

# Article

## The promise and the possibility: South Africa's contested industrial relations path

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### Abstract

A new vision of industrial relations emerged in the 1990s that grew out of a confident and militant labour movement which (unconsciously) drew on some of the key characteristics of a Coordinated Market Economy (CME). This outcome involved compromise which was contested from the beginning by all three social partners – labour, employers and government. Above all, the ability of the social partners to implement this fragile compromise was hampered by the complex legacy of South Africa's apartheid past. These tensions culminated in the Marikana massacre of 34 miners in August 2012.

### Introduction

'Industrial relations', Richard Hyman wrote many years ago, 'is the study of processes of control over work relations; and among these processes, those involving collective organisation and action are of particular concern' (Hyman 1975:12). It was this latter concern, the emergence of strikes and militant trade unions in the 1970s, that led to industrial relations becoming a subject of professional and academic interest in South Africa. While the study of labour endured as a popular subject in the social sciences over the next three decades, the regulatory side of industrial relations took a different turn emerging as a key part of human resource management in business schools. The result of this bifurcation is that industrial relations were increasingly left to the business schools and labour studies to sociologists. The applied nature of the business school approach to industrial relations meant that the processes of control over work relations was never really

integrated into the major theoretical contributions on the nature of South African capitalism. At a recent workshop on the Mineral Energy Complex (MEC), I could not help noticing that no mention was made of capital's changing strategies of control in the workplace.<sup>1</sup>

But this is not peculiar to South Africa. There is only one contemporary study of industrial relations in Africa and very few studies of political economy integrate industrial relations into their analysis (Wood and Brewster 2007). In part, this is the result of the relatively low level of industrialisation in Africa and the small size of its formal labour force. At the core of industrial relations is the International Labour Organisation's (ILO) notion of tripartism, a process of negotiation between three relatively well-organised constituencies. With its large informal workforce, neither unions nor employers are sufficiently organised to represent their constituencies, and post-colonial governments find it difficult to treat labour as a partner (Freund 1988, Beckman et al (eds) 2010).

This paper is a reflection on the contested nature of the developmental path South Africa has taken in the field of industrial relations in the post-apartheid period. I argue that the rise of labour as a key component of the internal liberation struggle laid the foundations for a new union-friendly labour regime. This vision of a new industrial relations system led to the creation of a range of innovative labour market institutions that were formalised in a raft of new legislation in the mid to late-1990s. This was a moment of optimism in which the African National Congress (ANC) was willing to satisfy the demands of the labour movement, opening up the possibility of a democratic corporatist path.<sup>2</sup>

The architects of this new path were influenced by what Hall and Soskice identify as the coordinated market economy (CME) of Germany, the Netherlands and the Nordic countries (Hall and Soskice 2001).<sup>3</sup> CME's are defined by four characteristics (Hall & Soskice 2001: pp. 6ff): first, centralised collective bargaining where both unions and employer organisations play a key role in national, industry-wide, wage determination; second, unions and employers are centrally involved in the supply of skilled labour, third, CMEs are notable for the key stabilising role that banks play in financing and monitoring companies, including in some countries such as Germany and the Nordic countries, through full representation on company boards; and, finally, a system of employee representation at workplace level through works councils (Feldman 2006:833).

While the new labour regime promotes centralised bargaining and through the Sector Education Training Authorities (SETA) unions and employers are involved in the supply of skilled labour, no systematic attempt has been made to introduce employees into company boards and the introduction of employee representation at enterprise failed to develop (Macun 1998, Webster and Macun 1998, Klerk 1999, Psoulis et al 1999). From the beginning the new labour regime was a hybrid, caught between some of the characteristics of the CME approach in-planted on a LME approach defined historically in racial terms. The implementation of this hybrid approach proved complex and contested. For employers, labour market flexibility became a mantra as they grappled with intensified international competition. For labour, on the other hand, democracy was not delivering on the expectations of more and better jobs and employers were by-passing the new labour laws. Indeed, under the impact of outsourcing and casualisation, the government's commitment to "decent work" seemed mere rhetoric designed for electoral campaigns.

Increasingly, the government has become ambivalent towards this new labour regime, particularly after the rapprochement between leading figures in the ANC and international and local capital. From the late 1980s, but particularly after the ANC was unbanned in 1990, far-sighted South African businessmen had been courting black businessmen, intellectuals, and politicians, offering them attractive directorships and shareholdings in established companies. For Bond, this 'elite compromise' determined the direction of macroeconomic policy in the country, redirecting it from the stated redistributive goals of the Reconstruction and Development Programme (RDP) towards a policy of dominant domestic and international class interests (Bond 2000).

In section three of the article I identify the constraints facing the key industrial relations actors, focusing on those that persist from the past. The foundations of the system of cheap, black migrant labour and white domination in South African workplaces were a result of the violent process of conquest and forced proletarianisation. This took the form of indentured labour and the semi-feudal labour of those dispossessed of their land (Webster 1999: 31-35). It has been argued that this racially-based violence used to subordinate the labour force is being perpetuated and increasingly expressed through market forces, especially through the growing informalisation of work (Pons-Vignon and Anseeuw 2009). Indeed, South Africa's post apartheid economy demonstrates Douglas North's argument of path dependence – the founding

institutions of a country are a fundamental determinant of its growth path (North 1990). For North, history matters not only because we can learn from the past, but also because the present and the future are connected to the past by the continuity of institutional change. He points out that institutional patterns are self reinforcing even when they are socially inefficient. Once development has been set on a particular course, organisational learning, cultural habits, and mental models of the social world reinforce that trajectory. South Africa, I suggest, illustrates this proposition; the founding interlocking apartheid institutions of the Mineral Energy Complex (MEC) have ensured continuity beyond the change in political regime in 1994.

In the fourth section I examine the challenges facing industrial relations actors in the contemporary workplace. In many ways, the industrial relations system is effectively channeling workplace grievances into the new institutions of dispute resolution. For instance, worker complaints to the Commission for Conciliation, Mediation and Arbitration (CCMA) have increased by more than 21 per cent, from 123,472 in 2007 to 150,000 in 2011 (cited in Southall 2012: 12). But a surge of militancy over the past five years has led to the re-emergence of violence in industrial conflict, effectively bypassing established institutions. The task of managing the workplace is made more difficult by the hostility of employers to the institutions of collective bargaining, persisting divisions within the labour movement, and the growing involvement of COSATU in national politics.

The central question raised by this paper is whether the sophisticated labour market institutions created in the immediate post-apartheid period are able to respond adequately to the changing world of work, or whether the legacy of the past and the challenges of the present are leading to a return to the patterns of conflict that characterised the apartheid past?

### **The promise**

In the wake of the Sharpeville massacre in 1960, the apartheid state embarked on a wave of repression banning the African National Congress (ANC) and its rival the Pan-African Congress (PAC), and driving the ANC's trade union ally, the South African Congress of Trade Unions (SACTU), into exile. South Africa was to experience a decade of 'industrial peace'. However, it was a decade in which the economy experienced a structural transformation financed by an influx of foreign capital. South Africa was to enjoy rapid growth based on a system of low-cost black labour and white privilege.

Coupled with these structural changes went a corresponding growth in

the black working class which brought black workers firmly to the centre of the industrial relations stage. In particular, the number of semi-skilled black workers grew the organisational base for industrial unionism. Through the concentration of large numbers of workers in large-scale production, the material conditions for a strengthened shopfloor-based trade unionism had been created. It was the mass strikes in January and February 1973 in Durban that were to dramatically highlight these changes, when an estimated 100,000 workers broke the decade-old 'industrial peace' and took to the streets to demand wage increases.

These strikes renewed a long and bitter historic struggle for the recognition of unions for black workers. It also exposed the weaknesses of the 50-year old dualistic system of industrial relations that conceded certain rights to non-Africans, whilst excluding African workers. The exclusion from these rights under the 1924 Industrial Conciliation Act was reinforced by a unilateral system of control over black workers that rested on the despotic power of the white supervisor.

This despotic system of control inside the factory was backed up by a tight system of control outside the firm exercised by the state through influx control over black workers. This system of control entrenched a dualism in the labour market between a predominantly skilled and privileged white labour aristocracy, and a non-unionised, vulnerable black and generally low-skilled labour force.

The struggles of labour were to culminate in the establishment, in 1977, of the Wiehahn Commission to investigate industrial relations. The Industrial Conciliation Act was amended to allow for the recognition of black unions for the first time in South African history. It would be better, Wiehahn concluded, to allow African trade unions to register at an early stage in order to control the pace of union development.

The Wiehahn 'solution' was clearly contradictory (Lambert and Webster 1988:23). The intention was to control the emerging unions by drawing them into the established industrial relations structures, in particular the industrial councils. This was intended to pre-empt attempts by these unions to establish a shop-floor presence and to widen the scope of their activities into the political arena. It had the opposite affect; it politicised the trade union movement. In 1984 a wave of political strikes began, called 'stay-aways', which drew these embryonic unions into the evolving political struggle for democracy in South Africa. This was to culminate in the formation of COSATU in 1985 and, shortly afterwards, the re-emergence of alliance

politics when the new union leadership formally visited the ANC in exile in Lusaka (Lambert and Webster 1988: 26-32).

In 1989 the reformist FW de Klerk replaced PW Botha as president of the apartheid state and signalled his intention to 'reform' apartheid. In February 1990, he announced the unbanning of the ANC, PAC and SACP, and freed Nelson Mandela. Over the next 12 months the ANC, COSATU and the SACP formed a formal alliance that cautiously began to distance itself from the armed struggle and insurrectionist elements in its ranks.

The legal recognition of black trade unions recommended by the Wiehahn Commission brought about greater interaction between labour and business leaders in the realm of collective bargaining and other industrial relations activities. Faced by growing disorder on the shop floor, many companies began searching for common interests with organised labour. A series of bilateral negotiations culminated in a tripartite agreement, the Laboria Minute in 1990 (Webster and Adler 1999). This accord, between the main labour federations, the employers' federations and the Department of Labour, declared that all future labour laws would be considered by employers' bodies and the trade union movement prior to being put before parliament. The unions agreed to participate in a reconstructed National Manpower Commission. Labour rights were extended to those previously excluded from the industrial relations system, including farm and domestic workers, and public servants.

The second tripartite policy-making institution was the National Economic Forum (NEF). Launched in October 1992, the NEF was a response to labour's demand for an end to unilateral restructuring of the economy. The trigger was the introduction of a regressive Value-Added Tax (VAT) in 1991. The largest union federation in the country, COSATU, mobilised a broad coalition in opposition to the new consumer tax (Patel 1993).

The election of a democratic government in April 1994 saw the triumph of the ANC with 63 per cent of the vote and a commitment to the reconstruction and development of South Africa. One of the first acts of the new government was to deliver on its promise to labour. It created the National Economic Development and Labour Council (NEDLAC). The new body was established through an Act of parliament in 1994 with the Department of Labour as the lead government department. Importantly, the Act expanded the traditional tripartite nature of these institutions to incorporate a developmental component; a fourth chamber was included of civil society groupings to give voice to the poor and marginalised. This was to prevent a narrow corporatist

arrangement between the Big Three: organised labour, organised employers and government. (Bird and Schreiner, 1992: 28-29) NEDLAC's central objective was for the four mandated constituencies to reach consensus and conclude agreements on economic and social policy before they were sent to parliament. Its main aims as specified in the NEDLAC Act are to:

- strive to promote the goals of economic growth, participation in economic decision-making and social equity;
- seek to reach consensus and conclude agreements on matters pertaining to social and economic policy;
- consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament;
- consider all significant changes to social and economic policy before it is implemented or introduced in Parliament;
- encourage and promote the formulation of coordinated policy on social and economic matters. (Webster and Sikwebu 2006: 3)

The cornerstone of the new vision of industrial relations was the Labour Relations Act (LRA) of 1995. It has five key features (Webster 1999: 46-47):

- it brings all employees into one industrial relations system where collective bargaining takes place in Bargaining Councils (previously Industrial Councils) The LRA extended the right to participate in Bargaining Councils to farm, domestic and public-service sectors (except the security services);
- it promotes collective bargaining – although it did not make it compulsory – by guaranteeing organisational rights to unions in the workplace, providing them access to employer premises, meeting rights and union subscription facilities, and the right to conclude closed shops under certain conditions. It also protects the right of employees to strike with a clear right to picket and to engage in sympathy strikes;
- it dramatically overhauled the dispute resolution procedures through the establishment of a state funded and independent Commission for Conciliation, Mediation and Arbitration (CCMA) which would seek to resolve disputes, initially through conciliation, with the right to impose compulsory arbitration in the case of unfair dismissals or 'essential services', or to arbitrate if a dispute was referred to it by the affected parties. Through such interventions it was hoped that the CCMA would 'reduce the frequency of strikes' (Webster 1999: 22);

- it established clear rules on dismissal, no longer to be decided by expensive and time-consuming litigation in the Industrial Court. The Act envisaged that most cases regarding alleged unfair dismissal, severance pay issues and organisational rights would be decided by arbitration. However, where these failed, they could be referred to a new Labour Court which, replacing the Industrial Court would have powers equal to those of the Supreme Court;
- an innovation was the introduction of workplace forums, which could only be established in workplaces with more than 100 employees, upon application by a representative trade union to the CCMA. In short, the purpose of workplace forums was to extend the potential for co-determination.

Subsequently, the LRA was supplemented by three other Acts.

First, the Basic Conditions of Employment Act of 1997 aimed to regulate minimum conditions of employment, and to ensure that working conditions of unorganised and vulnerable workers complied with minimum standards as defined, *inter alia*, by the International Labour Organization (Venter and Levy 2011: 225-35).

Second, the Employment Equity Act of 1998, which sought – against the racially-discriminatory background of apartheid – to promote equal opportunities in the workplace by eliminating unfair discrimination in employment practice or policy (Venter and Levy 2011: 236-40).

Third, the Skills Development Act of 1998 aimed to improve the skills of the South African workforce by improving investment in training and development (Venter and Levy 2011: 246-7).

The introduction of a new labour regime was a major step towards a more inclusive and participatory industrial relations system. Indeed, South Africa was celebrated globally for its ‘miracle’ victory over apartheid and praised by the ILO for its successful transition to a more rights-based and cooperative industrial relations system. Some innovations, such as the workplace forums, did not take off as workers already had workplace representation through shop steward committees. But vulnerable workers, who were previously excluded from the industrial relations system such as public sector, domestic and farm workers, now had the same rights as all other workers. However, although new labour legislation had been passed and innovative institutions introduced that laid the foundations for a corporatist-style industrial relations system at the macro level (through NEDLAC), at the

meso level (through centralised bargaining), and at the micro level (through workplace forums), the conditions for successful corporatism have not been realised in post-apartheid South Africa (Webster 1999: 47-48). The process of elite-pacting that led to South Africa's 'negotiated revolution' essentially conserved the pillars of the apartheid economy, the Minerals Energy Complex (MEC), a set of interlocking institutions that ensured continuity of the apartheid developmental path (Adler and Webster 1995, Fine and Rustomjee 1996, Bond 2000).

Furthermore, South Africa had won its democracy in a world where neo-liberalism was dominant and employers were in favour of greater 'labour market flexibility' and deregulation. As two progressive economists observed at the time: 'It was not unusual in the early 90s to hear senior ANC spokespersons arguing that the world had totally changed, and that those arguing for more radical or alternative economic solutions in this new globalised context were simply living in a bygone age' (Michie and Padayachee 1997). The outcome was a policy reversal from left-Keynesianism to fiscal austerity and the adoption of a neoliberal economic framework, the Growth Employment and Redistribution (GEAR) strategy (Webster and Adler 1999: 363-71).

The work order in South Africa was being restructured under the impact of a complex, diverse and often contradictory range of pressures that could be described as a triple transition, with political, economic and social dimensions (Von Holdt 2003). The political transition from authoritarianism to democracy had created a range of new rights; the economic transition from a domestically oriented economy to a more globally integrated one had led to widespread retrenchments and informalisation of work; the social transition from apartheid to a post-colonial order had impelled profound processes of redistribution of power and access to resources, occupations and skills (Von Holdt and Webster 2005:4).

The complexity of these transitional contestations had placed a range of obstacles in any attempt to genuinely transform the industrial relations system. Let me identify four legacies of the past.

### **Legacies of the past**

The first is the persistence of the system of migrant labour and its acceleration in post-apartheid South Africa through a dramatic increase in cross-border migration. Historically, certain sectors of the formal economy, such as mining and agriculture, had developed a structural dependency on low-

skilled migrant labour for parts of its production and supply needs. In 2006, 38 per cent of the 267,894 mine workers on the South African gold mines were foreign migrants, largely from Botswana, Lesotho, Mozambique and Swaziland (Crush and Williams 2010). In post-apartheid South Africa, service sectors such as construction, hospitality and the private security industry have turned to immigrant workers to satisfy their demand for lower-skilled, lower-paying jobs. Many of these jobs are either in the informal sector or are jobs which in the formal sector are fast becoming informalised (through labour brokers, for example) and have little social protection. Furthermore, sectors such as agriculture, the private security industry and hospitality have very low rates of compliance to the new labour regime (Webster et al 2012).

A second legacy is the persistence of the racial division of labour with a predominantly white management and a black workforce. This has led to a workplace culture characterised by low trust, low skills and adversarialism. 'While politically speaking apartheid is no more, in the workplace its legacy continues in low pay, racist differentials, authoritarian management and racism' (Von Holdt 2000: 102). Von Holdt describes this as the apartheid workplace regime. 'Apartheid oppression', he writes, 'was not something found outside the factory; it was also internal to the workplace and indeed structured management relations with black workers' (Von Holdt 2000: 107).

A third legacy is high structural unemployment. The unemployment rate increased to 25.2 per cent in the first quarter of 2012, the number of discouraged work seekers increased, with an estimated 40 percent of the economically-active population without work (StatsSA 2012a).<sup>4</sup>

This high level of unemployment is exacerbated in South Africa by a process of racialised dispossession (Hart 2002). This is the process of colonial conquest and dispossession of the land of the indigenous peoples of Southern Africa creating a marginalised labour force. The classic idea of modernisation is that workers move from the traditional to the modern economy. However, in countries such as South Africa the indigenous people though dispossession of their livelihoods were not absorbed into the modern sector. 'As a result', Sandal and Bhattacharyya argue, 'a "surplus" labour force emerged in developing countries consisting of dispossessed producers whose traditional livelihoods were destroyed but were not absorbed in the modern sector' (Sanyal and Bhattacharyya 2009:36). Some of this 'surplus' falls back on traditional subsistence agriculture; the rest survive on petty non-traditional manufacturing as well as service activities, usually retail. They go on to identify the following economic characteristics

amongst this ‘surplus labour force’: ‘the clear preponderance of self-employment largely assisted by family labour, the household as a major site of production, particularly in the case of non-agricultural activities, and community or kinship networks involving trust and reciprocity in place of impersonal exchange relations’ (Sanyal and Bhattacharyya 2009: 36).

The table below illustrates the very low proportion (43 per cent) of the working age population in employment in South Africa in comparison to countries that have a higher, and lower, per capita income.

	GDP / capita (US\$1000s)	GDP / capita rank	HDI rank	Employed as percentage of Working-age population
USA	40	2	13	70%
UK	30	19	20	71%
Japan	29	21	14	76%
Germany	29	24	26	69%
Sweden	28	26	8	72%
South Korea	19	52	37	63%
<b>South Africa</b>	<b>11</b>	<b>78</b>	<b>157</b>	<b>43%</b>
Chile	11	80	48	53%
Malaysia	10	83	80	68%
Costa Rica	10	84	61	64%
Brazil	8.1	92	82	62%
China	5.6	120	111	74%
India	3.1	153	166	63%
Cuba	3	154	68	56%
Vietnam	2.7	158	140	76%

Source: Cited by David Fryer, Presentation on Collective Bargaining Strategies for 2012, FEDUSA, Collective Bargaining Conference, FEDUSA Head Office, and Johannesburg. 29 February 2012.

Finally, and most importantly, post-apartheid South Africa inherited a labour market deeply segmented by race, ethnicity and gender (Webster and von Holdt 2005: 41-120). Under the impact of liberalisation the workplace has become increasingly differentiated between three zones of work – a core of six million workers in a standard employment relationship with contracts and benefits, a non-core of casual and informal workers and a periphery of long-term unemployed. We suggest that these three zones are asymmetrically interdependent, with the third zone increasingly marginalised under the impact of marketisation (Von Holdt and Webster 2005:23).

Corporate restructuring, the reorganisation of work and the differentiation of work into three distinct zones is creating new lines of social inclusion and exclusion in post-apartheid South Africa – a process which threatens to generate a crisis of social reproduction (Von Holdt and Webster 2005: 28). Although core workers are subject to socio-economic inclusion, earning regular wages and with access to legislative rights and a union voice, these rights of formally employed workers are increasingly under threat from those workers who are either outsourced into precarious and lower paid jobs, or who are retrenched and become desperate job seekers.

In the second zone – the non-core – workers are subject to job insecurity, low wages and alienation at work. For the new working poor, trade union rights do not exist, they have little access to the rights established by the new industrial relations system, and they tend to be excluded from skills development programmes. As they grapple with the flexible worlds of work, trade unions lose their capacity to provide voice for the new working poor and face a crisis of representation (Webster and Bischoff 2011).

The growth of the third zone, a periphery of unemployment and informal subsistence activities, places households under even more devastating pressure. For many in this social group, 'work' does not involve a regular income. In fact, for many there is no income at all but rather payment in kind. This results in enormous strain on families, households and communities.

The complex and contested nature of the transition has implications for managers, workers and trade unions, as these key actors face the challenges of contemporary industrial relations in South Africa. I identify five of these challenges in the next section.

### **Challenges of the present**

A central challenge is growing militancy and strike violence. It was widely believed in apartheid South Africa that there was an unacceptably high

incidence of unnecessary and un-procedural strikes. This was attributed to the absence of procedures for the independent and effective mediation of disputes. Many disputes that could have been resolved by consultation, it was believed, were instead resolved by industrial action, often characterised by violence (Webster 1999: 22).

Initially the establishment of the CCMA seemed to have been effective in institutionalising conflict and strike action dropped from a high point of 9 million work days lost in 1987 to 1.6 million in 1995, with a downward trend reaching 650,000 in 1997. However, strikes increased dramatically to 12,900,000 in 2007, 14,600,000 in 2010, and 20 million working days lost in 2011 (Southall, 2012: 4).

The significance of these strikes is that they have become ‘trials of strength’ between an intransigent management and an increasingly militant work force. They have become longer and increasingly violent. The three month strike in the private security industry in April to June 2006 led to a shocking number of 57 dead (Makgetla 2006). The four week public sector strike in 2007 was characterised by widespread intimidation and violence. Violence, the strikers believed, was a necessary element in maintaining worker solidarity, regardless of whether it was in apartheid or democratic South Africa. In the words of one woman worker:

There is no sweet strike; there is no Christian strike.... A strike is a strike. You want to get back what belongs to you.... You won't win a strike with a Bible. You do not wear high heels and carry an umbrella and say '1992 was under apartheid, 2007 is under ANC'. You won't win a strike like that. (cited in Von Holdt, 2010: 141)

Strike action is also being fuelled by a growing number of break-away unions, as well as the use of replacement (scab) labour. This is in part the result of economic pressure in which established unions struggle to deal with retrenchment and workers struggle for jobs.

Strike action is also the result of employer unilateralism and divisive tactics. A case in point is the strike in February 2012 at Impala Platinum, when 5,000 rock drill operators (RDOs) led 12,000 mineworkers out on strike after they were overlooked for a wage increase (Stewart 2013). Tension was fuelled by the existence of a break-away union from the dominant National Union of Mineworkers (NUM), the Amalgamated Mining and Construction Workers Union (AMCU). In August at Lonmin's Marikana mines, RDOs went out on strike leading to 34 mineworkers being shot dead by the police. This triggered the most extensive strike wave in South African mining

history (Alexander et al 2012: 56-61).

Militancy has not been confined to the workplace. Peter Alexander has analysed what the government refers to as 'crowd management incidents' (Alexander 2012). During the last three years, 2009-2012, there has been an average of 2.9 unrest incidents per day. He concludes that 'Government attempts to improve service delivery have not been sufficient to assuage the frustration and anger of poor people in South Africa. ... it is clear that while service delivery demands provide the principal focus for unrest incidents, many other issues are being raised, notably lack of jobs. As many commentators and activists now accept, service delivery protests are part of a broader Rebellion of the Poor' (Alexander 2012).<sup>5</sup>

Secondly, although NEDLAC has included constituencies that were previously excluded from the policy-making process, all social partners have shown some ambivalence towards this central institution of social dialogue (Webster and Sikwebu 2010: 204-6). At times business has preferred lobbying, while labour has put pressure on its allies in the Triple Alliance. The ambiguity of the government was clearest when it by-passed NEDLAC over GEAR in 1996 and declared it 'non-negotiable'. As Raymond Parsons (who chaired the Business sector in NEDLAC) observed 'Initially, government indicated that the basic policy lines of the GEAR strategy were not negotiable, even within NEDLAC. This was partly because implementation of the strategy was deemed to be urgent, partly because some elements like interest rates, taxes and fiscal deficits were not practically negotiable in any modern economy, and partly, it seems safe to say, because the Government surmised (correctly) that organised labour would strongly oppose GEAR. Whatever the reasons, it put considerable strain on the NEDLAC process' (Parsons 2007:13).

For some, the ambiguity arises out of what is seen as the abuse by labour of Section 77, which allows for parties to declare a dispute over socio-economic issues and, provided they follow the prescribed procedure, engage in strike action. Parsons' view is that NEDLAC is undermined as a 'sounding board' by social partners 'who see the forum as a place to negotiate agreements line by line' (interview with Parsons, cited in Webster and Sikwebu 2010: 205). As a result considerable frustration has been expressed with the time consuming nature of the process. Concern has also been expressed over the capacity of the social partners to engage in policy making, both in terms of the time it takes to reach decisions but also because of NEDLAC's limited budget (Webster and Sikwebu 2010: 205).

NEDLAC has been criticised by those who prefer the Anglo-Saxon Labour Market Economies (LME) approach on the grounds that it undermines parliament, as it requires that economic and labour legislation be referred to NEDLAC prior to its tabling in parliament (speech by CEO of the South African Institute of Race Relations cited in Webster and Sikwebu 2006: 15). But this misunderstands the idea behind NEDLAC, namely that it is complimentary to the parliamentary process. The CME approach is an attempt to go beyond parliament to build a broad social consensus by incorporating the 'social interests' of key institutions of civil society in policy formulation. As Vic van Vuuren, Chief Operating Officer of Business Unity South Africa (BUSA) at the time: observed, 'Social dialogue is vital for balancing market needs, on one side, and the social needs of the broader society, on the other. Without dialogue the market can overrun social needs or vice versa. Without social dialogue we could have gone the Zimbabwean way' (interview with Van Vuuren, cited in Webster and Sikwebu 2010:215).

A third challenge is the ambivalence of key industrial relations actors towards centralised bargaining. In spite of the fact that the number of workers covered by Bargaining Councils increased threefold from 735,533 in 1992 to 2,290,510 in 2010, Councils only cover 32.6 per cent of workers in occupational categories that would normally be covered by collective bargaining (Godfrey et al 2010: 115). This increased coverage is largely due to the creation of a Public Sector Bargaining Council for the first time with over one million members. At the same time, the number of Bargaining Councils has dropped from 87 in 1992 to 47 in 2010. This is partly due to the policy of creating a few large bargaining councils but it is also due to a number of smaller bargaining councils collapsing.

From their inception Bargaining Councils have been at the centre of the debate on the future of South Africa's industrial relations system. As Godfrey et al argue: 'The enactment of the Labour Relations Act of 66 of 1995 (LRA) did not end the debate over bargaining councils – rather it widened its scope to encompass labour market regulation as a whole and its impact on economic development' (Godfrey et al 2010:109). In particular, employers object to the extension of agreements to non-parties, arguing that it inhibits job creation and makes it more difficult to deal with international competition. Unions, on the other hand, remain strongly committed to the expansion of centralised bargaining to cover those workers outside the bargaining council system. The main goal of labour has been the creation of bargaining councils in the retail sector, mining and the automobile manufacturing sector

(Godfrey et al 2010: 218). Government for its part, remain ambivalent; the Department of Labour is committed to expanding the number and coverage of bargaining councils and the Treasury argues for greater workplace flexibility.

Research findings challenges the argument that the extension of bargaining councils to non-parties has a negative impact on employment (Godfrey et al 2010: 120-124). Pointing to comparative evidence that centralised collective bargaining produces consistently lower inflation and facilitates employment creation, the authors recommend tripartite collective bargaining at the national level with NEDLAC as the most suitable vehicle through which this could take place. An example of innovation in bargaining councils is the agreement, initiated by the clothing trade union SACTWU in November 2011, to a 30 per cent pay cut for all new clothing workers (Rudin 2012).<sup>6</sup>

Of particular concern to trade unions is the de facto highly flexible labour market that has emerged through the rapid growth of the labour broker sector since the passage of the LRA. 'In this context', labour lawyer Paul Benjamin writes, 'labour brokers become a "scapegoat" for the lack of economic transformation in the lives of working people and a lack of state investment in enforcement regimes and "prohibition" rather than "regulation" becomes an attractive slogan. The regulatory solutions, in contrast, are difficult because they require a response to the complex shifts in the labour market, particularly those associated with externalised work' (Benjamin 2011: 2).

In March 2012 a set of proposals to regulate labour brokers (formally titled Temporary Labour Services, TLS) was sent to parliament after two years of discussion in NEDLAC. However agreement could not be reached in NEDLAC and COSATU remains adamant that labour broking should be banned and undertook nationwide protest action on March 7, 2012 in opposition to the attempt to tighten up the regulations, rather than ban, labour brokers.

A fourth challenge to the system of industrial relations is the persistence of divisions within the labour movement. Although trade union membership remains high at 3,327,000 members, there is a large and growing representational gap; large numbers of workers do not belong to trade unions (StatsSA Fourth Quarter 2012).<sup>7</sup> As a proportion of total employment, registered trade union membership declined from a high point in 1997 of 45.2 per cent to 23.3 per cent in 2010 (cited in Southall, 2012).

In addition, important changes have taken place in the social composition of the union movement. The workforce has become more educated, the membership more skilled, and the leadership more career oriented.

Approximately a third is employed directly or indirectly by the state (Buhlungu 2010: 117-38). Today one out of ten COSATU members is a school teacher.

In spite of the growing concentration and coordination of union activities through such institutions as NEDLAC where there is a common labour caucus, the labour movement remains highly fragmented racially, occupationally, politically and by organisational style. COSATU, the largest federation, has a membership of over two million. It remains predominantly black, blue collar, and politically aligned to the ANC and the South African Communist Party (SACP) (Webster and Buhlungu 2007: 418).<sup>8</sup> It relies on a combination of strategic engagement and militant mobilisation in the workplace and on the streets using traditional tactics such as strikes and protest marches.

By contrast, and in spite of its attempts to distance itself from its 'white staff associations' image of the past, the Federation of Unions of South Africa (FEDUSA) continues to draw most of its membership from the upper-end of the labour market, which is predominantly white, coloured and Indian, and white collar. However, it has a membership of 527,628 and the composition is steadily changing with 40 per cent now black. FEDUSA is non-aligned politically and relies heavily on lobbying and social dialogue to influence the political process. It also emphasises the individual provision of services and benefits to its members.

The National Council of Trade Unions (NACTU), the smallest of the three, represents two distinct political traditions, Pan-Africanism and Black Consciousness, neither of which have yet found an effective voice in post-apartheid South Africa. To some extent NACTU's constituency is similar to COSATU's, but its organisational style relies on influencing informal political networks. But it has seen a steady drop in numbers and has been forced to close down most of its provincial offices and retrench staff. The 'reinvention' of the *Mynwerkersunie* as Solidarity in 1997 as a broad social movement represents an imaginative example of an attempt by an exclusively white trade union to break with its past (Mantashe 2009).

A growing challenge to the effective functioning of the industrial relations system is the increasing involvement of the union movement in national politics. For all its conflicts with government policy, COSATU's membership has on balance been a significant beneficiary of ANC rule. Not surprisingly, it has remained consistently loyal to the ANC and the Tripartite Alliance in its political affections since 1994, even if the intensity of its support for both has declined significantly over the years (Southall and Webster 2010). In

March 2005, COSATU went a step further in its involvement in national politics, when its Secretary-general Zwelinzima Vavi intervened directly in ANC succession politics by 'pronouncing that any effort to stop Jacob Zuma from succeeding Thabo Mbeki as president would be like trying to fight against the big wave of the tsunami' (Southall and Webster 2010: 14). Indeed, Zuma did become president with the full support of Vavi after Thabo Mbeki was abruptly removed in 2008. However the honeymoon did not last and COSATU was soon in an adversarial relationship with the Zuma government. This was to culminate in a large-scale protest march in March 2012 over COSATU's opposition to e-tolling and their demand for the banning of labour brokers.

This open confrontation between the state and labour brings to the fore an on-going dilemma in post-colonial Africa: do unions emulate COSATU and align themselves with the ruling party and try and influence its policies? The danger is that this path can lead to subordination to the ruling party, patron-client relations between the ruling party and ambitious union leaders, and the reproduction of divisions within the party inside the union movement (Beckman et al (eds) 2010). Or do unions follow the path of Ghanaian Trade Union Congress (and FEDUSA) which are not aligned to any political party and maintain an independent political position? (Akwetey and Dorkenoo 2010: 39-58). The danger in this position is that the centrality of national liberation politics may marginalise unions from the key developmental challenges facing the country. Furthermore, as Buhlungu notes,

Union members and leaders are steeped in (national liberation) politics, making it difficult for unions to transcend it. The results of a longitudinal study conducted in South Africa since 1994 show that the majority of COSATU members are staunch supporters of the ruling ANC and believe that the alliance with the federation and the ruling party is the best way to shape the post-apartheid economic and political dispensation. (Buhlungu 2010:205)

### **Conclusion: possibilities in the future**

I have argued that a new vision of industrial relations emerged in the 1990s that grew out of a confident and militant labour movement which (unconsciously) drew on some of the key characteristics of a Coordinated Market Economy (CME). This outcome involved compromise which was contested from the beginning by all three social partners – labour, employers and government. Above all, the ability of the social partners to implement

this fragile compromise was hampered by the complex legacy of South Africa's apartheid past.

What then are the possibilities of breaking with this low-trust dynamic between and within labour and employers, and constructing a new consensus in the form of a social or developmental pact between the social partners? As early as 1996 there were calls from the Presidential Labour Market Commission for an Accord for Employment and Growth (Department of Labour 1996: 191-206). In 1999, at the NEDLAC Annual summit, Jacob Zuma, then Deputy President of South Africa, called on the social partners to conclude a 'tough employment accord'. This was echoed by the then overall labour convener at NEDLAC, Ebrahim Patel:

We need to forge a common vision on economic policy. Building a shared vision is a difficult process, with gains today and retreats tomorrow. However difficult, we need to achieve consensus, because this is at the heart of our jobs and equity challenge. (NEDLAC 1999:3)

Pacts are compromises and as such, constitute a provisional consensus that, when circumstances change, can be challenged. The compromise reached in 1995 on the basic architecture of the new labour regime continues to be constantly questioned by the social partners. An opportunity was missed, both in 1995/1996 and again in 2003, to negotiate a broad social pact, a package deal with trade-offs across different economic and social policy issues that could have reflected consensus on macro-economic policy and a growth strategy (Webster and Sikwebu, 2010: 214).

Importantly, pacting re-emerged as an option in 2010 and again in the 2012 National Development Plan (NDP). The New Growth Path (NGP), adopted by the South African government in 2010, proposes three phases in the realisation of decent work: In the very short term the state can accelerate employment creation through direct employment schemes, such as the Community Work Programme (CWP). In the short to medium term it can support labour-absorbing activities, especially in the agricultural value chain, light manufacturing and services, to generate large-scale employment. In the longer term the state must, the NGP suggests, increasingly support knowledge – and capital – intensive sectors in order to remain competitive (NGP 2010:7). To start the implementation process, the authors propose the 'initiation of engagement on a social pact with key stakeholders' (NGP 2010:31).

Commenting on the trade-offs proposed in the New Growth Path, Adam Habib observed that:

Ultimately, all of this is possible only if a pact is developed between business, labour and the state. There are two political preconditions for a successful pact: a relative equality in the distribution of power between labour and business, and the development of political will among all stakeholders to contain elite and popular expectations. Polokwane established the first by enabling a more even distribution of power thereby enhancing the prospects of a pact. But the second precondition still seems to be missing. The reflex response of the leadership of business and labour to the remuneration cap was to reject it and enumerate the problems in its implementation. No attempt was made to consider how the recommendation could be implemented. This suggests that the political will still does not exist in business and labour to make the required sacrifices. (Habib 2010)

For a pact to emerge all parties must share a perception of stalemate and be willing to accept a suboptimal solution to the impasse (Webster and Adler 1999: 373). In April 2012, Thandika Mkandawire made the case for a developmental pact driven by a developmental state, where distribution takes place over time (Mkandawire 2012). This requires, he argues, 'patient labour', where labour accepts wage constraint, and 'patient capital', where capital invests in long-term development. It also presupposes, as Evans has shown in his path-breaking research on the development state, the existence of 'robust, competent public institutions at the centre of the development matrix' (Evans 2010: 37).

It could be argued that the conditions for such a pact do not exist.<sup>9</sup> Firstly, as Evans insists, a developmental state requires bureaucratic capacity and 'embeddedness'. The first condition requires that states approximate the ideal-typical Weberian bureaucracy. 'Meritocratic recruitment to public service careers offering long-term rewards commensurate with those obtainable in the private sector was the institutional cornerstone of the East Asian economic miracle. Meritocratic recruitment was important, not only to promote competence but to give state employees a sense of esprit de corps and belief in the worthiness of their profession. Long-term career rewards based on performance kept competent individuals from deserting the public service' (Evans 2010:45).

The second condition, embeddedness, requires that the state be in a position to orchestrate a concrete national project of development through drawing on 'a dense set of concrete impersonal ties that enable specific agencies and enterprises to construct joint projects at the sectoral level' (Evans 2010:46-47). Being able to avoid capture by capital and being able to

discipline entrepreneurial elites is, Evans concludes, a defining feature of the 'embedded autonomy' of East Asian development states, distinguishing them from less successful states in Asia and Africa (Evans 2010: 47).

In addition to state capacity, a pact also requires, Mkandawire (2012) has suggested, 'patient capital' and 'patient labour'.<sup>10</sup> Capital, as Seeraj Mohamed has demonstrated, has shown little patience. Instead the large corporations have responded to risk in post-apartheid South Africa 'by moving their money abroad' and government's policies have made this capital flight easier (Mohamed 2010: 62). Labour, on the other hand, has shown little patience with long-term considerations and focused its strategies on the immediate demands of 'core' workers in standard employment relationships, with rhetorical support for the non-core and the periphery. In a survey of COSATU members in 2004, it was found that 93.9 per cent were in standard employment relationships (that is, where work is full-time and indefinite) while only 6.1 per cent were in non-standard employment relationships (that is, temporary, part-time or outsourced employment) (Webster 2006: 22).

For a development accord to be constructed will require a dramatic shift in all three social partners. It will also require a strengthening of the key labour market institutions that underpin the CME approach. There is:

- a need to accept industrial conflict and strong unions as necessary components of a democracy;
- a better use of bargaining councils and the creation of new ones in terms of the Labour Relations Act;
- a more effective use of National Economic Development and Labour Council (NEDLAC);
- a more effective use of existing conciliation, mediation and arbitration structures;
- a more proactive Department of Labour in educating and building the capacity of all social partners.

As Cheadle et al argue:

A new social compact ... cannot be limited to the top-tier actors, it must reach down to the workplace leadership as well. It should not be so much a compact in relation to wages, but on workplace culture, productivity and reform. (Cheadle et al 2011: 8).

But the reality is that unemployment remains dangerously high and there are large numbers of insecure and low-paid jobs in a context of deepening inequality. This is likely to continue to ignite on-going protests due to lack

of service delivery, especially with rising food and electricity prices, water cut-offs, the privatisation of public roads, and the collapse of public institutions such as public schools and public hospitals.

With the by-passing of key labour market institutions by all the social partners and increasingly militant action in the workplace and on the streets, it could be argued that important components of a co-ordinated market economy no longer characterises, if it ever did, South Africa's capitalism. The massacre at Marikana brought these tensions tragically to the fore. Increasingly the ANC's intellectual paradigm combines elements of the European corporatist path with admiration of the East Asian development state (Hirsch 2005).<sup>12</sup> Whether such a hybrid model is possible is difficult to foresee, but what is clear is that social context and history profoundly conditions the effectiveness of key actors and institutions. This does not mean that changing formal institutions cannot change practice, what it does mean is that the path whereby the present has been reached influences the nature of the present.

## Notes

1. This was a joint seminar organised by CSID (Corporate Strategy and Industrial Development Research Programme) and TIPS (Trade and Industrial Policy Strategies) on February 7, 2012 at the University of the Witwatersrand to update Fine and Rustonjee's classic study of the South African political economy (Fine and Rustonjee 1996). While the seminar was useful in identifying both continuities and changes to the concept of the MEC, especially the impact of globalisation and financialisation, the implications of the changing labour market and worker responses to these changes were absent from the discussions.
2. It is, however, worth noting that the term 'corporatism' has never been popular in labour circles in South Africa because it was seen to convey the idea of 'a state initiated system of consensus building' (Baskin 2000: 48). 'In South Africa', Baskin continues, 'the origins of the process lie in union demands to be consulted on policy formulation'. He opted instead for the term 'concertation' to 'describe the trend of negotiated involvement in policy formulation' (2000:48).
3. CMEs are distinguished from the Anglo-Saxon Labour Market Economies (LMEs) which display key differences with CMEs: wage bargaining is largely company-based and employees have few formalised rights to workplace decision-making or board representation; there is little emphasis on vocational training, and higher education is less closely integrated with the requirements of industry; company financing is predominately secured through stock market issues in highly developed capital markets; strong anti-collusion competition law discourage sister-company coordination, and hostile takeovers are more common,

- and the model of corporate governance is dominated by the objective of maximising shareholder value (Soskice 1999: 37-40).
4. These figures have been disputed by Loane Sharp of ADCORP who believes there are about 19 million employed people in South Africa, including 2.5 million illegal immigrants and 6.2 million people in informal employment. This highly contested figure would leave South Africa with only 5 per cent, half the rate of the European Union! (Bisseker 2012: 43).
  5. In an earlier analysis, Alexander referred to these on-going protests, and the cycle of violence initiated by police hostility, as a rebellion of the poor (Alexander 2010: 26-27).
  6. The results of the first three months of this agreement were reported to be disappointing as companies failed to meet their target of 3 per cent new jobs. Employers reported that new employees brought in at the entry level wage deal, were expressing dissatisfaction at earning 30 per cent less than their colleagues. These employees subsequently left, leading to some employers experiencing a high labour turnover. If companies fail to reach the employment target of an increase of 15 per cent employment by March 31, 2014, the agreement will automatically be cancelled (Phakathi 2012).
  7. In the 2012 StatsSA survey for the first quarter, trade-union membership is officially reported to be 3,327,000. This is an increase of 399,000 in trade-union membership since 2006.
  8. These two paragraphs are drawn from a joint paper written with Sakhela Buhlungu arising out of research we did on the state of the trade union, Webster and Buhlungu 2007.
  9. I am grateful to Imraan Valodia for clarifying this point at a seminar at the School of Built Environment and Development Studies (SoBEDS) at the University of KwaZulu-Natal in May 2012.
  10. As Francie Lund suggested at the same SoBEDS seminar, the capacity of the local state will also need to be strengthened if it is to deal with the demands of precarious workers at local government level. Currently issues to deal with conditions of work are dealt with by the department of labour, a national department.
  11. Vishnu Padayachee made the interesting point at the same SoBEDS seminar that the new labour regime was shaped by a specific generation of social entrepreneurs who were at the centre of these innovations. To a large extent they have moved on and have, arguably, taken the vision with them.

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