

**LEGALISM IN THE SOUTH AFRICAN TRADE UNION
MOVEMENT: 1979-1988**

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Submitted for the degree of Ph.D.
London School of Economics
October, 1994.



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ABSTRACT

This study seeks to deepen an understanding of the response of the emergent non-racial trade union movement in South Africa to the statutory system of industrial relations created by the state in 1979. Both the legal issues relating to the trade union movement and the political issues surrounding the development of the emergent union movement, have been exhaustively canvassed in the past decade. However, a major lacuna exists in such writing with regard to how the trade union movement has responded to the new dispensation in the past decade.

The primary concern of the thesis is to fill that gap by examining the nature the new union movement's response to the post-1979 system and attempting to establish how and why that response developed. This concern leads me to contribute to the debate on the existence (or otherwise) of legalism in the new union movement in South Africa in the decade under review and to seek to identify the reasons for its existence or absence.

After establishing a brief historical/political framework for the thesis, the new unions and the new dispensation are described. This is followed by an examination of the main procedures and institutions of the new dispensation and the response of the trade unions to these. It is argued that these procedures and institutions themselves helped to shape the response of the new unions to the new dispensation. Since political factors had a crucial bearing on trade union affairs, the thesis also focuses on the struggle of different political currents for hegemony over the new unions and the extent to which this conditioned the response of the new unions to the new dispensation. It concludes that political factors were of great significance in determining the nature and extent of the new unions' interaction with the new dispensation and the law generally. Finally an attempt is made to assess the implications of the new unions' interaction with the new dispensation, for their overall development and for the achievement of their goals.

ACKNOWLEDGEMENTS

Numerous people have made the research, writing and production of this thesis possible. I am grateful to all of them for their assistance. Of these I wish to single out my husband, Bahir Laattoe, without whose practical, financial and personal support I would have found the completion of the thesis impossible. I also wish to thank my little daughter, Zora, whose life thus far has been (in the main) uncomplainingly lived in the shadow of this thesis and without whose sparkle the work would have been far more arduous.

Special thanks go to Fayruz Mollagee, Annie Moser, Paul O'Brien, Fran Jacobsen, Helen Durrant, Sheila Donn, Geraldine Tully and Bayar Laattoe for their practical assistance and moral support, and to my parents, brothers and sister for their financial support and their faith in my ability to fulfil this task. I also wish to express my deep gratitude to my supervisor, Bob Simpson, who patiently read and incisively commented upon the numerous drafts of the thesis, and whose overall support was invaluable to me.

I would also like to thank the numerous busy trade unionists, ex-unionists and lawyers who found time to talk to me, Adv. Bruinders for his practical assistance, COSATU for allowing me to use the FOSATU/COSATU archives, Baruch Hirson for allowing me to use some of his materials (and discussing the first draft of the thesis with me) and Bob Fine for the materials which he so generously allowed me to borrow.

I am grateful for the financial assistance which I received from the London School of Economics Students' Union Hardship Fund and Childcare Fund and from the Foundation for the Care of the Victims of Apartheid, the administrators of which showed a rare understanding of the way in which the demands of parenthood extend the duration of study towards a Ph.D. My thanks also go to: the Leche Trust, the Reeves Trust, the Family Welfare Association, the Morris Finer Trust, the African Educational Trust and the United Nations Education and Training Project for Southern Africa, for their financial assistance, without which the earlier work on this thesis would not have been possible.

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GLOSSARY AND ABBREVIATIONS

1. Publications

Hansard:	Reports of House of Assembly
AC:	African Communist, quarterly journal of the South African Communist Party
ASSAL:	Annual Survey of South African Law
CN:	Cosatu News
FWN:	FOSATU Workers News, newsletter of FOSATU
ILJ:	Industrial Law Journal (South Africa)
Inqaba:	Inqaba Ya Basebenzi, journal of the Marxist Workers Tendency of the ANC.
LRA:	Labour Relations Act:
LRAA:	Labour Relations Amendment Act:
MLR:	Modern Law Review
ROAPE:	Review of African Political Economy
RRS:	Race Relations Survey, annual survey of all political, economic and social events of note in South Africa, by the South African Institute of Race Relations
SALB:	South African Labour Bulletin
SALJ:	South African Law Journal
Sechaba:	Journal of the ANC
UM:	Umsebenzi, Paper of the ANC
WCR:	Wiehahn Commission Report
WIP:	Work in Progress
WM:	Weekly Mail

2. Trade Unions, Trade Union Federations and Related Organizations:

AAWU:	African Allied Workers Union
AEU:	Amalgamated Engineering Union
A/FCWU:	African Food and Canning Workers' Union and Food and Canning Workers' Union (later part of FAWU: Food and Allied Workers Union)
AWU:	Automobile Workers Union
AZACTU:	Azanian Confederation of Trade Unions
BAWU:	Black Allied Workers' Union
BCAWUSA:	Building, Construction and Allied Workers Union of South Africa
BMWU:	Black Municipal Workers Union
CAWU:	Construction and Allied Workers Union.
CCAWUSA:	Commercial Catering and Allied Workers' Union
CIWW:	Council of Industrial Workers of the Witwatersrand
CNETU:	Council of Non-European Trade Unions
CCOBTU:	Consultative Committee of Black Trade Unions
COSATU:	Congress of South African Trade Unions
CTMWU:	Cape Town Municipal Workers' Union (now part of SAMWU, the South African Municipal Workers' Union)
CUSA:	Council of Unions of South Africa
CWIU:	Chemical Workers Industrial Union
EAWU:	Engineering and Allied Workers' Union
FAWU:	Food and Allied Workers Union
FBWU:	Food and Beverage Workers Union
FCWU:	Food and Canning Workers Union
FEDCRAW:	Federal Council of Retail and Allied Workers
FOFATUSA:	Federation of Free African Trade Unions of South Africa

FOSATU:	Federation of South African Trade Unions
GAWU:	General and Allied Workers' Union
GWU (WPGWU):	General Workers Union (Formerly the Western Province General Workers Union, formerly the Western Province Workers Advice Bureau now part of TGWU: Transport and General Workers' Union)
GWUSA:	General Workers Union of South Africa
HARWU:	Hotel and Restaurant Workers Union
HAWU:	Health and Allied Workers Union
IAS:	Industrial Aid Society
ICFTU:	International Confederation of Free Trade Unions
ICU:	Industrial and Commercial Workers Union
IIE:	Institute for Industrial Education
ILO:	International Labour Organisation
IMF:	International Metalworkers Federation
IWA:	Industrial Workers of Africa
JLDF:	Joint Legal Defence Fund
MACWUSA:	Motor Assembly and Component Workers' Union of South Africa
MAGWU:	Municipal and General Workers Union of South Africa
MAWU:	Metal and Allied Workers' Union (later the main part of NUMSA, below)
MICWU:	Motor Industries Combined Workers Union
MWASA:	Media Workers Association of South Africa
MWU:	Mineworkers Union
NAAWU:	National Automobile and Allied Workers' Union
NACTU:	National Council of Trade Unions
NEHAWU:	National Education, Health and Allied Workers' Union
NUCW:	National Union of Clothing Workers
NUDAW:	National Union of Distributive Workers
NULCDW:	National Union of Laundry, Cleaning and Dyeing Workers
NUM:	National Union of Mineworkers (South Africa)
NUMARWOSA:	National Union of Motor Assembly and Rubber Workers of South Africa (into which NAAWU was merged)
NUMSA:	National Union of Metalworkers of South Africa
NUTW:	National Union of Textile Workers (later part of ACTWUSA, the Amalgamated Clothing and Textile Workers Union of South Africa and then of SACTWU, the South African Clothing and Textile Workers Union.)
OVGWU:	Orange Vaal General Workers' Union
PWAWU:	Paper Wood and Allied Workers' Union (later part of PPWAWU: Paper, Printing Wood and Allied Workers' Union)
RAWU:	Retail and Allied Workers Union
SAAWU:	South African Allied Workers' Union
SACTWU:	South African Clothing and Textiles Workers Union
SACWU:	South African Chemical Workers Union
SADTU:	South African Democratic Teachers Union
SADWU:	South African Diamond Workers Union.
SASJ:	South African Society of Journalists
SFAWU:	Sweet Food and Allied Workers' Union (later part of FAWU above)
SARHWU:	South African Railways and Harbours Workers Union
TAWU:	Transport and Allied Workers Union
TGWU:	Transport and General Workers Union (later merged with GWU into the current TGWU)
TUACC:	Trade Union Advisory Coordinating Council
TUCSA:	Trade Union Council of South Africa.
TWIU:	Textile Workers Industrial Union
UAMAWU:	United African Motor and Allied Workers Union.

UAW:	United Automobile Workers Union
UTP:	Urban Training Project
UWUSA:	United Workers Union of South Africa
WFTU:	World Federation of Trade Unions
WPGWU:	Western Province General Workers Union (later General Workers Union)
WPWAB:	Western Province Workers' Advice Bureau (progenitor of the WPGWU)

3. Political Organisations

ANC:	The African National Congress, a nationalist organization formed in 1912; banned by the South African state in the sixties and operating exile until 1990 when it was unbanned. The major component of the Congress Alliance.
AZAPO:	Azanian People's Organization.
BCM:	Black Consciousness Movement
CAL:	Cape Action League
COSAS:	Congress of South African Students
MWT :	The Marxist Workers Tendency of the ANC, a group politically to the left of the mainstream ANC; expelled from the ANC in 1985.
NEUM:	Non-European Unity Movement
NFC:	National Forum Committee
PEBCO:	Port Elizabeth Black Civic Association
SACP:	The South African Communist Party, allied to the ANC, suppressed in the fifties by the state and legalized in 1990.
SACTU:	The South African Congress of Trade Unions: a trade union federation never banned but severely harassed by the state in the sixties, therefore went underground and into exile; closely linked to the ANC and SACP and regarded as the trade union wing of the ANC.
UDF:	United Democratic Front
UPDUSA:	African People's Democratic Union of South Africa

4. Employers' Organizations

AHI -	Afrikaanse Handelsinstituut
SACCOLA -	South African Coordinating Committee on Labour Affairs
SEIFSA -	Steel and Engineering Industrial Federation of South Africa

5. Miscellaneous Abbreviations

CB:	Conciliation Board
IC:	Industrial Council
IC Agreement:	Industrial Council Agreement
ICA:	Industrial Conciliation Act
LMG:	Labour Monitoring Group
LRA:	Labour Relations Act
LRAA:	Labour Relations Amendment Act
LWC:	Living Wage Campaign
NMC:	National Manpower Commission
SALDRU:	Southern African Labour and Development Research Unit

PART ONE: BACKGROUND

CHAPTER 1:INTRODUCTION

1. The Scope of Concern of this Thesis

This thesis is concerned with the new trade union movement which was born in South Africa in the 1970's and the legislative framework through which the state legalized black unions in 1979.

1.1. The Unions

Although reference will be made where necessary to the established, conservative trade unions which existed prior to the 1970's, these are not of direct concern in this thesis. The unions under consideration in this thesis are the new unions which arose in the seventies. These were progressive unions - some non-racial, others open to Africans only, but all consisting mainly of African workers. Most of these unions were established in the wake of the 1973 strike wave which indicated a renewed period of African working class militancy after a decade of being silenced by state repression.

In order to make the study containable, it is limited largely to a consideration of the new unions which went on to form the Congress of South African Trade Unions (COSATU) in 1985. The arguments advanced in this thesis are relevant to the whole of the new union movement. However, the substantiation for arguments and examples cited, particularly in the post-1985 period, will relate to the unions which today form COSATU.

1.2. The Legal Framework

The 1979 Industrial Conciliation Amendment Act legalized African trade unions by amending the central piece of labour legislation, the Industrial Conciliation Act No. 28 of 1956 (which repealed and replaced Act 36 of 1937, which had repealed and replaced Act 11 of 1924). It also extended the procedures and institutions of the existing statutory industrial relations framework to African unions and created new institutions, such as the National Manpower Commission and the Industrial Court.

The Industrial Conciliation Act (the Act) did not represent the full extent of labour legislation which was applicable to workers in South Africa in the period under review. It was however the central piece of legislation and of major historical significance because it legalized African trade unions for the first time in South African history.

It was intended by the South African state, as will be seen in chapter 3, to be a means of co-opting the new trade union movement. The state hoped to institutionalize the conflict inherent in the relationship of workers and their unions on the one hand, and employers on the other hand. It hoped that by containing the activities of the new unions within a statutory framework of collective bargaining and dispute resolution, it would be able to dissipate the militancy of their membership. For this and other reasons which appear in the body of the thesis, participation in the institutions and procedures which were either created by this Act, or extended by it to African workers and their unions, was a major source of controversy within the new union movement.

This Act, or rather its 1979 and subsequent amendments, was commonly referred to in South Africa as the "new dispensation". The response of the new trade union movement to this "new dispensation", is at the heart of this thesis.

1.3. The Period Under Review

The period under review is the decade from 1979 to 1988. The starting point is 1979 because that was the year in which the new dispensation was established. The year 1979 also marked the end of nearly a decade of revival of trade unionism amongst the vast majority of the South African working class: the African working class. These unions were able to organize black, mainly African workers in the seventies in the face of major attempts by the state and employers to obstruct their development. Such obstructions included a range of legislation directly relating to African trade unions, and a further range of tight legislative controls over the working and social lives of the vast majority of their potential membership: the African working class.

The year 1988 was chosen as the cut-off point because it was the year in which the state promulgated legislation which sought to remove some of the gains represented by the 1979 dispensation for African workers and their unions, as well as the gains they had made by using that dispensation.

2. **Aims and Essential Arguments**

The aim of this thesis is to analyze the way in which the new trade union movement responded between 1979 and 1988 to the "new dispensation". More specifically, the thesis is concerned with exploring a particular trend which has emerged in the approach of the new unions to the institutions and procedures of the new dispensation. This leads to the first essential argument of this thesis: that it is possible to discern the gradual development of a distinct trend towards

"legalism" in the new union movement. The concept of "legalism" is discussed more fully below.

It is not contended that legalism was the most dominant feature of the new unions or the chief characteristic of their approach to industrial relations issues. Nor is it contended that the sum total of their activities lay in seeking to use the new dispensation as far as possible. It is also not contended that legalism dogged the activities of the new union movement from the beginning of the decade under review to the end.

What is contended is that, after initially rejecting the system, major new unions sought to use the law and the new dispensation only insofar as it was necessary to the advancement of their immediate and longterm goals and only insofar as no viable alternatives existed for such advancement. This was accompanied by reservations regarding the aim of the state in creating the new dispensation (viz. to "tame" the new unions) and an awareness of the need to approach the system with caution lest such aims be fulfilled. This critical approach was gradually undermined by a tendency towards legalism, particularly in the second half of the decade under review. However, the seeds for this were sown in the first years of real and apparent successful use of the system by those unions who first became involved in it.

The underlying aims of the thesis are threefold. Firstly it tests the conflicting prognoses, advanced by the trade union movement and observers (eg. GWU; 1980; Nicol, 1980; Haysom, 1984; Innes, De Clerq and Fine 1981) about what the consequences of participation in the system would be. Secondly it challenges prevailing complacent views such as those of Friedman (1987) that the trade unions have been able to participate in and use the system without any serious repercussions for them in terms of their principles and objectives. Thirdly it both challenges and extends the argument of Lambert and Webster (1988). They contend that the state has been able to achieve only a negligible measure of success in co-opting the new trade unions into the institutions and procedures of the new dispensation owing to the political militancy of the new union movement.

The thesis also focuses on the reasons why they responded as they did - ie why legalism emerged in the practice of trade unions. It looks at the statutory framework itself, as well as the political influences within and upon the trade union movement in order to establish the causes for the development of this trend. This concern raises the second important argument of this thesis: that legalism was a product firstly of the political position of the new unions and secondly of engagement in the statutory system which was inter alia geared towards the development of legalism.

3. The Central Concept: Legalism

In South Africa, the term "legalism" as it applies to the approach of trade unions to the law, has been used in at least two contexts. In the context of the legalization of African trade unions, and the extending of the statutory industrial relations system to the new unions, the concept of "legalism" was used to characterize a particular approach to that system and to the law in general (eg. Haysom, 1984; Anonymous, 1981; GWU, 1981; Nicol, 1980). More recently Fine and Davis (1991) have used it to describe the perspective governing the conduct of black unions in the forties. These various writers have also attempted to analyze the causes and effects of legalism. What follows is an exposition of their analyses.

3.1. Legalism Defined.

Fine and Davis (1991;p33) argue that legalism was a major perspective informing the practice of trade unions in South Africa in the forties. They counterpose the "legalism" of officials which is constituted by the fact that "they sought to restrain them [rank and file members] within the bounds of legality and substituted appeals to the state for direct action" to the reliance of rank and file members "on their own resources" (ibid). They distinguish between "legalism" and a judicious use of the law in the following terms:

"The problem of legalism...lay not in the exploitation of legal openings in the earlier period which proved effective, but rather in the continuation of these methods under no longer propitious circumstances" (ibid;p35)

For these authors, legalism is constituted by using the law when this is not conducive to furthering the organizational aims of trade unions.

The issue of "legalism" arose more recently in the context of the debate about the extent to which and the way in which trade unions should participate in the institutions and procedures of the new dispensation. It was argued that "legalism" meant:

"...a reliance on existing laws and legal structures to achieve certain aims. As such, it places considerable importance on court hearings and applications, legal and administrative officials, and lawyers". (Anon;WIP;1981;p10).

Again, "legalism" is distinguished from the use of law "at appropriate moments to enforce legal rights" (ibid; p11). The author argues that

"The opposite of a legalist tendency does not necessarily involve illegal forms of organisation....." (ibid).

S/he argues that the two extreme positions in relation to the law are

"...on the one hand a refusal to take part in any legal proceedings ('abstentionism') and on the other hand uncritical acceptance of legal processes to achieve aims" (ibid).

Similarly, Haysom (1984;121-2) in the same context argued that

"The argument against legalism was not a polemic for the boycott of legal institutions *per se*. It was a specific intervention warning against the naive worship of the law, implicit assumptions about its absolute neutrality, the substitution of legal suits when collective action was both more effective and organisationally desirable."

The consensus amongst these authors therefore appears to be that there is nothing intrinsically amiss in trade unions using law in particular circumstances, but that it is the uncritical reliance on the law under inappropriate circumstances, that constitutes legalism.

Such circumstances are delineated for example by the anonymous author as those in which law is used "as one method to rally or initiate organisation" or when "conditions do not favour an organisational offensive" or "when it advances organisational effort". (Anon;1981;p11).

The position adopted in this thesis is that the use of legal methods, procedures and institutions is not *per se* detrimental to the interests of trade unions and their members. The danger to these interests lies in legalism: in the indiscriminate use of legal forms of struggle; in their use to the exclusion of organisational forms of struggle which disregard legality or which come into conflict with the law; and in clinging to legality regardless of the circumstances.

3.2. The Sources of Legalism

The authors cited above have attributed the development of legalism to three major sources: the trade unions themselves, the political environment in which they operate and the institutions and procedures of the law.

For Haysom trade unions are themselves responsible for the development of legalism. More specifically, he links the development of legalism to "lazy, bureaucratic and undemocratic" unions (1984;p122)

Fine and Davis argue that legalism is only partly attributable to bureaucratic leadership (1991;p35). They accept that legalism is partly attributable to the reluctance of officials to "embark on illegal action with uncertain prospects of success" when other avenues are open (ibid). However, they also point out that the experience of utilizing legal methods of struggle

played a role in the development of legalism in the unions in the forties. (ibid; p33).

More importantly, they argue that

"The major factor behind the determination of union policy lay outside of the unions themselves and in the relationship of trade unionism to politics. It was a political decision to contain the unions as far as possible within constitutional, 'no-strike' bounds" (ibid;p35).

They go on to point out that trade unions in the forties were heavily influenced by political organizations, such as the South African Communist Party (SACP) (ibid;p35). This party encouraged the reliance of trade unions on leaders who were heavily legalistic in their approach to trade unionism (ibid;p44). Furthermore, they point out that the SACP adopted a position that trade unions should support the government which was contributing to the war against fascism in Germany and therefore should not strike, but adopt legal methods of addressing their grievances (ibid;p45). In addition, this Party formed a close alliance with the African National Congress, which took a position of "subordinating mass action to legal lobbying" (ibid;p46) and thus called on workers to adopt legal methods of struggle.

Joffe (1981) argues that "Legalism is not necessarily something which is introduced by the trade union hierarchy" but also flows from workers' experience of the Industrial Court, which she identifies as " a breeding ground for legalism." (p143). For Nicol (1980;pp54-5) too, legalism emanates from the participation of unions in statutory institutions and procedures, such as the registration process, the industrial council system and the courts.

The position adopted in this thesis is that legalism is primarily the product of the reformist approach of trade union leaders to trade unionism, as argued by Fine and Davis. Legalism is further encouraged by the establishment of relationships between such leaders and reformist political organizations.

This does not totally explain the development of legalism. Legalism is also a self-perpetuating phenomenon, in the sense that engagement in legal proceedings and legal institutions reinforces the tendency towards legalism, as argued by Joffe and Nicol respectively and also by Fine and Davis. In part this is because the price exacted by the state for the use of such institutions and procedures to defend or advance the interests of workers, is a commitment to legalism. In part it is because legalism strengthens reformist leadership and assists the growth of bureaucracy in trade unions. Such bureaucracy in turn encourages the achievement of reforms through legal channels, because this is the source of its strength.

3.3. The Negative Impact of Legalism on Trade Unions.

The significance of legalism appears from the negative connotations associated with it and negative consequences of legalism identified (*inter alia*) by the above writers. What can be deduced from their attempts to conceptualize legalism and its negative effects (eg. Anon;1981) and to elucidate it empirically (Fine and Davis;1991) is that essentially legalism negates the ability of trade unions to achieve their goals for a variety of inter-related reasons. In essence legalism weakens unions because it undermines the militancy, organization and democracy of trade unions.

Fine and Davis (1991;pp26-32) show how the legalism of the trade union leadership in the forties weakened the unions. They argue that the preference for legal course(s) of action left the unions lacking in the experience of militant, illegal action. Prior success in using legal courses of action to win reforms left union leaders lacking in experience or commitment necessary to lead workers in illegal action to secure victories when state and capital were no longer prepared to make concessions in response to legal appeals. When workers resorted to illegal strike activity union leaders, accustomed to legal courses of action, sought to restrain militant action by workers as far as possible. The result was that both the legalistic action of the trade union leaders (appeals to the state and employers) and the illegal strike activity of members unsupported by their unions, ended in defeat for workers.

A further consequence of legalism is the undermining of democracy (Anon.;1981). The author argues forcefully that democracy is essential to trade unions because it schools workers in struggle, it situates the organization in the working class, it makes workers conscious of their undemocratic environment and it empowers workers (ibid;p11).The author goes on to argue that legalism undermines democracy because it makes workers dependent upon legal experts who command the skills necessary to engage on legal terrain. In doing so it undermines the purpose of democracy and the self-confidence of workers. Considerations of legality also exclude workers from a whole area of trade union strategy because they lack the expertise to engage effectively in the legal arena. This leaves experts free to dictate strategy to workers. (ibid;p12)

Furthermore, it strengthens the bureaucracy in trade unions, firstly because trade union bureaucrats have superior access to legal skills and secondly because it is accompanied by the growth of "constitutionalism" which enables trade union bureaucrats to suppress dissent and entrench themselves(ibid).

The author goes on to argue that legalism undermines organization because it replaces organization with the skilful use of law. This erodes the link between the membership and the site of struggle (the court), it dissipates conflict through the legal process and demoralizes workers by reinforcing their sense of impotence since even if a victory is achieved through the legal process, workers have been isolated from it. Lastly, the author argues that legalism diverts and suppresses militant action by strengthening a bureaucracy which urges workers to pursue the legalistic route rather than pursue the path of militant action. Militant action would both empower the rank and file vis-a-vis the leadership and disrupt the "neat legal strategies" of the latter and "upset delicate negotiations" in which the latter are engaged (ibid;p13).

The arguments of this author have a lot in common with those of Fine and Davis (above), of Nicol (1980; p54) and of the GWU (1981; pp21-2). Underlying some of the arguments cited here are the twin concerns that legalism prevents trade unions from achieving their economic goals ie victories on the shop floor (eg. Fine and Davis; Haysom) as well as at least one aspect of their political goals ie the unity of workers in struggle and their experience of democracy which reinforces their militancy (eg.GWU;1981 and Anon;1981).

What does not emerge from the above writing is a solution to the problem of legalism. Nicol (1980) argues that participation in legal procedures and institutions invariably lead to "emasculatation" of trade unions. This implies that trade unions should avoid the law altogether.

Writers such as Haysom and Anonymous (above) posit an alternative to legalism, viz. the judicious use of the law to assist the organization of workers in trade unions (above). They respectively argue very cogently that unions can benefit from using the law. Fine (1982) and Innes (1982b) also argue that legalism need not arise from legal methods of struggle, provided that unions are cautious in their use of the law and guard against legalism. This is the argument accepted in this thesis. Yet such engagement exposes unions to the powerful thrust towards legalism emanating from the legal system (above). In addition, unions are contained and are exposed to political influences which steer them in the direction of legalism.

Joffe (1981) posits a political solution to the problem. She argues that legal methods of struggle could bolster organization "if used within the context of a well-formulated strategy" (ibid;p144). Such a strategy, she asserts, needs to be guided by a political party.

The position adopted in this thesis is that legalism blunts trade unionism as a means to advance the overall interests of workers in the radical transformation of society. Legalism is both a

product of the failure of trade union leadership to adopt a revolutionary position and a hindrance to such a position emerging in trade unions, because it ties the union movement to the institutions of the capitalist state, rather than bolstering their ability to challenge that state.

4. Motivation: Implications of Legalism

This thesis is not motivated by a desire to denigrate the new trade union movement and its achievements both before and during the period under review. On the contrary, this thesis is motivated by apprehension regarding the negative impact of legalism on the ability of the new unions to continue to make a substantial contribution to the struggle of the working class against apartheid capitalism in South Africa during this period.

It is accepted in this thesis that the new union movement in South Africa has contributed substantially to the struggle of the working class for the radical transformation of South Africa. In the words of Engels (1975, pp35-6) they have united workers who were divided by capitalist competition; they held the "money-greed of the bourgeoisie within certain limits and that they kept alive "the opposition of the workers to social and political omnipotence of the bourgeoisie". In addition, they have contributed to the raising of the class consciousness of workers in South Africa and have operated as "schools of revolution" (ibid). The substance of these achievements is dealt with in the body of this thesis.

The degree of bureaucratism and incorporation into state controlled industrial relations systems, evidenced by its counterparts in developed capitalist countries (see for example Hyman;1985 on British trade unions) does not yet affect the new South African union movement to the same degree. It has not suffered the same degrees of leadership betrayal, reformism and conservatism. In addition, the black working class in South Africa is constantly goaded into action by the effects of the extreme exploitation and oppression which it suffers as a result of the way in which capitalism developed in South Africa and the role which apartheid played in facilitating the process.

However, this new union movement exists in the world system which is capitalism, and more particularly in the epoch of imperialism. Thus features of the advanced capitalist countries sooner or later also manifest themselves in South Africa where capitalism arrived later than in the rest of the developed capitalist world. One of these features is the role played by trade union bureaucracies of keeping the working class quiescent and obedient (a recent example of this is the Wapping dispute in Britain in 1986/7; see also Hyman; 1985;p119 et seq). The role demanded

by monopoly capital of the union leaders in developed countries, sooner or later is demanded of the South African trade union leaders (an example of this is the Mercedes Benz strike in South Africa in 1990). Whereas in the developed capitalist countries like Britain the evolution of the trade union leadership into an intransigent bureaucracy (Trotsky; 1973;) was an organic and slow process (mainly because it grew almost simultaneously with capitalism), in a country like South Africa, where capitalism was introduced by a bourgeoisie which had already reached its highest stage of development and which was on the threshold of its historical decline, such a transformation is faster.

The development of legalism in the new trade union movement within the space of one decade after the establishment of those militant new unions is one manifestation of the fact that they are not immune to the above tendencies. This trend towards legalism was displayed in the settlement of the 1987 NUM strike by union leaders against the objections of union members, the calling off of the NUMSA strike in the same year because union leaders feared responsibility for illegal industrial action, the failure of the Living Wage campaign due to considerations of legality, the weak and legalistic handling of the campaign against the castrating effects of the Labour Relations Amendment Act of 1988 and the failure to build the other trade union campaigns in the face of state attacks on the working class and its organisations. Beyond the period under review, it has been seen in the attacks launched by the leadership of the trade union movement, as well as the political organizations linked to it, on strikers at the Mercedes Benz car plant in 1990, and by implication on all workers who reject attempts by trade union leaders to place restraints on workers' demands.

Thus the motivation of this thesis is to heighten awareness of the need to arrest the trend towards legalism. Whilst independent collective action such as strikes heighten the awareness of workers of the role of the state, its laws and legal institutions in "bind[ing] the workers hand and foot" at the same time as it defends capitalism (Lenin;1970b;p64), legalism does exactly the opposite. It dulls workers' perception of the role which the state plays in defending the class interests of their employers. Ultimately then, legalism leads to the betrayal of workers' immediate and long term interests. It is the exposure of this which is the motivation of this thesis.

5. Structure of the Thesis

The first part of the thesis is concerned with setting the scene, as it were, for the analysis of the period under review. Thus the first chapter looks briefly at the history of trade unionism in South Africa, including that of the new unions and at the significance of the latter. It also looks at the

new dispensation and its historical context.

The second and third parts of this thesis consist of four chapters. These examine certain key aspects of the new dispensation: the registration process, the industrial council system and the Industrial Court. These chapters demonstrate the increasingly uncritical involvement of the new unions in the post-1979 statutory system and their increased reliance on the procedures and institutions of the system to win immediate shop floor gains. They also demonstrate how and why the institutions and procedures of the system promoted the development of legalism in the new union movement and inhibited the new unions from fulfilling their short and long term aims.

The fourth part of this thesis is divided chronologically into two chapters. These examine how the adoption of reformist rather than revolutionary political positions by the leaders of the new union movement encouraged the development of legalism not only in the everyday economic struggles of the new unions, but in the major campaigns of the new union movement. These chapters also demonstrate the adverse consequences of that legalism on the ability of the trade unions to achieve their short and long term aims.

In the last chapter of the thesis, I hope to draw some conclusions with regard to the development of legalism and its causes. I also hope to point out some of the implications of legalism for the new unions' principles, their policies, their ability to struggle for reforms, and their ability to perform a political role in the struggle for socialism in South Africa.

6. A Note on Methodology

6.1. Arriving At An Hypothesis

The main issues which I sought to address were the extent and nature of the new unions' involvement in the new dispensation in the period under review and the reasons for that involvement.

An initial overview of the secondary material available to me served several purposes:

Firstly, it revealed in some measure the extent to which the new unions had become involved in the new dispensation in the period under review.

Secondly, it revealed that there was a current of thought amongst observers of the new union

movement and within the new union movement itself which believed that the new unions' involvement had been either entirely to the advantage of that union movement or only so minimally detrimental to them as to deserve no more than passing reference.

It appeared from looking at the developments recorded and analysed by other writers that it was plausible to pose an alternative hypothesis to the prevailing views regarding the involvement of the new unions in the new dispensation. This was that there was an element of developing legalism in the interaction between the new unions and the new dispensation. This was the hypothesis which I posed. My objective was not to establish an incontrovertible position in contradiction to the current orthodoxy. It was merely to posit as plausible and deserving of exploration, the view that the interaction of the new unions with the new dispensation could be seen from an alternative perspective - one which saw the engagement of the new unions in the new dispensation as not an entirely or predominantly positive experience.

The initial exploration of secondary materials also pointed me in the direction of the possible - and probable - factors which could have influenced that response viz. the dispensation itself and the political milieu in which the new unions operated in the period under review.

An analysis of secondary material also enabled me to see what had been written in the area concerned, to put the main question into context, to see to what extent such secondary material - which I regarded as extremely reliable - assisted me in formulating a response to the main questions.

6.2. The Evidence Required To Test The Hypothesis

I was thus faced with the question of what the appropriate methods were to adopt and what the requisite evidence would be, to address the main questions and test the plausibility of the hypothesis.

Legalism as I defined it (above) is a concept not capable of measurement in purely scientific terms, using only tools such as statistics, tables and similar measures. To determine whether or not it had developed required an examination of the perceptions which unions had of the law, legal proceedings and institutions. At best one could conclude from statistics that the unions showed an increased tendency to use the law, but whether this revealed a legitimate use of the law or a tendency towards legalism could not be deduced from statistics alone.

It was important to examine sources which could reveal something about the approach of the new unions to the law. It was important to discover their perception of the new dispensation, its advantages and disadvantages to them in achieving their goals, both immediate and long term.

Despite the above limitations, statistics could at least reveal the extent of the new unions' involvement in the new dispensation. Such statistics, figures and tables were available from various bodies which had at their disposal resources far beyond what I could command - independent labour research bodies and those attached to universities (eg. SALDRU, Labour Monitoring Group, Industrial Relations Data) and government sponsored or related bodies (eg. The National Manpower Commission and Department of Manpower reports). Whilst I accept that these were possibly not one hundred percent accurate, there was no guarantee that with my extremely limited resources I would be able to obtain equally - let alone more - accurate information.

Thus whilst I regarded statistics and tables as necessary indicators of the assessment of the extent of trade union involvement in the new dispensation, establishing the trend towards legalism as I conceived it (above) required some examination of the attitudes of the new unions to the new dispensation in the ten years under review. For this purpose, I envisaged having to use evidence which was both circumstantial and direct.

The circumstantial evidence was to be sought in secondary materials which chronicled and analysed developments in the union movement and in the procedures and institutions of the new dispensation, albeit with different objectives in mind. More direct evidence would be sought in the interviews and archival materials which I used to assess the views and perceptions of the new unions of the law. I felt that it would be superfluous to repeat the chronicling of developments when my purpose was to offer a critical perspective of those developments with view to establishing the plausibility of an alternative argument.

Direct evidence was to be sought by examining comments made by the new unions themselves on the new dispensation and their use of it. Thus I used newspapers and periodicals which were produced by unions and union-related bodies or institutions concerned with the study of labour relations, in which the views of unionists were revealed by interviews, comments, debates and other observations. In addition, I interviewed unionists and studied the archival documents (eg. minutes and other records of meetings of a variety of union bodies, union reports, records, newsletters, pamphlets, unpublished papers presented by unionists and so forth) of the new trade unions which were produced in the period under review.

6.3. Gathering Primary Materials

The extent to which I could base my analysis on primary research was limited by a number of practical constraints. Firstly, there was the fact that I was studying in Britain where primary materials and certainly access to unionists was necessarily very limited. I was therefore obliged to rely heavily on secondary materials and such studies as were available here. Secondly, my initial grant specified that I could not return to South Africa to do my research without losing the grant and I had no independent financial resources with which to proceed. When I did in fact secure financial assistance to embark on a field trip, it was extremely limited and thus the extent to which I could move around South Africa to interview unionists was limited, as was the time for which I could use the archives in Johannesburg.

Thirdly, given my own time constraints and that of trade unionists in South Africa, as well as the understandable reluctance on the part of union leaders, given their extremely busy schedule, to arrange interviews with rank and file members, such interviews were almost impossible to conduct.

Lastly, there was the fact that I had chosen to use semi-structured interviews. I chose to do so largely because of the advantages which I felt these would have. These included discovering the attitudes of unionists to various aspects of the new dispensation and how these were formed ie what underpinned their actions and decisions, how they thought rather than just the decisions made on various courses of action. Such interviews allowed the interviewees to offer examples of what they were saying, to clarify their responses in their own way, and to offer additional material which I had not thought about. They enabled me to put additional questions as necessary and to obtain clarification of apparent contradictions.

This flexibility could not be obtained in a formal interview. I also felt that surveys would not receive much response, given how busy unionists were. This was confirmed by the lack of response which I received upon first writing to unionists to set up interviews. At the same time, this flexibility meant that interviewees often did not answer questions directly or at all, or addressed issues which they wished to raise, rather than those which I intended to cover. This proved to be both advantageous in securing additional information and disadvantageous in that sometimes I could not get answers to the actual questions posed.

I was able to gather from a number of sources such trade union documentation about the period under review as still existed in 1991. These included: FOSATU/COSATU archives, union offices,

research institutions and libraries. However, few of these were systematically catalogued and none were complete, mainly as a result of the difficulties and dangers of keeping such records intact in the period under review and the difficulties of gathering them and cataloguing them a decade later. Nonetheless, such documentation as did exist often proved invaluable.

6.4. Using the secondary and primary material

I have relied to a large extent on secondary sources. This was for two main reasons. Given that the objective of the thesis encompassed providing an alternative analysis or critical perspective of already sufficiently chronicled events, I felt that it was valid to use reliable secondary sources and that it would in fact be superfluous to cover ground already adequately covered by others. Thus, for example, Baskin's book about COSATU, the Annual Survey of South African Law and the Survey of South African Race Relations, the South African Labour Bulletin and Work-In-Progress amongst others supplied information about the trade unions and the law which could usefully be analysed to discern trends as to how and why they were using the law.

The use of secondary materials with regard to analyses of the law is justified on a rather more mundane practical basis. Although I was able to use the main library which stocked South African legal material for part of my period of research, the materials were very limited. General legal materials were available but not necessarily those specific to the labour dispensation in a foreign jurisdiction. Moreover, I did not have access to the library for the last two years of my studies. Rather than rely purely on my early notes when writing the thesis some years after first taking the notes, I therefore chose to rely on highly reliable sources, such as the textbooks and articles written mainly by very respected scholars and practitioners in South Africa.

I integrated the information which I had obtained from primary materials (interviews, trade union documents, newspapers and newsletters, cases and statutes) into the argument in each chapter, rather than discuss what each source showed separately.

These sources provided a number of different types of indicators about how the unions perceived the new dispensation and their use of it. Hence, for example, the approach of the unions could be discerned not only from government statistics reflecting increased use of the new dispensation, but from statements about it in union newsletters and from interviews with leading unionists.

The information gathered from the various primary sources, together with that from the secondary materials, provided a more comprehensive picture of the approach of the new unions to the new

dispensation. Thus for example, interviews are not separately discussed: they are used to provide additional insights to explain what secondary sources could not, to clarify contentious issues raised in secondary sources and to supplement the documentary evidence (both primary and secondary) relating to the attitudes of the new unions to the new dispensation.

6.5. Reflections upon the adequacy of the methodology adopted

It may be pointed out that the methodology adopted in this thesis could not irrefutably establish the existence of legalism in the new union movement. This is not the objective of this thesis. What I set out to show was that the current belief that the new unions have been able to use the system purely for their own ends and have succeeded in making gains without in any way succumbing to the objectives of the state in creating the new dispensation (which included the fostering of legalism), is open to serious question. It is possible, from an analysis of the secondary and primary sources above, to posit an alternative thesis: that one of the trends which marks the new union movement, particularly towards the end of the period under review, is increasing legalism, with all that that implies for the new unions. For that purpose, I believe the sources used provided adequate proof.

7. **A Note on Historical Context**

Some space needs to be devoted to establishing the context of the developments under consideration in this thesis, since some understanding of that context is essential to an appreciation of those developments.

To avoid devoting a seemingly disproportionate amount of space in the body of the thesis to scene-setting, as it were, this context is provided largely by an Addendum at the end of the thesis. This examines the historical context out of which both the new union movement and the new statutory dispensation arose viz. the system of apartheid capitalism which gave birth to both. Here, however, some broad general references to that historical context need to be made in order to provide a brief background to what follows in the body of the thesis.

The subject of this thesis is the development of legalism in the South African independent (predominantly African) trade unions. The development and implications of this trend for the struggle to destroy apartheid capitalism can be understood only if one understands the importance of the African working class in South Africa. This in turn necessitates an understanding of that system of apartheid capitalism itself, for it is this pernicious system which shaped that working

class.

South African capitalism, slow to develop until the last three decades of the nineteenth century, was galvanised by the discovery of diamonds and gold at that time. Within mere decades of these discoveries, South Africa was catapulted into the era of monopoly capitalism, without passing through any of the stages which advanced capitalist countries had passed through. The "external necessity" of world capitalism's need for gold, the richness of the country's deposits of precious minerals, and most importantly, the access to an army of cheap labour which could make the supply of that gold highly profitable, converted South Africa almost overnight from a backward agricultural colony into a fully fledged capitalist country (Legassick;1974; and Callinicos;1985).

The result of this rapid evolution was the social system of apartheid capitalism in which the most advanced technology and methods of production are juxtaposed with the extreme backwardness of racial oppression, violent repression and deprivation of the barest democratic rights, of the vast majority of its population. The social system of apartheid capitalism had two inextricably welded components: racist oppression and capitalist exploitation. The capitalist mode of production is founded upon the extraction of surplus value from free wage labourers. However, it was the greed of the capitalist monster for maximisation of extraction of surplus value from the labour of the African working class, that gave birth to the anomaly known as apartheid capitalism. For it was only through the complete deprivation of the most elementary democratic rights enjoyed by workers elsewhere in the capitalist world, through the extremes of poverty inflicted on the African working class, through the coercion and violence synonymous with apartheid, that South African capitalism was able to hold its own in the competitive arena of world imperialism, where it was already a late starter. This was the advantage which it had over its rivals: not only the chance existence of mineral wealth, but a super-exploited workforce.

The South African working class was in the period under review, characterised mainly by its division along racial lines. The vast majority of that working class, the black working class, suffered from extreme oppression which facilitated its super-exploitation. A much smaller section, the white working class, had long since been completely co-opted by the state and capital. This co-optation was facilitated, *inter alia*, by racist employment practices, policies and legislation, such as the "civilized labour" policy (which gave white workers preferential access to certain types of work, especially skilled work), and through the provision of a comprehensive statutory system of collective bargaining and dispute resolution to which white workers had almost exclusive access and which their unions could manipulate to secure advantages for white workers at the expense of black workers (Davies et al;1988; pp246-8 and Simons and Simons; 1983;

pp300-352). In addition, within the ranks of the black working class legal divisions had been created by the state along "ethnic" lines and further sub-divisions of "race" (between "Indian", Coloured and "African" workers, all oppressed, but to different degrees) and between permanently urbanised and migrant African workers.¹

The extremes of oppression and exploitation engendered by apartheid capitalism have led to a rapid maturity of the black working class. This rapid maturity as well as its crucial role in the development of apartheid capitalism made the black working class the greatest threat to the existence of apartheid capitalism. For another inescapable feature of capitalism is that it creates in Marx's words "its own gravedigger", a class which has "nothing to lose but its chains": in the South African context this was the very force responsible for South African capitalism's rapid growth, the African working class.

The resistance of black workers to oppression and exploitation did not begin in the seventies. Black worker resistance and organization dogged the development of apartheid capitalism almost from its birth. At the same time, the oppressive measures necessary to secure the cheap labour system impacted on other groups too, chiefly the black petty bourgeoisie. This group, too, resisted the effects on it of apartheid capitalism with increasing vehemence.

As much as apartheid capitalism impacted on the development of the black working class, the resistance and organization of the black working class influenced the way in which apartheid

¹. Black South Africans, and the black working class, were over the years, particularly after the passage of the Population Registration Act and Group Areas Act in 1950, divided by the state into "African", "Indian" and "Coloured". I do not recognize the validity of this, or any other racial classification. Nonetheless, because of the divisions imposed on black workers, the different levels of oppression and exploitation faced by these different "racial groups" in the period under review, the different measures applicable to them and so forth, it is often necessary to resort to this terminology.

Of these, Africans, viz. the indigenous population of South Africa, formed the majority of the black population (Roux;1964;p7) as a whole, including the black working class. African workers form the backbone of the cheap labour system, being the most oppressed of the three "racial groups". It was to them that the migrant labour system, the pass laws, the "reserve" system and so forth applied. Coloured and Indian people, particularly workers, also suffered from oppressive measures, such as the Group Areas Act which obliged them to live in segregated ghettos, being excluded from taking certain jobs, being paid lower wages than whites, etc. The term "coloured" refers to the "mixed race" of people, predominantly in the Western Cape, descended from slaves (both indigenous and those brought from other Dutch and British colonies) and white colonizers, as well as the Malay people brought to the Cape as slaves or political prisoners.(ibid;p23). "Indians" refers to the descendants (living mainly in Natal) of the indentured labourers brought from India to Natal from 1860 to work on the sugar plantations, as well as the merchants and traders who followed them (ibid;p101).

capitalism developed, and posed a constant threat to its development. It was the resistance of this class to its oppression and super-exploitation which, for example, obliged the capitalist state to develop the pernicious legislative framework which by the end of the sixties so circumscribed the lives of black workers.

By this time the state and capital were confident of having finally, through a combination of legislative suppression and outright physical repression, reckoned with the black working class and its allies. This confidence was evidenced by the zest with which capitalist development took place in the sixties, over the dead bodies of worker organizations and political organizations and often of workers themselves. However, the very development of apartheid capitalism in the sixties was premised upon the increasing centrality of the black working class. The objective centrality of that class to the development of apartheid capitalism was to ensure that when it recovered from the defeat of the sixties, capital would have to deal with it very differently from the way it had in the past.

CHAPTER 2: THE BIRTH OF THE NEW UNIONS AND THE NEW DISPENSATION.

1. Introduction

The chapter attempts to examine why and how trade unionism re-emerged in the black, mainly African, working class which had suffered such a grave defeat at the hands of the state in the sixties. It also examines why, given its history of repression of African trade unions over several decades (see Addendum), the state chose to attempt to co-opt rather than simply repress that budding trade union movement. It then goes on to describe the essential features of both the new trade union movement and the reformist approach adopted by the state towards it. It concludes with a description of the social context of the eighties, against the background of which the new unions evolved their response to the new dispensation.

The central argument of the chapter is that the resuscitation of trade unionism in the black working class, as well as the state's transformed approach are explained by the objective conditions prevailing in South Africa at the beginning of the seventies. The inter-related contradictions facing the system of apartheid capitalism, particularly the growth and increasing centrality of the urban African working class, formed the basis for both the resurgence of the new unions, and the creation of an institutional framework within which to attempt co-opt those unions.

2. The Economic and Political Crises of the Seventies.

In the early seventies, the contradictions of the system of apartheid capitalism were becoming increasingly apparent (Callinicos;1981;pp 80-92). These contradictions, chief of which related to the black working class, generated both a profound economic and a profound political crisis (Davies et al;1984;pp53-4). The combined effects of these crises created a severe social crisis.

2.1. The Economic Crisis

Major internal problems faced South Africa's apartheid capitalist economy. These, together with the repercussions of international developments (the growing world economic crisis of the seventies and eighties) were responsible for the fact that by the early seventies, the South African economy was emerging from a boom period into one of recession (Davies et al;ibid and

Callinicos;ibid). This rapidly reached crisis proportions by the late seventies and continued into the eighties.

The growing problems of South African capitalism were inter-related. Essentially they were: the continued dependence on primary exports, the growing capital intensity of all sectors, and the growing power of black labour (Callinicos;ibid).

The first problem (Callinicos;1981;pp80-1) was South Africa's continued dependence on the export of primary goods to earn foreign exchange. It was never self-sufficient in the manufacture of capital goods. Its ability to manufacture capital goods was inhibited by the low productivity of labour engendered by the "inefficiencies of apartheid" ie skilled labour was expensive, labour mobility was limited and low wages meant a limited home market which in turn meant that economies of scale could not readily be implemented. The South African economy could not therefore compete in terms of productivity and was forced to continue to exploit its advantage, cheap labour power. Yet surplus value could only be realised and profits made by sale of commodities. South Africa's political policies deprived it of natural markets in Africa. The home market could not be expanded without relaxing apartheid and allowing black living standards to improve but thus negating cheap labour power. To alleviate the crisis, the South African bourgeoisie made much of " export-led growth": mainly the export of gold. This dependence on primary exports dragged South Africa down to the level of most ex-colonial countries with their one-crop economies.

Mining and South Africa's other major exporting sector, agriculture, were both "particularly labour repressive" (Callinicos;1981;p81). This repression curbed the increased labour productivity required by monopoly capitalism, and also created a powder-keg of extreme oppression and exploitation right in the heart of the South African economy, a powder-keg which it could not afford to ignite. Thus racist forms of coercion, which enabled the super-exploitation of labour and constituted the one advantage that South Africa had over its capitalist rivals, prevented its further advancement. Without racist coercion, the key sectors of the economy could not generate super-profits, yet as long as those racist measures existed, they prevented the further development of the economy.

Secondly, South African industry was becoming highly capital-intensive with potentially disastrous social consequences (Callinicos;1981;pp82-6). Increasing mechanization brought with it high levels of unemployment (Callinicos;ibid and Davies et al; 1984;p31). Dumping increasing numbers of jobless workers into the homelands could cause a potentially explosive situation. It

would be impossible for them, together with the rest of the so-called surplus black population (eg the old, the infirm), to eke out a living, because the subsistence economy of the homelands had all but collapsed (Hindson;1987; p8).

The third and most important problem facing South African capitalism was the looming threat posed by the organised black urban working class. Increased mechanisation of industry in the sixties and seventies led to the creation in the cities of a body of semi-skilled black workers, upon whom capital became increasingly dependent (Callinicos;1985;pp20-21 and 1981;pp80-81). "Ironically, then, the boom unleashed by the Nationalists' defeat of the black resistance led to the economy's increased dependence on African labour." (Callinicos,1981;p88) Notwithstanding the migrant labour system, the urban African working class continued to grow (Murray;1987;pp101-4). Between 1960 and 1970 the employment of black workers in manufacturing industry rose by 63% to 1 070 033. By 1970, four million blacks were in white areas and in the early seventies these began to organise (Callinicos;1985;p21).

Further problems were created by the fact that the boom in the sixties was heavily financed by foreign investment (Davies et al; 1984; Vol.I;p55 and Murray;1987;pp26-31). South Africa's fortunes became tied more than ever before to those of the world capitalist system. The world economic crisis of the mid-seventies therefore affected South Africa drastically (Callinicos;1985;p22 and Innes;1984;pp190-191).

The knot of economic problems described ushered in a long-term economic crisis in the seventies, which was to extend into the eighties. Referring to this period, Innes and Gelb argue cogently that "the South African economy is not simply undergoing a short-term cyclical downswing, but that it is also in a long-term economic decline." (1985;p31).

These economic contradictions had to be addressed. At the same time, the most crucial element in the South African economy, the black working class, was beginning to display renewed militancy (Callinicos;1981;p87).

2.2 The Political Crisis and the State's Initial Response to it.

The political crisis of the seventies, integrally connected with the economic crisis, occurred as a result of the actions of two sections of the oppressed: black workers and students. The state initially responded to these actions in ad-hoc fashion. Its response encompassed both continued

repression of the oppressed and exploited and reforms aimed at subduing the militancy of the black working class which threatened attempts at economic recovery.

By the beginning of the seventies, the actual wages of African workers were appallingly low: lower even than the officially recognized conservative minimum living level for Africans, which was set much lower than that for whites, coloureds and Indians (Maree; 1986;p93; Macshane et al; 1984;p21). Africans were severely affected by the recession. Their already low wages fell alarmingly in real terms as the cost of living escalated. At the same time, unemployment rose sharply (Macshane et al; 1984;p21).

It was this which at the beginning of the seventies drove the black workers of South Africa, beaten into submission by the state's brutal repression in the sixties, to spontaneously resort to strike action (ibid; p23). In Durban in 1973, nearly 100 000 workers started a huge strike wave which ended any illusions of capital that the black working class had been permanently crushed (Callinicos; 1981; p89). This renewed militancy of black workers had both political and economic repercussions.

The state and capital's responses to the militancy and incipient organization of African workers in the early seventies differed starkly from those of previous decades. African wages increased (Macshane et al;1984;p21 and Callinicos;1985;p22). The state dealt relatively mildly with the spontaneous strike action of workers. For example, it only prosecuted 0,2% of the strikers, as opposed to 24% in 1959 (Callinicos;1981;p89 and Macshane et al;1984;p23).

The explanation for this altered approach lay in the realization by capital of the increased importance of the urban black working class, and its corresponding increase in bargaining power (Callinicos; 1981;pp89-90). Macshane et al (1984;pp22-3) also point to reasons such as the fear by employers and the state that African working class militancy would spill over to coloured and Indian workers, and the embarrassment of foreign companies over the exposure of the excessively low wages which they paid their African employees.

More interestingly, the state introduced the Black Labour Regulation Act of 1973, which was what Murray calls "a stark corporatist measure" (1987;p147). Whilst on the one hand it purported to legalise strikes by African workers (under very limited conditions) it attempted at the same time to bureaucratise and institutionalise industrial action by, and representation of, such workers through a committee system.

Replacing the old Bantu Labour (Settlement of Disputes) Act of 1953, it made provision for a system of "in-house" works committees which were to be the link between employers and workers. In the Addendum reference is made to the provision made in the 1953 Act for the establishment of workers committees for African workers, as an alternative to black trade unions. African workers were meant to channel their grievances through these. By 1973 few such committees existed, since they were rejected by African workers, were not very representative and were generally ineffective in representing African workers (Bendix;1989;p296). A new element in the 1973 Act was the provision for workers to elect their own works committees, after informing their employer of their desire to do so, which the employer could then convene under his chairmanship, and which could to some extent negotiate with the employer on behalf of African workers. The 1973 Act also made provision for alternatives to these works committees, called liaison committees. Employers could create liaison committees, consisting half of representatives elected by African workers, half of people appointed by the employer, to advise the employer on issues relating to his African workers. These bodies were very ineffectual in representing African workers (Maree;1986;pp115-118) but were given preference over works committees by employers (Bendix;1989;p301). In addition, a provision in this Act prevented the victimization of workers for participation in the activities of such committees (Maree;1986;p117).

The institutions created by the 1973 Act were meant to deflect African workers from the growing new trade union movement (below) and were largely rejected by workers and certainly failed to slow down, let alone stop, the growing strike wave (Macshane; 1984;p55). The state and capital's expected industrial peace did not materialise from this, nor from the repression which followed in the wake of the 1976 student uprising (below). Workers continued to demand wage increases and their own independent organisations, viz. trade unions. Where workers were unable to organise separate unions, they used the limited powers of these committees to make what gains they could (below).

Whilst employers showed a marked preference for the liaison committees, workers were very often prepared to strike for the right to have works committees, which offered them more scope for organisation, especially when guided by a union which management would not recognise. Thus even the committee system could be "subverted" for its own purposes by the confident new union movement. Alternatively, it was rejected out of hand as useless for the furtherance of African worker interests (below). The state's first, crude attempts at addressing the problems of control of black worker militancy therefore failed, as black workers continued to go on strike and began to organize into trade unions (Maree;1986;p115).

At the same time, the state and employers did not entirely refrain from using repression against African workers and their unions. This was illustrated by the brutal response of the state and mining employers to mining strikes between 1972 and 1976 which left 178 African workers dead and 1 043 injured (Callinicos;1981;p91). Security legislation was used, particularly from 1976 to detain unionists without trial and to ban them (Baskin;1991;p18, Macshane et al;1984;p48, Maree;1986;pp118-120). Labour officers, the police and the security police continued to be called in by employers to force striking workers into submission (Friedman;1987;pp112-120).

Black workers were not the only ones to re-awaken in the seventies. Apartheid had spawned a system of "Bantu education" which was geared to educating black youth primarily for the mines, factories and fields of South Africa. This educational policy which gave black youth nothing to hope for but the poverty which faced the vast majority of South Africans, was furiously rejected on the streets of South Africa in 1976, as students and working class youth rebelled against an education system that trained them solely for super-exploitation and then had not even a job to offer most of them. For although "Bantu education" had correctly been dubbed "gutter education" by the forced consumers thereof, it did increase levels of literacy and brought heightened expectations. The extremes of oppression which faced the youth and students in 1976, in the context of the great wealth of the country were decisively rejected in the uprising (Callinicos; 1985; p22 and 1981;p91). The unrest sparked off by objections to the system of "Bantu education" was further fuelled by the fall of the white minority regimes in the rest of Southern Africa: Zimbabwe, Angola and Mozambique, in the seventies (ibid). The state's response to the township unrest led by students in 1976 was swift and unequivocal: it viciously crushed the student uprising (Callinicos;1985;pp22 and 81) as well as the Black Consciousness Movement (BCM) which led it (Callinicos;1981;p91).

Although officially the new union movement steered clear of any overtly political activity and played little part in the student struggles (Maree;1986;p668) the working class could hardly fail to be influenced by these events in the townships in which they lived, particularly since it was their children involved in the events of 1976. The community struggles outside the workplace, particularly the student struggles of 1976, played a major role in the general politicisation of the working class. This was demonstrated, for example, by the 3 political stayaways in support of the student uprising, in the Transvaal and the Western Cape in 1976 (Callinicos;1981;p92 and Maree; 1986;p122).

The face of South African politics therefore changed dramatically in the seventies. Not only did African (and other black) workers begin to organize into trade unions, but the seventies also saw

the resuscitation of political organization (below). The major political influence in the ranks of the oppressed and exploited in the seventies was the Black Consciousness Movement (BCM) which attempted to rally all those subject to racist oppression, to override the divisions sown amongst them by the state, in opposing apartheid. Organizations such as the South African Students Organization (SASO) promoted Black Consciousness mainly on black university campuses and in black schools, but also after 1973 amongst workers especially through community organizations (Davies et al; 1984;pp 31-35). The state suppressed the BCM in the early seventies: banning its leaders, trying and imprisoning them or detaining them without trial in terms of security legislation and finally, in the wake of the 1976 student revolt, banning the organizations belonging to the BCM (Davies et al; 1988; pp303-308).

Effectively it appeared that by 1978 the repressive action of the state, and the backlash of employers against trade unions and militant black workers (Maree;1986;118-119) had succeeded in smashing the student movement and arresting black working class militancy (Callinicos;1981;p92). However, unlike the sixties, the state's victory was limited and temporary (ibid). The black working class militancy and growth of the new union movement was slowed down, but not halted, by the repression of the mid-seventies (Friedman;1987;p120 and Callinicos;1981;pp119-141). In addition, from 1980 onwards (Callinicos;ibid and Murray;1987;pp201-203) the struggle and organization of the black working class spread beyond the factory floor: to education, housing, facilities, the pass laws, escalating unemployment and other facets of their lives which reflected the full range of adverse effects of apartheid capitalism. As the eighties unfolded, the struggle became one against apartheid capitalism in its entirety (below).

The combined effects of the political and economic crises gave rise to a generalised social crisis in South Africa (what Murray; 1987;p17 and Callinicos; 1981;p 93 call an "organic crisis"). The political and economic crises of the seventies, together with the regional instability created by its neighbours throwing off the yoke of colonialism in the same period, inspiring the black masses in South Africa to further revolt, led the South African regime to the conclusion that neither repression alone, nor piecemeal reform, would resolve the multiplicity of crises apartheid capitalism faced. The Botha government which came to power in 1978 developed what it called 'Total Strategy' as a response to what it perceived as a "Total Onslaught" on apartheid capitalism (Murray;1987;p17 and Callinicos;1981;pp93-115).

This strategy included plans to create a "constellation of states" in Southern Africa: an alliance of "moderate" capitalist states which would be a bastion against the advance of Marxism in the

region (ibid;pp35-7). At the same time, South Africa in the eighties, despite the defeat in Angola in the 1975-6 War (Callinicos;1985;p17), embarked upon concerted acts of aggression to destabilize those neighbours hostile to its interests, chiefly Mozambique, Angola and Zimbabwe (Murray; 1987;pp 48-57 and Callinicos;1985;pp16-19). In this way it would ensure its political and economic domination of Southern Africa (ibid;p36). Within South Africa, "Total Strategy" included plans to fragment the opposition of the oppressed and exploited to apartheid: through encouraging the development of a black middle class, by removing certain aspects of apartheid; dividing permanently urbanized from migrant African workers and granting coloureds and Indians a subordinate political role within the state apparatus (Murray;1987;pp65-66 and Callinicos;1981;pp24-25).

For the purposes of this thesis, the most important aspect of "Total Strategy" was the state's plan to co-opt the new trade union movement which had arisen in the wake of the 1973 strikes (below). This plan, initiated by the Wiehahn Commission which was appointed in 1977 and reported in 1979, found legislative expression in the Industrial Conciliation Amendment Act of 1979 which established the institutional framework for the co-optation of the new trade union movement (Murray;1987;pp15-18 and Callinicos; 1981; pp93-108). It is dealt with below, after an examination of the new unions which were its major concern.

3. The New Trade Union Movement

The new trade union movement was the most important organizational expression of renewed resistance by the black working class in the seventies. They were significant both historically and politically: to the black working class which was their main constituency, to the political organizations which re-emerged in the seventies and eighties in South Africa and not least to the state and capital to whom they posed a major threat. Their historical importance lay in the particular juncture at which they arose. Their political significance lay in their policies, principles and practices and their resilience which made them a force to be reckoned with in the seventies (as pointed out by the Wiehahn Commission, see later) and eighties. A brief examination of their main features will demonstrate why these unions posed a major threat to apartheid capitalism in the seventies.

3.1 The Historical Significance of the New Unions.

The new trade union movement was born into a virtual void of black worker organization and a dearth of political organization in the ranks of the oppressed and exploited masses of South Africa

(Addendum). SACTU operated largely in exile. Only two of its unions continued to operate inside South Africa: the registered Food and Canning Workers' Union and the unregistered African Food and Canning Workers' Union (dealt with in a later chapter). These operated as one union. Although committed to non-racialism, their membership was predominantly black (Macshane et al;1984;p46).

The Trade Union Council of South Africa (TUCSA) was multi-racial (as opposed to non-racial) and organized white, coloured and Indian workers on a segregated basis. It expelled Africans from membership in 1969 (Baskin;1991;p17) and re-admitted them in the early seventies, organized in separate "parallel" unions. These were "sweetheart unions" aimed at preventing the organization of Africans by the new unions. TUCSA had a "meek and subservient relationship to industry and government" (Macshane;1984;p36), used closed shop agreements rather than active organizing methods to recruit members, was highly bureaucratic and was ineffective in obtaining any real gains for members (Macshane;1984;pp35-7 and Davies et al;1988;p252). In addition, it purported to be a-political, but supported capitalism and apartheid (Davies; 1988;pp251-2). Whilst its membership was largely coloured and Indian, it was dominated by white bureaucrats, and the interests of its minority white membership was prevalent (Davies;1988;p252).

Little effective black, particularly African, trade union organization therefore existed at the time when the new trade union movement arose. It was this which made it of special significance to the black working class: it marked the beginnings of resurgence of organized opposition by the black working class to oppression and exploitation.

The new trade unions arose at a critical juncture for apartheid capitalism ie in a time of economic and political crisis. They grew mainly out of the spontaneous strikes of 1973 which was indicative of that crisis (Macshane, Plaut and Ward;1986;p19 and Baskin; 1991;p18). After a decade of enjoying the economic growth facilitated by smashing the black working class opposition, the state and capital were faced with increasingly organized opposition where they could least afford it: on the shopfloor (Callinicos; 1985;p23). In the new trade union movement, the state and the ruling class were faced by a movement which had the potential, and objective, to unite the black working class, to restore its confidence in its ability to oppose its oppression and exploitation and to give direction to its militancy. The new union movement represented the defeat of attempts to totally subdue the black working class, and by organizing the black working class at the heart of apartheid capitalism, presented a threat to that system.

3.2. The Political Significance of the New Unions: Their Composition, Principles and Practices.

The composition of the new unions, together with the principles and practices which they adopted, are regarded by Maree (1986;pp668-674) as accounting in large measure for their resilience, and their political impact in South Africa. These policies and practices included a commitment to workers' control of and democracy within unions, commitment to non-racialism and worker unity and orientation towards the factory floor.

3.2.1. Commitment to workers' control of unions

The impetus for the formation of the new unions came largely from young white intellectuals based at the liberal universities. These were assisted by ex-SACTU trade unionists, and leftwing officials from the ranks of the established trade union movement. (Maree; 1986;p586). The leadership of the new unions were not conservative bureaucrats, as in TUCSA, nor political activists, as in SACTU, but mainly young radicals who saw the need to organize the black working class at the point of production. (Macshane et al; 1984;p22).

From this leadership emanated the strategy of initially organizing black, mainly African, workers into advice and training organizations (such as the General Factory and Benefit Fund (GFBF) Central Administration Services (CAS) Urban Training Project (UTP) Industrial Aid Society (IAS) and Trade Union Advisory and Co-ordinating Council (TUACC)), rather than into trade unions, to protect such organization from possible state reprisals (Maree; 1986;p586, Baskin;1991;p21 and Friedman;1987;p59).

Amongst this leadership, and thus reflected in the unions, differences existed: ideological, organizational, strategic, etc. (Maree; 1986;pp586-612.) For example, the Federation of South African Trade Unions (FOSATU) combined a number of different trade union traditions: those brought by its ex-TUCSA affiliates, the motor unions which combined to form NUMARWOSA (National Union of Metal, Automobile and Rubber Workers of South Africa); those brought by the 4 ex-CCOBTU (Consultative Committee of Black Trade Unions) affiliates and those brought into it by the TUACC unions (Maree;1986;p597). Outside FOSATU, a number of trade unions existed, some with similar perspectives but unaffiliated to FOSATU (like the WPGWU) others with vastly different perspectives, such as the African-orientated CCOBTU which went on to form a separate federation, the Council of Unions of South Africa (CUSA) in 1980. However, in their policies and principles, as in their membership, origins and leadership, they had much in common

in the seventies.

One of the major principles to which the leadership of all the new unions were committed, was that of workers' control of trade unions. According to Maree, throughout the seventies, the new unions found themselves struggling to establish workers' control of the new unions in reality, rather than purely in principle. Attempts at formal education to enable workers, kept educationally backward by apartheid, to assume real control of the unions largely failed (ibid;p644). However, worker leaders were thrown up by the shopfloor experiences of workers. Maree (ibid;p 645-6) points out that the low educational standards of workers, together with their inexperience in making any decisions affecting their lives, created some tension between the need for an adequate leadership and the desire for workers' control of the unions. Whilst the end of the seventies saw a decline in the influence of the white intellectuals who were largely responsible for establishing the new unions, their influence was not eradicated, especially in unions like GWU and FOSATU, where the policy of letting the most competent people handle tasks, gave great power to white intellectuals (ibid;p650). The power of white intellectuals was curbed, according to Maree, not only through the emergence of worker leaders, but through the development of democratic structures, especially in TUACC (later FOSATU) unions which made officials accountable to members especially at shopfloor and executive level, albeit not at the level of the co-ordinating structures into which the various unions were grouped before FOSATU and CUSA. This however, he points out (ibid; p654), did not totally eradicate the influence of white intellectuals.

Nonetheless, whilst the degree of commitment to and existence of workers' control of unions may have varied within and between unions, there is no doubt that such commitment existed (Maree;1986; p587). Certainly it existed sufficiently across the new union movement to set it apart from the bureaucratized union movement represented by TUCSA and to give workers a sense of control over their unions.

3.2.2. Commitment to non-racialism and worker unity.

Unity of the black working class was important to the new union movement (Callinicos;1981;p165). Thus they organized across the divisions created by the state (Addendum) among black workers. Nonetheless, the essential composition of the new unions was (correctly, given their numerical, economic and political significance) African workers. It was these workers who, it has been pointed out above, suffered most under apartheid capitalism, and were most militant in the struggle against it. There were, however, those new unions which in the seventies, favoured a non-racial approach (TUACC and WPWAB) and those which preferred an orientation

to African workers (UTP) (Maree;1986;p587). In this orientation to the unity of either all black workers, or all workers, the new unions differed significantly from the racially exclusive unions in the white South African Confederation of Trade Unions (SACLA) (Davies et al;1988;p255) or the racially segregated TUCSA (above).

From the first decade of their existence, the infant unions showed a concern for uniting the trade union movement (Macshane et al;1984;pp111-117). Already in the first ten years, the new unions began to gather into various structures, and later into federations. By the time the Wiehahn Commission ushered in the new dispensation in 1979, several new trade unions existed outside the ranks of the established conservative trade union movement. Just before the Commission reported, many of these had been grouped into co-ordinating structures, FOSATU and CCOBTU (Davies et al; 1988; p333). These efforts (Baskin;1990) culminated in the formation in 1985 of the super-federation the Congress of South African Trade Unions (below).

The new unions also formed links with international trade union groupings, such as the International Confederation of Free Trade Unions (ICFTU). This arose both from their initial need for financial assistance and their belief in the need for international trade union solidarity. Bodies such as the ICFTU continued to be a major source of funding (Maree;ibid;p587) for a long time, despite intentions on the part of the new unions to be self-sufficient. In fact, the documentation of unions (eg. FOSATU minutes in that period) reflect that this was the situation well into the eighties. From the mid-seventies, the new unions established relationships with a number of trade union bodies, such as the British TUC and the various International Trade Secretariats, using the assistance of these to gain, for example, the expulsion of racist unions from international bodies (Macshane et al;1984;pp122-124) and to obtain international solidarity action for disputes involving the members of the new unions (ibid;pp130-138).

3.2.3. Orientation towards the shopfloor.

The new unions stressed the need to base the organization of workers on the shopfloor, not in trade union offices. They also stressed the view that the advancement of workers depended upon their collective strength, rather than upon the law and industrial relations structures and officials. TUCSA, on the other hand, was office-based, was dependent upon officials of industrial councils to solve workers' problems, and placed a heavy emphasis on the provision of benefits. (Maree;1986;p599)

After a period of mass recruitment, most new unions strengthened themselves by focusing on shop

stewards and shop stewards committees as the key to organization. By the end of the seventies, in most new unions, although to varying degrees, shop stewards were given the tasks of organization, recruitment, collection of subscriptions, liaison with the rest of the union and representing workers in negotiations with employers (Maree; *ibid*; p 645).

Maree argues that the new unions differed in the extent to which they implemented their stated commitment to building strong shopfloor-based organizations. Thus he points out that the UTP unions, later part of CCOBTU, emphasized this in principle but not in practice (*ibid*;p602). On the other hand the unions grouped in TUACC and later FOSATU, were more successful in building strong factory floor based unions because they were more committed to this in practice and displayed "greater awareness of the intensity of organization required to put it into practice" (*ibid*).

Differences in organizing strategy amongst the new unions (eg. industrial unionism versus general unionism; in-depth organization and consolidation of certain factories versus mass recruitment; struggling for the recognition of trade unions versus struggling for the recognition of a particular workers committee; using the statutory committee system versus not using it) resulted in differences in growth and strength amongst the new unions (Maree;1986;pp598-613).

Initially they, like SACTU after 1957 (Maree; *ibid*;p600) resorted to mass recruitment, but the inability to consolidate membership thus acquired, led some of them (TUACC/FOSATU and WPGWU) to rapidly shift to "in-depth" organization of each factory. This proved more effective in building the new unions, than the continued mass recruitment tactics of the CCOBTU unions. The structures of some of the new unions facilitated direct shopfloor representation, greater accountability of officials to members and thus a greater concentration on shopfloor issues. In others (CCOBTU) this was less so, resulting in less success in strengthening the unions. Some unions (TUACC/FOSATU) organized as industrial unions, others (WPGWU) as general unions. Again, the TUACC/FOSATU unions emerged stronger (*ibid*;pp600-603).

Some unions (TUACC/FOSATU) selected strategic factories to organize rather than organize all who sought the union's assistance (eg WPGWU). Again, the FOSATU unions achieved greater success in building strong unions (*ibid*). Some unions (TUACC/FOSATU and CCOBTU) struggled for the recognition of the trade union itself, while others (WPGWU) struggled for the recognition of works committees. Again, the former emerged stronger. Some (WPGWU) used the statutory committee structures from the outset, others such as TUACC unions only did so later. The former strategy, Maree argues, proved more effective when strategically used than the

latter (ibid;p610).

Whilst the implications of the various policies, principles and practices of the new unions will be dealt with in a chapter 8, it is worth noting here that whatever the tactics engaged in, it was clear that the new unions were much more firmly orientated towards shopfloor issues, much more firmly based on the shopfloor than either the conservative unions were, or SACTU had been (ibid;p599). In addition, they were firmly orientated towards the unity of the black working class and towards giving those black workers who were union members, control of their unions.

3.3 The New Unions and Politics.

The new unions differed from SACTU in at least one significant way. Unlike SACTU, the new unions avoided involvement in political activity or organization. Initially, this was done for fear of state reprisals, later it became apparent that this was not just a protective strategy, but an ideological position in opposition to that of SACTU (chapter 8). It was this which was to bring the wrath of the Congress Movement, including SACTU, down upon the heads of the new unions, particularly of FOSATU.

It is important therefore to note that the abstention of the new unions from involvement in the overtly political arena, and the consequent lack of affiliation to SACTU and the Congress Movement meant that the new unions were built not only in the face of state and employer hostility, but hostility from the Congress Movement in exile too. This bears examination at some length relative to the rest of this section, because it was to become an important factor in the development of certain trends in the new union movement in the eighties (chapters 8 and 9).

The Congress Alliance was formed in the fifties, consisting of a number of organizations, such as the South African Indian Congress, the Coloured People's Congress, the Congress of Democrats and the African National Congress (ANC), which was the leading organisation in the Alliance (Davies et al;1988;p286) and later SACTU. Since the forties, it worked closely with the South African Communist Party (SACP), an alliance which was consolidated in the years spent by the Congress Alliance and the SACP in exile (ibid;p 285 and p291 and Fine and Davis;1991;pp260-4). Any reference to the Congress Alliance in this thesis therefore includes the SACP. The Congress Alliance was to become the most important political organization among the oppressed in the eighties.

The Congress Alliance was hostile to the new union movement in the latter's formative years.

Proceeding from an analysis of South Africa as "fascist" (SACP;1975;p133) the Congress Alliance adopted a position that any trade unions in South Africa had to be either underground (like SACTU) or reformist/collaborator unions. This view was, for example expounded by John Gaetsewe, SACTU General Secretary in 1977 (Macshane et al; 1984; p 119). To the Congress Alliance, any unions which legally existed in South Africa had to be collaborator unions.

The fear of the new unions that political involvement would endanger the fragile new structures, afforded the Congress Alliance a basis on which to mount attacks on them as reformist and economistic (Davis;1976;p97) or to imply that they were "sellouts" (Shope;1975;p22 and Davis;1976;p98).

The Congress Alliance's hostility to the new unions led it to completely ignore the achievements of those unions in the seventies, under conditions of repression. These included resuscitating the organization of the militant black working class, creating a working class consciousness among the most powerful section of the oppressed and exploited in South Africa, giving workers confidence through fighting for factory floor gains, thus challenging not only capital but also the state which had put so much effort into keeping the black working class divided, unorganized and powerless. The failure of the new unions to engage in political activity (chapter 8) even after securing themselves on the shopfloor in the seventies and obliging the state to drastically reform labour legislation (see below) whilst open to criticism (chapter 8) did not in any way justify the Congress Alliance's indictment of them as reactionary (eg.Braverman; 1975;p52-53).

The fallacy of the Congress Alliance's position on the new unions was consistently proved by the growth of the new unions and their gains on the factory floor (Maree;1986;pp657-674). Condemning the new unions could not explain the gravitation of the black working class towards them, or the fact that the state and employers viewed them as a threat. The Congress Alliance was therefore compelled to belittle the unions' achievements. The thrust of an article by Davis (1976) was that African unions were failing to advance because of the absence of politics and the concentration instead on signing recognition agreements with employers. TUACC, he claimed, were "unable to deliver the goods" to their members (ie even victories on the factory floor) and

"Unable to negotiate wage increases, the unions' functions have devolved into processing of industrial complaints alone - the dead end of the economistic road" (1976;p 97).

This ignored the fact that the signing of a recognition agreement by an unregistered new union in the seventies was a mammoth achievement in the face of state oppression and employer intransigence. It also demonstrates the contradictions in the Congress position: on the one hand the state is so repressive that no progress can be made under it. On the other hand when progress

is made in the face of that repression, it is not much of an achievement.

The hostility of the Congress Alliance to the new union movement stemmed not only from their incorrect political analysis of South Africa. Callinicos points out their antipathy to influential organizations in South Africa which they could not control:

"....the record of the SACP is one of greeting forms of working-class organisation which fall outside the Congress Alliance with profound suspicion and often hostility. This was especially true of their attitude to the independent unions, which emerged outside the control of the exiled, ANC-aligned, SACP-dominated South African Congress of Trade Unions (SACTU)" (Callinicos;1988; p71)

This view is substantiated by the fact that the Congress Alliance radically altered its approach to the new unions once it saw an opportunity to seize control of it in the eighties (chapters 8 and 9). The political ascendancy of the Congress Movement in the eighties (below) and the dominance of its politics within the new unions after the formation of COSATU in 1985 were to have a significant impact on the way in which the new unions responded to the new dispensation (chapters 8 and 9).

3.4 The Impact of the New Unions on Apartheid Capitalism.

Ironically, the effect of the state not banning African trade unions nor subjecting them to the provisions of the ICA meant that when the new unions arose, they were in certain respects (despite state harassment) more free to organize than the established unions were (Davies et al;1988;p256). Unlike the established union movement, they dealt with employers at shopfloor level outside the existing framework of industrial relations. Although this gave employers a basis for refusal to deal with them, it also meant that they were not subjected to the controls of the system (Wiehahn Commission Report;below). Unfettered by this framework, they were able to undertake industrial action and otherwise pressurize employers to recognize them. This was the dual nature of South Africa's industrial relations system referred to by the Wiehahn Commission (below).

Some employers were becoming aware of the need to take account of the growth of black unions. Others, notably the powerful Steel and Engineering Industries Federation (SEIFSA), still stubbornly refused to recognise that both the urban African working class and their unions had become a permanent part of the industrial landscape. As late as 1979, it issued guidelines (RRS;1979;p264) to its affiliates urging them not to recognise unregistered unions or non-members of industrial councils, the main structures of the official collective bargaining system.

Also, members were not to conclude agreements with unions on issues which were covered by the Industrial Council agreements (which the new unions played no role in concluding), nor offer access to unions recruiting African workers, nor grant stop-order facilities (deducting union dues directly from members' pay) to unregistered unions (which included almost all the new unions).

These intransigent employers adopted what Webster called the tactics of pre-emption, fear and smear against unions (Webster;1985; p134). The first of these tactics involved the setting up of racist or paternalistic, management controlled liaison committees to prevent trade unions gaining a foothold at workplaces. The second involved threats of dismissal or calling in the police. The third involved telling workers that the union was illegal and corrupt. Whilst these tactics of management had some measure of success in preventing the new unions from gaining as much ground as they would have without interference, workers continued to support the unions.

The response of the African working class to employer intransigence was industrial action and trade union organization. Despite a fall-off in strike action in the immediate wake of the 1976 student uprising (Callinicos;1981; p90), which saw trade unionists also affected by state repression (above), African workers, including the membership of the new unions, increasingly followed up their demands for higher wages and better working conditions with strike action. Although employers largely refused to recognize the new unions, such industrial action no doubt played an important role in raising the numbers of unionized African workers (Macshane et al;1984;p17).

Whilst strikes around the issue of wages and working conditions continued throughout the seventies, a new cause of strikes emerged in the seventies: trade union recognition (Baskin;1991;p22). Trade union recognition became a demand for which many workers were prepared to sacrifice their livelihoods. This was illustrated by the numerous disputes in 1979 around this issue, involving the Metal and Allied Workers Union, for example, at Toyota, Glacier Bearings and Williams Brothers. The atmosphere of burgeoning worker consciousness was thus giving rise to a permanent, rapidly expanding, and firmly shopfloor-based trade union movement.

By 1979, it was clear that the new unions were filling the vacuum of organizations through which workers could express at least one aspect of their grievances: the economic aspects. The new unions were channelling those grievances into demands on the shopfloor, and the willingness of their members to back those demands with industrial action clearly had the ability to hurt the system of apartheid capital.

By the time the Wiehahn Commission reported in May 1979, the new non-racial/black progressive and independent union movement consisted of at least twenty seven unions, most of which had sprung up in the seventies (the exception being the A/FCWU). More importantly, powerful federations and groupings had emerged, as workers sought greater unity. Of these, the most important was the Federation of South African Trade Unions (FOSATU), launched in the year that the Wiehahn Commission reported and consisting initially of 12 and soon after its formation of 14 trade unions. Five unions fell under the umbrella of the Urban Training Project (UTP), five under the Consultative Committee of Black Trade Unions and five more powerful, unaffiliated unions existed (RRS;1979;p264).

What is clear from this brief synopsis of the features of the new unions, is that the new trade union movement was not only new historically, in that they were only born two decades ago, but they were new in their policies and practices. In significant ways, their policies and practices distinguished them from their immediate predecessors in the organization of black workers. These policies and practices were important because they enabled the new unions to survive employer and state hostility and to grow in the seventies (Friedman;1987;p 121 and Maree;1987;pp598-613). It was also these policies and practices which would determine how they would survive the next onslaught of the state: the attempt to co-opt them in terms of the new dispensation.

The new union movement which confronted employers in the seventies was therefore an entirely different proposition from TUCSA or SACTU. Unlike TUCSA, it aimed to unite black workers across the divisions created by the state; it was based on the factory floor and not in union offices; it fought for democracy, rather than succumb to bureaucracy. Unlike SACTU, its concern was primarily for the organization of the working class at the point of production. By eschewing overt political activity or involvement, the new unions also had to face opposition from black political organizations.

Nonetheless, in less than a decade, despite all opposition, it succeeded in establishing itself more firmly on the factory floors of South African industry than any non-racial or black union movement before it (Maree;1986;pp597-8). This together with the militancy of its membership and potential membership, and the centrality of that membership to the South African economy, obliged the state to deal with it differently from the way in which it had dealt with unions organizing black workers before.

4. The Wiehahn Commission Report and the New Dispensation.

The establishment of the Wiehahn and Riekert Commissions of Inquiry in the latter half of the seventies, was clearly a deliberate political response of the state to the problems posed by the changes within the black working class. Whilst Wiehahn sought to establish controls at the workplace to enable restructuring without resistance within industry and break the backs of the trade unions, Riekert was aimed at controlling the black working class outside their places of work, to prevent resistance and break organisation outside of it. As one group of commentators put it:

"The co-ordinated task of the Riekert and Wiehahn Commissions has been to formulate the institutional and political framework through which the state could attempt the twin strategies of co-optation and control of the African working class" (SALB editors;1979b;p4)

Whilst the Riekert Commission report (RCR) is beyond the scope of this thesis, it is essential to note its central thrust. It aimed at driving a firmer wedge between permanently urbanized and migrant African workers, by tightening up influx controls over the latter, granting the former some stability in the urban areas and closing the loopholes in existing legislation which allowed for the acquisition of "Section 10" rights (Callinicos;1981;pp103-7).

The state had failed to remove the threat posed by black working class militancy and the new unions through a combination of repression and the "reforms" of the 1973 Act (above). It had failed to secure the industrial peace needed for restructuring apartheid capitalism (NUSAS;1979;pp3-4). It saw in the new unions a threat to apartheid capitalism itself: shopfloor militancy could turn into political radicalism within the black working class. As late as 1987, with yet another major piece of trade union legislation in prospect (chapter 9) the Minister of Manpower restated this major aspect of the state's motivation for legalizing African trade unions in 1979:

"One may either leave it alone to be hijacked by dangerous radical organizations or one may recognise it and in so doing regulate and involve it in an orderly and stable system with possibilities for communication, contact and settlement" (Hansard;1986;p3344).

The task of the Wiehahn Commission was to find a solution to the problem. Its chosen method of dealing with the new unions, was to legalize them and seek to subdue them within a legislative and institutional framework geared to the purpose of constraining the militancy of the black working class. It was therefore proposing a radically different way of dealing with the black trade union movement, from the way in which the state had historically dealt with it (chapter 2).

4.1. The Wiehahn Commission Report

4.1.1. Terms of reference and underlying considerations

The terms of reference of the Wiehahn Commission were to investigate South Africa's labour legislation and make recommendations *inter alia* with regard to:

- adjusting the existing system of regulation of labour relations to provide more effectively for South Africa's changing times
- adjusting the machinery for preventing and settling disputes in the light of changing needs
- finding the means to lay the foundation for a sound labour relations system

(RRS;1977;pp302-3)

The Wiehahn Commission Report (WCR) highlighted a number of factors which had led to the Commission's appointment and important considerations underpinning the recommendations contained in the Report. Firstly, the necessity for skilled and semi-skilled labour in South African industry had in the decades preceding its report, brought African workers centre-stage in the South African economy. By 1977 African workers constituted 70,5% of the South African workforce (WCR pt1; paras 1.2 - 1.4).

Secondly, since the 1973 strikes, trade unions organising these very workers and operating outside the controls of the legal system, had become a permanent feature of the system (WCR;pt1; para.1.10). Twenty seven unions with membership of between 55 000 and 70 000 (mainly African) could not be ignored, particularly since these workers were increasingly responsible for major strikes. Although these met with mixed fortunes (Maree; ibid;pp 613-629) they had clearly demonstrated that they were a force to be reckoned with, and a fast-growing one at that. These unions, the Commission pointed out, operated outside the constraints of the law, particularly the statutory industrial relations framework within which the established unions operated (WCR;pt1; para3.57.1), and were open to being used by "non-labour organisations....as vehicles for change" (para;1.10).

Thirdly, the Commission found the dual statutory industrial relations system catering separately for African workers and non-African workers "complex and problematical". However, what clearly concerned the Commission more was not the duality represented by the different statutory systems, but the duality created by the operation of the new unions outside the controls of either statutory system. These unions were obliging employers to create extra-statutory channels for dealing with them. In this way, the industrial relations system had become "dualistic" in a way

never envisaged by the state (ibid; para 1.9.) The Commission saw the possibility of the new unions "bring(ing) extreme stress to bear on the existing statutory system", thus endangering industrial peace and in addition creating an informal system which might be difficult to dismantle later (ibid; para 3.35.14).

Fourthly, the new unions and their members were attracting international attention. International capital wanted stability to be re-established to safeguard its interests in South Africa, whether by "reform" or further repression. Furthermore, support for the black working class of South Africa was coming from the international working class. Even trade union bodies which had hitherto merely paid lipservice to solidarity with black South African workers and had in practice collaborated with reactionary white unions, were now calling for the recognition of African trade unions and other reforms in South Africa, especially after 1976. These created additional incentives for the ruling class in South Africa to find acceptable ways of dealing with black unions (Macshane et al;1984;pp130-131). The WCR acknowledged both these pressures: the fact that the new unions were being assisted by "foreign labour and political organizations" and that "other non-labour organizations" saw the new unions as a "vehicle for political change" (above and para3.27(i)); and the need to take account of the importance to the South African economy of foreign capital (ibid;para 1.16.4).

From this, the true purpose of the Commission emerged: that of finding a means of controlling the new unions, whose constituency was central to the South African economy, who were threatening industrial peace and thus endangering capitalist stability in South Africa and who were beginning to realize their power to wreak far-reaching changes in South Africa. For the Commission, the answer to this problem lay not in continuing to suppress unions catering for African workers (chapter 2), but in legalising these unions and adjusting the statutory system of industrial relations in order to control them within the framework of the law. In this way, the problems posed by those unions for capitalist stability in South Africa would be removed.

4.1.2. Main recommendations

This was the basis of the WCR's main recommendation: the statutory recognition of African unions. The Commission argued that, given the above factors, "it would be far healthier" if black unions were to register in order to prevent "polarisation", ensure "an orderly process of collective bargaining" and to expose

"...Black trade unions to South Africa's trade union traditions and the existing institutions, thus inculcating a sense of responsibility and loyalty towards the free market system" (WCR;Pt1; para 3.35.15)

The South African trade union "tradition" referred to in the WCR was represented by a conservative, racist and bureaucratic trade union movement (Davies et al; 1988; pp245-7) long co-opted by the very system that the Commission wanted the new unions to participate in. The Commission clearly intended that the new unions should be similarly co-opted and controlled through that system (WCR;Pt1;para 3.88).

It recommended that unions be free to choose their own membership rules, to include migrant workers if they so wished. It found that the exclusion of migrants would give rise to the same problems which already existed in respect of all African workers and which the Commission was seeking to remedy. It would drive organisations of migrants and commuters (see later) underground and into the arms of political organisations, foreign and domestic. An informal system operating outside the statutory system would continue to exist in respect of these excluded workers. Thus industrial relations problems would become a security issue, and inconsistency would continue to exist in the treatment of different workers, etc. (WCR;pt1;para 3.46-3.57.2).

Furthermore, it felt that unions would themselves exclude migrants. Unions would be interested in keeping membership figures consistently high and would not be interested in organising migrants who were, in the Commission's view, notoriously difficult to organise and retain in membership. Migrants themselves were, according to the Commission, not interested in paying dues and were interested in immediate gains which unions could not offer them, since their pay and conditions were fixed in terms of fixed term contracts (ibid).

The Commission recommended that the new unions be allowed access to the (highly bureaucratic) Industrial Council system (Chapter 5). It further recommended that this system be restructured to prevent one interest group from dominating another. The Commission blithely ignored the fact that the system had for decades enabled one interest group (white workers) to dominate others represented at industrial councils ("coloured" and Indian workers) and determine the interests of others not hitherto represented (African workers). It recommended "strict parity" of representation of trade unions at Industrial Councils, and that existing members be given the right of veto over the admission of new members (ibid;paras 3.90-3.92). Such provisions were clearly intended to curb the powers of the new trade unions, by allowing the existing conservative unions parity of representation with potentially much larger unions organizing African workers, and by allowing them to veto the membership of African unions.

Lastly, the Commission recommended the creation of an Industrial Court, which it envisaged as developing the law in such a way as not only to determine acceptable industrial relations

practices, but also foster a commitment to the industrial relations system, to operation within the law, and to the free enterprise system as a whole. This is dealt with in part 3 of this thesis.

In sum, the most important recommendations of the WCR were that unions with African membership be afforded statutory recognition, that they be subjected to the controls of the existing statutory system of industrial relations through the process of registration, that they be given access to the Industrial Council system, and that an Industrial Court be created which would encourage the new unions to confine their activities within the law. Each of these features of the new dispensation was envisaged as playing a role in the co-optation of the new union movement, although of course this was not so blatantly stated by the Commission. These key recommendations, and their practical implementation, as well as the response of the trade unions to them, are dealt with at length in the next two parts of this thesis.

4.2. The New Dispensation.

Most of the main recommendations of the WCR were embodied in the Industrial Relations Amendment Act No.94 of 1979. This Act allowed for the establishment of two new bodies concerned with industrial relations. It empowered the Minister of Manpower to establish a National Manpower Commission to investigate and make recommendations on all labour affairs, referred to it by him. It also allowed him to suppress the publication of any resulting report. Whilst the NMC was nominally a tri-partite body, the fact that the Minister had full control over the appointment of all its members indicated that it was to be, as commentators pointed out, simply an additional mechanism of control over unions (SALB;1979a; pp53-4). The Act also created, in terms of Section 17, an Industrial Court, the staff of which would be appointed by the Minister. The main features, powers and functions of this Court are dealt with in part 3 of this thesis.

As regards trade unions, the Act redefined the term "employee" to include certain Africans: those who were permanently resident in South Africa (outside the homelands) and in fixed employment. It therefore excluded migrants and "frontier commuters" (ie workers from the "homelands" or "independent states" which had been created by the South African regime, who commuted long distance from these places to the nearest industrial areas of "South Africa" every day (Sec.1). Trade unions organizing those African workers recognized as "employees" in terms of the Act, could now register and use the statutory industrial relations system. However, if they registered, trade unions could not have as members those workers regarded as "non-employees" in terms of the Act. They would face heavy fines for having, for example, migrant workers and "commuters"

from the "homelands", as members (S4B). S1(b) of the Act enabled the Minister of Manpower to extend trade union rights to workers excluded from the system. The legislation clearly disregarded the Wiehahn Commission's recommendations by not extending trade union rights to all workers.

The Act also prohibited the registration of non-racial unions, but gave the minister the power to allow this in certain circumstances (S4(6)). Again, this contradicted the WCR's recommendations regarding freedom of association. It also ran directly counter to the policies of most of the new unions, certainly of those under review in this thesis, most of which either had constitutions or policies embodying the principle of non-racialism.

The intention of the state, of controlling the new union movement, came through clearly in the Act. It created a system of provisional registration (S4A). The Industrial Registrar, who was appointed by the Minister, had wide discretionary powers to require that trade unions desiring registration, meet certain requirements before final registration was granted. Existing members of an industrial council were given the powers to veto the admission of new members (S21A). Thus new trade union members would not only have to satisfy the requirements of legislation and the registrar, but also of other unions and employers, who already displayed hostility towards the new union movement. This is dealt with more fully in chapter 4.

Unregistered unions did not escape the effects of the Act: employers were prohibited from allowing them stop-order facilities (Sec.51 (3)) and of course they continued to be debarred from the official collective bargaining system.

The new unions were united in their opposition to the controls to which the state wished to subject them, represented by provisional representation and dictating who should be eligible for membership (chapter 4). This obliged the state to amend the legislation several times (See Chronology of legislation) in the first five years of the existence of the new dispensation, in order to secure the participation of the new union movement in the system. Without such participation, its hopes of subduing them within the framework of the law and through the institutions and procedures of that dispensation (Chapters 4-7) were doomed to failure. Thus, for example, within months a ministerial declaration extended trade union rights to all South African workers ie including migrants and commuters, to be later incorporated formally into the Act. This removed a major source of trade union opposition to the new dispensation.

In 1981 amendments were made to remove another source of control, and therefore of objection

to the system: provisional registration. At the same time, the state extended the controls which the Act provided for registered unions to unregistered unions, in an attempt to eliminate the differences between the two and therefore wipe out the basis of the objections of certain new unions (chapter 4). In 1982, the Act was amended (and renamed the Labour Relations Act) to widen the scope of the Industrial Court's powers, and thereby make recourse to the Court a more attractive option for unions to pursue. In those first years, then, the state amended the legislation both to oblige unions to participate and to render participation more attractive.

5. Developments in the Eighties: Grassroots Struggles and the Consolidation of the New Union Movement.

The economic and political crises continued unabated in the eighties. These impacted upon the trade union movement and its members. In addition, changes were taking place within the new union movement itself. These factors constituted the context in which the new union movement had to contend with the new dispensation. What follows is an attempt to briefly sketch those developments. The last part of this thesis will examine the impact of those developments on the response of the new union movement to the new dispensation.

5.1. The Township Struggles.

The economic decline beginning in the early seventies turned into full-scale crisis which continued unabated in the eighties, despite measures taken by the state to arrest the decline and despite periods of respite (Davies et al; 1984; Vol.1; p37 and Kaplan;1987; pp524-5). The crisis required fundamental changes to apartheid capitalism, changes which the regime was incapable of effecting, and which it compounded with the disastrous economic policies with which it attempted to address the crisis (Kaplan;1987;pp527-8 and 534).

The effects of this on the African working class were devastating: for example, 3 million African workers were unemployed by 1982 (Davies;ibid; p55). Cassim argues that:

"Millions are out of work and will not hold jobs of any kind in the foreseeable future. It requires no leap of the imagination to understand why South Africa has seen unprecedented levels of unrest. " (1987;p548)

Stemming from and reinforcing the economic crisis was the continuation of the social and political ferment (Cassim;ibid). The early eighties were dominated by major strikes (Callinicos; 1981;pp126-129), such as that of the Black Municipal Workers' Union which crippled Johannesburg in 1980 (RRS;1980; pp188-190). Despite the repressive action of the state against

strikers (Callinicos; 1981;p138), the communities in which black workers lived were drawn in to support workers' struggles against employers, by boycotting the products of employers whose workers were engaged in a strikes. Black working class communities were drawn into united class activity during, for example, the Fattis and Monis strike and boycott, Wilson-Rowntree strike and boycott, red meat strike and boycott, Leyland strike etc. (Callinicos; ibid and Davies et al;1984;p35).

The eighties saw the black working class increasingly participate in the township struggles around issues such as poor or no local facilities, poor housing, rent increases, transport increases and so forth (Davies et al;1988;pp353-4). These struggles were led largely by community organizations (ibid), which are dealt with below. The struggle against the "Koornhof Bills", for example, was led by organizations such as the Disorderly Bill Action Committee. The Bills were meant to resolve the problems presented for the state by the growing urban African population. The most important of these was the Orderly Movement of Persons Bill which aimed at restricting the acquisition of "Section 10" rights and tighten up the pass laws (Murray;1987;pp 103-4). In the wake of this struggle, the Bill was scrapped. Thus the black working class was involved in struggles both on and off the factory floor.

The most intensive period of popular upsurge, however, occurred in 1984-6 (Murray;1987;pp239-306 and RRS 1984,1985,1986; overviews). The unrest was the result of a variety of factors, chief of which were the education crisis, which had resurfaced in 1983, economic factors and the new constitutional proposals. The new constitutional proposals essentially involved the creation by the state of a "Tricameral Parliament", consisting of three chambers, one each for whites, coloureds and Indians with the white chamber retaining real state control. Africans were excluded (Murray; 1987;pp116-8). The first elections for these were scheduled to take place in August 1984. Political and community organizations (including the United Democratic Front, the National Forum Committee and the ANC) called for a boycott of these elections (RRS;1984;p xvii). The mobilization against the proposals, already begun in 1983 by community organizations, was stepped up in 1984 (¹).

The economic factors were chiefly the increases in rents and service charges levied on township residents by local authorities appointed by the state and vehemently denounced as collaborator structures by the oppressed in the townships (Davies et al; 1988;p353). Already black people were

¹. This account of the community struggles in the eighties is based not only on the references cited but also on my own experiences as an activist in certain organisations and unions in this period.

worst hit by the inflation rate of 13,25% and increases in transport, fuel, electricity and water costs and in general sales tax (RRS; 1984;p67). They also faced serious housing problems due to the excessive shortage of housing in the townships, increased raids on squatters, and forced removals (RRS;1984;p xix).

From early in 1984, and continuing throughout the year, black schools were boycotted. The campaign against the new constitutional proposals was stepped up, as were campaigns against the township rent increases, to which the state reacted by sending the troops into the townships. In September and October 1984 there were three regional stayaways in major industrial and politically important areas: the Vaal Triangle, Soweto and Kwathema. These culminated in the largest political stayaway (both from schools and work) hitherto experienced in South African history on 5 and 6 November 1984 (RRS;1984;pp65-76).

The stayaway was successful not only in terms of the number of people mobilized, but in terms of the fear instilled in employers. The Associated Chamber of Commerce (ASSOCOM) expressed fears about the implications of political stayaways for business, whilst acknowledging the validity of the grievances raised.(RRS;1984;p77). The Afrikaanse Handelsinstituut (AHI - representing Afrikaner businesses), the Federated Chamber of Industries (FCI) and ASSOCOM condemned the widespread detentions, especially of union leaders like Dhlamini, the vice-president of FOSATU, which followed the stayaway, and the reprisals from employers were relatively mild. Most deducted wages or treated it as paid leave. Only at the parastatal SASOL (South African Coal, Oil and Gas Corporation) were 6000 workers fired (ibid).

The next year again saw unprecedented levels of resistance: boycotts, worker stayaways, insurgency, confrontation with the troops in the townships and attacks on collaborators. In a desperate attempt to assert its authority, the state declared a state of emergency in 36 magisterial districts on July 20 1985. This gave the police and army virtual *carte blanche* to use any means they wished, to end the unrest (RRS;1985;pp xx-xxxiii).

The already poor economic situation was exacerbated by the worsening political situation, causing the Rand to plunge in August to the lowest level ever against the US dollar. Economic chaos reigned as trading on the Johannesburg Stock Exchange was suspended for 3 days; foreign banks refused new loans to private investors and refused to renew existing ones and called up short term debts; and the government froze debt repayments for four months (RRS:1985; xxvii -xxviii). The effect of this on the black working class was significant: unemployment escalated, with the highest unemployment levels of 56% in Port Elizabeth, part of the politically volatile Eastern Cape (RRS

1985;p xxix).

The situation of crisis continued into 1986 (RRS;1986;pp xix-xxiv). The state, having lifted the first state of emergency in March 1986, imposed a country-wide state of emergency on June 12. Thousands of arrests, bannings, detentions and deaths occurred, as the army and police slowly reasserted control over the townships. By the end of the year, it seemed that the state had, mainly through brute force, succeeded in arresting the upsurge. Political organisations like the UDF and its affiliates, particularly the student organisation COSAS, had been reduced to mere shells of their former vibrant selves.

Capital continued to lose confidence in the state's repressive policies, which merely fuelled the political crisis and its continued disastrous economic policies (Cassim;1987;p548 and Innes;1987;p551). Nonetheless, the state proceeded to renew the state of emergency annually and virtually banned all political organizations early in 1988. In addition, it placed severe restrictions on the political activities of the new union movement, by that time under the leadership of a powerful federation, COSATU. (RRS;1987/8;p607).

From 1986 the state began to unveil other attacks on the black working class and the new trade union movement. Essentially, these consisted of its deregulation and privatization policies, and the introduction of a Labour Relations Amendment Bill (first introduced in 1986, revised in 1987 and made law in September 1988). The deregulation policy exempted certain businesses from complying with minimum standards of employment and wages (COSATU pamphlet;1989). The privatization policy involved privatizing the huge public sector: health, housing and transport services as well as the enormous parastatal corporations, which controlled services such as electricity, telecommunications, etc. (ibid). The aims and effects of these policies were to further impoverish the black working class (Innes;1987;p566 and 1988;p24-5). The Labour Relations Amendment Act sought to roll back gains made by the new unions since 1979 (chapter 9). It altered the law with regard to unfair dismissals and retrenchments to make it easier for employers to dismiss or retrench workers; complicated conciliation procedures; made legal strikes difficult to embark on; altered the structure of the Industrial Court and made cases more time-consuming and expensive and widened the scope for unions to be held liable for illegal strikes (CALS;undated). The impact of these attacks on the unions and their members is dealt with in chapter 9.

5.2. The Role of Community Organisations and Political Organizations.

Political events encouraged the mounting militancy in the townships and galvanized it into open and widespread rebellion, particularly amongst the black working class, who were the chief inhabitants of the townships. A significant characteristic of this period was the growth of grassroots political organizations in the black townships. This went hand in glove with the growing influence of the exiled political organisations (Murray;1987;pp195-238).

Organizations sprang up around issues like housing, education, township facilities, the new constitutional proposals and so on (ibid;p202). These organizations guided and consolidated the campaigns of the decade. Most community organizations were drawn together under two key umbrella bodies in 1983: the United Democratic Front (UDF) and the National Forum Committee (NFC) (ibid;pp196-200). The politics of these two organizations differed widely, the former supporting the politics of the exiled Congress Alliance, the latter opposing this line. These differences between adherents and opponents of the Congress Alliance (such as was expressed in the warfare between the UDF and AZAPO, a member of the NFC, in the Eastern Cape) gave the state added excuse for keeping the troops in the townships (ibid).

The UDF and most of its affiliates had long been considered to be under the predominant influence of the Congress Alliance (Murray;1987;p213-5), although both sides, as could be expected, denied any formal link because membership of the ANC or SACP was illegal until 1990. The UDF, probably the most influential legal political organisation in the townships in 1984, claimed two million members at the time. Its stated intention of strengthening its affiliates and extending its campaigns in 1984 added fuel to the fire raging in the townships (RRS; 1984; p15). During 1986, the state virtually smashed the UDF and its affiliates. Leaders and activists were arrested, detained and murdered. Its key affiliates were banned in early 1988.

The NFC was formed shortly before the UDF, by 200 organizations (Murray;1987;pp196-200). The leading organization in it was the black consciousness-oriented political organization AZAPO (see below). It rejected the involvement of whites in the struggle. In particular it rejected the participation of largely white organizations as in the UDF. In its socialist rhetoric, the NFC and its leading organizations were to the left of the Congress Alliance and its affiliates. They had a great deal of influence in various areas and constituencies, but were not as influential as the UDF.

The trade union federation CUSA was closely aligned to AZAPO, and later, after rejecting COSATU in 1985 (chapters 8 and 9) it joined another black consciousness oriented union group,

the Azanian Confederation of Trade Unions (AZACTU), to form at first CUSA-AZACTU, then the National Council of Trade Unions (NACTU) (RRS;1986;p237). These unions and political organizations are not of direct concern to this thesis. Their importance here is to show how prolific organizations were in the eighties, arising from and adding to the general climate of political ferment. At the same time, this reflects that the new union movement was subject to the same kinds of political debate and alignments which were sweeping through the community organizations.

The black consciousness movement (BCM) which led the uprisings of the seventies, faced the brunt of state repression in that decade. It therefore declined in influence. Towards the end of the seventies and throughout the eighties support for the Congress Alliance revived as a result of a number of factors. These included the state's repression of the BCM in the wake of the 1976 revolt, the support of foreign governments for the ANC and the resuming of the military activities of the ANC. (Callinicos; 1988; pp61-2). What was also important was the failure of any other party, such as an explicitly marxist party, to emerge to bring together the militant youth and working class organisations around a coherent programme to achieve the socialist society that was being increasingly called for by workers (chapters 8 and 9).

Throughout the eighties the Congress Alliance was able to gain increasing influence among the mass of oppressed militant youth, who led the battles of the seventies and eighties, through its re-affirmation of its commitment to the military and political struggles (Murray;1987;pp 207-214 and Davies et al;1988; pp443-449). It underlined the former with an allocation of half of its annual budget (\$50 million) to its armed wing, *Umkhonto we Sizwe*. Pushed by the intense struggles of the mass of oppressed and exploited in the townships into taking a more radical stance than it did historically, the Congress Alliance, gained increased support. Especially in the 1984-6 period, its call to "render the townships ungovernable" became the rallying cry of the masses. It declared 1987 "The Year of Advance to People's Power" and at the same time declared that it would intensify the armed struggle until the South African regime was willing to negotiate with it (RRS; 1987/8;pxxxvi). Its ability to wage armed struggle was, however inhibited by the restriction of support from the states surrounding South Africa (Davies et al;1988;p447) and the onslaught of the South African state on the masses inside South Africa.

In 1987/8 both the state and the ANC began to make moves towards a negotiated settlement in South Africa. The ANC began in 1987 to meet the leaders of South African capital (Eg.in Dakar in 1987) and the South African president began to show a willingness to release the ANC's Mandela, met with Angolan and Cuban leaders regarding withdrawal from Angola and Namibia,

and met with officials of the Soviet Union, traditional supporters of the South African liberation movement (RRS;1987/8;p xxxvi-xxxvii).

In the eighties the position of the Congress Alliance on the new trade union movement changed startlingly. It began the eighties vehemently opposed to the new unions (above), which posed a challenge to its trade union wing SACTU. By the end of the eighties, the Congress Alliance was the most influential political force in the biggest trade union federation in South Africa, the Congress of South African Trade Unions. COSATU was firmly allied to it and many of its affiliates had adopted the Freedom Charter. COSATU itself by the end of the eighties (in the period beyond the scope of this thesis) entered into a close alliance with the ANC and replaced SACTU as its trade union arm.

5.3. Developments in the Trade Union Movement.

From 1980, new unions proliferated. In 1979, the new unions consisted of 14 grouped in FOSATU, 4 in the CCOBTU, 5 in the UTP and 5 unaffiliated (RRS;1979;p264). By the mid-eighties, at the height of the social upheavals in South Africa, there were 33 unions affiliated to COSATU, with a paid up membership of 250 000 and a signed up membership of 700 000. There were also 23 unions affiliated to CUSA-AZACTU (later NACTU) with a paid up membership of 248 000 and a signed up membership of 420 000 (RRS;1986;p231).

In 1980 a number of new unions were born such as SAAWU which was formed in Durban in 1979 and moved to East London in 1980. There was also the Black Municipal Workers Union (BMWU), which led the important municipal workers' strike which crippled Johannesburg in 1980. In addition to FOSATU, another federation of new unions, the Council of Unions of South Africa (CUSA) was formed in 1980. Thereafter a number of "community" unions grew up, less established and shopfloor orientated than the more established members of the new union movement. These unions were also more overtly politically active, with 7 of them joining the Congress-orientated UDF in 1983 (Baskin;1991;p37). Last, but certainly not least, there was the formation of the National Union of Mineworkers (NUM) by the Council of Unions of South Africa (CUSA) in 1982, signalling the beginning of the end of peace in the mining industry.

The unity of the new union movement was one of its greatest priorities. At the end of 1979, the most important new unions were those grouped in FOSATU. Outside FOSATU there were the GWU and A/FCWU and the unions which were to form CUSA in 1980. FOSATU's formation excluded unions such as the GWU and A/FCWU who felt that they were not ready for affiliation

(ibid;p25). However, after 1979, those unions co-operated with FOSATU on various issues. In 1981, the GWU convened a meeting in Langa, Cape Town, to begin discussions about uniting the new union movement in South Africa under a new federation. This was attended by 29 unions, including all of the above. Thereafter followed a series of 6 major "unity" talks, over a period of four years, until the launching of the "super-federation", the Congress of South African Trade Unions (COSATU) in November 1985.

The unity talks were obstructed by a number of issues. The first saw disagreement on the issue of registration in terms of the new dispensation, but a basic agreement on the need for working together in solidarity action committees (ibid;p35). The second was again obstructed by the registration issue, with 2 unions, MACWUSA and GWUSA, refusing to work with unions and walking out of the talks. Seven other "community" unions were opposed on principle to registration but felt that they should not leave and let FOSATU form a federation on its own terms (ibid; pp37-8). The third meeting saw conflict over the founding principles of the proposed federation. FOSATU, GWU and A/FCWU wanted these to be worker control, non-racialism and industrial unionism. CTMWA agreed with the first two principles but wanted both industrial and general unions included. CUSA wanted black worker control, industrial unions and a loose federation. The 7 "community" unions wanted a rejection of registration and the industrial council system (ibid; pp38-9). No agreement could be reached.

When GWU finally managed to reconvene the unions in 1983, the 7 retreated, but one of them, the OVGWU, wanted unity at the level of workers before unity at trade union level. The rest agreed to form a new federation and set up a feasibility committee, but unity was again jeopardized when the "community" unions failed to provide the necessary membership information to enable the feasibility committee to embark on demarcation discussions. This was followed by allegations of "poaching" which again threatened to derail the talks (ibid; p 40). In July 1985 the community unions returned to the unity talks. Also involved were a group of black consciousness affiliated unions grouped in 1984 into the Azanian Confederation of Trade Unions (AZACTU). Unions were asked to state their positions on the constitution drafted by the feasibility committee and on five principles: non-racialism, industrial unionism, workers control, representation on the basis of paid up membership and co-operation at national level (ibid; p 47). AZACTU rejected the constitution and the principle of non-racialism. CUSA unions claimed not to have been consulted.

Finally, in the midst of the 1984-86 township uprisings, COSATU was born, without CUSA and AZACTU. However, the NUM left CUSA in 1985 because it regarded CUSA as not being

sufficiently committed to unity. It became the biggest affiliate of the newly-formed COSATU (Davies et al;1988;p458). The next few years saw both the growth of COSATU and its affiliates, and mergers of a number of affiliates and between those affiliates and unions who left the TUCSA fold. By 1988 there were one million signed up and 691 151 paid up members in 13 industrial unions in the giant non-racial federation COSATU alone (RRS;1987/8;p606). COSATU was the biggest trade union federation in South African history (Davies;1988;p459).

In the early eighties, the new unions were politically divided. The leading grouping of new unions, FOSATU, adopted the position that workers should build an independent working class organization (Foster;1982;p24). FOSATU initially avoided direct involvement in community struggles and organizations. It refused to join community organizations (FWN;Nov/Dec. 1983;p5) on the grounds that they were divisive (FWN;Feb,1983; p1), lacked a working class leadership and did not see workers' interests in fighting capitalism as the priority in struggle (FWN;July 1983;p8). From 1983/4, FOSATU and other leading unions were increasingly unable to avoid political involvement in the events taking place in the townships (FOSATU Report 1983;pp46-7). FOSATU then encouraged its members to involve themselves in the community and political struggles of the day (FWN; Feb.1983;p1) and expressed its support for the struggle of community organizations (FWN; Nov/Dec.1983;p5). However, its relationship with community organizations continued to be acrimonious (FWN;May Day issue;1985;p2).

Other trade unions, such as the "community unions" which included SAAWU, joined the UDF (Baskin;1991;p37) and flung themselves fully into community struggles. These unions were, however, much weaker than FOSATU unions, whose political position was the dominant one in the new union movement until the formation of COSATU (chapter 8).

After the formation of COSATU in 1985, the dominant political position within the new unions changed. Firstly, COSATU and its affiliates increasingly participated in political activity (Murray;1987;p193), particularly after the banning of political organizations in 1987/8, and despite state harassment and banning of the federation's political activities. Secondly, COSATU's leadership from the outset committed the federation to the political position of the Congress Alliance. (Davies et al;1988; pp459-460 and Murray;1987;pp192-3). COSATU's relationship with the Congress Alliance in exile rapidly strengthened (ANC-COSATU-SACTU; doc;1986). Despite the continued existence of different ideological positions within COSATU and within its affiliates (Davies et al; ibid and Fine;1987;pp222-223), COSATU consolidated its relationship with the Congress Alliance by the formal adoption of the Freedom Charter in 1987 Davies et al; 1988;p461).

These political developments within the trade union movement, and the implications of these, together with the growth of the new unions and their striving for unity, for the development of legalism, are dealt with in the last part of this thesis.

6. Conclusion

The seventies and eighties were a period of economic and political crisis in South Africa. The black working class, whose oppression and super-exploitation was the basis of the apartheid capitalist system, was in the thick of these crises. Its objective position presented contradictions which could be resolved only if posed no threat to attempts to restructure the system of apartheid capitalism. Thus the re-awakening of the militancy and class consciousness of the black working class and its organization against oppression and exploitation not only exacerbated the economic crisis but posed a political threat to the continued existence of apartheid capitalism.

The re-awakening of the black working class found expression in the growth of the new trade union movement. Its development at a time of economic crisis for apartheid capitalism, the centrality of its constituency to the system, the militancy of that constituency and the distinctive features of the new union movement, combined to make it far more resilient to the hostility of capital and the state than any trade union movement amongst the black working class had been in the history of South Africa. The state could not subdue it by repression alone.

Departing from previous practice, the state devised a framework for co-opting the new, overwhelmingly black, trade unions, in the same way as it had co-opted the white trade union movement decades before. It thrust the new unions in the direction of the statutory industrial relations system by a combination of compulsion and incentives. For the state, a major step in the direction of co-opting the new unions was to secure the commitment of the new unions to operating within the parameters of the statutory dispensation created in 1979.

For black workers, the new unions were an organizational means of expressing their opposition to their sufferings under apartheid capitalism. Through the new unions, they could most effectively use their powerful position in the South African economy to oppose their extreme oppression and exploitation. Given the underlying motivation of the new dispensation, and the nature of its chief institutions, unqualified commitment to it would set the new unions on the road to co-optation by the state and the ruling class. The success of the state in co-opting that new union movement would represent a grave defeat for black workers.

The response of the new union movement to the legislative framework for its co-optation, took place against a background of continued, and deepened, economic and political crisis in South Africa. The militancy of the black working class extended beyond the factory floor and this found expression in political organization. The new union movement was drawn into the political activity and organization of the black working class at the same time as it had to contend with the attempts by the state to co-opt it through the new dispensation. The impact of both the institutions and procedures of the new dispensation on the one hand, and the political factors on the other hand, on the success or failure of the state's new strategy in respect of black trade union organization, is the subject of the rest of this thesis.

PART TWO: THE NEW DISPENSATION AND THE DEVELOPMENT OF LEGALISM - THE REGISTRATION PROCESS AND THE INDUSTRIAL COUNCIL SYSTEM.

INTRODUCTION

This part of the thesis examines two aspects of the new dispensation: the registration process and the industrial council system (ICS). These two aspects of the statutory industrial relations framework are dealt with in one part of the thesis because they have historically been linked in at least two ways. Firstly, they were existing aspects of the statutory industrial relations system which were extended to unions organizing African workers by the Industrial Conciliation Amendment Act 95 of 1979, rather than newly created by it. Secondly, they were regarded as having played some role in the co-optation by the state of the established, racist trade union movement, and as the state's intended means to control the new unions within the framework of the new dispensation. As such, participation in these two aspects of the statutory system was hotly debated by the new unions in the wake of the 1979 Act.

It was in relation to these two aspects of the post-1979 dispensation that some of the new unions first raised the issue of legalism. One side of the debate argued that participation in the registration process and the ICS would inevitably undermine workers' control of the new unions, because participation would lead to state control of the new unions and to legalism (an aspect of which was the handing over of control over certain aspects of union activity to legal and other experts). The other side of the debate felt that with sufficient vigilance, the new unions could use the registration system to grow and at the same time defeat the state's attempts to control them.

CHAPTER 3: THE ROLE OF THE REGISTRATION PROCESS IN THE DEVELOPMENT OF LEGALISM

1. Introduction

The aim of this chapter is to examine the registration process and the approach of the new trade union movement to it. It will show both how the registration procedure itself fostered legalism and how the approach of the new unions to the registration issue sowed the seeds for the development of legalism in their approach to the whole of the new dispensation.

2. The Registration Process: An Invitation to Legalism

The Wiehahn Commission Report (WCR) which recommended that unions organizing African workers should be allowed to register, emphasized that the chief consideration underlying this recommendation, was to enable the state to control the new unions (Chapter 2). The registration process was formulated to enable the state to do so. It was not just a formality. It offered trade unions few advantages in return for submitting themselves to numerous obligations. Its power to attract trade unions to use of the law was not confined to the benefits conferred by registration itself. The main thrust towards participation emanated from beyond the system itself, from the conduct of the state and employers, as well as existing registered unions, towards unregistered unions. However, once trade unions were persuaded to adopt the procedure, the attractions of the procedure and the web of legal complexities which registration consisted of, encouraged the development of legalism.

2.1. The Historical and Political Significance of the Registration Procedure.

Prior to 1979, unions organizing African workers and non-racial trade unions, could not register in terms of the then Industrial Conciliation Act (Act 11 of 1924, repealed and replaced by Act 36 of 1937, repealed and replaced by Act 28 of 1956). The Act made provision for the prevention and settlement of disputes between registered unions and employers and created structures for collective bargaining between such unions and employers. Unions could register only if their members were "employees" (Jones; 1982;pp24-26).

Certain workers were excluded from the definition of "employee" in the Act. These included farm workers and domestic workers. State employees were not excluded but certain provisions of the

Act did not apply to them (ibid). The 1924 Act most importantly excluded pass-bearing Africans (not coloureds and Indians) from the definition of "employee". They could not therefore join registered trade unions. Initially, African women were not required to carry passes, could therefore be "employees" and could therefore join registered unions. The 1956 Act excluded all Africans, including women, from the definition of "employee". The 1956 Act also provided for all registered unions with mixed membership to have executive committees of only whites; to have separate branches for different races (ie white, coloured and Indian) and to have separate meetings for separate racial branches. No new mixed unions could register (ibid;p28).

Unions organizing African workers, and non-racial unions, were not prohibited, nor placed under any legislative controls, but they were not recognized in law in that they could not register. Therefore they had no access to the collective bargaining and dispute resolution structures and procedures provided by the the Act. Nothing in law prevented them from organizing any workers or from entering into collective agreements with employers (ibid;pp28-9).

This situation was altered drastically by the 1979 Industrial Conciliation Amendment Act, which followed in the wake of the WCR. As was pointed out in chapter 2, the Commission's recommendation that unions with African members be allowed to register, stemmed from its view that it was dangerous for the new unions to continue to operate outside the constraints of the law. It saw registration as a means of asserting state control over them and of securing their commitment to the legal system and the economic and political framework which it supported (para.3.23;para.3.35.17; para 3.35.15).

The 1979 amending Act made significant changes, but did not go as far as the WCR recommended. It amended the definition of "employee" to include certain Africans: those with rights to remain in the urban areas. Migrant workers, frontier commuters, and foreign blacks remained excluded from the definition. Accordingly, certain Africans could join registered unions, or unions with certain Africans as members, could register. A penalty of R500 was imposed on a registered union for every "non-employee" which it had as a member (Jones;ibid;p31).

The rejection of these provisions by the new union movement (below) led to a Ministerial Declaration that from 1/10/79 all except foreign blacks would be "employees" (GG No. 6679).

The Act continued to debar mixed unions from registration, except by Ministerial exemption. This power of exemption was exercised to allow established unions to recruit blacks into "parallel unions" (below), but not to allow the new progressive non-racial trade unions (eg.FOSATU

unions) to register as non-racial unions (Jones;1982;p33). The continued resistance of most of the new unions to this provision, led to the deletion of all reference to race in the definition of "employee" in the 1981 amendment to the Act (then renamed the Labour Relations Act).

However, the state placed so much importance upon the registration procedure as a first step in securing the objectives of the new dispensation (Chapter 2), that it endeavoured to oblige all the new unions to register. One of the means by which it sought to do so, was to amend the Act in 1981, to impose upon unregistered unions almost the same obligations as upon registered unions (below).

Employers supported the state's attempts to induce new unions to register. After the initial amendment allowing unions organizing African workers to register, powerful groups of employers such as the Chamber of Mines refused to recognize any trade unions which did not register as a first step in seeking recognition by the Chamber's members (RDM; 27/3/81). Similar action was taken by the Steel and Engineering Industries Federation of South Africa (SEIFSA) (The Times (UK); 18/2/80).

2.2. The Encouragement of Legalism by the Registration Process

Registration did not confer many benefits on trade unions which they did not already have (Haysom;1981a;pp32-3). The registration procedure did not legalize African trade unions because they were not illegal organizations if they remained unregistered. The registered status of a union also did not give it the automatic right to employer recognition (FWN;Feb.1980).

The rights which registration conferred upon registered unions were far more limited. They were:

- the right to object to the application of another union for registration;
- to be a body corporate ie to sue and be sued, own property and perform legal acts in its own name;
- to have automatic access to the institutions and procedures of the Act, such as the Industrial Council System (ICS);
- to negotiate check-off facilities with employers without first seeking ministerial permission;
- protection from actions for damages as result of a legal strike;
- the right to nominate people to sit on statutory bodies such as the Unemployment Insurance Board and committees established in terms of Manpower Training Act. (Jones;1982;pp39-40)

The initial importance to the new unions of registered status was limited. Registration offered them the possibility of stabilizing union finances through check-off facilities, but this had the disadvantage of losing the collection of dues as a means of direct contact with workers. They were not initially interested in participation in the ICS or in sitting on statutory bodies. The protection against damages was of little practical relevance, since in the early eighties few strikes were legal anyway. Furthermore, unregistered unions were already legally recognizable entities (WCR;Pt.1; para.3.23). They were:

"Voluntary associations entitled to pursue their lawful activities on behalf of their members; to sue and be sued; to contract and be bound by contracts; and entitled to certain protection by the operation of the law" (Cheadle;1979;p9).

In order to take advantage of the limited rights conferred by registration, trade unions had to comply with certain requirements laid down in the Act of 1956, as amended by Act 95 of 1979. Application had to be made to the Industrial Registrar (an official appointed by the Minister of Manpower) on the prescribed form in the prescribed manner. The applicant union had to comply with a number of formalities, as stipulated in the Act. These included proving that the union had been in existence for at least 3 months and was functioning effectively, that it had a proven paid up membership, held regular meetings, etc. These provisions had to be strictly complied with before a union could be registered (Jones;1982;p34).

A system of provisional registration was introduced (Sec.4A of the Act). This meant that even if a union complied with the basic requirements of the Act, the Registrar was empowered to register the applicant union only provisionally, and on such further conditions as he saw fit. He could extend the period of provisional registration and amend the conditions for registration without supplying reasons. During the period of provisional registration, the union would not enjoy any of the benefits conferred upon a registered union (ibid).

The applicant union also had to show that its constitution met the requirements of the Act, did not breach any law and was not adverse to public interests, and that the union had not been formed for illegal purposes and was not affiliated to any political party (Jones;1982;p35). The application had to specify the "scope" for which the union wished to be registered (ibid). This meant that it had to specify the geographic area within which it wished to organize as well as the group of workers it wanted to organize (ibid).

The Registrar then invited any registered unions to lodge objections to the registration of the applicant, stating their reasons. The applicant union was entitled to make representations in response. All steps in this procedure were subject to time limits and the entire process took approximately 6 months (ibid) unless unopposed (2 months then). Even if the application was

unopposed, the Registrar could restrict the applicant union to operating within a smaller geographic area or a smaller group of workers than that which it had applied to cover. If an objecting union was deemed to be sufficiently representative of any of the interests which the applicant was applying to cover, then the applicant's "scope" was limited by this.

Once registered, trade unions were subjected to ongoing controls over various areas of their activities: their constitutions, finances, political activity and other miscellaneous activities (Jones;1982;p40):

- The Act set out certain provisions that the constitutions of registered unions necessarily had to contain. It determined generally what had to be covered but left the specifics to unions, subject to the control of the Registrar and compliance with the law. Registered unions could only alter their constitutions if they did so in accordance with their existing constitutions and complied with the Act as applied by Registrar.
- The Act obliged registered unions to keep complete records of members, payments, income and expenditure, annual auditing, etc, to submit these regularly to the Registrar and to satisfy his queries.
- Before 1981, the Act prohibited a registered union from affiliating to, or financially assisting, a political party or candidate. In 1981, this was extended. Trade unions were prohibited from offering a political party or candidate non-financial forms of assistance and influencing trade union members to assist a political party.
- The Act also imposed a series of miscellaneous obligations on registered unions such as voting by ballot and keeping ballot papers for 3 years, submitting various documents to the Registrar eg membership figures, names and addresses of office-bearers, trade union addresses, etc. (ibid;p44)

Registration therefore involved unions in a web of legal complexities, with little practical benefit arising from the procedure itself. It imposed obligations and controls on registered unions which unregistered unions were not subject to. To deal with the legal complexities of the procedure, unions would have to develop the expertise, or engage experts to deal with these, thus wasting resources and removing important areas of union activities from workers' control.

Furthermore, by offering unions benefits, however limited, it encouraged the belief that legal procedures were the way to achieve those benefits. It encouraged unions to conduct their activities and pursue their objectives in an orderly manner within the boundaries of the law and through the institutions and procedures of the law and to allow the law to regulate their activities.

This invitation to legalism inherent in the registration process, and indeed in all aspects of the new dispensation, was recognized by both the proponents and opponents of registration in the debate which ensued after the state had made certain concessions in September 1979. (eg. Nicol, 1980; Fine, De Clercq and Innes, 1981; Innes, 1982a and 1982b; GWU, 1981; Haysom, 1981a; Hirsch and Nicol, 1981; Fine, 1982).

Opponents of registration (eg. GWU; 1979 and 1981; Nicol; 1980) objected to registration on the grounds that it would enable the state to control large areas of the activities of unions which registered, thus undermining workers' control of their unions. They also argued that registration would almost invariably lead to legalism, which would also undermine workers' control of their unions, because large areas of union activity would become the preserve of legal experts. Nicol, whilst conceding that the registration process itself did not lead to legalism, argued that it had the potential to "emasculate" the unions. *Inter alia*, the legislation:

"..attempts to draw them [the unions] into an industrial relations system which predisposes unions to become bureaucratic and hence allows a petty bourgeois leadership to remove control over the union's affairs from the working class. The act of registration alone will not transform a democratic union in this manner, but the web of controls and regulations encouraging the making of major decisions by the leadership as opposed to workers, encouraging the use of the law as opposed to organisation as the first weapon of the union, surely will." (Nicol; 1980; p51).

The General Workers' Unions (GWU) argued along similar lines. For it, the provisions with which trade unions would have to comply both before and after registration, especially those regarding their constitutions and scope of operation, would allow certain areas of union activities to "become the province of legal experts who are, in turn, subject to the specific and general supervision of the state" (1981; p20). Thus registration was a "process which removes direct control of the union from the hands of members" (ibid).

Against this, Fine, De Clercq and Innes (1981) argued it was not the registration process, but particular historical circumstances which had led to the incorporation of the established registered union movement (p49). Since such circumstances did not obtain in the case of the new unions, there was no reason why their participation in the system (through registration) should automatically lead to state control over the unions and to their eventual incorporation (ibid). Innes (1982b; p66) argued that it was not registration, but the Industrial Council System (chapter 5) which held the possibility for state control of the unions and that trade unions were not obliged to join the ICS simply because they were registered.

Both Fine (1982) and Innes (1982b) later acknowledged that the procedure held a potential for

allowing the state to control unions, and for the development of legalism. However, Innes argued that legalism could be avoided through the vigilance of the trade union movement against it (Innes;ibid;p68). Fine (1982) argued that registration created a favourable environment in which trade unions could organize and achieve their goals, but he pointed out that caution should surround use of the law. Trade unions could use the law to buy space within which to organize, he argued, without sinking into legalism, provided that they always saw the use of the law as secondary to organization in achieving their goals (Fine;ibid;p51). Legalism, that is "substitution of legal methods for grassroots organization" and "dependence on legal experts" could arise from registration, but needed to be resisted (ibid;p52). It could be resisted if trade unions did not sacrifice "grassroots work or direct action or illegal activities" (ibid).

Both proponents and opponents of participation of the new unions in the registration procedure, therefore viewed the procedure as geared to the development of legalism and ultimately the control of the state over the unions. Proponents saw trade unions as being able to rebuff the invitation to legalism inherent in the registration procedure. Opponents viewed the new unions as only capable of preventing the development of legalism if they remained unregistered.

3. The Development of Legalism in the Approach of the New Unions to Registration.

The new unions were determined to thwart the state's objectives of controlling them and taming them within the confines of the system. Initially they sought to do so by united refusal to register, forcing the state to make major concessions. Having won those concessions, they were fiercely divided about whether they could continue either to force further changes in the legislation, or to make any other advances for their members by remaining outside the system. Major unions opted to register: others opted to remain unregistered. Eventually, they were re-united on the issue, this time in favour of registration as a necessary step to achieve their aims.

3.1. United Rejection of the Initial Proposals

The response of the new unions to the 1979 Amendment Act was one of complete rejection. FOSATU, the GWU and the AFCWU rejected registration on several grounds. Their main objection was that registration in terms of the Act denied full freedom of association to all workers, by excluding migrant workers and "frontier commuters" from belonging to registered unions (RRS;1979;p283).

This position was both a principled one and informed by other factors. Firstly, the new unions

objected in principle to registration on a racial basis (Bonner;ibid). Non-racialism was a basic principle of the new union movement (Chapter 2). Secondly, there was the practical consideration that GWU, AFCWU, and some FOSATU affiliates consisted of a majority of migrant worker members (Bonner;1983;p20). Thirdly, these unions objected to provisional registration (ibid). Some of the new unions went further. Unions like SAAWU and MACWUSA objected to registration because they would, in principle, have nothing to do with anything established by the regime. To register was to collaborate with the state (Bonner;ibid;p21).

This rejection by the new unions attracted international support, from the International Labour Organization (ILO) and the International Monetary Fund (IMF) (RRS;1979;p284) and also from sympathizers of the new union movement, such as the South African Labour Development and Research Unit (SALDRU). Furthermore, this rejection forced the state to open the system to all workers in South Africa, including those in the "homelands" (GG No 6679; 28/9/79). This concession, together with other factors, threw the new unions into disarray.

3.2. Sowing the Seeds of Legalism: FOSATU's Approach to the Registration Issue.

3.2.1. FOSATU's reasons for registering

In the wake of the concessions made by the state in relation to migrant workers and frontier commuters (above), the new trade unions attempted to formulate a joint stand on the new dispensation, since they still had a number of criticisms of the new dispensation as a whole, and of the registration process in particular. At a meeting of the 3 major Western Cape unions (FCWU, AFCWU, GWU) and FOSATU, agreement was reached on what those criticisms of registration were: racial registration, provisional registration and the registration of "smaller divided unions, rather than our existing broad-based industrial unions" (FWN;Nov.1979;p1).

However, the unions did not agree on how to proceed in order to force the state to eliminate the legislative grounds for those objections (FWN;Nov.1979). The 3 unaffiliated unions were in favour of refusing to register as a means to achieve this (even though FCWU, which operated as one union with the unregistered AFCWU, had long been registered). FOSATU favoured registration, provided that it took place on the terms established by the new unions.

FOSATU had long felt that the WCR recommendations were "surprisingly progressive" (Erwin;1981;p8) but it objected to the way in which the state had chosen to implement the Report. It felt that there were advantages to be gained from being registered. These did not arise from the

registration process itself, as much as from the fact that employers and the state were more favourably disposed to registered unions and accordingly, such unions would find it easier to make advances.

FOSATU held the view that, even though registration did not eliminate the need to struggle on the factory floor for employer recognition (FWN;Feb.1980;p1), it undermined one of the major objections of employers to the recognition of the new unions (viz. that they were not registered) (RDM 1/8/81). FOSATU also pointed out that unregistered trade unions faced assaults from the state which registered trade unions did not. As unregistered trade unions, its affiliates had faced state attacks which included cutting off their funds, victimizing their members and using the police against strikers (RDM 1/4/81).

FOSATU also pointed to the threat which "parallel" unions posed to the new union movement. "Parallels" were unions for African workers which were started by the established registered union movement in the seventies. They were correctly viewed by the new union movement as "sweetheart" unions, dependent upon the established "parent" unions (which had a history of betrayal of African workers) and employers for support, rather than on workers. They lent support to the racial division of workers and were ineffectual in representing workers. In addition, they were seen by the new unions as having been started by the established unions specifically in order to undermine the dominance of the new unions among African workers (FWN;Feb.1980; pp 2-3 and Erwin;1981;p59). FOSATU argued that to reject registration was to leave the trade union field open to the parallel union movement:

"We believe that we would be sacrificing the best interest of all workers if we were to surrender our present role as the voice of integrity and allow the voice of expediency to dominate"(FWN;Nov.1979;p2)

FOSATU viewed the ability of the state to control the unions through the registration process as negligible (Erwin;1981;p8). It held that the experience of those of its affiliates which had registered prior to the new dispensation (and continued to be registered) was that the state had not really been able to intervene in the affairs of registered unions (Bonner;1983;p23). These affiliates felt that, through their emphasis on strong factory floor organization, they had been able to both register and enter the ICS, and subvert the original purposes of these procedures and structures (ibid).

Other unions in FOSATU assessed registration in terms of whether or not it would facilitate their goals of "entrench[ing] plant based organisation, and secur[ing] legally binding agreements with managements" (Bonner;1983; p23). The restriction upon their party political activities was

irrelevant, since they had no interest in, nor ability to participate in, the activities of the white parties in Parliament to which the restriction applied (ibid;p22). They were confident that once they were registered they would be able to use their united strength to resist any other attempts by the state to undermine workers' control of the unions. (Bonner;1983;p22).

FOSATU also argued that the new union movement had shown itself unable to forge a united stand on the question of registration and seemed unlikely to produce such a united stand in the foreseeable future (Minutes of FOSATU Central Committee Meeting;26-27 April, 1980; para 8.1.12). Implicit in its argument, therefore, was a perception of the new unions as being too weak to fight the defects in the system from outside the system.

Another important consideration highlighted by FOSATU, was that by insisting upon registration, but on their own terms, the new unions would pose a political challenge to the state. Rejection by the state of non-racial registration would expose the limits of the state's reformism. Subsequent refusal of employers to recognize unions who rejected racial registration, would expose employers, particularly foreign companies, as benefiting from apartheid (FWN;Feb.1980).

For FOSATU, then, certain advantages could only be reaped and certain problems could only be resolved, by utilizing the legal procedure of registration. As Haysom (1981a;p38) pointed out, unlike the GWU which had assessed the strength of the unregistered trade union movement and had insisted that that strength would enable trade unions to overcome the obstacles to organization mentioned by FOSATU, FOSATU did not engage in a similar evaluation. Whilst FOSATU was clearly aware of the limitations of registration, and of the need to avoid reliance on the procedure to achieve its aims (FWN;Feb.1980) in practice it did rely on registration to make advances for workers.

Arguably, FOSATU's reasons for registering were not entirely legalistic - it sought to bolster its organizational ability by taking advantage of the registration process. This was the argument of supporters of FOSATU, such as Fine, De Clercq and Innes (FDI), Bonner (1983;p24) and Friedman (1987;pp243 and 247). Innes, for example, pointed out that unregistered unions faced the brunt of state repression and employer harassment, which limited their ability to function. FOSATU unions, on the other hand, by registering had not suffered the same extent of harassment, and had consequently been able to use the new dispensation to expand and to advance the interests of their members (1982;pp 63-4). They had not done so at the expense of sacrificing their militancy (Davies et al;1988;pp333-4 and Macshane et al;1984;p38).

It is true the progress of unregistered unions was hampered more than that of FOSATU, because unregistered unions like SAAWU suffered greater state persecution than did registered unions. However, this could be explained not only by their unregistered status, but by their greater political involvement relative to, for example, FOSATU unions (Chapter 8).

It is equally arguable that FOSATU displayed an over-eagerness to resort to the legal procedure of registration, and thereby fulfil the desires of the state, before it had sufficiently canvassed ways of achieving those gains without depending on registration. Unregistered unions showed that they could make advances without relying on the law. They forced some companies to deal with them as early as 1980 (RRS;1980;pp173-5). By 1983, employers vehemently opposed to dealing with unregistered unions, such as the Chamber of Mines, were forced to recognize them (RRS;1983;pp178-9). The Afrikaanse Handelsinstituut and Federated Chamber of Industries urged their members to deal even with unregistered unions (ibid). Unregistered unions flourished. The unregistered AFCWU had a paid up membership of 18 000 by 1983, had signed 75 recognition agreements and 44 wage agreements (RRS;1983;p182). The unregistered GWU had a paid up membership of 10 000 and had signed 11 recognition agreements, some including wage agreements and had a further 9 agreements under negotiation (ibid). By 1984, GWU had 12 000 members and 13 recognitions agreements (RRS;1984;p313).

3.2.2. FOSATU's failure to guard against legalism.

However, the way in which FOSATU handled the registration issue heralded the beginning of the trend to legalism. FOSATU was careful to warn its members initially against relying on the law, in the form of registration, to secure advances (FWN;Feb.1980;p1), but it did not maintain this position. It began to demonstrate a propensity towards legalism in several ways.

FOSATU showed little regard for the actual efficacy of registration in eliminating the problems which it sought to overcome by registering. FOSATU found that registration was not the panacea for all ills. Registration could not ward off all state attacks. For example, the Minister of Health, Welfare and Pensions in 1980 issued a proclamation preventing FOSATU from raising funds inside or outside South Africa, which the federation successfully challenged in the courts. The Minister then gazetted a fresh ban, and a clause preventing any appeal against such decision (RRS; 1982; pp 182-3). In addition, as FOSATU itself pointed out, registration was not a guarantee that employers would recognise its unions. Yet, when registration did not bring the benefits FOSATU hoped for, FOSATU did not deregister and resort to the shopfloor to resolve the problems: it resorted to the courts as its primary means to secure such benefits, for example,

warding off state attacks.

In the coming years, it allowed to go unchallenged the views of observers (eg.Friedman;1987;p343) who tended to ascribe the successes of FOSATU unions in large measure to their ability to use the law, including the registration procedure, astutely. Not only did FOSATU never dispel this view, either publicly or within its ranks, but leading figures within FOSATU endorsed this view (Marie;1991 and Patel;1991 - interviews). Thus despite its early warnings, members were led to believe that it was the law rather than their collective strength, which secured advances for them.

FOSATU did not retain a consistently critical position in relation to the registration process. The concessions required of its affiliates and the impact of these on them were uncritically accepted. When FOSATU affiliates attempted to register, they were immediately faced with having to fulfil the requirements for registration. It had to develop the expertise required to fulfil those requirements and its affiliates had to alter their constitutions to meet those requirements. FOSATU's minutes record the effect of the first attempts to register:

"The original intention was to submit the applications by mid-December. However, we confronted a number of problems that we were not adequately prepared for. Exactly how the applications should be styled took a lot of preparation in order to avoid a situation where the government could side-step the issue by rejecting our application on technical grounds. This also necessitated a careful reworking of our constitutions in order to bring them into line with the way we function, to make them consistent and at the same time to meet the requirements of the Act" (Minutes of CC Meeting;26-27 April 1980;para.8.1.13)

By August, the problems of complying with the requirements for registration had still not been met. The registrar rejected the constitution of at least one union, the TGWU, demanding that it alter the scope of its envisaged registration to exclude public sector workers, since the law did not allow for them to be included with private sector workers (Minutes of FOSATU Executive Committee;29/8/80). FOSATU, therefore, from its affiliates' first attempts to register, found itself having to make major alterations to the constitutions of its affiliates, having to develop the expertise to deal with the legal requirements of the Act, and having to devote time and resources to fulfilling those requirements. Yet no mention was ever subsequently made of this impact of the registration process on FOSATU and its affiliates.

The minutes of FOSATU dealing with this issue do not reflect any worker involvement in fulfilling the requirements, merely some haste in fulfilling the requirements, to secure registration as quickly as possible (Minutes of FOSATU CC Meeting;26-27 April, 1980; para 8.1.13). This demonstrates graphically the contention of GWU (below) that registration would lead to the

replacement of worker control over such important issues as the trade scope and constitution, by the control of the state and of lawyers and experts within the unions. The demands of working within the law, began from the outset to undermine, to some extent, workers' control of their unions.

Registration impacted on the way in which the unions which registered operated. Maree (chapter 2) pointed out that part of the ongoing struggle of the new unions (including those in FOSATU) for internal democracy ie members' control of the unions, involved a struggle against the emergence of "experts" who would control certain aspects of union activities. For unions like the GWU, the development of dependence on experts was an important indication of legalism, and one which they sought to avoid (below) by avoiding registration. Fine recognized that "legalisation does lead trade unions to amend their forms of struggle", such as creating a "body of negotiators, full-time officials, legal experts, financial advisers, etc" but argued that this did not mean the end of democracy in unions (1982;p57).

The emergence of such a body of officials within FOSATU, and increased involvement of lawyers and other experts, was therefore no cause for concern for Fine. The problem also did not appear to exist for FOSATU, since it did not ever raise this as a possible adverse effect of engagement in the system, nor take any measures to guard against it.

Ardent supporters of registration, such as Innes recognized that one of the possible consequences of FOSATU's position would be to "blunt members' perceptions of their unions' opposition to the state's repressive policies" (ibid;p64). He argued that as long as FOSATU was prepared to openly debate its position on registration, particularly in its own ranks, workers would not arrive at this conclusion. There is evidence (FOSATU CC Meeting; 26-27 April 1980; para.8.1.11) that the issue of registration was discussed in FOSATU both before and after the state's September concession. However, Innes himself points out that, "whether the workers involved in this debate were fully aware of all the implications arising from the decision to register is an open question" (ibid;pp64-5).

It was therefore open to workers to conclude from FOSATU's position on registration, that the law, at least that relating to registration, was to be relied upon to secure gains for workers, despite its initial warnings (FWN;Feb.1980) to the contrary. The message was clearly that without the law behind them, factory floor strength alone would not overcome all the problems faced by unions in securing their goals.

This legalistic message was driven home by the way in which FOSATU from the outset conducted the battle for "registration on its own terms". For four years after its first attempts to register on its own terms, it fought for non-racial registration through the legal system, thus reinforcing the tendency to legalism already evident in its stance on registration.

Although the 1981 Act removed all references to race from the provisions governing the registration of trade unions (ASSAL;1981;p409), trade unions could still be registered on a racial basis. Existing registered unions could object to the registration of an applicant union on the grounds that the former already covered a particular industrial interest sought to be covered by the latter. The Industrial Registrar took this to mean that race could constitute such an industrial interest ie that a union registered for a particular racial group could object to another union's application for non-racial registration, on the grounds that the former already covered some of the applicant's "industrial interests" ie racial groups. Thus when the Registrar first granted FOSATU affiliates registration in 1981, it was for particular racial groups only (RRS;1981;p190).

FOSATU's immediate response was not that it would seek to overturn this racial registration by action on the shopfloor, but that it would appeal to the Minister of Manpower and then to the Supreme Court, to overturn the Registrar's decision (Cape Times;18/2/81). This it proceeded to do. The Minister upheld the Registrar's decision. FOSATU then went on appeal to the Supreme Court, where 4 of its affiliates won a limited victory in 1983 (RRS;1983;p179). The Court found that in the particular circumstances, the Registrar had wrongly refused non-racial registration. It did not find that racial registration by the Registrar would always be wrong. Thus years of following the legal route to achieving its aim of non-racial registration, did not end in FOSATU making an advance for all unions, but only in achieving a limited victory for individual unions.

FOSATU, from its leading position within the trade union movement, was sending the message to that union movement that victories could more easily be won in the courtroom, rather than on the factory floor. No mention was made of the limited nature of the legal victory, nor of the adverse effects of pursuing court action, such as the extent to which such an important issue was removed from the hands of workers, to that of lawyers.

In 1983 already, the National Manpower Commission (NMC) reported with some satisfaction that

"...it became increasingly clear that the younger trade unions in many respects are beginning to show a greater balance in their demands and that they have generally acquired greater knowledge and understanding of the statutory system

and the complexities of collective bargaining"(NMC Report;1983;pxx).

The leading members of the new union movement which were participating in the system were the FOSATU unions. Thus it seems that, for all their militancy, FOSATU unions were already then beginning to represent the acceptable face of the new union movement to the state. They were beginning to emerge as the "responsible unions" operating within the system that the Wiehahn Commission desired to create through the registration process and the rest of the new dispensation.

In its approach to the issue of registration, therefore, FOSATU began to sow the seeds of legalism in the new trade union movement.

3.3. The Permeation of FOSATU's Legalistic Approach to Other New Unions

3.3.1. The basis of opposition to registration: loss of workers' control and encouragement of legalism

Two influential unions (outside FOSATU) in the Western Cape, the AFCWU and the WPGWU rejected registration on the grounds that it would increase state control over the functioning of trade unions. The most articulate and public statement of their position came from the WPGWU (later GWU).

At the heart of the WPGWU's objection to registration, was the potential which the registration procedure had for undermining workers' control of unions (1981;p18). This potential lay in the control which the state would exercise over major aspects of trade union activity, such as determining the content of union constitutions (ibid;p20). In addition, registration involved handing over "fundamental aspects of the union's activities" to the control of "intellectuals" and "legal experts" (ibid). Registration involved:

"..being drawn into a highly complex, legalistic framework which allows for state intervention in internal union affairs and which assigns to union bureaucrats and legal experts a dominant place....."(ibid).

The WPGWU argued that as unregistered unions, exercising their collective strength on the shopfloor, rather than relying on the law, the new unions had obliged the state to make major concessions, such as removing the restrictions pertaining to migrant workers and commuters, racial registration and provisional registration from the Act (ibid;p19). It was this organizational strength, too, which had enabled unregistered unions to flourish and thus to neutralize the threat posed by "parallel unions" (ibid;p19).

Registration, argued the WPGWU, would weaken the new union movement by removing the basis of its strength ie democratic control of the unions by their members (WPGWU;1987 (1979); pp178-80). There was little to be gained and much to be lost by registering. Unions (despite being hampered by lack of check-off facilities and legal enforceability of their collective agreements) could continue their work without conceding their democratic control by workers which was the source of their strength (ibid;pp180-182). This view was supported by academics such as Haysom and Nicol (above).

It argued further that the divisions sown amongst unions by the registration issue would open those who refused to register to attacks from the bosses and state and thus further weaken the union movement. Whilst a united stand would force the state to capitulate to the demand of the unions that registration should not involve state control over them, but should be a mere formality (ibid;pp18--184).

For other unions, particularly the "community" unions which grew up in the wake of the 1980 community struggles, such as SAAWU, opposition to registration was not a tactical, but a principled issue, the principle being one of opposition to all involvement with state created institutions and procedures. The basis of their opposition was that registration was equivalent to collaboration with the state. (Baskin;1991;pp28-9). The mercurial and regionally influential SAAWU declared its implacable opposition to registration at its 1981 congress. (Labour Focus Aug.,1981). The NUM, although affiliated to CUSA, which like FOSATU had decided to register, refused to bow to the demand of the Chamber of Mines that the union register before the Chamber would deal with it. Within months of the Chamber determining to reject unregistered unions, it was obliged to change its mind by the swift growth of the NUM (RDM 13/12/82 and CT 13/12/82).

3.3.2. The erosion of opposition and the spread of legalism

The differences within the new unions on the issue of registration served as a major stumbling block to unity among the new unions for several years (Baskin 1991; pp34-40). Numerous pressures were applied by the state and employers to oblige the unregistered unions to register. However, the influence of the FOSATU unions played a major role in altering the position of the opponents of registration.

In 1981, the state amended the labour legislation to extend the controls which it exercised over

registered unions, to unregistered unions (LRAA 57/1981). The state sought to induce all unregistered unions to register by imposing upon them almost the same obligations as upon registered unions, without the same rights (Jones;1982;pp45-7 and ASSAL;1981;pp410-411; NMC Report;1983;p167). However, this in itself did not move the opponents of registration to register, as evidenced by the fact that GWU did not seek registration until 1985.

The pursuit of unity, was regarded as far more important by unions such as the GWU and A/FCWU, than the issue of registration. They agreed to work with FOSATU for unity, despite their differences on the issue of registration. The community unions rejected working with FOSATU until, under the influence of SACTU (Baskin;1991;p45) they too adopted the GWU and A/FCWU position.

In the course of working with FOSATU, unions like the GWU were beginning to be influenced by the apparent success of FOSATU at being able to utilize the procedure for its own ends, without suffering any adverse effects. Jon Lewis has argued that in retrospect WPGWU would agree that its arguments were exaggerated (1987;171). An influential ex-organizer of GWU argued in retrospect that the union had been "ultra-left" in its opposition to registration (Cooper;interview;1991). It came to view FOSATU unions as having succeeded in using the system without succumbing to its controls. GWU became more pragmatic: its need, for example, to stabilize its finances through check-off facilities came to outweigh the advantage of grassroots contact offered by personal collection of union dues (ibid). The right to enter into an agreement relating to check-off facilities (without obtaining Ministerial exemption) was only available to registered unions. GWU began to perceive of registration as making available rights with no strings attached.

Having apparently seen in practice (ie from FOSATU's experience) that state control of the unions did not result from registration, the union's other objections to the system, such as the development of legalism and the loss of workers' control to legal and other experts, fell away. Having led the battle for unions to remain outside the system, *inter alia* because of the dangers of legalism, the union did not appear to feel any obligation to state publicly why it had altered its position, or what safeguards it would observe to ensure that it was not trapped in legal complexity, did not become dependent on the law to make advances, and did not relinquish workers' control over their union in favour of control by "union bureaucrats" and "legal experts".

The argument of pragmatism was also offered by the NUM. Golding (interview;1991) argued that the union had always been a pragmatic one (although this is somewhat contradicted by its initial

outright rejection of registration - above). The NUM, he argued, always did whatever was best for workers in particular circumstances. No principled position underlay its position on registration. Registration was such a non-issue for the union, that when it decided to register in 1985, no substantial debate preceded this step (Golding;interview;1991).

By the time of COSATU's formation in 1985, the issue of registration was settled, in favour of routine participation in the procedure. NMC reports in the latter half of the eighties noted with increasing satisfaction the success of the state in securing the commitment of the new unions to registration. By 1988 the NMC reported a total of 209 registered unions with a membership of around 2,08 million, of which 62% was African (RP 51/89;p16). Unregistered union membership totalled a mere 330 000. The mammoth increase in membership of registered unions in the eighties was attributed largely to the registration of previously unregistered unions, such as COSATU affiliates. This development, compared with the resistance of the new unions to registration which was bewailed in the NMC reports in the early eighties, was clearly a situation to be relished as a victory by the state.

The general trend towards registration by the new unions was not in itself indicative of legalism. It was their routine acceptance of registration as the only means to achieve the few benefits of registration, which indicated the tendency towards legalism. It was also the uncritical adoption of the registration procedure which indicated this. The awareness of the dangers of registration, such as its potential to foster legalism, pointed out by some of the new unions themselves, disappeared. There is no evidence that the need to guard against legalism, or any other adverse effects, arising from registration, was ever raised by the unions again. In terms of the arguments of erstwhile opponents of registration, such as the GWU, as well as those of proponents (such as Innes), the conclusion must be that registration sowed the seeds for legalism.

The NMC noted with satisfaction the effect which participation in the new dispensation (including registration) had on the new unions:

"It is important to note that employers are reporting an increasingly higher level of professionalism and less emotional rhetoric in the approach of employee representatives from the younger trade unions...." (NMC Report;1987;p.v)

Thus the WPGWU's prediction that participation in the system, of which registration was the first step, would lead to dependence on "experts" and therefore an erosion of workers' control over all union activities, had been fulfilled.

4. Conclusion

In the decade under review, the new unions became increasingly legalistic in their approach to the registration issue. FOSATU and its affiliates played a leading role in initiating the involvement of the new unions in the registration process.

Given the pressures exerted by the state and employers to force the new unions to register, FOSATU's approach to the issue of registration might superficially have appeared not to be legalistic. It was arguable that FOSATU correctly sought to eliminate obstacles to organization by using the law ie by registering. However, it has been shown that it was equally arguable that FOSATU's reasons for doing so, and the way it set about doing so, could be regarded as demonstrating a propensity towards placing undue emphasis on the use of law and legal proceedings.

The trend set by FOSATU in relation to the registration procedure had by the end of the decade under review, permeated the whole of the new union movement. It was a trend which increasingly tended, particularly towards the end of this decade, to correspond with the description of legalism in Chapter One: the routine and uncritical resort to legal procedures as a means to attain objectives, regardless of the efficacy of such procedures in attaining those objectives, regardless of the existence of alternatives to the adoption of such procedures and regardless of the negative effect of such methods of struggle on unions or their members.

The registration debate has been regarded, in retrospect, as of little real importance, despite the impact which it had in terms of dividing the union movement for some years. Lewis, for example, has argued that the proponents of registration "exaggerated its advantages and that those opposing registration had overestimated the controls" (Lewis;1987; p174). This may well have been true. Certainly, the militancy of FOSATU affiliates debunked the notion that the state could totally control them through the registration process (Davies et al;1988;pp333-4 and Macshane et al;1984;p38). In addition, unregistered unions could not entirely escape the state controls which they had argued were inherent in the registration process, since the state extended these controls to unregistered trade unions in 1981. The fact that this regulation by the state did not significantly impede their militancy, also lent substance to Lewis's new position.

However, the registration debate *was* important. It highlighted the aim of the new dispensation, which was to weaken the new unions, *inter alia* by encouraging legalism. It highlighted the need to approach the new dispensation, and legal methods of struggle generally, with caution. It

stressed how insidiously participation in any legal procedure, particularly one geared specifically to the development of legalism, could undermine workers' control of a union. It highlighted the need to view the law as secondary to factory floor struggle as a means to achieve the aims of unions.

The dissipation of this debate indicated a decline in this critical approach to registration and in awareness of its effects on unions which registered. It also presaged a decline in a critical approach by the new unions to the entire new dispensation and to legal methods of struggle generally. It was therefore significant, because it signalled a growing tendency to adopt an uncritical approach to legal procedures and institutions. This was reflected in the approach of the new unions to other aspects of the new dispensation, such as the industrial council system and the Industrial Court, as will be seen in the next three chapters. By the end of the decade, the new unions no longer saw registration as part of a system which had to be approached with due regard for its potential to undermine the unions, *inter alia*, through its encouragement of legalism. Indeed, as will be shown in the rest of this thesis, they no longer saw the new dispensation as requiring a critical approach.

This chapter showed that the registration procedure itself encouraged the development of legalism but was not the primary cause for the development of legalism. In order for registration to foster legalism in the new union movement, the unions had in the first place, to register. The way in which FOSATU dealt with the registration issue reflected a propensity to place undue confidence in legal procedures, which pre-existed its participation in the registration procedure. Whilst FOSATU's experiences did influence other unions to register, its own approach to the registration process was *informed* by a trust in the law which was quite independent of its experience of registration. This indicated that factors other than the procedure itself were responsible for the development of legalism. These factors were not canvassed in this chapter, since they will be covered in Chapters 8 and 9.

CHAPTER 4: THE INDUSTRIAL COUNCIL SYSTEM AND THE DEVELOPMENT OF LEGALISM IN THE NEW UNION MOVEMENT

1. Introduction

The aim of this chapter is to examine the relationship between the new trade union movement and the Industrial Council System (ICS) from 1979 to 1988.

The arguments pursued in this chapter are, firstly, that in the period under review, the new trade union movement was increasingly drawn into, and became increasingly committed to, the ICS. In so doing, they manifested a distinct tendency towards legalism. Secondly, this chapter argues that the ICS, whilst *contributing* towards the development of legalism in the new unions once they participated in it, was not the primary cause for the development of legalism. The primary reasons for this lay outside the system itself. These reasons are not dealt with in this chapter, but later in this thesis.

2. The Origins, Structure and Functioning of Industrial Councils.

The ICS was a complex statutory system of industrial relations which was intended to encourage the development of bureaucracy and legalism in unions which participated in it and ultimately to secure their co-optation. The complexity and bureaucratic nature of the system marginalized workers, in favour of experts who could manipulate the system. In addition, it offered trade unions which engaged in it the "carrot" of being able to conclude collective agreements with employers which would have the effect of domestic legislation. In return, for the duration of those agreements trade unions had to endure the "stick" of forgoing the use of their collective strength to enforce such agreements. Instead, they had to commit themselves to relying solely on legal procedures to enforce agreements.

2.1. The Origins and Purpose of the ICS.

Like the registration process, to which it was closely linked (in the sense that only registered trade unions could join industrial councils), the ICS originated in the Industrial Conciliation Amendment Act 1924 (the Act) and was refined in the subsequent amendments to that Act (chapter 3 and Chronology).

The ICS was the centre-piece of the highly legalistic and bureaucratic statutory system of

collective bargaining and dispute resolution created by the Act. It was widely perceived as having been historically geared to the co-optation of the white trade union movement (eg. Davies et al;1988; pp246-7; Fine, De Clercq and Innes;1981;p47 and Callinicos;1985;p9). Davies et al credit the ICS with a substantial role in reducing the white trade union movement into tame, legalistic and bureaucratized trade unions (ibid;p246). Callinicos regards the system as having played some role in this development, without ascribing any relative weight to it (ibid).

Fine et al, on the other hand, argue that the system was only effective in fulfilling the state's aims of co-opting the white trade union movement and entrenching the racial divisions within the trade union movement, because of the particular historical circumstances and the state of the class struggle which prevailed at the time of the creation of the ICS (ibid;p47). Whilst writers therefore differ on the extent to which the ICS contributed to the co-optation of the white and racially divided union movement by the state, they agree that the system did in fact play some role in securing that co-optation.

Unions organizing African workers were excluded from participating in the ICS, since they could not register (previous chapter). By recommending that unions organizing African workers (in effect the new unions) be allowed to register, the WCR was also therefore recommending that they be allowed to join this highly bureaucratic and legalistic system of collective bargaining and dispute resolution, of which the industrial councils were the most important institutions (para.3.153.2). The reasons which informed the recommendation that unions with African members be allowed to join the ICS were therefore the same as those which informed the recommendation that they be allowed to register. To reiterate, the Commission saw the new unions as posing a threat to economic and political stability in South Africa and thought it best that they be drawn into the statutory industrial relations system, within which their activities could be controlled and their militancy reduced through the system's encouragement of legalism.(paras. 3.35.14; 3.20.5; 3.35.15).

At the same time, the Commission wished to limit the power of the new unions within the system. It therefore recommended that "safeguards and guarantees against a particular interest group dictating the process of decision-making at the expense of other groups" be built into the system. These were that trade union parties to an IC be given "strict parity of representation" (ibid; para.3.92.1) and that existing members of industrial councils be allowed to veto the acceptance of any prospective member. (para.3.92.2).

The 1979 amendments to the Act allowed unions with African members to register (previous

chapter) and therefore to enter industrial councils. It did not alter the ICS, except to provide for the curbs suggested by the WCR on the power which the new unions, with their growing numbers, could bring to bear on the ICS, should they participate. The result was to extend to the new unions the same invitation to legalism and co-optation extended to the white union movement in 1924 (Davies et al;1988;p326), but with measures built into the system to ensure that they could not use their superior numbers to defeat the traditional alliance between the bureaucratic leadership of the established unions and employers within the ICS (below).

2.2. The Establishment of an Industrial Council.

Industrial Councils (IC's) were permanent bodies established when one or more employer organizations and one or more registered trade unions in an industry agreed to register as an Industrial Council (NMC Report;RP3/84; Jones;1982;pp58-9). In this sense they were voluntary associations.

In order for an IC to come into being certain technical requirements had to be fulfilled. Each of the parties which proposed to form an IC had to submit a formal application to the Industrial Registrar, together with three copies of the proposed constitution which fulfilled requirements set out in the Industrial Conciliation Act (the Act) later the Labour Relations Act (the LRA). The Registrar advertised for objections to the registration of the proposed Industrial Council. If there were none, he satisfied himself that the constitution contained no illegalities and that it complied with the provisions of Section 21(1) of the Act. He satisfied himself that there was no other IC covering the scope which the proposed IC wished to cover and that the parties had followed all the required procedures. An IC had to be registered with regard to a specified geographic area and with regard to a particular undertaking, industry, occupation or trade. Most importantly, the Registrar had to be satisfied that the parties were "sufficiently representative" within the scope of the IC. This was within his discretion to determine.

At all times, an IC had to consist of an equal number of trade union and employer representatives and this had to be embodied in the Constitution. The scope of an IC could be altered at any time upon the initiative of the Registrar or the IC itself. An IC constitution also had to provide for procedures for the resolution of disputes which come before it. (Bendix;1989;pp368-9 and Jones;1982;pp58-9).

Act 94 of 1979 introduced an important provision relating to the composition of industrial councils, along the lines suggested by the WCR. This was that new members could only be

admitted to an IC if all existing members agreed in writing (Sec.21A). If they refused to allow an applicant union to join, the applicant union could appeal to the Industrial Court.

When the Registrar was satisfied that all the requirements of the Act had been complied with, he registered the IC and issued a certificate of registration. After promulgation of the registration in the Government Gazette, the parties were free to regulate their relations as they wished. Such regulation took place through Industrial Council Agreements (Agreements), which are dealt with below.

2.3 Functions of Industrial Councils

The functions of IC's were, in the period under review, set out in Section 23 (1) of the Act which stated that an IC had to:

".... within the undertaking, industry, trade or occupation, and in the area, in respect of which it has been registered, endeavour, by the negotiation of agreements or otherwise, to prevent disputes from arising, and to settle disputes that have arisen or may arise between employers and employers' organizations and employees or trade unions and take such steps as it may think expedient to bring about the regulation or settlement of matters of mutual interest to employers or employers' organizations and employees or trade unions".

The main (statutory) functions of IC's therefore related to their role in collective bargaining and in the resolution of disputes.

2.3.1 The collective bargaining role of Industrial Councils

The Wiehahn Commission favoured collective bargaining at the highest possible level. This was usually at industrial level, through industrial councils (Fourie; 1989;p66)

The procedure for bargaining through an IC was ostensibly simple. The parties agreed on a date to start and exchanged proposals. Alternatively, the unions submitted proposals and the employers' association acknowledged receipt. They agreed on a date for the commencement of negotiations and attempted to reach agreement on certain issues. Half of the negotiators were appointed by employer parties and half by trade unions parties (Jones;1982;p60).

If negotiations led to deadlock, either party could declare an official dispute. The issue was then either submitted to arbitration or to mediation, or followed the legal procedures for a strike or lockout. Parties could withdraw from the negotiations, yet still be bound by the Agreement reached by the remaining parties (Bendix;1989;p432).

The product of agreement reached by the majority of employer and employee parties to IC negotiations, was an Industrial Council Agreement (Agreement). The Agreement was sent to the Department of Labour, which forwarded it to the Minister of Manpower together with certain recommendations. The Minister had to exercise his discretionary powers in terms of Section 48 (1) (a) of the Act. Once he was satisfied that the Agreement fulfilled the requirements of the Act, he could promulgate it if he thought it desirable to do so. He could not select parts of the Agreement for promulgation, and therefore bind the parties to only part of what they agreed upon (Fourie;1989;p68).

An Agreement could be extended within the industry to cover non-parties to the IC. This was done by the Minister of Manpower in terms of his discretion granted in section 48 (1) (b) to extend the whole of the Agreement or any parts thereof to non-parties to the Agreement or to the IC itself. In terms of the Act, he could only do so if satisfied that the parties to the Agreement were "sufficiently representative" of the employers and employees in the industry concerned.

The term "sufficiently representative" was construed over the years as meaning that the parties on the IC represented over 50% of the workers within the jurisdiction of the IC. In respect of employers it was taken to mean employers who employed over half of the workers in the industry, even if they were a minority of employers (Fourie; 1989; p71). However, the term was never defined by either the legislature or the courts, despite having come before both for consideration. The Minister was not bound to use the 50% yardstick, and in numerous instances where the parties represented fewer than a third of the industry, he extended the scope of the Agreement (ibid; pp74-5). In practice, Agreements were usually extended by the Minister to all employers and employees in the industries covered by those Agreements (ibid).

The Minister also had a discretion to extend an Agreement beyond the period for which the parties agreed that it would be in operation. Alternatively, if it had already expired, he could re-enact it (Bendix;1989;p435 and Fourie;1989;p75).

Parties who would be bound by the provisions laid down in an Agreement, could apply to the IC for exemption from compliance with any or all of its provisions, setting out their reasons for the application. Refusal of such exemption was subject to appeal to the Minister of Manpower (Bendix;ibid;p435 and Fourie; ibid;p75).

Normally Agreements covered only minimum conditions of employment. They did not usually deal with the collective issues (eg rights of shop stewards, time off for union meetings, balloting

facilities, etc) between trade unions and employers. These were left to the individual employers and unions to determine, usually in what was termed a "recognition agreement" (Jones;1982;p60).

An Industrial Council Agreement had force of law once promulgated ie published in the Government Gazette. Breach thereof was a criminal offence and was subject to criminal sanction. There could be no waiver of the minimum conditions of employment set out in it. In this regard, Industrial Council Agreements overrode the minima laid down in other legislation such as the Basic Conditions of Employment Act of 1983. Whilst such an Agreement was in operation, there could be no legal strike or lockout about issues covered by it (Fourie;1989;p75).

Related to this collective bargaining function, was the IC's function of policing the adherence to the Agreement. This was done through the (sometimes enormous) permanent structure of the IC's. IC's had administrative staff for ensuring compliance with the agreement. This structure was headed by a full-time secretary and the policing was carried out by agents or inspectors. The latter were appointed by the Minister on the request of the IC. An IC had the power to oblige a defaulting party to act in accordance with the Agreement or institute criminal proceedings (Bendix;1989;p435 and Jones;1982;p61).

2.3.2. The role of Industrial Councils in dispute resolution

Ordinarily, when a dispute arose in an industry where there was an IC, either party could declare the dispute by notice by registered post or hand delivery to the other party and to the IC. If there was no IC in the industry, the party applied to the Minister of Manpower for the establishment of a Conciliation Board. In order to encourage unregistered unions to use the statutory dispute resolution machinery, the LRA Act 2 of 1983 gave unregistered unions the right to apply for conciliation boards, provided that they complied with the Act (ASSAL;1983;p350). Time periods were laid down for the various steps eg. the time within which the IC or Conciliation Board had to resolve the dispute, before it could proceed to the Industrial Court, or to private arbitration or mediation or lead to a legal strike or lockout.

In essential services, the procedure was a bit different, since there could be no legal strike. If all attempts at settlement *via* the Conciliation Board or IC, within the specified period failed, the dispute had to go to the Director-General of Manpower for arbitration in terms of section 46 of the LRA (ibid;p461). This took place either through a private arbitrator whom the parties agreed to, or the Industrial Court. The award of such arbitrator was binding on both parties for a particular period. If the party to an essential services dispute declared a dispute involving an

alleged unfair labour practice, it went to the Industrial Court in terms of section 46(9).

Where an unfair labour practice was the source of the dispute, the party had to declare a dispute and allege an unfair labour practice at the same time. This type of dispute differed from an "ordinary" dispute in that the declarer could at the same time apply for a status quo order. If all else failed, the Court made a final determination, regarding the existence of the unfair labour practice.

The following is a typical example of how an IC mediated in a dispute referred to it, according to D.Levy, the General Secretary to the Transvaal Industrial Council for the Clothing Industry and an arch supporter of the ICS (Levy;1990;pp50-51):

Parties to the dispute submitted written statements to the IC setting out the circumstances of the dispute. These were sent to the disputes subcommittee (two employer delegates, two union delegates plus a Chairperson). The meeting date was set. The parties were interviewed separately by the Committee, at which interview the role of the IC was explained to the party. According to Levy: "...the Committee goes out of its way to create as informal and relaxed an atmosphere as is possible" (ibid;p51). No attorneys were allowed to attend, unless there was an obvious need for them, which rested within the discretion of the Committee. The Committee pointed out the weaknesses of each party's factual account to that party. "Through a series of these interviews we are usually able to clear misunderstandings, dampen unrealistic expectations and defuse emotions. At this stage the Committee tries to envisage possible settlements...." (ibid). If this failed, parties were allowed to negotiate directly, with legal representatives present, in the presence of the chairman.

Whilst the collective bargaining function of an IC was voluntarily discharged, its role in dispute resolution was not. Thus Section 23 of the LRA obliged an IC in an industry to attempt to prevent disputes from arising in the industry or to settle them when they did arise. The parties to such a dispute need not be parties to the IC.

3. Some Criticisms of the ICS

By 1979, the ICS was widely criticized inside and outside the new union movement, by both those who were opposed to the participation of unions in the system and others who favoured such participation. The major criticisms included: the fact that industrial councils (IC's) were unrepresentative; the fact that they were remote from the factory floor, legalistic and bureaucratic and tended to promote such traits in unions which participated in them; and the fact that they were

biased in favour of employers. These criticisms related to the ICS as it was before the new unions decided to participate in it, but continued to exist after that decision.

3.1 The ICS as an Unrepresentative System

One of the major reasons for the initial refusal of the new unions to participate in the ICS was that IC's were not representative of workers in the industries which they covered (eg. FOSATU;1981b;15 and FOSATU;1981a; p110).

Historically, the ICS was unrepresentative for two reasons. Firstly, unions organizing African workers were excluded from the ICS, but unions representing a minority of workers ie non-African, predominantly white workers, could enter Industrial Council Agreements which also covered the terms and conditions of employment of African workers, at the plants where such participating unions operated. Secondly the Minister had the power to extend the provisions of an Agreement beyond the parties to the IC. In 1979, for example, out of 28 Agreements gazetted, 26 were extended to cover African workers (RRS;1979; p192). Between 1970 and 1979, just over 100 IC's negotiated Agreements which covered an average of 1 million workers, of whom almost half were African and therefore not represented on the IC's (RRS;1980;p182).

Because they were the sole voice of workers on the IC's, these unions could negotiate not only high wages and excellent conditions of employment for their own (mainly white) members, but low wages and poor conditions for black workers. In 1981, for example, with the new unions still out of the National Industrial Council for the Iron and Steel Industry, white workers in the industry earned an average of R1043, whilst Africans earned R278 (RRS;1981;p143).

As the National Union of Textile Workers (NUTW;1982;p96) correctly pointed out, the removal of racial exclusivity did not make the ICS a representative system. After 1979 the ICS continued to be unrepresentative, in the sense that unrepresentative, conservative, mainly white (or white dominated) unions continued to have exclusive or disproportionate power in IC's, for several reasons.

Firstly, the Act made provision for "sufficiently representative" unions to sit on IC's, but left it within the discretion of the Industrial Registrar to determine the meaning of "sufficiently representative". According to Bendix, he usually took this to mean that the union represents ".....the majority of.....employees in an area, industry, occupation or trade" (1989;p368-9). This meant that any tiny white union which dominated a narrowly defined craft or skill could claim

to be "sufficiently representative" in terms of the Act. It could claim to represent the majority of a particular category of workers, even if within the industry as a whole it represented but a tiny minority of workers. It could therefore lay claim to a seat or seats on an Industrial Council.

Secondly, although the number of votes on an IC were equally divided between the employer parties, on the one hand, and the trade union parties on the other, the allocation of the trade union share of votes amongst trade union parties, was determined by existing members of an IC and bore no relationship to the relative sizes of the trade unions concerned. This also helped to entrench the power of the small, established, co-opted trade unions, vis-a-vis the much bigger, fast growing and militant new unions. As will be shown later, when the new unions entered the IC's, they were given so few votes, that they were prevented from making any real gains for their members by participating in the ICS.

Thirdly, the power which established unions were able to wield in IC's was entrenched by the provision of the 1979 Amendment Act which gave them the right to veto the membership of applicants to IC's. By using this power, they could totally exclude the new unions which applied for membership. As the NMC pointed out, the object of allowing existing members of an IC to veto the membership of applicant unions, was to allow the existing parties to IC's (employers and established unions) to protect their vested interests against the new unions which were expected to enter IC's after 1979 (RP 115/86;p31).

Fourthly, the old established and unrepresentative unions had negotiated long-standing check-off facilities and closed shop agreements with employers through Industrial Council Agreements, which further entrenched their position because such arrangements continued to prop up the old unions at the expense of the new ones (NUTW; 1982;pp96-7).

Lastly, unions which were not party to an Agreement because they disagreed with it and were outvoted when it was concluded, were still bound by it. So too, were unions which were not even party to the IC itself, because an Agreement could be extended to cover them. Such unions could not therefore even voice their disapproval of the terms of the IC by striking, since industrial action over issues covered in an Industrial Council Agreement was outlawed for the duration of the Agreement (NUTW;1982;p96).

The ICS therefore continued to be unrepresentative even after new unions were able to and did participate in it. The new unions regarded the ICS as a system which perpetuated the low pay and poor working conditions of their members because it entrenched the power of conservative racist

minority unions which collaborated with employers in setting such conditions for black workers (NUTW;1982; pp96-7)

3.2. The ICS as a centralized and bureaucratic system.

A major criticism of the ICS was that its procedures "were centralized, complex and bureaucratised" (Davies;1988;p246) and that it "favoured the formation within unions of a corps of professional negotiators distanced from the rank and file members" (ibid). The brief examination of the structure and operation of the ICS (above) supports this view. This criticism of the ICS concerned not only the nature and operation of the system itself, but also the impact which it was designed to have, and did have, on trade unions which participated in it (ibid;pp 246-247).

Bendix, a supporter of the system, pointed out how the process of bargaining through the ICS affected trade unions which participated in IC's:

"The system of collective bargaining established by the Industrial Conciliation Act had led to ever-increasing centralization of bargaining structures. Registered trade unions bargained through the machinery, the aim of which was to avoid industrial disputes. Since agreements were legally enforceable, unionists began to spend more and more time guarding against breaches. Also, benefit funds were established and many unionists found themselves overburdened by these administrative functions. In the process a large number of unions lost touch with their grassroots organization and took on the role of bureaucrats. Added to this was an increasing acceptance of, or at least abidance by, the socio-political status quo...." (1989;297-8)

This view of the effects on unions of collective bargaining through the ICS, was substantiated by, for example, the respective studies of Hartman (1982;pp64-67) and Dobson (1982;pp38-43) of the IC's for the Bakery and Confectionary industry and the Metal and Engineering Industry.

Hartman argued that the constitutional objectives of the IC in the Bakery and Confectionary Industry reflected a unitarist perspective out of touch with the reality of the "conflict that is inherent in the collective bargaining process" (1982;pp60-61). She demonstrated that the way in which dispute resolution, collective bargaining and policing of IC agreements took place in that IC "tends to promoted bureaucratisation" and further weakened a union already "lacking in democratic practices" by eliminating any need for rank and file participation" (ibid;pp67-68).

The way in which the implementation of Industrial Council Agreements were policed was criticized because workers and unions were isolated from the process and encouraged to rely on IC agents, rather than their own strength, to enforce Agreements. Agents were traditionally drawn

from the old conservative unions. Although they were supposed to be chosen by the Industrial Council Secretary in consultation with the parties to the Industrial Council parties, in practice the Secretary, an administrator who had little contact with workers, appointed agents. Agents, like the rest of the staff of the often enormous Industrial Council bureaucracies, were unknown to the majority of workers, particularly in huge industries like Iron and Steel, where there were too few agents to adequately police the system (RP3/1984;9118 and Dobson;1982; p36). Dobson argued that isolation of unions from the administration of IC Agreements posed dangers for unions. It encouraged the substitution of active trade unionists by agents and it made unions complacent about the implementation of such Agreements (Dobson;1982;p36).

The procedure for resolving disputes through the ICS was criticized on a similar basis. Dobson argued that this procedure was remote from the factory floor and fostered bureaucracy. He pointed out that in the Iron and Steel industry, for example, even a special committee set up to deal with disputes remained ineffectual because it was so remote from ordinary workers.

"Membership of the NIC [National Industrial Council] entails an implicit acceptance of its conciliation procedures. For a democratic African trade union to participate actively within this corporatist body and to utilise its dispute procedure holds the danger of the organisational effect of isolating and disorganising worker struggles as disputes become handled by officials on various levels of the NIC. The present dispute process requires negotiations conducted by union officials, not only with the employer body, but also with the participation of other party unions. The procedure is so structured as to undercut the possibility of worker participation in the handling of their own disputes with management." (Dobson;1982; p38)

Both opponents of the ICS and some supporters criticized it as being time-consuming and bureaucratic in carrying out its functions (NMC RP 3/1984;p117). Dobson, for example, cites an official of the conservative white Amalgamated Society of Woodworkers complaining that the NIC's processing of complaints is " bloody long.....the process can take up to 6 months" (Dobson; 1982;p36). FOSATU charged that Industrial Councils dragged out disputes at industry level and thus prevented strikes (1981b;p110). Labour lawyer Brand (Rycroft; 1989;p41) pointed out that attempts to circumvent this time-consuming procedure by employers and unions agreeing upon and following a their own disputes procedure failed because they still had to follow the official disputes procedure (ie via the IC) if they wished to reach the stage at which they could legally strike or lockout.

The new unions were very conscious of the bureaucratic nature of the ICS and very critical of it. The NUTW characterised the ICS as a system "which generated permanent bureaucracies mediating the relationship between labour and capital" (1982;p97). It argued that

"In general the Industrial Council System has tended to create self-generating

bureaucracies which have effectively forced participating unions to move to the sidelines for the entire period of the agreements which often means 2 to 3 years" (ibid).

FOSATU pointed out that the ICS operated completely differently to the way in which the new unions operated. Its centralization, remoteness from the factory floor and bureaucracy stood in total contra-distinction to the decentralized structures, plant-based negotiations, and democracy of the new unions. In this way it undermined the power of the new unions.(FOSATU; 1981b;p110). Copelyn, a leading figure in FOSATU's NUTW, argued that the ICS isolated workers from the collective bargaining process and from policing collective agreements. It undermined workers' democracy in favour of bureaucracy, and encouraged the emergence of legalism because workers were obliged to rely on the structures and procedures of the ICS to enforce agreements, rather than on their own shop stewards and their factory floor strength (1982a;pp 9-11).

The GWU pointed out that participation in the ICS left unions little time to do anything else. Thus the cost of industrial council membership would include a sacrifice of other union activities (ibid). This was borne out by Bendix (above).

The GWU also pointed out that the effect on unions of using structures like the IC's was to make such unions "utterly dependent" on experts skilled in the manipulation of such structures, and on such structures themselves (GWU;1981;pp21-22).

The system was therefore widely regarded as not only being highly centralized, complex and bureaucratic, but as having adverse effects on trade unions, because it encouraged the development of bureaucracy and legalism in unions (Jones;1982; p63)

3.3 The ICS is Biased in Favour of Employers

The ICS was perceived by trade unionists and some informed commentators as being biased in favour of employers.

At a general level, the system was criticized because it was based upon and fostered the notion in unions that employers and unions shared common goals and interests (Hartman;1982; pp61-62 and GWU;1987;p187). By encouraging the emergence of weak and bureaucratic unions whose leadership shared the views of employers (Hartman;1982;p61 and Dobson;1982;p39) the ICS ensured that the promotion of the interests of employers was always primary in the operation of IC's.

Traditionally, the consensus between employers and the established union movement at IC level was based upon the maintenance of low wages and poor working conditions for black workers. FOSATU argued that the co-opted established unions had helped employers to keep the wages of black workers low, in exchange for privileges for their members. Although white workers benefited from this, the primary beneficiaries were employers. For employers, it was a more viable proposition to pay high wages to a minority of skilled white workers, than to pay reasonable wages to the majority of black workers. The continued unrepresentative nature of industrial councils was perceived (FOSATU;1981a and 1981b;p110) as indicating that this would continue to be the case even after the participation of the new unions (cf. the experience of MAWU in attempting to obtain higher wages for its members and failing to straighten the wage curve between skilled and unskilled workers, below).

Jones has pointed that the ICS also favoured employers because it enabled them to operate as a centralized unit, sharing the skills of professional negotiators. At IC level, small, weak and inexperienced employers were shielded by these professionals and by larger employers who could outmanoeuvre unions. At plant level, small employers would have to contend with unions at the level at which the unions were strongest, without the support of large employers and the central pool of skilled negotiators. Such small employers might be forced to make concessions at plant level which they could not be forced to make at IC level. This would endanger not only the interests of those employers, but would have a "knock-on" effect throughout industries in which they operated (Jones; 1982; pp63-4).

The ICS was also regarded as favouring employers because it allowed them to bargain at the level where they were strongest and the unions weakest (Copelyn; 1982a; pp10-11). This provided employers with an excuse not to bargain at plant level, the level at which the new unions were strongest (FOSATU; 1981a;p110). As GWU argued:

"..... active participation in the industrial council system must inevitably result in a particular change in organising strategy. It forces us into a prescribed round of bargaining at the level of total industry - ie at a level at which the bosses are 100% organised and yet at which the black unions are very weak." (ibid;pp180-181).

Furthermore, the minimum conditions of employment laid down in IC Agreements were determined by what the "poorest" employer on the IC could supposedly afford. Such minimum wages were well below what workers needed to live on. A study by the Southern African Labour and Development Research Unit (SALDRU) of 101 IC Agreements found that over 1 million workers covered by these Agreements earned wages well below the Supplementary Living Level in 1983. Only the IC Agreement in the motor industry set wages above that level in 1983. The

study also revealed that IC Agreements often set working conditions below those laid down in legislation like the Basic Conditions of Employment Act of 1983 (RRS;1984;p322).

Despite this, for years employers maintained that bargaining at IC level was sufficient (next section). Employers therefore resisted the demand of new unions that they bargain at plant level in addition to at IC level, or instead of at IC level (Copelyn;1982; pp10-11). Thus by allowing employers to avoid plant level bargaining at a time when the new unions were strongest at plant level, the ICS was perceived as contributing to the perpetuation of low wages and poor working conditions for black workers (ibid).

In sum, then, the system was seen at the beginning of the eighties as benefitting employers because it encouraged the emergence of union bureaucracies which shared their interests, because it protected weak employers, because it undermined plant level bargaining and because it perpetuated low wages and poor working conditions.

4. The Development of Legalism in The Approach of the New Unions to the ICS.

In the period under review, the approach of the new unions to the ICS changed dramatically, from one of rejection to one of complete commitment to and defence of the system. In this section, it is argued that both in their decision to enter the ICS, and in their increased commitment to the ICS, the new unions displayed elements of legalism. The new unions placed increasing reliance on the ICS to achieve their objectives. However, the hopes of the new unions that they could make gains through the ICS, effect substantial changes to the system and prevent the ICS from adversely affecting them proved to be unrealistic.

4.1. Rejection of the System: 1979-81

When the ICS was extended to also cover the new unions, their initial response was to reject participation for the reasons cited above (Copelyn;1982a;pp6-12 and Jones;1982;pp63-64). However, the extent of rejection varied amongst the new unions, as was illustrated by the arguments presented by FOSATU and the GWU against participation in the system.

FOSATU argued that what it rejected was not the ICS itself, but the negative features of the ICS. It emphasized that it was opposed to unrepresentative industrial councils (FOSATU;1981a;p110). In fact, as early as 1981 FOSATU's general secretary stated that the ICS was "a very concrete part of South African reality. It will therefore participate in Industrial Councils...." (Erwin;

1981;p59). He stated further that FOSATU did not believe that the ICS would automatically adapt to the new circumstances (presumably the potential membership of the new unions) but believed that through effective organization at factory floor level, the new unions could resolve the problems created by the ICS (ibid).

FOSATU's position therefore seemed to be somewhat contradictory: it was prepared to enter the system, with all its faults, yet hoped to change it through organization outside the system. This made a nonsense of entering in the first place.

Support for FOSATU's position came both from within the ranks of the conservative union movement, and outside it. For example, Kagan, a trade unionist from within the conservative TUCSA fold, criticized the system as being tailor-made for lazy unionists, encouraging bureaucracy and the incorporation of trade union leaders and so forth. However he was equally insistent that a distinction be drawn between the incorporative intentions behind the system and the realization of those intentions. The fact that the established unions had been incorporated, he argued, did not mean that this need always be the case. He saw the system as holding possibilities for democratic unionism, presumably under the correct union leadership, for two main reasons. Firstly, he saw it as impractical not to bargain at industrial level. Secondly, IC Agreements were legally enforceable and this could be used to protect any gains which unions made by bargaining within the system (Kagan in Baskin;1982;pp 7-8).

The GWU argued that the problems which the ICS presented for the new unions were so fundamental, that they should reject it completely. The ICS offered unions advantages, such as the legal enforceability of collective agreements and check-off facilities. However, the price which new unions would have to pay for these advantages would be their "emasculatation". They would have to become the "responsible" trade unions that the state and employers wanted them to be; they would have to alter their policies and structures to conform to what the existing members of IC's wanted; their resources would be devoted largely to operating at IC level, at the cost of their other activities; they would be operating at the level at which bosses were strongest and unions weakest; they would be dependent on experts at manipulating the system at the cost of democracy in the unions. In such circumstances, they would be able to achieve few or no gains for their members, but would lose their strength (GWU;1979 [1987];pp180-181).

Despite the differences in the extent of their opposition to the ICS, the prevalent position within the new union movement, between 1979 and 1981, was one of opposition to joining the ICS. Two of FOSATU's affiliates, established unions which had joined the progressive union movement in

the seventies, continued to belong to Industrial Councils, but the new unions decided that no other unions within the ranks of the new union movement should join Industrial Councils. The unions should assist one another in resisting pressure from employers to join IC's (FOSATU Transvaal Co-ordinating Committee Report dd 9/8/81 and Sowetan; 27/4/82).

4.2. Initial Involvement in the ICS - The Beginnings of Legalism

FOSATU's affiliates spearheaded the move towards joining the ICS. In doing so, they opened the way for themselves and other new unions which followed them, to be exposed to the negative impact of the ICS, including its encouragement of legalism. To some extent, the participation of FOSATU's affiliates in the ICS also indicated their own incipient legalism.

4.2.1. FOSATU's reasons for participation in the ICS.

In 1982 the question of centralized forums of collective bargaining began to be debated within the ranks of FOSATU. The NUTW called for centralized collective bargaining at industry level. Membership was growing, there was greater worker participation in union activities. Despite not being representative of the whole industry in which it operated, the NUTW was a growing force in that industry. These factors indicated, it argued, that it would soon have to bargain beyond plant level (NUTW;1982).

It accepted the position adopted by FOSATU of rejecting the existing statutory system of industry-level bargaining (ie the ICS). It argued that FOSATU was correct to adopt a conscious political decision not to enter the system because of it would undermine the new unions (NUTW;1982;pp 94-7). The NUTW argued that the strength of unions had enabled them to resist pressure from employers to join the ICS. The union felt nonetheless that the time had come for trade unions and employer federations to work out alternative industrial collective bargaining forums which did not have the negative features of the ICS (ibid).

Despite the conscious understanding of the new unions that the ICS was fraught with problems and held great dangers of co-optation for the new unions, and despite the arguments within and outside the ranks of FOSATU for an alternative to the ICS to be worked out, FOSATU decided that its affiliates could enter IC's on certain conditions. These were that such entry had to be tactically to the advantage of the union concerned and that the right to plant level collective bargaining be retained (Lewis;1987; p174). No reference was made to FOSATU's own previous criticisms that the system was unrepresentative, bureaucratic and biased in favour of employers

or to the GWU's argument that using the system would prove ineffective because of those factors.

In 1982 the NUTW applied to join a provincial IC for the clothing industry, but found its application blocked by an existing IC member union. In 1983 the Metal and Allied Workers Union (MAWU) a key FOSATU affiliate, joined the National Industrial Council for the Iron Steel and Engineering and Metallurgical Industry. It was followed by FOSATU's Paper Wood and Allied Workers Union (PWAU) which joined the IC in its industry in 1984.

The first FOSATU unions to enter the ICS, MAWU and PWAU, developed FOSATU's new position on the ICS more fully, setting out the reasons for and the conditions on which they would participate in the ICS. MAWU gave its reasons for joining the National Industrial Council (NIC) in its industry as follows (MAWU; 1983;p 49 et seq):

1. The major employer organization in the industry and the state had tried to destroy the union, since its birth in 1973. The ability of the union to resist these attacks had declined since mid-1982, in the context of state action against migrants, high unemployment, and employer unity through SEIFSA which enabled employers to resist the union's demands.
2. MAWU was unable to overcome the "fragmented" nature of strikes in 1982/3. This indicated a need for "....a focus around which workers could unite in their demands." This focus would have to be industry level bargaining and since most unions were in the NIC, the NIC would have to be that focus.
3. The NIC took up and mismanaged demands raised by MAWU.
4. There was a need to show that MAWU was the real representative of black workers for whom the NIC set minimum conditions of employment.

MAWU stressed that it was entering the NIC on its own terms and set out the principles that would underlie its participation:

- "1. That MAWU organise primarily at the shop floor level and that MAWU is committed to the principle that shop floor bargaining is fundamental. Industry wide bargaining may supplement but can never take the place of shop floor bargaining on all issues including wages and working conditions.
2. That MAWU is democratically controlled by its members and that the union will be represented primarily by elected worker representatives. These representatives will be mandated at all stages of negotiations by the union's shop steward councils.
3. That MAWU will represent all its members regardless of race.
4. That MAWU will not be party to any agreement or actions by the council which MAWU's members do not agree with.
5. That MAWU will withdraw from the Council if necessary.
6. That the union understands that the Council will not attempt to limit or discourage shop floor bargaining. In addition MAWU will insist on facilities for

reporting back during negotiations." (ibid; p48)

PWAWU, like MAWU, argued that it was obliged to join the IC because employers refused to bargain outside the IC. Like MAWU, PWAWU set out certain conditions for its participation: that seats on the IC be fairly allocated and that no union representing less than 15% of the workforce in the industry be represented on the IC; that proceedings be translated; that plant level bargaining take place with the majority union; and that the constitution of the IC be renegotiated.

4.2.2. The difficulties of the FOSATU position.

FOSATU and its affiliates on the one hand assumed that their factory floor strength and their commitment to workers' democracy, would enable them to overcome the problems posed by the ICS and to use the ICS to win advantages for workers. Yet on the other hand, they did not credit that strength as being sufficient to achieve those advantages outside the system. For FOSATU and its affiliates, the unions were weaker than the system (in terms of being able to achieve gains) when they were outside the system, but suddenly stronger than the system (in terms of being able to overturn its nature and objectives) when they were inside it. This was inherently contradictory.

The position adopted by FOSATU and its affiliates also contradicted the reality of the situation which faced them. On the one hand, outside the ICS, both MAWU and PWAWU, for example, had been able to make considerable advances, despite the resistance of employers to dealing with them. PWAWU, by the time it joined the IC, represented 40% of workers covered by the IC (Lewis;1985; p22). MAWU was one of FOSATU's strongest unions. By 1982 it was well-organized and in touch with its membership through sound shop floor structures. Work stoppages on the East Rand in 1981 involving 11% of the workforce, made MAWU a major force in the industry. Between 1980 and 1982, its membership increased from 10 000 to 30 000 and attendance at its AGM increased from 200 to 5000 (Webster;1983; p15). This forced employers to change their position of refusing to recognize it, as was reflected in SEIFSA's 1981 guidelines. These guidelines recognized the growing power of MAWU on the shop floor. Thus they recommended, for example, time off to shop stewards for training, and that shopstewards be involved in dismissal and grievance procedure (ibid;pp15-16).

On the other hand, in 1982 the ICS still suffered from the same problems as before. FOSATU and its affiliates were fully aware of this (above). The other unions already party to the ICS were as unwelcoming as ever. They tried to exclude the new unions who wished to join or allocated them voting powers grossly disproportionate to their size (below). Given the entrenched position of the white-dominated unions and the strength of employers at IC level (FOSATU;1981;p110),

it was optimistic to hope that the new unions would be able to overturn the ICS or make significant advances through the system itself whilst retaining their basic principles intact. Nonetheless, FOSATU and its affiliates argued that they could make more advances inside the ICS than outside it.

Dobson and Webster expressed reservations about whether MAWU's position (and by implication that of FOSATU) was either consistent or realistic. They questioned the ability of new unions to make any real gains from within the system while at the same time maintaining their basic principles.

Dobson argued that the system offered the new unions few advantages, but had a powerful potential to undermine them (1982;pp46-7). The old unions on IC's had made gains for their members only because they were prepared to sacrifice the interests of black workers. In addition, such unions were run by bureaucrats who never challenged the bureaucracy and centralization of the ICS. New unions seeking to make real gains for their members would be confronted by the combined strength of very powerful employer bodies and entrenched unions, whose interests were hostile to those of the members of the new unions (ibid).

New unions which sought to change the ICS would have to operate through structures very different from their own democratic ones. They would have to acquire a great understanding of the technicalities of the IC's operations, meaning a reliance on experts, thus undermining members' ability to recall full-time officials, and usurping the role of shopstewards. New unions would find themselves spending time and resources on training people to understand and deal with NIC and its agreements at the expense of the programmes like worker education which would lead to greater democracy (ibid).

Even if the new unions remained only minimally involved in the affairs of IC's, or attempted to make the IC's more democratic, any active participation in IC's impacted upon the operation of unions participating in them. They would be obliged to respond to issues thrown up by the IC's, and in this way the IC's would to some extent dictate the strategies of unions which joined them (ibid).

Similar arguments were presented by Webster (1983). He agreed with MAWU that it was in a position of weakness vis-a-vis employers (ibid; pp16-17). However, using the IC to overcome these weaknesses, he argued, presented further problems for the union:

"1.Entering the NIC is part of MAWU's strategy of establishing an effective national union. Already four branches existAre the structures at branch level

strong enough to retain local participation in the face of the tendency for a growing centralisation of decision-making on the national level?

2. A vital tension has emerged inside MAWU between the growing need for stable organisation and the desire for mass participation in the organisation. MAWU believes that the NIC is the means whereby it can unite demands at this stage and mobilise on a mass basis. The emergence of local and sub-sector wide shop steward councils provides MAWU with the organisational form for such a mass mobilisation. This however, depends on the consolidation and extension of the present shop-floor structures in the union.

3. The NIC agreement is a complex technical document that will force MAWU to undertake some division of labour inside the organisation. In particular some members will have to acquire technical knowledge and negotiating skills. The challenge facing MAWU will be to build representative structures which can be made accountable in a real way to the rank and file.

4. The strength of capital in the metal industry and the self-proclaimed weakness of MAWU, stacks the odds against MAWU. Is this weakness an argument for entering the NIC in an attempt to consolidate the organisation or is it likely to be out-numbered and out-manoeuvred by the CMBU [Confederation of Metal and Building Unions] ?" (Webster;1983;p18)

These writers thus correctly questioned whether, given the nature of the system (bureaucratic, unrepresentative and biased against the new unions) and its purpose (undermining the new unions) it was realistic of those unions to seek to use the system to address their problems. If unions could not make advances at the level where they were strongest and employers weakest (shopfloor level) how could they expect to make advances in a system hostile to their interests, where employers were strongest and unions weakest?

It is arguable that the position adopted by FOSATU and its affiliates contributed to the development of legalism by exposing themselves to the negative impact of the ICS. Because they were amongst the most influential unions in the new union movement (Chapter 8) their position influenced other unions (below) who were also exposed to the ICS. It is also arguable that the position of FOSATU and its affiliates was indicative of their own incipient legalism. To argue thus requires a brief recapitulation of the meaning attributed to legalism in this thesis.

In Chapter One legalism was conceived of as placing undue emphasis on legal channels to advance the interests of trade union members. It was argued that legalism involved seeking to use legal institutions where these were unlikely to prove effective (Fine and Davis; 1990;p35). It was also argued that legalism meant "....a reliance on existing laws and legal structures to achieve certain aims" where organizational strategies were more appropriate or more likely to be effective (Anon;1981;p10).

Whilst industrial councils were not courts of law or legislative bodies, they were certainly legal structures in the sense that they performed legal functions, most noteworthy of which was their

ability to make law in the form of Agreements. They were also a crucial part of the system of dispute resolution.

FOSATU and its affiliates were seeking to use these institutions to further their aims. They were doing so in circumstances in which, as Webster and Dobson pointed out, there was no room for arguing that FOSATU and its affiliates were likely to succeed in achieving their aims by using the ICS. There was little real hope of FOSATU's affiliates being able to fundamentally alter the ICS or reap real gains for their members by using the ICS. FOSATU and its affiliates were well aware of this. Their insistence upon relying on the ICS to make advances was therefore consistent with the conception of legalism adopted in this thesis.

As was pointed out above, there were ways in which FOSATU's affiliates could achieve their aims without relying on the ICS. MAWU in particular had made numerous gains without having to rely on legal institutions like the ICS (above). MAWU looked to the IC to provide a central focus for workers. However, workers were already at the time united in the fight against the ICS and in favour of plant level collective bargaining. Workers were already united in their demands for higher wages and better conditions of employment. This was what had in the first place united workers in the union, and their struggle around these demands was an ongoing one. FOSATU had launched a living wage campaign which had the potential to unite workers not just in particular unions, but across unions. MAWU did not explain how and why bargaining at the IC would provide a better central focus for its members than such united campaigns. There were therefore viable alternatives to participation in the ICS as a means to achieve the objectives sought by FOSATU and its affiliates - alternatives which were likely to be far more effective and have none of the adverse effects on the unions which the ICS would have. By disregarding this, MAWU (and by association, FOSATU) again demonstrated a position consistent with the conception of legalism adopted in chapter one of this thesis.

4.2.3. The futility of relying on the ICS to make gains for unions.

Between 1982 and 1985, the new unions achieved very little by joining the ICS. They were not able to effect any significant or fundamental changes to the system and consequently were unable to use the system to make any real gains for their members (Lewis,J; 1987;p174).

The system remained unrepresentative and this frustrated the attempts by new unions like MAWU to use the ICS to get its demands met by employers. For example, when MAWU joined, despite the fact that it was the strongest union in the industry (Dobson; 1982; p34), it was allocated a

single vote on the IC by the existing members. The 14 established unions on the IC commanded 1 vote each, and employers 15 votes (Ruiters et al;1988;pp7-10). The result was that for the first three years of MAWU's membership of the NIC, when MAWU refused to sign the IC Agreement, it was nonetheless promulgated with the consent of the other unions. Employers and the other unions argued that MAWU, and later its successor, NUMSA, was only one of 15 unions. Therefore, if the majority of unions on the IC (regardless of their relative sizes) reached agreement, it should be promulgated (Ruiters et al;ibid;p8). As Webster (above) had warned, MAWU found itself "out-manoeuvred" by the strength of employers and established unions on the Industrial Council.

Even by 1985, when MAWU had won to its side some other unions on the IC which belonged to the International Metalworkers Federation (IMF), it could not defeat the alliance of employers and established unions. The 6 IMF unions, which represented the majority of workers in the industry, were allocated 6 votes, as opposed to the 9 votes commanded by the bloc of small white unions allied in the CMBU, which had been dominant when MAWU arrived in the NIC. Employers and reactionary unions could therefore still outvote the IMF unions, even though the IMF unions represented the majority of workers in the industry (ibid).

There is probably some validity in MAWU's claim that because it took a strong position on minimum wages, employers were forced to raise the minima in the industry. This was important. However, MAWU was never able to win its demands nor to straighten the "wage curve" in terms of which the minima for skilled (mainly white) workers were 4 times that of unskilled (mainly black) workers (SALB;1987d;p36 and Ruiters et al;p10). In fact, according to a MAWU organizer (SALB;ibid), the wage gap between skilled, mainly white workers (represented by the CMBU) and unskilled, largely black workers (represented by MAWU and other IMF unions) actually widened in the first 3 years of MAWU's membership of the IC.

A similar situation faced PWAU. When PWAU entered the IC in its industry, despite representing 40% of workers and being by far the largest union on the IC, it was allocated 1 seat, the same as much smaller unions (Lewis;1985; p22). Later when the union represented 60% of workers in the industry, its allocation went up to 3 seats. Established unions representing far fewer workers in the industry continued to dominate the IC.

Given this situation, it was not surprising that neither MAWU nor PWAU were able to make headway at their respective IC's. In the paper industry the 1984 deadlock over annual wage negotiations at the IC led to members calling for PWAU's resignation from the IC. Unlike

MAWU, PWAU withdrew in 1985 and called for the dissolution of the Council on the grounds that upon the union's withdrawal, it was no longer representative in terms of Sec 24(1)(d) of the LRA.

PWAU left the IC bitterly disillusioned. According to the union (Lewis;1985a;p22), the IC was "not a successful, democratic, national bargaining forum" ; employers used the presence of the union on the IC not to bargain at plant level and even reneged on existing plant level agreements; there is no "meaningful worker participation"; other unions had a say out of proportion to their tiny size; the council was run by a group of conservative employers and unions, much as it was when only white unions belonged to it; the Secretary of the Council's manner of dealing with black unionists was unacceptable; PWAU had a majority in 14 out of 18 mills and only 2 remained beyond its influence yet this was not reflected in its IC representation. PWAU still saw the need for a national bargaining forum, but wanted one built with PWAU, as the most representative union in the industry.

The established unions also continued to be able to totally exclude the new unions from certain IC's. For example, in 1982, another FOSATU affiliate, the NUTW, applied to join a provincial IC for the clothing industry, but found its application blocked by an existing IC member union. Although the NUTW was later to gain access to the IC, the National Manpower Commission found that the entry of most of the new unions to IC's was still blocked by the older established conservative unions through a combination of closed shop agreements, and exercising their right to veto the membership of the new unions (RP115/86;pp30-31).

Employers continued to use the existence of IC Agreements to refuse to bargain with MAWU at plant level. MAWU's participation in the NIC now served to bolster this refusal, since the union could no longer claim that its members were not represented on the NIC. It strove, mostly unsuccessfully (Lewis and Randall;1985;p64), to force employers to improve upon the minima set at IC level, by bargaining at plant level.

The new unions were also not able to make the system less bureaucratic by involving shop stewards in all the activities of the unions at IC level. Lewis (ibid; p20) claims that MAWU was able to effectively prevent divisions arising between official negotiators and worker leaders. For example, MAWU ensured that the (worker) executive was always present at IC negotiations, that representatives of shopstewards committees were involved as directly as possible, ie being close by for consultation and reports back. However, Fanaroff, a leading figure in MAWU, reviewing the early involvement of the union in the NIC, pointed out that it had taken the union a while

after joining the NIC to overcome initial divisions between rank and file and leadership caused by joining the NIC. This was eventually resolved by involving members more closely, eg. by having Shop Stewards Committee chairpersons at negotiations, as a "mandating committee" (Fanaroff in SALB;1987b;p41). However, the system of having workers discussing negotiations fully before they took place was still "not perfect" (ibid;p43). Thus the new unions were only able to make slow and halting progress in their attempts to change the way in which the ICS operated.

However, at the same time, the ICS was beginning to have some impact on the unions. The complexities of bargaining at IC level meant that unions placed an increasing reliance on "experts" in operating at IC level. The 1987 survey of Markham and Matiko (1987;p110) reveals that increasingly experts were engaged by unions to undertake ".....detailed research into profit rates" and "to help formulate demands." This contrasted with the position in the seventies and early eighties when unions relied on members' own knowledge of their poverty relative to their employers' wealth, to substantiate their wage demands and formulated their demands without relying on "experts".

Fanaroff (SALB;1987b;p44) claimed other gains had been made due to MAWU's participation. For example: administration of benefits in the hands of the NIC improved due to union involvement. It cannot be denied that benefits are important to workers, particularly in South Africa, where social security is virtually non-existent for most workers. However, for any new union to effect any real change in the administration of benefits by the IC's, vast expertise would be required, since a large part of the bureaucracy of IC's was built around the administration of benefits. This would drain the unions' resources. Also new unions would run the risk of becoming very similar to the established unions - little more than administrators of benefits.

According to Fanaroff, MAWU's stance attracted more workers, and involvement in the NIC enabled it to consolidate. The NIC had proved to be the national mobilizing factor the union sought. There could be no doubt that MAWU's militant stance at the IC would attract workers. However, Fanaroff ignored the fact that even before joining the NIC, MAWU's militancy captured the imagination of thousands of workers. In addition, Fanaroff did not seem to consider whether any other common factor, for example the Living Wage Campaign (chapter 9) could be an even stronger national mobilizing factor for the union than the IC.

By 1985, then, the new unions had not been able to effect significant changes to the ICS - the ICS remained a bureaucratic and unrepresentative system. Because of this, the new unions were unable to win any substantial gains for their members through relying on the ICS, as MAWU and

PWAWU's experiences showed. Despite this, the new unions became increasingly involved in the system after 1985 (Markham and Matiko;1987; p110). Markham and Matiko argue that this was because the new unions realized what benefits could be derived from industry-wide bargaining. Whilst the authors do not specify the nature of the benefits offered by the ICS, these included the fact that legally enforceable IC Agreements at least obliged employers to abide by minimum conditions of employment (Barrett;interview;1991).

The new unions' attempts to make gains through the ICS were therefore proving ineffective. Their belief that their reliance on the ICS would more easily achieve their goals than reliance on their factory floor strength proved to be unrealistic. Their determination to escape the negative impact of the system on the unions, was beginning to prove equally unfounded. Despite this, they continued to rely increasingly on in the ICS, thus illustrating the beginnings of a tendency towards legalism.

4.3. The Further Development of Legalism - Fighting to Retain the System Despite its Ineffectiveness.

In the period after 1985, the respective attitudes of the new unions, on the one hand, and of the state and employers on the other, to the ICS changed dramatically.

These changes should be seen against the background of developments in the country and in the union movement at this time (Part 1). The economic crisis created a need for the state and capital to remove restrictions on exploitation of the working class, such as minimum conditions of employment. Part of the state's solution to the problem, was the production of an economic package in the latter half of the eighties which involved a three-pronged attack on the working class: deregulation; wage freezes and the curbing of union power through the 1988 Labour Relations Amendment Act (LRAA). The latter two issues, particularly the LRAA, will be dealt with in Chapter 9. Deregulation on the other hand, was important in shaping the attitude of the new trade union movement to the ICS in this period (Hofmeyer and Nicol;1987;pp82-84 and COSATU;pamphlet;1989).

4.3.1. The state's changes to the ICS

The new unions continued to find it difficult to use the ICS to their advantage after 1985, for much the same reasons as before. This was compounded by the direct intervention of the state in the operation of the ICS.

In 1985, the Department of Manpower began to adopt a policy of "deregulation" in terms of which certain employers were exempted from complying with the minimum conditions of employment laid down in IC Agreements (Hofmeyer and Nicol;1987;pp79-80). In October 1985, the state intimated that it would give this policy legislative backing. One of the ostensible reasons for deregulation was the difficulty small businesses experienced complying with IC Agreements. The state claimed that this prevented these small businesses from creating more jobs (RRS;1885;p189).

Furthermore, it argued that IC's were unrepresentative, since most employers were not represented on them. The 100 IC Agreements then in existence covered 1,4 million workers, but only 42% of employers. It proposed that the representativeness of employers be measured by whether those on the IC were the majority of employers in an industry, not whether they employed most of the workers in the industry (ibid).

Both rationales offered by the state were suspect. Fanaroff (Rycroft; 1989;p81) pointed out that studies by NUMSA in the latter half of the eighties revealed that small businesses did nothing to create more jobs or prevent retrenchments. The new unions saw the aim of deregulation as being to reduce wages, particularly since the participation of the new unions in the ICS had led to increases in the minimum conditions of employment (ibid).

For the state to base deregulation on the grounds that the ICS was unrepresentative was ironic. For decades the system had not represented the majority of workers, because the state had not intended it to do so. The participation of the new unions in the ICS had for the first time begun to make it more representative of the workers covered by IC Agreements. The state, of course, was not concerned with whether or not the system was representative of workers. Whether or not it was representative of employers, and whether it could continue to further their interests, were the state's sole concerns. When the interests of employers as a whole in maintaining excessively low wages were served by the ICS, it was all right for small employers to be sheltered by the presence of big employers at IC level. When even the low wages set under the ICS could no longer be afforded by employers, particularly small employers, the state suddenly began to notice that the system was "unrepresentative" - of employers. This afforded it an excuse to change the entire ICS, which at least provided a modicum of protection for workers, particularly unorganized workers.

Despite the increased participation of the new unions in the ICS, the number of workers covered by IC Agreements dropped from 1,18 million in 1984 to 960 000 in 1986 (NMC Report;

1986;p61). The NMC explained this in terms of the "slump in economic activity" (ibid;p 61). The real reason seems to be its revelation that exemptions from compliance with IC Agreements were being granted more readily. In September 1986, the state introduced the Temporary Removal of Restrictions on Economic Activity Act 87/86. This allowed the state president to suspend any measure pertaining to minimum wages or working conditions in any industry (Hofmeyer and Nicol;1987;p81).

The state and employers had for years tried to force the new unions to use the ICS. Just as the new unions were finally using it, the state with the backing of major employers, began to attack the system, once again threatening to outflank the unions.

4.3.2. The growing commitment of the new unions to the ICS.

After 1985, the approach of the new unions to the ICS changed both quantitatively and qualitatively. More and more new unions were drawn into the system, contributing to an aura of its general acceptance. After the formation of COSATU in 1985, and the collapse of the conservative TUCSA in 1986, many erstwhile affiliates of TUCSA joined COSATU. Many of these merged with new unions in COSATU and brought into the merged unions their membership of Industrial Councils. At the same time, unionists who were sympathetic to COSATU took over the leadership of some ex-TUCSA affiliates, which were members of IC's. Thus not only did more COSATU affiliates enter IC's 1985, but COSATU gained affiliates which had long been involved in the ICS. In 1986, 1987 and 1988 the NMC repeatedly reported that there was a greater use being made of the statutory collective bargaining and dispute settlement machinery.

After 1985 participation in the ICS, from being regarded by some of the new unions as a reviewable tactic in order to advance their interests, became very much an accepted practice. COSATU did not itself have a developed policy with regard to the participation of the new unions in the ICS. The basis on which unions entered the ICS, what they hoped to achieve through the ICS, whether or not they would continue to participate in it if they failed to make any advances, what alternatives to the ICS could be created - none of this was discussed in COSATU in the period under review. As a result, none of the new unions were encouraged to perpetuate the conscious kind of approach adopted initially by MAWU. With all its flaws, at least MAWU's approach had demonstrated that it was aware of the inherent problems of the ICS; of its potential to adversely affect participating unions; and of the need to address these issues. This was not the position adopted by those unions which followed MAWU into the ICS after 1985.

The dramatic growth of COSATU's unions, and increased centralization as a result of both that growth and COSATU's policy of one union per industry, was viewed by the bigger new unions as creating a need for centralized collective bargaining. Whilst plant level bargaining was still regarded as important, industry level bargaining was regarded as more important (Fanaroff in SALB;1987b;p40 and Barrett;interview; 1991)

Increasingly after 1985, the new unions saw the ICS as the means to fulfil that need for national centralized collective bargaining. They argued that their adoption of the ICS was based purely on the pragmatic consideration that the advantages of participation in the ICS outweighed its disadvantages. According to union leaders these advantages were that the centralized bargaining through the ICS was easier than negotiating agreements at a number of different plants; IC Agreements were legally enforceable; and it was easier for unions to operate when their funds were deducted at source, through check-off facilities (Marie, 1991; Barrett, 1991; Cooper, 1991; Patel, 1991 - interviews). In addition, unions were influenced by MAWU's ability to "use the system without being used by it".

This was a somewhat benign view of MAWU/NUMSA or other unions' experiences in the ICS. According to some unionists (eg.Appollis.; interview;1991), the exclusion of MAWU's (NUMSA after 1987) rank and file from participation in bargaining at IC level, increased in the latter half of the decade, despite Fanaroff's assurances (above). NUMSA found it unwieldy to have its shop stewards at NIC negotiations and stopped trying to secure their participation in them (ibid). Also, as NUMSA was sucked into the operations and structures of the NIC, bureaucratic practices began to emerge. One unionist (ibid) cited the example of NUMSA negotiators reaching an agreement on medical aid with employers at IC level without consulting workers, and then attempting to impose the agreement on workers. When workers rebelled, they were reportedly told that they could resign from the union, a position which the union was forced to withdraw when workers in fact resigned (ibid).

As the unions became more involved in the ICS, they increasingly identified with it. For example, despite the nature and purpose of the ICS, despite the failure of the new unions to fundamentally change the ICS, union leaders like Patel (of NUTW, later ACTWUSA and later SACTWU) argued that unions had been able to use the system to their advantage, that the system was a "powerful tool" and unions and employers should remedy its "important weaknesses" in order to ensure that they became "wedded to the notion that we ought to use accepted procedures" (1989;pp36-37).

Patel's view of the advantages which the ICS offered the new unions was a particularly salutary one. The best measure of whether or not the ICS was a powerful tool in the hands of the new unions, was whether or not that tool was able to be wielded to improve the living standards of impoverished black workers. In 1986 the minimum wage system of which the ICS was such a crucial part was still failing to protect workers' living standards, let alone improve them (Bargaining Monitor;Feb.1987;p3). The earnings of most workers who were covered by IC Agreements still fell below the supplementary living level, which in itself was nowhere near a living wage (ibid;pp4-5). In Patel's own industry, in 1988 employers were still able to use the ICS to set average earnings of workers at R94 p.w., or R523 p.m. (BM;April,1988;pp4-5), despite the fact that the previous year already the government's Human Sciences Research Council calculated a living wage as being R1257 p.m.

As employers and the state increasingly tried to change the ICS, the new trade unions rose to defend the system. In 1987 an organisation called Job Creation South Africa, whose chief shareholders were not small employers but powerful groups like Barlow Rand and the National African Chamber of Commerce (Black big business), applied for deregulation (RRS;1987/8; p625). Although the post-1988 period is beyond the scope of this thesis, it is useful to point out how 1989 and 1990 saw the ICS beginning to crumble, despite union efforts to sustain it. In 1990 six COSATU unions met to plan action against Barlow Rand - a leading opponent of centralised bargaining (WIP No 64; Jan 1990; p40). In the mid-eighties, Barlows had been praised by the new unions because of its willingness to enter into plant level agreements. On the other hand, SEIFSA had been seen as problematic, because it refused to allow plant level bargaining and insisted on bargaining at industrial council level only. In 1989 at least ten Barlow companies withdrew from SEIFSA and it was feared that other Barlow metal companies could follow. This would threaten not only the continued existence of SEIFSA, the employer organisation, but also the metal industrial council. Already the printing council had collapsed due to the withdrawal of the main employer body (ibid).

Unions argued that the state, through deregulation, was not only allowing small employers to escape minimum conditions of employment. It was also ensuring that if they undercut those employers who were party to and bound by IC Agreements, there would be no reason for employers to remain in IC's. In addition, large employers were able to benefit from deregulation by farming out work to small employers who were exempt from minimum conditions of employment.

Of course, as was pointed out by SALDRU (SALB;1985;p23) the new unions were duty bound

to defend measures which legally enforced minimum wages and conditions of employment. In this sense, the new unions' defence of the ICS against the state's deregulation measures was entirely correct. It was the way in which this was done, by acting as responsible unions within the system, that was indicative of the legalism of the new unions, and therefore questionable.

An example of the increasing development of the approach of "responsible unionism within the system" is afforded by MAWU/NUMSA. According to Fanaroff, as the biggest union in the IC, NUMSA in 1987 carried greater responsibility than before. Where before employers refused to recognize NUMSA as the biggest union in the industry, they were now using its size against it. If NUMSA continued to push for better conditions than the employers on the IC were prepared to give, the union could no longer refuse to sign the IC Agreement. If it did, it ran the risk of employers using this as an excuse (ie the biggest union in the industry did not sign the Agreement therefore it was not representative) not to sign, and therefore having no minimum conditions in the industry. Alternatively, NUMSA's refusal to sign an IC Agreement with which it disagreed could furnish the Minister of Manpower with an excuse not to gazette the Agreement, or to grant exemptions, or to refuse to extend it to non-parties. He also saw NUMSA as carrying more responsibility for the continued existence of the NIC. If some employers were exempt from minima, others would withdraw from SEIFSA which would cause it to collapse. The NIC would follow suit and not only would employers in the industry no longer be bound by a minimum, but centralized bargaining would disappear, and it would be difficult to operate as a national union without a national forum (Fanaroff in SALB;1987b;p38).

Critics of the system had warned before the new unions entered the ICS that they would only be able to make gains if they bowed to the system as their white counterparts had. The point was not to allow emasculation of the union in the process of retaining minimum standards. What Fanaroff was saying was that NUMSA would have to rein in its demands, in order to get legislative protection for minimum conditions of employment. In other words, in the pursuit of "responsible unionism" unions should be less militant in their demands. This was the same NUMSA who not only fought to increase the minima set in the IC Agreement, but which fought throughout the early eighties to raise those minima at plant level. Here one of their leaders was arguing that only by bowing to the evils in the system, could the system be retained and therefore some good be reaped from it.

This "responsible" approach was not only adopted in respect of collective bargaining. NUMSA serves as a prime example of the legalistic approach of new unions in relation to dispute resolution. NUMSA chose to remain within the bounds of legality at all costs. It chose to play

the game of industrial relations by the rules set by the state and employers. Thus for example, it relied heavily on the Industrial Court in its battle to force employers to bargain at plant level, rather than on its shopfloor strength. This was despite the fact that the Court had set its face against encouraging workplace bargaining (Part 3). It chose to confine itself to the official dispute resolution system in its fight for higher wages, rather than challenge the system through its strength on the factory floor.

The adverse effects of this legalistic approach were glaringly apparent in the 1987 proposed NUMSA strike. After years of failing to win its demands at the NIC, NUMSA finally resorted to legal strike action, adhering to all the requirements of the legal dispute resolution machinery in so doing. On the eve of the strike the state whipped the mat out from under the union's feet. The Minister of Manpower used his discretionary powers in terms of the law to extend the currency of the existing IC Agreement. All strike action relating to issues covered by the IC Agreement was thereby instantly rendered illegal (SALB;1987d;p9 and Singh;1987; p40).

Whilst NUMSA members were prepared to proceed with the strike, and many did so, the union called off the strike because it feared the consequences of illegality. Where once NUMSA would have first considered the fact that 652 factories went on strike nationally and needed their union to support them, it placed its adherence to legality first. Members had taken a firm decision to proceed regardless of legality and notwithstanding the fact that they would be open to dismissals, police attacks, damages claims, etc. Shop stewards were reported to be dissatisfied with the decision to call off the strike, but union leaders disregarded this (SALB;1987d; p9). Rather than run a risk of state and employer action, which they would have taken on boldly in the past, the union leadership chose to run the risk of losing the confidence of its members. As Fanaroff was to say later, NUMSA had become a "peace-loving union" which did not "go in for strikes" (Fanaroff in Rycroft;1989;p81).

The new unions used the state-created dispute resolution machinery increasingly after 1985, when most of them joined IC's. Labour relations, says Bendix (1989; p496) showed every sign of becoming "more stable". A key feature of this "stability" was the fact that instead of departing from the state-created machinery, as they would have before 1985, unions found themselves increasingly embroiled in the system with all its complexities. Strike figures, particularly over industrial (as distinct from political) issues, declined. Most of the new unions joined IC's, they increasingly used the Industrial Court (Part 3) and there was a general air of acceptance by the new unions of the new dispensation, with all its shortcomings. The NMC pointed out not only that the new unions were becoming more involved in and committed to the statutory system of collective bargaining and dispute resolution, but that their approach to it had altered qualitatively:

"Employers are reporting an increasingly higher level of professionalism and less emotional rhetoric in the approach of employee representatives from the new trade unions...". (NMC RP 74/88;p v).

As Ruiters et al pointed out, in order to resist the attacks by the state and employers on the positive aspects of the system (such as legally enforceable minimum conditions of employment) and advance the interests of members, it was impossible for the new unions to remain within the boundaries of legality. They argued correctly that "serious.....advance is impossible for workers if they stick to the industrial laws" and that the participation of the new unions in the ICS required serious re-examination (Ruiters et al; 1988;p10).

Given the continued unrepresentative nature of the ICS; given the intervention of the state to prevent industrial action by workers in support of their demands at the ICS; given the state's increasing refusal to extend the provisions of IC Agreements to provide minimum conditions of employment for workers not represented at IC's; given the inability of unions to make significant advances at IC level, there seemed to be little reason for the new unions to continue to be bound by constraints which the system imposed on them (ibid). Clearly, what was needed was a demonstration of the ability of unions to resort to militant collective action to defend what they wanted. Yet union leaders like Patel of SACTWU were instead calling for unions to be "wedded to the law" when the state and employers were able to use the law to achieve anything they wanted.

5. Conclusion

This chapter has demonstrated that in the period under review the new union movement became increasingly committed to participation in the ICS.

Viewed superficially, the unions' reasons for entering the ICS were not legalistic. They hoped to use the statutory system to achieve what they thought they could not gain through action on the shopfloor: legally protected collective agreements, access to national, industry-wide bargaining, a say in legally-established minimum conditions of employment and so forth. All of this would bolster organisation. However, given their own and others' longstanding criticism of the ICS, it is arguable that their involvement in the ICS revealed an incipient legalism in that they sought to "[exploit] ... legal openings" provided by the ICS under circumstances where this was unlikely to prove "effective".

Their continued adherence to the ICS, even when their own experiences showed that participation

in the ICS was more likely to undermine them than to enable them to make substantial gains for their members was also indicative of legalism. By clinging to the ICS in circumstances such as those that faced MAWU/NUMSA, the new unions demonstrated a "reliance on existing....legal structures to achieve certain aims" (Anon; 1981;p10), where such reliance could not "advance organisational effort" (and moreover would undermine it) or where conditions favoured an "organisational offensive" (ibid;p11).

Increasingly in the latter half of the decade under review, the new unions adopted the attitude which the state wanted to create in them: that of "responsible unions" acting within the statutory system of collective bargaining and dispute resolution. This conduct lent some substance to the arguments of commentators like Webster who claimed that the state had achieved some success in incorporating the new unions into the statutory industrial relations system (1987;p217). Thus in relation to the new unions' response to the ICS, this chapter has revealed a clear correlation between an increased tendency towards legalism and greater incorporation.

This chapter has also demonstrated that part of the explanation for this increasingly legalistic approach to the ICS lay in the nature of the system itself. The ICS fostered legalism in a number of ways. It encouraged the belief amongst unions that the system was more effective in securing gains for their members than organizational effort on their part.

Engagement in the system also fostered legalism because the complexity of the system led to the development within unions of a dependence on internal or external experts who could manipulate the system. This, together with the centralized and bureaucratic way in which the system operated, marginalized ordinary members. It therefore weakened unions by undermining the democratic control of workers over all union activities and encouraging divisions between leadership and rank and file.

Legalism was reinforced by the way in which the state and employers manipulated the system. Employers refused to deal with the new unions outside the system and thus applied pressure upon them to operate through the system. Once they were committed to the system, employers obliged them to accept the constraints of the system by threatening to withdraw from the system if they did not do so. The state, too, exploited the commitment of the new unions to the system to undermine their militancy, as was seen in the action of the Minister of Manpower in relation to the NUMSA strike in 1987.

However, it was also shown that the new unions were conscious of the shortcomings of the

system and of its potential to impact negatively on them, yet they participated in the ICS. The decision of the new unions nonetheless to rely on the ICS indicated a predisposition of the new unions to legalism, which was unrelated to the influence of the ICS itself, since they were at that stage not subject to its influence and highly critical of it. The decision appeared to be a conscious political choice made in a given set of historical circumstances. So too, was the decision to continue to rely on the system and to increasingly submit to its constraints, after it was quite clear that the new unions could gain little by doing so. (These issues are explored in Chapters 8 and 9).

Thus the approach of the new unions to the ICS was an expression of their tendency towards legalism, which originated outside the ICS itself. But legalism beget legalism. Once the new unions were part and parcel of the ICS, they became victims of the system and thus even more legalistic.

PART THREE: THE NEW DISPENSATION AND THE DEVELOPMENT OF LEGALISM - THE INDUSTRIAL COURT

INTRODUCTION

The concern of this part of this thesis, is to examine the role played by the Industrial Court (the Court), one of the key elements of the new dispensation, in fulfilling its aims.

The major arguments pursued in this part are as follows. Firstly, the Court was intended to, and did, assist the the process of undermining the new unions' strength and ability to upset the political and economic *status quo* in South Africa. One of the means by which it achieved this was by fostering legalism in the new unions. Secondly, it is argued that the new union movement increasingly tended to pursue their objectives through legal methods of struggle, particularly litigation in the Industrial Court. This, it is argued, was due to a large extent, but not exclusively or primarily, to the role played by the Court.

The Wiehahn Commission clearly intended that the Court would encourage the development of legalism in the new unions. Thus it argued that the fact that the new unions operated beyond the controls of the law posed dangers to capitalist stability in South Africa and that for that reason the new unions had to be brought under those controls (chapter 2). This was subsequently endorsed by the state-created National Manpower Commission (RP3/1984;p282).

Both the Wiehahn Commission (WCR;pt 1;paras 4.6-4.17) and the NMC (RP3/1984;p282) thought that what was needed to create the necessary respect for law and order in the new union movement was "an effective and respected industrial court". This Court would encourage unions to pursue their aims through itself and other legal institutions, rather than through strike action (WCR; ibid). The Court was to create respect for itself amongst employers, workers and unions (RP 3/84;p 284). The NMC stated very clearly in 1984 that the task of the Industrial Court should be to create a belief in "order and stability" and in "responsible, disciplined and rational behaviour by workers and employers towards each other". This implied "that employers and employees should act within the parameters of the law in trying to exercise the rights granted to them in terms of the law." (RP 3/1984; p304). In short the Court was specifically given the task of encouraging legalism in the ranks of the new union movement.

The Court was also given the task of generally promoting the ideology underlying the new dispensation. This was clear from the recommendations of the WCR regarding the considerations

which the Court would have to take into account in developing fair employment guidelines (WCR;Pt 1;para.4.28;p51). The WCR envisaged that the "new dispensation" of which the Court was a part would promote "a common loyalty of all to both the [free enterprise] system and the country" ; "the preservation of industrial peace"; "individual freedom" (WCR; Pt1;p4); "orderly unionism acting within the law (ibid;p16) and so on. These "philosophical foundations" were subsequently confirmed by several NMC reports (eg. RP 3/1984; p18). The NMC made it clear that in the free enterprise system espoused by the state, "the profit motive and the price mechanism play a fundamental role" (ibid; p19) as did the "principle of safety, order and stability" (ibid;p 23). The achievement of these wider objectives also required the reduction or elimination of conflict between employers and workers/unions through the institutionalization of the various aspects of that relationship.

The Wiehahn Commission saw the Court as being best able to fulfil the role envisaged for it, if firstly, it was a court of experts, with broad powers to resolve industrial relations problems in a manner which was free from the procedural difficulties of the ordinary courts, expeditious and as cheap as possible (WCR Pt 1; para 4.24 -4.28). This view was later endorsed by the state-appointed NMC (RP 3/1984; p304).

Secondly, the Wiehahn Commission wanted the Court to have the power to develop fair employment guidelines (WCR Pt1; para 4.28;p51) such as those which existed in the rest of the developed capitalist world. It saw the absence of those practices as being a major source of industrial unrest because this provided the new unions with reasons for embarking on strikes.

In this part, it is argued that the Court, as its creators intended, proved to be a breeding ground for the promotion of legalism in the new union movement and also served the overall purpose of contributing to undermining the new unions in other ways. This however, did not necessarily occur in the way in which the Wiehahn Commission envisaged that it would.

CHAPTER 5: THE INDUSTRIAL COURT: STRUCTURE AND FUNCTIONING

1. Introduction

This chapter will demonstrate that, for the duration of the period under review, the Industrial Court suffered from structural problems which appeared to contradict one of the aims of its creators - to attract the new unions to seek to fulfil their aims through the Court and the new law and in this way promote legalism. In reality, although these shortcomings obtained for the duration of the period under review, they did not prevent the phenomenal growth in the use of the Court by the unions (Table 1). Contradictorily, the very absence of those features contributed to some extent to the development of legalism.

Moreover the very deficiencies of the Court also served the overall purpose underlying the new dispensation of which it was such a key part viz. of weakening the new unions. Thus the contradiction between the Court's lack of appealing features and the aims underlying its establishment was more apparent than real. This, it is argued, was why the state did not seek to remedy the perceived initial crisis of credibility of the Court by giving it the features advocated by the WCR and the NMC.

2. The Structural Problems of the Industrial Court

2.1. Composition of the Court: Absence of Experts

The evidence laid before the Wiehahn Commission (WC) reflected that the ordinary courts were unfit to adjudicate on labour affairs for a number of reasons. However, the Commission based its recommendation that experts in labour matters staff the new Industrial Court, on developments within the labour field, rather than on criticisms of the existing judicial system. These included the vast range of legislation applicable to labour matters, the increasing number of organizations operating in that field and the fact that courts of law could not take account of "sociological, economic, political, psychological and other aspects" applicable in the labour field (WCR Pt.1; p49; Paras. 4.22 - 4.23).

The 1979 legislation provided for a court composed of a president and as many members as the Minister of Manpower wished to appoint. The president initially had to be appointed by reason of his knowledge of labour law [Section 17(1)(b)], but in 1980 this was amended, so that he

simply then had to have knowledge of the law in general, like all the other appointees [Section 5 (b)]. Thus the legislation contradicted the WCR almost from the outset.

The absence of specialist labour judges in a specialist labour court was more than a contradiction in terms: it by definition undermined all the reasons for its creation. This was recognized by the NMC in its 1984 assessment of the Court (RP 3/1984; p287), but the NMC felt that little could be done because of the shortage of suitable persons to staff the Court.

The 1979 legislation made provision [S17(19)(a)(i)] for the president to appoint assessors to advise the Court, after consultation with the parties. These assessors were to represent the interests of the parties equally insofar as each had to be an employer, employee, or office-bearer or official of a registered trade union or employers' organisation concerned in the matter.

From the outset this provision was subjected to criticism. For example, Brassey (1980;p76) argued that whilst in some ways the appointment of specialist assessors could be useful, in South Africa the value of assessors in labour cases was doubtful. In reality, he argued, one of the parties was subordinate to the other. This was exacerbated in the South African context by racial factors:

"...an employee (particularly if he is Black) may be a member of a trade union which is not registered or a member of no union at all, and so find that he is unable to nominate anybody but himself;...the dice seem to be loaded in favour of a corporate employer, who can nominate assessors from the ranks of its management;...those assessors who are parties to the dispute may have to give evidence and be cross-examined, with a resulting confusion of roles" (ibid;p79).

A major repercussion of the lack of expertise in the Court, was that non-experts proved unable to take cognisance of the aims and objectives of the new labour dispensation. They could also not bring to bear specialist knowledge of labour issues on cases, as the WCR and subsequent NMC reports called for.

One example of this, was the fact that ordinary lawyers were unable to always appreciate the stated intention underlying the new dispensation, of excluding the common law and its underlying assumptions, from the labour arena. This was highly problematic because, as labour lawyers argued, the intention of the statute law was to redress the imbalances of the common law which favoured employers (eg.Pretorius; 1983; pp170-174).

This tendency was illustrated by the decisions of Erasmus SC, one of the judges most severely criticized for the continued application of common law principles in this field (Davis;1985;p425 et seq). Erasmus SC with alarming regularity applied the "narrow contractual premise" of the

common law, which presumed a contractual freedom and equality of bargaining power between employer and employee which, especially in the South African situation, did not exist. In addition, his decisions reflected a failure to protect employees from victimization, to appreciate why they required protection, and to take adequate account of the existence of and necessity for the right to strike in South African law (eg. in Ngobeni and others v Vetsak (Co-op) Ltd).

The mythological nature of the common law presumptions of freedom of contract and equality of bargaining power between employer and employee, and the hostility to trade unions shown by the ordinary courts in applying the common law were seen by the Wiehahn Commission as part of the reason for the rejection of those courts by the new union movement. Thus in order to attract them to the new Court, the Commission had recommended sealing off labour law and the Industrial Court from the ordinary courts. In practice, this scheme was upset because of the appointment of common lawyers, rather than labour law experts, to the Court.

O'Regan cites the absence of expertise in the Industrial Court as a reason for the gravitation of the new unions towards private arbitration in the late eighties. She argues that trade union and employer dissatisfaction with the competence of the Court's personnel, "many of whom are merely ad hoc appointments who have had little industrial relations or labour law experience" was a major factor in the increasing popularity of private arbitration (1989;p559). In other words, the absence of labour law and industrial relations experts in the Industrial Court, did little to enhance its credibility. O'Regan cites at least one unionist who supports this view (ibid).

In 1985 this issue was also raised in Parliament, where it was revealed that there were only two full-time members of the Court and that the number of vacant posts meant that members were appointed ad hoc. These, it was alleged, brought the Court into disrepute because of the inconsistency of their decisions, and the highly contentious nature of those decisions (Hansard; 1985; p5166). The government's reply was that it was upgrading the posts in the Court and overhauling remuneration packages in order to remedy the situation. (Hansard; 1985; pp 5190-1).

2.2. The Status of the Industrial Court

Two major problems arose with regard to the status of the Court. The first concerned its status within the various arms of the state and the second its relationship to the ordinary Courts.

2.2.1. The link with the Department of Manpower

To the Wiehahn Commission the status of the Court was irrelevant (para 4.25.12; p50). It wanted the Court to have a status of its own, with country-wide jurisdiction, functioning through local divisions. The legislative response to this, was to place the Court within the administrative arm of the state viz. within the Department of Manpower. At the same time, the Legislature did not clarify the relationship between the Industrial Court and the ordinary Courts.

This led to problems of credibility. Whilst the Court was supposedly free from the influence of the ordinary courts, it was seen as lacking independence from the government. Given the hostility of organizations in South Africa, including the new unions, to the government of the day, this placement of the Court was guaranteed to affect its credibility. This was recognized by the state-appointed NMC (RP 3/1984; pp284-5). The NMC was concerned that the Court could not be seen as being independent of the government whilst it fell within the jurisdiction of the Department of Manpower and its members were appointed by the Minister of Manpower subject to such conditions as he and the Minister of Finance determined.

The NMC recommended that the Court "should be constituted in such a way that its independence and freedom from possible interference from the Government should be beyond doubt" (ibid). The parliamentary Opposition (Hansard;1985;pp8166-7) called for the Court to be made "free from government influence if it is to have the clout and credibility that it needs". The government's reply (ibid;p5191) was a bland denial that the Court was, or was perceived as, a government agency. It therefore did not address this problem in its numerous amendments to the legislation.

2.2.2. The nature of the Industrial Court

The legislature did not define the nature of the Court. What it did was to give it judicial, quasi-judicial and administrative powers (dealt with below). The Appellate Division appeared to settle the issue of the nature of the Industrial Court by holding that it was not a court of law at all, not even when it exercised its judicial functions. It was simply an administrative body. Thus its decisions were subject to review by the Supreme Court, in terms of the latter's inherent powers of review over the functioning of any administrative body. (SA Technical Officials' Association v President of the Industrial Court (1985).

This power was exercised for example in Consolidated Frame Cotton Corporation v President,

Industrial Court (1985). Fortunately, the ordinary courts, in reviewing the Industrial Court's exercise of its powers, had regard to the intentions of the legislature in creating it, and for the most part refrained from adversely reviewing its decisions (eg Marievale Consolidated Mines Ltd v President of the Industrial Court and Others (1986)).

The administrative nature of the Court enabled it to decide that it need not adhere to the same procedures as ordinary courts. One implication of this was the trend heralded by the decision of Fabricius AM in Medupe v Gold Spur that there was no onus of proof on either party in unfair labour practice determinations. Because the Industrial Court was not a court of law, he held that proceedings before it did not take the form of civil proceedings. Whilst the Court had until then required an employer to justify a dismissal as being fair, in this case it held that an employer had no burden of proof to discharge. The Court had to take account of all the evidence before it and then establish whether or not an unfair labour practice had taken place. This decision substantially affected the ability of unions to win unfair labour practice determinations.

Another problem which arose from the status of the Court as merely an administrative body was that of precedent. Cameron (Brassey et al; 1987; p235) argues that this was advantageous, since it enabled the Court to adopt a flexible approach, much needed "in a time of social flux" (ibid). However, it was open to the Court to pay attention, as it did, to its own previous decisions. It was therefore free to discard decisions which were in its view clearly wrong and adopt those which were right.

This has meant, though, that the Court could reject a long line of its own decisions, which had become accepted as law. For example, prior to the Medupe case (above), the Court, in exercising its unfair labour practice jurisdiction, required an employer to show that a dismissal was fair. Suddenly, and for no apparent reason, the Court rejected this (ASSAL; 1987;p351). A litigant could not therefore approach the Court with any certainty as to what the law was. Thus unions had very little to rely on. In addition, no courtroom victory could be perceived as having established an unassailable right for unions or workers.

The inconsistency of the Court on numerous key issues frustrated the intention of the WC that the Court would over the years develop a body of decisions which would establish fair employment practices. The Court's record of inconsistency grew as its staff increased. Davis cited examples of what he called "...this cavalier approach to previous judgements of the court that is undermining the ability of the court to develop a clear and certain body of industrial law as envisaged by the Wiehahn Commission..." (1985; p274).

A key example of this was the Court's decisions regarding its criminal jurisdiction. In Moses Nkadameng v Raleigh Cycles one of the bases for refusing relief to the applicants was that the Court could not grant an interdict restraining the commission of an alleged offence because it lacked jurisdiction in respect of alleged offences. Later in the NUTW v Jaguar Shoes, the Court held that the relevant section meant only that it could not try alleged offences. The cases are discussed below.

A further example was to be found in the Court's failure to take a consistent position on collective bargaining. Whereas one set of cases (Bleazard v Argus Printing and Publishing; UAMAWU v Fodens; UAMAWU v Fodens) gave unionists hope that the Court would compel recalcitrant employers to bargain with them by imposing a duty to bargain on employers, another set of cases such as BCAWUSA v Johnson Tiles, where the Court refused to impose such a duty, dashed the hope (chapter 6).

Finally, the decision that the Industrial Court was an administrative tribunal had direct political implications. An administrative tribunal had the discretion to take account of a host of extraneous factors which a court of law could not do. That the Court should be able to do this was clearly stated by the WC (above) and confirmed by the Appellate Division (Consolidated Frame Cotton Corporation v The President, Industrial Court (1986). The Supreme Court in Trident Steel (pty) Ltd v John NO (1987) expressly stated that the Industrial Court had to make value judgements in unfair labour practice determinations. Those value judgements were clearly set out by the WC and later the NMC, and applied by the Court, as will be seen in chapter 6. Even more directly, Sec. 17(20) of the LRA itself gave the Industrial Court the ability to take account of information furnished by various state departments or similar bodies, in performing its functions. It could not therefore be said that the Court even had the appearance of standing outside state policy, which the ordinary courts at least had.

2.2.3. Overlapping jurisdiction

The absence of clarity regarding the relationship between the Supreme Court (SC) and the Industrial Court led to problems of overlapping jurisdiction. The SC continued to administer the common law (which disregarded matters outside the law) with regard to labour matters, whilst the Industrial Court attempted to deal with the same matters in terms of the new legislation, against the background of a changed socio-economic environment.

The inherent jurisdiction of the SC with regard to common law issues not only continued to allow

for its intervention in labour matters, but held a potential for conflict with the jurisdiction of the Industrial Court. The most dramatic illustration of this was the trilogy of cases arising from the (legal) 1985 NUM strike, known as the "Marievale trilogy" (Roos;1987; p109).

When the National Union of Mineworkers (NUM) called a legal strike after a deadlock in wage negotiations, the employers (Marievale) warned that they would dismiss workers for breach of contract. When workers refused to return to work, they were not only dismissed, but ordered to vacate their hostels since they were ostensibly no longer employed by the company and therefore no longer entitled to occupy accommodation provided by it.

The NUM applied to the Supreme Court for an interdict to prevent the evictions and to restore accommodation to those workers already evicted. The NUM also asked the Industrial Court for *status quo* relief pending the final resolution of the dispute, thus requiring the Court to decide upon the fairness of the dismissals. The company applied separately to the SC to find the dismissal lawful, a very different concept from fairness, and thus find the evictions lawful too. The NUM's request for the latter court to suspend its decision on the issue pending the Industrial Court's decision on the *status quo* issue was rejected by the SC because of the uncertainty as to what the Industrial Court, which it reiterated was not even a court of law, would decide. Following previous decisions, the SC held that the lawfulness of the strike did not prevent the employers from sacking the workers for breach of contract (at common law). The refusal to work constituted breach of contract at common law, which was unaltered by legislation. The Industrial Court on the other hand, reinstated the employees via a *status quo* order. On the review of this decision, the SC held that the Industrial Court was a specialized court with powers which the SC did not itself possess, granted by legislature. It thus declined to interfere with the Industrial Court's decision.

As Roos correctly points out, this trilogy illustrates that the legislative failure to clarify the position of the Court *vis-a-vis* the ordinary courts contradicted the WCR ideals in a number of ways. Firstly, the intervention of the SC and the common law hampered the endeavours of the Court to fulfil its function of promoting a settlement of the dispute. Secondly, the objectives of speed, simplicity, clarity and cheapness were defeated. Thirdly, the SC allowed the employer to frustrate the intentions of the legislature in creating the infrastructure for dispute settlement and collective bargaining, of which the ultimate sanction of a lawful strike was an integral part, by allowing employers to simply pull out of collective bargaining by dismissing and evicting workers. Thus they destroyed the incentive to use the collective bargaining mechanisms, since after dismissal the trade union had no incentive to go to arbitration.

2.3. Industrial Court Procedure

The WC recommended (WCR; Pt.1; para. 4.28.11) that the Court "follow a less formal procedure but observe the principles of natural justice". However, the procedures of the Court were not as simple and problem free as the WC envisaged.

Initially, no rules of procedure were laid down. The Court did indeed follow a simple procedure, by requiring that the parties submit only a memorandum setting out the facts, points of law to be raised and relief sought, together with supporting documents. Yet even as early as 1981, the Court found that numerous points of technical irregularity were taken by litigants in cases brought before it, which it noted did not contribute to settling the substantive issues before it speedily and expeditiously (Mamabalo and Others v Putco)

In 1982, however, the Court adopted a formal set of rules and tariff of costs. At times the Court was keen to be flexible in the application of these rules, as in Matshoba v Fry's Metals (1983) and Nodlele v Mount Nelson Hotel (1984). At other times it was quite stringent (eg. BCAWUSA v West Rand Brick Works, 1984).

However, it could not prevent a host of technicalities from being brought before it, as the above cases reflect. Some further examples will suffice to make the point: the regularity or otherwise of documents (Mamabalo (above)); which affidavits are required (BCAWU v Masterbilt, (1987); the Court's discretion to allow certain affidavits (FAWU v Ameens Food Products, 1988); the permissibility of amendments (SACWU v Custom Moulders, 1986); issues of joinder (Sosibo v Quality Products, 1986); issues relating to onus of proof (Larcombe v Natal Nylon Industries, 1986) and so forth.

The extent to which the taking of technical points by litigants wasted time and money was decried by the NMC in its 1984 report:

"The experience of the Industrial Court to date has been that at times much time (and therefore money) has been spent on arguing technical and procedural questions without the merits of the particular case being heard." (RP 3/1984;p289)

It pointed out that there had been complaints that the Court was far from the inexpensive and expeditious forum that it was supposed to be (ibid; p288). The NMC saw no way forward to remedying this evil, and clearly the legislature did not either. Even lawyers, supposedly the key beneficiaries of protracted litigation, have raised this as a problem (Bruinders; informal interview

- August 1991).

2.4. Access

One of the major procedural problems which confronted potential litigants in the period under review, was the issue of access to the Industrial Court. Two issues arose: who had access and how such access was gained.

2.4.1. Who had access

The WC recommended that the Industrial Court be open to "all persons, groups and organizations" (WCR; Pt1; para 4.28.12)

Both registered and unregistered trade unions had to fight for the right to represent their members in legal proceedings. The question of *locus standi* of unregistered trade unions to represent their members was raised in the Supreme Court in PE Bosman Transport Works Committee v Piet Bosman Transport (Pty) Ltd 1980. The Supreme Court decided that an unregistered union could not institute legal proceedings on behalf of its members. The decision was a controversial one, subjected to criticism by lawyers (eg. Van Der Vyfer (1981) and Cheadle (1980)), as well as the NMC (RP 3/1984; p290). The issue was left unresolved when the Appellate Division, South Africa's highest court, refused to hear the case on technical grounds.

However, the Court, in an endeavour to obtain credibility, as not being bound by the technicalities of other courts, held that it was not bound by the decision of the Supreme Court in PE Bosman. It settled the matter temporarily in Metal and Allied Workers Union v A Mauchle (Pty) Ltd t/a Precision Tools (1980) by holding that the criteria used by a court of law were not necessarily the same as or applicable to those applied by the Industrial Court. Thus an unregistered trade union could bring a unfair labour practice case before an industrial council. It confirmed this position in NUM v Marievale Consolidated Mines (1986) by holding that an unregistered union could bring proceedings on behalf of its members in the Industrial Court. The decision was upheld in the Supreme Court in review proceedings.

In NAAWU v CHT Manufacturing Co LTD (1984) the Court Industrial Court held that a trade union had *locus standi* to represent its members even if it had itself suffered no harm. This went beyond the view of the NMC that a trade union could institute legal proceedings in its own name if its own interests were affected (RP 3/1984; p289).

The fight to establish *locus standi* on behalf of members, however, once again reflected the difficulties faced by unions who wished to resort to the Industrial Court and the law. Not only were resources consumed in this battle, but the situation was exacerbated by the intrusion of the ordinary courts with their baggage of technicalities and formalities, which counter-acted the entire spirit and aims of the new dispensation.

2.4.2 How was access gained.

The most controversial aspect of access to the Court related to its unfair labour practice powers, which was arguably its most important area of jurisdiction (discussed in chapter 6).

In the period under consideration in this thesis, the LRA, as variously amended, made no provision for direct access to the Court in alleged unfair labour practice disputes. Section 46(9) required that an industrial council or a conciliation board (CB) should hear the matter first. If the industrial council or CB settled the matter, there would be no access to the Court. Only if the industrial council or CB failed to settle the dispute within 30 days, could the matter be referred to the Court. This was alleviated to some extent by the fact that the parties, where there was an industrial council, could agree in terms of S46(9)(d) that the matter proceed directly to the Court. Alternatively, where there was an industrial council, it could inform the Minister of Manpower that the matter could not be settled. He then had to refer it to the Court.

Thus a party could suffer from "delay, bedevilment or denial" (Laborius;1985;140) in attempting to gain access to the Court:

"Delayed, because litigants must go from A, the grievance, to B, its resolution, via the C of the industrial council or the D of the conciliation board; bedeviled because they must decide very difficult questions of fact and law in order to determine whether C or D is the road they should be taking (witness Matshoba v Fry's Metals 1983); and denied, because the minister, who has a discretion whether to appoint a conciliation board or not, can exercise it in a way that makes the D-road, the one via the conciliation board, a cul-de-sac."

(ie the Minister could exercise his discretion to refuse to appoint a conciliation board)

As "Laborius" correctly pointed out, the problems of "delay and bedevilment" were amongst the reasons why the Wiehahn Commission recommended the establishment of the Industrial Court to handle labour matters, rather than leaving them to the ordinary courts. The above problems confounded the Commission's aims and wasted trade union time and resources, thus making the Court, or the entire dispute resolution machinery, potentially unattractive to the unions.

"Laborius" argued that it was the third problem which was the worst. If there was no industrial

council with jurisdiction, and both parties did not agree in writing to go straight to the Court, they had to proceed via a conciliation board. Initially the Act left it entirely to the discretion of the Minister of Manpower to decide whether or not a conciliation board (CB) should be established. Subsequent amendments (1980) obliged him to appoint a CB if the dispute in his opinion, concerned an unfair labour practice. If he formed the opposite opinion, he could, of course refuse to establish a CB and thus deprive the parties of access to the Industrial Court. This situation would have been worse, "Laborius" argued, were it not for court decisions constraining both the minister's and the industrial council's powers over access to the Court.

The Minister's discretion was constrained by a Supreme Court decision that once he appointed a CB, he could not deprive the Industrial Court of jurisdiction (Zuke v Minister of Manpower, 1985). This was what the minister of manpower purported to do, by appointing a CB and framing its terms of reference to prevent it from finding that the dispute concerned an unfair labour practice, and thus attempting to prevent the case from proceeding to the Industrial Court. In Rhodes v SA Bias Binding Manufacturers and Ntuli v Natal Overall Manufacturing Co, the Industrial Court overruled the attempts by industrial councils to prevent access to the Court on technical grounds.

Nonetheless, the cases brought before the Court and even the ordinary courts, bore testimony to the fact that gaining access to the Industrial Court in order to use it to establish legal rights, or to settle disputes, consumed time and resources far in excess of what the WC envisaged.

2.5. The Powers and Functions of the Court

The WC recommended that the Court be given powers to interpret provisions of labour laws and regulations, industrial agreements, wage determinations, awards, exemptions, orders and other such instruments. It should also hear cases of alleged irregular and undesirable labour practices or changes in labour practices or other actions which threatened industrial peace or led to dissatisfaction; issues related to conditions of employment; the legality of strikes, lockouts, picketing, intimidation, boycotts, etc. It should settle disputes of a non-legal nature, as well as adjudicate on disputes of rights and settle labour disputes of a legal nature which the ordinary courts would usually decide, but should not be able to decide criminal cases.

The issues subject to the Court's initial jurisdiction were extremely limited, leading to speculation that this was the reason for its almost complete inactivity in its first year of existence (Brassey; 1980;p76). Subsequent amendments led to an enabling section (Section 17 (11)) in the Act which

read as follows:

"The functions of the industrial court shall be:

- (a) to perform all the functions, excluding the adjudication of alleged offenses, which a court of law may perform in regard to a dispute or matter arising out of the application of the provisions of the laws administered by the Department of Manpower;
- (b) to decide any appeal lodged with it in terms of sections 16 or 21A [which relate to appeals from the decisions of the industrial registrar and appeals by an employer or registered employers' organisation or registered trade union who feels aggrieved by the refusal of his or its application for admission as a party to an industrial council];
- (c) to conduct arbitrations referred to it in terms of ss45, 46 or 49;
- (d) to advise the Minister on any matter contemplated in s46(7) (c);
- (e) to determine any question referred to it in terms of s 76 [which relates to demarcations between industries];
- (f) to make determinations in terms of s 46 [which relates to disputes concerning an unfair labour practice];
- (g) to deal with any matter which it is required or permitted to deal with under this Act; and
- (h) generally to deal with all matters necessary or incidental to the performance of its functions under this Act."

The Court was therefore given judicial, quasi-judicial (arbitral) and administrative (investigative) functions. From the outset this was criticized. For example, Brassey argued that this combination of functions could lead to "a conflict of roles which may jeopardize the court's status as a court of law". For example:

"..the industrial court may be required by the Minister to investigate the circumstances surrounding a strike or lockout, conclude that they had their origins in victimization, and then find itself adjudicating upon an application for an interdict to restrain further victimization. In a sense, the court will now have prejudged the issue, possibly using powers and admitting evidence in a way entirely foreign to its role as a court of law". (Brassey;1980;p84)

The functions of the old administrative industrial tribunal which the Court replaced were largely retained in the above section. The only new powers granted to the new Court were those concerning its adjudicative functions, the powers regarding admission to industrial councils and the unfair labour practice jurisdiction.

Section 17(11)(a) confined the Court to the laws administered by the Department of Manpower. At the time when the Court was created, the laws administered by the Department of Manpower were: the Factories, Machinery and Building Works Act 22 of 1941, the Shops and Offices Act 75 of 1964, the Apprenticeship Act 37 of 1944, the Wage Act 5 of 1957, the Industrial Conciliation Act 28 of 1956, the Black Labour Relations Regulation Act 48 of 1953, the Unemployment Insurance Act 30 of 1966, the Workmen's Compensation Act 30 of 1941, the Training of Artisans Act 38 of 1951, and the In-service Training Act 95 of 1979.

The Court could not therefore adjudicate on important issues such as the matters which arose out of the common law contract of employment, contrary to the recommendations of the WCR. The common law powers of the ordinary courts could therefore potentially conflict with the statutory powers of the Industrial Court when the former overlapped with the latter, as has been seen in the Marievale trilogy of cases above.

The Court was constrained from adjudicating upon important issues affecting the labour relationship, which fell outside the ambit of its specified areas of jurisdiction, yet affected the labour relationship. These included the influx control measures, which directly affected industrial relations, and gave the employer vast advantages over the mass of workers subject to the restrictions of influx control. It could not adjudicate on security laws affecting the labour relationship, such as those affecting the right of assembly or those that prevented picketing and allowed the state to intervene by way of the police, or employer appeals to the police to intervene in labour disputes.

It specifically could not adjudicate on criminal matters - thus excluding many issues which should logically have been subject to its jurisdiction eg. the recovery of wages, and victimization.

Not only were the powers of the Court limited in these important ways, but the Court itself construed its powers in this regard very narrowly, so that it was in danger at one stage, according to its critics, of ruling itself out of existence as a court of law (ASSAL; 1981; 417-8).

The case of Moses Nkadameng v Raleigh cycles (SA) Ltd (1981) illustrated this. Applicants alleged a lockout by the employer in contravention of Section 65 of the then Industrial Conciliation Act, which outlawed certain types of lockouts. They also alleged that the employer had committed an unfair labour practice. They sought an interdict restraining this contravention or restraining the commission of an unfair labour practice. On the first ground relief was refused. The Court held that a lockout was an offence, and since offences fell outside the jurisdiction of the Industrial Court, even if civil relief was sought, the Court could not grant it. In other words not only did the section exclude criminal jurisdiction, it also excluded the granting of "civil relief based on acts which have both civil and criminal consequences" (ASSAL;1981;p418).

The other basis for refusing relief was that the applicants had not exhausted the legal remedies available to them. This reflected the Court's determination to assist workers only where they had institutionalized their dispute with their employers as far as possible. The Court therefore pushed workers towards exhausting their resources in protracted legal proceedings, regardless of the

circumstances or the effect on the workers' side of the dispute. (This is dealt with more fully in chapter 6.)

For a brief time it seemed that the Court would be able to overcome this self-imposed restriction of its powers. In NUTW v Jaguar Shoes (Pty) Ltd (1985) it overruled the Nkadimeng case (above). It held that the relevant section meant that the Court could not *try* alleged offences, but that it could consider *the relief* in this case, especially where the applicants had tried all available avenues of relief. It therefore granted an interdict (in terms of its "court of law" functions) to restrain the employer from either unlawfully requiring workers to work overtime beyond statutory limitations, or locking them out as a result of their refusal to do so.

Because the Court was not bound by its own previous decisions (a problem discussed above), the decision in NUTW v Jaguar Shoes (1985) was soon reversed. Following the Section 43 (*status quo*) order granted in the 1985 Jaguar Shoes decision, the NUTW in a subsequent case (NUTW v Jaguar Shoes, 1986) applied for backpay and benefits which were due prior to the purported dismissal. The Court, without reference to previous decisions, said that the phrase "excluding the adjudication of alleged offences" in the legislation (the same phrase at issue in Nkadimeng case and the first Jaguar Shoes case) meant that the Court could not grant the order applied for in the second Jaguar Shoes case, because Sec.53 (1) made it an offence to contravene a Sec.43 order. In other words, the Court refused to enforce an obligation in terms of its own previous order, because it was an offence to contravene such an order.

Despite this being raised as a problem in the NMC report on the Court (RP 3/1984;pp292-3) it was not fully addressed by subsequent legislation. The Labour Relations Amendment Act of 1982 (which amended the Industrial Conciliation Act and changed its name) only partially addressed this criticism by allowing victimization to constitute an unfair labour practice and therefore allowing the Court power to adjudicate in respect of victimization. The implications of this are dealt with in the next chapter.

3. Section 43 - Status Quo Orders

The above problems led to much criticism, not only from academics and lawyers, but from the state-appointed NMC as well (RP 3/1984; p304). The NMC argued that the Court could only create belief in the law and itself on the part of the union movement, and encourage "responsible behaviour" within the "parameters of the law" (on the part of wayward trade unions, presumably), under certain conditions. Thus the it stated that:

"....the temptation to enforce rights (or perceived rights) by extralegal means will be almost irresistible should the methods provided for the enforcement of these rights be impracticable or cumbersome...Of...importance from the Industrial Court's point of view, is that there must be inexpensive, expeditious and easily accessible procedures to enforce these rights. In addition, the body...charged with enforcing these rights must have the powers to ensure that these rights are respected". (RP 3/1984; p304).

The NMC conceded that "credibility and respect cannot be created by legislative fiat" but argued that the state should structure the Court correctly, define its functions, allow it to exercise those functions effectively and allow the members of the Court to seem independent (ibid; p305). The state largely ignored the qualms of the NMC and other critics. This indicated that the legislature did not wish to eliminate the technical difficulties surrounding the Court because it did not perceive them as preventing the Court from achieving its purpose. It thus addressed what the NMC saw as a crisis of credibility of the Court in a different way from that proposed by the NMC.

It achieved this by amending the Industrial Conciliation Act (renamed the Labour Relations Act) in 1982 (Sections 5 and 8 of Act 51 of 1982) to transfer from the Minister of Manpower to the Court, the power to grant "*status quo*" orders in terms of section 43 of the LRA. Sec.43 then allowed the Court to order reinstatement of workers who had been dismissed, or the restoration of conditions of employment that were about to be changed or had been changed, or abstention by the opposing party from the commission of an alleged unfair labour practice, pending the settlement of the dispute by an industrial council, or a conciliation board, or by arbitration, or by the Court itself. In effect, it restored the "*status quo*" for a period of time. The section and the substantive aspects of its implementation by the Court, as well as the impact of its implementation by the Court, are discussed in chapter 6.

The point to be made here, is simply that the procedure for granting *status quo* orders was by no means free from the problems raised above. It was meant to offer speedy relief to a party by arresting the unilateral action of another party, to allow negotiations to take place, but was itself fraught with technical legal problems. Some of these are dealt with below.

3.1. The Status Quo Provisions and the Status of the Court

Cameron (1987;pp182-3) strongly denied that the position of the Court within the Department of Manpower (above), or the fact that Section 17 (20) of the LRA allowed it to take account of information furnished by the state, had any influence on how it exercised its powers, including its *status quo* powers.

However, the framing of the *status quo* provisions allowed for the opening up of an important avenue through which the policy of the state could influence the decisions of the Court. Where no industrial council existed, the applicants had to show that a conciliation board (CB) had been applied for.

In the first three years after it acquired *status quo* jurisdiction, the Court adopted what Cameron (1987;183-6) called a "minimal" approach. Applicants for *status quo* orders simply had to show that a CB had been applied for. (eg Mbatha v Vleisentraal Co-op, 1985; Bleazard v Argus Printing and Publishing Co, 1983; Fihla v Pest Control Tvl, 1984).

This was altered by Supreme Court decisions that required that a *valid* application for a CB had to have been made (Marievale Consolidated Mines v The President of the Industrial Court (1986); Consolidated Frame Cotton Corporation v The President, Industrial Court (1986).

In addition, in the Frame case, the applicant was required, in order to succeed in getting a *status quo* order, to show that not only was the Minister reasonably likely to appoint a CB, but that the CB was likely to settle the matter in favour of the applicant. The applicant was therefore faced with the need to make impossible predictions regarding how the Minister would exercise his discretion and how the CB would view the dispute. Given the width of the Minister's discretion, this would require the applicant to know, and the Court to take account of, a host of factors, including possibly political and other policy factors, which would influence the Minister in the exercise of this discretion.

In Kloof Gold Mining Co v NUM (1986), this inquiry into the exercise of Ministerial discretion, and therefore the factors which would influence it, was widened. The applicant had to satisfy the Court, in applying for a *status quo* order, that not only had the requirements for the establishment of a CB been fulfilled, but that if they were not fulfilled, the Minister would still exercise his overriding discretion to appoint such a CB.

The establishment of a CB was ultimately subject to Ministerial discretion. In terms of Section 35 (4), it depended in certain circumstances on whether he would find it expedient to appoint one and on whether in his opinion the issue concerned an unfair labour practice. When the Court adopted the Kloof approach, it had to enter into issues which would influence the Minister's exercise of his discretion. Since these undoubtedly encompassed state policy and political considerations, such considerations might well have been perceived to in turn influence the Court, which fell within that Minister's department. The fact that the Court had to take certain

considerations into account, which included state policy (above), had to at least create an inference that the Court would be influenced by state policy. Even if concrete evidence could not be adduced to support this perception, the existence of that perception did nothing to ease the Court's job of establishing its neutrality and the neutrality of the law which it administered. It had to therefore cast aspersions on the Court's credibility.

In addition, the last approach clearly placed additional obstacles in the way of those seeking to obtain a *status quo* order. It was well-nigh impossible to predict how a Minister would exercise a discretionary power, or what a CB would decide. Thompson (1987b;p10) argued that it was mainly trade unions and workers who benefited from the provisions of Sec.43, and since the vast majority of applicants in Sec.43 proceedings were workers and unions (ibid), the increased onus of proof clearly did not favour them.

Despite the Appellate Division decision that the Court was an administrative body, with discretion to deal with matters before it in terms of its general brief (above), and the apparent reluctance of the Supreme Court to intervene in decisions of the Industrial Court, clearly this attitude did not extend to the *status quo* jurisdiction. The legislature refrained from telling the Industrial Court how to exercise these powers. So too did the Supreme Court, but it displayed its unhappiness by describing the powers as "Draconian". It thus intervened by insisting that the *status quo* powers be exercised "reasonably and equitably and with due regard to the interests not only of the employees, but also of the employers" (Consolidated Frame Cotton corporation v The President, Industrial Court 1986 at 799). In addition, the ordinary courts intervened in a substantive manner (the Frame and Marievale cases (above)) in this area.

3.2 Inconsistency in the Approach to the Status Quo Jurisdiction

The above discussion highlights the inconsistency of approach adopted with regard to the *status quo* provisions, by both the Industrial Court and the Supreme Court.

Cameron argued that the Industrial Court's exercise of the *status quo* jurisdiction led to diversity without any chaos (1987;p178; p178). However, he betrayed the weakness of his own argument in several ways. Firstly, he conceded that the large number of people who presided over *status quo* applications did not help to introduce any uniformity in "attitudes, approaches and outcomes" (Cameron; 1987;p178). Secondly, his attempt to discern guiding principles in the exercise of the *status quo* jurisdiction was suspect, because each of those principles had to be sifted from a welter of contradictory judgements, and each of those supposed principles were beset with problems and

contradictions. Most telling of all, were his concessions that "not all presiding officials have been equally attuned to the relevant principles of industrial relations and industrial law and even to the applicable notions of equity" (Ibid) and that *status quo* cases were marked by "some inconsistency, uncertainty and in some instances even apparent perverseness" (ibid).

Trade unions, who according to Thompson (1988;p339), were the beneficiaries of this section, often had to learn by experience the validity of another comment, that the judgements of the Court did not reflect reasons for decisions as much as the "commitments and proclivities of its members" (ASSAL;1984;p435). This applied not only to decisions on substantive issues, but also to issues of procedure. This could be seen in National Union of Printers and Allied Workers v Vervoerdienste and Phooko v Atlantis Diesel, both 1985 cases in which respondents challenged the validity of the referral of their dispute to an Industrial Council. In the former, one member of the Court decided that it was not for the Court to enter into the validity of the referral viz. whether sending an application to the Council constituted referral. In the latter the Court held that this did not constitute valid referral and therefore dismissed the application.

Possibly the most important inconsistency relating to *status quo* orders was the nature of the test to be applied in deciding whether or not to grant the order. The predominant test applied in the period under review was the interim interdict test, discussed below. However, this test was not consistently applied (De Kock; 1988;pp 598H-600A). In some cases (eg. Bleazard; Van Zyl v O'Okiep; Larcombe v Natal Nylon Industries), the Court applied this test. In others it applied a test based on the flexible exercise of its discretion (NUM v Unisel Gold Mines).

The result was to leave the fate of predominantly worker applicants dependent upon the inclination of the Court for one test or another. For workers, the determination of issues urgent enough to require seeking *status quo* relief was dependent upon the manipulation of what was to them an abstract set of legal principles, which was complex and removed from the reality of their situation, rather than on the straightforward determination of whether a particular right (ie to reinstatement) existed in the circumstances or not.

3.3. The encroachment of the common law on Section 43 Orders

The temporary nature of *status quo* orders led the Court to apply to *status quo* orders, the same test that was applied to the granting of interim interdicts by the Supreme Court (Bleazard v Argus Printing and Publishing Co ; Matshoba v Fry's Metals; MAWU v Stobar Reinforcing). This meant that the applicant had to establish firstly, either the existence of a clear right, or that he would

suffer irreparable harm if the infringement did not cease; secondly, that an actual or threatened infringement of that right existed; and thirdly that there was no other remedy available. This approach justifiably came under fire (eg Pretorius 1983 and Cameron 1987).

The criticisms largely related to the fact that the application of the test reflected an insufficient appreciation by the Court of the distinction between itself and the law which it administered on the one hand, and the common law courts and the common law on the other. By conflating the two in the application of the Act, the Court in various ways not only defeated the institutionalizing function of the Act and of the Court itself, but it misinterpreted actual sections of the legislation (Cameron; 1987 and Pretorius; 1983). The point which I want to extract from these cogent arguments, is that overall, the application of the common law test made S43 relief far more difficult for workers and unions to obtain, and often deprived them of relief altogether.

Firstly, the analogy between an interim interdict and a *status quo* order was a false one. The common law and its procedures and remedies theoretically disregarded any policy or other considerations extraneous to the law itself. It granted remedies to parties based on their legal rights (eg. to dismiss or evict workers), regardless of the consequences. The provisions of the LRA generally were meant to facilitate and induce the settlement of industrial disputes through certain procedures. The provisions of Sec.43 were meant to prevent any unilateral action by either party, including the exercise of legal rights, until the statutory dispute procedures were exhausted. A party did not approach the Industrial Court, as it did a court of law, on the basis of the legal situation obtaining. It alleged that the *status quo* should obtain, regardless of who had what legal right, until a settlement could be reached through the procedures laid down. To expect a party to prove a clear legal right, was therefore incorrect. As Pretorius (1983;p175-6) contended, an applicant in Sec.43 proceedings could conceivably even concede that the respondent acted in terms of the latter's legal rights (1983; p176) ie that the former had no legal right.

Secondly, the requirement that the applicant establish a clear legal right meant that Sec.43 proceedings offered no advantages to applicants over the common law. An applicant who could not establish a clear legal right would not get an interim interdict. An applicant who could not establish a clear legal right would not get a *status quo* order. Since, as has been pointed out, an applicant for a *status quo* order could well have been seeking to prevent the unilateral exercise of a legal right by the respondent, it followed that it would have been extremely difficult for a worker, for example, to show that he had a clear legal right, in the face of his employer's unilateral but lawful exercise of the latter's rights to dismiss or evict the former. If alternatively, the applicant had to show that he would suffer irreparable harm, he could similarly face extreme

difficulties in proving this (Cameron; 1987;pp195-6).

Thirdly, the Supreme Court evaluated the applicant's prospects of success in the main action, in exercising its discretion to grant or refuse an interim interdict ie it inquired into the merits of the applicant's case. This could not be applied to Sec.43 proceedings, for a range of reasons canvassed by Pretorius and others:

- (1) In Sec.43 proceedings there were no final proceedings at Court, except in the case of alleged unfair labour practices (ASSAL; 1983; pp364-5) and even then the matter could have been settled before coming to court. The purpose of S43 was not to hold the *status quo* until a final court decision, but to hold it until final settlement of the issue, *inter alia* through conciliation proceedings. The essential purpose of the Act, and of the section, was to promote such conciliation.
- (2) To translate "prospects of success" into "prospects of conciliation", it has been pointed out (ibid), allowed one party to defeat the application by alleging his own intransigence.
- (3) Where conciliation was dependent on the establishment of a CB by the Minister, the applicant first had to show that a CB would be established. Given the fact that the Minister had a discretion to establish a CB (above), this was impossible for the applicant to show (Pretorius adduced various arguments to show that this requirement could not have been correct in terms of the framing of the legislation itself (1983;p179)).
- (4) It was nigh on impossible for an applicant to show reasonable prospects for conciliation, because of the host of factors which would have influenced such prospects, the range of settlements available, etc. many outside his knowledge.
- (5) Where a *status quo* order was sought pending an unfair labour practice determination by the court, the applicant had to show, and the Court inquire into, issues of fairness appropriate only in the final determination, which might never have arisen.

The application of this test therefore placed a heavy burden of proof on applicants, who, it has been pointed out, were largely unions and workers. Criticisms of this test (eg.Pretorius; 1983) led the Court to adopt other tests (above). The interim interdict test however, was not eradicated. Instead, applicants had the added burden of uncertainty regarding the test which the Court would apply, the proofs they would have to adduce depending upon which test was used, and the outcome of applying various tests.

3.4. Section 43 as an Urgent Remedy.

One of the main aims of Sec.43 in particular, was to grant speedy interim relief to workers and unions, thus motivating them to use the statutorily-created dispute-resolution machinery. This incentive was removed if the consequence of using the machinery was that an unfairly dismissed worker, for example, had to wait without any income for the machinery to take its course. Sec.43 reflected urgency in two ways: in that applications had to be brought within 30 days of notice of the action which caused the dispute, or of the action itself in the absence of notice; and in the fact that the order only lasted for 90 days.

Yet, Cameron pointed out, on average, 103 days passed between the hearing of a Sec.43 order, and the event which led to the application for the order. This was attributable to two main causes: the delays occasioned by lawyers who fitted matters in at their own convenience, especially if counsel was used; and the delays which occurred under certain presiding officers. The average time from hearing to decision was 25 days and one officer took twice the average time and far longer than any one else (1987; p215 and footnote).

4. **Conclusion: The Effect of the Court's Deficiencies on the New Unions**

The new unions did not, in their criticism of the new dispensation, focus on the Court or mention its defects as the reason why they simply ignored the Court for the first years of its existence. Once they started to use the Court, there were indications that they were aware of its structural deficiencies and the limitations which these placed on their ability to use it effectively [eg. Vivien Mtwla, a leading trade unionist cited by O'Regan (1989;p506) and the criticisms of interviewees like Marie (interview; 1991)]. The criticisms raised by lawyers cited in this chapter, many of whom were closely linked to the new unions, must also have increased the unions' awareness of the problems posed for them in using the new Court.

As table 1 reflects, this awareness did not deter the new unions from using the Court after 1982/3. In fact, their use of the Court virtually doubled each year thereafter. This indicated that the features which the Wiehahn Commission saw as necessary if the Court were to attract unions to it, were largely peripheral to the fulfilment of that aim.

However, contradictorily, the very *absence* from the Court of those features, contributed to the development of legalism. This was because the problems involved in using the Court necessitated the skills of lawyers to manipulate the intricacies of the law and the Court. The objective

interests of lawyers lay in thrusting the unions towards greater use of the Courts and some of them displayed an honest belief that the interests of the unions could best be served by using the law and the Courts to an ever greater extent (eg. Brand; 1991;interview).

It has also been shown that the structural problems of the Court inhibited the extent to which unions could use it and the new labour law to advance their members' interests. *Inter alia*, as the case law shows, legal technicalities could defeat unions or workers without the real issues even being raised. Also, certain problems such as the composition of the Court and the absence of precedent diminished any perceived potential for turning particular victories for specific parties into general rights for workers.

In addition, the adverse effects of the problems surrounding the Court, diminished or rendered worthless the outcome of legal proceedings. The structural problems which dogged the Court debilitated unions who sought to use it, by wasting their time and resources, and frustrating and/or demoralizing members, thus contributing to the overall aim of weakening the new unions.

CHAPTER 6: THE INDUSTRIAL COURT, THE UNIONS AND LEGALISM.

1. Introduction

The aim of this chapter is to examine some aspects of the post-1979 labour law and its implementation by the Industrial Court. The central argument is that through its implementation of the provisions of the Industrial Conciliation Act (IC Act) - later renamed the Labour Relations Act (LRA) - particularly the provisions of Sections 43 and 46, the Court contributed to the development of legalism in the new union movement, and to the fulfilment of the overall aim of the state of winning the new unions to the "free enterprise system". It is also argued that the way in which the Court sought to fulfil its projected role was beset with contradictions which to some extent hampered its ability to fulfil that role, but did not ultimately prevent it from doing so. It is further argued that the new unions, despite awareness of the limitations of pursuing their aims through the Court, nonetheless increasingly did so and that this indicated that there were factors beyond the impact of the Courts which influenced them to do so.

2. The Theoretical Perspective Informing The New Dispensation and the Court's Decisions

Before examining the way in which the Court implemented its powers, it is perhaps necessary to examine the philosophy underpinning the new dispensation - and informing the Court's decisions.

The philosophical position underlying the new dispensation was generally accepted as being a pluralist one (Jordaan in Rycroft and Jordaan; 1992;p120). The Wiehahn Commission Report was shot through with the language of pluralism. *Inter alia* , the thrust of the report, and of the new dispensation to which it gave birth, was the acceptance of the legitimacy of the role of the new unions and the institutionalization of conflict, creating respect for law and order amongst unions and workers and so forth (Chapter 2). The purpose of the brief exposition which follows is neither to analyse pluralism in detail, nor to provide a comprehensive critique of it. It is merely to show the implications for encouraging legalism (and fulfilling the broader purpose of the new dispensation) which followed from the adoption by the Court of a pluralist perspective.

2.1 Pluralism as Encouragement of Legalism

Proponents of the pluralist approach to industrial relations take as their starting point the acceptance of conflict as inherent in the labour relationship. Thus it is argued that:

"The conflict between capital and labour is inherent in an industrial society and therefore in the labour relationship. Conflicts of interest are inevitable in all societies." (Davies and Freedland;1983;p28).

Pluralism encompasses a recognition that trade unions have a legitimate role to play in capitalist society generally and specifically in industrial relations (Fox;1974;p256). It encompasses a recognition that employers and workers/trade unions have legitimate interests, which may conflict.

This conflict, it is further argued, must be regulated by rules. Thus

"There are rules for their adjustment. There can be no rules for their elimination..... There must be rules designed to promote negotiation, to promote agreement, and to promote its observance, and there must be rules designed to regulate the use of such social pressure as must be available on both sides as weapons in the conflict" (Davies and Freedland;1983;p28).

In other words, the conflict needs to be institutionalized. This takes place primarily through collective bargaining (Fox;1974;p257) within the broad framework of consensus.

Pluralism connotes "collective *laissez-faire*" ie legal abstentionism - that the state and its various instruments abstain from intervening in the self-regulation of their relationship by labour and capital.

"The state nevertheless retained a critical if residual role. It intervened where there was a serious disequilibrium between the autonomous forces of management and unions." (Lewis in Wedderburn et al; 1983; 114).

Thus the role of the state, the law and the courts emerges as one of ensuring "that the rules according to which the process of collective bargaining is conducted should be the same for both (employers and employees)" (Jordaan in Rycroft and Jordaan; 1992;p125). Other than that, "the processes of the State - the courts and administrative tribunals - should keep out of industrial relations" (ibid;p121). The role of the law is simply to

"intervene as far as necessary to ensure the smooth operation of the process of collective bargaining, so that its outcome can be determined according to the relative economic strength of the parties" (ibid;p126).

It is therefore arguable that, despite the emphasis on voluntarism in classical pluralism, the adoption of a pluralist approach to industrial relations implies a thrust in the direction of legalism: that unions will be encouraged, at least to some extent, to pursue their aims within the parameters of the law and through the institutions and procedures of the legal system. It encourages a belief

by trade unions and workers that a "level playing field" between them and employers can be created and maintained by the law and the courts. Furthermore, Fox points out that the adoption of pluralism obliges parties to "obey the law and respect the integrity of the current system" (1974;p273)

According to Jordaan (in Rycroft and Jordaan;1992;pp125-9) the application of a pluralism in South African industrial relations should require that the parties are left to settle the substance of their relationship through the collective bargaining process. The law should ensure that equilibrium is maintained, by ensuring that the rules of the game are established and adhered to through securing freedom of association, imposing a duty to bargain, providing protection from dismissal for striking and providing for legally enforceable collective agreements. The law and the courts should abstain from intervening in the outcome of the interaction of employers and workers/unions (also Cameron et al; 1989;p100).

It will be shown in what follows that the adoption of this role by the Court in itself promoted legalism, by assisting in the creation of a power balance illusion, an illusion of a legal system in which "all the principal interests" of society competed equally within the law for the rewards of the system and thus helped to legitimate the system. In other words, it fostered legalism which helped to legitimate the system.

Moreover, the "voluntarist" aspect of pluralism, in terms of which the intervention of the law and the courts is limited to "process" and does not encompass "substance" (Jordaan; Rycroft and Jordaan;1992;p126) whilst heavily advocated by leading proponents of pluralism, such as Kahn-Freund (Lewis in Wedderburn et al; 1983; p117) has in recent years been called into question (ibid) with the move away from voluntarism in favour of greater legal regulation of industrial relations (or "juridification") in industrialized countries like Britain (ibid;pp 115-117). This has meant greater intervention by the law and the courts in the substance of the industrial relationship.

In the South African context, the Wiehahn Commission's conceptualization of the Industrial Court was marked by a departure from classical pluralism as explained by Kahn-Freund in this important respect - its approach to voluntarism. As Cameron et al (1989;p98) argue, "the industrial court was created to play an intrusive role in labour and employment relations". The Court was not merely to assist in establishing and securing adherence to the "rules of the game". It was also to balance the interests of the respective parties. Such an interventionist role, if played by the Court, would be a further encouragement of legalism, since workers and trade unions would be urged seek the Court's assistance in settling matters of substance in disputes with their

employers; the Court would not just be required to ensure that the "rules of the game" were adhered to.

2.2. Pluralism and the Acceptance of the Existing Political-Economic System

The pluralist position, according to Fox, is based on certain assumptions. Firstly, it assumes that there is a broad framework of consensus between the respective parties. This encompasses a belief that the respective parties

"....will agree... on the need for 'orderly' procedures, perceived by all parties as expeditious, 'fair' and appropriate for their location" (my emphasis) (Fox; 1974;p271).

Equally importantly, this consensus concerns, *inter alia* the "need to keep the industry prosperous and the need to co-operate on many issues" (Fox;1974;p259 - also per Lord Wright cited in Wedderburn et al; 1983;p40). Jordaan argues that there is an assumption that compromise is possible between management and labour, but that "compromise is obviously only possible if demands are kept at a level which the other side finds sufficiently tolerable to enable collaboration to continue. Demands must, ...be kept at a 'reasonable' level" (1992;p123). This, he argues, is a weakness of pluralism, because of the lack of clarity as to how and by whom this "reasonableness" is to be determined. It creates, he argues, a

"temptation.....for one of the parties to invoke the assistance of the law.....in a confrontation which should be resolved through negotiation by the autonomous collective forces of management and labour or, in the last resort, by a trial of economic strength." (ibid;p124).

In other words, it fosters legalism - a resort to the law and courts, on issues which should be fought out by the parties themselves. It is also plausible to argue that, once this temptation is succumbed to, a further temptation arise: to accept that what the courts and the law determine is fair, is in fact so. In other words, to accept the values underpinning a decision as to what is fair between the parties.

Secondly, pluralism assumes the existence of a balance of power between workers (united in trade unions) and employers, a balance which is achieved and maintained through collective bargaining (Fox;p265 and p270). Pluralists argue that they do not "necessarily postulate equality in the economic position of the parties" (Jordaan in Rycroft and Jordaan; 1992;p 124) but that the equilibrium consists in equal application of the rules of the game.

"In other words, the assumption is that the parties are subject to the same rules and that their economic powers, although disparate, are subject to the same, or at least comparable, constraints" (Fox)

The role of the state is to maintain the assumed balance power between the respective parties to the conflict (Fox;p270). This role (which is fulfilled *inter alia* through the institutions and procedures it creates) is therefore one of "abstention and neutrality" (Lewis;1983;p115). Again it may plausibly be contended that this fosters faith in the law, the courts and other institutions of the state - and also a belief in the justice of the result of seeking the assistance of the state.

It is the questionable nature of these assumptions as well as the ideological impact of pluralism in legitimating the inherent inequalities in capitalist society, that has given rise to criticism. Lewis points out that the radical critique of pluralism:

"....contrasted the postulate that union organization and collective bargaining produce a rough equilibrium between capital and labour with the persistence of major inequalities of wealth and power. It criticized the supposed degree of consensus in industrial relations and wider society as a denial of fundamental social and economic conflict, It insisted that ultimately the state in practice was not a neutral arbiter." (Lewis;ibid;p117).

Pluralism emphasizes "human values" which give workers "a rationale for believing in the existing enterprise system" (Fox;1974;p273). Pluralism, according to Fox creates a "power balance illusion" which

"...rests on the continuing acceptance by the less favoured of social institutions and principles which support wealth and privilege and which the wealthy and privileged would exert their power to defend if that acceptance were to pass into attempts at repudiation. But the illusion itself contributes towards acceptance, for by concealing gross disparities of power it fosters belief that all the principal interests, at least of society compete fairly for its rewards, thereby helping to legitimate the system" (ibid;p280).

Pluralism therefore legitimates the existing economic system and creates the belief that the interests of all parties, however conflicting, can be addressed "fairly" within that system. It also implies an encouragement of the ideological framework informing pluralism: the capitalist system.

In the South African context, one of the general aims of the new dispensation was to legitimate the capitalist system in the eyes of the new unions and their members (WCR.Pt.1.para.1.19.4). Given the centrality of the Court to the fulfilment of the aims of the new dispensation, it is not far-fetched to contend that the Court was also to play a role in promoting the capitalist system and its values which underpinned the new dispensation.

The WCR and the state saw the Court as fulfilling its role not only through the features which it displayed (previous chapter) but through its role in contributing to the development of fair employment practices (WCR.pt1.; para.4.28.6). The Wiehahn Commission accepted that the notion of "fairness" was vague (Pt.5.para.4.127.17). It acknowledged that determining what was "fair" in the employment context appeared to present the Court with some difficulty in giving a

uniform and readily ascertainable meaning to the concept, in its implementation and shaping of the law regarding what was "fair" and "unfair" between employers and workers or trade unions. It acknowledged also that the determination of what was fair in employment practices involved "an element of subjectivity on the part of the adjudicator" (WCR pt5;para4.127.17).

The parameters within which "fairness" should be determined, set by the Wiehahn Commission, again revealed its adherence to pluralism with its emphasis on balancing of the interests of the respective parties within a capitalist framework (Fox;1974; pp264,270,p280). The Commission argued that the Court should not be led "into a wilderness of philosophical considerations" (WCR pt5;para4.127.17). To determine the meaning of fairness, the Court "should take into account the "sociological, economic, psychological, anthropological and other extra-legal factors that play a role in the labour situation" (ibid;para.4.35.14). Given the intention of the Commission to promote capitalist values through the new dispensation (above), there can be little doubt that one of those factors to be taken into account was that the values informing what was fair should be those espoused by the capitalist system, which was what the Court accepted (below).

More specifically, the WCR proposed that the Court should determine fairness by having regard for the "legitimate interests" of all parties:

"....from the employer's side, all considerations affecting the growth and profitability of the business; production and productivity; the protection of markets, property, goodwill and a positive public image; and from the employee's side their social and moral welfare; physical well-being; economic and job security; job advancement; freedom of association and bargaining rights" (ibid;para4.127.19)

The Commission's intention was therefore that the Court should adopt a position in relation to "fairness" which would create the belief amongst the new unions that the aim of the new dispensation and the Court as one of the institutions of the new dispensation, was to see that they and their members were treated fairly by balancing their interests against those of employers. It was therefore to create the belief that the Court and the law were neutral in the determination of fairness.

It is not just an exercise in deductive logic to conclude that a Court operating from a pluralist perspective would automatically serve the wider ideological purpose of disguising the real inequalities in society and securing the acquiescence of workers and unions in this. The architects of the Court themselves foresaw that it would play an interventionist role, at variance with classical pluralism, which would allow it to fulfil a broader ideological function. The extent to which the Court sought to do this will be dealt with further on in this chapter. It will be shown that, to the extent that the Court intervened beyond just ensuring that the game was played by the

rules, it also more directly supported the system of "wealth and privilege" (Fox;1974;p280) and therefore played a more far-reaching ideological role. It has in fact encouraged and enjoined workers and unions which come before it to accept the values of the system in which the Court and the law which it implements, operate.

3. Winning Credibility for the Court and the Law.

The Industrial Court, in the period under review, particularly in the first years after being given power to issue status quo orders, used both S43 and S46 to strike down certain conduct of employers. Despite the fact that the absence of precedent in the Court meant that such decisions did not create incontrovertible rights for workers and unions, they did create an acceptance on the part of employers that certain conduct towards workers was not going to be tolerated by the Court. The Court therefore created the impression *inter alia* amongst unions and their members, that the law could be successfully used to pursue their aims. In this way, it contributed to the development of legalism.

3.1. The Provisions of S43 and S46

Section 43 allowed the Industrial Court to grant relief by restoring the status quo as it existed before the cause of the main dispute arose, until the settlement of that dispute. The maximum duration of a status quo order was 90 days, subject to the discretion of the Court to extend it. The Court could therefore order temporary reinstatement of dismissed employees, restoration of conditions of employment which had been changed or were about to be changed, or that the respondent refrain from engaging in an alleged unfair labour practice pending the final settlement of the dispute (De Kock;1988;p597).

The main dispute had to be one concerning:

- (a) the suspension or termination of the employment of an employee of employees, or a proposal to do so;or
- (b) the change or proposed change in terms or conditions of employment of an employee or employees (except to give effect to any relevant law or wage regulating measure); or
- (c) an alleged unfair labour practice

Section 43 therefore allowed unilateral action by one of the parties to a dispute to be reversed temporarily to enable conciliation to take place via the statutorily provided machinery. The order therefore only obtained:

- (a) until the settlement of the dispute by an industrial council or conciliation board; or
- (b) until determination of the dispute by an arbitration award or an Industrial Court determination (in those cases where the dispute was referred to arbitration or the Industrial Court); or
- (c) until the failure by an industrial council or conciliation board to settle the dispute (and the matter was not to be referred to an arbitrator, umpire or the Industrial Court); or (d) until a period of fourteen days has expired from the date of the Minister's decision not to appoint a conciliation board. (Section 43(6) of the LRA)

The remedy was open to any party who referred the dispute to an industrial council or applied (to the Minister) for the establishment of a conciliation board to settle the dispute. It was therefore equally available to employer and employee parties. The objective of S43 was clearly in line with that of the LRA: to promote bargaining and conciliation by discouraging unilateral action which might or did endanger industrial peace.

Quite independently of S43, S46(9) empowered the Court to make a final determination that certain labour practices which were brought before it were unfair. The methods of approaching the Court in unfair labour practice determinations were dealt with in the previous chapter. Suffice it to reiterate here that the Court could not be approached directly for an unfair labour practice determination, save in exceptional circumstances. The Act did not lay down who had to make the referral to the Court, but the Court itself held that the Minister, the industrial council concerned, or one or more of the parties could refer the matter to it (De Kock;1988;p620H).

The nature and content of an unfair labour practice determination was not stated in the legislation (De Kock;1988;p620M). However, the determinations of the Court did not amount to mere declarations that particular practices were unfair, but encompassed orders aimed at redressing the situation (De Kock;1988;p620N). Determinations by the Court which amounted to both declarations that the practices in question were unfair (a power specifically given to the Court in terms of S46) and orders to discontinue the practices (a power not specifically granted by S46) went unchallenged or were upheld in the Supreme Court (ibid). The Supreme Court also addressed the issue directly by finding that the Industrial Court was not restricted to simply declaring a particular practice unfair, but had the power to issue an order to redress the situation (Trident Steel (Pty) Ltd v John, N.O. and others (1987)).

The notion of an "unfair labour practice" thus appeared in the LRA in two contexts. A party could approach the Industrial Court for a (temporary) status quo order on the basis of an alleged unfair labour practice (Sec.43), or the Court could be approached for a final determination that such a practice existed (regardless of whether or not a status quo order had previously been applied for), and for final relief accordingly (Sec. 46(9)).

The notion of an "unfair labour practice" was an entirely new one in South Africa, introduced for the first time in 1979. A great deal of leeway was afforded the Court in determining its meaning, by the wide formulation of the LRA. In framing this concept, the legislature left it open to the Industrial Court to determine its content. At first it was defined very widely as:

"any labour practice which in the opinion of the industrial court is an unfair labour practice".

Subsequently, the Industrial Conciliation Amendment Act 95/1980 Sec 1 amended it to read:

"(a) any labour practice or any change in any labour practice other than a strike or lockout or any action contemplated in s66 (1) which has or may have the effect that-

(i) any employee or class of employees is or may be unfairly affected or that his or their employment opportunities, work security or physical, economic, moral or social welfare is or may be prejudiced or jeopardized thereby;

(ii) the business of any employer or class of employer is or may be unfairly affected or disrupted thereby;

(iii) labour unrest is or may be created or promoted thereby;

(iv) the relationship between employer and employee is or may be detrimentally affected thereby; or

(b) any other labour practice or any other change in any labour practice which has or may have an effect which is similar or related to any effect mentioned in paragraph (a)"

It was predominantly in terms of the status quo and unfair labour practice powers of the Court that the new unions sought to redress the gross iniquities of the South African industrial relations system. Employers in South Africa were, until the eighties, given to treating black employees with complete contempt. This was supported by the common law which allowed employers to dismiss workers or alter their conditions of employment at will, provided that they gave notice thereof. Their appalling treatment of black workers was broadly supported by state policy which encouraged this and backed employers by allowing them to deploy the police force and use the security and pass laws against workers who protested against unfair treatment. The new dispensation signalled a change in policy: that the actions of employers which were seen as causing labour unrest would have to be halted. S43 and S46 were the primary instruments used by the Industrial Court to achieve this.

3.2. The Implementation of S43 and S46 to Extend Rights to Workers and Trade Unions.

The Industrial Court wielded S43 and S46 to effect a number of changes in industrial relations. What follows below are some examples of these.

3.2.1. Unfair dismissals

In the area of non-strike related dismissals the Court in a series of cases insisted that employers were not entitled to dismiss workers at will simply because their actions were lawful in terms of the common law. Employers had to justify such action. Failure by employers to justify dismissals on the grounds that they were substantively fair, and to show that workers had been granted a right to a hearing resulted in the Court reinstating workers temporarily in terms of S43 to allow for conciliation to take place.

What substantive fairness amounted to will be dealt with later on in this chapter. As far as procedure was concerned, several early cases (eg. MAWU v Stobar Reinforcing (Pty) Ltd (1983); MAWU v Barlows Manufacturing Co Ltd (1983); Matshoba v Fry's Metals (1983); Wahl v AECL Ltd (1983)) established that workers were entitled to a hearing before being dismissed. This right was confirmed in subsequent cases throughout the period under review (eg. NUM v Driefontein Consolidated Mines (1984); Fihla v Pest Control (1984); NAAWU v Pretoria Precision Castings (1985); SA Laundry, Dry Cleaning, Dyeing and Allied Workers Union v Advance Laundries (1985); Robbertze v Matthew Rustenberg Refineries (Wadeville) (1986); Mahlangu v CIM Deltak (1986); TGWU v S Bothma and Son Transport (1987)). In BCAWU and Another v E. Rogers and C Buchel (1987) the Court went so far as to state that a pre-dismissal hearing was a right of workers and a "principle of workplace justice" (at p169).

Initially the Court shied away from establishing guidelines regarding the content of the right to a hearing. Thus it stated in Stobar that the content of the right would not be inflexible and mechanically enforced. In NUM v Driefontein it held that it was beyond the competence of the Court and would amount to blatant legislation for it to lay down rules for an employer to follow in dismissing a worker. In Pretoria Precision Castings it held that a hearing could constitute as little as a series of questions and answers, as long as the procedure followed was fair and equitable.

Then in the Robbertze case, the Court began to set out the content of the right to a hearing: that the worker should be informed of the charge against him and be given an opportunity to state his

version, and the decision maker act in good faith and discharge his duties honestly and impartially. This was expanded upon in Advance Laundries. Finally in Mahlangu the Court established that the right to a hearing included the right to: challenge statements against the workers' credibility, to know the nature of the offence and the relevant part of the charge, adequate notice, to have representation and an interpreter, to call witnesses, to have her previous record considered, to be advised of the penalty and the finding and to appeal. These basic principles were confirmed in later cases eg. Bassett v Servistar (1987).

3.2.2. Retrenchment (Redundancy).

The Court used its unfair labour practice jurisdiction to lay down guidelines which had to be followed in retrenchment situations, and its status quo jurisdiction to reinstate workers retrenched in contravention of those guidelines.

In the landmark case of UAMAWU v Fodens (1983), it found, *inter alia* that it was an unfair labour practice for an employer to retrench workers without explaining why the generally accepted principles applicable to retrenchments had not been followed. The Court then proceeded to lay down what those guidelines were, having regard to the general principles laid down in English case law. These included:

"proper prior warning of proposed retrenchments; fair application of agreed retrenchment selection criteria; prior consultation with representative trade unions; adequate steps to look for alternative employment; and first in last out" (at 230).

This was followed in 1984 by Shezi and Others v Consolidated Frame Cotton Corporation; Nxumalo and Others v Consolidated Frame Cotton Corporation and Zuke and Others v Consolidated Frame Cotton Corporation, in which the Court granted reinstatement orders in terms of S43 because the employers had not followed fair procedures for retrenchment.

3.2.3. Freedom of association

The Court in particular circumstances used its S43 and S46 powers to support freedom of association or various aspects thereof. In the Fodens case, for example, the employer was alleged to have, *inter alia*, been abusive in dealing with union officials, victimized employees who had joined the union, and refused to bargain with the union. The Industrial Court referred to ILO Convention No.87 of 1948, in finding that these were unfair labour practices, and directed the employer not to interfere with the freedom of association of the employees.

Before 1982, the Court held that it had no jurisdiction in respect of the victimization of workers for trade union membership or activities (MAWU v A. Mauchle t/a Precision Tools). Such victimization was an offence in terms of the Act and the Court had no jurisdiction in respect of offences. The Act was amended in 1982 to allow for victimization to be regarded as an unfair labour practice. This opened the way for the Court to find that the victimization of workers for trade union membership was an unfair labour practice, as it did, for example in Fodens.

Furthermore, it on occasion upheld the right of a trade union to have reasonable access to the employer's premises for the purpose of seeing members (NUTW v Universal Lace and Fabric Mills (1983)). It also exercised its powers in terms of S17 (11)(a) to grant urgent relief to unions seeking access to employers' premises to conduct a strike ballot (FAWU v Clover Dairies (1986)).

3.2.4. Collective bargaining.

For almost the entire period under review (Jordaan in Rycroft and Jordaan; 1992;p 132) the Court was inconsistent in relation to the duty to bargain collectively. (This is dealt with more fully later in this chapter). However, unions were on occasion able to use both its unfair labour practice and its status quo powers to compel employers to bargain. In the course of this, the role of the trade unions was bolstered, as for example in the retrenchment cases above.

In Fodens, for example, the Court held that it was an unfair labour practice for an employer to fail to negotiate in good faith with a representative trade union. In MAWU v Transvaal Pressed Nuts, Bolts and Rivets it held that it might be an unfair labour practice to deliberately breach an agreement which resulted from negotiations. It criticized the failure of employers to disclose information relevant to negotiations (MAWU v Natal Die Casting). Both its unfair labour practice and its status quo powers were used to uphold established bargaining practices and forums (eg. SA Diamond Workers' Unions v The Master Diamond Cutters Association of SA; Bleazard v Argus Printing and Publishing). This attitude was also demonstrated in granting S43 relief to workers in NUM v Marievale, where the employer was berated for its "adamant, negative or uninspired approach during settlement negotiations" (at 149B). Such recalcitrance in employers with regard to collective bargaining was also the reason for the provisional reinstatement of workers in Food Beverage Workers Union of SA v Transvaal Atlas Wholesale Meat Distributors, where the delay by employers in signing a recognition agreement caused a work stoppage.

3.2.5. Other unfair labour practices.

The Court also exercised its S43 and S46 powers to find various other types of conduct by employers unfair. One of the cases which no doubt both considerably improved the quality of working life for black workers, and therefore also earned the Court much respect from workers and unions, was the Fodens case. Workers alleged that their employer had engaged in a total of 37 unfair labour practices. These were grouped by the Court, which found some of the practices mentioned above unfair. In addition, it held that it was unfair to use derogatory language to employees and to refuse to refund unlawful deductions after giving an undertaking to do so.

The Court held it might be unfair to fail to renew a migrant worker's contract where there was a reasonable expectation of renewal and reinstated migrant workers in terms of S43 (eg. Koyini and Others v Strand Box (1983) and Mtshamba v Boland Houtnywerhede (1986). It also held that discrimination on the grounds of race might be an unfair labour practice, as when an employer paid black workers less than other workers doing the same job and there was nothing to justify this eg. a difference in lengths of service (SACWU v Sentrachim (1988).

3.3. The Aim of the Court: Gaining Credibility and Fostering Legalism.

Some lawyers (eg. Thompson;1988;339) hailed the provisions of S43 as being "tailor-made for unions". He argued that:

"This is evident not only from the description of disputes covered by the provision, but because of the more basic fact that it is generally employers who, in exercising control over the organisation of labour and the production process, will be initiating changes to the status quo. In addition,...the section provides for temporary relief pending later conciliation or adjudication,.....and the applicant does not have to discharge an unduly heavy onus in order to win relief" (ibid).

However, others (eg. Pretorius;1983) pointed out that what S43, in particular did, was to "tether the sacred cow" of employer prerogative for a purpose. That purpose, in line with the overall intention of the Act, was to institutionalize the conflict between employers and employees/trade unions. Still others (De Kock;1988;p620I) have pointed out that whilst the Act as a whole held potential for protecting employees, "it would be wrong to characterize it as a welfare statute" (ibid). He argued that the "major premise of the Act is the maintenance of economic stability" (ibid) and its primary purpose is institutionalization.

Pretorius argued that the intention of the legislature (in creating S43) was to discourage unilateral action until statutory measures for a resolution of the dispute could be complied with:

"It thus seeks to promote negotiation and conciliation in the place of, or at least before, the exercise of common-law rights" (1983;p175).

S43 was therefore completely in line with the overall intention of the legislature to "institutionalize and contain the collective bargaining relationship" (ibid; p172), because the parties were required to maintain the *status quo* until the statutory procedures for settling the dispute were exhausted. This, said Pretorius, came about not because of the desire of the state to protect workers, but because of the "collective demands of workers" (ibid). (In this case it would appear that the section 43 provisions were a response to the collective rejection of the Court by workers and unions.) This was also the view, for example, of De Kock (above).

Pretorius and De Kock's views regarding the aims of the Act, and its implementation by the Court, were supported by the NMC. The NMC argued that to secure "a belief in 'order and stability' and 'responsible, disciplined and rational behaviour by workers and employers towards one another' ", workers and employers had to be made to use the law and the courts to pursue their interests. Therefore, the law and the courts had to be perceived as "fair" (RP3/1984;304). The purpose of the legislation was therefore to encourage the development of legalism in the interests of industrial peace and stability. It was with this purpose in mind, rather than the purpose of benefitting workers, that the Court implemented the provisions of the Act, especially S43 and S46.

Thus, for example, the Court's provisional reinstatement of dismissed and retrenched workers in the above cases, was predicated upon arresting unilateral action, not for the sake of protecting workers, but in order to allow collective bargaining to take place (the retrenchment cases for example) or to allow procedures to be followed (as for example in the individual unfair dismissal cases). It was in the interests of institutionalizing conflict between employers and employees/trade unions that the Court:

- ordered employers to reinstate workers and comply with agreed procedures or operate within established forums for collective bargaining and dispute resolution (eg. Bleazard (1983); NUTW v Polyknit (1984))
- enjoined employers to formulate procedures for the settlement of disputes, to make them known to workers and to follow them (eg Koyini and Others v Strand Box (1985))
- formulated procedures to be followed in dismissing workers (unfair dismissal cases above)
- required employers to follow guidelines of international and other bodies before retrenching workers (cases above).

The aim underlying these and other similar decisions was clearly to support collective bargaining

and institutionalized dispute resolution. By making recalcitrant employers follow procedures and operate within accepted structures in dealing with their employees, the Court saw itself as preventing disputes or keeping them within acceptable boundaries in the interests of industrial peace. There was little coming from the Court about the need to provide protection for workers for their own sake.

Whilst erratic in its support for a duty to bargain, or to bargain in good faith (Thompson;1987b), the Court, particularly through the implementation of S43, indicated that the reason for granting such orders, was to prevent industrial unrest by allowing collective bargaining and conciliation through statutory or other established procedures to take place. It asserted in Koyini that had the employer had proper, known procedures and followed them, the industrial unrest might not have occurred.

Underlying the Court's striking down of certain labour practices on the part of employers as being unfair, was the fact that such actions would have disturbed industrial peace. The Fodens case was a key example of this, where the way in which employers treated workers was so bad that workers would inevitably have been forced to strike. The Court also demonstrated this by upholding the dismissal of a manager whose racist treatment of black employees might have led to industrial unrest (Wahl v AECL).

Where industrial unrest could have been avoided, because the dispute was on the point of being resolved when a manager took precipitate action cutting across such negotiations, the Court (in one of few cases granting relief to illegal strikers) castigated employers and reinstated workers. Where employers showed themselves unwilling to bargain with unions, leading to industrial unrest, the Court reinstated legal strikers (NUM v Marievale; MAWU v Natal Die Casting).

Unions and workers undoubtedly benefited from the decisions of the Court. Those decisions changed the face of labour relations in South Africa, in the sense that they made employers tread more carefully in dealing with black workers and unions (see eg. Friedman;1987 pp320-1). Whilst not creating incontrovertible rights for workers and trade unions (previous chapter), the Court's decisions created a general perception that employers were no longer free to fire workers at will, or to treat black workers abominably, or to disregard unions' attempts to bargain with them, or to victimize workers for trade union membership or activities. This was of no mean significance in South Africa and greatly enhanced the credibility of the Court, despite its shortcomings (previous chapter), in the eyes of black workers and their unions.

However, the greater beneficiary of the Court's decisions was not the union movement, but the state (and hence employers as a class - see first part of thesis). The credibility won by the Court for itself and the "new dispensation" in the eyes of workers and unions, helped to promote legalism, in that it helped to convince the new unions and their members that the Court and the law would support them against employers. This was one of the main aims of the "new dispensation" and of the court which it established.

4. Enforcing a Legalistic Approach.

Far more important than confining the activities of *employers* within institutional boundaries, was the objective of confining *unions and their activities* within those boundaries. This was, it has been argued, a key objective of the new dispensation. The Industrial Court's determination to force workers and unions to use the statutory framework of collective bargaining and dispute resolution to achieve their objectives could be seen in its approach to various aspects of strike action and to the role of unions in strike action, and to a lesser extent, to collective bargaining.

4.1. The right to strike

At common law, the collective withholding of their labour by workers was not a crime, but might have consequences in civil law (eg. interdicts; claims for damages; dismissal). Statute law, especially the IC Act, later the LRA, was the means through which the state sought to regulate the common law freedom to withhold labour. It was clear from the WCR which sought to extend to African workers the provisions of the then IC Act, that "regulate" in relation to the right to strike meant "control". The impact of the IC Act on non-African workers and their unions was to control strike activity in which such workers were prone to engage outside the law (eg. the 1922 Mineworkers strike) within the parameters of the law. Extension of that framework to African workers was meant to similarly confine their activities, particularly the kind of strike activity engaged in the seventies, within the parameters of the law.

The IC Act of 1956, as variously amended, made striking a criminal offence (the stick) and then offered protection from criminal sanctions and civil claims for damages (the carrot) if certain conditions were complied with ie if the strike took place after compliance with the procedures prescribed by law. S65 of the Act, made a strike as defined in Sec.1 an offence if certain conditions obtained, including:

- (1) The issue leading to the strike was dealt with in an agreement, arbitration award or determination in terms of the LRA, covering the employer/s and employees concerned

or

- (2) The issue was dealt with in a determination in terms of the Wage Act of 1957 which was less than a year old and binding on the employer/s and employees concerned or
- (3) there was an industrial council to which the matter in dispute had been referred which had not yet reported to the Minister or less than 30 days had passed since the matter was referred to it; an application had been made for a conciliation board (CB) and it had not yet reported its findings to the Minister or less than 30 days had passed since the Minister established the CB ; or the matter had been referred to arbitration, or
- (4) the purpose of the strike was unlawful.

If none of the above conditions obtained, the dispute settlement procedures of the LRA had to be exhausted and certain other requirements fulfilled before the strike would be legal. In that event, no criminal sanctions attached to the strike and S79 protected strikers and strike organizers from actions for damages.

For certain workers, striking was totally prohibited in terms of various statutes. For example, S8G of the Armaments Development and Production Act (57 of 1968) and S26 of the Conditions of Employment (SA Transport Services) Act (16 of 1983) outlawed strikes by workers in the armaments or related industries and in transport services; various statutes prohibited medical personnel and post office employees from striking and S65(1)(c) prevented workers in essential services (set out in S46(1) of the LRA) from striking.

The WCR made no important recommendations regarding the right to strike (NMC; RP 115/1986 p69). It appeared to find South African legislation relating to the right to strike largely in conformity with international standards and therefore above reproach (WCR; Pt 5; p429 and p545). The NMC (ibid) found that South African strike law was not as uncontroversial as it appeared to the Wiehahn Commission, but again, its attention focused largely on the issue of dismissals following a strike.

The Industrial Court had no jurisdiction to determine whether or not a particular strike constituted an offence or to apply criminal sanctions for such offence. Nor did it have jurisdiction in respect of the welter of restrictions on the right to strike which emanated from security and other legislation (See eg. De Kock;1988; pp642L-M).

In terms of the legislation, the Industrial Court had jurisdiction over only one of the "triad of protections" (Cheadle;1987;p244) which determined the extent of the existence of the right to

strike in the period under review. That was the protection against claims for damages arising from a strike (S79 of the LRA). Little use was made of this power in the period under review.

At common law, a strike whether legal or illegal, was a material breach of the contract of employment which entitled an employer to lawfully dismiss a striker (R v Smit). The Act offered strikers no protection from dismissal for striking legally (or illegally). The Act gave the Industrial Court no direct power to protect strikers from dismissal. However, the Court was predominantly called upon to determine the parameters of the right to strike through fashioning protection against dismissal. It was repeatedly approached in the period under review by dismissed strikers and/or their unions to use its status quo and unfair labour practice powers, to overrule the exercise by employers of their common law rights to dismiss striking workers.

4.2. Inducing Legalism: The Industrial Court and Strike-Related Dismissals.

The Court had the discretion to protect strikers by temporarily reinstating them in terms of S43 to allow for collective bargaining or the resolution of the dispute through the statutory mechanisms. It also had the discretion to reinstate strikers in terms of its unfair labour practice jurisdiction (S46).

The Court manipulated S43 and S46 to induce workers and unions to follow the statutory procedures for dispute resolution and to show a general commitment to acting "responsibly within the parameters of the law" (NMC above). In short, it tried to coerce unions to adopt a legalistic approach to dispute resolution. If unions and workers involved in strikes demonstrated these traits, they were rewarded by the strikers being protected against dismissal, for the most part. If they failed to demonstrate these traits, there was little hope of protection from dismissal.

4.2.1. Demanding that workers use the statutory dispute settlement mechanism.

Jordaan (Rycroft and Jordaan;1992;p 218) argues that in considering whether or not to grant protection from dismissal to strikers, the primary consideration for the Court appeared to be whether or not the strike was "legitimate" or "acceptable". This legitimacy was established by considering a range of factors, including the legality of the strike. Like others (eg.De Kock;1987;642S, Cheadle;1987;256; and Cameron *ibid*;pp223-4) he avers that the Court increasingly came to see illegality *per se* as not the only factor relevant to its refusal of relief to strikers. However, like De Kock (*ibid*) he points out, illegality counted strongly against strikers who approached the Court for protection (Jordaan in Rycroft and Jordaan;1992;p219).

A key factor, for the Court, in determining whether or not to protect strikers from dismissal is whether or not their strike was legitimate, was the legality of the strike (Jordaan;ibid). Thus, for example, in MWASA v Argus Printing and Publishing Co. Ltd (1984); Ngobeni v Vetsak (1984); Rikhotso v Transvaal Alloys (1984) PWAWU v Uniply (Pty) Ltd (1985); SACWU v Pharma Natura (1985) the Court refused to grant relief to workers dismissed as a consequence of an illegal strike.

In Ngobeni v Vetsak (1984) the Court severely castigated workers before rejecting their application:

"Notwithstanding the flagrant disregard of the machinery provided by the Act for resolution of any grievances they might have had, and their unlawful action in refusing to return to work, the applicants now seek protection under that very statute which they chose to ignore" (at214).

Even in cases like SACWU v Pharma Natura where the Court indicated that it might protect illegal strikers in certain circumstances, it did not in fact offer that protection, instead confirming that:

"This court has held on more than one occasion that applicants who take the law into their own hands have a slim chance of obtaining the relief sought" (at 17)

To encourage unions to use the statutory dispute resolution machinery, the Court offered protection from dismissal to legal strikers as a "reward" for "good conduct" ie acting within the law (eg. NUM v Marievale Consolidated Mines). In Marievale, for example, it made clear its objectives in granting protection to the strikers:

"....reinstatement in the circumstances of the present case may very well convey to employees intent on embarking on a strike rather to consider making use of the procedure provided by the Act in order to exclude criminality from their proposed actions.

The manner in which the union made use of the provisions of the Act in the present dispute may thus serve as a useful example to other employees on the mines." (at 143C-D)

The Court only protected illegal strikers in very narrow circumstances (Jordaan;1992;p219). These were where the strikers showed a willingness to use the statutory mechanisms, but the legality of the strike was vitiated by technical omissions (MAWU v Natal Die Castings); or where the employer was capricious and obstructed the collective bargaining process (Ntsaba and Ors v EP Textiles (1987)); or when workers had a legitimate fear for their safety (NUM v Driefontein Consolidated (1984); or when strikers did not ignore the procedures of the Act and believed they were acting lawfully and in any event the employer was equally guilty of ignoring procedure (BAWU v Palm Beach Hotel (1988). In other words, the Court would usually only protect illegal strikers where they demonstrated a commitment to using the legal procedures and the employer was the one who upset the institutionalizing intentions of the new dispensation and caused workers

to behave in ways which the dispensation sought to avoid. Thus in MAWU v Natal Die Casting, the Court regarded granting of protection from dismissal to workers whose strike was technically illegal as a reward for having *attempted* to follow the procedures of the Act as far as possible.

The weight of this factor, in establishing the legitimacy of a strike and therefore the eligibility of strikers for protection by the Court, was thus such as to, in reality, act as a bar to relief (Ngobeni v Vetsak; SACWU v Pharma Natura; Rikhotso v Transvaal Alloys; NUTW v Lanatex Weaving Manufacturing Co).

4.2.2. Demanding a general commitment to operating through the legal system, and respect for law and order.

The basis for the argument that illegality *per se* was not the reason for the Court's refusal to protect illegal strikers from dismissal (eg. ASSAL:1984), was the fact that the Court took into account a host of factors (other than legality) in determining whether to protect strikers, (Raad van Mynvakbonde v Die Kamer van Mynwese van SA (1984); NUM v Marievale; MWASA v Argus Printing and Publishing; Rikhotso v Transvaal Alloys(1984); EAWU v Tubecon Africa). The reference by the Court to other factors had two effects.

Firstly, far from *mitigating the illegality* of the strike, those factors on occasion served to *fuel the Court's aversion* for granting relief to illegal strikers. Thus the fact that illegal strikers acted defiantly to induce employers to succumb to their demands, whilst the employer acted "reasonably" gave an added reason to the Court for refusing relief to the strikers and "rewarding" the employer in SACWU.

Secondly, the "other factors" taken into consideration by the Court in fact amounted to *additional requirements* that legal strikers had to fulfil to establish that their strike was legitimate and thus to obtain relief. In Raad van Myanvakbonde v Die Kamer van Mynwese van SA (1984) the Court acknowledged that legal strikers were not unequivocally protected from dismissal in SA law. Instead, their protection would depend on a number of factors:

- "(a)the cause, nature, extent and purpose of the strike;
- (b)the circumstances of the employees;
- (c)the circumstances of the employers;
- (d)the duration of the strike;
- (e)the consequences and result of the strike;
- (f)the purposes of the Labour Relations Act and the principles of collective bargaining;
- (g)the presence or absence of negotiations in good faith;
- (h)the provisions of the relevant contracts of employment, particularly those provisions that deal with the employees' participation in an illegal strike;

(i)the manner in which the employees and employers have conducted themselves during the strike." (361C-I)

Thus whilst the *illegality* of a strike was, except in narrow circumstances, sufficient to render a strike illegitimate and justify a denial of protection to strikers (Jordaan;1992;p219), the *legality* of a strike was not in itself sufficient to ensure its legitimacy and thus secure protection of strikers from dismissal. This became clear in cases like NUM v Marievale and MAWU v Natal Die Castings. Some examples of this will suffice.

In the Marievale case, the Court considered the range of factors mentioned in Raad van Mynvakbonde. However, it was correctly pointed out that what swayed the Court in favour of the workers were those factors which illustrated the commitment of the union to "institutionalization" of disputes (ASSAL;1986;380) and the other objectives of the "new dispensation" such as collective bargaining, orderly conduct, adherence to strike rules, lack of damage to the employer's property, and so on. On the other hand, the employer had clearly demonstrated *its* lack of commitment to the objectives of the "new deal" in his "adamant, negative and uninspired" approach to negotiations (ibid).

Perhaps the most important case in which legal strikers failed to obtain protection from dismissal, because they failed to demonstrate a general commitment to the legal system and its objectives, was MAWU v BTR Sarmcol. Although the Court found that *neither* party had bargained in good faith, it rejected the workers' claim for relief. The grounds on which it did so included: irresponsible conduct by the union and its members, the union's insensitivity to the economic loss occasioned by the strike, the failure of the union to call off the strike to allow for further negotiations, the absence of a warning preceding the strike, and the intimidation of non-strikers.

Taking into account some of those "other factors" eg. the conduct of the parties, led to relief being granted to the Marievale strikers, and being denied to the BTR Sarmcol strikers, though both were engaged in legal strikes. Whilst the former decision displayed the Court's approval of "good behaviour", the latter reflected its abhorrence of disorderly conduct or unlawful conduct in the course of a strike.

In CWIU v Bevaloid, the Court refused relief to legal strikers, because they had not chosen to pursue their aims through the Court. Workers had gone on a legal strike, demanding that their employers reinstate fellow-workers who had been dismissed. They too were dismissed as a result. The Court's reason for refusing them relief was that the original cause of the dispute, viz the first

set of dismissals, was amenable to settlement in ways other than a (legal) strike. As Cameron et al (1989;p104) point:

"...The court decided that the strike in which the individual applicants had engaged was not worthy of protection because of the fact that their demands could have been advanced down an alternative route: the judicial one".

The difference between *wages* as a cause of a strike (Marievale) and *dismissals* (Noristan), was that in the former case the strike was the *last resort* after exhausting the machinery of the Act, in the latter not. Adopting the lengthy procedures of the Act to render the strike legal was not enough to warrant protection from dismissal. Strikers had to show total commitment to using the institutional machinery as far as possible. Thus the degree of institutionalization of the dispute was important, for both legal strikers (Sarmcol) and *a fortiori* for illegal strikers who had to show that all other avenues of redress were closed to them and striking was the only option. As Cameron et al point out, this type of issue

"may be adjudicated in the industrial court, but in the absence of a waiver of the right to resort to industrial action it is inappropriately intrusive of the court to impose the waiver" (1989;p105).

The Court also required that as far as possible, legal strikers show willingness to bargain about the dispute during the strike. Where employers rejected this institutionalizing of the dispute, workers were protected (eg NUM v Marievale). Where it was the workers or union who refused to bargain during the dispute, there was no protection for the strikers.(eg.SAAWU v Nampak (1987). Workers and their unions therefore had to show that the strike was a last resort which they embarked on "only after deadlock had been reached in negotiation" (Jordaan; 1992;p219).

The Court's approach to strikes was therefore one of seeking to compel potential and actual strikers not only to confine their actions within the strict letter of the law, but also to demonstrate a general commitment to the objectives of the very legal system which sought to inhibit their most important weapon as far as possible (See for example Jordaan;1992;p128 on the importance of the right to strike in industrial relations). Striking, whilst recognized as legitimate, was also regarded as an absolutely last resort, which was condoned by the Court (by granting protection from dismissal to strikers) only in limited circumstances. The Court, as shown in the Bevaloid case, would go out of its way to ensure that this situation obtained - as long as an alternative remedy (through the Court) existed, the strike would not be legitimate, even if legal.

4.2.3. Demanding that unions behave "responsibly" and oblige members to respect the law.

The Court was determined to force unions to behave "responsibly" within the parameters of the law and see to it that their members did so too. This came through clearly with regard to one of the other factors which were used to establish the legitimacy of the strike - the manner in which the strike was conducted (Jordaan;Rycroft and Jordaan;1992;pp222-223).

In Natal Die Casting, one of the considerations which led the Court to grant relief to the strikers, was the fact that the unions had engaged in a "fair fight" and had not sought to destroy the employer. In NUM v Marievale, it took into consideration, in granting relief to legal strikers, the fact that the union had been restrained in not calling out its members on other mines. In BTR Sarmcol, despite the legality of the strike, the Court berated the union for acting in ways which the Court deemed irresponsible in the course of the strike (such as not taking action to prevent members from attacking strike-breakers), whilst the employer behaved exceedingly responsibly (in the Court's view). Legality was not sufficient to ensure that the Court would protect the strikers from dismissal.

In MAWU v Siemens(1987), it required that unions should have policed their own and their members' actions, to demonstrate their commitment to acting responsibly within the law:

"The dictates of industrial peace make it imperative that parties to the dispute eschew violence and conduct themselves with dignity and decorum.....the union should therefore have taken steps to protect the rights and safety of non-strikers" (at 552J-553A)

In other words, the Court saw the role of the trade union as being one of controlling its members, and acting in restrained fashion. The presence of such conduct would be rewarded, its absence punished.

Where unions proposed using alternatives to strike action, such as continuing to bargain or attempting to use the statutory dispute settlement machinery, and their members rejected their advice to refrain from strike action, the Court refused to protect such members from dismissal for striking. Thus in Mabuso and Others v D Cooper Corporation (1985) the Court refused relief to illegal strikers. Inter alia, it remarked that:

"The applicants [the strikers] had a remedy under the Act. The trade union correctly advised the workers to return to work, as it [the trade union] would approach the matter in a different manner." (at p478)

What the Court therefore favoured, particularly in strike situations was a bureaucratic relationship

between trade unions and their members - a relationship in terms of which members followed the legal route dictated by union leaders. The point was driven home in the Sarmcol case, where the Court voiced its repugnance for trade union democracy, as practised by the union concerned:

"A disturbing featurewas the form of collective democracy practised by this union. If properly understood, union activity depends solely on the collective will of the members. This has the convenient effect that no individual member can be held responsible or be called to account for his actions or inactions. As effective as such a philosophy might be in also promoting solidarity amongst union members, it would appear to deprive the union of the responsible and strong as well as sustained leadership required in a pending or actual strike situation. The members of this court, given the circumstances of the present case, have some reservations whether this philosophy can properly be entertained or even tolerated by present-day society in this country." (at pp 836-7).

The Court's support for unions, by upholding freedom of association (above) was therefore qualified by what kind of unions it was prepared to support. It was only prepared to support unions which bureaucratically dictated to their members that they should remain within the parameters of the law in the pursuit of their aims. It was only prepared to accept unions which policed their members, especially in a strike situation. This reflected the state's position: the new unions were to be recognized as having legitimate role to play in industrial relations, but they had to be controlled, and in turn had to control their members.

4.2.4. Allowing employers to attack the right to strike.

The Court demonstrated its determination to oblige unions to settle disputes as far as possible without resorting to strike action, particularly illegal strike action, in at least two ways (other than refusing to protect strikers from dismissal): granting interdicts to employers to prevent strikes and allowing employers to victimize strikers through selective dismissal.

In terms of S17 (11) (aA), the Court had the power to determine whether a strike was lawful or not, and to grant an interdict to prevent it in certain circumstances (General Motors of SA v NAAWU; Nasionale Suiwelkoöperasie v FAWU; Mercedes Benz SA v NAAWU; Barlows Manufacturing v MAWU). Usually the Court issued a *rule nisi* calling upon the union to show cause at a later date why a final order should not be granted declaring that a strike was unlawful and that the employer was entitled to dismiss the strikers.

What usually happened was that the preliminary order was granted on the papers, as a matter of urgency. This operated as a temporary restraint until the return day. Whether or not the union could discharge the onus on the return day, the impetus of the strike was arrested until then. The interdict was aimed at preventing employers from suffering loss as a result of alleged proposed

illegal strike action. However, as O'Regan (1988;959) pointed out, the granting of such interdicts was criticized because, *inter alia*, the ordinary principles of civil procedure allowing both parties to be heard were waived.

Secondly, the substantive law relating to interdicts favoured employers and did not take sufficient account of the legitimacy of strike action. The effect of this was seen in the Mercedes Benz and Barlows cases. In both cases the Court granted urgent interdicts to prevent alleged illegal strikes. In both cases the proposed action was not shown on the return day to be illegal. In the latter it was clear that the procedure for granting interim interdicts allowed the employer to restrain proposed strike action, without full disclosure of the facts to the court. On the return day, the Court pointed out that the interim interdict (which had restrained the strike for ten days) was granted *ex parte* (ie without hearing the other party) on the basis of urgency. The applicant employer did not present all the facts to the Court, or else the interdict would not have been granted, because the proposed action was clearly not illegal as had been alleged.

Nonetheless, the Court was not averse to granting employers this relief, thus placing industrial peace above the interests of the trade union, fairness, justice, etc. Clearly the former and not the latter, were its primary concerns.

The Court also allowed employers to employ the tactic of selective re-employment of strikers, in order to break worker solidarity. With few exceptions, it held that selective re-employment of strikers did not constitute an unfair labour practice. It adopted the doubtful (and much criticized) view that the dismissal of all the strikers, and the subsequent re-employment of only some of them were separate actions. It held that if the dismissal was unimpeachable, since the employer's freedom to choose to employ whom he wished to was not constrained by law, there was no unfair labour practice (Ngobeni v Vetsak; SEAWUSA v Trident Steel).

4.3. The Industrial Court and Collective Bargaining

The Court further demonstrated its determination to oblige unions to use the statutory mechanisms as far as possible to achieve their aims, by its approach to collective bargaining. Whilst for most of the period under review, it was ambivalent about imposing a duty upon employers to bargain collectively (Thompson;1987b and Jordaan; 1992;p132)), by 1988 it appeared from cases such as FAWU v Spekenham Supreme that the Court had begun to look favourably upon the imposition of a general duty to bargain (Jordaan in Rycroft and Jordaan;1992;p132).

As the cases in the foregoing section have shown, in the period under review, the Court showed a clear preference for bargaining rather than open conflict in the form of strike action. It required employers to bargain with unions, particularly when refusal to bargain seemed likely to endanger industrial peace. This, according to Jordaan, was in line with the "broad policy objectives" of the Act, in terms of which collective bargaining is seen as necessary "not as an end in itself, but as a means of achieving industrial peace" (1992;p133).

Similarly, the Court used the willingness of a union to negotiate, as one of the factors to be taken into consideration in determining whether to protect strikers from dismissal (NUM v Marievale; MAWU v BTR Sarmcol). Equally, it refused to protect dismissed strikers, not only because the illegality of their strike indicated a rejection of the statutory dispute resolution mechanism, but their failure to bargain over the disputed issue reflected a rejection of negotiation as the preferred way of settling differences. (eg. PWAWU v Uniply; SAAWU v Nampak Products)

It was also keen to protect existing or accepted channels of collective bargaining (eg Bleazard), particularly the existing heavily bureaucratized industrial council system (Jordaan;1992;p132).

In the early eighties, when the strength of the new unions lay at enterprise rather than industry level, those unions fought to get employers to negotiate at plant level rather than at industry level. At industry level, the accepted system of collective bargaining was through the state-created industrial council system which was largely rejected by the new unions (Chapter 4). Faced with unions fighting to establish a legal right to bargain at plant level, the Court refused to uphold such a right in the landmark decision in MAWU v Hart. Whilst not denying the right of unions to bargain at plant level, the Court lent support to the bureaucratic, institutionalized industrial council system. This could be viewed as further endeavour of the Court to compel the new unions, which had largely refused to participate in the industrial council system, to do so. As Thompson pointed out:

"The court broke the deadlock by informing the union that it had to bargain at the council or not at all" (1987b;p4).

Whilst the intention behind the new dispensation was clearly that unions and employers should settle their differences through bargaining (Thompson; *ibid*; pp8-9), the Industrial Court read into that a preference for bargaining through the Industrial Council System. In this way, it attempted to bolster the use of the state-created collective bargaining forums.

5. The Ideological Role of the Industrial Court.

Besides its role in promoting the institutionalisation of conflict, the Court had a broader ideological role. The pluralism of its progenitor, the WCR, was reflected in the meaning which it gave to "fairness" in relation to S43 and S46. Through its interpretation of "fairness" between employers and employees/unions, it sought to fulfil both the specific tasks ascribed to it, and to fulfil the overall aims of the new dispensation.

However, its attempts to fulfil its tasks through its implementation of those sections was beset with contradictions and had potentially contradictory results. Some of those contradictions were inherent in the pluralist approach it adopted, some of them arose out of the way in which the state framed the legislation, some of them arose as a result of the way in which the Court interpreted "fairness".

5.1. Establishing the "Neutrality" of the Law and the Court through "Fairness"

The Court set about fulfilling its tasks, by adopting the pluralist position of the WCR with regard to "fairness". In doing so, it faced numerous problems. Firstly, the definition of "fairness" in the Act was vague. Secondly, its attempt to project the law and itself as "neutral" was contradicted by the specific directions given by the state with regard to its determination of "fairness". Lastly, as a more general level, it revealed the inherent contradictions of the pluralist position viz. the contradiction between the reality of a fundamental conflict of interests between labour and capital and the positing of consensus as the basis of "fairness" nonetheless (Fox;1974;pp274-276).

5.1.1. Attempting to give meaning to "fairness"

"Fairness" was an important concept in the two most important and most frequently used powers of the Court viz. those in terms of S43 and S46. When the legislature introduced it in 1979, it was a novel concept in South African law . The open texture of the definition of fairness in the Act soon led to it becoming a cliché amongst South African legal writers (eg. Cockrell;1986) to assert the nebulous nature of the concept of fairness in the legislation, despite amendments to the original formulation (above). The uncertainty surrounding fairness was reflected in the decisions of the Court (Cockrell;ibid.)

As Cockrell points out, in SADWU v The Master Diamond Cutters of SA (1982) it stated that each case would be determined on its own facts and circumstances. It was inconsistent in the

methods which it used to establish the meaning of the concept. For example, in the above case, the Court used various dictionary definitions such as "unjust" and "unfavourable". These took the matter no further, for the synonyms for "fairness" still allowed the Court to impose its own value judgements, rather than follow objective standards.

Cockrell points out that the Court also attempted to set out various types of conduct which it regarded as unfair, for example in UAMAWU and Others v Fodens (SA)(Pty)Ltd (1983), it was held an unfair labour practice to *inter alia* fail to negotiate with a registered trade union; to interfere with the freedom of association of employees and to use derogatory language to employees.

Thirdly, the Court judged fairness or otherwise in terms of the effect of the practice in question. It therefore found a labour practice unfair if it led to any of the situations mentioned in the Act. For example, in Bleazard v Argus Printing and Publishing Co Ltd (1983) it was held unfair for an employer to refuse to adhere to a particular negotiating forum because this would cause industrial unrest, which was one of the effects the Act sought to prevent. In UAMAWU v Fodens, it held 37 practices of the employer to be unfair because they detrimentally affected the employer/employee relationship. This has proven to be no real guide since, as Cockrell (1986;p86) points out, all practices which have the effects specified in the Act are not unfair.

It therefore seemed impossible to find that the Court attached any specific meaning to the concept of fairness, or was able to lay down guidelines with regard to the meaning of the concept "fairness". Legal commentators decried the uncertainty resulting from the Court's failure to establish principles regarding what constituted fairness. One commentator suggested that it was impossible to discern any *rationes decidendi* underlying the determinations of the Court, but that one should examine each case to detect the "commitments and proclivities of its members" (ASSAL;1984;p435).

5.1.2. Fairness and consensus

However, as Cockrell (1986;p93) correctly goes on to argue, there was "unity in diversity" in the Court's approach to the meaning of substantive fairness. Cockrell cites instances where the Court outlined this consensual basis of "fairness":

" 'Fair treatment is in the *public interest*'

'Subparagraph (iv) is obviously intended to cover the damage or prejudice to the *mutual situation* that exists between employer and employee'

'It is believed that subject to a balanced approach of the dismissal procedure in the true spirit of labour relations it should be possible to maintain a practical

dismissal procedure to the *satisfaction of both parties* in spite of the differences that might exist between first applicant's and respondent's attitudes in respect thereof" (his emphasis) (ibid).

The meaning of fairness in the law was therefore projected by the Court as being free from bias in favour of either employers or workers/trade unions. What was fair was simply determined within the framework which the Court assumed was accepted by both workers/trade unions and employers. The law simply required that both make compromises for their mutual good. In the words of the NMC, the new dispensation and the decisions of the Court reflected:

"... the need for employers and workers to adapt continually to changing circumstances, at the same time displaying a greater degree of sophistication than previously in the handling of labour issues, and not merely seeking personal gain but placing the interests of all the inhabitants of the country first." (RP 81/86; p 82).

Lawyers like Brassey (1987;p13) argued that in its decisions as to what was fair between employers and workers/trade unions, the Court was neutral. He argued that:

"Despite the fears of those who saw the court simply as another capitalist - worse, apartheid - ploy, it has been very even-handed".

He also pointed out that the Court expressed its commitment to neutrality between workers and employers in speeches by its personnel outside the Court (ibid). What the members of the Court said they were determined to be, and what their decisions regarding fairness reflected, was that they were neutral arbiters between labour and capital (ibid). The Court therefore attempted to project itself and the law as neutral, and thus as viable institutions for workers and trade unions to use to attain their objectives.

The state, however, itself to some extent undermined the ability of the Court to project this image, by situating the Court within the Department of Labour (Chapter 5) and by setting out in the Labour Relations Act that in determining "fairness" the Court could take into account relevant information supplied by various state departments and similar authorities (S17(20)). Given the fact that most black workers and trade unions regarded the state and its policies as opposed to their interests (Chapter 2), this provision in the Act undermined the Court's attempts to present the law and itself as "neutral".

Furthermore, the Court itself deemed it important to take into account the political and economic system which prevailed in South Africa in determining fairness. Direct confirmation of this was given in MAWU v Hart where the Court stated that :

"The court has to take judicial notice of the fact that the economic system of South Africa is based essentially on the principles of capitalism" (at p36).

In accepting capitalist values as the framework for establishing the meaning of "fairness", the

Court opened itself up to the criticism which has been directed at pluralism generally. This criticism lies primarily in the fact that consensus is assumed in the face of fundamental conflict of interests between the parties, and in the fact that a balance of power is assumed in the face of its clear absence (Wedderburn, Lewis and Clark; 1983;p117). By determining the meaning of "fairness" within the capitalist framework of values, the Court was exposing its bias in favour of employers (Chapter 1) and that there was no possibility of neutrality.

The notion of the Court as a court of equity impartially adjudicating upon the rights and interests of workers and employers, and the notion of consensus as the basis of "fairness" appeared ludicrous, particularly in the South African situation in the late seventies. The attempt to promote this in the ranks of black workers and their unions in the early eighties appeared to be a Herculean task, given the fact that both the Court and the unfair labour practice provisions were products of clear demonstrations of the absence of such consensus (Chapter 2). Following upon the struggles waged by black workers and their unions in the seventies, which forced the Wiehahn reforms, most of the eighties were characterised by calls for socialism by workers and unions, and by clear demonstrations of the absence of consensus. Workers then did not appear to share the Court's views regarding consensus.

Proposing labour law and industrial relations (to both of which "fairness" was important) as a neutral arena and the Court as a neutral arbiter between (largely black) labour and (largely white) capital, given the experience of black workers and their unions of the law and the Courts before 1979, seemed equally formidable. Especially given the clear class bias of the "unfair labour practice" (above), and the clarity with which the state (in the form of the WC) put forward the capitalist aims of the new dispensation against the (real and perceived) socialist aims of the new unions, the Court's attempt to promote capitalist values through the notion of fairness determined by consensus, seemed to fly in the face of reality.

The task for the Court of developing "fairness" in employment practices and thus presenting itself and the law as "neutral" was therefore beset with difficulty. At base the difficulty lay in the aim of its creators that the Court and the law should appear to be "neutral", yet should also espouse capitalist values. This difficulty was both revealed by and compounded by the Court's clear departure from the WCR's instructions to balance the interests of labour and capital in giving meaning to "fairness".

5.2. Undermining the neutrality of the Court

The Court undermined its own attempts to be perceived as objective by the new unions and their members, by, for example, promoting the economic interests of employers and disregarding the interests of workers in their own economic well-being, job security and collective bargaining, and by promoting the maintenance of employer prerogative and disregarding the interests of workers in job security and their right to bargain collectively.

5.2.1. The economic interests of employers vs the interests of workers.

The partisan position of the Court was demonstrated in several cases, where it failed to find that the dismissal of strikers was unfair, *inter alia* because it regarded their demands or their conduct of the strike as unreasonable because they threatened the economic interests of employers. It completely disregarded the effect of the employer's conduct on the economic well-being or job security of workers, considerations which, according to the WCR, should also have been taken into account.

In Ngobeni v Vetsak, in refusing relief to dismissed strikers, the Court had occasion to make the following comment:

"....one would have expected that the workers, on being informed of the reasons for the refusal to grant an increase (viz. the adverse economic situation) would have been satisfied and returned to their work. Bearing in mind the depressed economic situation and the effects of the drought, there obviously was no change in the economic situation ...the workers could not have expected the company to pay wage increases.....The attitude adopted by the workersseems to the court to be utterly unreasonable....." (at 210 - 211).

The Court showed complete disregard for the sufferings of workers during an economic depression, though there was evidence to show that it was such suffering which had driven the workers to demand wage increases, and ultimately to strike in support of their demand. In its opinion, it was unfair for workers not to place the economic interests of employers above their own.

In MAWU v BTR Sarmcol, the Court refused to find the dismissal of legal strikers unfair, *inter alia*, because in its opinion, workers had been unreasonable by demonstrating insensitivity to the R1 million loss suffered by the company as a result of other industrial action prior to the strike in question. Although it was faced with overwhelming evidence of a lengthy history of mass retrenchments embarked on by the company, resulting in the destabilizing of a once secure workforce (the average worker had been employed for more than seventeen years), the Court

apart from noting this in its summary of the evidence (p836) did not take it into account. It simply blithely overlooked the fact that the loss of a longstanding job must have meant far more to a worker, and the loss of numerous members' jobs far more to the union, than R1 million to a multinational corporation.

Furthermore, the Court disregarded the fact that strikes are meant to cause economic loss to employers. Without this threatened loss, a strike would be purposeless. In therefore requiring that strike action not cause loss to employers, the Court was effectively limiting the right to strike, a right seen by many (cf. Cheadle; 1987; p245 citing the views adopted in various legal systems) as a necessary concomitant of the right to bargain, which in turn was a right which the WCR (above) enjoined the court to take into account in determining fairness.

In non-strike related cases, too, the Court showed itself willing to promote the economic interests of employers above that of workers. For example, in NUTW v Braitex (1987) the Court upheld the right of employers to shut down their businesses purely because they did not consider it economically viable to continue. The economic problems of the firm did not have to be shown - an employer could simply shut down if he wanted to. The Court went on to limit the extent of the workers' right to be consulted and to negotiate in such circumstances:

"The employees.....should not abuse their right to consult and negotiate. It is not acceptable that consultations and negotiations should be prolonged unduly. This could lead to economic disaster for the employer" (at ;;799-800).

Thus once again, the interest of workers in their job security, the economic well-being and collective bargaining, was subsumed under the economic interests of employers, in the Court's determination of what was fair in employment practices.

In cases where the Court did override the economic interests of employers, it did so only because, in its opinion the demands of workers were reasonable and the strikers did not seek to destroy the employer. According to the Court, evidence showed that the employers concerned could well afford increases and their profitability was not endangered by the demands of the strikers (MAWU v Natal Die Casting ; NUM v Marievale). Given the appallingly low wages in the industry concerned (mining) and the extra-ordinarily high profits of employers (according to the evidence the employers in Natal Die Casting were doing better than they had budgeted for) it was not hard for the Court to find that the demands of the workers were reasonable.

In addition, by refusing what the Court regarded as the reasonable demands of workers, particularly workers who were prepared to use the statutory dispute resolution mechanism to achieve their aims, the employers concerned were also endangering the greater interests of

employers as a whole in institutionalization of conflict and in industrial peace. Thus it was not the economic (or any other) interests of the workers which led to the decision that the dismissals were unfair, but what the Court regarded as higher interests than the immediate economic interests of employers, which were in any case, in its opinion, not endangered.

5.2.2. Employer prerogative vs the interests of workers

Another way in which the partisan position of the Court was demonstrated was in its defence of employer prerogative, in particular in its decisions as to what was fair in retrenchment situations and in relation to the right to bargain collectively.

Despite inroads made into employer prerogative by the Court's determinations that for retrenchments to be fair employers had to follow certain procedural guidelines (Shezi v Consolidated Cotton Corp and UAMAWU v Fodens), the Court severely limited the extent to which employer prerogative could be eroded by the rights and interests of workers. In Barsky v SABC (1987) the Court decided that the guidelines in Shezi and Fodens were precisely that: guidelines, not rules of law. They need not be followed regardless of circumstances. Failure by an employer to follow the guidelines was therefore not necessarily unfair. In Masondo and others v Bestform (SA) (1986) the Court refused to find that the failure of an employer to pay severance pay was unfair. It indicated that it would be nice if he did, but it would not impose a duty on him to do so.

In NUTW v Braitex (1987) the Court held that there was a distinction between consultation and negotiation in retrenchment situations. The Court's position was that what was required was *consultation* and that this meant that "advice is given to the employee, leaving the decision-making power of the employer intact". It refused to impose a duty to *negotiate*, which was "joint decision-making, involving bargaining between representatives of workers and representatives of employers".

Thus in determining what was fair in retrenchment situations, the Court placed the protection of employers' interest in the maintenance of their prerogative to conduct their business as they saw fit, or not at all, above the interests of workers in their economic well-being, job security or in collective bargaining.

In determining whether a refusal of an employer to bargain collectively was fair or not, the Court showed marked inconsistency. Two distinct sets of judgements emerged from the Court, one

supporting the view that it was unfair of employers to refuse to bargain and therefore imposing a duty to bargain on employers and the other holding that it was fair to refuse to bargain and refuting such a duty. The former position is illustrated by the Bleazard v Argus Printing and Publishing; UAMAWU v Fodens; NUM v Marievale; MAWU v Natal Die Casting. The latter is illustrated by BCAWUSA v Johnson Tiles; MAWU v Hart.

This inconsistency bewildered labour lawyers who argued that the failure of the Court to impose a duty to bargain on employers by finding that refusal to bargain was unfair, indicated its failure to appreciate the underlying intentions of the legislature to institutionalize the relationship between employers and unions/workers so as to avoid industrial conflict (Thompson;1987b, De Kock;1988;p620R and ASSAL;1988;p367). However, it is arguable that, in determining whether refusal of employers to bargain was fair or not, it was in fact seeking to balance the respective interests of employers.

The Court held that refusal to bargain was unfair when the exercise of employers of their prerogative not to bargain threatened an interest of employers as a class in the institutionalisation of conflict, or in industrial peace, considerations which for the Court outweighed that prerogative. In Bleazard and Fodens, the refusal to bargain by the employers threatened the achievement of the goals of the new dispensation. By refusing to bargain where they had nothing to lose by doing so, employers were threatening to disturb the process of institutionalization at a very delicate stage, just when unions were beginning to enter the system. In Marievale and Natal Die Castings the pursuit by employers of their own interests threatened to upset unions who had shown themselves willing to use the system, at a time when not many unions were doing so. In cases like Food Beverage Workers Union of SA v Transvaal Atlas Wholesale Meat Distributors; Ntsaba and Others v EP Textiles and SACWU v Control Chemicals , the employers concerned upset the industrial peace by their refusal to bargain. The Court therefore supported the duty to bargain by finding that refusal to do so was unfair and it reinstated dismissed employees. In the process of supporting the interests of all employers in institutionalization and industrial peace, it inhibited individual employer prerogative and the unions benefitted, but the latter was not the objective of the Court.

In cases like BCAWUSA v Johnson Tiles and SAAWU v Border Boxes, the Court held that it was not unfair for employers to refuse to bargain and in MAWU v Hart it held that refusal by an employer to bargain with the union at plant level was not unfair. It is arguable that in these cases the Court did not see the exercise by employers of their prerogative not to bargain as posing any threat to any other interest of employers which the Court perceived as being of greater

importance.

As De Kock pointed out (1988;p620R) in Hart the Court refused to impose a duty to bargain, or rather a duty to bargain at plant level, because policy considerations outweighed such a duty. It is submitted that those policy considerations may well have had to do with the fact that the state was trying to promote the bureaucratic industrial council system as the forum for collective bargaining at the time. The new unions, whose strength lay on the factory floor, were trying to compel employers to negotiate at enterprise level. Given that the Court, in considering what was fair, was empowered to take account of state policy (above), such policy no doubt influenced the Court's decision.

Brassey (1987; p151-153) offered some examples of the kind of considerations that caused the Court to hold that refusal to bargain was not unfair in certain cases. These included the rejection by employers of collective bargaining, because for many employers:

"Collective bargaining.....is a Trojan horse. If they agree to it, the union will be 'in the factory'. Its status for the workforce will be enhanced. It will insist on being consulted before action is taken. And it will forever be calling its members out on strike. Managerial prerogative will be lost and gone....." (1987;p151).

Clearly, by upholding this refusal of employers to bargain, the Court was demonstrating that it was not neutral in the conflict between workers/trade unions and employers.

5.2.3. The contradictory nature of the Court's decisions regarding fairness.

The Court's decisions regarding what was "fair" in industrial relations practice were therefore contradictory. On the one hand, the Court attempted to promote itself and the law as being neutral through the notion that "fairness" was determined on the basis of "consensus" about the values underpinning fairness.

On the other hand, by showing a marked preference for upholding the interests of employers above those of workers in determining what was fair or not in terms of S43 and S46, the Court clearly contradicted the projection of itself and the law as neutral in the conflict between employees and unions on the one hand, and employers on the other. In so doing, it appeared to undermine its credibility as a forum within which workers and unions could seek to advance their interests and therefore the extent to which it could promote legalism. As long as the Court used, as a framework for determining fairness, a system inherently hostile to workers' and trade unions' interests, viz. the capitalist system, and more specifically preferred to uphold the interests of

employers rather than that of workers, its neutrality was doubtful.

However, at the same time, to the extent that workers and unions continued to see the Court as a viable forum for making gains (below), the Court was effectively able to foist the values of capitalism on them. If workers and unions wanted to use the Court to make any gains, they had to accept that such gains would not include making any fundamental changes to their relationship with employers. They would have to accept that the interests of employers would remain a primary consideration in determining fairness. They would have to accept that they would make gains only insofar as those gains were acceptable within the framework of values upheld in capitalist society, such as the economic interests of employers. They had to accept, as Cockrell put it, that certain rights formed part of the "rules of the game" in capitalist society, but that "the nature of the game itself is beyond challenge".

6. The Court and the Unions.

The Industrial Court's implementation and development of the new labour law had an undoubted impact on the new unions - both beneficial and harmful.

6.1. Benefits for workers and unions

The fact that the new unions and their members were largely successful in their forays into the Industrial Court in the early years, had a number of consequences.

Firstly, victories in the Court established rights for workers (however tenuously) which neither the law nor employment practices had ever given the majority of South African workers in relation to employers. Apartheid had led to even more pernicious employment practices being permissible in South Africa prior to the "new dispensation" than elsewhere in the developed capitalist world (Addendum and Chapter 2). Anything which changed this, particularly a court in a country where courts were generally seen as being there to confirm and implement the rights of white bosses in relation to black workers, was bound to elicit much prestige in the eyes of workers and unions, whatever its shortcomings.

This is not to say that the courtroom victories were of no consequence to workers. It was and remains important to wrest whatever rights can be won from employers and to have these established in law, as was stated in Chapter 1. Given the fact that South African employers exercised, lawfully or not, unbridled prerogatives to hire and fire and impose virtually any

conditions of employment on their workforce, including verbal and physical abuse, there can be no doubt that unions and workers objectively benefited from decisions of the Court which arrested these practices.

Secondly, such victories enhanced the status of unions, already seen as fighting bodies by workers, in the eyes of workers who were still tentative about the legality of unions and their ability to win cases in court. This no doubt contributed to union growth.

Thirdly, the actual content of courtroom victories obviously improved the lot of the workers immediately concerned. Despite the uncertainties of Industrial Court decisions, such victories often extended beyond the workers concerned in any case, to establish rights for all workers eg the unfair dismissal and retrenchment decisions.

The organizational capacity of unions was also enhanced by certain decisions of the Court. For example, despite its ambivalence regarding a duty to bargain, where the Court did impose such a duty, the union concerned was placed in a better positions *vis-a-vis* the employer than before. Rights of access to employer premises, and protection against victimization for trade union membership also improved organizational capacity.

6.2. Credibility for the Court.

At the same time, however, courtroom victories posed at least two dilemmas for the new unions. The first of these lay in the extent to which those victories established credibility for the state's "new dispensation", including the Court, in the eyes of workers and the union leadership itself. Some examples of this will suffice.

In 1983 a FOSATU News article alleged that the Court had until the Stobar decision largely favoured employers and that decision was an indication that "Perhaps it is now beginning to appreciate the oppressed position of workers in this country." Such victories, the paper argued, would lead management to " (t)hink twice before arbitrarily firing workers..." (ibid). The Court's rulings under S43 that employers had to follow accepted procedure in dismissing and retrenching workers were seen, by leading unionists, as being responsible for a drop in labour turnover in industry ie for greater security of employment. (Copelyn;1989; p102).

One unionist (Cooper;1991) saw the earlier judgements of the Court as "progressive". Other leading unionists also appeared to accept that the Court's initial judgements (ie when unions first

started using the Court frequently, mainly for S43 orders and usually successfully) were "progressive" and only complained of its later judgements (eg. Patel; interview; 1991; Copelyn 1989) as if the Court was "pro-worker" at first and only degenerated into being "anti-union" later. Patel went as far as to call the institutions created in 1979, including the Court, "sites of struggle" (interview; 1991). Unionists like Patel began to display pride in and identification with the system. Patel, a leading figure first in the litigious NUTW and later SACTWU stated that:

"I do think we shaped some of the decisions of the Industrial Court through our active engagement with that institution". (Patel; ibid)

Undoubtedly, then, some union leaders displayed a tremendous amount of confidence in the Court.

Another example of this faith in the Court, is the jubilation with which the NUM (NUM News; Oct/Nov 1985) greeted the reinstatement of workers by the Court in the Marievale judgement. A union official talked of the fact that the "union's confidence in the Industrial Court had been restored" and of the fact that the granting of some protection to legally striking workers would "encourage the use of industrial conciliation machinery". Another unionist (Barrett; 1991) pointed to how workers, fired by the early victories in the Court, insisted that cases be taken to court, even against the advice of union leaders.

This type of attitude, together with the massive increase in the case load of the Court (table 1) after 1983, appeared to support Thompson's view (1988; 339) that S43 was responsible for "the first sustained recourse" of the new unions to the law. It would appear that the Court's exercise of its S43 powers did have some influence on the turn of the unions to the Court.

However, by the end of the decade under review, some doubts were beginning to surface about the viability of Court as a forum through which workers could fight against their employers. Increasingly the decisions of the Court began to reveal the limited extent to which workers could benefit from the Court's pursuit of credibility and institutionalization. Thus unionists were increasingly beginning to voice views such as those cited by Miller (1989; 90):

"I thought it was objective and I thought it was fair. But today I see it as part of the country's judicial system. I do not think the Industrial Court has been established to assist workers. It is there to honour the promises made to the voters and the sponsors of the current status quo during election times ie capital. I think it serves management more than it serves the union" (citing Kenneth Mosime, an official in the legal department of NUM)

She also cites the assistant general secretary of NUM as saying that the Court had "increasingly become quite conservative" (ibid).

The Court's ability to continue to promote legalism was therefore beginning to weaken. However, it is arguable that by that time (ie towards the end of the period under review) legalism was already a well established trend amongst the new unions. As Table 1 reveals, the resort of the new unions to the Court did not suffer any decline as a result of the doubts beginning to emerge about the Court. The sporadic complaints voiced by unionists about the Court, did not lead to a comprehensive critique of the Court by the unions, let alone rejection of it. On the contrary, as Patel's statement reveals, influential unionists like himself still regarded use of the Court and the law as important in advancing workers' interests.

6.3. The Cost to Unions of Using the Court.

The second dilemma posed for the union movement lay in the *quid pro quo* which the Court sought to exact from them, both in terms of how they should pursue their demands and in terms of the demands which they could pursue.

In order to secure the protection of the Court, especially in the area of protection of strikers from dismissal, they had to indicate a willingness to use the machinery created by the state, however debilitating it was, and to indicate by their actions that they were "responsible" and willing to police their members in strike situations. This was the implication of decisions from Vetsak to BTR Sarmcol. By refusing to grant status quo orders to illegal strikers, the Court was insisting that in order to make use of the wonderful new status quo order, workers and unions had to show themselves willing to entrust the resolution of their differences with employers to the machinery of the law.

The extent to which the Court's decisions found a direct echo within the unions in terms of institutionalizing their actions is difficult to measure. What can be said is that undoubtedly, the refusal of the Court to protect illegal strikers from dismissal had some impact in that legal strikes became a greater feature of the late than early eighties. Considerations of legality became a primary concern before embarking on strike action for some unions. For example, the 1987 MAWU strike was called off when a Ministerial decree rendered it illegal, despite the fact that the union had gone through all the procedures (Chapters 5 and 8). The union promptly demobilized workers who had been preparing for months for the strike.

The Court also had some measure of success in winning unions to the idea that legal action was preferable to industrial action:

"Previously when a worker got dismissed the only remedy available was to withdraw everybody's labour and force the company to reinstate.....they started

to codify what are acceptable and not acceptable reasons for dismissing. And the Court then becomes the institution through which that is mediated. So if someone is dismissed, instead of us now having to withdraw the labour of 1000 workers, that is referred to court. (Patel;ibid)

The failure of the new unions to secure plant level bargaining rights, through organizational pressure, was one of the reasons for the decision of certain unions to enter the much-vilified Industrial Council System (Chapter 4). This failure and its result must have in some measure have been compounded by the failure to win the right to plant level bargaining at the Industrial Court.

The victories won in the Court gave tremendous status to those seen as responsible for those victories: labour lawyers who could negotiate the intricacies of the law. The extent of this influence could be measured in a number of ways. Firstly, labour litigation became a whole new field of practice in South Africa, with particular lawyers seen as "union lawyers", held on retainer to advise trade unions on a host of issues and represent them on a wide range of issues and numerous forums. (This is dealt with more fully in the last part of this thesis). Secondly, it could be measured by the disquiet of some unionists (eg.Appollis 1991; Van Wyk 1991) over the extent of that influence. Lastly it could be measured by the confidence expressed by leading unionists in lawyers (Golding; interview; 1991 and Patel;interview; 1991). The orientation of these lawyers was generally towards the acceptance of the "new dispensation" provided certain faults could be remedied. They leant in favour of channelling industrial conflict through collective bargaining and various dispute resolution mechanisms including the Court (interviews: Brand 1991; Thompson 1991). This compounded the institutionalizing effect of the Court's decisions, for these lawyers became the heroes of every legal battle won.

Further indications lay in the fact that unions were increasingly arming themselves to wage battle on the legal front. Most of the major unions in COSATU established specialist legal departments to run what were regarded as mundane cases, and over and above that devoted large amounts of resources to the running of legal cases (eg. SACTWU, the second largest union in COSATU spends half a million rand per annum on legal battles - Patel, interview, 1991). COSATU ran annual courses to train organizers in the use of the law, whilst organisers complained of too much concern with the law (eg. Appollis; interview; 1991). This appeared to contradict the disaffection expressed by some unionists who noted the "increased conservatism" of the Court. It indicated that the unions were not disillusioned with the Court and the law, despite their clear limitations.

The "sustained recourse" (Thompson; 1988; p339) of trade unions to the law, after 1983 particularly, took place regardless of the continued structural/technical problems surrounding the Court (Chapter 5) and the problems surrounding the Court's exercise of its powers raised in this

chapter. This too had to be accepted as part of the cost of going to court. Winning a legal battle depended very often on who had best command of the rules of the game. Unionists briefing lawyers could very easily get caught up in the intricacies of the legal battle itself, losing sight of whatever the original objective of the case was.

Reliance on the Court also created other problems for the unions. An example of the kind of organizational problems (IR Data; June 1985) caused by such faith in the law and the Court is provided by the NUTW (now absorbed into very powerful SACTWU). The NUTW was one of the most litigation-conscious of the new unions, having won a number of cases against the Frame Cotton Corporation. When it sought to organize garment workers in Natal, it was faced with a closed shop operated by an established TUCSA union. Legal provisions prevented it from challenging the refusal of the Industrial Council to grant it an exemption from the closed shop agreement, in the Industrial Court. When, however, its members at one factory were retrenched, it sought a court order to compel management to negotiate over the retrenchments with it since it claimed to be the majority union, despite the closed shop. The Court ordered the employers to ballot workers to establish which was the majority union, and to bargain with that union. Having thrown all its energies into legal proceedings, it appeared that the NUTW had neglected to consolidate its base on the factory floor. Its victory in the court turned to defeat on the factory floor, where it was unable to attain a majority. This illustrates the cost to the new unions of emphasizing legal proceedings and relying on the Court, rather than their organizational strength.

7. Conclusion

This chapter has demonstrated that the Industrial Court encouraged legalism in several ways. It seduced the unions into placing their faith in it, by giving the overwhelmingly black membership of those unions rights which they had never had before. In the South African context where employers exercised unbridled prerogative to do as they pleased with workers and to ignore unions, the Court's decisions, particularly in terms of S43 and S46, extended real benefits to workers. They also extended an almost irresistible invitation to the new unions to use the Courts to secure those benefits, rather than shop floor action - reinforced by pressure from the Court to use legal institutions and procedures as far as possible and to remain within the parameters of the law at all times. This was bolstered by the fact that the web of legal complexities surrounding the Court made unions dependent upon lawyers and legal specialists, whose objective interests lay in propelling the unions towards the use of law and the Courts to win battles against employers.

This chapter has also attempted to reflect the ideological role played by the Court. It functioned

to disguise the fact that workers were not the primary beneficiaries of its decisions. The real beneficiaries of the Courts's support for the institutionalization of conflict were employers as a class. The Court also tried to secure the support of unions and workers for the values underlying the new dispensation, through the meaning it gave to "fairness" in the exercise of its ability to grant status quo orders and ability to make unfair labour practice determinations. Thus, albeit beset with various contradictions, it contributed to fulfilling of the overall aims of the new dispensation: institutionalizing industrial conflict and winning the new unions to the "free enterprise system".

Since 1982/3, as the Table 1 reveals, the new unions increasingly gravitated towards the Court and the new labour law which it implemented and developed. Their apparent faith in the Court and the law was not tempered by a concerted assessment of the negative impact of the Court on the unions and of the limitations placed by the Court on the extent to which the unions could advance the interests of their members through all means at their disposal. Nor was it tempered by an overt recognition of the overall aims of the Court and a concerted attempt to resist the Court's determination to fulfil these aims. Even when the Court's pursuit of its aims glaringly conflicted with those of the new unions, they did not desist from using the Court to seek redress against employers. Increasingly, the unions' approach to the Court therefore corresponded with the description of legalism offered in chapter one of this thesis.

This chapter, and to some extent the previous one too, has attempted to assess the extent of the contribution which the Court made to this development and how it has been able to make that contribution. Clearly, the Court's willingness to take decisions which greatly alleviated some of the worst aspects of industrial relations (in respect of mainly black workers) in South Africa goes a long way towards explaining the gravitation of the unions to the Court. However, the increasing revelation, as the decade unfolded, of the limitations of the Court as a means to advance the interests of workers and their unions did not escape the notice of the new unions. Their continued adherence to the Court in the face of these limitations and the negative impact of the Court on the unions, indicates that there were factors outside the Court and new dispensation itself, which continued to increasingly thrust them towards the Court and the law. These are dealt with in the next part of this thesis.

Advocate Bruinders, for example (informal discussion; August 1991) asserted that the Court rapidly became the domain of experts. Disputes were removed from the control of workers once

the legal road for settlement of a dispute was embarked upon. This marginalization demoralized workers. In addition, in his experience, by 1988, cases did not come to the Court until 2 years after action was instituted because of all the legal technicalities raised. By such time, he asserted, it was not uncommon to find that workers had found other employment, or had simply disappeared in search of other jobs, because they could not starve while a case dragged on.

Bruinders' view was borne out by other sources, one of which pointed out that one of the most litigious of the new unions, the NUTW, which embarked on a series of actions against the powerful Frame group, found itself tied up in these legal actions. Employers appealed to the ordinary courts every time the union won at the Industrial Court, thus causing considerable delays as well as the expenditure of vast sums of money. In addition, workers became impatient with leaders who struggled to prevent industrial action whilst the law took its course. Employers also refused to implement the Court's *status quo* orders whilst on appeal, thus destroying the effect of the order (IR Data; August 1984;pp8-9).

Thus the problems surrounding the Court undermined the unions which used it.

PART FOUR: POLITICS AND THE DEVELOPMENT OF LEGALISM IN THE NEW TRADE UNION MOVEMENT.

Introduction

Previous chapters have shown how the procedures and institutions of the new dispensation themselves, in particular the Industrial Court, contributed to the development of legalism. It was argued, however, that the trend towards legalism in the new trade union movement did not develop primarily as a result of the impact of the new dispensation on the unions.

In this part it is argued that the more important reason for the development of legalism, and the dangers of incorporation posed by uncritical participation by the new union movement in the post-1979 dispensation, are to be found in the political influences on the new unions and the political, economic and social context, of which the new dispensation was merely a part.

This part of this thesis looks at the political influences within and upon the trade union movement in the period under review and examines how these influences contributed to the development of legalism. The aims are two-fold: firstly, to show what the different political influences on the new union movement were in the period under review and how they changed in that period. Secondly, it seeks to show how these different ideological and objective influences affected the involvement of the new union movement in the political events from 1979-88 and in the state's new trade union dispensation and eventually combined to steer the new union movement towards orthodox unionism and legalism. In particular, it shows how the two dominant influences in the union movement in this period, commonly termed "syndicalism" and "populism" facilitated this trend.

CHAPTER 7: THE ERA OF FOSATU: SOWING THE SEEDS OF LEGALISM

1. Introduction.

The aim of this chapter is to examine the main political influences within and upon the trade union movement in the first half of the eighties, and the contribution made by these to the development of a legalistic approach in the new unions.

The central argument is that it was the dominant political orientation within the new trade union movement in the period before 1985 which ultimately sowed the seeds for the development of legalism. That political position was not one which encouraged the incorporation of the struggle around factory floor issues into the broader struggle of workers and other oppressed groups for a radical transformation of South Africa. It was one which dictated that the new union movement would orientate itself mainly towards factory floor issues. It also dictated that trade unions would adopt a purely pragmatic approach to achieving gains on the factory floor.

This concentration on industrial issues and this pragmatic approach to winning gains in the realm of industrial relations led to increasing participation in the new dispensation and fostered a generally legalistic approach to trade union strategy. The institutions and procedures of the new dispensation came to be viewed purely in terms of how they could be used to effect immediate shop floor gains. The initially critical political approach of the new unions to the new dispensation declined into acquiescence.

2. The Dominance of FOSATU and the Political Roots of Its Legalism

FOSATU was the most dominant and most significant grouping of trade unions between 1979 and 1984/5. It represented a new style of trade unionism and a different political approach to trade unionism from that of SACTU, the dominant progressive trade union grouping of the fifties. It argued that the goal of the South African struggle was socialism, it emphasized the role of the working class in the South African struggle, and stressed the need for independent working class organisation. However, its exclusive focus on trade unionism, its adoption of an orthodox approach to trade union organization and its abstention from direct political involvement for much of its existence sowed the seeds for the development of legalism in its ranks. This was revealed in its approach to the institutions and procedures of the new dispensation.

2.1. The Significance of FOSATU

FOSATU was historically significant. It was the first legal non-racial trade union federation to be formed in South Africa since the decline of the SACTU (Chapter 2). At the time of its formation, it was also significant for its numerical strength in relation to other groupings within the new union movement. It distinguished itself from many important trade unions and trade union groupings, notably those which went on to form the Council of Unions of South Africa (CUSA) and the influential Western Cape unions which existed at the time of its formation in 1979 (Chapter 2). It was launched finally with unions from TUACC (Chapter 2) at its core, some ex-affiliates of the Consultative Committee of Black Trade Unions, and two registered motor unions which had distanced themselves from the conservative union movement.

Numerically, and in terms of the industries in which its affiliates were organized, it was the most significant grouping of trade unions in South Africa between 1979 and 1985. In 1980 its membership stood at 50 000 and by 1981 this rose to 94 000 (Davies et al; 1988;p333) or 95 000 (Baskin; 1991;p29). Its 1983 report (RRS 1984; pp309-310) stated that it had 9 affiliates, around 106 000 signed up members and 81 000 paid up members. Its affiliates included the most established and powerful unions in the ranks of the new union movement, located in major industries. The Metal and Allied Workers Union (MAWU), for example, dominated the metal and engineering industries. When FOSATU dissolved to enter COSATU in 1985, its paid up membership stood at 140 000 (Baskin;ibid;p49).

FOSATU affiliates were also known for their militancy on the shop floor. They led many strikes, involving large numbers of workers, and sometimes organized product boycotts in support of these strikes, particularly at the beginning of the decade (Macshane et al;1984;pp59-61). In the short period of its existence, it made many organizational gains. By 1981 its affiliates had organized 387 factories and entered into 75 agreements with employers (RRS;1981;p182). In 1983 FOSATU reported that its affiliates had majority membership at 489 factories and had entered into formal recognition agreements with 205 companies.(RRS 1984; pp309-310). By 1984 it had majority membership at 489 factories and 205 recognition agreements (ibid; p31). Despite the growth of unions unaffiliated to FOSATU (below) in the early eighties, it was therefore FOSATU which gave the definitive stamp to the new union movement.

However, FOSATU's importance lay not only in its size, organizational strength and militancy. Davies et al (1988;334) correctly point out that FOSATU's importance also lay in the fact that it represented "a distinct strategic position within the democratic trade union movement". Through

its basic principles of worker democracy, workers control, and industrial unionism it was responsible for bringing a new style of unionism to black workers. It emphasised strong factory floor structures, educating shop stewards, establishing shop stewards committees, carrying out mandates democratically, and so forth (Macshane et al;1984;p38). Through the formation of locals (inter-factory and inter-union groups of shop stewards) it attempted to weld together its different affiliates at a grassroots and community level. Locals were seen as the means to break down industrial sectionalism and allow workers to respond collectively to issues which affected affiliates (SALB;1987e;p30).

It was also important for its emphasis on the class nature of the struggle in South Africa, its bold raising of the call for socialism and therefore the emphasis which it placed on workers' control of production. At the same time FOSATU was responsible for fostering the development of a working class cultural tradition in the song, dance, dress and behaviour of workers which reflected the working class struggle. It also developed a tradition of reading and discussion, in order to raise workers' class consciousness.

2.2. FOSATU's Political Position.

It is difficult to clearly identify the political position of the leadership of FOSATU because it was by no means monolithic in its views (Davies;1988;p334). What can, however, be said is that the group of mainly white young intellectuals who had been the driving force in creating FOSATU's affiliates (Chapter 2), together with their adherents, still had a great degree of influence by the time FOSATU was formed (Maree; 1986; pp648-651). The task of identifying the political position of this group is complicated both by the repressive conditions in South Africa which outlawed communism and socialism, and the fact that there was never an open organizational articulation of the political position of FOSATU's leadership.

The position adopted by FOSATU under the leadership of these intellectuals, has variously been criticised as being "syndicalist" (Matajo;1984) "economistic" (Inqaba;1988) and "workerist" (Mahlalela;1986). Such criticisms emanated mainly from the Congress Alliance (Chapter 2), which correctly objected to FOSATU's abstention from political confrontation with the state. However, it must be emphasised that FOSATU incurred the latter criticism because it refused to bow to the Congress Alliance which viewed itself as the head of the liberation movement.(Macshane et al;1984;p125). At the same time the Congress Alliance also attacked the great strengths of FOSATU's position: the emphasis on the class nature of the South African struggle, the leading role of the working class in that struggle and the need for independent

working class organization (Fine and Davis;1991; p283-4).

2.2.1. Syndicalism, economism and workerism

Lenin described economism as a concentration on the purely economic struggle to the exclusion of the political struggle. He criticized economists for retreating into a "purely trade union struggle" (Lenin;1947;p37).

Fisher and Monroe, writing in *Inqaba* (1988), the journal of a leftwing group expelled from the ANC, argued cogently that the term "workerism" was no more than a confused version of economism. Several writers since (eg. Fine and Davis;1991;pp282-5) have implicitly agreed with this view.

Hyman (1983) described "syndicalism" in the following terms:

"Syndicalist doctrine was never fully explicit or precise: the emphasis was on action rather than theory. Key themes were the need for rank and file initiative; the value of militancy....; and the overthrow of capitalism and the state by purely industrial organization and struggle." (p476)

and further

"...the dominant meaning of syndicalism was the rejection of the need for a socialist party..... to destroy capitalism, the working class must concentrate on the industrial battlefield." (p477).

Whilst Marxist criticisms of syndicalists (Trotsky;1983) and economists (Lenin;1947) revolved around their methods and chosen arena of struggle, they did not deny the fact that underlying both syndicalism and economism was an emphasis on class struggle and the goal of socialism. Syndicalists and economists can be validly criticised for their over-emphasis on trade unionism as the key to socialist revolution, but not for their denial of the need for socialist revolution. Class struggle and the need for socialism are key components of both syndicalism and economism.

FOSATU's leadership adopted a position which could be described as both "economistic" (Fine and Davis;1991;p 283) and "syndicalist", as will be shown below. It emphasized the class nature of the struggle and the importance of working class organization. However, it also concentrated purely on the "trade union struggle" and the "industrial battlefield". Despite its references to the need for political organization of the working class, this remained in the realm of rhetoric, as will be seen below.

2.2.2. FOSATU and the emphasis on class struggle

In the seventies many individuals and groups without any open political affiliation emerged in South Africa. These people advanced a class analysis of South Africa and proposed that the political goal should be socialism. They included the young radicals from the liberal universities who played the leading role in founding the new trade union movement (Chapter 2). This leadership saw the industrial working class as the backbone of the struggle for a radical transformation of South Africa (Macshane et al;1984;pp 22-23). It was from this source that FOSATU inherited its great strength: its emphasis on the nature of the South African struggle as being a struggle of the working class for socialism.

This emphasis, and the leading role of the working class in the South African struggle, was articulated in 1985 by Alec Erwin, the first general secretary of FOSATU. He called for a radical economic and political transformation of South Africa:

"The economy has profound structural problems which require substantial transformation if the working class both urban and rural is to improve its material and humanitarian position." (1985;p68)

He argued that South Africa's future would have to be a socialist one, if the problems of the working class were to be addressed in any real way. This position was counterposed to the "liberation politics" of the Congress Movement (Chapter 2). "Liberation politics", he argued, did not address the issue of such total transformation ie a revolutionary overturning of the existing capitalist social relations of production. Such a revolutionary overturning of capitalism was necessary for addressing the problems of the working class.

Erwin argued that on the one hand, in the absence of its ability to wage a conventional war, the liberation movement was compelled to resort to political means to destroy the apartheid regime. It could only succeed in doing so if it could mobilise the greatest possible support among the masses. Because of the universal abhorrence of apartheid, the liberation movement could harness the masses' energies and willingness to sacrifice so as to unite around the purpose of destroying apartheid.

On the other hand, the working class interest in the destruction of capitalism, was derailed by the theory of two-stage revolution, which was often accepted because of the projected need for the maximum unity against apartheid. In the process, the need for transformation, the different class interests, were suppressed. Thus liberation politics would lead to the creation of a new regime, in which little had changed, but which would be harder to oppose because of the legitimacy won with the overthrow of apartheid. Therefore, he concluded, there was a need to begin to accept

the centrality of the working class immediately.

The major contribution of the leadership of the new unions of the seventies, and consequently of FOSATU, to the struggle of the working class in South Africa, was therefore a renewed emphasis on the class nature of the South African struggle, and on the working class as the leading force in the struggle for socialism. This set them apart from the Congress Alliance, whose cause was national liberation under its own petty bourgeois leadership (Chapter 2).

2.2.3. FOSATU's position on the political activity and organization of the working class.

The political abstentionism which had characterised the infant trade unions of the seventies (Chapter 2) continued in the early eighties to be a hallmark of FOSATU (Lambert and Webster;1988;p22, Maree;1986;pp669-670, Macshane et al;1984; p23 and p125). Despite the fact that the new unions, particularly those grouped in FOSATU, were much stronger than they had been in the seventies, the conception of a weak working class, which could not afford to confront the state for fear of destruction, continued to justify the abstention of FOSATU from involvement in the political issues of the day (Davies et al;1988;p334 and Friedman;1987;430).

The premise of a weak working class led FOSATU to two conclusions: On the one hand the unions could not afford to confront the state because they would be smashed and on the other hand their participation in community struggles, through community organisations consisting of multi-class alliances, would open the working class to domination by the petty bourgeois leadership of those organizations. This caution regarding political involvement stamped FOSATU as "apolitical" in the eyes of other unions, political organizations and many observers (Davies et al;1988; p334).

FOSATU's response to accusations of being apolitical and therefore economistic had two related aspects. Firstly, influential figures in FOSATU like Phil Bonner argued that trade unionism itself was political:

"The question of political involvement is, in any case, a much broader one than this (involvement in anti-state politics). There is often a false dichotomy drawn between politics and economics in which politics is confined to actions directed towards the state. Yet political action extends much further than this. As Alec Erwin of the NUTW has recently argued, the living wage demand is a politically charged issue, since it potentially involves overturning the privileged position of the white working class and the low wage economy as a whole.....Much the same could be said of the recent wave of strikes on the East Rand. A large proportion of these were directed at the arbitrary and racist exercise of authority

by supervisory staff on the factory floor. The issues at stake were white authority and black self-respect...." (Bonner;1983;pp 34-5)

Secondly, FOSATU argued that it was not opposed to the involvement of trade unions in politics, but saw the trade union movement as adopting an alternative type of politics to that offered by the liberation movement. FOSATU's position on the political organization of the working class, its relationship to the trade union movement, and its relationship to other political organizations, emerged in a keynote address by its then General Secretary, John Foster, in 1982 (Foster;1982). This was later adopted as FOSATU policy (Davies et al; 1988; p336). It was seen as confirming FOSATU's "apolitical" position and provoked an outcry from numerous quarters, not least the "liberation movement", which bayed for FOSATU's blood (Macshane et al;1984;p125).

Foster argued that more than trade unionism was necessary if the working class was to effectively challenge capital - a working class political movement was necessary:

"...worker activities such as strikes and protests do not in themselves mean that a working class movement or working class politics exist. These latter are more than that - they are large scale organisations with a clear social and political identity as the working class" (Foster;1982;p7).

Foster went on to account for the failure of a working class movement to emerge, as had happened in the rest of the industrialised world, in terms of the ability of capitalists to hide behind the apartheid regime as the real enemy of the working class. Apartheid oppression meant that the political movement which emerged, posed a challenge to the apartheid government, not to capital. Trade unions had cast in their lot traditionally with the broad anti-apartheid movement at the cost of developing a workers' movement (ibid;p22-23).

Indirectly answering the charge that FOSATU was "a-political", because it would not become involved in the political events and organizations surrounding it, he contended instead that FOSATU sought a different kind of politics from the multi-class, petty bourgeois dominated politics of community organisations and national liberation movements. He argued that:

"Workers need their own organisation to counter the growing power of capital and to further protect their own interests in the wider society. However, it is only workers who can build this organisation and in doing this they have to be clear on what they are doing.

"As the numbers and importance of workers grow then all political movements have to try and win the loyalty of workers because they are such an important part of society. However, in relation to the particular requirements of worker organisation, mass parties and popular political organisations have definite limitations which have to be clearly understood by us. " (Foster;1982;p19)

and further:

"All the great and successful popular movements have had as their aim the

overthrow of oppressive...regimes. But these movements cannot and have not in themselves been able to deal with the particular and fundamental problems of workers." (ibid;p23)

and:

"It is therefore essential that workers must strive to build their own powerful and effective organisation even whilst they are part of the wider struggle. This organisation is necessary to protect and to further worker interests and to ensure that the popular front is not hijacked by elements who will in the end have no option but to turn against their worker supporters." (ibid;p24.)

In opposition to this liberation movement tradition, Foster went on to commit FOSATU to leading the building of a working class movement. Yet in so doing, he appeared to see no conflict between this role and the liberation movement, merely that the workers' movement would protect worker interests in broader struggle.

Foster's articulation of FOSATU's political position was echoed by its then President Chris Dlamini in 1983 (FWN No 22 July 1983;p8):

"I am convinced that the worker movement cannot be pushed to link up with non-worker organisations because that might hinder or misdirect its programme of action."

and

"Worker liberation can only be achieved by a strong, well-organised worker movement" (ibid).

FOSATU's political position as expressed by Foster (above) called for the political organization of workers as well trade union organization. Implicit in his call was the understanding that without such an organization, the working class could not through trade unionism alone fight for a radical transformation of South African society ie for socialism. However, Foster also correctly understood that the trade unions could contribute to the political organization of the working class.

This position was reflected in FOSATU's constitution which included wider political objectives which indicated that the trade union movement should have a role beyond the factory floor. It should concern itself with the overall interests of workers, not only their economic interests. The constitutional objectives included: the establishment of a united, non-racial union movement, the securing of social justice for all workers, fighting for decent living standards for workers, winning recognition and negotiating rights, building industrial unions, workers' control of and workers' democracy within unions. It thus focused on both industrial relations issues and wider political issues (FOSATU constitution; para.3 aims and objectives).

Despite this, the building of the working class political movement was translated in practice by FOSATU into building the trade union movement. The tone was set by Foster's speech. Foster saw the general political direction which he set out (above) as being concretized through the organizational tasks of the FOSATU at the point of production. He translated the building of a working class movement into: building structures from the factory floor up, thus emphasizing worker control and democracy; stressing factory floor bargaining thus involving shop stewards and giving them leadership experience; building industrial unions as the best defence against capital (Foster;1982;pp 27-45).

Dlamini cited Zimbabwe as an example of the need for separate workers organisation and again equated this with a trade union:

"During the time in Zimbabwe I noticed that although some people were liberated, workers were not.....It seems to me that the people in Zimbabwe were taken up with the popular struggle but failed to organise themselves into a worker organisation, like a union which would have liberated them as workers in their workplaces" (FWN No 22 July 1983;p8)

In reality, FOSATU's commitment to the building of a workers' political movement or party proved to be purely theoretical. FOSATU unions and unionists were among the first to publicly raise the call for socialism but their appreciation of the need for socialism was purely moral. In theory FOSATU's leadership appeared to see that without a party which could guide the factory floor struggle of trade unions in terms of an overall programme geared towards socialism, the struggle on the factory floor would be insufficient in itself to secure the radical transformation of South African society.

Yet in practice FOSATU did not in any way contribute to building such a party. In fact, Alec Erwin (Foster's predecessor and regarded as a prominent voice in FOSATU) apparently told Socialist Worker: "We are not considering a workers' party. It would be premature and unwise" (quoted in Callinicos;1988;p96). Certainly there is no evidence of any attempts by either FOSATU or its leadership to contribute to the development of such a working class movement, much less a party of the working class.

The leadership of FOSATU therefore tended to espouse syndicalism, both in their correct emphasis on the class nature of the South African struggle and the leading role of the working class in the struggle for socialism, and in their incorrect tendency to in practice to dissociate the trade union movement from a political role and distance themselves from the building of a working class party. The syndicalism of FOSATU had at least two consequences of relevance to this thesis. It contributed to the emergence of national democratic politics as the dominant politics

of the new union movement (an issue discussed towards the end of this chapter). In so doing, as will be seen in Chapter 9, it indirectly fostered the development of legalism. It also led directly to the development of legalism because of its exclusive concentration on the winning of factory floor battles as the primary task of its unions (discussed below).

3. Syndicalism, "Collective Bargaining Unionism" and Legalism.

In reality, FOSATU's commitment to building the workers' movement boiled down to building strong trade unions based on the factory floor, along the lines of those which existed in capitalist countries elsewhere in the industrialized world. In the words of Hyman (1983; p474) this meant it "concentrate(d) on the industrial battlefield" to win power. In practice it adopted a form of unionism described as "collective bargaining" or "orthodox unionism", by Lambert and Webster:

"a form of trade unionism which concentrates almost exclusively on workplace issues; fails to link production issues to wider political issues; and finally encourages its members to become politically involved without necessarily engaging itself in the political arena, believing that this is best left to other organizations more suited to the task." (1988;p20)

Although Lambert and Webster do not state that it was FOSATU which espoused this trade union "orthodoxy" or "collective bargaining unionism", the new unions which were characterized by their almost exclusive commitment to workplace issues were FOSATU affiliates. An overview of the minutes and reports of FOSATU, its various bodies and affiliates in the period before 1984 reveals that its focus was predominantly upon building trade unions along traditional collective bargaining lines. Its focus was almost exclusively on industrial relations issues. Thus the magnitude of achievements of FOSATU on the factory floor, such as the extent to which it succeeded in organizing black workers into trade unions (below) is a testimony not only to its commitment to fighting for gains for workers on the factory floor, but also to the exclusivity of that focus. An important element in FOSATU's practice of this type of unionism, was its willingness to use the institutions and procedures of the new dispensation to that end.

3.1. The Historical Link between "Collective Bargaining Unionism" and the Use of Legal Procedures

FOSATU's dominant affiliates came mainly from the TUACC unions which formed a distinct group in the new union movement. The registered motor unions of the Cape which left the conservative TUCSA to join FOSATU (Chapter 2) were also influential in FOSATU. Both thrust FOSATU in the direction of traditional collective bargaining unionism.

The motor unions of the Eastern Cape, such as NUMARWOSA (National Union of Motor Assembly and Rubber Workers of South Africa) were unions which had removed their conservative leadership and moved from the sphere of established unions to the new union movement. They continued to function along traditional collective bargaining trade union lines. They brought into FOSATU their experience and skills in the industrial relations sphere and their orientation to shop floor issues as the exclusive focus of trade unionism.

TUACC's position in the seventies was based on a view of South Africa as dominated by monopoly capitalism. There was therefore a concentration on strong shop floor organisation in multinational corporations, because it was believed that this, together with international pressure on such companies would force them to recognize representative unions. This would also make those companies put pressure on the state to take cognisance of non-racial unions. Davies et al point out that in TUACC unions "Recognition agreements, such as that signed between the British-owned Smith and Nephew and the NUTW in 1974, became the overriding objective of this perspective" (Davies et al; 1988; p334.)

Both TUACC and the ex-TUCSA motor unions favoured the use of statutory procedures and institutions to advance the goals of workers on the factory floor (Bonner;1983;p23). TUACC's pre-1979 experience (Maree;1986;p608) was that statutory structures such as works committees could be used to advance trade union organization. Its policy was also that the law could and should be used in order to strengthen organization and advance workers' legal rights. In their formative years, the TUACC unions concentrated on protecting the right to organize. TUACC unions used the courts to fight against victimization of trade union members and activists. TUACC's strong belief in using the law to win rights for workers was reflected in the report made by its Joint Legal Defence Fund (JLDF) in 1979:

"The problem is..... that not enough initiative is taken or enough legal research is undertaken. TUACC feels that we should seriously consider overcoming this problem so that more legal initiatives can be taken. At present we wait rather passively for cases that may provide a precedent to come up" (JLDF Minutes May-August 1979).

The experiences of the few Urban Training Project (UTP) related unions which also joined FOSATU had also led to the adoption of statutory procedures and institutions to bolster organization. (Maree;1986; p608).

Bonner (1983;p23) argued that TUACC's experiences of the ease with which the state and employers could smash unions which were not consolidated on the factory floor, led FOSATU to adopt the particular style of unionism that it did and to see nothing wrong in participating in

the institutions and procedures of the new dispensation:

"To survive in that period (of repression in the mid-seventies) they (TUACC) had to build up resilient and independent structures in individual factories, and to seek agreements to secure workers' rights. Their two priorities were hence to entrench plant based organization, and secure legally binding agreements with managements which would serve as defensive ramparts for workers in hostile situations, and as platforms for further advances, once conditions improved. For these unions, registration was judged according to its ability to facilitate or obstruct these goals." (ibid)

The motor unions thrust FOSATU in the same direction. Together with their style of unionism, they brought into FOSATU the view that the system could be used to the advantage of the new unions without any serious repercussions for them. As Davies et al correctly point out:

"These unions brought to FOSATU their experience in the Industrial Councils and particular conception of workers' power operating within the existing industrial relations system, which was to have a strong influence in FOSATU. They argued that if based on factory floor organisation and democratic control by the membership, independent trade unions could successfully use Industrial Councils for their own ends." (Davies et al;1988;pp334-5)

According to Bonner (1983;pp22-3) these unions had never experienced state interference in their internal working and no threat from the state to workers' control and democracy as a result of using the statutory machinery.

Bonner (1983;p23) therefore argues that there were direct historical links between FOSATU's commitment to shop floor issues, and its use of legal procedures and institutions. They lay in both TUACC's survival strategy (ibid;p23) of using the institutions and procedures of law to advance organizationally, and what he calls the "pragmatism" of the motor unions (ibid) in relation to the use of such institutions and procedures.

Arguably, the use made by the TUACC unions of legal procedures and institutions could not be seen as legalistic. Maree (1986;eg. at pp608-610) argues like Bonner (above) that the new unions had little choice in the political and economic context of the seventies, but to use the legal avenues open to them, for securing themselves against employer attacks. In FOSATU, however, the pursuit of the goals of traditional collective bargaining unionism increasingly led to a *reliance* on the legal system to fulfil those goals.

3.2. FOSATU's Concentration on Workplace Issues and the Beginnings of Legalism.

At first, FOSATU showed a willingness to view legal institutions and procedures, including those of the new dispensation, in some wider political perspective. Despite its concentration on pure

trade union issues, what was important was not the achievement of immediate victories over individual employers, but the long term building of the new unions on a principled basis. This was apparent from the critical view it initially took of the registration process and the industrial council system (part 2). It was also apparent from its adoption of the policy of TUACC with regard to the use of courts and the law. TUACC's Joint Legal Defence Fund was only handed over to FOSATU on condition that the latter showed that

"....it has established a clear legal policy that makes it clear that this money is to be used for legal cases that assist the organization of workers or extend their rights" (Archival Doc. B.3; p.13 dd 24-25/3/79).

The fact that the fund was handed to FOSATU reflected its acceptance of this policy. FOSATU therefore commenced the decade with a clearly spelt out and principled policy relating to the use of law and the courts (which now also encompassed the Industrial Court) and the new dispensation. Use of the system was to be based on weighing up the long term benefits of using the system against the long term adverse consequences for the unions.

However, FOSATU's concentration on factory floor issues and "trade unionism pure and simple" began to change its approach to the use of law and the courts, and indeed to the entire new dispensation. Its approach increasingly tended towards one of pure pragmatism. The statutorily created system of collective bargaining and dispute resolution came to be viewed more in terms of its effectiveness in securing immediate victories over employers, than in terms of the overall political impact on the new unions (Chapters 3-6).

Both FOSATU's approach to the new dispensation and the legal system generally and its experiences of the impact of the legal system on its affiliates were contradictory. From early on FOSATU showed a willingness to rely on the legal system rather than its shop floor strength to fight important battles. Key examples of these were the battles around the restrictions placed upon FOSATU in terms of the Fundraising Act and the battle for non-racial registration which commenced in 1980 and dragged through the Courts for a number of years (RRS;1982;p182).

Yet at the same time, FOSATU minutes of the early eighties reflect that there was some concern expressed about the degree to which affiliates were resorting to legal action. Affiliates were already in 1980 routinely taking numerous individual cases to court, in contravention of the JLDF policy and as a result were draining the Fund of its financial resources (JLDF letter dd 10/6/80)

Within the new union movement in the first half of the eighties, FOSATU affiliates were mainly responsible for spearheading the use of the Industrial Court (supplemented by the ordinary courts) to establish basic trade union rights. These included legal battles to establish freedom of

association by attempting to outlaw the victimization of unionists; to establish job security by legally obliging employers to adhere to certain procedures in cases of dismissal and retrenchment; to establish the right to strike without fear of dismissal; and attempting to legally oblige employers to bargain collectively. These attempts met with mixed fortunes, as was seen in Chapters 5 and 6.

As Lambert and Webster (1988;p25) correctly point out, the *political* importance of such gains outweighed their economic importance. The economic impact of these gains were in any event limited (parts 2 and 3 of this thesis). Politically, however, it had impact in that workers were "empowered" ie. these victories gave workers a sense of their own power. Such gains, together with the growth of FOSATU appeared to bear out the correctness of FOSATU's position (Bonner;1983;p23) that the system could successfully be used to advance the interests of workers, at least in the industrial relations terrain.

On the negative side, these gains were in themselves limited. For example, the Industrial Court circumscribed the extent to which it would allow the employer prerogative to dismiss workers at will to be curtailed and rarely supported the right to strike (part 3). Again, it was the negative *political* effects of the use of the system which were more important. In the words of Lambert and Webster (ibid), the gains had not only a "transformative" but also a "conservative" impact on the new unions (in this case FOSATU). FOSATU could not, as Friedman (1987;p314) so blithely argues, use the system but not be bound by its chains (part 3).

As Lambert and Webster (ibid;p25) again correctly observe, the industrial relations gains won through the development of an "orthodox" approach to trade unionism and the adoption of the system were not without cost. The gains were offset by the unions allowing conflict to be channelled "in ways that can be contained and institutionalized by the industrial relations system" (ibid). This was encouraged by the institutions of the system, particularly the Industrial Court, the institution which came in for the least criticism by the new unions in the initial debates regarding the new dispensation (parts 2 and 3).

Increasingly, cases involving the above-mentioned issues were routinely referred to the Industrial Court. Whilst many of the cases were won in the early eighties (Chapter 6) taking such cases to court meant a loss of those issues as focal points for organization. Some of the big cases (eg. the BTR Sarmcol case) did serve as a focal point for organization, but this was the exception rather than the rule. One unionist pointed out that in the seventies victimization, for example, led to strike action in support of the victimized worker. In the early eighties these were processed

mainly through the statutory dispute resolution machinery, especially the Industrial Court (Theron;1988;p50). Since it was the FOSATU unions (such as MAWU and NUTW) which were the most litigious unions, there can be little doubt that it was mainly FOSATU unions which routinely resorted to the Court in such cases.

To the extent that FOSATU affiliates continued to show concern about the impact of their involvement in the legal system, this concern was not directed at the fact that the unions were becoming more dependent on the courts than on their own strength on the shop floor. It was directed mainly at the financial implications of regular use of the Industrial Court. The solution was not found in decreasing the use of the Court, but in decreasing the cost of using the it. For example in 1984, MAWU's general secretary concluded from the fact that legal proceedings were costing the union massive amounts of money, not that routine resort to law should be replaced by organizing workers around the issues involved, but that the union should engage in-house legal practitioners to routinely take cases to court (MAWU Report;dd 6/10/84).

With the industrial relations issues as its predominant focus, for many major FOSATU unions their tasks became simply to fight for what was winnable, and adopt the strategy which was most likely to secure an immediate victory. As Patel, a leading figure in SACTWU (into which NUTW merged) approvingly pointed out, unions were no longer concerned with basing their use of the system on the "abstract set of principles" which had guided TUACC. The only constraint was financial (interview;1991).

Whilst FOSATU's historical composition, style of unionism and politics were important factors precipitating its use of the institutions and procedures of the new dispensation, so too were other factors. One of these was the very growth of FOSATU, brought about inter alia by its militancy and organizational stability. Markham and Matiko (1987;p110) point out, with regard to the new unions generally, that:

"The increased use of the institutionalised framework should also be viewed against the tremendous growth in the number of organised workers over the past few years. Estimates put the number of workers presently belonging to trade unions at 20%, one of the highest in the world".

Given the fact that FOSATU was the biggest federation and its affiliates amongst the biggest in South Africa for most of the period considered in their survey (until 1986), it must have been affected by this factor. The increasing tendency not to search for organizational alternatives, according to Marie, a leading figure in a former FOSATU union, was almost a natural tendency given the size of unions (interview;1991). Organizers faced with an overwhelming workload would opt for the line of least resistance, eg. handing over complaints of workers to lawyers to

sort out even when in theory they might for example, favour putting united pressure on an employer (ibid). Organizational considerations were replaced by considerations of what would be the most effective immediate solution to any one problem. Rather than attempt to implement a more difficult or militant organizational strategy, organizers would often routinely resort to, for example, the Industrial Court.

Another factor precipitating the use, by FOSATU affiliates and other unions, of the Industrial Court and the ICS, was the economic climate.

Cassim (1987;pp536) argued that South Africa was in recession since 1981 and the economy showed no subsequent sign of recovery. One of the effects of this was high and increasing unemployment (ibid;p542). It was this high unemployment which was cited by MAWU, for example, as one of the reasons for its entry into the ICS (chapter 4). The declining economic situation no doubt played a role in the major battles, particularly over retrenchment and dismissals, being fought in the Industrial Court in the early eighties rather than on the shopfloor, according to unionists like Morris (interview in RRS;1983;p192).

Markham and Matiko (1987;pp112-3) report that despite the fact that, as early as 1985/6, the unions voiced dissatisfaction with the Industrial Court and the ICS, the majority continued to use these institutions. Despite such dissatisfaction, within and outside FOSATU the conviction grew that the gains made by FOSATU unions were mainly due to their ability to manipulate the system astutely, particularly the Industrial Court (Eg. Patel 1991; and Friedman;1987;pp314-336). This further encouraged a legalistic approach, i.e. growing dependence upon the institutions of the system to win battles against employers and an increasing dependence on experts inside and outside the unions to manipulate the system (Parts 2 and 3 of this thesis). This could not but undermine FOSATU's much vaunted real control by workers over all aspects of trade union activity and foster the emergence of bureaucracy which was expert at manipulating the system.

After its decisions to enter the system (first by registering and then by entering the ICS) FOSATU never engaged in any real, regular and comprehensive assessment of the impact of increasing engagement in the new dispensation on its affiliates. This is testimony both to FOSATU's overriding concern with "trade unionism pure and simple" and its complacency about its ability to manipulate the system in pursuit of its goals. Therefore whilst FOSATU remained, for the duration of its existence, a vibrant and growing federation, it was unable to retain a critical political perspective in relation to the new dispensation. It began to move increasingly in the direction of legalism.

Its heavy commitment in practice to the industrial relations arena as its sole concern meant that it was also unable to contribute to the emergence of a political movement or party of the working class (as it had undertaken to do) which might have enabled it to place in political perspective its day-to-day work and its relationship to the system and might perhaps have steered it away from the legalism which was beginning to emerge within it.

4. Outside FOSATU.

In the new unions outside FOSATU various political positions obtained. It is not possible or necessary to examine all of these here. Instead what will be considered is how some of the dominant political influences in and on the rest of the new unions under consideration in this thesis contributed to sowing the seeds of legalism. Three strands of influence will be considered here: that operating in respect of the dominant Western Cape unions outside FOSATU, that operating in the "community" unions, and that operating in NUM, the most powerful CUSA union which joined COSATU despite CUSA's refusal to do so.

4.1. The Western Cape Unions

Two major unaffiliated Western Cape unions were very influential in the Western Cape in the first half of the eighties. These two unions also reflected a particular political position within the new union movement. The GWU and A/FCWU which resembled each other in terms of leadership and dominant political perspectives. They resembled FOSATU in their resistance to being dominated by liberation politics and their commitment to building strong factory floor based unions. However, they were not as single-mindedly devoted to shop floor issues as FOSATU and differed from FOSATU on the issue of engagement in the new dispensation.

4.1.1. Political perspectives: a weaker strain of syndicalism?

The leadership of both unions comprised both ex-SACTU unionists and young white intellectuals. According to Pillay (1990;p103) it was the "other officials" (ie other than ex-SACTU members) "who represented the official or dominant union position." Young intellectuals like Theron and Lewis, mainly represented the stance of these unions until the formation of COSATU (Maree;1986;567). However, counter pressures existed inside and outside the unions.

The young intellectuals in these unions shared, to a lesser degree, FOSATU's suspicion of community or multi-class politics. Like FOSATU, they were accused of being economistic and

a-political. Lewis, the general secretary of the GWU put his union's position in response to the charge of being a-political and economistic very much like Bonner (above):

"There are two answers to this: the first is that a union must inevitably carry within it the tendency towards economismThe second answer ...is that the accusation reflects a very narrow formalistic notion of what politics is..." (Lewis,D;1986;p245)

He argued further that:

" ...unquestionably the democratic union movement in South Africa has won substantial economic gains, and to be sure we've spent a major part of our time and energy in making these economic gains. But in the democratic unions, the workers have in addition won a new pride and dignity, a self confidence in their ability to take and implement decisions. This is really the key aspect of unions' political work. The acquisition by our members of an awareness of their own power, an awareness of their ability to participate in their own way in the most complex and difficult decisions. We don't claim for one minute that this should or does represent the totality of our political work." (ibid; p246.)

The increased pressure on unions to participate in community campaigns (Chapter 2) led to some debate on the issue. In 1982, A/FCWU (1982;pp54-8) raised a number of important points about trade union participation in community politics. The union stated that community organisations and trade unions differed in a number of respects:

- (1) trade unions consisted of only workers, whereas community organizations were multi-class;
- (2) trade unions shared the common exploitation of their members whereas different classes with different class interests belonged to community organizations though they sometimes shared common oppression;
- (3) community organizations were led by intellectuals, which made it difficult for workers to articulate their demands/position in such organisations, whereas in trade unions, even if the leadership consisted of intellectuals, there was a striving towards worker control and increasing orientation to worker democracy;
- (4) community organisations had questionably organized constituencies ie they consisted of mainly activists and very often lacked working class membership, whilst trade unions were soundly organized and structured.

Whilst therefore the union supported the participation in struggles beyond the workplace, trade unions could not wage this struggle because they were not political or community organizations and would destroy themselves if they tried to be such. It called for a different organisation to lead such struggles (Hindson;1987; pp212-3).

A similar position was adopted by the GWU in relation to the UDF and NFC launches in 1983

which threw up the question of union affiliation to political/community organisations. It held that the UDF and other organisations opposed to oppression should be supported by unions but not joined because this would be divisive. Workers in unions held diverse affiliations/loyalties. Also, different unions were divided on the issue of joining political organizations, and on which organisations to join, which might set back unity initiatives. This proved prophetic, since in the next few months already, unions (like MWASA) split on this issue.

In their rejection of large-scale involvement in community politics and of identification with the national liberation movement or its adherents inside South Africa, the political positions of the most influential leaders in these unions, the intellectuals, therefore resembled that of FOSATU.

The second strand of influence in these unions were SACTU activists, who had experienced political involvement and were in favour of the involvement of the unions in community politics [not the ex-TUCSA unions as in FOSATU, who had no history or experience of political involvement of trade unions]. As Pillay's research with regard to both unions reveals, the "activists" in these unions, especially respected old SACTU activists like Mpetha (A/FCWU) and Mehlomakulu (GWU) also had some influence in these unions. This resulted in ongoing tensions between the two sections of the leadership of these unions, with the "activists" accusing the "intellectuals" of wanting to have "normal run-of-the-mill" unions and some complaining of being victimized for being overtly politically active (Pillay;1990;pp150 and 156). These accusations were repudiated by the "intellectuals" (ibid;p149).

Given the different history, composition and environment of these unions, they participated in community politics much earlier and to a greater extent than did FOSATU. Bonner (1983;pp25-26) pointed out that these unions organized mainly African migrant workers who were constantly changing employment and lived in the large African townships where much political activity was taking place. This put great pressure on these unions to actively participate in the political events affecting their members.

Both the A/FCWU, and the GWU experienced some involvement in community politics, both through the involvement of the community organizations in support boycotts for union strikes (eg the Fattis and Monis strike and the red meat strike) and the involvement of the unions in community campaigns. These experiences made them very critical of community organisations, and the participation of unions in them.

In 1979, the AFCWU/FCWU's strike at Fattis and Monis led it to call for a community boycott

of the company's products. This threw up problems for the union: community organisations which were asked to help disputed the way in which the boycotts were run by the unions, union leadership, etc and made it difficult to organize the boycott. Further conflict between unions and community organizations arose when community organizations demanded union support for community campaigns such as rent, housing and anti-election campaigns. Some union leaders failed to attend meetings to launch campaigns, which led to criticism by community organizations. Union leaders in turn criticized community organizations because of short notice of meetings, lack of time to consult membership, etc. This resulted in tensions between trade unions and community organizations eg. the refusal by unions to support campaigns which the unions had no hand in planning in late seventies and early eighties (Hindson;1987;p 211.)

Such adverse practical experiences of working with community organizations in the late seventies and early eighties appeared to strengthen the theoretical political position of the intellectuals from these unions. However, both elements of the leadership of these unions brought positive contributions to the unions. Like the young intellectuals in FOSATU, the leadership of these unions were responsible for bringing class consciousness into the black working class. The militancy of these unions was demonstrated in the strikes they led, and the gravitation of workers to them. Both the Fattis and Monis strike and the red meat strike in 1980 were responsible for not only gains on the factory floor, but since they were accompanied by community boycotts, they galvanised the working class as a whole into action.

These unions did not therefore share to the same degree, FOSATU's caution over involvement in community organizations. They also did not share to the same degree FOSATU's historical commitment to collective bargaining trade unionism. They also did not share FOSATU's legalism.

4.1.2. Approach to trade unionism and the law.

The Western Cape unions, particularly the GWU (Bonner 1983;pp25-26 and Maree;1986;p659) shared FOSATU's commitment to building strong unions based on the factory floor, emphasizing the importance of collective bargaining, building worker leadership and so forth. In their methods of building unions, they were far closer to FOSATU, than to the new general unions (below) which were indifferent to such issues. However, they lacked the strong thrust towards collective bargaining unionism along traditional lines and the use of the legally created dispute settlement and collective bargaining mechanisms which FOSATU had inherited from both TUACC and the motor unions. This to some extent explained their refusal to use the system to win gains for their members.

For both the Western Cape unions, participation in statutory structures and recourse to law were not new. A/FCWU was in fact technically two unions - the African Food and Canning Workers' Union and the Food and Canning Workers' Union. The former was unregistered and the latter registered since before 1979, but they operated as one union. The GWU used the statutory works councils created in terms of the Bantu Labour Settlement of Disputes Act of 1953, as a major organizing tool (Maree;1986;p601). However, both rejected the new dispensation and opposed FOSATU's position on it (Part 2).

The GWU in particular (Chapter 3) was opposed not only to registration, but also to the use of the courts, something the FOSATU unions resorted to heavily in the eighties. The GWU argued correctly that 'legalism' shifted control of disputes from workers to lawyers. The use of the law was also ineffective. The law was weighted against workers and employers could always find a way around a court order unless workers were organized enough to enforce it. If they were, they had no need to rely on the courts: it was worker power, not brilliant lawyers, which won unions rights in the factories. Court action was costly and time consuming - the resources could be better spent on organising in the factories (Friedman;1987;p317).

As an unaffiliated registered union, the FCWU historically refused to *de facto* recognize the state's pre-1979 approach to African unions. It rejected the state's attempts to divide the union along racial lines by operating as one union with the AFCWU. Like the GWU, it took the view that the new dispensation was calculated to weaken the new unions and that they should not therefore participate in it. For A/FCWU it was a matter of pride that it so rarely had recourse to the Industrial Court, for example, and relied on its organizational strength to address the problems of workers (Theron;interview;1991).

Maree (1986;pp 578-580) attributes the GWU's opposition to registration to its strong commitment to workers' control of the union, the hostility of its largely African membership to the idea of registering their union with the state, and the fact that GWU over-estimated the extent of the statutory controls and also put such a premium on workers' democracy that it obscured other legitimate objectives of trade unions. Bonner (1983;pp25-26) attributes this to the fact that the union operated in a geographic area dominated by conservative bureaucratic unions organizing mainly "coloured" workers and operating within the system, which reinforced a tendency to reject the new dispensation. This, he argues, justified rejection of the new dispensation.

The GWU and the A/FCWU were major proponents (together with FOSATU) of greater unity amongst the new unions (Chapter 2). They worked very closely with FOSATU throughout the years when the new unions were striving to form a single federation (Davies et al; 1988;p342 and

344). Working with FOSATU brought them under the influence of its affiliates. According to Cooper (interview;1991) FOSATU's apparent experiences viz. that it could grow, obtain stop-order facilities (deduction of membership dues at source), defeat employer hostility and so forth, led GWU to conclude, like FOSATU, that it was possible to manipulate the system without being incorporated into it. Given the vehemence of the GWU leadership's opposition to the new dispensation, according to Cooper (interview;1991) the leadership had a hard time persuading members that they had to alter their position on the new dispensation.

Thus, in the course of the struggle for greater trade union unity, FOSATU's legalism spread to at least one other union. This was important, since the union affected, the GWU, was an influential union, which had been in the forefront of the battle against the use of the new dispensation, *inter alia* on the grounds that it indicated and further fostered the growth of legalism (part 2).

4.2. Unions under the Influence of the Congress Alliance

The hostility of the Congress Alliance to the new union movement in the seventies was dealt with in Chapter 2. However, as was pointed out there, this opposition to the new unions was simply based on the failure of the Congress Alliance to exert any real influence in the working class, especially in the trade union movement (Callinicos;1988;p71 and Searchlight;1989;p85). In the eighties, the Congress Alliance changed its position on trade unions in South Africa. It concentrated its attacks on those unions, particularly FOSATU, which had eschewed politics, or rather had openly articulated opposition to the involvement of the new unions in "liberation politics" (eg. Toussaint;1983).

The emergence of mass-based unions orientated towards community politics, rather than towards the shop floor (Chapter 2) offered the Congress Alliance a foothold in the new union movement. Perhaps the most important of these was SAAWU (Baskin;1991;p28). Certainly SAAWU's position on politics, trade unionism and the new dispensation serves as a good example of the position of all the "community unions" on these issues (ibid). These positions reflected the position of the Congress Alliance. Of course at the time, affiliation to the Alliance was outlawed. The "community unions" instead affiliated to the organization which was widely viewed as the Alliance's legal surrogate, the UDF (Murray; 1987;pp215 and Baskin;1991;p29).

SAAWU was a mass-based trade union formed in 1979 by breaking away from the black consciousness orientated Black Allied Workers Union. SAAWU has been called a "mass

participatory union". It differed markedly from FOSATU in a number of respects.

Firstly, SAAWU, like the other "community unions" adopted "more or less openly... the ANC's political perspectives" (Baskin;1991;p29). For example, early in its existence, SAAWU adopted the Freedom Charter (Matajo;1984; p51). This support for the Congress Alliance was reciprocated by the express approval of the Congress Alliance of SAAWU, which took the view that SAAWU was like the old ICU, only better (Matajo; 1982; pp24-25). The Congress Alliance treated FOSATU and CUSA (below) as either of little importance, or else slated them for their "apolitical" stance and their pro-registration stance, or vilified them for their external contacts. SAAWU was highly praised, despite the fact that FOSATU was clearly the dominant body in the new union movement. For example, Matajo (1982; pp23-4), having virtually dismissed FOSATU and CUSA in the space of a few lines, says this of SAAWU:

"Its policy is non-racialism, based on workers unity. It strives to organize workers on the shop floor. The guiding principle of the union is mass participatory democracy. This means that workers decide the policy direction and tasks of the union....SAAWU has given courageous leadership to the workers in SA and the government is banning and detaining SAAWU activists."

The implication of this was that the two federations, FOSATU and CUSA lacked all these features. The importance of SAAWU therefore lay in the fact that it reflected the first conscious intervention or direct influence of the Congress Alliance in the union movement since the sixties.

Secondly, SAAWU differed from FOSATU in the way in which it organized. Its methods of mass mobilization were typical of ANC/SACP methods. It did not have the tight structures of FOSATU or its affiliates; it was a general union, rather than an industrial one, sometimes coming close to being a loose federation in that it had a number of "sub-unions" affiliated to it. Its involvement in community politics was progressive for it had the effect of galvanising large numbers of workers into political activity, which FOSATU and CUSA failed to do. SAAWU's key theme was "mass mobilization": meetings drew thousands, many not members, and also students, youth, women's organizations etc. It thus forged early links between organised workers and the rest of the working class (Davies et al;1988;p339).

Nonetheless, SAAWU was highly unstable. It did not build strong factory floor structures, consolidate its membership or make lasting gains on the factory floor for its members. This was to have severe implications for its ability to withstand either the strains placed on it by the economic recession of the eighties, or the harassment for which it was singled out by the state due to its overtly political role (Baskin; 1991;p29).

Thirdly, SAAWU differed from FOSATU in its approach to the new dispensation. It rejected the new dispensation, its position being that the new dispensation was part of "All those draconian laws which amount to genocide against the working class, and black workers in particular" (Davies et al; 1988;p338). It argued that it could not participate in the structures and procedures of the new dispensation because "We cannot participate in our own exploitation and oppression" (ibid). In this, it reflected the influence of the Congress Alliance which also rejected the new dispensation (eg. Workers' Unity; No.31 June 1982;pp3-4, SECHABA; Aug.1982;pp20 et seq.; Matajo;1982;pp23-4).

4.3. Unions under the Influence of the Black Consciousness Movement.

As was seen in Chapter 2, CUSA, the federation which aligned itself with the Black Consciousness Movement, initially participated in the unity talks which led to the formation of COSATU and then dropped out. It is therefore not of direct concern to this thesis. Its importance here lies in the fact that it was CUSA which set up what was to become the biggest and most important union in South Africa (and in COSATU), the National Union of Mineworkers (NUM). I shall deal only briefly with CUSA, since it falls outside the concern of this thesis.

CUSA, unlike the rest of the new unions in the "unity talks" did not adopt a non-racial approach to trade unionism, but an "africanist" approach. It was this which eventually led it to decline to join COSATU (Chapter 2). Unlike FOSATU, it joined both the UDF and the NFC, as its solution to the problem of divisions sown amongst members with different political allegiances.

However, it was criticized on several grounds. Davies et al argued that

"CUSA has generally promoted a form of trade unionism which does not challenge the capitalist system. The major ideological force within CUSA, the UTP, explicitly defines its 'first and foremost concern' as the promotion of 'a healthy relationship with employers'. CUSA's approach to negotiations gives a leading role to officials rather than shop stewards." (Davies et al;1988;p345.)

Davies et al support the view of the Congress Alliance with regard to CUSA that:

"Its leaders,frequently appear at business conferences as the acceptable black trade union voice. They are strongly cultivated by certain monopolies" (Davies et al;1988;p346)

CUSA came in for as much criticism from the Congress Alliance as FOSATU did, because of its stance on the new dispensation. Most of CUSA's unions registered in terms of the new dispensation. Its acceptance of the new dispensation was far more unreserved than FOSATU's.

The NUM differed from CUSA's political position, insofar as it rejected the "Africanist" stance

in favour of non-racialism. It finally broke away from CUSA in 1984 claiming that the latter was not serious about the unity talks (Baskin;1991;pp43 and 47). Its stated principles resembled those of FOSATU: Worker control, non-racialism, worker independence, industrial unionism and international worker solidarity.

However, the NUM reflected its CUSA background, in that it was headed by not by young white intellectuals with a clear class perspective on South Africa, but by young black intellectuals like Ramaphosa, a lawyer in CUSA's legal department who was given the task of organizing the NUM and who leaned in the direction of liberation politics. This distinguished the NUM clearly from FOSATU unions. Although the NUM did not have any connection with Congress Alliance in its initial years, the fact that it favoured a political role for unions, unlike the rest of CUSA, was regarded as a point in its favour by the Congress Alliance (SACTU;1984;p22).

However, in practice NUM did not throw itself wholeheartedly into politics. Instead it favoured concentration on building the union, on direct economic gains for workers. The NUM was, for the first years of its existence, occupied predominantly with the mammoth task of establishing its presence on the mines, in the face of tough anti-union mining bosses.

The way in which the NUM operated had little in common with the "mass recruitment" tactics or the "mass participatory democracy" of SAAWU. The methods adopted by NUM to gain access to workers on the mines was dictated largely by pragmatism, rather than abstract political principle, according to Golding (Acting General Secretary in 1991) and Ramaphosa (FM 9/7/91). Golding argued that in order to gain access to workers on the mines, who were tightly controlled by mining employers, the NUM necessarily had to approach the mining employers for permission to organize. They also had to abide by the conditions set by employers and make certain concessions to them (interview;1991). NUM argued that if they did not have the permission of employers to organize, then workers would think it was illegal and would not join (NUM News;Nov. 1985;p5).

As a result of NUM's stated political position on the one hand, and its organizational practices on the other, the Congress Alliance was somewhat ambivalent towards it. On the one hand it acknowledged the political position adopted by the NUM (above). Yet on the other it treated the union with some suspicion. Whilst the Congress Alliance could not directly deny the major advances which the NUM had made in being able to organize the miners at all, given the extremely difficult conditions on the mines (part 1) the Alliance raised questionmarks over the union's relationship with the mining bosses.

It spoke of the "ominous" granting of access to some mines by the Chamber of Mines and the Chamber's desire to "corrupt, subvert and co-opt the leadership of NUM" (Diseko;1983;p11). It further referred to the affiliation of NUM to CUSA and repeated its accusations that CUSA was conservative and had dubious international connections (ibid p10). It insisted that "a union cannot organise mine workers with the consent, monitoring and directorship of management" (SACTU; 1984; p24). In a series of articles in Sechaba, SACTU called instead for "the revival of a union along the lines of Uncle JB Marks...(a famous unionist of the forties) under the control of SACTU. It argued that

"There is nothing to suggest that the apartheid regime mine management and international investment will ever tolerate a strong, progressive Black miners' union."
(SACTU; Dec 1984 p 24).

However, as Callinicos (1985;p26) pointed out, if the mining employers were hoping that the NUM would turn into a tame, co-opted union, they were mistaken. So too was the Congress Alliance, of course. The NUM's success in organizing the workers in the key mining industry, and its rapid growth, bore testimony to the correctness of its position that it had to go via the employers in order to gain access to the workers. By mid-1985 it was the largest of the new unions, with a membership of 200 000 amongst the 550 000 workers in the gold and coal mining industry (Callinicos;1985;p26). Like FOSATU, which emphasized the role of shop stewards, NUM emphasized the role of shaft stewards. Like FOSATU, it expressed a commitment to international working class solidarity by, for example, supporting the British mineworkers in 1985 (ibid). However, this correct approach, guided as it was by pragmatism rather than by a programme for advancing the overall interests of workers, soon declined into legalism.

In the first few years of its existence, numerous strikes took place on the mines (NUM; Nov.1985;p15). However, despite this militancy, and its rejection of certain aspects of the new dispensation such as registration (ibid;p6), the NUM placed much emphasis on legal proceedings and the use of the statutory dispute settlement procedures. Within 2 years of its establishment, it had a firmly established legal department, which the union claimed had handled over 800 court cases by 1985 and had won 75% of these cases (ibid;p13). It took great pride in the fact that it led the first legal strike on the South African mines, and in its courtroom victories in the wake of that and other legal strikes (ibid;p15). It chose to highlight, not the results of united worker action, but its courtroom victories as its major achievements (ibid;p16). Despite the militancy of its members, NUM therefore early on demonstrated a tendency towards legalism. Given its growing importance in the new union movement, particularly after the formation of COSATU in 1985, this position was to have a great deal of influence in the rest of the new union movement.

On the one hand, the NUM was avowedly committed to participation of unions and workers in the liberation struggle ie in politics. On the other hand, in practice, like FOSATU it concentrated all its energies on the struggle at the workplace. In this struggle, it adopted what it called a pragmatic approach: it would adopt whatever course it deemed suitable for any particular battle. If that meant that operating through the legal channels was the easiest route to adopt, then it would adopt that route (Golding; 1991;interview). It did not favour open confrontation with employers or the state. According to Golding, negotiation, compromise and working within the system were infinitely better than direct militant action by workers, especially if the latter was illegal (ibid).

5. The Decline of Syndicalism

The political position adopted by FOSATU (above) rapidly declined in influence in the new union movement. FOSATU's economist/ syndicalist position came under pressure in a number of ways in the context of the growing unrest in the townships in which its members lived, particularly from 1984. Whilst FOSATU continued to grow by devoting itself to factory floor issues, its unwillingness and inability to contribute in practice to building the political leadership of the working class, or to participate in a concerted way in the political events of the day, undermined its political influence in the union movement and in the working class generally. This was to have powerful implications for the union movement in the second half of the decade. Initially FOSATU came under attack because of its political position as well as its participation in the new dispensation. However, whilst its political position was increasingly undermined in the mid-eighties, the criticisms of its position on trade union issues, particularly the new dispensation, rapidly vanished. This too was to be significant in the second half of the decade.

5.1. FOSATU and the Growing Political Crisis

FOSATU's commitment to the building of a workers' movement (as a political movement or Party) proved to be purely theoretical. Certainly there was no evidence of any attempts by either FOSATU or its leadership to develop such a movement. FOSATU unions and unionists were among the first to publicly raise the call for socialism but its appreciation of the need for socialism was purely moral. Without a programme on which to fight for socialism, seeing everything including the struggle for socialism as emanating from the unions, it could not actually guide the working class to socialism.

Instead, FOSATU devoted itself to the tasks outlined by Foster: the strengthening of its shop floor

structures, the education of shop stewards and a worker leadership, collective bargaining and so forth. It also contributed enormously to a task universally agreed (even by the Congress Alliance) as of crucial importance: that of trade union unity (dealt with later). Nonetheless, this meant that it was devoted, however excellently, to the trade union struggle pure and simple. Having devoted all its energies and resources to the trade union struggle, FOSATU had little left to launch a workers movement to challenge the Congress Alliance and did not in practice consider doing so (Erwin quoted in Callinicos;1988;p96)

Throughout the first half of the eighties, the new union movement, with FOSATU at its head, continued to make factory floor gains. By 1984, they had succeeded in unionizing 20% of workers, mainly into national industrial unions, numerous plants were organized and many shop stewards and shop stewards councils existed. They negotiated agreements laying down disciplinary, retrenchment and other procedures, negotiated agreements regarding wages and conditions of employment and dramatically escalated their use of the Industrial Court to establish legal rights. In 1984, for example, the number of cases referred to the Industrial Court was double that of the previous year, despite unions expressing increased concern at the restrictions placed on the court's powers (RRS;1984;p324). Strikes, both legal and illegal, but increasingly tending to be legal, became an accepted part of the industrial relations scene (RP115/86;pp69 et seq). The new unions, led by FOSATU unions in 1982, increasingly participated in industrial councils.

FOSATU continued to assert that it could not join in political activity or join political organizations. Joe Foster argued that:

"I don't think we have the power yet to flex our muscles and put pressure on the government. Of course the whole struggle is political. But we've decided we're better off not joining any political organizations now" (RRS; 1984;p337)

FOSATU still argued in 1984 that it could not affiliate to any political organization because it was "trying to build an independent worker movement" (Dhlamini,in RRS;1984;p337). It still feared the swamping of working class voices and interests in multi-class organizations and campaigns.

A worker interviewed by *Inqaba* expressed this view in relation to the UDF:

"In the UDF there are organisations that don't accept all nations, that are only open to blacks. They are not non-racial. FOSATU can't live in the same room as those organisations. The next point is that the UDF leaders are doctors and lawyers. They won't fight for workers. The last point is that every organisation has one vote. There are organisations with few members but very big voices.....it's only for educated people" (*Inqaba* No.12 Feb 84).

Given the strength of the trade union movement, particularly FOSATU, at the time, which was implicitly acknowledged by the UDF in their constant appeals to FOSATU to join campaigns, and

borne out by statistics, there was little validity in this argument by 1983. In fact, as was pointed out by the MWT, the expelled leftwing grouping of the ANC, it was by remaining out of the UDF, that FOSATU was failing to safeguard working class interests. Workers were more likely to be swamped by the petty bourgeoisie if they entered these organizations as individuals, than if they did so as a strong united trade union body. The MWT argued that the FOSATU's failure to enter the UDF meant that

"....it leaves these workers stranded in the UDF, under essentially middle-class leadership, and fails to direct the organised forces of the working class effectively towards the transformation of the entire mass movement on proletarian lines" (*Inqaba*; No 11; p13).

This was one of the reasons why the MWT issued a call to

"the organised workers in the independent unions to go into the United Democratic Front - to build it, transform it, and lead it on a clear program against apartheid and capitalist rule" (*Inqaba* No.11; 1983;p11)

FOSATU's other reservation, that the unions would be divided by affiliation to any political body, was irrelevant, in the light of the fact that workers were in any case divided: into unions which supported the UDF and those who did not; and between loyalty to their union and to the UDF.

The working class inside the community organizations needed leadership. This could be secured through the participation of the trade unions in community organizations and campaigns. It was necessary for the powerful unions to bring their democratic methods and experiences, as well as their muscle, into political campaigns. These needs made nonsense of the arguments of GWU and FOSATU that unions could not join community organizations or campaigns because community organizations were differently structured and operated differently from unions ie without the democratic structures and strict mandate system of unions (FWN No 26 Nov/Dec 1983 p5).

There was no way that FOSATU could avoid political involvement. The townships were set alight literally and figuratively by numerous issues: rents, transport, education, the pass laws, the new constitutional proposals, the absence of political rights. These issues affected the black working class more drastically than any other section of South African society (Chapter 2). FOSATU members were affected. FOSATU encouraged its members to become involved, as individuals, in campaigns around these issues. As Callinicos said:

"In the conditions of economic and political crisis of South African in the 1980's, a powerful workers' movement would willy-nilly be drawn into confrontation with the state." (1988;p96)

Given that the leadership of FOSATU was opposed to the national democratic politics of the Congress Alliance, and the hostility of the latter to FOSATU (below), FOSATU's refusal to

submit to the leadership of the "liberation movement" was of course correct. However, the refusal to engage in political activity in an organized way in the context of the heightened class struggle which swept the country in the eighties was entirely untenable.

FOSATU entered the campaign against the new constitutional proposals (Chapter 2) late and sporadically. Its participation consisted of localized actions such as its involvement in the Eastern Cape in the campaign against the new constitution and joining community organizations and other unions in calling a mass rally in Cape Town in August 1984. Its position remained that it would call on its members to get involved in township campaigns and organizations on an individual basis, but FOSATU itself "would not get involved in petty divisions" which it saw pervading community organisations (FWN Feb 1983; p1).

One of the problems which this approach created for FOSATU (MWT; above) was that it risked losing the respect of members for not participating in the events which dominated members' lives. The severe effect of the crises on the lives of members, and their growing awareness of the link between factory floor issues and those in the community, led to pressure from the rank and file for FOSATU to engage more fully in politics. In addition, in 1983, worker leaders like Mayekiso and Dhlamini who lived in the townships and found themselves drawn into township struggles, despite supporting the stance of FOSATU, were forced to acknowledge the connection made by the masses between struggles in the plants and the townships:

"...the union was not only involved in 'bread and butter' issues but was involved in the broader struggle for liberation. It is impossible to separate the two in South Africa when dealing with the oppressed voiceless masses" (Mayekiso;FWN Oct 1983;p2)

and

"We must unite to fight the bosses in the factories and we must unite in the communities....We are facing terrible conditions and bad education in the schools...Local Authorities.....set up by the oppressive government could never serve the interests of workers....Workers need to fight these community councils through joining civic associations in the communities. We should stand with others in our trade unions, in our civic associations and in our political organisations to fight against oppression and exploitation... We cannot isolate ourselves from the struggle." (Dhlamini; FWN 32 Sept 1984; p3)

In July 1984 two FOSATU unions, the powerful MAWU and SFAWU called at a mass meeting for the building of "worker controlled community organisations", joining "progressive community organizations" and actively supporting the "non-racial democratic organisations of the community" (RRS;1984;p310). FOSATU locals were meeting with community organisations to discuss various issues of mutual interest. Shop stewards councils, which spanned factories, took up local issues and took union struggles into the community.

Clearly, then, the dominant "economist/syndicalist" position within FOSATU, and within the new union movement generally, that the unions should avoid political activity, was in decline by 1984. Still FOSATU's participation in political activity by this time amounted to only regional or localized and sporadic participation, not the concerted entry of FOSATU and other syndicalist unions as a force in politics, articulating a working class position. The events of 1984 were to sound the death knell of the "economist/syndicalist" approach of FOSATU as a major influence in the new union movement.

5.2. The Political Challenge from the Congress Alliance.

FOSATU confined itself to factory floor issues, getting embroiled in the intricacies of the Industrial Court and industrial council system. It would not and could not, given the direction it had determined upon, assist in the emergence of a working class political organization to lead the working class politically. Yet the black working class was being swept into political activity because of the effect of the political and economic crisis on their lives (Chapter 2).

Thus the working class increasingly turned to the Congress Alliance, which was prepared to offer leadership in the struggles of the masses. The Congress Alliance, re-appearing slowly in community organisations in the early eighties and in community campaigns and worker support campaigns like the Fattis and Monis boycott, had strengthened its hold on the masses through the launch of the UDF in 1983. The UDF became a major force in the townships, leading the township revolt in the mid-eighties and replacing the unions which had led the strike movement as the most powerful form of protest (Chapter 2) (Baskin;1991;pp43-4; Davies et al;1988;pp451-2) .

In community organizations, the Congress Alliance gained access to union members (Baskin;1991;pp43-4), which added to the pressure on FOSATU to engage in political activity.

As Callinicos again pointed out workers

"see themselves as militant trade unionists, committed to independent workers' organization, but also support the ANC/UDF. At work they would participate in the independent unions, but their political loyalties would be to the old Congress Alliance." (1988;pp96-7)

This confusion of allegiances was demonstrated for example by two key FOSATU members, Moses Mayekiso and Chris Dhlamini, who were to emerge as ANC and SACP members in the wake of the legalisation of the SACP, (Baskin;1991;pp61-2 and p428).

Until 1984, the power of the union movement, especially FOSATU was such that its sanction was

needed to guarantee the success of that very potent form of protest, the political stayaway. The adherents of the Congress Alliance were forced to recognize this. This was the case for example with regard to action against the new constitutional proposals in 1983. At that stage, the UDF was so desirous of FOSATU's support and affiliation, that it offered to amend its rules, to allow the unions a greater say than other lesser organizations, to meet one of the unions' major objections to joining the UDF (Friedman;1987;p441).

All the regional stayaways of 1984 were led, successfully, by community organizations, especially students (Baskin;1991;p44). Some of them included unionists, including leading figures in FOSATU. For example, COSAS called meetings with parents in September 1984 in Kwathema to get their support: such meetings included shop stewards from MAWU and UMMAWOSA and Dhlamini, the President of FOSATU. This increased the pressure within FOSATU to participate and at the same time brought its membership increasingly under the sway of adherents of the Congress Alliance in community organizations. The result was that when students appealed to the unions to join in the call for a stayaway in November, around both community and factory demands, the unions could not and did not refuse (RRS;1984;pp338-9).

The November 1984 Transvaal stayaway, which set off the train of events of the next two years (Chapter 2), reflected the fact that FOSATU was still a powerful force in the new union movement and the working class generally. FOSATU's enormous organizational infrastructure and influence in the organized working class was still critical to the success of such a major event.

However, its influence was declining. The catalyst for the events of 1984-6 was the rent struggle, not shop floor issues, and the initiative came from the Congress of South African Students (COSAS), an organization with Congress loyalties. For certain stayaways concerning its members, FOSATU was only consulted after the stayaway decision had been taken. FOSATU's syndicalism and style of unionism had lost ground to such an extent, that the Congress related activists could appeal over the heads of the syndicalist leadership of the unions without going through union structures or getting formal mandates. They no longer needed to defer to the syndicalist leadership, in order to have access to the might of the organized working class. This caused an outcry from FOSATU's "old guard" (FWN;Mayday;1985;p2).

Dissension continued to exist between FOSATU and community organisations, particularly the UDF. FOSATU withdrew, for example, from the call for a "black christmas" on the grounds that notice was too short for the call to be effective. Like other unions, however, it was further drawn

into the political arena with the widespread arrests and detention of union personnel in the wake of the stayaway. In 1984 alone, 51 unionists were detained, of which 37 were leadership figures (RRS;1984;318).

The May Day 1985 issue of FWN reports two indications of the confidence of community organizations that they could do without FOSATU: the PEBCO call for a stayaway (albeit unsuccessful) in March 1985 in the Eastern Cape and the fact that UDF affiliated unions like MACWUSA and GWUSA were using their positions in the UDF to attack FOSATU. FOSATU complained of attacks on it and its affiliates as "enemies of the people" (FWN;1985;p3), of being snubbed in its attempts to plan joint action with the UDF and so forth. Attacks of this nature on FOSATU would have been unthinkable in its heyday. It indicated that FOSATU's position of only sporadically participating in political activity was politically untenable in the climate of mass militancy.

Clearly FOSATU was now beginning to realise the effect of staying out of the UDF and community politics whilst its members were actively involved in them. When FOSATU did participate, it found that it had been outflanked by the Congress Alliance chiefly because it had neglected the political arena and left the building of a working class movement, as a political force, too long. As a force in the working class, the "economist/syndicalist" position in FOSATU and unions like it was in decline. The masses involved in the upsurge had found their unions wanting and had found direction for their action in the UDF, where support for the Congress Alliance was growing and the unity unions in particular were absent. The result was that FOSATU was beginning to lose the confidence of its members in its ability to offer political leadership.

5.3. The Challenge Within the New Union Movement to FOSATU's Dominance

The softening stance of the Congress Alliance with regard to the new unions was indicated, *inter alia*, by Joe Slovo (then general secretary of the SACP) when he commented in *Sechaba* that the rapid growth of trade unions "creates enormous potential for the advance of the revolutionary movement" (April 1983; p12)

Rather than attack the whole of the new union movement as it had in the seventies, in the eighties it concentrated its attacks on FOSATU. The SACP voiced its outrage at the proposal for a workers party, calling FOSATU divisive in ignoring the existence of the SACP and attempting to compete with it (Toussaint;1983;). In 1983, the strength of the Congress Alliance in the

working class, was not yet as overwhelming as it was to become after 1984. In the union movement in particular, SACTU, its trade union wing, was "little more than an exile rump promoting the political ends of the ANC and the SACP, with slender influence in the trade unions within South Africa" (Searchlight;1989;p85). By contrast, workers had great respect for FOSATU and its leadership, which had been responsible for so many gains for the working class.

Thus the Congress Alliance concentrated attacks on the new unions, especially FOSATU, in the international arena, where it, unlike FOSATU had some established presence. An example of this was seen in the response of the Congress Alliance to a discussion paper circulated by the International Department of the (British) Labour Party in 1982. SACTU insisted that all international contacts with trade unions in South African should be made only through the liberation movement, in particular SACTU. Existing contacts were regarded by the Alliance as divisive. FOSATU on the other hand called for direct international links between South African and other workers. (Searchlight 1989; pp 85 et seq.). Even internationally, the Congress Alliance could not entirely succeed in discrediting FOSATU.

Nonetheless, the pages of *Sechaba* and the African Communist abounded with slurs and gross slanders about the nature of FOSATU's international connections and its politics. A review of the papers of the Congress Alliance reveals that it built up a systematic case against particular international bodies. These included the AALC and the ICFTU, which the Congress Alliance asserted had CIA connections (Eg.*Sechaba*;Nov 1982;p1; Matajo; 1982;p26). Whether or not these assertions were valid, the issue for the Congress Alliance was not the pretended concern to prevent these bodies from subverting the revolutionary potential of "our" unions (*Sechaba*; ibid). The object of the exercise was to discredit FOSATU and CUSA for having contacts with these bodies.

The most vicious attacks were based on FOSATU's supposedly "apolitical" stance. Over and over again, the Congress Alliance would expressly or implicitly equate the political position of FOSATU with the reactionary TUCSA and other reactionary union bodies (eg. Matajo;1982). It established links between FOSATU and international trade union bodies such as the ICFTU, AALC, Friedrich Ebert Foundations which "practises economism and avoids political action ". It pointed out that such international bodies paid ".....most subsidies to the 'economist' non-political unions" (ibid; p26). Such accusations, particularly about FOSATU's a-political nature, had little impact before 1984, but in the context of the political upsurge of 1984, they would become significant.

Whilst the Congress Alliance might have had some justification for accusing FOSATU of being "a-political", its accusations that FOSATU was divisive were entirely unfounded. One of the major pre-occupations of the established new unions (FOSATU and the Western Cape unions) was the struggle for unity within the trade union movement. It was these unions which spearheaded the unity talks in 1981 and continued to devote a lot of energy to it before the formation of COSATU. It was in fact the "community unions" which were responsible for the continual breakdown of the talks (Chapter 2). These talks ran parallel to the debate on the greater involvement of the unions in politics.

The opportunism of the "community unions" and their Congress Alliance mentors was reflected in the obstacles which they continually placed in the path of unity. Their initial objections (Baskin 1991;p 37-8, Lewis;1985;p30) concerned the fact that certain of the "unity" unions, notably FOSATU and CUSA, participated in the new dispensation (Chapter 2). This was in line with the position of the Congress Alliance on the new dispensation (above). However, as the Congress Alliance realised that conditions were ripe for it to seize control of the new union movement, it dropped its objections to unions which participated in the new dispensation. Thus the objections of the "community unions" under its influence, to participating in unity talks with FOSATU and CUSA disappeared. The Congress Alliance urged the unions under its influence to place unity above all their ^^^S221^S ^J ^^*(below). Nothing further was said about FOSATU's participation in the new dispensation. The position of the new unions in relation to the new dispensation had become irrelevant. The central focus was on the political direction of the new unions.

Two major factors led to the decline in influence of the "economist/syndicalist" position of the FOSATU leadership in the new union movement, in favour of participation in political activity led by the Congress Alliance. Both of these arose in the course of the unity talks, in the context of the events of 1984.

Firstly, within FOSATU, that position was increasingly being challenged. Baskin points out (1991;p45) that the old leadership was beginning to lose its tight hold of the direction of the federation. Some of the leadership figures, but more importantly the rank and file membership, were becoming impatient "with what was perceived as FOSATU's political hostility to mass action" (ibid). Regional leaders were beginning to talk to the UDF. Powerful leaders like the president of FOSATU, Chris Dlamini, were urging a change in political direction.

From within FOSATU there was pressure to allow the "community unions" which left the unity talks in March 1984 because they refused to bow to pressure to demarcate along industrial lines

to re-join the talks (ibid;p46). Given the powerful position of the ANC in the townships, it was regarded as necessary to have their support for any federation which was formed (ibid). This would mean re-admitting the "community unions" to the talks, despite their obstructiveness. In addition, both the leadership of FOSATU and that of the by then very powerful NUM, were sincerely committed to the greatest possible unity of all the new unions (ibid;p48).

Secondly, outside FOSATU, there were challenges to any new federation which would be formed under its leadership. Lewis reported that:

"In early 1985 there were rumours that SACTU.....had intentions of reviving itself internally and that this move would be supported by SAAWU, GAWU, MWASA (Western Cape) and the Clothing Workers Union. The commemoration meetings planned in different parts of the country fuelled the speculation, but any such intention was denied by the unions concerned and by SACTU, which urged unity within the new federation." (Lewis;1985;p32)

Despite SACTU's denials, it seems that respected old activists like ex-SACTU and ex-AFCWU organiser Oscar Mpetha voiced this threat. In addition, some of the UDF unions like the breakaway MACWUSA threatened FOSATU in the Easter Cape and alleged that it was the unity unions which had sowed disunity.(Friedman;1987;p411). It seems therefore that from outside the unity unions, challenges were about to be mounted to the legitimacy of any federation formed without the "community unions" ie the Congress aligned unions, which had given Congress its much sought after base in the powerful union movement. The community unions would have to be included "to ensure wider legitimacy both within South Africa and on the international plane." (Lewis,J; 1985;p32).

The reason for the Congress Alliance's insistence that the unions under its influence re-enter the unity talks (Baskin;1991;p45 and p48; SACTU document), rather than set up a separate federation soon became clear. The Alliance hoped to seize control of the whole of the new union movement. It could not therefore afford to continue to upset the unity talks by, for example, continuing to criticize FOSATU for its participation in the new dispensation.

It realized that it could not hope to have much power in the new union movement through a separate federation of "community unions". As Hindson pointed out, with the exception of SAAWU and MACWUSA, the community unions were small general unions. Most of them had arisen and achieved massive growth through strike waves and mass meetings in the townships, in the context of a temporary economic upturn which favoured union growth. Unlike the older, mainly industrial unions, they had failed to consolidate their membership, concentrating instead on signing up as many as possible. These weaknesses caught up with these unions when the recession began to bite deep. They were devastated by retrenchments and because of their overtly

political stance, by state harassment. The apparent huge gains in membership existed more on paper than in reality. These unions, particularly SAAWU which had been wracked by internal tensions, state harassment and loss of members through retrenchment could appear to be much bigger than they really were (Hindson;1984;p93).

Furthermore, the Congress Alliance realized that FOSATU was divided and that many influential figures in FOSATU by then supported political position of the Congress Alliance. Thus Baskin points out that in 1985, the UDF unions circulated a document that urged all the community unions to join the new federation to win all the new unions in the new federation to their side and break the influence of the old leadership which they called "reactionary"(1991;p48).

By the time COSATU was launched in 1985, the political position which had been dominant within FOSATU and the other unity unions such as GWU and A/FCWU (Baskin;1991;p50) had declined significantly both within FOSATU and in the new union movement generally. FOSATU was divided: the old leadership continued to be suspicious of "popular politics" , whilst "a growing number of officials and workers ... favoured the political direction of the UDF" (ibid; p49). Within the GWU and the A/FCWU the old SACTU leadership continued to exert some influence (ibid;p50). In the unaffiliated Commercial Catering and Allied Workers Union which joined the unity talks, the leadership was divided between those who supported the black consciousness movement and those who supported the UDF. In the powerful NUM, the UDF position was dominant (ibid).

The stage was set for the Congress Alliance to become the dominant influence over the political direction of the new federation. As will be seen in the next chapter, the leadership of the new federation reflected the end of the dominance of the "economist/syndicalist" position in the new union movement. The political direction of the new federation under a leadership which showed strong allegiance to the Congress Alliance, closely followed the trajectory of the Congress Alliance. At the same time, the adherents of the Congress Alliance within the new union movement, and indeed the Alliance itself, never again made any concerted attempt to criticize the new dispensation, or the extent to which unions were being involved in it. To all intents and purposes the issue, having served the purpose of helping to undermine the leadership of FOSATU, was no longer important. As will be seen in the next chapter, this opened the way for increased and unchecked participation of the new unions in the new dispensation.

Whilst the new unions were to become increasingly militant politically, in the realm of industrial relations they were increasingly drawn into the new dispensation which had been so widely

criticized, inter alia by the Congress Alliance for its potential to foster legalism in the new union movement. This was not only because the Congress Alliance and its adherents in the new union movement were no longer interested in criticising the involvement of the new unions in the new dispensation, once they had seized control of the political direction of the new union movement. It was also because, as the Congress Alliance became increasingly conservative politically, it urged the new unions to return to traditional collective bargaining trade unionism, which as in the era of FOSATU, led to a greater participation in the new dispensation and promoted the development of legalism in other ways. These issues are dealt with in the next chapter.

6: Conclusion

This chapter has demonstrated that the seeds for the development of legalism were sown in the new union movement in the period when FOSATU was the dominant grouping in that movement.

It has been argued that the increasing gravitation of FOSATU, and of the rest of the new unions which followed its example, towards engagement in the new dispensation, was attributable to a range of factors. Chief amongst these, were the political influences within the dominant FOSATU, resulting in a style of unionism which combined with the political and economic context and the growth of the new unions to thrust them in the direction of increasing engagement in the procedures and institutions of the new dispensation.

The way in which the struggle for political dominance within the new union movement was conducted and resolved, further supported the budding tendency towards legalism. Just as FOSATU's abstention from the political arena and concentration on factory floor issues contributed to its growing propensity to resort to using legal procedures and institutions, so the discarding of any criticism of such involvement by the Congress Alliance and its adherents in the new union movement left the way open for increased involvement and, in the era of COSATU (next chapter) to the development of a trend towards legalism in the new union movement.

CHAPTER 8: THE GROWTH OF LEGALISM IN THE ERA OF COSATU.

1. Introduction

The central argument in this chapter is that although the dominant political influences within and upon the new union movement changed significantly with the launching of COSATU, that change did not reverse the trend towards legalism. In fact, it strengthened it.

The chapter deals with the important political changes which took place in the new union movement after the formation of COSATU. These changes meant that COSATU played a greater and more overtly political role than FOSATU. They also involved a change of direction away from FOSATU's position of independent working class politics to one which favoured a close alliance between COSATU and the Congress Alliance. This meant that the new unions tied their fortunes to that of the Congress Alliance so that the nature and extent of their political role was determined by the direction chosen by the Congress Alliance.

The effect of this commitment was that during the first year of COSATU's existence, which coincided with the period of heightened mass political activity, when the Congress Alliance was obliged to assume a militant stance, COSATU too adopted a militant political stance. This militancy was to some extent reflected on the factory floors of the country, since it was the organized working class which formed the backbone of political activities such as stayaways in this period. However, the leadership of COSATU largely ignored developments in the industrial relations arena, particularly the development of a tendency towards legalism there.

The commitment to the political position of the Congress Alliance also meant that when the Congress Alliance rapidly shifted to negotiation politics in the post-1986 period, and became increasingly conservative, the trade unions too became concomitantly less militant. Workers continued to a large extent to take militant industrial action, but their leaders were increasingly directing them to confine their activities within the boundaries of legality. Moreover, the trade union movement was instructed to return to the type of unionism which characterised the pre-COSATU era: traditional collective bargaining unionism. In this way legalism was strengthened.

2. COSATU's New Political Position and the Continuation of Legalism.

COSATU's formation was significant for a number of reasons. It represented a victory for the working class in the existing political context. It brought with it the promise of not only greater political activity by the organized working class, but the possibility of welding together the political struggle of the working class and the struggle on the factory floor, to present a formidable challenge to the state and capital. It had the potential to reverse the trend towards legalism and make the organized working class as militant in the industrial relations arena as in the political arena. However, the particular political position adopted by COSATU instead fostered the continued growth of legalism in the new union movement.

2.1 The Significance of COSATU

COSATU was significant because of its size and its broad base. When it was launched in December 1985, it comprised 33 affiliates with a paid up membership of 450 000 (FM 6/12/85) or 460 000 (Baskin; 1991;p53) in the major industries of South Africa. COSATU's affiliates included NUM, the biggest union in South Africa, in the most important industry, the mining industry. They also included the most established of the new unions, *inter alia*, the Metal and Allied Workers' Union (MAWU), the Chemical Workers' Industrial Union (CWIU) and National Union of Textile Workers (NUTW), ex-FOSATU affiliates.

COSATU was born after years of struggle by the new unions for greater unity (chapters 3 and 8). Whilst its birth was significant in bringing together many of those unions in the biggest non-racial trade union federation in South African history, it is also important to note that it excluded a large section of the new union movement. Twenty unions tending towards Black Consciousness (rather than non-racialism) remained outside it: the 11 unions affiliated to CUSA and the 9 unions affiliated to AZACTU (WM 29/11/85).

COSATU was also significant in that it was born at a time of heightened political crisis in South Africa. The townships of South Africa were burning (Chapter 2). The state declared a second, this time a country-wide, state of emergency on the 12th June, 1986. It proceeded under the cloak of that state of emergency to crack down on all political organization and activity. The union movement, which had begun to participate more fully in community political campaigns in 1984 (Baskin; 1991;p87-89 and Davies et al; 1988; pp 459-460) suffered the same attacks from the state as did the community organizations, including arrests of activists and leaders (most notably Mayekiso of MAWU) and deaths of leading figures in detention (most notably Raditsela of

FOSATU). In this context, the launching of the biggest federation of mainly black workers in South African history was a victory for the oppressed and exploited masses of South Africa.

Most importantly, the birth of COSATU was accompanied by a significant change in the political direction of the new union movement. Under COSATU the new union movement from the outset assumed a far more overtly political role than it had played up until 1985. COSATU's leadership set this direction at its launching (Baskin;1991;p54, pp 60-66,pp91-93 and Davies et al;1988; p460).

COSATU's entry into the political arena added a further dimension to the struggle. It consolidated what had begun with the 1984 stayaway: the entry of the powerful organized working class into the struggle. The heightened political role of the union movement was clearly a progressive indication. For too long the unions had languished behind the mass of workers who were involved in political activity and urging their unions to participate.

During 1986, COSATU led the new unions into the political struggle (RRS;1986;pp234-6). It opposed the new reform proposals of the regime (Chapter 2) on the grounds that they would not lead to a free and democratic South Africa. It joined the UDF in campaigning for the release of Mandela and all political prisoners. It called for active opposition to the Johannesburg centenary celebrations, which it said meant 100 years of oppression and exploitation for black people. It joined the call for sanctions and other forms of pressure against the regime. It joined the successful call for stayaways in favour of May Day being a public holiday and to commemorate the anniversary of the June 16 1976 uprisings (ibid).

The declaration of the second state of emergency in June 1986 unleashed a wave of repression against political organisations. Under cover of the state of emergency many community organizations and political activists were banned, detained and driven underground (ibid;pp425-6). This repressive action by the state particularly affected the UDF, which had been in the forefront of the community struggles, and precipitated a downturn in the militant struggle which had overturned the townships since 1984.

Nonetheless, under COSATU's leadership, the organized working class now led the struggle. In response to the second state of emergency COSATU called for a day of action on July 14 (Davies et al; 1988; p425). The number of strikes in 1986 was more than double that of the 1985 (Table 3). This was largely due to the increased political activity of the new unions. The South African Institute of Race Relations (SAIRR) reported that:

"The sharp increase in strikes... mirrored the greater general unrest in the country. Workers increasingly used the strike to exert pressure for general political and local demands, while a number of mass work stayaways were called in protest against the state of emergency.... and also in pursuit of various local and political demands. A new feature of strikes during the year...was the sit-in or sleep-in strike, a tactic used by strikers in chemical, food, metal and mining industries" (RRS;1986;273).

All these activities resulted in the unions, like the political organisations, becoming the targets of state harassment and repression. Their members were attacked at home and at work by the members of UWUSA, a rival conservative federation launched by Inkatha, a political movement based in the KwaZulu "homeland" and closely linked to the South African government (Davies et al;1988;p429 and Baskin;1991;p132). Those arrested and detained by the agencies of the state included many trade unionists. In the first 6 weeks of the state of emergency, 2600 trade unionists were detained, of whom 81% were COSATU members ((RRS;1986 p248 and Baskin;1991; p135). Like their comrades in political organizations, many unionists were forced to go underground (ibid;p134). The offices of COSATU and its affiliates were raided by police and many meetings were banned (Baskin; ibid; p135).

Consequently, the functioning of unions was greatly disrupted (ibid). Less attention could be paid to day to day running of the unions and issues such as trade union strategy with regard to industrial relations issues, the participation of the new unions in the 1979 dispensation, the changes in the Labour Relations Act which the state proposed to introduce, and so forth, took second place to political activity.

State harassment was followed by protest strikes, which in turn led to employers making representations to the government about the detentions. The general secretary of COSATU, Naidoo, warned of "industrial anarchy" as a result of the detentions, and called on employers to secure the release of detained unionists, in view of "COSATU's continued commitment to good industrial relations" (RRS;1986;p240-250). In addition, COSATU unions entered into talks with business organizations demanding that they take action regarding the detentions and the harassment of unions and unionists, and securing the continued payment of detained workers. COSATU and its affiliates also suffered harassment in the form of the kidnapping and killing of unionists, arson attacks on their homes and offices, and so forth (ibid).

However, there were many weaknesses in the way in which COSATU assumed the leadership of the masses, particularly the dichotomy between its political militancy and the increasing legalism with which its affiliates approached industrial relations issues. This is dealt with in the rest of this section and section 2. However, at a more general level, weaknesses could be noted in

COSATU's method of operating. One of these was the increasing tendency to retreat *de facto* from the commitment to members' control over all aspects of the trade union movement's activities. Despite its verbal commitment to this principle (Baskin;1991;p57), COSATU's operation did not reflect that commitment.

At the launching of COSATU the commitment to grassroots participation was all but lost, despite the rhetoric of worker control and democracy. The constitution did not, for example entrench a commitment to building locals. This was only mooted in January 1991 (LN; 21/3/91). Locals were structures inherited from FOSATU. They were originally intended to be for the purposes of "mass discussion and initiativeto ensure co-operation between affiliates" (SALB;1987e;p29). Not only were they there to build unity between affiliates, but to serve as "an organizing tool" in response to organizational problems (ibid). Already in the FOSATU days they also served as the means for joint political action with the community (ibid; pp32-3).

By building its locals, COSATU could have ensured that at grassroots level, its political militancy would be translated into factory floor militancy in a concerted and organized way. Workers could have worked out how to translate their political militancy into shopfloor militancy. In particular, they could have addressed the issue of the increased assimilation of their unions into the industrial relations system, and the solution to this problem. Locals could also have been a means for uniting the community organizations and COSATU in a fighting front against the ravages of apartheid capitalism: the restrictions of apartheid, unemployment, inflation and repression. In other words, the role played by locals in the FOSATU days could have been developed and strengthened.

However, COSATU was unable to build its grassroots structures, such as the locals, on a national basis. In 1987, they really existed only in the Transvaal (SALB;1987e;p48), and functioned unevenly. By 1991 this was still the case. In a policy paper released in January 1991, COSATU acknowledged both its failure to build its grassroots structures, especially locals, which were seen as "the most democratic grassroots structures of the federation" (LN;21/3/91) and the fact that the federation could not therefore "fully practise the principles of workers' democracy and workers' control" (ibid). It acknowledged that this had meant, *inter alia*, that COSATU had failed to build a wide core of worker leadership in the unions (ibid).

Because of the failure to build these locals nationally, to strengthen them and have a definite policy on their political role, COSATU failed to use them to draw the unemployed, particularly the youth and the rest of the working class, into the struggles of organised workers and to rebuild

the community structures. By involving the locals in its various campaigns, especially the living wage campaign (below), COSATU could not only have strengthened the locals and rebuilt the community organizations, but united the working class as a whole, beyond the factory floor. At the same time, locals could not act as an organizing tool, through which workers could discuss and address strategies in relation to shopfloor problems. The problem of legalism in industrial relations could not therefore be tackled at grassroots level.

The failure to build locals and other structures for effective worker participation also meant that COSATU very often took decisions, particularly at the political level, without consultation with its members (Patel;interview;1991). Baskin (1991;p189) points out that the reasons for COSATU's initial failure to build its grassroots structures and involve its members in important political decisions, lay largely in the extreme political repression which it (and other organizations) faced in the initial years after its launching. Whilst there is a measure of truth in this, it does not, however, adequately explain the continued failure to establish such structures (acknowledged by COSATU itself).

Thus a bureaucratic structure, open to top-down political manipulation, was clearly in place from the outset. The structures through which workers could challenge not only their leaders' political direction but also their handling of shop-floor issues, did not really exist. The consequences of this will be seen in the next section.

2.2. COSATU's Commitment to the Congress Alliance and the Potential for the Development of Legalism.

Observers lauded the formation of COSATU as a marriage of "political and collective bargaining unionism" (e.g. Swilling 1987;p33). Put another way:

"COSATU combines two major traditions of trade union opposition in South Africa - the one class based, the other linked to the national liberation struggle. The one will ensure...that COSATU does not withdraw into narrow economism, the other will guarantee the interest of the working class for immediate economic gains and a long term transformation. " (Webster;1987b;p38).

However, both Davies et al (1988;p459) and Baskin (1991;p92 and pp96-7) have pointed out that from the outset the marriage was not a happy one. Neither the issue of the extent of trade union involvement in politics, nor the nature of that political involvement was clearly agreed upon (ibid). The division within COSATU, mainly between the old FOSATU leadership which still remained at the head of the individual affiliates of COSATU, and the new leadership of COSATU

itself, came to be known as that between "workerists" and "populists" (Callinicos;1992;pp31-2).

The former was seen as placing "great emphasis on independent working class organisation" and giving "factory floor organisation and struggles over 'bread and butter issues'" priority over "participation in wider struggles, particularly those in which the unions did not play the leading role" and favouring staying out of community organizations like the UDF (Davies et al;1988;p459). They saw apartheid simply as a means of dividing the working class, tended to "counterpose the national democratic struggle and the class struggle" and viewed "[c]o-operation with other classes [as] likely to compromise working-class objectives" (Baskin;1991;p96). For them, the struggle of the working class was one for socialism, under the political leadership of a workers' party (Callinicos;1992;p31).

The latter "emphasised the importance of workers and unions participating in wider political struggles, and favoured affiliating to the UDF". They were said to be "seeking a role in the wider political arena at the expense of independent working class organisation" and to "neglect the need for strong factory floor organisation" (Davies et al;1988;p459). Populists held the view that "racial oppression is the central contradiction within society". They paid little attention to the class aspects of the struggle (Baskin;1991;p96). For them the South African struggle, including that of the working class, was for national liberation under the leadership of the Congress Alliance (Callinicos;1992;p31)

The way in which the struggle for control of COSATU's political position was resolved had important implications for the continued development of legalism. The political direction of COSATU was from the outset determined by the populists, who paid little attention to shopfloor issues. Such issues were left to the syndicalists, who continued to steer the unions in a legalistic direction in relation to these issues. This "division of labour" and its effect on the development of legalism are discussed below.

2.2.1. The dominance of populism in COSATU

Baskin (1991;p97) argues that neither position won out in the first eighteen months of COSATU's existence. However, from the launching of COSATU it appeared that, at least at leadership level, the "populist" position had gained precedence in determining the political direction of COSATU. Despite the continued political differences in the union movement, which would continue to dog COSATU at least in the first 2 years of its existence, adherents of the Congress Alliance had succeeded in gaining decisive influence in the new federation (Callinicos;1992;p31). This was

consolidated in the next few years. The powerful influence of the Congress Alliance in the new union movement was due to at least two factors: the commitment of leading figures in COSATU to the Congress Alliance, and the disproportionate influence of the UDF unions within COSATU's top structures.

From the time of its launch the top positions within COSATU were occupied by people who supported the political position of the Congress Alliance (Baskin;1991;p92). This was no accident. The tiny group of UDF unions, which had until the last minute obstructed the formation of COSATU (Baskin;1991;pp37-49), were able to gain disproportionate representation in COSATU. Because of their commitment to the everyday community struggles in which the majority of union members were involved, they were able to win a degree of influence in the new federation which far outweighed their actual numerical or organizational strength (Baskin;1991; p102). In addition, many other unionists who initially appeared to be fully behind the FOSATU line (Chapter 7), emerged in the run-up to COSATU's formation and at its launch, as supporters of the Congress Alliance (Baskin;1991; pp60-66).

These factors helped to ensure that the new leadership of COSATU would consist of people who, as Davies et al (1988;p460) put it, "positively embraced the terrain of what has been called alliance politics". The convenor of the launching Congress, NUM's Cyril Ramaphosa, argued that the political strength of workers depended on their shopfloor strength. The main task of the unions was to develop worker unity, to strengthen the working class organizationally, in order for it to lead "the struggle for liberation". He also argued that:

"It is also important to draw people into a programme for the restructuring of society in order to make sure that the wealth of our society is democratically controlled and shared by its people. It is important to realise that the political struggle is not only to remove the government. We must also eliminate unemployment, improve education, improve health facilities and the wealth of the society must be shared among all those that work in this country. It is important that the politics of the working class eventually becomes the politics of all the oppressed people of this country." (SALB;1986;p44).

No reference was made to an independent workers party, or an independent workers' movement as envisaged by Foster and FOSATU and their allies in the union movement (Chapter 7). Rather, it was the line espoused by the Congress Alliance (Davies et al;1988;pp443-450 and Fine and Davis;1991; pp259-289): that the struggle is one for "national liberation" under the leadership of the national liberation movement, rather than an immediate struggle for socialism (Fine and Davis;1991;p279).

At the rally the following day, the new President of COSATU, Barayi, called for redistribution

of the wealth of the country, through nationalisation of the mines and big business. However, at the same time, he was far clearer in his support for the ANC than was Ramaphosa. The Congress Alliance responded to this expression of support by claiming that the new federation would not have been formed without the work of SACTU inside the country (RRS;1985; p181).

Baskin points out that COSATU's political position, as expressed in a resolution adopted, was ambiguous. The resolution committed COSATU to greater participation in political activity, but at the same time made reference to the independence of the working class in the general political struggle. COSATU resolved to work with other progressive organizations, but did not state which these would be. However, the new leadership of COSATU clearly saw the Congress Alliance as the most important political influence in South Africa - the chief "progressive political organisation" with which Ramaphosa had urged contact. (Baskin;1991;pp92-93).

Thus shortly after COSATU's birth, COSATU's new leadership set up meetings with the exiled movement. These meetings were unmandated by the general membership of COSATU and many union leaders complained that they had not been consulted and had to learn about them from the press (Baskin;1991; p74). From one of these meetings in Lusaka, a joint statement was issued, which *inter alia*, agreed:

"...that lasting solutions can only emerge from the national liberation movement, headed by the ANC, and the entire democratic forces of our country, of which COSATU is an important and integral part. In this regard it was recognised that the fundamental problem facing our country, the question of political power, cannot be resolved without the full participation of the ANC.... (ANC-SACTU-COSATU;doc;1986).

In addition, although COSATU initially agreed not to affiliate to any political organization inside South Africa, it met with the UDF in February 1986 and throughout the year (Baskin;1991; p94) and worked closely with it. Clearly then, the union movement under COSATU was from the outset under the predominant influence of the Congress Alliance.

This relationship strengthened in the next two years (see later). Baskin points out that there was still commitment in the ranks of the leadership of COSATU in its first two years to the recognition of the "existence of classes" and the "need for strong independent organisations of the working class" (ibid;p95). However, the SACP (the close ally of the ANC), was seen as the political organization of the working class and "racial oppression was seen as the dominant contradiction within society" (ibid). Furthermore:

"The future was conceived as non-racial, democratic and socialist. Multi-class alliances, under working-class leadership, were seen not as an obstacle, but a requirement for advancing to socialism. In practice, for example, this involved

emphasising those clauses of the Freedom Charter which went furthest in proposing the radical transformation of society" (ibid).

So, instead of working class interests dominating the relationship of COSATU with the Congress Alliance, and the Alliance being forced to commit itself to exactly what was meant by "long term transformation", the "leading role" and the "special place" of the working class and other vaguenesses (Fine and Davis;1991;pp278-9), COSATU's leaders committed the working class to fighting for a black capitalist South Africa, under the leadership of the Congress Alliance which rejected socialism as an immediate goal (ibid;p279).

The lack of effective democracy in COSATU, operating through grassroots structures where workers and non-leadership figures could voice their views (above), together with the tendency of the leadership to espouse the politics of the Congress Alliance from the outset, meant that the federation as a whole was effectively committed to following the line laid down by the Congress Alliance, regardless of what the mass of workers knew or thought of the politics of the Congress Alliance. This soon proved to be the case, despite the ongoing mutterings of opposition (below).

Baskin's delineation of the forces in COSATU offers some further insight into why the Congress Alliance was able to strengthen its influence within COSATU. He points out that the political position of COSATU was determined by a combination of the "UDF" unions and the "centre" unions in COSATU. The former, it was pointed out above, had representation in the top structures of COSATU which was way out of proportion to their actual strength in the new union movement (Baskin;1991;p102). The "UDF" unions were politically dominant because of the political climate of the day ie one of "semi-insurrection". They were able to determine the political direction of COSATU, particularly since they were supported by the "centre" group of unions, including the NUM, SFAWU, FCWU, PWAU and TGWU which were "prepared to sacrifice trade union independence" in support of the Congress Alliance (ibid;p104). This group favoured the old FOSATU position which stressed the need for strong shop floor organization, but on political issues supported the UDF unions against those who favoured the old FOSATU political view which stressed the need for independent working class politics and organization (ibid; pp102-103). This balance of forces ensured the consolidation of COSATU's allegiance to the Congress Alliance.

This allegiance was confirmed by COSATU's formal adoption of the Freedom Charter at its congress in July 1987 on the grounds that the Charter set out "the minimum demands of the democratic majority" (Carrim;1987;p11 and SASPU National; last quarter;1987). This move was said to have been supported by two thirds of delegates. It was allegedly opposed by those who

wanted it to be complemented by a workers' charter and those who believed it divisive to adopt any particular political programme (RRS;1987/8;p608).

Affiliates had taken positions on the Freedom Charter (FC) before the congress. NUM, NEHAWU and FAWU adopted it. So too, after some heated debate, did NUMSA, despite the fact that its predecessor, MAWU, had resolved in its July 1986 Congress to commit itself to building socialism in South Africa under the leadership of the working class, to defining what was meant by socialism and to working towards a working class programme (Webster;1987;p39). CCAWUSA avoided both the Freedom Charter and the Azanian People's Manifesto at first because of the possibility of division, but once it merged with RAWU and HRAWU it adopted the FC.

Unions which did not adopt the FC, such as ACTWUSA and CWIU, where the old syndicalists held sway, were condemned as "workerist". In unions like CCAWUSA and FAWU, the adoption of the FC caused major factional disputes between adherents of the Congress Alliance and those who distanced themselves. In FAWU this led to a witch-hunt of those opposed to or not openly supportive of the Congress line (below). In COSATU itself, it was acknowledged that opposition to the Charter still existed, but those that opposed it were described as "an extreme minority" which had "never received much support from workers" (SASPU National;last quarter;1987).

Because COSATU's political direction followed the trajectory of the Congress Alliance, it was politically militant in the first year of its existence, before the Congress Alliance turned openly to reformism by seeking a negotiated settlement in South Africa. At the same time, as Tables 1 and 2 reflect, COSATU became, with regard to industrial relations issues, increasingly conservative and legalistic. This disjuncture is explained both by the legalistic role of the syndicalists in COSATU, and by the inattention of the populist political leadership to that growing legalism.

2.2.2. The retreat of the syndicalists into "trade unionism pure and simple" and into increasing legalism.

The "UDF" unions were weak when it came to organisation on the ground and to the handling of factory floor issues. It was here that the old FOSATU unions, the "syndicalists" were strongest, best organized and most experienced. With regard to industrial relations issues, the "syndicalist" unions were supported by the "centre" group (Baskin;1991;p103). The position of the "centre" unions was probably best expressed by Ramaphosa (above): that in order for the working class to play a role in national liberation, they needed to be strongly organized.

Thus the old FOSATU leadership and other syndicalists, with the support of the "centre" unions, continued to determine the direction which the new unions would follow in relation to industrial relations issues (Baskin; *ibid*; pp102-3). As in the past, this meant greater engagement in the institutions and procedures of the new dispensation.

The response of the syndicalists to the populist "coup" in COSATU, was to retreat back into traditional collective bargaining trade unionism. They seemed to resign themselves to the "inevitable" rise of the ANC and to accept that their task now was to build strong trade unions to safeguard the working class under a new government (Van Wyk; interview; 1991). They continued to dominate established ex-FOSATU "syndicalist" unions (eg. CWIU and NUTW) and remain influential (Baskin;1991;pp102-3 and Van Wyk;*ibid*). This was because they were very good at the day-to-day running of unions and energetic in their defence of the economic interests of the working class. For this reason, they continued to retain the respect of the working class.

Left to dealing with industrial relations pure and simple again, the syndicalists continued to follow the path of legalism after the formation of COSATU, as was seen in Chapters 4-6. More of COSATU's affiliates joined industrial councils, for example the Transport and General Workers Union (formed from a merger of unions which included the General Workers Union which had so vehemently opposed industrial councils).

In addition, now that the populist adherents of the Congress Alliance had won sway over the political direction of the union movement, they seemed no longer concerned to criticise the unions on industrial relations issues. The new populist leadership of COSATU dropped all criticism of the participation in the structures and procedures of the new dispensation. The syndicalists were fulfilling the role of building organizationally strong unions which could follow the dictates of the political leadership. To criticise the strategies which they adopted would mean that the populist leadership would be able to devote less attention to steering the unions politically behind the Congress Alliance.

Thus, for example, unlike when MAWU and other FOSATU unions entered the ICS, the TGWU was not criticized for entering the ICS on exactly the same grounds as MAWU had (RRS;1986:p259). In addition, as Tables 1 and 2 reveal, after 1985 there was a mammoth increase in the use made by the new unions of the statutory industrial relations system. Whilst strike figures also increased initially after the launch of COSATU, this was mainly due to COSATU's political activity and the continued spontaneous militancy of the working class. In the arena of industrial relations, where the ex-FOSATU leadership and their associates were

dominant, the unions were more and more drawn into the procedures and institutions of the post-1979 legal dispensation.

The continued devotion of the syndicalists to the day to day running of the unions served the interests of the populists, who had never been interested in building factory floor structures and the other "mundane" tasks of unionism. The latter had always viewed unionism merely as a tactical issue ie an avenue to gain support for the ANC/SACP. Evidence of this lay in the strong politics but weak structures of "UDF unions", like SAAWU (Baskin;1991;p102).

For the populist adherents of the Congress Alliance the organized working class was merely a lever with which to force the state and capital to negotiate. The problems and needs of the working class could be ignored, decried as narrow economism, in the interest of using the working class to further the interests of the black petty bourgeoisie. The populist leadership therefore had little concern with what was happening in the arena of industrial relations. In this way, by ignoring the increasing legalism in industrial relations, the new populist leadership of COSATU indirectly contributed to the growth of legalism in the industrial relations arena.

In sum then, COSATU's increasing legalism, particularly after 1987, can be attributed to both sides of the "marriage" between the "syndicalists" and "populists". The "syndicalists" largely retreated into "trade unionism pure and simple" and legalism. The "populists" were content with having control over the political direction of COSATU and had no interest in factory floor issues or how they were conducted by the syndicalists. Thus while the erstwhile FOSATU position (Chapter 7) on political engagement of the new unions declined in COSATU, its legalistic position with regard to "pure trade union activities" remained dominant in COSATU (Van Wyk;interview;1991).

The traditional collective bargaining trade unionism of the syndicalists was bolstered by the clear decision of the new political leadership of the new unions that, in the context of the shift of the Congress Alliance to a negotiated political settlement in South Africa, unions should return to concentrating on shopfloor issues after the 1987 COSATU conference. This "orthodoxy" continued to be accompanied by an increasing turn to legalism.

3. Post-1986: Legalism Continues under Populist Domination.

COSATU's formation brought the promise not only of a new political direction for the new unions, but a new direction in the area of industrial relations and collective bargaining. It was to

be hoped that those who had been most vociferous in their criticism of the involvement of FOSATU unions in the new dispensation, would now steer the new unions away from their growing dependence on the institutions and procedures of the new dispensation to win factory floor gains, ie. away from legalism. However, despite the change in the political direction of the new unions, legalism continued to grow in a number of areas of trade union activity, sometimes even impinging upon the political arena. What follows are some important examples of this.

3.1. Legalism in Strikes and Dispute Settlement

A strike wave commenced in 1987 with the mammoth OK Bazaars strike in January, the SARHWU strike, the May 6 stayaway, the NUM and NUMSA strikes, the two POTWA strikes, the South African Breweries (SAB) strike and the June 16 stayaway, rendering the year the most strike prone in South African history. For the first time, the number of strikes exceeded 1000 and involved more than half a million workers.(RRS;1987/8;p667). Clearly, the factors which had in the first place galvanised the working class into struggle in the 1984-86 period had not disappeared. The living standards of the working class continued to decline steeply as the price of foodstuffs in particular soared, and unemployment and retrenchments continued to increase (ibid;overview).

This strike wave and subsequent strikes were clearly an indication of the militancy of the workers involved. At the same time, some of those strikes began to reflect the lack of militancy of the leadership of especially the more established of the new unions. Two examples of this will suffice: the NUM strike and the NUMSA strike. These are key examples, since they did not only involve the two most powerful unions in COSATU, but took place in two of South Africa's key industries: mining and metal.

3.1.1 The NUM strike.

By 1987, despite nearly 5 years of existence of the NUM and despite the militancy of black miners, 85% of black miners were still earning below the poverty datum line (Markham and Mothibeli;1987;p59). Goldmining profits in 1986 alone were R8 420 million, the highest profits in history, whilst the lowest wage in the goldmining industry was R230 per month (ibid;pp.61-2).

In 1987, the NUM demanded a 55% increase in wages, which though seemingly high, would still not bring miners' earnings up to a living wage. Last minute settlement offers had for the most part averted industry-wide strikes in the previous years (eg 1985). In the course of negotiations

this time, the NUM lowered its demand to 30%, which was far from the living wage demanded by COSATU affiliates (see later). It was clearly affordable for bosses to pay these increases, but they refused to budge from an offer of 17-23% on gold mines and 15-23% on coalmines (ibid;p61).

Despite the difficulties and time-consuming technicalities involved (Chapter 6), the NUM embarked on a legal strike. By following the procedures for a legal strike, the union hoped, apparently, to protect workers from mass dismissals. As was shown in Chapter 6, employers and the courts to whom appeals are made in the event of dismissals, had little regard for the legality of a strike. This proved to be the case here too, with an estimated 60 000 workers losing their jobs, despite "the union emphasis.....on following the predetermined (legal) channels to the letter" (Markham and Mothibeli;1987; pp69 and 62).

In addition, the legality of the strike was no protection against the vicious reprisals of the employers and the state. Besides the mass dismissals, bosses deployed security firms to quell the strike, which led to several deaths. NUM officials were denied access to the mines, workers were often not allowed to hold meetings, they were threatened with having their food cut off and with eviction from the hostels. Bosses recruited scabs from Lesotho, and the state was about to send police in just before a settlement was reached. The Reserve Bank was set to cut off external NUM funds and the NUM was not allowed to operate a strike fund. All that the legality of the strike therefore meant was that employers were able to prepare for the strike by getting scab labour and building up stockpiles. Whilst all the legal formalities were being followed and legal time periods allowed to elapse, bosses created a climate of fear amongst workers (Markham and Mothibeli;1987;p62).

Yet the time was not used by the NUM and COSATU leadership to prepare and strengthen the strikers for the strike, by building support committees in advance and preparing for solidarity action, through the structures of COSATU. Only two and a half weeks into the strike, was the first meeting of COSATU shop stewards convened (Ruiters;1987;p61).

The strike lasted for 3 weeks, a remarkable feat considering the extremely repressive conditions on the mines, and the fact that previous mining strikes had lasted no more than 48 hours. In addition, workers had to resist the conservatism of their leaders. Obery et al point out that NUM leaders did not want a strike in 1987, but were forced into it by rank and file "anger" (1987;p37). The authors also report that "A song doing the rounds (during the strike) warns leadership that workers will not return unless substantial gains are won." (ibid).

Nonetheless, despite the fact that the NUM members were prepared to make extreme sacrifices to curtail their exploitation, and thereby galvanize even non-union members into action, the leadership settled very readily, much as they had on previous occasions:

"Eventually,.....the union made what it described as a 'tactical move sideways' and called off the strike in return for undertakings that dismissed strikers would be reinstated and acceptance of a Chamber of Mines offer of improved death benefits and holiday allowances. However, the strike failed to achieve any concessions on the main demand for a 30% wage increase which would, in fact, only have brought the earnings of workers in the industry back to their 1984 levels in real terms." (Davies et al;1988;p462).

As Davies et al point out (ibid), despite the failure to achieve any gains, "the miners' strike was nevertheless an impressive display of the potential power of organised labour". However, the strike was also indicative of how the leaders, who were more interested in bowing to their political masters (see later) and preserving "the union" than pursuing the interests of their members, allowed that potential power to dissipate.

Furthermore, the way in which the strike was handled wasted opportunities for the whole black working class. The early involvement of COSATU could have placed the whole of that very powerful union movement behind the miners, a very daunting prospect for capital indeed. This would also have gone a long way to restoring the confidence of the black working class after the defeats inflicted on it by the state under the state of emergency. Support action for the miners could have been the way to build not only COSATU's structures, but to rebuild community structures and galvanize the whole working class into action behind the miners, thus striking a blow not only at the most important sector of the South African economy, but defeating the state's attempts to permanently smash the masses and their organizations (Ruiters; 1987;p61).

Management had seen the strike as a trial of strength: the biggest and most important employers against the biggest and most important union in South Africa. According to one employer:

"We thought we had to go through a strike experience at least once in order to indicate that the threat of a strike was not always going to move us where NUM wanted us to be" (Markham and Mothibeli;1987;p 62)

It was no accident that this trial of strength took place in 1987 when there was a downturn in the mass activity which had prevailed in the previous three years, rather than at the height of the struggle in 1985. Clearly the mining bosses wished to demonstrate to the workers the extent of their new confidence, with the state back in control. The NUM leadership demonstrated their legalism by pouring energy and resources into seeking to protect workers by ensuring the legality of the strike. The protection of the strikers and the achievement of their aims would have been ensured far more effectively by devoting that time and those resources instead to building defence

committees against the attacks of the mine owners, building support for the miners within COSATU and the working class as a whole. This organisational defence of and support for the miners would have shaken the confidence of the bosses. The fact that these leaders confined the powerful miners within the bounds of narrow legalism, had a lot to do with the direction determined by the Congress Alliance and foisted on the whole of COSATU after the 1987 COSATU congress (see below).

3.1.2 The NUMSA strike

In 1987, NUMSA, the second biggest COSATU union after NUM, and operating in the key metal industry, prepared to go on strike supported by the overwhelming majority of its members. The details of the excesses of legalism which pervaded this proposed strike have been dealt with in Chapter 4. Suffice it to say here that once again such legalism allowed bosses, with the intervention of the state, to outmanoeuvre the union. The union was locked into the legal mechanisms, when the state was preparing to outlaw its legal strike through the stroke of a ministerial pen (Singh;1987).

No preparation was made for workers to build solidarity action through COSATU, for example, to withstand whatever management threw at them. This would have allayed the fears of union officials and workers, of the reprisals from the bosses and the state if the union went ahead with the strike (Ruiters;1987;p61).

Instead, union leaders, in the face of opposition from the membership, many of whom went ahead with the strike anyway, called off the strike. Clearly workers' militancy had not been dampened by the drawn out procedures involved in a legal strike but this militancy was defeated due to a leadership determined to back down in the face of the law. Again, this legalism of the leadership lost the opportunity to restore the confidence of their own workers, wearied by defeats in the townships and wage negotiations which dragged on for months.

Top officials of NUMSA (eg. Marie;interview;1991) defended calling off the strike once the Minister rendered it illegal. Marie argued that workers would have been sacked and the union would have lost those members. However, as was shown in Chapter 6, the legality of a strike did not ensure that workers kept their jobs anyway. In such circumstances, for the union to defend workers' jobs through a demonstration of its strength on the shopfloor, would conceivably have resulted in better results. In addition, others within the union criticized the way the strike was called off, on the grounds that workers who had been mobilized for a long time in preparation

for the strike would become demoralized (eg. Appollis; interview;1991).

Moreover, a major opportunity to wreak havoc with the South African economy was lost: the NUM and NUMSA strikes were to occur at about the same time (Singh;1987;p40) ie simultaneous strikes in the two most important sectors of the South African economy. Yet this tremendous potential was lost by the leadership of both unions: workers in both cases surprised their leaders with their militancy. The main objective of forming a federation like COSATU was to facilitate unions' united action and mutual support, yet in these early days already, COSATU showed itself incapable of fulfilling this role.

3.2. The Decline in Strike Activity and the Increasing Emphasis on Legality

From 1979 to 1987, almost every year was a new record year of strikes in South Africa (Table 3). Many of the strikes which took place were due to the increased political activity of COSATU. As the RRS of 1986 (cited above) pointed out, the sharp increase in strikes in the period after the launching of COSATU was due to the general unrest in the country and the fact that workers were using strikes "to exert pressure for general political and local demands, while a number of mass work stayaways were called in protest against the state of emergency.... and also in pursuit of various local and political demands." (RRS;1986;273).

However, 1988 brought a general decline in trade union militancy, even with regard to political issues (below) and the return to traditional collective bargaining unionism, operating within the framework of the law. This was directly linked to the political influence of the Congress Alliance, which had instructed unions to return to traditional collective bargaining unionism in 1987 (see later). Unlike during most years in the previous decade, strike levels fell rather than rose. In the first six months of 1988 strike levels were down by 89% on the same period in 1987 and lower than at any level since 1983. (RRS;1987/8; p667).

Whereas before 1985 most strikes were illegal, after that time there was an increasing trend in favour of legal industrial action (Bendix;1989;495), despite all the problems and pitfalls of such legality. For example, the intricacies involved in following the procedures for a legal strike dissipated the militancy of workers and the legality of a strike did not give workers any protection eg. against dismissal (Chapter 6).

Increasingly the new unions also turned to the state created system of collective bargaining and dispute resolution (the industrial councils, as was seen in Chapter 4). Ultimately, from having

condemned these, correctly, as instruments of incorporation, the new unions, particularly in 1989 and 1990 rose to defend them, and again, not through strike action, but through the courts and the system itself.

Increasingly, too, the unions turned to the very courts which they had bitterly condemned in the wake of the judgement against the NUMSA workers in the dispute with BTR Sarmcol (Chapter 6). As Table 1 reveals, the resort to the Industrial Court more than doubled in 1985 and again in 1986 and nearly doubled again in 1987 and 1988 (RRS;1987/8;p646). The Minister of Manpower was able to report to Parliament that the Industrial Court's activities grew by 131% in the 5 years up to 1988 and disputes referred to industrial councils and conciliation boards by 116% . This showed, he concluded, that

"...the majority of the Black workforce turn in a legal way to the legal machinery which the government has provided for the settlement of disputes....."
(Hansard; Vol; 19; 1987/8; p8887-8)

The increased use of the Industrial Court in particular, brought into play an aspect of legalism which was raised by the WPGWU in the early debates around the use of the new dispensation, namely that it would lead to a dependence on legal experts and a marginalization of workers in respect of certain areas of union activity (Chapters 3 and 4). This, the union then argued, would endanger workers' control of unions. The tendency of the new unions to resort to lawyers illustrated a particular pre-occupation with the law and legal strategy. It is also arguable that lawyers reinforced legalism because they tended to direct issues towards the courts rather than towards the shopfloor (eg. Brand;interview;1991).

The involvement and influence of lawyers in the new unions burgeoned in the decade under review, starting in the era dominated by FOSATU. Lawyers were consulted prior to negotiations with employers and prior to determining what strategy to embark upon in disputes; lawyers were involved in drafting constitutions, advising on the implications of and responses to legal changes, and most of all of course in litigation itself (FOSATU archival documents).

The welter of opinions sought by FOSATU on various legal issues bears testimony to the early involvement of lawyers in the new unions. This reliance on lawyers, particularly to assess strategy in disputes, continued after the formation of COSATU (Patel; 1991; Maree 1991), not only within affiliates of COSATU, but in the federation itself.

Both the extent of reliance on lawyers and the cost of engaging them on so many issues caused a great deal of concern within union circles (eg. Van Wyk of SACCAWU and Appollis of NUMSA; interviews 1990 and 1991). Van Wyk, for example (ibid) asserted that lawyers were

engaged by the union officials without any real consultation with other officials, let alone members. This was facilitated by the fact that the money to pay lawyers was received from sources outside the union and did not have to be accounted for to the membership. Thus financial resources which could more usefully be spent on other aspects of trade union work was wasted on seeking the assistance of lawyers unnecessarily. Only when external funders began to question the amounts spent on legal costs, did the union begin to review the extent to which it depended on lawyers (ibid).

However, the degree of influence wielded by lawyers in determining trade union strategy, and in particular in influencing trade unions to institute legal proceedings rather than rely on shop floor strength to achieve their aims, is in some dispute. From the perspective of lawyers themselves, they did not wield undue influence on trade unions. Lawyers like Brand (interview;1991) in fact decried the fact that trade unions did not sufficiently adhere to their advice before launching into strike action. Others insisted (eg. Benjamin;interview;1991) that they simply advised trade unions on the options open to them and that if trade unions attached more importance to their advice than to the feelings of members, then it was not the lawyers' fault. Other lawyers (eg. Bruinders; 1991) were critical of the degree of influence wielded by certain top labour lawyers, who largely succeeded in making COSATU and its unions "their patch", and in steering the unions in a legalistic direction.

Within the unions, some argued that lawyers in no way determined trade union strategy, in the sense of pushing them into legalistic rather than organizational solutions - that ultimately it was the decision of the unions as to whether to pursue legal or organizational strategy (eg. Patel;interview; 1991; Erntzen and Brown;interview; 1991). However, others were vociferous in criticizing what they regarded as the undue influence within the new trade unions of lawyers, who were neither elected by, nor accountable to, members (eg. Appolis 1991; anonymous). Some went as far as to say that lawyers based at certain legal centres formed the "think-tank" of COSATU. Certain lawyers have themselves been critical of the influence wielded by well-known labour lawyers with historically close links with trade union leaders, either as a result of their success in winning cases, or as a result of their prior participation in unions as officials/organizers.

Differing opinions and experiences therefore make it difficult to state categorically to what extent lawyers had a determining influence on trade unions' industrial relations strategy. What the critics of legalism and particularly of the role of lawyers in unions argued, was that because lawyers commanded a wealth of knowledge beyond the command of ordinary union members and many

organizers, their views as to what strategies should be adopted by unions were frequently incapable of being challenged.

Once legal proceedings were instituted, undoubtedly control over a dispute shifted from the hands of members to that of lawyers. As was seen in part 3, the complexities of labour law, exacerbated by the problems surrounding the Industrial Court and its applications of that law, meant that the handling of legal proceedings was beyond the ability of most organizers and elected officials ie those without specialist training. Thus the institution and conducting of legal proceedings was left to the legal experts within unions, or experts called in from outside.

In addition, the ability and commitment of unions to using court cases as focal points around which to organize workers considerably declined in the decade under review. The extent of involvement of workers in a case, even only insofar as being kept abreast of developments, being consulted during proceedings, etc. has always been minimal (Bruinders; 1991). Frequently workers' involvement was so minimal that with court proceedings becoming increasingly complex, with intricate points of law being raised which were the preserve of experts in labour law, workers would lose interest in cases entirely (Bruinders; *ibid*). Of course, exceptions existed, where a high level of worker interest and involvement in cases ensured that the case did become a rallying point for workers and strengthened the organization. These included in the period under review the BTR Sarmcol case (chapter 7) and the lengthy dispute in 1985 between the then CTMWA and the Cape Town municipality (Erntzen and Brown; interview; 1991).

The high point of involvement of lawyers in the affairs of trade unions in the decade under review, concerned the campaign waged by the new unions against the state's proposals to amend the Labour Relations Act. This is dealt with later.

3.3. Legalism in the Campaigns of COSATU.

The most important campaigns waged by COSATU in the period under review, were its "Hands Off COSATU" campaign around the issue of state attacks on its political activity, and its "Living Wage Campaign (LWC) around the issue of wages. Towards the end of the period under review, it launched a campaign with both political and industrial relations ramifications: the campaign against the package of attacks on trade unions in the form of the Labour Relations Act of 1988 (the LRAB campaign), deregulation and wage freezes. Both the LWC and the LRAB campaigns demonstrated the incipient reformism and legalism of the leadership of COSATU and most of its affiliates. The "Hands Off" campaign, whilst initially a militant one, also carried overtones of

reformism and legalism.

3.3.1 The "Hands Off" campaign.

Born as it was under a state of emergency, and with a clearly stated commitment to involvement in the political action which had forced the state to declare that state of emergency, COSATU almost from its birth faced harassment from the state and its allies (above).

COSATU's initial response to the attacks on itself and its affiliates and members (above) was one of defiance. Defiance took the form of mass action in protest at the detentions and other attacks, notably the Mayday stayaway of 1986. COSATU's CEC met and demanded an end to state harassment of unions and for employers to release ordinary workers to keep the unions running in the absence of their leaders (Baskin;1991; p140).

However, whilst the masses were still pushing their leaders in a militant direction by their willingness to take direct action on the shopfloor (ibid;p136), already in 1986 that leadership was showing signs of tiring. COSATU backed its demands with the threat of "action" if the state and employers did not accede to them. However, disagreement amongst its leadership about the nature of such action, coupled no doubt with the effects of the state of emergency (ibid;p141), led to an uneven and disappointing response from the masses to a call for a stayaway on 14th July 1986 (ibid). These divisions continued to be reflected in the different action taken by different unions. Some took their opposition to harassment to the courts, others took action on the shop floor.(ibid;p144).

According to Baskin, the mood within COSATU continued to be one of defiance throughout 1986 and for some time into 1987 (ibid;pp187-192). COSATU took a militant stance despite advice from its lawyers (ibid;p144). However, at COSATU's congress in July 1987 little attempt was made to assess the "Hands Off" campaign, or come up with a concrete programme of action for the future, which would protect itself and its members. As will be seen in the next section, the thrust of this Congress, was the decision to "return to basics" (Baskin;1991;p242 et seq). In other words, it decided to return to "orthodox unionism" and abandon its politically militant position (below).

Thus even in the realm of political activity, COSATU was becoming increasingly cautious after 1987. COSATU identified "the federation's current priority as defence against the propaganda attacks by the government and the South African Broadcasting Corporation (SABC), and physical

attacks on COSATU premises" (RRS;1987/8; p612). The campaign consisted of letters to employers demanding that they use their influence with the government to protect freedom of speech and association (Davies et al;p462). It also included placing newspaper advertisements setting out these demands, and lodging a complaint with the SABC (ibid; and Baskin; 1991;pp192-4). This was the extent of the "Hands Off" campaign.

Not only was the propaganda war not the central issue, but counter-propaganda did little to alleviate the effects of that war: the ordinary newspapers had little interest in the defence of COSATU, and the state-controlled SABC even less. Thus to appeal to either of these to stop discrediting COSATU's was ludicrous. It was a waste of time and resources to attempt to refute charges that, for example, COSATU supported violence (Baskin;1991;p192). It was also reactionary and reformist to desire to cultivate a non-violent image in the minds of the middle-class, largely white audience of the mainstream media. At the same time, this campaign, (following the attempts of the Congress Alliance to clean up their "violent" image) resulted in the abandonment of those workers who did, in the direct or indirect defence of themselves get involved in violence, like the railways workers on trial for their lives. COSATU disavowed any such actions (Baskin;1991;pp179 and 182).

Also, this campaign would do little to defend COSATU or its members from the spate of physical and other attacks on unions and unionists. COSATU did not form defence committees of workers, youth and the unemployed to physically defend itself.

The response of the employers to appeals to them was predictable. The very Gavin Reilly, one of the representatives of "big business" with whom the Congress Alliance had shaken hands in 1985, responded:

"We cannot be expected to treat sympathetically appeals from those, including trade unions and trade union federations, who promote sanctions and disinvestment, the more so when such advocacy is part of a wider political programme inimical to the very survival of the free enterprise system of which we form part." (cited in Davies et al;1988;p 462).

The retreat of COSATU, even in the political arena, was driven home in 1988. At the beginning of 1988, the state effectively banned 17 organisations inside South Africa, including the UDF, and severely restricted the actions of COSATU. COSATU was prevented from calling for the unbanning of banned organizations; calling for the release of political prisoners and unionists and the commuting of sentences for political crimes; opposing dummy elections; commemorating certain sensitive events like June 16; involving itself in community issues and organization; supporting disinvestment and sanctions against South Africa and calling meetings to discuss any

of these issues. In addition, COSATU faced a barrage of police raids on its offices, attacks on unionists, bombing of its offices, evictions from offices and so forth (RRS;1987/8; and Baskin;1991;p269).

In the face of the state using its draconian legal powers to suppress COSATU and its allies, and the outrageous disregard shown by its attackers for anything approaching legality, COSATU was determined to remain within the bounds of the law in "fighting back", with its appeals and propaganda, rather than advocating and leading direct action by workers. However, Baskin claims that COSATU continued to be determined to defy the state's political restrictions, despite the reservations of certain people in its ranks (ibid; p270).

At a special Congress in June 1988, called to discuss responses to both the restrictions on COSATU and the LRAB (below), COSATU leaders, fearful of the legal implications of openly defying the restrictions placed on it, called for 3 days of national peaceful protest, leaving it to each community to decide what form this would take (Baskin;1991;p285). This was interpreted by the masses as a stayaway call, and resulted in the biggest stayaway in South African history (ibid;p287). The COSATU leadership, so hesitant, divided and legalistic in their approach to the stayaway, were "surprised at the level of support for the stayaway" (ibid;p288). The masses were clearly more militant than their leadership.

Baskin points to another weaknesses of the stayaway: that it focused on the pure trade union issues ie the attack on the unions in the form of the LRAB. It did not focus on the political issues which were tied to these: the attacks on political organizations and on COSATU's political activity. To all intents and purposes, then, the "Hands Off" campaign was dead. Henceforth, COSATU's energies would be focused on the LRAB, not on defending its right to engage in political action.

This is not to say that COSATU did not continue to be militant politically. However, particularly after 1987, the political agenda was determined by the Congress Alliance. As will be seen below, this agenda became an increasingly reformist one. COSATU's role was henceforth to call out its members in political protest only as and when the Congress Alliance deemed it expedient.

3.3.2 The Living Wage Campaign.

The state's clampdown on COSATU's overtly political activity nonetheless allowed it to continue its trade union activities. Given that COSATU saw fit not to challenge this clampdown by open

and non-legal defiance, it still remained for COSATU to use its trade union role to defend itself against the state and capital. Such an opportunity was created by its Living Wage Campaign (LWC). Yet the way in which COSATU handled the campaign revealed its reformism, economism and legalism. It was a golden opportunity to advance the long term interests of the working class by building its unity and restoring its confidence, and short term interests by actually improving the living standards of the working class as a whole.

The idea of a LWC did not originate with COSATU. As Baskin (1991;p249) pointed out, SACTU also called for a living wage in the fifties. In the new union movement, FOSATU also raised the call for a living wage at the beginning of the eighties (Erwin;1982). Erwin's description of FOSATU's LWC revealed at least two aspects which did not come to the fore in COSATU's campaign. These were that FOSATU called for a national minimum wage to be set for all workers (ibid;p 6-7), and determined what that living wage would be, not by reference to levels and statistics determined by state-related bodies, such as poverty datum line (PDL) and Supplementary Living Level (SLL), but by asking workers what they could reasonably live on (ibid;p7). Its unions then set out to fight for that living wage for all their members.

COSATU called for a living wage at its inaugural congress in 1985. It resolved to campaign for a "legislated national minimum wage which would be linked to inflation" (Baskin;1991;pp 248-9). It also determined to call for companies to open their books (ibid). However, COSATU never set a minimum wage (ibid). Nor did it in practice conduct a campaign to fight for a living wage in the first two years of its existence (ibid; p249).

It was only in 1987 that COSATU actually initiated a LWC (ibid). The demands of the LWC included: a living wage for all; a 40 hour week without loss of pay; certain politically important days as paid holidays (eg June 16); 6 months' paid maternity leave; the end to the migrant labour and hostel systems; decent housing near places of employment; and the right to a decent education and living (Baskin; ibid and RRS;1987/8;P611). This was accompanied by calls for companies to open their books to unions. The aim of the campaign according COSATU was not just economic, but to strike at the very heart of the super-exploitative system of apartheid capitalism (RRS;1987/8;P611).

Again, in 1987, COSATU did not set a national minimum wage. The majority in the leadership argued that to do so was unrealistic. This was because some sectors might already earn above a set minimum wage, it might be unobtainable in other sectors and it was divisive and economic (Baskin;1991;p250). Against this others argued that setting a minimum wage around which to

fight would enable COSATU to mobilize not only all its own forces, but also the unemployed and unorganized workers. A common figure would unite all affiliates, instead of all affiliates running their own living wage campaigns. This position lost out (Baskin;ibid).

By failing to adopt the latter position, COSATU lost the opportunity of using the LWC as both a political and economic weapon. Some leading figures in COSATU recognized the potential of the LWC. Meintjies, COSATU's information officer, claimed that the LWC had "captured the imagination of the working class" (Baskin; 1991;p248).

Politically, it could have drawn together all the elements of the working class. If a living wage were defined in terms of living requirements determined by COSATU's membership and pegged to the increases in the cost of living, it could have tied together the issues of wages, prices, rents, decent housing, affordable transport and all issues affecting the working class which had brought it to the ramparts in 1984-6. The unemployed could be drawn in via a demand that unemployment benefits correspond to a living wage; locals could be used to draw together all shop stewards in areas where negotiations were taking place, and representatives of community organizations to monitor; and so forth. Thus the working class as a whole would be drawn in and via the locals the structures in the communities would be rebuilt. All this passed COSATU by. Thus it could not convert an economic struggle into an attack on the state by campaigning for it to legislate upon a national, living minimum wage, an idea that seem to underlay the minority position, which was rejected as unrealistic by the LWC commission.

As it was, Baskin pointed out that the LWC not only failed to unite COSATU's affiliates (ibid;p251), but increased the gap between unionized and non-unionized workers (ibid;p254). Given the fact that by 1988 all political forums in which unionized and non-unionized workers and the unemployed could unite had been smashed by the state, this failure of the LWC considerably weakened the working class as a whole.

Economically, the impact of the LWC was contradictory. On the one hand it was reported that in 1987 COSATU's LWC had a positive effect on black wages. It was responsible for the fact that "unionized workers were the only section of South Africa's working population to achieve wage increases above the inflation rate" (RRS;1987/8;p613; and Baskin;1991;pp252-253). On the other hand, such statements belied the reality of excessively low wages which continued to be paid to COSATU's members. COSATU's biggest union, the NUM, for example, revealed in 1988 that despite the fact that it had negotiated increases well above the rate of inflation, most of its members were still being paid wages well below even the SLL, a standard rejected by the

new unions (NUM News; Dec.1988).

It was obviously a great achievement to improve the lot of their members, but given the potential COSATU had to improve the lot of the entire working class through united action, to confine itself to wage increases for its members was economism of the highest order. Thus COSATU's claim that the federation had taken "big steps forward in the struggle for, amongst other things, a living wage, a 40 hour week....etc" (COSATU;policy statement;1987a) was rather meaningless. The unions were winning isolated gains before its formation: what difference had COSATU made quantitatively to these gains?

Without any guide from COSATU as to what a living wage was, how it was determined or how it should be fought for, the new unions indeed all embarked upon campaigns of their own. Unlike in the pre-COSATU era, what a living wage was, was not determined by workers themselves setting out what they could live on and what they wanted. Unions increasingly relied on the help of external agencies.

COSATU did not build structures through which the LWC could be organized effectively (Baskin;1991;p251). "It encouraged the membership to be more militant and determined on the factory floor, but ...failed to develop solidarity action between different affiliates" (ibid). Baskin points out that the NUM strike of 1987 was to provide a "springboard" for the launching of the LWC, but it failed to do so. The strike failed to achieve its immediate aims of higher wages. It also failed to unite workers. Workers were not encouraged to support one another, for example through blacking action, regardless of the law. There was therefore no co-ordinated support from COSATU unions for their co-affiliates engaged in strikes for a living wage (ibid;pp251-2).

COSATU's affiliates took up the campaign in an isolated and legalistic way, through the usual collective bargaining forums, chiefly by this time the industrial councils, and all COSATU's literature propagandized the issue. NUMSA, for example, pursued its claim for a living wage through the industrial council on which it and 3 other unions which it was beginning to win to its side, represented more than half the workers in the industry, but had only 4 votes, while minority, racist unions commanded nine votes and management 15. Thus commitment of this union to legalism remained high, despite the defeats at the industrial council (Chapter 4) and in the Industrial Court (Chapter 6) and by the Minister of Manpower (Chapters 4 and 6). The NUM's pursuit of a living wage came to grief a long way from its target, despite clinging to the letter of the law in negotiating, declaring a dispute and going on strike (chapters 4 and 6).

The problem was that the way in which the campaign was pursued was in a factory-based and sectional and legalistic manner, and confined to the organized working class who had access to the legal avenues of collective bargaining. The whole purpose of a political and progressive union federation like COSATU, in terms of its own aims, is to unite to improve the lot of all the oppressed and exploited, including the non-unionized and the unemployed. In this sense, and as a means of uniting the working class around a programme of action geared to achieving a living wage for the whole working class, the LWC was a failure (Baskin;1991;pp251-256).

The point of course is that unionized workers are not the whole working class, a point made repeatedly by the Congress Alliance in the days when it was at loggerheads with the unions. The purpose of a federation is also to initiate and facilitate the unity of the organized working class. For COSATU to confine itself to the desires/needs of its own membership, and then not even to fight effectively for those demands, was inexcusable.

Thus a potentially revolutionary campaign for a living wage for the whole working class was turned into the usual reformist and legalistic trade union struggle for higher wages for its members, predominantly through state-created channels which the unions themselves recognized were against them (Baskin;1991;pp255-6).

3.4. Handing the Struggle to Lawyers: the LRAB

The campaign against the Labour Relations Amendment Bill (LRAB) dominated COSATU's activities in the last year of the period under review and in the years immediately afterwards. The campaign is important for the purposes of this thesis, because it highlights the growth of reformism and legalism in COSATU. It reflected the extent to which COSATU and its affiliates had come to accept the 1979 legal dispensation for trade unions and the extent of commitment of the new unions in COSATU to operating within the framework of the law and using legal rather than organizational strategies to address even major issues. It also indicated the extent to which COSATU had become accustomed to handing over crucial issues to lawyers to deal with, and using legal channels, rather than the strength of workers on the factory floor, to advance the interests of its members. The extent of the new unions' commitment to the 1979 dispensation has already been dealt with at length in various ways in this and other chapters. Some additional points will be made here. The issue of lawyers' vs workers' control is dealt with more extensively.

3.4.1. The 1988 LRAA and COSATU's defence of the 1979 dispensation.

In 1986, the state raised proposals to amend the Labour Relations Act in many key respects. The LRAA was put before Parliament in 1987 and became law in 1988. Minor changes were effected between the time when the Bill was first proposed and the time when it was enacted. In essence, the new Labour Relations Amendment Act (LRAA) introduced the following changes:

- (1) The definition of an unfair labour practice was amended, to partly codify it, so that the definition both set out specific practices which were unfair and at the same time contained a general reference to the type of conduct which would constitute an unfair labour practice. By setting out which specific actions would constitute unfair labour practices, the Act removed some of the discretion of the Industrial Court to determine what an unfair labour practice was. The specific practices which were unfair included: unilateral dismissal of a worker or alteration of his terms of employment; discrimination solely on grounds of race, sex or creed, refusal or failure to comply with the provisions of the Act or an agreement; unconstitutional or misleading recruitment activity; intimidating an employer or an employee; interference with the right to associate or dissociate, specifically an act by a trade union aimed at preventing employers from dealing with non-members ie demanding exclusive bargaining rights; action to promote a consumer boycott; illegal strikes and lockouts; secondary industrial action; resumed strikes. Over and above these, the Act provided generally that any act or omission that unfairly damaged the labour relations between an employer and an employee would be unfair.
- (2) Dismissals would be unfair if not for a valid and fair reason, or if a fair procedure was not followed, subject to a number of exceptions.
- (3) Retrenchments would be fair if reasonable notice was given to employees, the selection criteria were reasonable, and the employees or their union consulted.
- (4) A Labour Appeals Court was established, to be staffed by judges of the Supreme Court, to hear appeals from the Industrial Court.
- (5) The procedures for resolving disputes and being able to strike legally were rendered more complex.
- (6) The indemnity granted to officials and office bearers of unions against claims for damages arising from acts committed in the course of a legal strike was narrowed. No such indemnity of course applied to illegal strikes. However, the Act introduced another provision with regard to illegal strikes. It created a presumption that a strike was authorized by the union to which the strikers belonged. Therefore in order to be indemnified against claims for damages arising from any act committed by a union member, official or office-bearer in the course of an illegal strike, unions would have to

prove that they had not authorized the strike, or be held liable for damages. (Institute of Industrial Relations Review; 1986, Albertyn;1987 and ASSAL;1988;pp 359-364)

The 1986 proposals and 1988 legislation was seen as expressing the state's aim of tightening up its control over unions and limiting their ability to not only win gains on the shop floor, but in the Industrial Court as well, and in many respects was seen as rolling back the rights which unions felt they had won since the WCR (eg. Van Holdt;1988;pp7-8; Albertyn;ibid). In addition, it was aimed at controlling the political activities of unions and their ability to unite among themselves and with the community in pursuit of both economic and political goals. These views were borne out by the state itself. For example, the Minister of Manpower prefaced his announcement of the proposed changes with the warning that the state would take steps to prevent the unions from "abusing" their power as unions to pursue political goals and encouraging "intimidation of workers, stay-away actions, boycotts and unlawful strikes" (Business Day 5/9/86).

The LRAB proposals, ironically, forced the new trade union movement to rise to the defence of the status quo ie the 1979 dispensation, despite all its weaknesses. In an open letter to the Dept of Manpower (10/12/87) COSATU stated that:

"The Labour Relations Act of 1979 laid down a reasonable basis for a workable labour relations system. The trade union movement has generally developed within the framework of the law, even when this has been difficult due to shopfloor militancy. However, the proposed legislation - which hopes to lessen industrial conflict through curbing trade union rights - creates a serious dilemma for trade unions.....

The proposed changes to the law reverse the positive steps initiated by the Wiehahn Commission which sought to deal with wildcat strikes and spontaneous militancy through setting up proper channels of communication.....its real effect will be to damage the structures of collective bargaining and to undermine credibility of the law itself."

However, the statement by COSATU not only reveals that the attacks in the LRAB obliged the new unions to defend the 1979 dispensation. It also shows that by 1987 the new unions no longer sought to avoid or only critically use the institutions and procedures of the 1979 legislation. The institutionalizing aims of the Wiehahn Commission were seen as legitimate, the spontaneous action of workers suspect. COSATU saw the new unions and the state as united in striving to keep trade union activity within the boundaries of the law, against the threatening tide of shopfloor militancy.

COSATU itself never attacked the 1979 dispensation, despite all the latter's weaknesses. As was shown earlier in this and in the previous chapter, by the time COSATU was launched, there was a general acceptance by the new unions of the 1979 dispensation. And as was shown above, there

was in fact, a greater tendency after the formation of COSATU, for the new unions to be drawn into using the institutions and procedures of that dispensation. The above statement by COSATU revealed its belief that the existing law and the institutions which it had created were reasonable and credible. The unions had strived to use the law despite its shortcomings and all the problems which they posed for unions (parts 2 and 3).

The Industrial Court, in particular, had never come in for more than sporadic criticism. The new unions had come to identify so closely with the system, particularly the Court, that as late as 1987, they still expressed amazement when their adherence to the law did not yield success. Thus in one of the first public press sallies by COSATU against the LRAB, its information officer, Frank Meintjies appeared to be outraged by the fact that where trade unions followed legal procedures, as in the case of the legal NUM strike of 1987, employers were allowed to dismiss workers with impunity (Weekly Mail; 9/10/87).

COSATU and its affiliates had become so accustomed to operating within the parameters of the 1979 dispensation, that it was only as the protracted process of negotiations with employers and the state unfolded, that COSATU for the first time began to speak directly on the shortcomings of the existing legislation (below). These included the fact that large numbers of workers in the public sector, farm workers and domestic employees were excluded from the provisions of existing labour legislation (ie the 1979 dispensation). A demand began to emerge for a more comprehensive overhaul of the existing system, in consultation with the organized labour movement, including, for example, making the system more simple, expeditious and inexpensive (Telex to SACCOLA dd 7/6/88). It appeared therefore that until it was forced to respond to the state's proposals in 1987/8, COSATU paid little attention to the shortcomings of the system prevailing between 1979-88, and largely supported it.

COSATU (Baskin; 1991; p264; Van Holdt; 1988; p10) was slow to respond to the implications of the Bill. It was not until after the actual publication of the Bill in September 1987 that COSATU unions began to see it as an issue to be tackled and it was not until early 1988 that COSATU itself took concrete action. The way in which the campaign unfolded highlighted at once COSATU's commitment to remaining within the framework of the law, its commitment to the existing statutory system with all its defects, and the emphasis on legal rather than shopfloor based strategy.

The course of action adopted by COSATU in response to the Bill confirmed its commitment to remaining within the boundaries of the law, even in response to so dire an attack as that

constituted by the LRAB and in the context of all the other attacks on COSATU. Baskin (1991; p283) for example reveals how considerations of legality caused COSATU to refrain from offering direction to members about how to pursue the only form of mass action it took against the Bill (the mammoth stayaway of 6-8 June 1988).

Whilst COSATU's strategy for opposing the Bill did not involve instituting legal proceedings through the Courts, the course of action adopted greatly marginalized workers, in favour of lawyers and officials, before, but particularly after the mammoth stayaway of June 1988. This was one of the aspects of legalism which the new unions had expressed great opposition to, when they initially attacked the new dispensation on the ground that, inter alia, it fostered legalism (parts 1-3). This aspect of the campaign is dealt with below.

3.4.2 The Dominance of Lawyers.

COSATU's LRAB campaign reflected the retreat of its leadership from militancy into hesitancy, vagueness and submissiveness. The emphasis in COSATU's response, on protracted negotiations with employers rather than reliance on the shopfloor strength of workers, reflected the prevalent political climate of negotiations. The strategy adopted by the COSATU leadership also marginalized workers to a great extent. For the most part, the control of this crucial campaign was removed from workers to officials and lawyers, those best at running a campaign consisting largely of appeals to the state and employers.

The proposals to change the LRA were first made public by the state in 1986 (Cape Times 16/4/86; Business Day 5/9/86; Star 12/11/86). Throughout 1986 and 1987 the various aspects of the proposed changes were reported in the press (as in the above cited papers) and during 1987 their negative implications for the new unions were scrutinized by well-known labour lawyers and observers (eg. Thompson 1987a; Davis in Finance Week 15-21/1/87; A Fine in Bus. Day 23/12/86, 15/9/87, 30/9/87).

The first public indication of COSATU's awareness of the content and implications of the proposals came in the form of a statement issued by its then Publicity Secretary, in which he called the Bill "another high-handed and ill-advised government intervention in the labour relations system so agonizingly built up since 1979" (Meintjies in WM dd 9/10/87). Meintjies rejected the Bill in its entirety and called instead for amendments which addressed some of the shortcomings of the existing legislation.

As far as concrete action was concerned to back up this rejection, COSATU's first response to the Bill was not to draw workers into opposition to it. When COSATU's Executive Committee (Exco) met on 10/10/87, it decided to call upon lawyers to make representations to the state concerning the Bill. This was done by Cheadle of Cheadle Thompson and Haysom on 26/10/87.

COSATU's public statement in response to the Bill after this meeting was simply that it was vehemently opposed to the Bill because it was "a threat to the entire industrial relations system" (Bus.Day 17/11/87; Star 17/11/87). It indicated that it had resolved to mount a national and international campaign against the Bill. However, it also indicated that its affiliates would only meet in February 1988 to "work out the form of action we will take" (ibid).

The only other action taken at that stage was to agree to draft pamphlets highlighting the implications of the Bill, whilst further action was left to a more widely representative body, the Central Executive Committee (CEC) to determine 5 weeks later. The latter meeting led to a course of action which involved asking shop stewards to request that employers send standard letters to the Minister of Manpower stating COSATU's objections to the Bill, mounting a campaign inside and outside South Africa against the Bill, and meeting with employers to explain COSATU's position.

The campaign inside South Africa was spearheaded by CWIU, PPWAWU and NUMSA (Baskin;1991;p265) who embarked on lunchtime demonstrations every Tuesday and issued pamphlets to inform workers about the Bill. It was only at the CEC meeting of mid-February 1988 that the lunchtime demonstrations were endorsed by COSATU. At the same meeting it was not proposed that any further action be taken until responses had been received from employers (Baskin ibid).

It was not until mid-May 1988 that COSATU held a special congress to determine upon more widespread action involving all its members. This was to consist of a continuation of the lunchtime demonstrations building up to 3 days of protest in June 1988. COSATU stressed that considerations of legality meant that it could not tell workers what form such protest should take and that the protest should be peaceful. This was also emphasized in meetings with employers prior to the stayaway. The overwhelming support given by workers to the stayaway (and the earlier support for lunchtime demonstrations) confirmed the militancy of COSATU's membership.

Notwithstanding this, COSATU's subsequent course of action was to largely sideline those workers from direct participation in the struggle against Bill. Rather than rely on its strength on

the shopfloor, COSATU's strategy for opposing the Bill revolved around negotiations with employers and an attempt to get the state to talk to it about the Bill. The high point of worker involvement in the campaign was the stayaway. A press statement issued by COSATU itself a month before the promulgation of the new LRA refers to the fact that COSATU invested "massive time and effort.....in this process (of negotiation)" and despite the intransigence of employers and the state "COSATU and NACTU remain committed to the process of negotiation", feeling that it was only because it was "pushed by Government action" that it would have to "consult our membership and to inform our international allies in order to take appropriate steps to defend our legitimate worker rights" (dd.12/8/88).

The campaign, being centred around negotiations with employers as the key course of action, particularly attempting to persuade employers to submit to a panel of lawyers and judges determining whether the proposed new legislation was consistent with international standards, marginalized rank and file members of COSATU almost entirely. From the documentation emerging from the campaign from June 1988 to September when the Bill became law (particularly press releases, memoranda to regional and general secretaries of affiliates and correspondence between officials of COSATU and SACCOLA, and their respective legal representatives) it appears that the entire process of negotiations with employers was in the hands of a select group of top officials and lawyers. Two firms of lawyers were engaged to set out the parameters of a dispute between COSATU and SACCOLA about the implications of the Bill, though COSATU denied that it had any intention of taking the matter to court.

The press release cited above for example, reveals that the consultation with the membership of COSATU, and participation of that membership in the battle against the Bill, was secondary to the process of negotiations which was dominated by officials, particularly those with legal backgrounds (Telex Naidoo to General Secretaries of affiliates dd 22/7/88) and lawyers. The dependence on legal experts is also revealed by the constant references in COSATU documents around the campaign, to the fact that lawyers supported their position (eg. Telex to general and regional secretaries by the general secretary of COSATU, Jay Naidoo dd 29/7/88.) The glaring absence of reference to the position of workers speaks for itself.

Whilst Baskin (1991;pp290-2) calls the process of negotiating with employers a "bitter experience" for COSATU it must have been far more so for workers who were isolated from the main arena of the campaign (negotiations) despite their clear demonstration of willingness to conduct the battle on the shopfloor. Baskin is undoubtedly correct to point out the success of the campaign in highlighting amongst workers the undemocratic way in which legislation is passed

and in drawing their attention to the failings of the pre-1988 system (eg. exclusion of certain workers from the provisions of the Act). However, the campaign also highlighted the commitment of the new unions under COSATU to legalism.

Though the events subsequent to 1988 are beyond the scope of this thesis, it is interesting to note that COSATU continued the path of negotiations with employers and the state as its preferred strategy. Part and parcel of this strategy was participation in the NMC, a body which was appointed by the state and largely regarded as an extension of the Dept. of Manpower, and partly responsible, through its recommendations, for the LRAB. This participation, Callinicos points out, was part of the COSATU leadership's strategy to create an institutionalized system of collective bargaining between "unions, employers and the state" (1992;p34). Thus within 10 years of creating of the new dispensation with the aim of institutionalizing the activities of the new unions in order to control those activities, the state had succeeded beyond its wildest dreams - the new unions were in fact leading the way towards ever greater institutionalization. In the interests of such institutionalisation, Callinicos points out, the leaders of the new unions revealed their willingness to restrain the militancy of their members (ibid;pp34-5). This was confirmed by the restraining role played by union and political leaders in the 1990 Mercedes Benz strike (ibid).

Furthermore, the union movement's strategy included even greater reliance on lawyers, as the welter of correspondence between the lawyers of COSATU and those of SACCOLA, and between COSATU, its lawyers and the Department of Manpower reveals. This is reinforced by the proposal emanating from COSATU after promulgation of the Act in 1988 that the dispute be adjudicated upon not by an international commission including trade unionists, but by one consisting purely of lawyers.

The fact that COSATU as a federation, marginalized workers from the campaign and placed it in the hands of selected officials and lawyers, does not reflect what was happening on the ground, where, although unevenly, certain unions were attempting to sustain worker interest in the campaign, despite the fact that the conduct of the campaign was largely out of workers' hands. However, even on the ground, the campaign was limited largely to unions constantly informing their members of progress made in negotiations. Attempts by unions to force employers not to use the disputed provisions of the new legislation by, for example having lawyers draft standard letters for shop stewards to hand to employers demanding that employers give an undertaking to support the position of the unions, were diverted back to the SACCOLA/COSATU/NACTU talks (eg. letter from Godsell of SACCOLA to Naidoo of COSATU dd 9/8/88).

In sum then, by the end of the period under review, COSATU was demonstrating a distinct trend towards legalism in many areas of its activities. Not only was it showing a willingness to adopt uncritically and ultimately to defend the post-1979 dispensation, but it was generally demonstrating those traits which the creators of that dispensation sought to create in the new unions. Its affiliates were becoming "responsible" unions confining their activities within the parameters of the law, dependent upon legal institutions and procedures to attain their objectives and looking to the law and the courts to regulate important areas of their conduct.

4. The Origins of COSATU's Reformism and Legalism.

By ignoring the growth of legalism in the industrial relations arena, the populist leadership of COSATU allowed it to flourish unchecked. However, the allegiance of the leadership of COSATU to the Congress Alliance also contributed more directly to the increasing legalism in COSATU. The Congress Alliance, in the aftermath of the crushing of community political organizations by the state, increasingly turned towards a negotiated political settlement in South Africa. The climate of negotiations had a generally dampening effect upon the militancy of the new unions, particularly after the 1987 COSATU congress.

At the 1987 COSATU Congress, various members of the Congress Alliance openly voiced the Alliance's disapproval of the unions' call for socialism. In addition, COSATU was instructed to return to "collective bargaining unionism". Given the historical link between "collective bargaining unionism" and legalism (chapter 7), this position reinforced the development of legalism. Whilst COSATU still retained some political militancy, the emphasis thereafter in the industrial relations arena was on becoming "responsible unions" acting within the law.

4.1 Retreating from Socialism, Creating a Climate of Negotiations.

In 1985, the Congress Alliance was still swayed by the militancy of the masses over which it admitted it had little control, and called for "people's power", "people's war", "ungovernability" and so forth (RRS;1985;p9). It expected the trade union movement to play a central role in realizing these calls (ibid). The unions, whilst moving into the fold of the Congress Alliance, heeded these calls, but on the basis that the struggle was ultimately for socialism (Baskin;1991;pp95-100). In 1987, some of them still continued to raise the call for socialism, even those unions which adopted the Freedom Charter (ibid;pp 214-216).

Yet already in 1985, the Congress Alliance indicated its desire for a non-socialist future South Africa, when it had favourable talks with the South African capitalists (ibid;p11). This reformist direction was confirmed in a similar meeting in 1987, in the face of large scale worker struggles against exploitation by the self-same capitalists. Matisonn, reporting on the Dakar conference between the representatives of the Congress Alliance and of the South African bourgeoisie, pointed out that the ANC, in implementing the Freedom Charter's nationalization policy, would regard economic growth as a priority and put nationalization on the back burner (1987;p4). In the stampede towards a "negotiated settlement", socialism became the chief casualty.

However, having called for the townships to be made ungovernable in the previous period, the Congress Alliance had to ensure that the young militants, the militant workers in the townships and factories, and those who had begun to speak increasingly of socialism and "uninterrupted" as opposed to "two-stage" revolution, would accept the new line of negotiations. It declared 1987 the "Year of Advance to People's Power", but it became increasingly clear that such power would be gained by negotiations, not revolution. With regard to what was left of the community organizations, its task was rendered relatively easy by the decimation of those organisations (Baskin;1991;p213). Thus there was little effective opposition, when its adherents began to talk again of "two-stage" revolution, the primacy of the bourgeois democratic stage, the diplomatic struggle and so forth, or when the Congress Alliance began to distance itself from the "necklace" and "undisciplined youth".

What remained was to whip the unions into line. This meant steering COSATU in the new direction, for it was to COSATU that the working class looked for leadership (Baskin;1991;p213). COSATU was the most powerful organization of the masses which was still functioning. The first half of 1987 had demonstrated its power and the continued militancy of its members on the shopfloor (above). COSATU could therefore wreck any negotiations between the Congress Alliance and South African capitalists, particularly if it continued not only to be politically militant but to advocate socialism as its goal.

This need to get COSATU into line came through clearly during and after the 1987 COSATU congress, where workers were told to subsume the struggle for socialism under that for national liberation and that COSATU should "return to basics". This Congress was greeted by a message from the ANC-SACTU-SACP which welcomed the widespread discussion of socialism, but urged that it not be adopted as COSATU policy. SACTU argued that the immediate task of the unions should be to strengthen their shopfloor base (Carrim;1987; P12). SACTU, which for years had berated the new unions, particularly FOSATU, for confining themselves to the factory floor, now

ironically urged the unions to do just that. The July 1987 COSATU Congress was preceded by meetings in which many affiliates, some amidst heated internal disputes, adopted the Freedom Charter (above), the guiding document of the Congress Alliance, which Nelson Mandela, a leading figure in the ANC had pointed out was not a socialist programme (cited in Callinicos;1988;p65).

One of the casualties of this new turn of COSATU was working class militancy. The effect of the atmosphere of "negotiation politics" on the unions was probably best summed up by the NMC in relation to the LRAB campaign. It noted with some satisfaction that the new unions had initially opposed the entire Bill, but after the talks with SACCOLA had "mellowed" their stance and by the end of 1988 had considerably scaled down the number of areas of their opposition to the Bill (RP 51/1989;para.2.4).

More importantly, another more deep-seated effect of the atmosphere of "negotiation politics" was to make the unions more top-heavy, therefore reinforcing the tendency for officials and experts to take decisions and action over the heads of the rank and file, and thus reinforcing the trend towards legalism.

4.2. The Return to "Trade Unionism Pure and Simple" and Legalism

In line with the call from SACTU, the UDF spokesman at the congress called for a united front of trade unions and community organisations, in a more structured form. Given the fact that the UDF had been reduced to a mere shell, and that COSATU was the only organization left in the country which could articulate and champion both political and economic issues, the task of COSATU should obviously have been to rebuild the UDF and community organizations by using its own structures. This was what COSATU's general secretary seemed to imply when he said that:

"We understand the difficulties (in building strong community structures) and are definitely prepared to play our role in achieving strong organization in the community" (Carrim;ibid; p14).

However, just as the unions' tendency towards socialism had been publicly slapped down in their own congress by the Congress Alliance, so this proposal was rejected by the UDF spokesman who voiced his concern "that some people sought to promote shop stewards councils as alternative township political structures to those of the UDF" (ibid p 14). In other words, COSATU was discouraged from using its own structures, the shop stewards councils, to help rebuild the once vibrant community organisations. Instead, the line pushed at the congress was the new line emanating from the Congress Alliance: that shop stewards councils were to be confined to

workers, that they concern themselves with consolidating trade unions at local level (ibid;p14).

The way was left open, however, for the Congress Alliance to continue to use the unions for its own political purposes ie to force the state to negotiate by being able to demonstrate control of the powerful union movement. Thus Morobe of the UDF was concerned to say that shopstewards councils should be confined neither to only shopfloor issues, nor to only political issues (ibid). The unions could not therefore be used to voice the political demand of the working class for socialism, but could be called upon to strengthen a demand of the black petty bourgeoisie for "liberation".

This conference could be seen as the fruit of the marriage of the "collective bargaining" trade unionism and "political unionism". The syndicalists who continued to run the day-to-day activities of the unions and continued to build their factory floor strength, who had first been vilified for doing so now found that it was the official line of the Congress-orientated leadership, that it was not only valid, but necessary to confine themselves to the "trade union struggle pure and simple".

Baskin points out that in the wake of the 1987 Congress, COSATU determined to "return to basics" (1991;pp242 et seq.). It determined to address trade union issues, to consolidate its industrial relations campaigns and its structures and to address issues such as workers' education (ibid). As was shown above, this return to traditional collective bargaining unionism was accompanied by the increasing development of legalism. COSATU affiliates, particularly after 1987, were drawn increasingly into the institutions and procedures of the new dispensation. COSATU's campaigns were carried out through legal structures and procedures, were conducted by lawyers and other experts and were characterised by endeavours to remain as far as possible within the parameters of the law. Day-to-day trade union struggles were increasingly fought through the courts, rather than on the shop floor.

This new direction of the "populists" (ie towards "orthodox unionism") was welcomed by the "syndicalists". Dave Lewis, one-time secretary of the GWU provided one example of this. At a conference, dominated by lawyers and academics, on laws against trade unions and political organisations (UCT Labour Law Unit; 1988), he argued that one of the problems facing the unions was their "looseness of organization"; that trade unions had gained the ability to take on "our political oppressors", but that there had been a decline in the ability to take on the "immediate economic exploiters". Unions, he argued, needed to focus on building themselves up and taking on the bosses on the factory floor (1988; p27) .

This differed very little from the argument of the Congress Alliance that the unions should

concentrate on building themselves up, rather than on political issues. It was the same argument produced by the syndicalists in the seventies, the same argument produced by the NUM leadership in their reluctance to take on the 1987 strike.

5. Conclusion

What has been demonstrated in this chapter is that legalism, which was a budding tendency in the period before 1985, developed into a more fully fledged trend in the new union movement in the period thereafter, particularly after 1987.

The chief reason for this was the political direction embarked upon by COSATU. Whilst it necessarily became more heavily committed to the political arena, with the leadership able to pay but scant attention to day-to-day industrial relations issues, the particular political position which its leadership adopted, that is its close involvement with the Congress Alliance, encouraged the ever-closer involvement of the new unions in the post-Wiehahn dispensation and neglected consideration of the effect of this on the new unions.

The embarkation of COSATU's political allies on the road to "negotiation politics" was reflected in the increased acceptance by the new unions of the necessity of conforming to the legal industrial relations framework, of increasing acceptance of its procedures and institutions as the means to achieve their goals and of confining their industrial relations activities within the framework of the law.

The "marriage of collective bargaining and political unionism" which COSATU's creation represented for some observers, far from turning the unions away from the legalistic path, in fact strengthened the development of legalism. The "division of labour" within COSATU between "populists" and "syndicalists" ensured the growth of legalism in the industrial relations arena, even when COSATU remained politically militant. The dichotomy between COSATU's initial militancy in the political arena and its legalism in the industrial relations arena was not eliminated by the decline of legalism in the industrial relations arena in favour of the kind of militancy which prevailed in the realm of political activity. On the contrary, the reformism which pervaded COSATU through its relationship with the Congress Alliance ensured that legalism would spread from the industrial relations arena to the political arena. The LRAB campaign (at the end of the period covered by this thesis) a campaign which straddled both arenas of trade union activity, clearly demonstrated this.

CHAPTER 9: CONCLUSION

This thesis has analyzed the response of the new trade union movement in South Africa to the statutory system of collective bargaining and dispute resolution which the state opened up to African unions in 1979. The analysis has shown that the new trade union movement displayed an increasing propensity to succumb to legalism in the period under review. This was evidenced by the nature and extent of their commitment to using the institutions and procedures of the new dispensation and to using legal methods of struggle generally, in pursuit of their immediate goals.

The thesis has also demonstrated that the institutions and procedures of the new dispensation played an important role in the development of legalism, as the opponents of participation in that dispensation argued (Chapters 3 and 4). However, the thesis has revealed that the development of legalism in the new union movement was not attributable primarily to the new dispensation itself (as proponents of participation argued); the primary reason for the emergence and development of legalism was shown to be the political positions adopted by the new unions and the influence upon them of political organisations with which they formed alliances.

The major findings of this thesis and the extent to which they support the above arguments have already been presented in the conclusions to chapters 4 to 8. These are the synthesized below under two headings:

- The development of legalism in the new trade union movement
- The reasons for the development of legalism.

Where it is relevant to do so, the conclusions of this thesis are related back to the views about legalism and its sources set out in Chapter One.

The final part of this chapter will attempt to draw some conclusions regarding the short term effects of participation in the new dispensation on the new union movement. It will also attempt to assess the potential impact of the increasingly legalistic approach of the new unions on their role as trade unions in the light of the theories regarding trade unions set out in Chapter One.

1. The Development of Legalism

The first conclusion derived from the substantive parts of this thesis was that by 1988 the new trade unions were fully participating in the main institutions and procedures of the new dispensation, were committed to defending it, and were displaying a marked inclination to favour legal methods of struggle. The new unions tended towards the indiscriminate and routine use of

the new dispensation and legal methods of struggle generally, regardless of their effectiveness in achieving the unions' aims, of the existence of more viable alternatives for attaining their objectives, and of the negative effect of legal methods of struggle on the unions. In short, the new unions showed a marked tendency towards legalism as defined in the first chapter of this thesis.

Registration did not resolve all the problems that the new unions thought it would. Participation in the ICS proved ineffective in enabling the new unions to achieve the goals which they hoped to win by using the system. After the first flush of apparent liberalism, the Industrial Court increasingly limited the extent to which it could be successfully used by the new unions to make advances for their members. The preference for legal methods of struggle, over demonstrations of the collective strength of the whole new union movement on the shop floor, did not result in a successful Living Wage Campaign or defeat of the Labour Relations Amendment Act in 1988. However, despite the increasing ineffectiveness of these legal methods of struggle in enabling them to achieve their immediate or long term goals, the new unions nonetheless increasingly gravitated towards such methods of struggle.

In order to avail themselves of the limited advantages offered by the legal system, the new unions had to make concessions demanded by that system. If, for example, they wished to use the ICS to establish legally enforceable minimum conditions of employment, they had to contain their demands within limits acceptable to employers, lest employers destroy the system by withdrawing from it. If they wished to seek the protection of the Industrial Court, they had to constrain their demands and their methods of pursuing those demands within boundaries which the Court found acceptable. Their demands had to be such as would not place their own interests above that of employers sufficiently to endanger the underlying values upheld by the Court - the values of the capitalist system which the new unions had at one time once sworn to overthrow. Their methods of struggle had to show overt commitment to both the letter and spirit of the law, even if this meant overriding their own democratic principles.

The most telling evidence of the growing legalism in the new union movement was the huge growth in the workload of the Industrial Court, despite the new unions' increasing awareness of the Court's role and the consequent limitations of the Court as a means to achieving the unions' ends, particularly in the wake of the BTR Sarmcol case. Evidence of legalism also lay in the routine and uncritical participation of the new unions in all other aspects of the dispute resolution system, such as the industrial councils, and the general commitment to being "responsible unions acting within the law", despite the constraints which this placed on them.

Despite the fact that the activity of the new unions outside the constraints of the law had proved markedly effective in forcing concessions from employers and the state before 1979 (most notably the concession embodied in the new dispensation itself), such illegal activity was increasingly viewed as less desirable than legal methods of struggle. The most noteworthy example of this was the NUMSA strike of 1987 where one of the most powerful new unions called off a major strike because the union feared the outcome of illegal activity. Noteworthy too, was the hesitancy of COSATU in taking to the shop floors of South African industry at all, and when it did, its failure to do so consistently, in order to defeat the LRAB. It preferred boardroom talks with employers through legal representatives, even though this proved totally ineffective in halting the passage of the 1988 LRAA. In such cases, alternatives to legal methods of struggle were either rejected or not consistently applied, even though they could have proven more effective in attaining the aims of the unions.

By the end of the period under review, the new unions were firmly wedded to the new dispensation. The suspicious and critical approach to the system which they had held at the beginning of this period, their scorn for legal methods of struggle, had by the end of that period been transformed into uncritical support for the system and an affinity for legal methods of struggle. Nothing illustrated this more clearly than the uncritical defence of the new dispensation by the new unions, when the state sought to attack it in 1988. They had come to place such faith in the system that it took some time before the new unions began to see that the system which they were defending so loyally against its creator (the state) was fraught with problems for them. The extent of commitment of the new unions to the institutions and procedures of the new dispensation was greater therefore than the offhand acknowledgement of Webster (Chapter 1) suggests.

The behaviour of the new unions in the industrial relations arena increasingly corresponded to that described as "legalistic" by the authors (both proponents and opponents of participation in the new dispensation) cited in Chapters One and Three in the thesis. Thus the new unions had come to "(substitute) legal methods for grassroots organization" (cf. definitions in Chapter 1). Their use of the legal methods of struggle went beyond mere strategic use of the law to bolster organization (Anon.;1981;p11). Even when legal methods clearly undermined organization (below) the new unions continued to rely on the legal institutions and procedures to attempt to make gains.

This did not only mean that they wasted time and resources in routine resort to the IC, but that they devoted a lot of energy to ensuring that their activities were legal (eg. the NUM strike of 1987). They did so even when there was nothing to be gained and arguably much to be lost from

remaining within the boundaries of legality (eg. the abortive NUMSA 1987 strike). They did so even under circumstances where legal methods of struggle were not "propitious".

Increasingly, too, they displayed other aspects of legalism. For example, Fine (1982;p52) indicated that an important aspect of legalism was a "dependence on legal experts" to manipulate the legal system, rather than on the strength of members to achieve their objectives. This was also a characteristic of legalism pointed out by others (Anon;1981;12) and was one which the new unions increasingly displayed by the end of the decade under review, as was shown particularly in Chapters 5, 6 and 8. Another example was the display by some unionists (eg.Patel;1991;interview) of what Haysom (1984;pp121-2) called a "naive worship of the law....." - one of the hallmarks of legalism.

In sum then, this thesis has shown that in the decade under review a trend towards legalism developed and strengthened in the new union movement.

2. The sources of legalism

The second conclusion derived from the analysis presented in the substantive parts of this thesis, was that two factors played a major role in the development of legalism in the new trade union movement. These were the political proclivities of the leadership of the new unions on the one hand, and the impact of the system itself on the new unions, on the other. The analysis also demonstrated that the former was the primary factor, but that the latter was nonetheless important in thrusting the new unions towards legalism.

2.1. The Contribution of the System to the Development of Legalism

Chapters 3 to 6 showed that the institutions and procedures of the new dispensation were geared towards and did in fact encourage the development of legalism. In the course of the eighties the Industrial Court proved increasingly to be the "breeding ground for legalism", as Joffe had already labelled it in 1981 (Joffe;1981;p143). However, the other major aspects of the new dispensation, the registration process and the industrial council system, also contributed to the development of legalism. All the procedures and institutions of the new dispensation, but in particular the Industrial Court, extended an invitation to legalism which was both seductive and coercive.

The registration procedure, the Industrial Council System and the Industrial Court promoted the

belief that trade unions could and should use the law in order to achieve their immediate aims. They offered trade unions an apparently easy means of achieving certain advantages. For example, trade unions could secure stop order facilities by participating in the registration process. Trade unions could overcome employer resistance to negotiating with them by joining Industrial Councils. The Industrial Council System also offered trade unions a means to secure collective agreements which had the force of law. The Industrial Court appeared to be a liberal court, willing to use its status quo and unfair labour practice powers to support the rights and interests of workers and their unions. It was tempting to leave it to Industrial Councils to police Industrial Council Agreements and to leave it to the Industrial Court to, for example, reverse unfair dismissals and retrenchments, rather than to contest such issues by collective action on the factory floor. Thus these aspects of the system attempted to inculcate in unions the idea that they had a great deal to gain from using the law, legal institutions and legal procedures.

However, in attempting to secure the advantage offered by the system, unions were drawn into the legalistic environment surrounding the system. The registration process, the Industrial Council System and the Industrial Court, it was shown, were beset by legal complexities. In the process of seeking to use the new dispensation, trade unions invariably became embroiled in these legal complexities. They had to develop the legal skills necessary to manipulate the legal procedures effectively or engage experts who commanded such skills. Unions thus became increasingly dependent on legal specialists from both inside and outside the unions and the objective interests of these specialists lay in thrusting the unions in an increasingly legalistic direction.

The unions were thrust in the direction of participation in the new dispensation not only by the attractions which it offered, but by the coercion exerted by the system itself, by the state and by employers. The state altered the law to try to force trade unions to register, and harassed unregistered unions. Employers attempted to refuse to deal with unions which were unregistered or not members of Industrial Councils.

In Chapter 6, it was demonstrated that the Industrial Court, in particular, exerted a great deal of coercion upon the new unions to use legal procedures to achieve their objectives and to commit themselves to remaining within the parameters of law in the pursuit of their objectives. This was clear from its approach to strikes, the area of trade union activity which the state most sought to regulate through the law. The Court demanded that dismissed strikers and their unions who sought its assistance, demonstrate that they had behaved like "responsible unions acting within the parameters of the law" before and in the course of the strike.

The Court offered striking workers protection from dismissal only if they had showed their commitment to the law by complying with, or attempting to comply with, the intricate and time-consuming procedures laid down by the LRA for engaging in legal strike action. It also required strikers and their unions to show a more general and thorough-going commitment to the law than that evinced by the legality of their strike. The entire conduct of the strike had to reflect respect for law and order, for employers' rights and economic interests, and for those of non-strikers. These considerations, not the achievement of their legitimate demands by any means possible, were to govern the actions of strikers and their unions. The Court further required the trade unions to which striking workers belonged, to show that they had exhausted all alternatives to strike action before embarking on a strike. They also had to show that they had availed themselves of any alternatives which arose in the course of the strike. Thus if employers offered to bargain in the course of a strike, unions were to call off the strike. If they failed to do so, or if their members failed to adhere to their instructions to do so, the Court would not protect strikers from dismissal, regardless of the legality of the strike. Lastly, the Court required trade unions involved in strikes to show themselves willing to police the conduct of their members during strikes. They were to do so even if this meant acting undemocratically.

The gains which unions made through using the Industrial Council System and the Industrial Court were shown to be important, but often limited. It was important to establish legal protection for minimum standards of employment, which the Industrial Council System could offer. It was important to limit the unbridled exercise of employer prerogative through the Industrial Court. However, to enlist the support of these institutions for making gains, unions had to accept the constraints placed upon them by these institutions. They had to not only confine themselves to the law in the methods which they adopted to secure gains, but limit their objectives to that which was acceptable to the capitalist framework underpinning the new dispensation. For example, for fear of losing the legal protection offered by Industrial Council Agreements, unions had to constrain their demands at a level acceptable to employers, or else employers would destroy the Industrial Council System by withdrawing from it. For fear of losing the protection of the Court for dismissed strikers, unions had to constrain their activities within the law to a degree which endangered the achievement of the goals of strikes, as NUM and NUMSA's actions in 1987 illustrated. Thus the limited gains which the system afforded unions became a bartering element, in exchange for which they agreed to become "responsible unions acting within the law", the kind of unions which the state sought to make them.

The analysis presented in this thesis therefore bore out Joffe's argument that the Industrial Court was a "breeding ground for legalism" (above). It extended that argument to other aspects of the

system, such as the registration procedure and the Industrial Council System which also encouraged the development of legalism. The thesis thus to some extent also supported the views of opponents of participation in the new dispensation in the early eighties (eg.GWU; 1980; Nicol,1980; Haysom, 1984) who argued that the system would lead to the development of legalism.

However, the thesis went on to show that participation in the system was not solely or primarily responsible for this, as Innes, De Clerq and Fine correctly argued in 1981. The new unions were fully aware of the system's propensity to foster the development of legalism. That they nonetheless failed to guard against that development pointed to the fact that there were reasons beyond the system itself which were responsible for it.

2.2. The Contribution of the Political Proclivities of the Trade Union Leadership to the Development of Legalism

The analysis of the leadership of the new union movement showed that it was their political tendencies that were the more important factor in the development of legalism.

This thesis demonstrated that before 1985, the dominant political perspective in the new union movement, particularly in FOSATU, the leading federation of new unions, was a syndicalist one. This political perspective saw the struggle in South Africa as being one for the establishment of socialism. It saw the building of a strong union movement as crucial to that struggle. It saw this in turn as being achieved through concentrating on the struggle around factory floor issues rather than on political issues. Historically, those within FOSATU who adopted this "orthodox " approach to trade unionism were also those who viewed the law as having an important role to play in advancing the rights and interests of workers and unions. At the same time, FOSATU was influenced by affiliates who, from their own experience of having worked within the statutory system, viewed legal methods of struggle as having no negative impact on trade unions. Thus from the outset, FOSATU did not see any problems arising from the use of the law, particularly the institutions and procedures of the new dispensation, and no need to take concrete measures to guard against the development of legalism.

FOSATU's initial successes of using legal methods to attain victories on the factory floor led it to become progressively uncritical of the new dispensation and legal methods of struggle, to the point of even becoming enamoured of them. They were viewed in purely pragmatic terms. For FOSATU, as long as those methods achieved immediate victories, their legalistic impact on it and

its affiliates could be disregarded. Thus even as it succumbed to legalism, FOSATU ignored it as an issue. FOSATU did not develop a coherent strategy in relation to legal methods of struggle. It had no consistent political approach to the use of the law - one that could be used as a guide by its affiliates or that could be made the basis for an ongoing assessment of the overall impact of the legal methods on its affiliates. There was therefore no countervailing force to legalism within FOSATU.

Moreover, despite perceiving the need for a political party of the working class which could guide the activities of the new union movement, FOSATU in reality did not attempt to contribute to the building of such a working class party or movement. It concentrated purely on the factory floor struggle and neglected the political arena. It therefore had no links with a party with a programme which could guide all aspects of working class struggle, including the struggle in the industrial relations arena. It had no link with a party which could guide its strategy in relation to the law and which could sustain an ongoing critical awareness amongst the unions, of the impact of legal struggles on the union movement. As a result of FOSATU's political abstentionism, it was not allied to any political force which could steer it away from legalism.

Initially, FOSATU's engagement in the new dispensation was challenged mainly by the unaffiliated Western Cape unions, and the Congress-aligned UDF unions. Because of FOSATU's dominant position in the new union movement, bolstered by its leading role in the unity talks, it was able to influence the former group to adopt a similar position to its own with regard to the new dispensation. To unions like the GWU, which also emphasized the importance of building strong unions around factory floor issues, FOSATU's use of the law to win factory floor battles seemed increasingly correct. The UDF unions, under the influence of the Congress Alliance, for political reasons soon dropped their criticism of FOSATU's involvement in the new dispensation and its growing legalism. Thus the pressure from outside FOSATU to guard against the development of legalism dissipated.

After 1985, the new unions grouped in COSATU were led by people who were linked to the Congress Alliance. The Congress Alliance had at first opportunistically seized upon FOSATU's legalism in order to undermine FOSATU's political dominance in the new union movement. Later it equally opportunistically dropped the issue of legalism when the issue had outlived its usefulness. Once the adherents of the Congress Alliance had assumed dominance over the political direction of the new unions, they simply ignored factory floor issues and the methods of struggle used in relation to factory floor issues. The new leadership of the new unions allowed the erstwhile FOSATU's legalistic approach to factory floor struggles to continue to flourish, rather

than attempting to reverse this by bringing to bear on the industrial relations arena, the militant approach which they brought to unions' political activity. Again, therefore, there was no thrust from within the trade union movement against legalism.

Although COSATU was linked to a political party (or rather an alliance of parties), that relationship did not provide the basis for guarding against legalism. Legalism was an issue opportunistically used and equally opportunistically discarded. The political grouping to which COSATU was linked therefore offered it no guidance with regard to how it should approach the law or how it should guard against the adverse effects of legal methods of struggle. In fact, after 1987, that political party thrust the new unions allied to it in a legalistic direction.

After 1987, the Congress Alliance moved in an openly reformist political direction. It attempted to persuade the South African regime to enter into a negotiated political settlement in South Africa. It no longer served the Alliance's purposes for the new unions to be politically militant, save when it needed to call upon the union movement to demonstrate the Alliance's strength to the state. It sought instead to return the new unions to the path of "orthodox unionism". It directed the new unions in COSATU to concentrate purely on industrial relations issues. This was an arena in which legalism was an established trend and where the legalistically inclined ex-FOSATU unionists remained dominant. At the same time, because the Congress Alliance was closely involved in negotiations with South African capitalists and the state, it created a climate for the new unions to seek to regulate their struggle with their employers, these self-same capitalists, through the legal system created by the state, rather than through direct collective action on the factory floor.

Thus the Congress Alliance and the COSATU leadership linked to it, contributed to the further development of legalism, both by ignoring the need to reverse the existing trend, and by steering the unions in the direction of orthodox unionism and legalism. The Congress Alliance also contributed to this development by creating a general climate of reformism, of negotiation with capital and the state, and of abiding by the law, rather than militant defiance of the state and its laws.

Proponents of participation in the new dispensation and of legal methods of struggle, such as Fine (1982) and Innes (1982b) took account of the potential of the legal system to foster legalism, and of the detrimental effects of legalism on the new unions. They called for vigilance in using the law and for the trade unions to resist legalism by not allowing legal methods of struggle to dominate over grassroots struggles. Joffe went further to argue that the potential of the system

to foster legalism could only be resisted in the context of "a well-formulated strategy" which was "guided by a political party" (1981;p144).

What has been established in this thesis, is that the cautious approach to the use of the law and legal methods of struggle advocated by Innes and Fine was not adopted in either FOSATU or COSATU. Neither took the issue seriously - they simply ignored it and thus it was allowed to flourish unchecked. Thus this thesis has substantiated the views of Innes and Fine that the potential for legalism to develop exists where there is an absence of a critical approach to the law and legal methods of struggle emanating from the unions themselves.

The thesis also tended to support Joffe's theory. It showed that neither FOSATU nor COSATU's approach to the law was part of a "well-formulated strategy" which was "guided by a political party". FOSATU had a well-formulated strategy for building the union movement, but its approach to the law was not a conscious and integral part of that strategy. Its affiliates simply used the law as and when they saw fit to do so. FOSATU also lacked the link with a political party to guide its legal strategy, to consistently and critically assess its strategy in relation to the law and to evolve methods of avoiding legalism. COSATU on the other hand was linked to a group of political parties, but its approach to the law formed no part of a "well-formulated strategy" guided by those parties. Those parties vacillated between opposing legal methods of struggle, ignoring them, and thrusting trade unions towards them, in the pursuit of their own political interests.

But the guidance of trade unions by a political party was shown to be insufficient to deter them from legalism. In this the thesis echoes the findings of Fine and Davis (1990;--33-57) with regard to black trade unions in South Africa in the forties. It was shown that where such a party is interested in establishing a conciliatory relationship with the state and capital, it will steer unions towards, rather than away from legalism.

3. The Immediate Effects and Long Term Implications of Legalism

Although the immediate effects and long term implications of legalism are not part of the central concerns of this thesis, they are of interest, given the motivation for the thesis set out in Chapter One. In the course of identifying the trend towards legalism and its causes, some of the effects of legalism which were already being felt by the new unions were necessarily touched upon.

One of the effects of legalism which the thesis noted was that it undermined democratic worker

control of the new unions. It was shown that legal methods of struggle, in particular the use of the institutions and procedures of the new dispensation, caused those unions which adopted them to become enmeshed in the web of legal complexities surrounding such institutions and procedures. In order to use them successfully, trade unions had to increasingly rely upon experts both within and outside the unions to manipulate those procedures and institutions. Thus as the new unions became increasingly involved in the new dispensation, entire areas of trade union activity became the province of legal and other experts.

The complexities of the Industrial Council System meant that the intentions of the new unions that workers should be constantly involved at all stages of negotiations and control the negotiations were soon forgotten. Workers did not exercise their strength on the shop floor to ensure adherence to the Industrial Council Agreements. The inspectors of the Industrial Council and ultimately the courts ensured such adherence. Court cases were handled by legal experts inside the unions or lawyers engaged for the purpose who largely liaised with officials, not workers. Workers no longer exercised their strength to prevent unfair dismissals, retrenchments and so forth - these were issues routinely dealt with by those legal experts through the Industrial Court. The more routine the use of the law in certain types of cases became, the more workers were marginalized from whole areas of their unions' activity. Even in major campaigns, once legalistic methods were embarked upon, workers were largely marginalized. The Labour Relations Amendment Bill campaign was a case in point where the negotiations with employers and the state took place through officials and lawyers and workers were largely not in control of the campaign.

The thesis also noted that legalism undermined the militancy of trade union members in various ways. Firstly, legalism undermined militancy precisely because it marginalized workers and impaired their self-reliance. Workers and worker leaders became accustomed to depending on legal experts inside and outside the unions to deal with a whole range of issues. Issues such as the unfair dismissal of workers became matters reported to union offices and taken by officials to lawyers, rather than issues around which workers were encouraged to organize and fight on the shop floor. Very often the outcome was of little significance to workers because they could not feel involved whilst legal methods of struggle ran their course. It was to the lawyers and the legal institutions that victories were attributable, not to workers.

Secondly, workers were demoralized by lengthy court cases, or lengthy Industrial Council negotiations, or lengthy legal dispute settlement procedures. Particularly in court cases, workers were removed from the site of struggle and could not identify with it. The battles at Industrial Councils and in the Industrial Court were between the economic and legal experts of the unions

and employers respectively, each lining up evidence in support of their claims or cases.

Thirdly, trade union leaders, accustomed to the protection offered by the law and the Industrial Court for legal courses of action were reluctant to encourage or support militant action outside the law. They devoted increasing time to ensuring the legality of worker action rather than to stimulating the militancy of workers, sometimes even actively discouraging militant illegal action, as the 1987 experiences of NUM and NUMSA revealed. This had a negative impact on worker militancy, for workers were increasingly faced with situations in which they could not achieve their aims either through legal or through illegal methods of struggle. The Industrial Councils and the Industrial Court limited what workers could achieve through these institutions. Their leaders discouraged them from pursuing their aims through illegal methods. Thus union members had to settle for what the system was prepared to allow them.

The thesis also noted the detrimental effects of legalism on trade union organization. A great deal of resources, time and energy which would usually have been spent upon organization, was increasingly spent on lawyers, economic experts, running training courses in the law and so forth as the emphasis on legal methods of struggle escalated. Sometimes the need for strong organization around the issues which were the subject of legal struggles were neglected. For example, the NUTW struggle with the Frame Group, the Living Wage Campaign and the Labour Relations Amendment Bill Campaign reflected this.

The development of legalism, and its detrimental effects on the new unions contradict the view of Friedman (cited in Chapter 1) that the new union movement has been able to manipulate the legal system to its advantage without suffering any real or apparent negative repercussions. Instead what has been shown is that legalism developed within the new union movement in the eighties and that this detrimentally affected the principles of trade unions and their ability to achieve their objectives.

Finally, the impact of legalism and its negative effects ie the undermining of the democracy, militancy and organization of the new unions, on their long-term goal of socialism has to be considered. The most glaring implication of legalism is that if the new unions continue to allow themselves to be increasingly constrained by the law, as they have in the eighties (particularly after 1987) they will not be able to fulfil their role as revolutionary bodies contributing to the undermining of capitalism in South Africa by acting as "schools of revolution" - one of the roles ascribed by Engels to trade unions (1975;p40).

Firstly, the new unions will not be able to fulfil their ideological role of bringing home to workers the necessity of overthrowing the capitalist system (cf. Lenin; 1970b; pp58-9 on the role of trade unions in raising workers' consciousness), when they are assisting the process of winning workers to the idea that the laws and institutions of that system are supportive of the aims and objectives of workers. They cannot fulfil that role when they allow workers to believe that it is best to accept the limitations imposed by those institutions and procedures on what workers seek to achieve, or how they seek to achieve it and retain the limited protection offered by the law and the courts, rather than use their collective strength to challenge those limitations.

Secondly, the new unions will not be able to fulfil the role of giving workers the practical training or experience provided by actual struggle on the factory floor, where workers are increasingly marginalized by legalistic methods of struggle. The experience of democracy, of militant struggle, of their own strength and power are undermined by legalism. Thus in practical terms, too, the new unions, if they continue to pursue a legalistic path, will not be able to play the role of "schools of revolution" (cf Engels;1975;p40 on the role of unions in giving workers experience of struggle).

Thirdly, the possibility exists that, given the undermining of democratic control of unions by workers, unions will be looked to by the state and capital to control workers either by actively discouraging militant direct action by workers, or by passively refusing to assist militant activity by workers, especially if this is illegal. An example of the former was offered, in the period immediately following the period under review, by the role played by NUMSA leaders, supported by the Congress Alliance, and employers, in breaking the Mercedes Benz wage strike by NUMSA members in 1990 (SALB;Nov,1990;p1 and Von Holdt;1990;pp19-26). Illustrations of the latter were to be found in the abortive NUMSA strike of 1987 and the failings of the legal NUM strike of the same year. Already in 1991, the state showed its willingness to deal with the leadership of COSATU, if that leadership would allow itself to be co-opted onto the tri-partite National Manpower Commission (Daniels and Pillay;1991; p38), responsible inter alia for advising the state on how to "regulate" that is control, the activities of unions. By accepting this offer, COSATU revealed the extent to which the state had succeeded in co-opting the new unions into becoming "responsible" unions with respect for (capitalist) law and order.

The development of a trend towards legalism in the new union movement is thus a negative development which threatens to contribute to undermining all that they have achieved in their short period of existence and preventing them from accomplishing all that they hope to achieve. For that reason, it deserves the critical examination of the new unions and an effort to reverse it.

ADDENDUM

This addendum is meant to supplement the brief background the thesis provided in chapter two.

1. The Origins of Apartheid Capitalism

1.1. The Colonial Era

Colonialism first brought the Southern tip of Africa into the capitalist world system. The colonial conquest of South Africa resulted from the clash between the conquerors from countries engaged in the most advanced mode of production and armed with the weapons of that advanced society, and an indigenous population engaged in far more primitive modes of production. Inevitably at the Cape, the latter were defeated, their land expropriated and their social relations and structures virtually annihilated. Legassick points out another aspect of colonial encroachment: the new modes of production (feudalism and capitalism) were hierarchical and these consolidated in the colonial context as racial divisions. (Legassick; 1974;p258)

However, capitalism was not initially the dominant mode of production. In line with the pre-capitalist modes of production which the settlers themselves engaged in, pre-capitalist forms of expropriation of surplus existed at least under the Dutch government: slavery, indentured labour, etc. To the extent that "free wage labour" existed, conditions of employment were at the outset tinged with racism, or rather the arrogance of conquerors towards the conquered (both towards the indigenous people and the slaves brought from other conquered territories). There is evidence to show, however, that free wage labour was not generalised throughout the Dutch colony and insofar as it existed the conditions of employment of the few whites who came out as indentured labour, were little better than those of blacks (Callinicos;1981;p73)

The beginnings of capitalist forms of exploitation began to emerge, particularly after the Dutch colonial power was replaced by the British in 1806. For the British the new acquisition was primarily to ensure the protection of the trade route to the East. Soon it was deemed desirable that the colony pay for its own administrative costs and provide agricultural goods and a market for manufactured goods. Thus commercial farming began to emerge at the Cape

and with it capitalist forms of labour exploitation, utilising mainly a tightly controlled black workforce. In addition, the mercantile colonialism which had begun in the period of Dutch rule, giving rise to a local merchant bourgeoisie, expanded.

The beginnings of a rural proletariat appeared with commercial farming, consisting in the British colonies (the Cape and Natal) of ex-slaves (brought initially from other British colonies); expropriated/landless indigenous people; people of white/African origin (Coloured people) and indentured labour (Simons and Simons;1983;p23). The British colonial power terminated slavery, but permitted indentured labour, particularly on the farms of the Cape and Natal. This resembled slavery in that workers were tied to employers and suffered harsh conditions of employment. Workers were brought for example from India under contract for a fixed period of time. They could at the end of that period either renew their contracts, return whence they came, or buy themselves out of indenture and remain at the colonies on payment of a fee to the British government (LACOM;1989;p22).

The British brought a "liberal" approach to the Cape eg enacting Ordinance 50 of 1828 to remove the pass laws (below) which the Dutch had used to control the movement and employment of blacks at the Cape. They also removed the right to flog employees for breach of labour laws. The British later decreed in Natal that discrimination on the grounds of race or colour should cease. Although the employer/employee relationship was tinged with racism, most ex-slaves being black (mainly Coloured), the legislation governing the relationship was to a large extent "colour blind". The British and other immigrant workers who came to the colonies as indentured labour, competed with blacks for both skilled and unskilled work and were subjected to the Masters and Servants legislation prohibiting desertion of employees, as much as blacks were, although Simons and Simons (1983;p24) point out that these laws were in practice applied more rigorously to blacks.

Further inland Afrikaner farmers and British traders did not succeed in totally expropriating the land of the indigenous population through military conquest. Many Africans continued to farm for themselves in the old way despite the encroachment of the settlers. Increasingly these were transformed by both continued wars of conquest waged against them by Afrikaner farmers, who then exploited them as farm labourers, tenant farmers or share-croppers, and by the influence of trade and other interaction with capitalist society (Davies et.al.; vol.1;1984 p7).

In the Boer republics which existed prior to the formation of the union of South Africa in 1910, capitalism was still not the dominant mode of production by the time of the discovery of gold and diamonds in the late nineteenth century.

2.2 The Mining Revolution and the Cheap Labour System

Recent analysts of the South African political economy (eg. Legassick; 1974; Davies et al; 1984; Callinicos; 1981) have shown that the discovery of diamonds in 1867 and of gold in 1886, qualitatively changed the face of South Africa. It hastened the final destruction of pre-capitalist relations of production, thrusting the backward agricultural South African economy headlong into modern day capitalism. The colossal impetus given to capitalist development in South Africa by the discovery of diamonds and gold has led to South Africa's Industrial Revolution being described as a revolution "from above" (Legassick; 1974; p260).

2.2.1. The discovery of diamonds and the beginnings of the cheap labour system

The diamond mining industry, despite going through distinguishable early stages (Innes; 1984; pp21-33), set mining as a whole on the road to monopolisation. In addition, the key features of the South African working class (the division along a coincidence of race/class/skill lines, the extremes of exploitation of the African working class, etc) emerged very early in its history.

Individual small-scale mining was shortlived for a number of reasons. Diamonds were a luxury commodity and thus the realisation of profits was very vulnerable to the vagaries and fortunes of the wealthy of Europe. Economic crises facing these, together with over-production stimulated by a surfeit of competition, threatened the profits of the diamond producers. Technical problems generated a need for wage labour. Small-scale diggers resisted centralisation of diamond holdings as the answer to these problems. They sought to resolve labour problems by demanding that Africans be made to work as wage labourers on the mines (ibid).

This was achieved, inter alia, by completing the process of colonial conquest of Africans thus depriving them of land from which to subsist, depriving them of the right to be claimholders, and imposing hut and poll taxes on them to force them to seek cash through wage labour

(Callinicos;1981;p73). Africans also had their own reasons for seeking to earn wages eg. to find the means to purchase weapons to defend their remaining land against further encroachment (ibid).

However, the difficulties of supply and control of the workforce continued. Africans saw the sale of their labour power as intermittent, which having served its purpose, could be readily abandoned. Also, they quickly learnt to use the labour shortage to gain higher wages, with desertion as the means of backing up those demands. They also engaged in strikes as early as 1889 (Innes;1984;p33). The diggers' insistence on greater control of the African workforce by for example the stricter enforcement of vagrancy laws and Masters and Servants legislation, could not resolve the problems of an inadequate supply of labour and arising from this the high cost of that labour (ibid;p30).

Economic crises rapidly led to the replacement of individual diggers by companies which could operate the industry more efficiently and profitably. "The new economies of scale to be gained from centralization made it possible to restructure the labour-process in such a way as to cope with the technical problems involved without increasing the demand for labour." (Innes;1984;p33). In an attempt to resolve the problem of labour supply and the related one of relatively high wages, the labour-process was restructured towards greater mechanisation. However, African labour was still required and retained a measure of bargaining power in respect of the wages and conditions of employment. To undercut this, convict labour was introduced, and with it the housing of workers in compounds to increase control over them (ibid;p32).

Mechanisation did not entirely resolve labour supply problems and brought its own problems (ibid;pp32-33). It required the use of skilled labour, which could only be obtained by importing expensive labour from Europe. Skilled labour was more than usually expensive for at least two reasons: the need to provide incentives to European workers to come to the colonies and the history of unionisation which they brought with them. Not only were white workers able to use their experience of organisation to gain high wages, but they also used it to retain a monopoly of skills. Thus from very early on the "...the industry came, ...to be racially stratified, not only in the capital-labour relation, where capital had become a white preserve, but also in the skill differential within labour where skilled work became dominated exclusively by whites" (ibid). Almost from its inception, therefore, mining gave rise to two

features of the South African working class: the race/skills divide and the utilisation of the African working class as a source of cheap labour.

The most important aspect of the rise of monopolies as far as the working class was concerned, was the increased scope it provided for capital to launch assaults on labour. The closure of mines led to retrenchments, especially amongst the army of African workers, thus driving down the cost of their labour power, and facilitating the introduction and consolidation of the hated compound system (Innes;1984;pp34-7). African workers were herded, for the duration of their periods of employment on the mines, into "ethnically" separate compounds guarded tightly by armed mining police.

Simons and Simons (1969;42) describe the appalling prison-like conditions which obtained in the compounds and the total control which it gave the mining bosses over every aspect of the workers' working and social lives. These included African mine workers being subjected to humiliatingly thorough and intimate daily searches before and after each long and arduous shift, living in overcrowded and primitive huts or iron structures, going to work along a tunnel, being forced to buy all their requirements from company stores at exorbitant prices, having all leisure activities such as the consumption of alcohol controlled in the interests of greater productivity, and being unable to leave these compounds at all for the duration of the contract. Before leaving, workers were detained for a period and subjected to purges and searches.

Thus black workers found themselves unable to move around and seek out the highest wages, unable to bargain with employers for higher wages by threatening to desert, and with all aspects of their lives controlled in the interests of greater efficiency. Thus, Innes concludes, the ability of black workers to struggle was reduced to an absolute minimum (Innes;1984;p37). One of the worst features of modern day apartheid capitalism had begun to emerge, viz. the compound labour system. It was founded, not upon crude racism, but upon the needs of capital to maximise profits.

2.2.2. The discovery of gold and the extension of the cheap labour system

The discovery of gold was of critical importance to capitalist development in South Africa. Gold was and remains important to the international bourgeoisie because of its significance as

the capitalist world's money-commodity (Innes;1984;p45). In South Africa, the gold-mining industry derived added importance from its role in spawning the monster which is apartheid capitalism.

Early centralization of the industry was necessitated by geological conditions which made mechanisation necessary. The diamond monopolies had capital to finance this. Soon they took control of goldmining in South Africa. Geological conditions also created a need for large amounts of unskilled labour. The diamond mining industry pointed the way to finding and controlling that supply of labour (ibid;45-47).

Gold held a special place in the capitalist monetary system: unlike diamonds, it was not a largely luxury commodity and hence had an unlimited market - problems of overproduction did not exist. In addition, Britain, then the foremost political and economic power in the world, had fixed the price of gold, therefore it was not subject to the fluctuations of the market. This was as much a disadvantage as an advantage, for if costs increased, the price could not make up for it and therefore profits would decline (ibid;p49).

The costs for mine-owners were essentially two-fold:labour on the one hand, and stores and equipment on the other. The latter necessitated great initial expenditure, but the former represented the largest portion of the costs and was also an ongoing source of expenditure. There was no choice but to pay the costs of capital goods required, for which British investment was available. Also, it was difficult to cut the costs of the skilled workers needed to operate the machinery and to supervise the unskilled workers, for reasons stated above. The only viable means, in the eyes of mine-owners, of cutting costs and therefore of guaranteeing high profits, was to cut back on the cost of black unskilled labour. (Innes;1984;pp49-50).

The cost of labour could only be controlled if its supply could be controlled (Innes;1984;pp58-9 and Hindson;1987;p22). Monopoly conditions facilitated the introduction of increasingly harsh forms of securing a large supply of cheap labour from the ranks of the African population. The Chamber of Mines, created in 1889, was able to centralise the recruitment of African workers by creating its own centralised recruitment agencies, thus eliminating the competition between mine-owners for cheap labour, and standardising the wages and working conditions. The compound system again, as in diamond mining, was introduced to control the lives of workers in all respects, increase productivity, curb desertion and so on.

In addition, the aid of the state was enlisted to prevent desertion by stricter enforcement of pass laws which controlled the ability of Africans to seek higher paying employment. The pass laws pre-dated the advent of mining. They were used in the various colonies which existed before Union in 1910, to keep Africans out of the colonies and to control their movement within and between the colonies (Hindson; 1987; pp18-19). However, the use of the pass laws to control the supply of labour and drive the cost of labour down, as well as the development of the migrant labour system for the same reason, stemmed from the need of the mining industry for cheap labour (Davies et al; 1984;p8).

Thus in 1895 the Chamber of Mines succeeded, in the Witwatersrand heartland of the goldmining industry, in getting the Transvaal government to pass measures to control the supply of African labour to the mines (Innes;1984;pp60-3). These required that all Africans entering the mining districts register upon arrival at a pass office and obtain a document (pass) giving them leave to remain in the area for 6 days to find work. If they failed to do find work, they had to leave at once or were forced to work on road gangs. If they obtained work, their service contracts had to be registered. These contracts acted as passes - documents reflecting the workers' right to be in the area (Hindson;1987;p23).

They also encouraged the emergence of a form of itinerant labour. The contracts only lasted for 330 (later 360) days, after which the worker had to return to the rural area from which he came. He then had to repeat the procedure to obtain work (Hindson; 1987; p23). This migration of workers to and from the mining districts sowed the seeds for the development of the migrant labour system which was used to justify the payment of excessively low wages to African workers. By exploiting the ties of African workers to the land capitalists could rationalise paying the African workers excessively low wages: a worker need be paid only the cost of his own maintenance, not reproductive costs, because his family were supposed to subsist off the land in the reserves (below), to which he returned at the end of his contract of employment. The legislative measures of the state and the oppressive practices of the mining industry were complemented by the outright brute force exerted by both to prevent African workers from resisting their super-exploitation.

However, mining was not alone in its pursuit of an army of cheap labour. Nor were its interests the predominant concern of the Boer governments of the republics in which the gold mines were located. Agriculture was also in contention. According to Legassick (1974;p260),

"....in the new economically dominant Transvaal, nouveau riche and foreign controlled mining houses confronted a feudal rather than a capitalist landowning ruling class."

The attempts at compromises to resolve the conflicts of interest, such as diverting mining taxes to agriculture could not resolve the tension between the two. In addition, despite the completion of military conquest of the African people, the establishment of reserves (Roux;1964;p87), the steps taken by the mine-owners themselves to secure labour and the piecemeal assistance of these states, a permanent and more efficient system of acquisition of labour from the reserves was required. These needs could be met only by the establishment of a unified nation state, in which the imperialist colonial power could directly intervene to ensure that mining and capitalist farming (along the lines established at the Cape) could be established as the predominant interests throughout the country (Legassick;1974;p260). It was these needs which precipitated the Anglo Boer War and the formation of the Union of South Africa in 1910.

3. The Role of the Nation State

The new nation state played an essential role in the rapid development of capitalism in South Africa. The colonial government provided both the infrastructure required by the developing capitalist economy and the legal framework for the super-exploitation of the African working class. It ensured that all the existing and developing sectors could have an adequate labour supply and that this could be secured at the lowest possible cost. This galvanized the overall development of capitalism in South Africa.

3.1 The Impact of the Alliance of Maize and Gold.

The new state's policies and legislation reflected primarily the interests of mining and agriculture, what has been called "the alliance of maize and gold" (Legassick;1974;p247). Callinicos (1981;p74) points out that "The development of capitalism in both mining and agriculturerelied upon labour repression".

The mining industry provided the state with enormous tax revenues to develop an economic infrastructure (key parastatals, transport and communications, state subsidies to other sectors) for rapid capitalist development. It also stimulated the development of capitalist farming in South Africa by creating a huge demand for agricultural products (Davies et al;1984;pp9-12).

As Davies et al point out, capitalist farming developed "from above" (1984;p11). The state's protection of Afrikaner farmers, assisting the development of capitalist farming, included the establishment of the Land Bank in 1912 to finance farmers, the provision of subsidies and the controlling of market conditions. This policy was consolidated by the passing of the Agricultural Marketing Act in 1937 to create control boards representing farmers, which could control prices in their interests (ibid;pp10-11).

Mining taxes also financed the repressive means (in the form of a gargantuan state bureaucracy, and a powerful military and security apparatus) to keep the black working class oppressed and super-exploited. The new state ensured the subjugation of the working class, by repeated legislative and other assaults to quell the resistance of both the black and white working class.

Mining and farming, as well as the economic infrastructure which developed in the wake of the development of mining, required a steady supply of labour and the means to control that labour. The new state advanced the interests of both mining and agriculture by streamlining their access to and control of a vast supply of cheap labour, primarily constituted by the African working class.

It produced major pieces of legislation such as the Native Labour Regulation Act of 1911. This systematized the existing pass law controls over the movement of African workers on the mines. It regulated the recruitment, employment and housing of African workers. Service contracts of African workers had to be registered and their fingerprints taken. The registration certificate acted as a "pass" permitting the worker to be in the district specified. The Act made breach of contract by "native labourers" employed on the mines and works a criminal offence and provided severe penalties for such offence: failure to carry out an instruction, or leaving employment without notice could cause the worker to be arrested and forced to do hard labour for up to 2 months (Hindson;1987; pp24-5).

The Act provided the framework for the migrant labour system by limiting these contracts of employment to a maximum of 360 days and preventing unemployed workers from remaining in the labour districts. The access of African workers to the mining districts and their ability to seek work independently was limited by centralization and control of their recruitment (ibid;p25). This undermined the ability of African workers to seek out the highest wages. By

undermining their stability in the areas where they worked, the Act also hampered their ability to organize to fight for higher wages and better working conditions. As long as they were "temporary sojourners" who could periodically be sent "home" ie to the "reserves" outside the labour districts (ie the mining areas), African workers were unable to organize to defend themselves against excessive exploitation.

Thus the migrant labour system emerged from the perceived need of mining employers to drive down the cost of labour in order to maximize profits. Hindson points out that

"The Act had its most comprehensive application on the mines, where, during the early twentieth century, migrant labour became the exclusive form of African labour supply for all but a very small minority." (ibid;p25)

However, he also points out that the Act safeguarded the supply of labour to the farms from being diminished by the increased demand from the mines and the towns. Labour recruiters were not allowed to recruit in white farming districts, agents were allowed to recruit for farmers and the Native Affairs Department sent workers rejected by the mines to the farms (ibid;p25).

Further controls over black workers lay in legislation such as the Masters and Servants laws which already existed in each of the two British colonies and the two Boer Republics which now formed the provinces of the Union: these were now more strictly applied to African workers. The 1913 Admission of Persons to the Union Regulation Act formally classified 47% of South Africa's African mine labour force as "foreign". This allowed the state to extend its control over these workers by denying them any rights (Innes;1984;pp68-9).

The pass law system and the migrant labour system worked together with the system of "reserves" (later called "bantustans" and finally "homelands" by the state) already established in the mid-19th century (Bindman;1988;p23) and formalized by the 1913 Native Land Act. This Act confined Africans in South Africa to live on 8.8% of South Africa's land space (ibid). While African workers worked on the farms and mines, their families were supposed to subsist off the land, regardless of whether they in fact had such land, how much they had, or what condition the land was in. Moreover, the "reserves" were and remain reservoirs of a vast supply of cheap labour and the dumping ground for the reserve army of labour and the casualties of capitalism (the old and infirm) for whom capitalism would usually have to bear responsibility.

The state also resuscitated and strengthened the traditional authority structure in the reserves, now geared to meet the needs of capital. Several legislative interventions were to set a pattern which eventually produced the current "self-governing homelands" system. These were: the Native Affairs Act 1920, the Native Administration Act 1927, the Bantu Authorities Act 1951, the Promotion of Bantu Self-Government Act 1959 (Legassick;1975;p250).

By limiting the access of Africans to land and thus making more cheap labour available, the state resolved two problems for capitalist farmers: the back of the African peasantry was broken and labour costs for white farmers were cut, enabling them to compete more effectively (Davies et al;1984;p11). Mining also benefited from the streamlining of its access to and control of a vast army of cheap labour, which facilitated the extraction of surplus value.

South African capitalists therefore had tremendous advantages over many of their international capitalist competitors. The vast mineral wealth of South Africa, and the economic muscle and skills of monopoly capitalism were only two of the important elements that account for the "success story" of apartheid capitalism. The third and most important element was the creation of a super-exploited black working class ie one from which a higher than usual surplus value could be extracted, with the aid of the state.

3.2 The Growth of Secondary Industry and the Urbanization of the African Working Class

The mining industry fostered the development of the manufacturing sector both directly and indirectly. In the late nineteenth century, it set up industries geared to its needs, such as the railways system. Support industries such as steel and engineering developed. In addition, its very existence provided a market for manufactured goods, which stimulated the manufacture of local goods (eg. clothes, soap, bricks, tiles, etc). These developments were necessarily limited by the competition with more developed countries, especially the colonial power, Britain (Innes;1984; pp118-121). The development of the manufacturing sector was also assisted by foreign capital, which, already attracted by mining, joined it in branching out into secondary industry, where, as in mining, super-profits could be guaranteed by the cheap labour system.

Manufacturing really took off with World War I when international competition decreased and

local enterprises developed to make substitutes for shortages. The shortage of capital goods occasioned by the disruption of trade in Europe ensured that industry was largely labour intensive in this early period (ibid).

In this period, the rapidly declining ability of the reserves to contribute to the support of African workers, together with the increased availability of employment in urban areas led to increased African urbanization (ibid;pp33-4). These workers could be paid appallingly low wages, determined by the rate paid to migrant workers (Hindson;1987;pp33-34). This provided South African manufacture with an advantage over competitors: the cheap labour system which made possible low priced goods.

European recovery caused the manufacturing sector to seek the protection of the state, in the form of tariff protection (Innes;1984;p121). In addition, Britain, facing increasing competition which threatened her international dominance, sought every advantage. As the colonial power, it could trade favourably with South African industry, hence its interest in the development of South African industry.

However, the most important role played by the state related to the supply and control of labour. The development of manufacturing brought problems for capital. Firstly, there was competition between different sectors for cheap black labour. Secondary industry was attracting Africans from the "reserves" as the subsistence economy collapsed, and from white rural areas as Africans sought alternatives to the harsh conditions of employment offered by the mines and the farms. Secondly, the manufacturing sector, initially labour intensive with the shortage of capital goods during the war, was becoming increasingly mechanised and required a more stable semi-skilled workforce rather than what existed then: skilled whites and unskilled blacks. Thirdly, industrialisation, however rapid, did not keep pace with urbanisation. The development of manufacturing was to bring cyclical unemployment in its wake. Increased urbanisation posed a threat in the form of increased organisation, undermining the migrant labour system, as well as the related problem of the relocation of the reserve army of labour in urban areas (Legassick;1974;p168).

No provision had been made for these developments since the system was geared towards the location of these problems in the "reserves". These and other contradictions would have to be resolved either by establishing new forms of control over the supply of labour, or by

tightening up and systematising the existing controls. Manufacturing, like mining and agriculture, looked to the state to resolve its problems in relation to labour.

3.3. Resistance, Repression and Co-optation.

3.3.1. Early resistance to capitalist domination.

Neither the black working class created virtually overnight by coercion nor the growing white working class swelled by being forced off the land by the growth of capitalist farming in the wake of the Anglo-Boer War, submitted quietly to the domination of capital.

White workers, it has been pointed out, brought their trade union traditions with them from Europe. However, except to a limited extent in the Cape, they did not welcome black workers into these unions, which fought to keep skilled, highly paid work, white. In the Cape, unions tentatively welcomed Coloured artisans but not Indian or African workers. In the North, where mining was dominant, all blacks were unwelcome in white unions (Roux;1964;p125) despite the attempts of some socialists like Bill Andrews to fight for the inclusion of Blacks (ibid).

Strikes by black workers predated the turn of the century. The first recorded strike by black workers was the mine workers strike in 1896 in response to a reduction of black wages (Bendix; 1989;p289). Early resistance, however, mainly took the form of boycotts, desertion and non-co-operation (ibid). Such resistance, and attempts at organization by Africans, as well as repression of such activities by the state and employers, continued in the first decades of the 20th century.

Black political organization, to some extent supported by workers and taking up issues concerning workers, flourished in the early decades of the twentieth century under a predominantly petty bourgeois leadership. Educated Africans, Coloureds and Indians suffered under discriminatory pass and land laws, and were opposed to the repression of black workers by the state. The African Peoples Organization was founded in the Cape in 1905 and although open to all black people, was predominantly led and constituted by Coloured intellectuals at the Cape. It attempted to resist racial discrimination against black people by mobilizing those who retained the vote (the Cape retained for some time a provision that "civilized" people,

including Africans and Coloureds who passed the test of being "civilized", could vote, resulting in a tiny proportion of blacks having the vote). Its following was mainly Coloured teachers and its concern primarily for the education and franchise of black people. It did not embark on mass struggles and had little worker support (Simons and Simons;1983;pp119-123). Disillusioned with white trade unions and socialist organizations which, whilst purporting to fight for black workers in the Cape, supported the anti-black policies of unions and the South African Labour Party in the North, it attempted to organize separate unions for black workers in the Cape. (ibid;p127.)

The South African Natives National Congress (SANNC) (forerunner of the African National Congress) was founded in 1912 and consisted of mainly tribal chiefs and the small black petty bourgeoisie (traders, missionary educated teachers and clerks, etc). These black people were also affected by the racist legislation such as pass laws and land laws and the lack of voting rights in certain provinces. The SANNC was a pressure group to "oppose the colour bar and promote the interests of Africans". (Davies et al; Vol 2;1988;p285). This organization, for example, arranged for a deputation to Britain to persuade the British government of the wrongs of the 1913 Land Act (Roux;1964;pp108-110). It also organized a passive resistance campaign against the pass laws in 1919. This campaign was supported by black workers who suffered appalling poverty, exacerbated by the absence of decent housing, sanitation and the basic amenities of life, as well as the repressive application of the pass laws (Hindson;1987; pp33-34). It was repressed by the state by brute force (Roux;1964;pp 116-7).

Indian workers were originally brought as indentured labour to the sugar plantations of Natal in 1860 and many Indian workers migrated to the Cape in search of work. After completing their terms of indenture many remained as traders and servants and later worked on the railways and coal mines in South Africa, despite taxes imposed on them to prevent them from remaining (Roux;1964;p101). They were precluded from owning land or acquiring any other rights in the Boer Republic of the Transvaal and subjected to pass laws in the Transvaal even after the Boer War (ibid;p104). Later, they were prevented from entering the Transvaal by immigration legislation (ibid;p106). Indians were obliged to pay special poll tax, prevented from owning land outside of specially demarcated areas in Natal and banned from the Orange Free State altogether. Also, Indian workers suffered from the same discriminatory practices and legislation in employment as Coloured workers (such as being paid lower wages than whites for doing the same work, being excluded from certain types of skilled work, etc).

In Natal, Ghandi led a passive resistance movement against the severely discriminatory treatment suffered by Indians. This was supported by Indian workers who struck in 1913 on the coal mines, sugar plantations, railways, factories, shops and offices in Natal. This campaign was brutally put down by armed police action (Roux;p108) and achieved meagre gains, but crippled industry in Natal (Simons and Simons;1983;p161).

Attempts were made by some socialists to organize African workers. This led, for example, in 1917 to the formation by the International Socialist League of the Industrial Workers of Africa (IWA) for all unskilled workers. This union led the "bucket strike" by black night soil workers in Johannesburg, the major mining city, for higher wages, in 1918. It was preceded by a successful wage strike by white municipal workers. The black strike was however, unsuccessful, calling forth the full wrath of the state on the heads of strikers. They were arrested, charged under the Masters and Servants Act and sentenced to 2 months' hard labour - doing their own work under armed guard, under threat of being lashed if they refused to work and being shot if they tried to run away (Roux;1964;pp130-131). Their leaders were charged with incitement to violence, not only in relation to this strike, but in relation to the general industrial unrest which beset the Rand at the time, including a strike on the mines (below) by African workers (ibid).

The IWA, together with the Industrial and Commercial Workers Unions (ICU) established in 1919 (ibid;p154) also organized a wage strike by Cape dock workers, mainly African but including Coloureds, in 1919. This was also defeated as a result of state action and the employment of white scabs (ibid). Unrest generated by the activities of the ICU spread to the ports and farms of South Africa, but not to the mines, where it had no influence (ibid;p 156). The ICU went on to become the most powerful mass organization of black workers in the twenties. Founded as a dock workers' union, it developed into a general union for all black workers, eventually becoming a mass political party which superseded for some years the role of the ANC (Roux;1964;pp 153-197).

It was, however, on the all-important mines, dominated by African unskilled workers, that the most damaging strike action took place. In 1911, African mine workers struck on the Rand and were driven back by the brutal action of police and white scabs and imprisoned by the state in terms of Masters and Servants legislation (Simons and Simons;1983;p154). In 1913 diamond workers struck over brutal treatment (the kicking to death of a fellow worker) by

mine management. The strike was forcefully broken and the strikers jailed (ibid;p168). In 1918 a wage strike by black mine workers, accompanied by a boycott of compound shops ended in defeat when mounted police drove workers down the mineshafts (Innes;1984; p77). In 1919 a series of sectional strikes by African mine workers for improvement in wages, conditions of employment, the compound stores, and the type of work they were allowed to do elicited only marginal wage increases from the mining employers. (Simons and Simons;1983;pp 230-1).

In 1920, 71 000 African mine workers on the Rand went on strike over wages and conditions of employment and boycotted company stores. Roux (1964;p132) points out that as usual whites scabbed on them and the police surrounded the compounds and forced them back to work. However, the strike was well-disciplined and well organized, which alarmed the government since this was different from an instinctive revolt by workers (Simons and Simons;ibid; p232). Simons and Simons claim that it lacked any real support from socialist organizations, but Roux (1964;p132) claims that the IWA organized the strike.

White mine workers, unionized and participating in strikes even before the turn of the century (Simons and Simons;1983; pp pp53-5) went on strike again in 1913 (ibid;p181 and Innes;1984;p76), participated in a general strike in 1914 (Simons and Simons,ibid;p182) and in 1916 were partly responsible for the decline in output from the mines by going on strike. At least one of these was crushed by the state.

The general climate of industrial unrest was arrested by the state, but was cause for concern, particularly in mining. With wages still their greatest cost, the mining houses could ill afford such militancy. Mine-owners wanted to restructure the labour process to both quell this militancy and increase the rate of exploitation of black workers. They proposed to train black semi-skilled workers, to replace whites, thus cutting the cost of white labour power and increasing the level of exploitation of black workers. This would also create an "elite" amongst black workers, which would hopefully lead to further divisions. Both white and black workers would be weakened by this.

White workers saw altering the racial structure of employment as promoting black advancement at their expense. They had for decades defended a monopoly of skilled jobs on mines, and hence a better standard of living, against the encroachment of African, Coloured

and Indian workers (Simons and Simons; 1983;pp55-6). They expressed their determination to defend these privileges in the mammoth Rand Revolt in 1922 (ibid; 1983;pp271-299). This was brutally crushed by the state (ibid;pp295-297), but convinced the mining monopolies and the state that pure repression of white workers would be far more costly than their co-optation. White workers, with the collusion of so-called communists, fought under the slogan "Workers of the World Fight and Unite for a White South Africa" (ibid;p285). For mining employers and the state this pointed the way out: white workers could be further co-opted at the expense of black workers. The revolt was to mark the last time that white workers would directly confront the state and capital.

3.2.2. Co-optation of white workers and repression of black workers

Faced with the need to break the power of organised labour, the state and capital resorted to methods which were to become an enduring feature of labour/capital relations in South Africa: the co-optation of the white working class and the continued brutal repression of the black working class. In the 1920's the state, through its assaults on labour "created the political conditions for the reorganization of labour supply and control in the economy" (Innes;1984;p126)

The state protected the interests of all sectors of capital by keeping at bay the growing army of Africans forced into the urban areas by the increasing failure of the overcrowded "reserves" to support them (Hindson;1987;p33). The Native (Urban Areas) Act of 1923 gave the state greater control over the African workforce and also regulated, controlled and steered labour to where it was needed by the various sectors of capital. It fitted in neatly with the "reserve" system by ensuring that the social costs of the African workforce would not be borne by capital. At the same time, it ensured that Africans were unable to supplant poor whites in jobs in the urban areas.(Simons and Simons;1983;p316).

The Act made the registration of African employment contracts compulsory in all areas prescribed in the Act. It also required local authorities to create segregated locations for housing urban Africans (ibid;p35). Employers wishing to employ Africans had to show that they had suitable accommodation. The Act retained the repressive aspects of the Masters and Servants legislation by making breach of contract (eg. change of employment without permission, desertion, failure to satisfy and employer) a criminal offence. This offence was

punishable by fines and hard labour under the "offended" employer (Hindson;ibid).

Africans from rural areas had to register as workseekers, acquire workseekers' permits and stay in labour depots until they had work. Failure to find work in a specified period led to "endorsement out" of the area. The chronically unemployed, even those not from the reserves, as well as those convicted of a criminal offence, could be endorsed out to the reserves or to labour colonies. This was particularly used to punish workers who returned to seek work. (ibid). The Act thus ensured that "redundant" Africans could not stay in the urban areas: those without a pass, which was only granted to those who served the needs of capital in the urban areas, could not stay in the urban areas. In this way it could also ensure that the growing secondary sector was not depriving the farms and mines of labour (Innes;1984;p37). Few Africans were exempted from these controls. African workers, the overwhelming majority of the black working class, found themselves subject to legislation which controlled every aspect of their lives.

Shortly after the passage of this Act, the state created the framework of legislation for the co-optation of the white working class (Innes;1984;p127 and Hirson;1989;p29) which at the same time considerably weakened the position of all black, but particularly African workers.

The Industrial Conciliation Act of 1924 created an institutionalised collective bargaining system which excluded all African unions, legally recognised white unions, allowed for legally binding collective agreements between such unions and employers, and protected the colour bar in employment. The *quid pro quo* was the tight regulation of industrial action by white unions, which was to ensure their future as mere societies administering benefits and going through the motions of collective bargaining. As Davies et al correctly point out:

"The Industrial Conciliation procedures were centralised, complex and bureaucratised. They thus favoured the formation within unions of a corps of professional negotiators distanced from rank and file members." (1988;p246).

The Wage Act of 1925 was introduced to protect semi-skilled and unskilled white workers (Hirson;1989;p30). It formed part of the "civilized labour" policy of the Pact government and was meant to ensure that white workers maintained "civilized" standards of living (Davis and Fine;1990;p20 and Hirson;1989; pp30-31). It provided for Wage Boards to be established under the Department of Labour to make wage determinations with this in mind. As Davis

and Fine (ibid) point out, it was formally open to all workers, but since it excluded farm workers, domestic workers and mine workers, it effectively excluded the majority of black, particularly African workers who were mainly employed in these sectors. To the extent that wage determinations were made for black workers, they applied mainly to Coloured workers in the Cape and were so low as to afford little benefit to such workers. (Hirson;1989;p31).

White workers' co-optation was further secured through other aspects of the "civilized labour" policy such as the policy of the state to relieve the unemployment situation for white workers by absorbing unemployed white workers into the state sector (Innes;1984;p127).

Although coloured and Indian workers were spared the full extent of the oppression and super-exploitation of African workers, they too fell foul of the cheap labour system, by for example, being paid excessively low wages, suffering from poor working and living conditions and being barred from certain jobs through the industrial colour bar, which spread from mining to all industries and sectors over the decades. Thus the "civilized labour" policy also excluded them from jobs reserved for whites only. The industrial colour bar was bolstered by the closed shop practices of the white dominated and controlled registered trade union movement. Through their dominance of the Industrial Council system, these unions were able to negotiate agreements which reserved the best jobs for their white members. Later these unions were able, through the Apprenticeship Act of 1944 to prevent Africans, and in some instances Coloureds and Indians, from being trained for certain skilled work (Maree; 1986;p99).

Furthermore, the state conducted a vicious assault on the organized industrial and political power of black workers. The Native Administration Act of 1927 and the Riotous Assembly Amendment Act of 1930 gave the police "Widespread powers of repression which they used to murder, imprison and beat up workers and their leaders, as well as breaking up meetings, assemblies and strikes" (Innes;1984;p128). By 1932, the political organizations of the oppressed and exploited were much weakened.

African trade unionism in particular was in a parlous state. Organization of black workers by communists continued in the late twenties, in industries such as laundry, baking, clothing, and municipal works. These were grouped into the South African Federation of Non-European Trade Unions (SAFNETU) in 1928 and led numerous strikes (Fine and Davis;1990;p7 and Roux;1964;327). These unions collapsed in the early thirties as a result of the Depression,

state repression and the policies of the Communist Party to which they were linked (ibid). The ICU, too, continued to flourish in the twenties and to organize strikes, such as the general railways and harbours strike of 1930 (Roux;1964;p134). It suffered a similar fate to the SAFNETU: depression, repression and internal problems (Fine and Davis;ibid;p8 and Maree;1986; pp64-5). The IWA collapsed in the twenties and the militancy of mine workers was defeated by the state's response to the 1920 strike.

Thus the needs of the most important sectors of capital in South Africa gave the South African working class its most enduring features: racial division and extreme exploitation of one "race" of workers and co-optation of the other at the expense of the former. Mining, in particular, in the wake of the Rand Revolt, was responsible for the institutionalization of the racial division of labour and the creation of the framework of legislation and coercion under which the black working class suffered. By 1932, says Innes, "The working class had been decisively defeated and its division along racial lines further entrenched" (1984;p128). The features of division, co-optation and repression, were to mark the South African working class for decades to come and laid the basis for way in which both parts of the working class were to respond to capital's strategies in the crisis of the eighties.

4. The Growth of Apartheid Capitalism

The pattern of repression of the black working class, established in the twenties, continued to develop in the next decades, with the state playing a major role. The success of the state in repressing black working class militancy and organization endured only until the mid-thirties. Black trade unionism surfaced again in the late thirties, black working class militancy was resuscitated in the forties and fifties, to be virtually annihilated in the sixties, with capital the primary beneficiary of its death.

4.1. Urbanisation and the Control of the Working Class in the Thirties

The collapse of the "reserves" in the thirties forced more and more Africans into the urban areas (Davies et al;1984;p15). At the same time the Depression played a part in causing and reinforcing the effects of this collapse by giving rise to increasing unemployment. For Africans this meant increasing impoverishment. No provision was made for the housing of the masses which flocked to the urban areas (Hirson;1989;p17), or for catering for the social

needs of a permanently urbanised African workforce. The result was that this population suffered under the most abysmal and squalid living conditions (Fine and Davis; 1990;p17). Unemployment in the towns was high in the early thirties, and for those who had employment wages were low, following the low standards set by mining and farming (Hirson;1989;pp17-22).

The dangers of having a permanently urbanised workforce and the reserve army of labour located in the urban areas, together with the need of farming and mining for labour, led to the tightening up of the pass laws, the implementation of the existing influx controls pertaining to urban areas and the introduction of efflux controls from white farms. The legislative framework for this included the Native Service Contract Act 1932, the Hertzog Bills of 1936, the Native Laws Amendment Act 1937 and the Urban Areas Act 1933. Attempts were made to forcibly remove the "excess population" to the impoverished "reserves" and channel African labour to where it was needed in the economy (Hindson;1987;pp42-6).

By the mid-thirties, the South African economy had recovered, particularly as a result of the international departure from the gold standard which increased her export earnings as the gold price increased (Innes;1984;pp129-131). As manufacturing rapidly expanded in the thirties, its need for both large numbers of unskilled workers and for semi-skilled labour increased. The latter could more profitably be gained from cheap black than expensive white labour. However, this would require some stability in the workforce, to protect capital's investment in training them. At the same time, the migrant labour system had to be retained. It still served the purposes of justifying excessively low wages, facilitating allocation of labour and ensuring that the militancy of African labour was curbed both by the reserve army of labour in the "reserves" and by the instability and uncertainty of employment. What was required was an extension of control over the urban African workforce, as well as keeping them divided from migrant workers, so that the two sections of the African working class could not readily organise against capital.

African militancy, organisation and politicisation was repressed by a range of laws which smashed political organisations and unions. Laws regarding the employment of Africans were tightened up, to increase control of them. In this way the state was able to resolve the contradictions which had emerged, albeit not permanently. Innes sums up the state's policy towards labour in this decade and its effects on the working class as follows:

"The 1930's were thus a period of major social restructuring during which the state thoroughly reorganised the labour supply in three key areas: through increasing the size of the labour pool; through controlling labour's access to points of production; and through disciplining these points. The defeat suffered by the working class at the turn of the decade had deprived it of the organisations necessary to lead it in opposition to these measures. Racially divided and disorganised, the working class became pliable in the hands of its rulers as they moulded it to their needs. The cost of skilled and semi-skilled wage labour was reduced as militant white workers were neutralised through co-option, concessions and repression; the supply of semi-skilled and unskilled black labour was increased without producing wage inflation; and the political dangers associated with the concentration of a reserve army of labour in the urban areas was averted through restricting access to those areas and tightening controls over those in them. Under these conditions, all major sections of capital production in South Africa flourished." (1984;p129)

The ruling class therefore emerged from the thirties on the crest of a wave, whilst the black working class found itself constrained more than ever before.

4.2 The Forties: The Need to Rationalize Labour Coercion

World War II brought prosperity, especially to secondary industry. It surpassed both mining and agriculture as the biggest single contributor to Gross Domestic Product in the mid-forties (Innes;1984;pp157-168 and Davies et al;1984;p16). The development of manufacturing, though each of the other sectors had a degree of interest in this (mining had invested in manufacturing, farming depended upon the markets it created) caused problems for them too. This mainly took the form of competition for cheap labour. Whilst mining could recruit foreign labour, farming was dependent on local supplies, and therefore resented the new competitor.

The shortage of white skilled labour during the war and its replacement by a combination of African semi-skilled labour and mechanisation in large plants, whilst smaller plants remained dependent upon large numbers of unskilled black workers, meant an increase in the bargaining power of black workers (Hindson; 1987;p57). As a result, during the war pass controls were relaxed and urbanization increased, although the greatest concentration of African labour remained on the mines (Fine and Davis;1990;p13-16).

Organisation and militancy grew with increased urbanization and bargaining power. Towards the end of the thirties African trade unions showed signs of recovery from the defeats of the

twenties and early thirties. The fragile threads of unionism which survived the twenties and early thirties were slowly consolidated in the latter thirties (Hirson;1989;pp39-40). Trotskyists were able to make some use of the Wage Board system and representations to the Department of Labour to improve the conditions of employment of black workers, supply legal assistance to them and provide medical assistance (ibid;p42).

Trade union membership grew. For example, the Council of Non-European Trade Unions (CNETU), formed in 1941, had by 1945 organized 40% of African workers in commerce and industry and its membership stood at 158 000 organized into 119 unions. The African Mine Workers Union (AMWU) formed in 1941, claimed membership of 25 000 workers by 1944 and numerous other unions and union groupings existed (Fine and Davis;1990;p9).

Black worker militancy increased during the forties, despite the introduction by the state in 1942 of War Measure 145 which prohibited all strikes by black workers under penalty of 3 years' imprisonment and/or a fine of £50 (Fine and Davis;1990;p23). Between 1942 and 1945 strikes increased among industrial and commercial workers. In the latter half of the decade, migrants on the mines and in related industries were driven to strike in favour of higher wages and trade union recognition and in opposition to victimisation, high accident rates, assaults, poor food and the migrant labour system (ibid;p10). This culminated in the massive mine workers' strike by 70 000 African workers in 1946 and the strike by 6 000 iron and steel workers in the same year (ibid). These strikes were brutally crushed by the state, and the unions organizing them were weakened by repression (ibid;p11).

In addition, a climate of general political activity was created by other sectors of the oppressed black population, including the African petty bourgeoisie which had been deprived of its limited franchise in 1936 and the peasants in the "reserves" who had been further impoverished by the Native Trust and Land Act of 1936 which further limited access to land (Innes;1984;p499). The material conditions of urban blacks were such as to drive them to respond to their poor living conditions: the lack of housing, the absence of services and facilities, the effects of the pass laws etc. Their response included bus boycotts over fare increases in 1942, 1943 and 1944, squatter protests against housing shortages in 1944-46 and anti-pass campaigns (Fine and Davis;1990;pp10-11).

The problems caused by competition for labour between the different sectors of capital

(mining, farming and manufacture) as well as by the urbanization and militancy of the black, particularly African, working class, needed to be resolved if South African capitalism were to retain its advantage, the cheap labour system, over its international competitors. At the same time, migrant workers, already kept apart from the rest of the African working class by the compound system, had to be insulated from this consciousness. These factors, amongst others (Legassick;1974;pp274-5) called for greater systematisation and rationalisation of the existing labour controls, not only in relation to the urban working class and the problems generated by it, but overall.

Differences emerged amongst capitalists about the solution to their problems. The manufacturing sector favoured relaxation of pass controls to allow a settled urban workforce to emerge to supply its need for semi-skilled labour. The state would have to face the reality of black urbanization and bear the social costs thereof. Black worker militancy could be controlled by the incorporation of black unions and a modified version of existing coercive laws. This was opposed by agriculture and mining which depended on mass unskilled cheap black labour, founded on the migrant labour system. These sectors instead argued for an extension of the migrant labour system and the securing of the needs of secondary industry through a system of labour bureaux in the reserves. (Callinicos;1981;p76 and Legassick;1974;pp275-6).

4.3 The Fifties: The Rationalization of Labour Coercion

The National Party government which came to power in 1948 represented a triumph for those who saw the solution to capital's problems in the further subjugation of the black working class through the extension of coercive labour controls (Legassick;ibid; p277).

For a variety of reasons, secondary industry was encouraged to become labour intensive and take advantage of the cheap labour system (Innes;1984;p170). The state would ensure that it and other sectors had an adequate supply of cheap labour by systematising its control of black workers. It would also eliminate the growing black working class militancy which threatened the cheap labour system. In this way, the overall interests of capitalist development would be safeguarded.

4.3.1. The framework of division and control

The "elaboration" of the racist coercive controls required by capital constituted a comprehensive attack on black living standards and working conditions. Apartheid was the means used by capital to control black labour in order to maximise profits. It was to leave the black working class with a legacy of division, disorganisation, repression and poverty far exceeding what it had hitherto experienced. Some of the major pieces of legislation which created this, need to be briefly referred to here.

The migrant labour system was extended, with the aim of making all Africans "temporary sojourners" in the "prescribed areas" ie "white South Africa" outside the reserves. The new government inherited the Natives (Urban Areas) Act of 1945 from the previous one. Section 10 of this Act provided that no African could remain in an urban area ("prescribed area") for longer than 72 hours. This was extended to cover all Africans, including women, who until then did not have to carry passes, register as work seekers or register their service contracts and therefore did not until then fall subject to Section 10 (Hindson;1987;p60). The exemptions based on "property ownership, professional qualifications, good character and faithful service" (Hindson;1987;p62) were removed. The only exemptions related to "birth, residence and continuous employment" (ibid). Section 10 only permitted Africans to reside in urban areas if they could produce proof that they had resided in the area concerned since birth, had worked there continuously for 15 years or were the dependents of those with the first two rights (These came to be known as "Section 10 rights"). Others could only remain in the "prescribed areas" if they had been granted permission by a labour bureau. In addition, the Act gave the state the power to remove to the reserves those who did not serve the needs of capital in the towns: the old the sick, children, the unemployed and those convicted of offences (Hindson;1987;p61).

In this way, entry of Africans into the urban areas was regulated and urbanization controlled and a wedge driven between permanently settled and migrant workers. The flight of labour from the mines and farms was restricted and the number of people who could gain permanent urban rights or compel capital or the state to bear the social costs related to their permanence in urban areas was reduced. In addition, trade unionists, strikers and other "undesirables" could be "endorsed out" of urban areas at the whim of employer or state.

The misnamed Natives (Abolition of Passes and Coordination of Documents) Act of 1952 required all male Africans to carry a "reference book" ie a pass, at all times and to produce it when moving from one area to another, when registering for work and when registering as work seekers. All male Africans between the ages of 15 and 65 had to register as work seekers in the urban areas and to report to a labour bureau within 3 days of becoming unemployed. (Hindson;p61). From 1956 the state began to issue passes to African women and in 1959 the Native Labour Regulations obliged African women to register employment contracts (ibid;p64).

In 1949 local authorities were allowed to establish voluntary labour bureaux. The Native Laws Amendment Act of 1952 established a compulsory national labour bureau system in all rural and urban areas. These regulated the influx of Africans to urban areas and the efflux from white farms and the "reserves". It thus served to direct labour to where it was needed in the economy (Hindson; 1987;pp63-4). Labour bureaux exercised sole control over which sector or job a worker was allocated to. The labour bureau system also ensured the cheapness of African labour by giving Africans a limited time in which to find a job. To avoid the hazards of high turnover, especially of industrial workers, migrants were given very short periods of leave to return to the "reserves" and then had to return to the same job. The acquisition of permanent residence rights in urban areas was avoided by the creation of a new contract every time the worker returned from leave.

Hindson mentions some of the practices which accompanied this legislation (ibid;p66):

"... workers who came legally to the towns...were refused work seeker permits. They were either endorsed out or, especially at harvest time, put in teams and sent to farms as wage labour. Pass offenders were treated much more harshly. Controlled labour schemes were set up by the Department of Native Affairs in the late 1940's. These were presented as voluntary schemes in which a worker could choose to go to a farm or serve out a prison sentence, but in practice pass offenders were forced to work on farms. This system was exposed in the press, and in the 1950's court cases resulted when workers' bodies were found in shallow graves. Evidence showed that workers were locked up at night in overcrowded and filthy barracks, given little food and beaten in the fields to keep them working."

The complexity of documentation required by Africans to live or work or move around spawned a mammoth bureaucracy, the hated Department of Native Affairs (later Bantu Affairs Department) which controlled every aspect of African life (Callinicos;1981; p77). It also took charge of education of Africans, which was removed from the hands of missionaries, so that

central government could ensure that only the necessary skills required for semi-skilled labour were acquired by the vast majority of Africans. This system was to prove costly in the long term, not only because of the financial cost, but because of the cost in social unrest from people driven beyond endurance by the effort required just to live and work.

The state in the fifties embarked on a massive programme of resettlement of urban Africans, Indians and Coloureds in segregated townships. These were as far as possible situated close to industrial centres, so that they could supply labour for these and built so that they could be easily controlled by police (Bindman; 1988;p18). For Africans, housing problems were "resolved" by the provision of the most basic shelter possible in "locations" (without any amenities and heavily policed) and the extension of compound housing beyond the mines in the form of single-sex hostels for migrants. The cost of housing for Africans, especially in the Western Cape, was cut to the bare minimum. To the extent that it was provided, poor materials and unskilled labour was used, and it was funded by Africans themselves (Hindson; 1987;p68). Coloureds and Indians were each allocated separate townships under the Group Areas Act, with slightly better housing and amenities. Whilst they too faced forced removals under the Group Areas Act in the fifties and sixties, they were encouraged to view themselves as "better" than Africans (Bindman;ibid;p18).

All remaining property rights which Africans retained in the urban areas were removed. Most Africans lost all permanent residence rights in the urban areas, and were required to seek rights of residence and of citizenship in the "homelands". The final evictions of Africans from white farms took place and the "surplus people" from these forced removals were dumped in the "homelands" or "resettlement areas".

As far as specific employment law was concerned, the Industrial Conciliation Act of 1924 excluded from the definition of "employee" all "pass-bearing Natives". No union who had these "non-employees" in their ranks could register and therefore use the system which the Act created. This meant that African women and certain Africans in the Cape, who at the time were not obliged to carry passes, could still be members of registered unions (Bendix;1989;p291). As the pass laws were extended over the years, fewer and fewer Africans qualified for membership of registered unions in terms of the law (above). Effectively, the Act shut unions organizing African workers out of the system which it created. Nonetheless, they had continued to organise. In 1956 the Act was amended. It excluded all "bantu" ie Africans,

and therefore all their unions from the provisions of the Act. (Bendix;1989;p296). It provided that already "mixed" unions ie those with Coloured and Indian workers, could not have mixed executives and placed other restrictions on them. It also provided for the reservation of certain jobs for certain "racial groups" (ibid). This finally shut all African workers out of the collective bargaining and dispute resolution system created by the Act and further institutionalized the racial division of the working class.

In the fifties, those African unions which had continued to organize despite all inhibitions devised by the state, found that their unions were further incapacitated by having their leaders arrested as "communists" under the Suppression of Communism Act of 1950 (Fine and Davis;1990;p156) in which the definition of what constituted communism was wide enough to cover almost anyone opposed to government policy (Bindman;1988; p66). The Native Labour (Settlement of Disputes) Act of 1953 precluded negotiations involving African unions, reaffirmed the provisions of War Measure 145 of 1942 which prohibited strikes by African workers, and created state controlled mechanisms for the regulation of African conditions of employment (Innes;1984;p144). It was followed by an amendment in 1959 which imposed fines of up to £500 or 3 years' imprisonment for illegally striking or supporting an illegal strike by Africans (Davis and Fine;1990;p156). Protest against the restrictions placed on organisations and actions of the oppressed and exploited were rendered difficult by the Criminal Law Amendment Act of 1953 which even outlawed civil disobedience and penalized even minor political transgressions of the law by whipping and up to 5 years' imprisonment. The Public Safety Act of 1953 allowed the state to declare a state of emergency and gave it great powers of repression in such circumstances (Fine and Davis;1990;p123.)

Ideological rationalisation was found in the concept of "separate development". Under Verwoerd in the fifties it became "grand apartheid" - not one man's mad racist dream, but a carefully planned system of oppression. The Promotion of Bantu Self-Government Act of 1959 institutionalized the concept of different "nations" each with rights to "self-government" in its own "homeland" to justify the absence of political rights for Africans (Bantu) in "white South Africa". In addition, the government, having resurrected the old tribal systems, suitably adapted to the modern requirements of apartheid capitalism, gave these "tribal authorities" powers to control the population of the "homelands" so as to further break any resistance to capitalist domination. In exchange for financial and other support from the government, these "authorities" were to masquerade as leaders in the "homelands" and ensure that these areas

fulfilled their desired role. (Callinicos; 1981;pp77-8)

Racist social engineering completed the divisions of the black working class. The wedge driven between "races" in terms of the Population Registration Act of 1950, though affecting all persons thus classified, primarily served to divide the black working class into "Indians", "Coloureds" and "Africans", each suffering the effects of racist oppression and capitalist exploitation to a different extent. The Group Areas Act of 1950, whilst allowing for the removal of the competition from Indian petty traders in favour of white traders, also served to further divide the working class. Not only were workers physically divided in terms of where they could live, but organisation across the "racial" divide was made difficult by the restrictions placed on free movement between "group areas".

4.3.2. Resistance to apartheid capitalism in the fifties.

The effects of apartheid went beyond the black working class. Members of the petty bourgeoisie were affected by, for example, the tightening up of the pass laws, segregation into townships and the deprivation of political rights (the few Africans who had such rights were removed from the voters' roll in 1936 and Coloureds in 1952). As the black petty bourgeoisie, led by the African National Congress (ANC), finally realised the futility of hoping to share in the privileges of bourgeois democracy, it rallied black workers and all sections of the oppressed behind it in political campaigns and strikes which threatened to severely impair the carefully built structures of apartheid capitalism. Divided, weakened, rightless, impoverished and subjected to draconian laws and practices, it was a short step for African workers to participate in the political upheaval of the fifties (Innes;1984; p172 and Davies et al;1988;pp 285-8). Strikes, boycotts, sabotage and general upheaval created a crisis for apartheid capitalism. The resistance of the fifties was, however, doomed to failure, through the weaknesses of its leadership and severe state repression.

In 1949, the ANC finally declared a "turn to the masses" and in 1952 it launched the Defiance Campaign against the pass laws and other oppressive measures (Fine and Davis;1990;p118). The campaign included "boycotts, pass-burnings, civil disobedience and 'stay-aways'" (Callinicos;1985;p12) but was meant to be non-violent and in both its aims and conduct was essentially reformist, which excited some criticism (Fine and Davis; 1990;p120). Mass action was seen as a means of pressurizing the state and eliciting the support of white liberals

(Callinicos; 1985;p13). The working class, however, could not be contained, as demonstrated by the strikes and battles against the police in the Eastern Cape in 1952 which went beyond the expectations of the ANC leadership (Fine and Davis; 1990;p120-p122). These activities were repressed by force and the use of the Criminal Law Amendment Act (above) and won no significant gains (Fine and Davis;1990;p125 and Callinicos;1985;p13). Nonetheless, the ANC continued to organize around the issue of national liberation, gathering all forces in favour of this objective at the Congress of the People in 1954, where the Freedom Charter was adopted (ibid;p138).

In the latter half of the fifties, black working class organization and militancy began to recover from the assaults of the late forties and early fifties. The number of strikes involving African workers increased steadily, reaching a high point in 1957 (Fine and Davis;ibid;p159). These were smashed by the state by force and repressive legislation. The working class component of the resistance movement in the fifties remained weak. This was due to the 1950's depression which undermined black working class power, repression which undermined its ability to organize, and the influence of the underground SACP which subsumed the struggle of workers under the struggle for national liberation, restrained working class action and failed to mobilize the black working class adequately (Callinicos;1985; pp12-3).

Several trade union groupings organized black workers: the conservative South African Trades Union Council (SATUC), formed in 1954 and renamed the Trade Union Council of South Africa (TUCSA) organized Coloured and Indian workers on a segregated basis as required by the Industrial Conciliation Act, but refused to organize Africans, who could not be members of registered unions. Unaffiliated unions such as the National Union of Distributive Workers organized African Workers. So too did the Federation of Free African Trade Unions (FOFATUSA) which was established in 1959 (ibid;pp164).

The union grouping given most prominence by writers (eg. Davis and Fine; Davies et al;Innes) was the South African Congress of Trade Unions (SACTU), regarded as the trade union arm of the Congress Alliance (eg.Fine and Davis;ibid;p159). Formed in 1955 out of the remnants of CNETU and another group, the Trades and Labour Council (TLC), with 20 000 members and 119 affiliates, both registered and unregistered, it adopted the political position of the SACP and the ANC ie that the workers' struggle was inseparable from the struggle for national liberation (ibid;pp159-165). In 1957, amidst the growing tide of popular militancy

reflected, for example, by the Alexandra bus boycott, it launched a campaign demanding a minimum wage of £1 per day. This campaign was taken over by the ANC, which launched a call for support for "Freedom Day" in June 1957: a "day of protest, prayer and demonstration" around both the minimum wage and other political demands. This was successful in terms of the support it received from the oppressed and exploited, and in terms of gaining a slight wage increase for black workers (ibid;p168-9).

The £1 per day campaign was continued in 1958, with a National Workers Conference calling for a week long strike to back it. Again, this was subsumed under the campaign of appeals to the white electorate for political change, advocated by the ANC leadership (Callinicos;1985;p13 and Fine and Davis;1990;p171). Attention was diverted from the £1 per day strike to appeals to the white electorate to vote against the government. ANC leaders opposed picketing, reduced the call to one for a 3 day strike and called for it to be undertaken only where possible. The strike elicited an uneven response from workers and was called off by the ANC after a day because it felt that the attention of the white electorate had been sufficiently attracted to black political grievances (Fine and Davis;1990;p171-2). In some areas, workers struck for the full 3 days, despite police violence (ibid). However, the electoral appeal and the strike both failed to bring about any changes, as a result of the inherent weakness of the former, the absence of leadership for the latter, and state repression of the latter (ibid;p172). The £1 per day campaign fizzled out into deputations to business and government bodies (Fine and Davis;1990;p213.)

The failure of the campaign led to a breakaway Pan-African Congress being created in 1959 (Callinicos;p13). It continued the campaign of protest against the pass laws, through non-violent means. People presented themselves *en masse* to the police for arrest under the pass laws, refused to pay bail or fines and thus clogged up the jails (Fine and Davis;1990;p220). The reply of the state was the massacre of protestors, as at Sharpeville and Langa in 1960. (ibid;pp220-221). These sparked off a nation-wide wave of mass protests and strikes. The state threatened to ban the ANC and PAC. The ANC responded with a call for a stayaway, supported by the PAC, which was overwhelmingly supported by Africans. In Cape Town it was followed by a week long strike, in other areas of the country by demonstrations, riots and pass burnings which continued for some time after the original stayaway (Fine and Davis;1990;p221-222).

The state responded by throwing the weight of the army and police and its security legislation against the tide of resistance. (Callinicos;p13 and Fine and Davis;1990;p222). Only when the working class was exhausted by this battle, did the ANC, which had not led the mass resistance after the initial stayaway call (Fine and Davis;1990;pp222-223) call for a 3-day stayaway, which failed to elicit worker support (Fine and Davis;1990;p227 and Callinicos;1985;p13). The ANC then resorted to armed struggle, its military wing, *Umkhonto weSizwe* engaging in sabotage of government projects. This again failed due to the absence of mass support and the sheer power of the police and army (Fine and Davis;1990;p238 and Callinicos;1985;p14). The leadership of the organizations, including SACTU, was rounded up and jailed and the organizations, except SACTU, were banned. The remaining leaders went underground and fled the country, including trade union leaders.

It was this smashing of resistance, and the final subjugation of the black working class in its wake, which was to usher in the "golden era" of apartheid capitalism, the "long boom" of the sixties.

4.4. The "Long Boom" of the Sixties.

The smashing of political opposition at the beginning of the sixties gave capital the perfect opportunity to consolidate its domination over black labour. Some examples of this will suffice.

Pass laws were extended and their administration tightened up (Hindson;1987;p69). Convictions in terms of these laws soared so phenomenally in this decade as to "criminalise" almost all Africans, especially workers. Influx control was tightened up, for example by the widening of the definition of "idle person" to include those who refused work offered by labour bureaux 3 times, those who were sacked for misconduct more than 3 times in a year and those who did not keep a job for more than a month. These people could lose their "Section 10" rights (see above), be imprisoned or drawn into forced labour (ibid). "Undesirables" ie those who caused trouble, could also be "endorsed out". This legislation was used with increasing frequency throughout the decade. The labour bureaux system was streamlined. Workers were classified into job categories and restricted to work in certain geographical areas and sectors. Migrants were given the worst paying jobs in the worst paying sectors: mining and farming (ibid;p70).

The economies of the "reserves", "bantustans" or "homelands" had long collapsed, yet they continued more than ever to justify the absence of political rights, the payment of excessively low wages, the migrant labour system, the refusal of capital or state to carry the burden of the reproductive costs of labour, etc. and to prevent the location of the reserve army on capital's urban doorstep. In the sixties the state embarked on a massive programme of relocation of whole townships to "bantustans" (Hindson;p1987;p71). Particularly where industrial areas were close to bantustans, townships were relocated in the "bantustans" and workers forced to do long-distance commuting to work. The Physical Planning and Utilisation of Resources Act 1967 offered incentives to businesses to relocate on the borders of "bantustans" to further ensure that Africans remained in the "bantustans" and commuted from there to work (ibid).

This, together with the security legislation, ensured that unions had difficulty in recovering their pre-sixties strength. Access to permanent residence in the urban areas was so restricted, that not only was it difficult for new urbanisation to legally take place, but many people with existing rights lost them in the complexity and bureaucracy of the "streamlined" system. Thus most African workers became migrants. This made their ability to earn a living so uncertain, that workers could not be readily enjoined to further imperil their livelihoods by unionism.

In addition, the provision of separate "citizenship" for each "ethnic group" or "nation" in a separate "homeland" and the allocation of jobs and compound housing by "nation" served to fragment worker unity and weaken resistance. Such policies as the "coloured labour preference policy" in the Western Cape further encouraged the division amongst black workers sown by the Population Registration Act and the Group Areas Act (Bindman; 1988;p18). This made uniting black workers in trade unions difficult.

Security legislation hampered the organisation of workers. For example, the Suppression of Communism Act of 1950 defined communism extremely widely, prohibiting acts which "aim at bringing about any political, industrial, social or economic change within the Union of South Africa by the promotion of disturbance or disorder" (ibid;p66). This was used against trade unions and their leaders in the sixties (ibid). The General Law Amendment Act of 1962 prohibited a wide range of activities deemed to endanger law and order (ibid;p68). These together with the Criminal Procedure Act of 1965 and Terrorism Act of 1967 and other measures ensured that not only political organization, but trade unionism was effectively suppressed.

"The smashing of the black working class in the early sixties paved the way politically for the most spectacular economic boom in South Africa's postwar history," says Innes (1984;p188). The confidence of world capital in the regime's ability to secure their investments was restored by the state's campaign of terror against the working class and political organisation in the post-Sharpeville era. The state and major South African mining monopolies like Anglo American also encouraged foreign investment by themselves investing in the South African economy. The pace of development of the South African economy exceeded that of the developed countries of the Western world (Innes;1984;p188).

Manufacturing became more capital intensive in the sixties, thus improving productivity without increasing its wage bill. For with the black working class silenced, it could restructure its labour process in relative peace: the unemployment caused by increased mechanisation was buried in the "homelands"; the semi-skilled workers it now sought could be employed at the low wages that the migrant labour system disguised; skilled white labour began to disappear from factories and its successors appeared in the government bureaucracy and the service sector. With African labour organisations smashed, there would be no claims for improved wages and working conditions for the mass of the working class.

The process of monopolization of secondary industry, delayed for so long by the tide of mass militancy of the 40's and 50's, could take place now that resistance had been crushed. By the seventies, concentration and centralisation had taken place to such an extent, that according to Innes monopolies dominated all sectors:

"literally a handful of companies have come to exert a decisive influence over the direction of South Africa's economic life. Half a dozen groups control the mining industry, while the same number dominate the financial sector. Although not as well developed yet, the position in industry reflects the same pervasive influence."(1984;p221)

Concentration of capital also concentrated the working class. The urban semi-skilled labour force required by monopoly capitalism became increasingly important to the further development of capitalism. Callinicos (1985;p21) cites the fact that the employment of Africans in the manufacturing sector grew by 63% between 1960 and 1970, encompassing 1 070 000 workers. By 1970, 4 million African workers were employed in "white South Africa" and over a million of these were permanently settled in the urban areas. The objective position of African, and all black workers was therefore central to apartheid capitalism. This, as much as its subjective growth as a conscious class in the next decade, was to prove the undoing of

capital in the next phase of South Africa's development.

The "golden era" for the South African white bourgeoisie and its allies, was a period of deep gloom and apathy for the defeated black working class. Its standard of living deteriorated in the face of the stark realities behind the myths (ie the ability to supplement their wages through income from subsistence farming in the "homelands") which underpinned its low wages. Impoverished, unorganised, rightless, divided, ill-educated, largely unskilled - it had, at the end of this period, literally nothing to lose but its chains.

APPENDIX 1: TABLES

TABLE 1: INDUSTRIAL COURT CASES.

YEAR	NO. OF CASES
1979	4
1980	15
1981	30
1982	41
1983	168
1984	399
1985	801
1986	2 000
1987	3 500
1988	3 800

(Source:National Manpower Commission Reports - 1979-88)

TABLE 2: CONCILIATION BOARD APPLICATIONS

YEAR	NO. OF CB APPLICATIONS
1982	60
1983	118
1984	279
1985	514
1986	1 294
1987	2 312
1988	3 035

(Source:National Manpower Commission Reports - 1979-88)

TABLE 3: STRIKES

YEAR	NO. OF STRIKES	WORKERS INVOLVED	MANDAYS LOST
<u>1979</u>	101	22 803	67 099
<u>1980</u>	207	61 785	174 614
<u>1981</u>	342	92 842	226 554
<u>1982</u>	394	141 571	365 337
<u>1983</u>	336	64 469	124 596
<u>1984</u>	469	181 942	379 712
<u>1985</u>	389	239 816	678 273
<u>1986</u>	798	424 340	1 308 958
<u>1987</u>	1 148	591 421	5 815 231
<u>1988</u>	1 025	161 679	914 388

(Source: National Manpower Commission Reports - 1979-88)

APPENDIX 2: CHRONOLOGY OF MOST IMPORTANT INDUSTRIAL RELATIONS AND RELATED LEGISLATION 1910-1988

- 1911 Native Labour Regulation Act prohibits breach of contract and therefore striking by African workers.
- 1912 Mines and Works Act requires the issuing of certificates of competency in skilled occupations.
- 1914 Riotous Assemblies Act repeals and consolidates the existing legislation regarding gatherings, of the different colonies and makes it applicable nationally.
- 1918 Factories Act regulates the use of machinery and forbids the employment of women and children in certain jobs. It also imposes a 50 hour working week.
- 1922 Apprenticeship Act sets up committees to control the training of apprentices in certain "scheduled" industries.
- 1924 Industrial Conciliation Act (ICA) provides for the registration of trade unions, the regulation of their activities and the prevention and settlement of disputes. Defines "employee" to exclude pass-bearing "Natives", farmworkers, certain public sector workers; therefore excludes them (and unions organizing them) from participation in the industrial relations framework.
- 1924 Apprenticeship Amendment Act sets out conditions of employment and minimum wages for all industrial workers not covered by the ICA.
- 1927 Native Administration Act allows for tightening up of pass laws. Also prohibits actions or comments which could create hostility between whites and blacks.
- 1930 Industrial Conciliation Amendment Act allows for the establishment of Industrial Councils, consisting of equal numbers of representatives of employers and employees in an industry or area for which it is established. Allows these to negotiate terms and conditions of employment and reach agreements which could be given force of law with regard to all parties to it, and also to be extended (by the Minister of Labour) to cover non-parties. Gives such councils dispute settlement powers. Provides for the establishment of conciliation boards upon application to the Minister to resolve disputes which arise where there is no council. Provides for obligatory arbitration of disputes in essential services, in which it prohibits strikes. Strikes are also prohibited in other industries, during the currency of an industrial council agreement. Provides procedure for legal strikes.
- 1930 Riotous Assemblies Act incorporates the provisions of the native Administration Act prohibiting the creation of "hostility" between races and allows the state to remove anyone from an area where s/he is creating such hostility.
- 1931 Factories Act provides for 48 hour working week, except for mineworkers, offices workers, farmworkers, construction workers and railway workers.

- 1937 Industrial Conciliation Amendment Act redefines "employee" to also exclude those whose contracts were governed by the Native (Urban Areas) Act of 1923. Also provides for the registration of trade union federations.
- 1939 Shops and Offices Act provides for the regulation of the conditions of employment of certain workers.
- 1941 Workman's Compensation Act makes provision for compensation for death, disease or disability arising from employment.
- 1941 Factories Machinery and Building Works Act makes provision for racially separate facilities.
- 1942 War Measure 9 allows the Minister of Labour to declare a strike or lockout illegal in certain circumstances.
- 1944 War Measure 1425 prohibits meetings on mines of more than 20 people, without permission.
- 1950 The Suppression of Communism Act outlaws "communism" which is defined as aiming "at bringing about any political , industrial , social or economic change within the Unions by the promotion of disturbance or disorder, by unlawful acts or omissions, or by means which includes the promotion of disturbance or disorder..." It also outlaws any actions which encourage hostility between the races to achieve such aims.
- 1951 Native Building Workers Act allows for the training of African artisans, but prohibits their use in white areas.
- 1952 Native Labour Regulation Amendment Act provides for the establishment of labour bureaux for the control and allocation of African workers.
- 1953 Native Labour (Settlement of Disputes) Act establishes a system of representation of African workers through a three tier system of committees. It also prohibited strikes by Africans.
- 1955 Native Labour (Settlement of Disputes) Act widens the definition of strike action and prohibits the incitement thereof.
- 1956 Industrial Conciliation Act redefines "employee" to exclude all African workers, thereby preventing the access of African trade unions to the industrial relations system;. Does not prohibit the existence of African trade unions.
- 1959 Industrial Conciliation Amendment Act restricts activities of "mixed" unions.
- 1962 General Laws Amendment Act amends the Suppression of Communism Act of 1950, the Public Safety Act of 1953 and the Criminal Procedure Act of 1955 and Unlawful Organizations Act of 1960, inter alia it makes it an offence to "cripple or seriously prejudice any industry or undertaking or the production and distribution of light, power, fuel, water, sanitary, medical or fire extinguishing services and to further or encourage the achievements of any political aim, including the bringing about of any social or economic change in the Republic"
- 1962 Suppression of Communism Act allows for more restrictive banning orders to be served.

- 1966 Industrial Conciliation Amendment Act prohibits strikes and lockouts unconnected with the employer-employee relationship.
- 1967 Terrorism Act makes it an offence, inter alia, to attempt to, or to commit , incite, encourage or command any person to commit an action which would prejudice any industry or undertaking or would cause substantial financial loss to any person or to the state.
- 1968 Proclamation R74/1978 extended the labour bureaux system.
- 1973 Bantu Labour Relations Amendment Act replaces the 1953 Act. It provides for a restructuring of the committee system of representation of African workers. Facilitates the formation of liaison committees and allows for works committees to be elected.legalizes strikes by African workers in limited circumstances.
- 1974 Riotous Assemblies Amendment Act increases restrictions on public gatherings
- 1977 Bantu Labour Relations Amendment Act amends 1973 Act
- 1979 Industrial Conciliation Amendment Act following the publication of the Wiehahn Commission Report establishes a National Manpower Commission and the Industrial Court. Redefines "employee" to include African workers, except migrants and commuters. Prohibits mixed trade unions except by Ministerial permission. Excludes farmworkers and domestic workers and state employees. Introduces provisional registration.
- Ministerial exemption extends trade union rights to migrants and commuters.
- 1980 Industrial Conciliation Act amends unfair labour practice definition and the powers of the Industrial Court and the National Manpower Commission.
- 1981 Labour Relations amended the ICA and changed its title. Inter alia, it
- Extended controls over unregistered unions. It required them to submit to their Constitutions, membership figures, details of branches, financial statements, etc to the Industrial Registrar.
 - It widened the definition of trade union to include all worker organizations engaged in industrial relations, including trade union federations and extended the controls applicable to trade unions to them too.
 - It prohibited trade unions, including federations, from giving financial support to illegal strikers and increased the penalties for striking illegally.
 - It repealed the Black Labour Regulation Act of 1953 and made provision for the establishment of works councils, of which at least half the members had to be elected by workers.
 - It repealed the provisions for provisional registration.
 - It made it an offence to grant check-off facilities to unregistered unions without the consent of the Minister of Manpower.
 - It required employers to report all strikes to the Registrar or department of Manpower.
 - it redefined the term "unfair labour practice"

- 1982 Labour Relations Amendment Act made crucial amendments to the powers of the industrial court. It broadened the definition of "unfair labour practice" to include victimization. It also shifted from the Minister of Manpower to the Court, the power to grant status quo orders.
- 1983 Labour Relations Amendment Act further increased power of Court by allowing it to hear appeals against the decisions of Industrial Councils on exemptions. It also allowed the President of the Industrial Court to disclose the court's judgements.
- 1983 The Basic Conditions of Employment Act superseded the Shops and Offices Act and certain sections of the Factories Act. It provided minimum conditions of employment for all workers, except domestic, employees, farmworkers, and state employees. It safeguarded the right of workers to belong to unions, but did not provide for reinstatement for dismissal for membership of a trade union.
- 1988 The Labour Relations Amendment Act introduced the most far-reaching changes to the existing Act since 1979, of which the most important were those regarding the unfair labour practice, the powers of the Industrial Court, the introduction of the Labour Appeal Court, the procedure for referring disputes to conciliation boards and industrial councils and the restriction of the indemnity against civil actions for conduct in furtherance of an industrial dispute.

(Source: Based on Trade Union Directory 1988, but with various additions and omissions, especially the addition of the Labour Relations Amendment Act of 1988).

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(Note: The central legislation was Act 28 of 1956, to which the various amendments were made, including the change in the name of the Act from the ICA to the LRA. References in this thesis to "the Act" or "the legislation" or to any section of an Act refers to this legislation, unless otherwise indicated.)

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NOTE:

1. The above documents were culled from the FOSATU/COSATU archives at the University of the Witwatersrand and from the files of unions which gave me access to their files. The archives contain a lot of dated and undated material generated by FOSATU and COSATU and their affiliates. To cite all of these here is impossible. I have instead cited specific documents referred to in the text. Where possible they are cited in the text by date. Where they are unnamed or undated, they are cited by the number allocated to them in the Archives).
2. In addition to the above, the following were perused at the Archives, at the offices of unions which gave me access to their files, at the Cape Town Trade Union Library, or at the Southern African Labour Development Research Unit:
 - Various minutes and reports of meetings of FOSATU, its affiliates and substructures, as well as correspondence amongst them (1979 - 1985).
 - Various minutes and reports of meetings of COSATU, its substructures and affiliates (1985-90), particularly those collated by COSATU in preparation for its 1987 Congress, Special Congress of 1988 and 1989 Congress.
 - Press Statements issued by FOSATU and COSATU, particularly those on the Labour Relations Amendment Bill collated by COSATU.
 - Telexes and other correspondence between COSATU and its lawyers; COSATU lawyers and SACCOLA lawyers; COSATU and SACCOLA, part of the documents collated by COSATU in preparation for above congresses.(All of these are cited by the nature of the document and its date in the text).

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Note: Whilst the issues of the newspapers published in the period 1979 - 88, were consulted fully to the extent of their availability, in some cases entire sets of papers were available in libraries, in other cases only odd issues were available. The specific issues/articles referred to in the text are specifically cited by name and date. Some of the newspapers did not exist during the entire period under review. For example the Weekly Mail commenced publication in 1985/6 and the Rand Daily Mail ceased to exist around the same time. Others were available only in the form of collections of clippings mentioned above

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Abbreviations:

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AD	=	Appellate Division, highest court in SA

The letters in brackets at the end of each citation refer to the division of the Supreme Court which heard the case, whilst IC refers to the Industrial Court

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