

Compulsory Arbitration and the Western Australian Gold-Mining Industry: A Re-Examination of the Inception of Compulsory Arbitration in Western Australia

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SUMMARY: In 1900, Western Australia, a self-governing British colony, adopted compulsory conciliation and arbitration legislation, the first Australian colony to do so. This article focuses primarily on the roles the colonial state and capital played in the adoption of the legislation and proposes a broader, more complex explanation for the introduction of the legislation than current mainstream Western Australian historiography, which, mostly, constructed the event as an unproblematic regional labour triumph. This article argues that the legislation was passed to prevent disruption to gold mining, the industry driving the development of the colony, and to revive the flagging political fortunes of the colonial government. It asserts that the timing of the legislation pre-empted a more effective bill being introduced under conditions less favourable to capital. Organized labour, which, through its lobbying, had created consensus about the desirability of introducing the legislation, was unable to influence the shape of the legislation significantly.

INTRODUCTION

Western Australia, a British colony granted self-government in 1890, was, in December 1900, the first Australian colony to pass compulsory conciliation and arbitration legislation.¹ Compulsory arbitration was to dominate industrial relations in Australia at state and federal level until the late twentieth century. Intended as a dispute settlement mechanism, it

* The author thanks especially her supervisor, Patrick Bertola, and Bert Altena, as well as the anonymous reviewers for their helpful comments on earlier versions of this paper. Thanks for their comments and suggestions are also due to Andrew Gill, Richard Hartley and Eddy Lutze. To A.S. Weston many thanks for his forbearance and editorial advice. I am also grateful to the staff of the Batty Library of Western Australian History and the State Records Office of Western Australia for their cheerful and competent assistance. Betty Colgan of the Eastern Goldfields Historical Society assisted greatly with pictorial material.

1. 64 Vict. No. 20.

developed into a “process of quasi-legislative industrial and economic regulation”² with far-reaching effects for wages, working conditions, industrial organization, and economic policy in Australia,³ even while collective bargaining outside the arbitration system continued to exist. As first enacted in New Zealand in 1894, compulsory industrial arbitration legislation consists of tribunals with coercive powers arbitrating industrial disputes between employers and unions of workers. The term “compulsory” refers both to the powers of the tribunals and to the conditions under which disputes are settled.⁴ According to Kahn-Freund,⁵ arbitration can be compulsory in compelling the parties to attend, in not depending procedurally on the parties’ consent, in curtailing their freedom to engage in industrial action, and, finally, in compelling adherence to the award of the arbitrator.

In the form in which Western Australia first introduced compulsory arbitration legislation, the legislation provided for voluntary registration of employers’ and workers’ unions,⁶ established elected regional conciliation boards without coercive powers, and a three-person Arbitration Court, headed by a Supreme Court judge, which had powers to compel. Two members of the Court were employers’ and workers’ nominees. The Court could compulsorily arbitrate unresolved disputes regarding “industrial matters” referred to it from the Conciliation Boards. “Industrial matters” in Western Australian legislation meant wages and conditions of employment of “workers”. The definition of “worker” was narrow (workers over eighteen, neither apprenticed nor under contract for one month or more) and excluded large groups of employees. The Court had no jurisdiction over unregistered unions. The legislation proscribed direct action (strikes and lockouts) by parties proceeding under the Act. Most importantly, it required deposits to secure costs before parties could move the Court.

In seeking to explain the circumstances which led to the inception of this legislation, Western Australian historians have, in the main, proposed that it was primarily a turbulent lumpers’ dispute in 1899 which convinced the government to introduce conciliation and arbitration legislation.⁷ More

2. Stuart Macintyre and Richard Mitchell, “Introduction”, in *idem* (eds), *Foundation of Arbitration: the Origins and Effects of State Compulsory Arbitration 1890–1914* (Melbourne, VIC, 1989), pp. 1–21, 18.

3. *Ibid.*, p. 2.

4. Richard Mitchell, “State Systems of Conciliation and Arbitration: The Legal Origins of the Australasian Model”, in Macintyre and Mitchell, *Foundation of Arbitration*, pp. 74–103, 89.

5. O. Kahn-Freund, *Labour and the Law* (London, 1972), pp. 93–94, 112–113, cited by Mitchell, “State Systems of Conciliation and Arbitration”, p. 90.

6. After Mitchell, “State Systems of Conciliation and Arbitration”, p. 91.

7. For example, H.J. Gibbney, “Working Class Organization in West Australia from 1880 to 1902” (B.A. Hons, University of Western Australia, 1949), p. 34; John Merritt, “George Foster Pearce: Labour leader” (M.A., University of Western Australia, 1963), pp. 134–135.

specifically, some have argued that the lumpers' dispute wrought a qualitative change in the attitude of capital and of the state to Western Australian labour, one outcome of which was that the government opted for compulsory arbitration as the solution in the "context that was emerging".⁸ That context was considered to be one of increasing political labour power and growing industrial disputation. In explaining the process by which the Bill finally passed in December 1900, Western Australian historians such as J. Merritt, L.B. McIntyre, N. Dufty, and I. vanden Driesen⁹ pointed both to vigorous labour lobbying and to a quid pro quo concluded on 16 August 1900 between a delegation of unionists and John Forrest, then Western Australian Premier. The arrangement these parties allegedly concluded was that organized labour would use its influence over its supporters in the Western Australian Legislative Assembly to save the colony's government from the threat of an imminent no-confidence motion. In return, Premier Forrest would introduce and pass compulsory arbitration legislation. In short, the story of the genesis of compulsory arbitration in Western Australia as told and retold by Western Australian historians (the main exception being Gerritt Treuren)¹⁰ is a story of a labour triumph, reflecting the growing political importance of labour, the

8. I.H. vanden Driesen, "Confrontation and Reconciliation on the Waterfront: the Fremantle Lumpers' Strike - 1899", *Labour History*, 40 (May 1981), pp. 29-48.

9. John Merritt, "George Foster Pearce and the Western Australian Labour Movement", *University Studies in History*, 3 (1962), pp. 19-94, 65; "George Foster Pearce: Labour Leader", pp. 136-140; L.B. McIntyre, "The Development of Trade Unionism in Western Australia and the Operation of Industrial Conciliation and Arbitration, 1900-1914" (M.A., University of Western Australia, 1972), pp. 118-120; Norman F. Dufty, "The Genesis of Arbitration in Western Australia", *Journal of Industrial Relations*, 28 (1986), pp. 545-563, 553-554; and I.H. vanden Driesen, "The Evolution of the Trade Union Movement in Western Australia" in C.T. Stannage (ed.), *A New History of Western Australia* (Perth, WA, 1981), pp. 352-380, 372-373.

10. The work of Gerritt Treuren ("Economic Transformation, Political Reform and the Establishment of Compulsory Arbitration. The Case of Western Australia, 1890-1900" in Patrick Bertola and Janis Bailey (eds), *Frontiers of Labour: Proceedings of the Fifth National Conference of the Australian Society for the Study of Labour History, 2-4 October, 1997* (Perth, WA, 1997), pp. 365-379, locates the circumstances of the passage of arbitration legislation more broadly in "the social processes of transformation of the colony over the decade [the 1890s]" (p. 377). These processes included an increased level of industrial disputation, growing labour power in Parliament and the emergence of a political opposition to Forrest, of which labour was only one component. While this interpretation has been helpful to this writer, Treuren, at the level of microanalysis, did not go beyond the mainstream historiography's claim that the process of the passage of the legislation in Western Australia involved the quid pro quo between labour and Forrest (pp. 376-377). Warrick Claydon, in "Labour Legislation in Western Australia", *Papers in Labour History*, 1 (1988), pp. 43-52, conjectured that "a simple and atavistic need to achieve some comity with the Imperial and colonial legal systems of which Western Australia was a part" (*ibid.*, p. 51), led to the passing of arbitration and other labour legislation between 1892 and 1902, but he did not proceed to substantiate this suggestion in relation to the arbitration statute.

culmination of its protracted agitation for such legislation, and its opportunistic exploitation of a political crisis involving the state.

In the wider debate over the political context in which compulsory arbitration legislation emerged in Australia, Western Australian historiography thus appears to fall more or less into that school of Australian thought which views the impetus for arbitration to have come from the unions, a school of thought to which P.G. Macarthy's work¹¹ is central. Macarthy stipulated for Eastern Australia that there was union enthusiasm for legal wage regulation in the wake of labour's defeats in the 1890s, and that triumphant employers opposed introducing arbitration legislation until such time as some of them saw advantage in linking wage regulation and tariff.¹² Freelance historian, Brian Fitzpatrick, whose interpretation of the genesis of arbitration Macarthy was revising, elaborated the opposing view. He saw compulsory arbitration, with its proscription of strikes, as originating from employers in order to cement the advantage they had gained over labour at great cost in the 1890s.¹³ Stuart Macintyre, in his "Neither Capital nor Labour",¹⁴ proposed another context for the adoption of the legislation

Rather than a simple response to class, arbitration is better understood as a form of state activity that shaped and constituted the organized working class as well as the employers. It shaped them according to a civic ideology that was articulated by liberal reformers in response to a perceived crisis within economic and social relations. These circumstances gave rise to the specific and temporary coalition of political forces that enacted arbitration.¹⁵

However, in his brief description of the actual process of passing the Western Australian legislation, Macintyre's account conforms to the mainstream Western Australian historiography.

The industrial conflicts of the 1890s in Eastern Australia and the economic depression that followed them are central to all the contextual explanations. Yet neither these conflicts nor the subsequent major depression extended to Western Australia, which, however, had its own, unrelated, more minor economic tribulations (see below). The context in which compulsory arbitration emerged in Western Australia was, there-

11. For example, P.G. Macarthy, "Labour and the Living Wage, 1890-1910", *Australian Journal of Politics and History*, 13 (1967), p. 67-89; *idem* "Employers, the Tariff and Legal Wage Determination in Australia, 1890-1910", *Journal of Industrial Relations*, 12 (1970), pp. 182-193.

12. Stuart Macintyre, "Neither Capital nor Labour: the Politics of the Establishment of Arbitration", in Macintyre and Mitchell, *Foundation of Arbitration*, p. 180.

13. *Ibid.*, pp. 178-180; Brian Fitzpatrick, *A Short History of the Australian Labour Movement* (Melbourne, VIC, 1940), pp. 107-110.

14. In Macintyre and Mitchell, *Foundations of Arbitration*, pp. 178-200.

15. *Ibid.*, p. 198. For a more detailed discussion of the Australian historiography see *ibid.*, pp. 178-182.

fore, fundamentally different from that in the Eastern Australian colonies, as Treuren correctly observed. It is, therefore, difficult readily to include accounts of the genesis of compulsory arbitration in Western Australia within the crisis-centred explanatory frameworks of Fitzpatrick and Macarthy, or even Macintyre, except to the extent that the thinking of labour in the West was influenced by labour's experience in the East. On the other hand, the plausibility of the Western Australian construction of arbitration as an essentially unproblematic labour triumph, a consequence of linear growth of labour's political power which is at the heart of the Western Australian historiography, is also questionable. This historiography depicts the emergence of the legislation as having met with little resistance from capital, apart from some minor despoiling activities. Yet capital, especially mining capital, which operated in a fixed-price-product market, had a vital interest in both legal wage fixation and the restriction of employer bargaining power that compulsory arbitration signified. Furthermore, capital enjoyed far from insignificant political power. For example, representatives of mining capital had the power to stop the legislation in the Western Australian Legislative Council, where the Chamber of Mines, in September 1900, considered it had the support of sixteen, if not eighteen of the thirty Members.¹⁶ Clearly, capital's role in the emergence of the legislation, especially the neglect of mining employers to defeat the legislation, needs further examination, more so since the story of the quid pro quo between Forrest and unionists as the catalyst for the passage of the legislation does not survive close scrutiny. For example, evidence exists that well before the August 1900 deal with unionists, Forrest seriously consulted with unions and the mining industry on a draft of the Arbitration Bill and that he assured them the Bill would be introduced in the coming parliamentary session.¹⁷ Furthermore, it appears that Forrest resolved the trouble over the censure motion independently of unionists;¹⁸ parliamentarians, whose votes unionists were alleged to have swayed, had, in fact, declared their opposition to bringing down the government in a no-confidence motion as early as May 1900,¹⁹ well before unionists and Forrest allegedly struck a deal. It is also instructive that when

16. Chamber of Mines of Western Australia (Inc.) [hereafter COM], *Minute Books*, III, Meeting, 24 November 1900, Checklist of Materials Awaiting Processing (COMAP), Batty Library of Western Australian History [hereafter BL].

17. *Coolgardie Pioneer*, 14 April 1900, 28 July 1900.

18. For example, *West Australian*, 18 August 1900.

19. [Joint Conference], 30 May 1900, Railway Employees Union, *Minute Books*, BL Acc 1567A, MN 241, Item 2; also *Morning Herald*, 18 August 1900. It is likely, however, that the railway unions applied pressure to these parliamentarians in August 1900 to support the new censure motion should the government fail to include them in the scope of the Arbitration Bill. It may have been this pressure that Forrest was requesting the union delegation of 16 August to counter, although he did not require their help in the end, as already stated. For evidence that labour leaders perceived the success of the censure motion to be linked to the railway unions, see

Forrest first introduced the Bill in 1899, not long after the lumpers' strike, the Bill failed to pass due to employer opposition. In short, it is insufficient to rely only on the admittedly important effects flowing from the lumpers' strike, or on the story of the quid pro quo between Forrest and unionists, for an explanation of either the circumstances or the process of the passage of the arbitration legislation in Western Australia.

For these reasons, this article, drawing on sources which only recently became available, revisits the inception of compulsory arbitration in Western Australia with a focus on the state and capital, especially gold-mining capital, and their relations, and, to a lesser extent, on the complex relations between core and peripheral representatives of mining capital. The article argues that, rather than as a pure concession to political labour, the legislation was passed primarily because, in 1900, the colonial state clearly saw the need to intervene in its own interests and on behalf of as yet incompletely organized mining capital to contain industrial conflict. The timing was critical, as the largely overcapitalized, largely speculative Western Australian gold-mining industry, starved of working capital, and under stock market pressure, was in the midst of a shift to large-scale industrial processes of production and determined to limit costs, especially of labour, even if this were to lead to major industrial clashes. Further government considerations were the imminent departure of the experienced and wily Premier John Forrest for federal politics,²⁰ and the approaching entry of labour into the legislature under an expanded franchise, which, it was feared, would allow it to hold the balance of power there.²¹ This was, therefore, the last opportunity for Forrest to deliver an emasculated version of compulsory arbitration legislation which would cause minimal upset to capital at the same time as it could avert industrial conflict and potentially disastrous impact on the goldfields. It is further argued here that it was a short railway dispute, with potentially severe effect on the goldfields' population and the gold-mining industry, rather than the lumpers' dispute, that most immediately propelled the state to act to contain industrial disputation. As well, the powerful gold-mining industry, through its emerging local representative peak body, the Chamber of Mines, was mindful of the utility, and alert to the opportunity of passing weak arbitration legislation under Forrest, even as it remained opposed to the legislation. It therefore collaborated with the state's initiative in shaping the legislation and having it passed. It also played a key

Morning Herald, 18 August 1900, and Croft's criticism of the attitude of the Railway Association and the lumpers' union to the censure motion (*West Australian*, 17 August 1900).

20. Forrest moved to the federal political arena in 1901, where he served in a variety of ministerial positions until his death in 1918.

21. *Kalgoorlie Miner*, 5 June 1900 (interview with Illingworth). The Political Labour Party, which emerged in 1900, was an "extended version" of the earlier, coastal Political Labour Party (vanden Driesen, "Evolution of the Trade Union Movement", pp. 352–380, 374).

role in containing and overruling pressure from overseas controllers of mining finance, who lacked understanding of the regional contingencies. While other employer organizations also contributed, the Chamber of Mines dominated the process of passing the legislation. This was consistent with the mining industry's pre-eminent position in the colonial economy (by 1900, gold exports constituted 88 per cent of the total export income of the colony)²² and with its influence in the colony's upper legislative chamber, the Legislative Council. Finally, in suggesting that the adoption of arbitration in Western Australia was a consequence of deliberate pre-emptive action by a state/capital alliance (although capital was reactive at the beginning of the process), this article also highlights the fundamental inequality underpinning labour's participation in this process, notwithstanding its emerging electoral prowess, and therefore challenges certain triumphalist Western Australian labour historiography.

SOME IMPACTS OF THE GOLD RUSHES

At the end of the nineteenth century, what had been the backward, agrarian colony of Western Australia, deficient in population and starved of public and private capital as well as of labour, was still in the throes of economic transformation, with massive changes flowing from the discovery of large gold reserves in the early 1890s in the inland Kalgoorlie region. Gold made the colony briefly the focus of a flood of speculative capital investment and located it firmly within imperial monetary relations. By 1896, 780 Western Australian gold-mining companies had been floated (only four of which in Kalgoorlie had produced gold of any consequence),²³ an estimated £70 million of shares had been issued, and cash of between £18 and £20 million had been subscribed.²⁴ In Western Australia, the gold finds "led to urban expansion, to large scale migration of labour from interstate and overseas, to rapid expansion of public capital formation, and, although generally on a small scale, to the accelerated development of industrial capitalism in Western Australia".²⁵

By 1900, the population of the colony stood at almost 180,000, almost quadruple the figure of 1890. In 1903, the peak year of Kalgoorlie gold output, Australia's total gold yield constituted over 24 per cent of world production.²⁶ Of this Australian gold, 44 per cent was from Western

22. R.T. Appleyard "Western Australia: Economic and Demographic Growth, 1850-1914", in Stannage, *A New History*, pp. 211-236, 226.

23. Patrick Bertola, "Kalgoorlie, Gold, and the World Economy 1893-1972", 2 vols (Ph.D., Curtin University of Technology, WA, 1993), vol. 2, Table 2.3.1.

24. J.W. McCarty, "British Investment in Western Australian Gold Mining, 1894-1914", *University Studies in History*, 4 (1961-1962), pp. 7-23, 13; Bertola, "Kalgoorlie, Gold, and the World Economy", vol. 1, p. 25 (see, however, his qualification in fn. 5).

25. Bertola, "Kalgoorlie, Gold and the World Economy", vol. 1, p. 1.

26. *Ibid.*, p. 8, fn. 14.

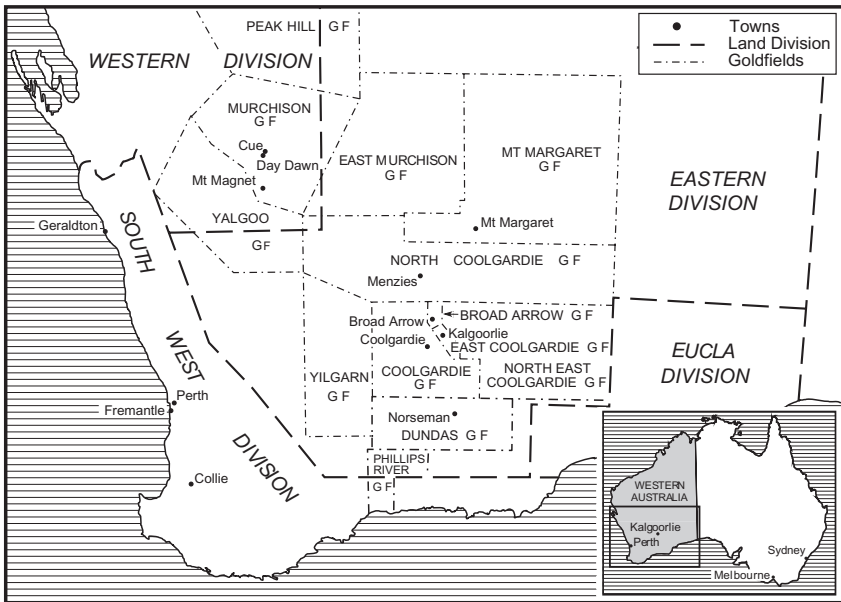


Figure 1. South Western Australia (1904), showing goldfields of the Eastern Division and towns referred to in this article.

Australia.²⁷ According to Pope,²⁸ Australian gold protected London gold reserves from depletion, by “[deflecting] Indian gold demands away from London”.²⁹ It thereby averted inconvertibility, maintained Britain’s superior financial position and, consequently, was of considerable imperial significance.

John Forrest, Western Australia’s Premier from 1890 to 1900, a colonial nationalist, but also an avowed and enthusiastic imperialist,³⁰ used the window of opportunity the gold rushes offered to borrow heavily³¹ on the

27. Calculated from *Statistical Register of Western Australia for 1903* (Perth, WA, 1905), p. 14.

28. Andrew Pope, “The Imperial Matrix: Britain and the Australia–India Gold Trade, 1898–1919”, (Ph.D., Curtin University of Technology, WA, 1993).

29. *Ibid.*, p. 222. Pope further emphasized that “the real benefit [to Britain] of supplying India with gold from Australia was that the gold was not drawn from the reserves of London, but it ultimately ended up in London [...] in triangular trade adjustments between Australia, India and Britain” (*ibid.*, pp. 96–97).

30. Frank Crowley, *Big John Forrest 1847–1918: A Founding Father of the Commonwealth of Australia* (Nedlands, WA, 2000), p. 60.

31. According to A.R. Hall, “Between 1894 and 1902 inclusive, Western Australia was only absent from the London [money] market in one year (1899), while between 1894 and 1899 inclusive, it was responsible for almost half of all Australian government issues” (A.R. Hall, *The London Capital Market and Australia 1870–1914* (Canberra, 1963), p. 173, also Appendix 3, Table 1).

London money market in order to implement an accelerated development programme to which state construction of major infrastructure was pivotal. He perceived the colony's long-term economic future to be in primary production, but more so in agriculture and pastoralism than in mining, a wasting asset, and especially as the longevity of the gold mines was initially uncertain. Accordingly, he ensured, as much as possible, that infrastructure delivered to mining communities, such as railway lines and water supplies, would serve a grand scheme of pastoral and agricultural expansion. "We don't build railways for people to travel on for pleasure, but to assist in the cultivation of the soil", he had declared some years earlier.³² Pastoralists and agricultural producers, John Forrest's rural power base, also received many other benefits, including preferential rail freight rates and protective tariffs on intercolonial imports, the last being major revenue spinners in a colony with limited agricultural production.³³ Much of the revenue raised from the food and stock duties came from the large goldfields population. Of these duties, those on meat attracted the greatest goldfields anger,³⁴ not least because the fields were already burdened by high transport costs for consumables, but even more so because the measure benefited a local livestock cartel linked to the Premier's entrepreneurial politician brother, Alexander.³⁵ Alexander Forrest was "rumoured to have been involved in practically every new company floated",³⁶ including a large number of gold-mining companies. John Forrest, himself a large landowner, had also invested and speculated in gold mining,³⁷ like so many of the old colonial elite.

Government support for the gold-mining industry was both direct and indirect. In seeking to deliver favourable conditions of production, Forrest legislated for ready access to land and provided health care and administrative and law enforcement services. The state also explored for water and delivered it, funded transport and communication facilities, assisted with mineral exploration and mineral processing, and paid for the training and regulation of competent skilled labour.³⁸ In addition, industry received direct financial government grants, for example a massive grant of £5,000 in all towards a headquarters-cum-mineral-museum for the Coolgardie Chamber of Mines. "It is no use finding faults with the capitalists; we must encourage them by good treatment",³⁹ Forrest urged, with an eye to continued capital investments from Britain.

32. Crowley, *Big John Forrest*, p. 106.

33. *Ibid.*, p. 211.

34. See, for example, *Kalgoorlie Miner*, 15 June 1900.

35. Crowley, *Big John Forrest*, p. 64.

36. *Ibid.*, p. 281.

37. *Ibid.*, p. 185.

38. Bertola, "Kalgoorlie, Gold and the World Economy", vol. 1, pp. 77–87, contains more detail on state support for gold mining both at the turn of the century and later.

39. *Western Australian Parliamentary Debates* [hereafter *WAPD*], 10, p. 164–165.

After 1897, though the feverish speculation subsided, gold mining continued to play a central role in the colony's economy, largely owing to the productiveness and rich reserves of key mines on the "Golden Mile", an area of approximately one square mile in the East Coolgardie (or Kalgoorlie-Boulder)⁴⁰ mining district. Episodic slumps continued, however, as investors responded to investment opportunities outside Western Australia, including in the Transvaal, to news of widespread fraudulent activity involving the Westralian mines, to the paucity of new Western Australian discoveries, to technical problems with refractory ore processing, to uncertainty about new technologies,⁴¹ and to the increasing depth of payable ore on some mines.⁴² A number of overcapitalized companies failed, notwithstanding attempts to raise further capital. Other companies sought to concentrate and centralize capital and concentrate production in efforts to protect the value of their capital, reduce costs and increase the rate of profit, processes which Bertola⁴³ elaborated for the Kalgoorlie-Boulder Goldfield. Many of these companies did not survive, while the value of investment and capital of others eroded significantly in the course of a few years.⁴⁴

The gold rushes brought to the transformed colony a new politics in which, progressively, newly arrived merchant, industrial and finance capitalist fractions, centred primarily on the goldfields, challenged, jointly with the leaders of labour and prompted by the goldfields press, the domination of the colony's institutions by the old colonial mercantile and landed elite. Mining finance capital, predominantly British (though Lougheed documented large French and German shareholdings, many of these mediated through London,⁴⁵ and Katzenellenbogen mapped some South African investments),⁴⁶ was riven by divisions arising from the

40. The names "Kalgoorlie district" and "Kalgoorlie-Boulder district" were used colloquially for the administrative and mining district of East Coolgardie. In the main, the colloquial practice is followed here.

41. Richard G. Hartley, "A History of Technological Change in Kalgoorlie Gold Metallurgy 1895–1915", (Ph.D., Murdoch University, 1998), pp. 124–182.

42. Alan Lougheed, in his "The London Stock Exchange Boom in Kalgoorlie Shares, 1895–1901", *Australian Economic History Review*, 35 (1995), pp. 83–102, mapped the trends and fluctuations in the share price of major Kalgoorlie companies and the reasons for these fluctuations.

43. Bertola, "Kalgoorlie, Gold and the World Economy", vol. 1, pp. 34–47.

44. *Ibid.*, p. 39.

45. Lougheed, "London Stock Exchange", p. 87; also A.L. Lougheed, *Ownership of British-Westralian Mining Companies, 1895–1914* Discussion Papers in Economics, No. 76 (St Lucia, 1992). The South Australian-based Coolgardie Mining and Prospecting Company, which sold most of the leases of the main Golden-Mile companies in the early phase of the industry, obtained large share parcels in British companies as "part payment", but was soon superseded by London as the "market for Australian shares" (Lougheed, "London Stock Exchange", pp. 86–87, fn. 5).

46. Simon Katzenellenbogen, "Southern African Mining Interests in Australia before 1939", *Business History*, 32 (1990), pp. 120–132.

existence of rival, secretive British financial groups which competed locally for skilled labour, industrial intelligence, and promotional advantage. Differing in their management styles, sometimes due to the personalities of key managers,⁴⁷ the groups also differed in the size, richness, and geographical location of their mine holdings as well as in the methods proposed to resolve technical problems such as the processing of refractory ore. Before 1900, the lack of cohesion within the gold-mining industry was reflected in the emergence of competing organizations claiming to represent the gold-mining industry (see below).

As some of the mines shifted to production by deep-level mining and as the alluvial fields gradually depleted, the colony gained a large social grouping of increasingly proletarianized immigrant mineworkers, predominantly originating from the eastern Australian colonies. Many of the new arrivals had experienced more vital union movements and more extensive citizenship rights than those available to them in Western Australia. For example, residence provisions and registration procedures barred itinerants, many of them prospectors and mine workers, from exercising a vote. A gerrymandered electoral distribution skewed parliamentary representation so as substantially to disadvantage the populous goldfields districts.⁴⁸

PRE-ARBITRAL SOCIAL RELATIONS

The coast

The influx of capital and population consequent on the gold finds, the associated rapid expansion and diversification of economic activity, and the acquisition within the space of a few years of a mass industrial labour force, reshaped class relations in the colony. In the coastal region, the site of the capital and trading centres servicing the newly settled inland goldfields, industrial disputes before 1896 were, according to Gibbney,⁴⁹ rare, localized, restricted to single enterprises, typically a foundry or a small factory, and mostly of short duration. In the wake of the gold rushes, the booming coastal towns, their employment levels high, weathered several major strikes, including a failed building unions' strike in 1897, and strikes by bootmakers, lumpers, furniture workers, and railway workshop

47. For Bewick Moreing and Co.'s labour policies see Hartley, "Bewick Moreing in Western Australian Gold Mining, 1897–1904: Management Policies and Goldfields Responses", *Labour History*, 65 (November 1993), pp. 1–18. For some of the labour policies of H.C. Callahan at the Lake View Consols, see *Kalgoorlie Miner*, 17 May 1900.

48. B. de Garis, "Western Australia", in P. Loveday, A.W. Martin and R.S. Parker (eds), *The Emergence of the Australian Party System* (Sydney, NSW, 1977), pp. 298–354, 310.

49. Gibbney, "Working Class Organization", ch. 2.

workers.⁵⁰ A large timber workers' strike,⁵¹ a strike in the Collie coal mines,⁵² and a prolonged and bitter lumpers' strike took place in 1899. Reliable assessments of union penetration are unavailable for this period, although researchers agree that it was low. Vanden Driesen estimated the number of coastal unions in 1900 at 30,⁵³ while Gibbney considered that the total number of coastal unionists would not have exceeded the low figure of approximately 3,000.⁵⁴ Statistics of strikes are equally limited. Still, it is clear that the 1899 lumpers' strike exceeded in scale and intensity all those preceding it and that, towards the end of the century, the overall industrial picture was one of increasing coastal industrial acrimony, notwithstanding low union membership and limited organization. On the wharves, in coal mining, and increasingly in the timber industry, unions' power was growing. Peak employer bodies emerged in each of these sectors. In the government workforce, the railways were exceptional in their level of organization. By early 1899, the Locomotive Engine Drivers, Firemen's and Cleaners' Association claimed to cover 98 per cent of the government railways' drivers, firemen, and cleaners.⁵⁵ While this figure may have been a slight exaggeration, subsequent events showed that the drivers had more than sufficient industrial strength to bring the railways to a standstill.

The goldfields

In the late 1890s, goldfields political and social relations were dominated by the intense localism and separatism of the new communities. While goldfields communities often battled each other over allocation of a variety of infrastructure, in particular railway lines, much local agitation focused on what was perceived to be economic and political discrimination against the whole of the goldfields. Resentment focused, for example, on the government's custom tariff, differential rail freight charges and grossly unequal parliamentary representation. In these early years, this shared experience of political and economic discrimination, the shared conditions of hardship in the developing settlements, and a common entrepreneurial ethos, acted as unifying forces and tended to obscure class antagonism. Thus, union leaders frequently collaborated with the mining, business, and professional elites dominating the goldfields. For example, labour leaders sat on a committee planning an international mining exhibition, lobbied for

50. *Ibid.*, p. 28.

51. *Bunbury Herald*, 5 August 1899, 8 August 1899.

52. *West Australian*, 26 October 1899; Gibbney, "Working Class Organization", p. 35.

53. Vanden Driesen, "Evolution of the Trade Union Movement", p. 369.

54. Gibbney, "Working Class Organization", p. 36.

55. T.C. Cartwright to J. Davies, 23 January 1899, Premier's Department, Files 1722/1898, State Records Office of Western Australia [hereafter SROWA], Acc 1496, AN 2/1-4.



Figure 2. Members of the Kalgoorlie Chamber of Mines, 1901.
Courtesy of the Eastern Goldfields Historical Society, 13/3A

a Kalgoorlie School of Mines in a campaign directed by the Chamber of Mines, and supported the gold-mining industry in its opposition to paying cyanide patent royalties.⁵⁶ Labour leaders were fighting alongside the goldfields mining and business elite to win the local Federation campaign, funded by the Chamber of Mines to the tune of £2,000,⁵⁷ and headed by Alexander Matheson, a member of the Legislative Council, a member of the Chamber of Mines and the head of the Western Australian branch of Matheson and Co., a British-based merchant house and investment group with key mining and other investments, including banking and insurance.⁵⁸ The Kalgoorlie Chamber of Mines, in turn, supported labour leaders on some issues; for instance, at labour's behest, it protested to government about the reduction of local hospital nurses' salaries and privileges.⁵⁹

56. Western Australia. Royal Commission On Mining [Report] (Perth, WA, 1898), p. 1225 (item 4585).

57. Though it denied this motivation, the Chamber of Mines supported Federation in the expectation that it would lead to intercolonial free trade and to "an amelioration of the difficulties under which mining is carried on" (*Kalgoorlie Miner*, 20 November 1900), that is, to abolition of tariffs, a consequent general reduction in the cost of living and in the cost of the reproduction of labour on the goldfields.

58. See S.D. Chapman, "British-Based Investment Groups before 1914", *Economic History Review*, 2nd series, 38 (1985), pp. 230–247, for discussion of the function of investment groups; also Charles Harvey and Jon Press, "The City and International Mining, 1870–1914", *Business History*, 3: 32 (1990), pp. 98–119, 109–10.

59. COM, *Minute Books*, 2, 26 January 1898.

Notwithstanding this collaboration and, in spite of a poor level of industrial organization (see below), the mines' rank-and-file reacted in the second half of the 1890s, in the main unambiguously, to pre-arbitral attempts to reduce wages and working conditions. C. Kaufman, the American manager of the rich Golden Horseshoe Mine, in 1895 described this workforce as "scarce, inferior, highly paid and independent".⁶⁰ Between 1896 and 1900, mineworkers instigated numerous strikes on individual mines in different parts of the fields over rejection of their wage demands, increased hours of work, reduction of wages, and changes to working conditions.⁶¹ Some strikes occurred without any union organization at all, as in the Black Flag and Edjudina strikes of 1896 and the Day Dawn strike of 1898, and others without a union callout, as at the Paddington Consols. Even H.C. Hoover's⁶² success in 1898, at the Sons of Gwalia Mine, in increasing working hours, shifting some workers to single-hand work and contracts, and in reducing Sunday and wet-work wage rates,⁶³ was at the expense of two strikes and threats of more. According to Hoover, he avoided a "united revolt" at the mine, "chiefly [...] because the possible ringleaders had been previously dispensed with",⁶⁴ as well as any others who demurred.

Key industrial complaints of some mining employers at that time appeared to be the absence of uniform minimum wage rates, lack of standard classification of unskilled labour, and both inconsistencies in and "high" levels of regional wage rates, which reflected labour's capacity to win compensation for increased outback costs of living and primitive conditions. Before arbitration, mine managers instigated several attempts to reduce and standardize wages, but in each case, only on a limited district basis.⁶⁵ These attempts included an 1897 proposal by the Chamber of

60. *Coolgardie Miner*, 23 May 1895.

61. For example, there were, in 1896, strikes at the Corsair, Lady Shenton, Black Flag, White Feather Reward, and Edjudina mines as well as at the 25 Mile Cement Leases. In 1897 and 1898, strikes occurred at the Hit and Miss, City of London, Lake View Consols, East Murchison United, at Niagara, Crown United, and the "Magnet shows". As well, there was a general engine drivers' strike in the Broad Arrow district. In 1899, there occurred a two-month strike at the Great Fingall and Catherwood. In 1900, workers went on strike at the Chambers, the Lake View Consols, the Fraser South Extended, and the Paddington Consols. This list is far from comprehensive.

62. Herbert Clark Hoover, 1874–1964, Stanford graduate, geologist, mining engineer, financier, a partner in British engineering firm Bewick, Moreing and Co. and later 31st President of the United States, worked in Western Australia briefly in the late 1890s as a mine manager, becoming known for his efficiency and ruthless labour management policies.

63. Richard G. Hartley, "Bewick Moreing in Western Australian Gold Mining", p. 3.

64. Hoover to Bewick Moreing and Co., 10 May 1898, 23 May 1898, H.C. Hoover's letterbook, Sons of Gwalia, [Records], BL Acc 270, MN 1614A.

65. It is likely that the driving force behind some of these was engineering consulting and financing company Bewick Moreing and Co., influenced by Herbert Hoover between 1897 and 1899.

Mines, London, a peak body for London-based mining companies with interests in Western Australia, to reduce wages in the Murchison district.⁶⁶ In 1898, the Paddington and Broad Arrow Branch of the Mine Managers' Institute (MMI) developed a new uniform scale of wages.⁶⁷ In the Central Murchison, also, mine managers issued a uniform reduced scale of wages.⁶⁸ Successful in cutting wages of unorganized unskilled Murchison mine workers in 1898 (though not of engine drivers), the managers suffered a resounding defeat in a further such attempt in 1899. However, the most significant pre-arbitral attempt at collective wage reduction was that of the Kalgoorlie Mining Managers' Association (MMA), which produced a uniform scale of minimum wages for different classes of mine labour in the East Coolgardie (that is, Kalgoorlie and Boulder) district in 1899.⁶⁹ The new scale provided a baseline for assessing regional variations in rates. More importantly, in providing a rough classification of different classes of mineworkers, the scale challenged the custom of some mines of paying an undifferentiated miner's rate of 11s 8d ("all round pay") to underground labourers performing unskilled work such as trucking and shovelling.⁷⁰

Notwithstanding the MMA scale, variability of rates of wages in the East Coolgardie district, where most of the richest mines were located, continued. This variability reflected, *inter alia*, different management policies, competition especially for competent skilled labour among the mines and, more generally, the lack of organization of gold-mining capital at that point.⁷¹ Thus, overall, the MMA's and other gold-mining industry pre-arbitral attempts to reduce and standardize wages in the mines had only limited success.⁷²

By the turn of the century, the shift to deep mining had created a waged mine workforce numbering almost 6,000 in the East Coolgardie district alone and almost 17,000 in gold mining in the whole of the colony. In

66. West Australian Chamber of Mines, London, *Report for the Year ending 31st December, 1897 with Appendix* (London, 1898), p. 13 (BL).

67. *Coolgardie Pioneer*, 5 March 1898.

68. *Ibid.*, 14 May 1898.

69. *Kalgoorlie Miner*, 30 May 1900, 19 July 1900.

70. Workers defended the "all round" pay to underground workers by pointing out that many of the truckers and shovellers were in fact skilled hand (or hammer and drill) miners (COM, *Monthly Report*, 1902, p. 208). They also contended that the practice in some mines was to interchange classes of labour underground so as to provide relief to (hand) miners from unhealthy working conditions. The issue of the pay of truckers, shovellers, and mullockers would not finally be resolved until after the passing of the Arbitration Act (Industrial Conciliation and Arbitration Court, Files 12–27 SROWA Acc 1095 AN 195).

71. In fact, the MMA, the membership of which overlapped to some extent with that of the Kalgoorlie Chamber's, had unsuccessfully challenged the Kalgoorlie Chamber's leadership. Forrest, however, had dismissed the association as a "club", essentially advising it to amalgamate with the more corporate-minded Kalgoorlie Chamber (*Kalgoorlie Miner*, 11 August 1900).

72. *Western Australia: Votes and Proceedings* [hereafter *WAVP*] 1900, 2 vols, vol. 2, paper A17, p. 14 [hereafter *WAVP*, 1900, 2, A17].

addition, between 3,000 and 4,000⁷³ entrepreneurial alluvial miners were eking out livings on the various fields. The gradual depletion of alluvial fields and, in 1898, legislative restrictions on alluvial mining which favoured mining companies, threatened to throw a large number of these men on to the labour market. Labour surplus in the fields grew as the number of leases shrank in a process of both centralization and attrition, and as the Forrest Government, responding to mining industry demands, progressively reduced the quota of labour required to hold a mining lease.⁷⁴ Also, mines had begun to introduce rock-drilling machines along with contract work, as well as to take other steps to mechanize the work process with ramifications for worker numbers and the structure of the workforce.

Union penetration of the mines was low, although conclusive figures are not available for this period. In October 1900, before arbitration, mine employers estimated union membership at 20 per cent or less of the goldfields workforce.⁷⁵ Goldfields labour's own assessment of around 3,000 total goldfields union members,⁷⁶ of which the majority would have been mineworkers, was considerably lower.⁷⁷ Whichever figures are correct, the organizational weakness of unions at the turn of the century is not in dispute. Notwithstanding this weakness, the industrial situation in the goldfields in the immediate pre-arbitral period can be characterized as one in which a high level of solidarity prevailed among mine workers and wages and conditions were mostly defended vigorously. However, while workers were in many cases successful in defending their earnings, as, for instance, in the Murchison district in 1899, they did not arrest increased use of contract labour, reorganization of the work process, and

73. The Western Australian Mines Department estimated the number of alluvial gold miners in the whole of Western Australia in 1900 at 3,639; Western Australia, Mines Department, *Report [...] for the Year 1900* (Perth, WA, 1900), p. 21.

74. *Coolgardie Pioneer*, 15 May 1897.

75. *WAVP*, 1900, 2, A17, p. 9.

76. *Kalgoorlie Miner*, 29 October 1900, 5 November, 13 November 1900.

77. Membership figures of the Kalgoorlie-Boulder Branch of the AWA 1897–1900 are available and reliable (see COM, *Monthly Report*, 1902, p. 241). They point to a penetration rate well below 20 per cent in the mines of the Golden Mile in early- and mid-1900, rising to slightly over 20 per cent at the end of 1900. L.B. McIntyre ("The Development of Trade Unionism") who researched union membership in Western Australia extensively, provided a figure of 5,022 unionized workers out of a workforce of 20,888 in mining at the end of 1901, constituting a unionization rate of 24 per cent (calculated from *ibid.*, App. 2, Table 7). McIntyre's figures, however, refer to mining for all minerals in the whole of Western Australia, postdate arbitration by some twelve months (in other words, they probably reflect increased union numbers and membership in response to the attraction of arbitration (*ibid.*, p. 26), and show the effects of a recent recruitment campaign by mining unions (*ibid.*, p. 27, fn. 25). In the light of these considerations, the estimate of about 20 per cent of the goldfields mining workforce being unionized in 1900, appears credible.

introduction of labour-saving technology. Nor did they succeed in sharing in the increased profits from these changes.⁷⁸

GOLDFIELDS LABOUR AND ARBITRATION

In 1900, the producing sector of the Western Australian gold-mining industry faced a range of difficulties, including the technical problem of processing refractory ores and the financial dilemma of how to do so and develop the mines with limited working capital. As the industry shifted from its initial speculative phase to relatively large-scale, capital-intensive, industrial production, which employed a large, waged workforce, achieving reductions in the costs of production and higher rates of profit became matters of crucial importance to mining companies, who were also under attack by the bears of the stock market. Some mines failed, including two of Coolgardie's biggest. In 1900, unionists, observing the unsettled financial state of the industry and the growing labour surplus, and aware of a rumoured industry plan to reduce wages, anticipated a big showdown with mining employers.⁷⁹ In this atmosphere, each industrial dispute was perceived as potentially the spark that could ignite the big industrial conflagration that would envelop all mining unions and that could break the weak and nascent trade union movement.⁸⁰ The Amalgamated Workers' Association (AWA), the goldfields' largest union, in March 1900 warned workers not to come to Kalgoorlie-Boulder where there were "fully a thousand good lusty men" who were out of work and lacked the means to leave the district.⁸¹ When industrial disputes arose, union leaders did their utmost to contain them. Cases in point were the conflicts at the Lake View Consols in April–May and at the Ivanhoe in mid-1900. Both disputes concerned "all round" pay to unskilled labour, which had been reduced at the Lake View and which Ivanhoe workers struck to obtain. In both disputes, unions persuaded striking workers to return to work. At the Lake View the union wrung some minor concessions from employers (the mine's managers agreed to limit the mine's truckers'⁸² work to trucking alone, but at a reduced rate, rather than use them interchangeably with

78. Arbitration records for the period 1902–1912 in fact demonstrate that in continuing the pre-arbitration process of classifying the workforce and standardizing wage rates, but now through the arbitration system, the mining industry, at least initially, succeeded in achieving some further economies.

79. William Somerville, "An Economic History of Western Australia, with Special Reference to Trade Unions and the Influence of the Industrial Court of Arbitration", [1915–1949] (Manuscript, University of Western Australia Archives), pp. 433, 465. See also the reference to labour's "longstanding fear that the late market operations in scrip presages a critical period in the relations of capital and labor" (*Coolgardie Pioneer*, 17 May 1900).

80. See, for example, *Kalgoorlie Miner*, 9 June 1900.

81. *Ibid.*, 7 March 1900.

82. Workers engaged mainly in pushing ore-haulage trucks.



Figure 3. Four o'clock shift on Great Boulder Mine coming off, 1896.

Photograph by E.W. Henderson; courtesy of the Eastern Goldfields Historical Society, 2/14A

miners). At the Ivanhoe, the union promised to have the dispute submitted to the Arbitration Court once the Court was established.⁸³ The union failed to contain a third dispute, at the Paddington Consols Mine⁸⁴ (Broad Arrow) in May–July 1900. This strike erupted without a union callout over the company's attempt to reduce the minimum rate for all unskilled workers to a level below the MMA's uniform wage scale for Kalgoorlie;⁸⁵ the issue yet again was "all-round pay" plus a reduction below the Kalgoorlie MMA's standard. Violent conflict with mounted police over the introduction of foreign strike breakers to the mine landed several of the protestors in gaol. Finally, the almost three-month-long strike was resolved, according to the union, in a compromise, and according to employers, with little gain to workers.⁸⁶ However, contrary to its intentions, the company was forced to pay differential rates to unskilled workers depending on conditions in the workplace.⁸⁷ Some of these rates

83. COM, *Monthly Report*, 1902, p. 245.

84. Lake View Consols, the Ivanhoe and Paddington Consols in 1900 were Whitaker Wright mines, overcapitalized, and under extreme pressure to produce profit to fend off bear attacks on the London Stock Exchange. Wright's financial empire collapsed in December 1900 (R.T. Appleyard and Mel Davies, "Financiers of Western Australia's Goldfields", in R.T. Appleyard and C.B. Schedvin (eds), *Australian Financiers: Biographical Essays* (S. Melbourne, VIC, 1988), pp. 160–175).

85. *Kalgoorlie Miner*, 9 August 1900.

86. *WAPD*, 17, p. 687.

87. For example, there were three classifications and rates for truckers: truckers (dry) 10s 6d per shift, truckers (wet) 11s 6d, truckers (shovelling from drive in face) 11s. The MMA scale had stipulated a single rate for truckers of 10s 6d (*Kalgoorlie Miner*, 9 August 1900).

were higher than those specified in the Kalgoorlie MMA scale of uniform wages.

The cost to unions of conflicts such as the Paddington Consols was high. Although it declared before the strike's resolution that its finances "were never in a sounder position",⁸⁸ the AWA's Kalgoorlie and Boulder branch paid, in strike pay and probably also legal fees, about £1,000, of which, at the conclusion of the strike, it had received only £202 from other branches in support.⁸⁹ The financial and organizational weakness of unions, their concern that goldfield employers were preparing to wage an all-out war such as that in the eastern colonies in the 1890s,⁹⁰ the pressures of an approaching election campaign (see below) and AWA promises to some workers to resolve outstanding issues by arbitration, combined to make goldfields union leaders in late 1900 especially anxious for compulsory arbitration legislation.⁹¹

So anxious were mining unions to avoid conflicts, such as that at the Paddington Consols Mine, that, even while that battle was still being waged, they sought to confer with the MMA on a minimum wage scale "so that all friction between employers and employees may be averted".⁹² Rebuffed by the Kalgoorlie MMA, a union deputation representing the Eastern Goldfields Trades and Labour Council, including representatives of the AWA and the Amalgamated Certificated Engine Drivers Association, met with the Kalgoorlie Chamber of Mines in September to demand that all mines adhere to the MMA wage scale, as the lack of a standard caused "dissatisfaction and irritation among the men".⁹³ Specifically, they requested adjustment of the MMA scale, including increased pay for truckers, surface laborers, firemen, and "assistant" machine men, overtime rates for engineers, carpenters and boilermakers, and other amendments. "Chilly" in its reception of the unionists,⁹⁴ the Chamber refused all demands: "assistant" machine men were not entitled to a higher rate as they were trainees; trucking work was done by youths and young men who should not receive as much as able-bodied surface men, most of whom had large families to support; and employers could not pay overtime and Sunday rates to skilled workers as the mines were not in a

88. *Kalgoorlie Miner*, 18 July 1900.

89. *Western Argus*, 16 August 1900.

90. Somerville, "An Economic History", p. 433.

91. William Somerville was a contemporary union leader, later the worker nominee on the Arbitration Court for more than three decades. He witnessed personally union leaders' anxiety for arbitration in late 1900 (*ibid.*). See also then union leader G.F. Pearce's statement that labour considered the Arbitration and Conciliation Bill "a matter of urgency" (*West Australian*, 20 August 1900).

92. *Kalgoorlie Miner*, 19 July 1900.

93. COM, *Minutes*, 3, 7 September 1900.

94. *Westralian Worker*, 7 September 1900.

position to pass on such extra costs the way private manufacturing firms could. In any case

[...] if [the skilled workers] but reflected they would find that it was in their own interests to allow things to remain as they were; they had steady employment and should not object, in the case of a breakdown, to work overtime in order to prevent stoppage to keep all hands employed.⁹⁵

The Chamber further pointed out that wages paid on the mines in some cases were nearly 50 per cent “in excess of [the coastal town of] Fremantle rates”, and that they had risen, even though the cost of living on the field had dropped with the advent of the railway. The response of the managers was thus couched, on the one hand, in terms of the hegemonic localism of the goldfields, which conflated the public and the mines’ interests and linked public benefit with the mines’ capacity to pay, and on the other hand, “within the liberal discourse of equity, harmony and public benefit”,⁹⁶ in which decisions had to appear to have moral authority. (The workers had couched their demands within the same discourse.) The arguments the Chamber employed articulated core principles with which it would resist many future wage demands. Worker combination, however, was clearly not an issue with goldfields mine employers.

The workers’ representations amounted to a demand for a general wage increase.⁹⁷ Not actually having official authority to deal with such demands collectively, the Kalgoorlie Chamber referred its report on the conference with the unionists to the overseas company boards for the advice of the various boards. From the unionists’ point of view, this first conference with the peak mining body was an “abortive effort”,⁹⁸ demonstrating the unions’ industrial weakness and inability to advance the cause of its members by collective bargaining, as well as the bargaining strength of mining employers, who were, at that point, subject to few compulsions other than the market’s and certainly not to mining unions’ industrial muscle. Mining employers had much to lose by submitting to a compulsory arbitration regime.

PRE-ARBITRAL GOLD-MINING EMPLOYER ORGANIZATIONS

The respective roles of the state and mining employers in the process of adopting industrial arbitration legislation cannot be understood without

95. COM, *Minute Books*, 3, 7 September 1900, “Report on Deputation re Standard Scale of Wages”.

96. Macintyre and Mitchell, “Introduction”, in Macintyre and Mitchell, *Foundations of Arbitration*, pp. 1–21, 12.

97. COM, *Minute Books*, 3, 7 September 1900.

98. *Westralian Worker*, 7 September 1900.

probing, however briefly, the history of the organization of gold-mining employers in Western Australia. In late 1900, a unified, strong local voice for the Western Australian gold-mining industry was only beginning to emerge, as the Kalgoorlie Chamber and the Coolgardie Chamber of Mines amalgamated to create the Chamber of Mines of Western Australia, thereby ending a long history of rivalry between them.⁹⁹ The Kalgoorlie Chamber was the senior partner of the two, representing as it did the most productive section of the industry, which was located, in the main, in the gold-rich Kalgoorlie-Boulder area. By 1900, the Chamber included among its members some highly-trained, professional mining men, with a diversity of specializations, expertise, and experience, and some with a growing sense of their common interests.¹⁰⁰ The Chamber was, at that stage, only minimally funded by subscriptions and specific purpose allocations from overseas boards, reflecting the latter's lack of cohesion and collective orientation, a lag in their awareness of the professional mine managers' group that emerged on the fields, and a failure to appreciate that their interests required them to engage in the social and political relations of the colony.¹⁰¹ Consistent with this failure was the reluctance of some overseas boards to grant even limited autonomy in professional matters to their Western Australian mine managers.¹⁰² Notwithstanding these limitations, the range of collective activities which the Kalgoorlie Chamber undertook had grown since its inception in 1896, for example, as it fought the McArthur-Forrest cyanide royalties claims,¹⁰³ co-ordinated measures to control gold stealing, secured wood supplies for the Kalgoorlie mines, opposed some of the legislative restrictions on Sunday work, and proposed or opposed a variety of other legislative amendments and initiatives.

Before 1900, local representation of the gold-mining industry had been hampered by its fractured nature, consisting of the two main chambers on the goldfields, shortlived affiliates of the Coolgardie Chamber in the mining centres of Geraldton, Cue, Menzies, Mt Magnet, and Norseman,

99. Although the legal amalgamation of the Chambers was not concluded until early 1901, they acted essentially as one by late 1900 and consequently were sometimes referred to as the Chamber of Mines at Coolgardie and Kalgoorlie.

100. It was no coincidence that the Mine Managers' Institute, founded 21 January 1896, and its successor, the Mining Managers' Association, were both Kalgoorlie emanations, having the goal of defending, promoting, and supporting professional mine managers (*Coolgardie Pioneer*, 13 March 1897).

101. Seemingly contradictory is the fact that at the height of the speculative wave, the Coolgardie Chamber of Mines had been funded generously by mining and mining financing companies. However, this support did not extend beyond the first years of the Coolgardie Chamber's existence.

102. Hartley, "A History of Technological Change", p. 110.

103. Naomi Segal, "The Intervention that Wasn't: A New Look at the McArthur-Forrest Cyanide Patent Conflict in Western Australia", *Prometheus*, 18 (2000), pp. 175–196.

and a multi-branched Mine Managers' Institute with a central administration in Kalgoorlie, which lapsed in 1898 to be replaced by the MMA.¹⁰⁴ In addition, there existed two London bodies representing London-based investors and speculators in Western Australian mines.¹⁰⁵ Employers outside the mining industry also lacked unity, and a permanent peak employer body did not emerge in Western Australia until 1913. By 1900, however, outside gold mining, there existed several major industry-specific employer bodies, including in the shipping, coal-mining, and timber industries. In matters affecting them all, at the turn of the century, employers in Western Australia appeared to deliberate through a loose, ad hoc combination¹⁰⁶ sometimes known as "the Employers' Association".¹⁰⁷

In its first few years, the Kalgoorlie Chamber of Mines refused, as a matter of principle, to deal with wage matters collectively.¹⁰⁸ In the early period of labour scarcity, key Golden Mile mines competed for labour, especially for competent skilled labour. As Bertola pointed out, such labour was critically important in the early stage of development of the mines: "much of the inventive skill behind [early gold-mine development and operation] was bound up in the labour the companies employed", on which depended the mines' efficient practices and processes.¹⁰⁹ According to mining representatives, the variability of conditions in the mines militated against uniformity in wages.¹¹⁰ Perhaps more important in preventing cooperation in industrial matters, however, were the secrecy and distrust among companies and rival speculative financiers in London, and their different labour and management policies.

In the absence of systematic engagement in wage issues and, for that matter, most other industrial issues, by the Chamber, there was no substantial gold-mining industry representation to government on the conciliation and arbitration legislation prior to the first introduction of the Bill to Parliament, in 1899. By contrast, the labour movement and its liberal parliamentary supporters had made many representations and numerous public pleas for such legislation. Conciliation and arbitration legislation was one of the objectives of the second coastal Trades and Labour Council (TLC) in 1892, the Progressive Political League of 1893, and the Eastern Goldfields TLC.¹¹¹ In April 1898, a committee of the coastal TLC advocated adopting the New Zealand Arbitration Act in

104. It is not possible to discuss here earlier short-lived associations, for example the Mineowners' Association of Western Australia or the Perth Chamber of Mines.

105. Of these, the unfinancial West Australian Chamber of Mines, London, merged with the Incorporated London Chamber of Mines in 1900.

106. For example, *West Australian*, 11 October 1899.

107. For example, *ibid.*, 18 September 1900.

108. COM, *Minute Books*, 1, 25 October 1896.

109. Bertola, "Kalgoorlie, Gold and the World Economy", vol. 1, p. 51.

110. *WAVP*, 1900, 2, A17, p. 4.

111. Vanden Driesen, "Evolution of the Trade Union Movement", pp. 359–360, 368.

Western Australia, a decision endorsed by the first Western Australian Trades Union and Labour Congress in Coolgardie in 1899. As industrial disputes unfolded, unions demanded speedy introduction of compulsory arbitration legislation,¹¹² with the goldfields press echoing their demands. The logic of workers' demands reverberated in the community as strikes such as those of the lumpers, the locomotive engine drivers, and the workers at the Paddington Consols affected the wider community, especially storekeepers dependent on workers' custom,¹¹³ and as disputes were shown to be resolvable by private arbitration.¹¹⁴

THE PROCESS OF ADOPTING ARBITRATION

Social legislation under Forrest

Astute, pragmatic, paternalistic and autocratic, an old colonial conservative who claimed, however, not to lack some liberal instincts,¹¹⁵ Premier Forrest responded to the structural transformation of the colony with social measures only, in the main, under duress and for short-term political advantage (for example, so as to steal the Opposition's thunder). He led on many issues, so the Opposition's F.C.B. Vosper alleged, "only in the [...] sense that a wheelbarrow leads its driver or a mule a plough [...] under harness, whip and spur".¹¹⁶

Forrest's final years in his decade of ruling Western Australia were punctuated by growing resistance to his regime and policies, including within the ranks of his erstwhile parliamentary supporters, but especially among the goldfields population. Some of his opponents described his government as politically corrupt, referring to patronage and "distribution of sops to government supporters"¹¹⁷ as well as to specific instances of gross maladministration.¹¹⁸ In the face of persistent and vociferous demands, Forrest eventually conceded some political, "economic" and

112. See, for example, *Kalgoorlie Miner*, 19 May 1896; 15 July 1896; *Coolgardie Pioneer*, 2 October 1897, 25 May 1899, 9 September 1899, 21 October 1899. This is not to argue that the union movement was unanimous in supporting compulsory arbitration. A notable exception occurred in Day Dawn in 1899, when striking workers, conscious of being in a strong position and unwilling to compromise with employers, rejected arbitration in their dispute and the concept of compulsory arbitration in labour disputes generally (*Murchison Advocate*, 19 August 1899).

113. For storekeepers/working class relationship in Australia see Erik Eklund's "The 'Anxious Class': Storekeepers and the Working Class in Australia, 1880–1940", in Robert Hood and Ray Markey (eds), *Labour and Community: Proceedings of the Sixth National Conference of the ASSLH, Wollongong (NSW) 2–4 October 1999* (Wollongong, NSW, 1999), pp. 78–82.

114. Vanden Driesen, "Evolution of the Trade Union Movement", p. 372.

115. J.A. La Nauze, *The Making of the Australian Constitution* (Carlton, VIC, 1972), p. 208.

116. *Coolgardie Pioneer*, 22 May 1897.

117. Crowley, *Big John Forrest*, pp. 281–282.

118. *WAPD*, 1900, 17, pp. 136–137, 141–142, 145.

“social” rights¹¹⁹ to abate the crisis in the state’s legitimacy consequent on the colony’s altered demographics and economy. He was also under pressure from the threat of social changes promised by the imminent Federation of the Australian colonies, which, for example, promised payment of members and a national arbitration system.¹²⁰

In the last years of the nineteenth century, Forrest granted his critics several concessions. These included, in 1899, increased parliamentary representation, and a redistribution of seats (though still heavily gerrymandered, or “re-jerrymandered” according to Vosper),¹²¹ and an extension of the franchise (including to women, in the hope that they would counter the heavily masculine goldfields vote). Most importantly, in 1900, under pressure from a majority Assembly vote for the measure, he conceded payment of members, which, significantly, opened the State Parliament to labour politicians. Other reforms included restrictions on the payment of truck wages, limiting Sunday mine work, and a minimum wage clause in government contracts.¹²² However, Forrest frequently diluted reformist legislation, seeking thereby to pacify his old colonial supporters or other vested interests, often to such an extent that his measures proved to be “simulacra” (phantoms)¹²³ and of only limited benefit to their proponents. In the wake of the Federation debate and as criticism of his pro-Federation stance from anti-Federationists in his camp increased, Forrest’s parliamentary majority became less secure, leading, in late 1900, to the motion of no confidence, which briefly appeared to have a chance of success.

By the end of the century, Forrest also faced a combination of coastal and goldfields labour unions, which was dominated by the goldfields unions, but which shared a political agenda following the first Trades Union and Labour Congress in 1899. Parliamentary representation, the extension of the franchise and compulsory arbitration legislation modeled on the New Zealand Industrial Conciliation and Arbitration Act, 1894, were the key objectives adopted by this moderate and as yet industrially weak movement.¹²⁴

119. David Held, *Political Theory and the Modern State: Essays on State, Power and Democracy* (Oxford, 1990), p. 201.

120. Forrest supported the inclusion of the conciliation and arbitration power in the proposed federal constitution at the convention debates in Melbourne in 1898 (La Nauze, *Making of the Australian Constitution*, pp. 206–208). His argument, as quoted by La Nauze, is interesting: “the federal Parliament, he hoped, would be able to exercise such a power with greater moderation and more wisdom than the local parliaments were likely to do” (*ibid.*, p. 208).

121. *WAPD*, 1899, 15, p. 1614, quoted in Crowley, *Big John Forrest*, p. 259.

122. B.K. de Garis, “Self-Government and the Evolution of Party Politics 1871–1911”, in Stannage, *A New History*, pp. 326–351, 346. Also Crowley, *Big John Forrest*, p. 297.

123. *WAPD*, 1900, 17, p. 87.

124. West Australian Trades’ Union and Labour Congress, *Minutes of Proceedings* (Perth, WA, 1899).

The 1899 Arbitration Bill

Though Forrest first contemplated introducing arbitration legislation in the wake of the lumpers' dispute,¹²⁵ which took place between February and April 1899, he did not introduce such a Bill to Parliament until 22 August 1899. This was rather late in the session, there was much other business pending, and there had been no consultation over the details of the final Bill with either employers or unions. All this suggests that Forrest, though in principle committed to the Bill, at this stage was not serious about having it passed. He would have been aware that, as there had been no consultation, it was inevitable that employers and unions would request copies of the Bill and that there would be delays in debating the Bill, probably leading to its demise. Nevertheless, there was probably electoral advantage in introducing the Bill, if only to counter the arguments of pro-Federation labour supporters, who expected that, *inter alia*, Federation would deliver "one elector one vote",¹²⁶ payment of members, and the minimum wage¹²⁷ to the backward Western Australian colony. If the Arbitration Bill failed to pass because of intervention by non-government interests, its introduction would still remain a feather in Forrest's cap, and it would be so even were the Opposition to claim, as it did later, that the Bill had been introduced only "[to hold it up] and gull the country".¹²⁸

It was not until after the second reading of the Bill that the Kalgoorlie Chamber informed Forrest of its displeasure at his action.¹²⁹ It did so in no uncertain terms. In September 1899, Forrest and goldfields parliamentary representatives received a strongly worded wire from the Kalgoorlie Chamber of Mines:

This Chamber learns with regret proposal to bring to third reading a Bill of such vital importance to welfare of industries of Colony as Conciliation and Arbitration Bill without giving various employers fullest opportunity discussing Bill in all its details. Whilst Chamber is not yet in position to express opinion the bill appears to have such important bearing on mining industry in particular that this chamber respectfully begs enter most emphatic protests against anything like hasty legislation and trusts that Bill will be held over until next session.¹³⁰

At this stage, the Chambers of Mines at Coolgardie and Kalgoorlie were

125. Crowley, *Big John Forrest*, p. 245.

126. *WAVP*, 1899, 3 vols, vol. 3, paper A10, p. 362. Forrest defended Western Australia's plural voting system, which entitled electors to vote in any electorate in which they had property, apparently giving Forrest himself as many as seventeen Legislative Assembly votes (Crowley, *Big John Forrest*, p. 259).

127. *Ibid.*

128. *WAPD*, 17, p. 417.

129. The Chamber's records offer no explanation for this delay.

130. COM, *Minute Books*, 2, 24 September 1899.

opposed in principle to compulsory arbitration in industrial disputes and to a common wage policy for the mining industry (see below). They feared that the legislation would interfere with “free” (non-union) labour, and that judgements adverse to workers would not be enforced, since the legislation did not secure costs of judgements from unions of workers. The Chamber was also concerned that the provisions of the Masters and Servants Act, which made workers liable for financial loss due to worker negligence or maliciousness, would no longer apply. However, with a poorly defined collective role in industrial matters and limited finances, the Kalgoorlie Chamber’s first step in response to Forrest’s initiative was to obtain authority from overseas boards to “act definitely”¹³¹ in this matter. Granting such an authority would commit the overseas boards to fund the actions connected with arbitration that the local Chamber would undertake.

When the inevitable lobbying by employers eventuated, Forrest stood firm. His response to a deputation of major employer bodies was to insist on the necessity for the Bill by pointing to the strength of organization of both labour and capital, to the harm that could come from their clashes and to the likelihood of worse future clashes than the lumpers’ dispute. He reminded the deputation that employers had lost the battle for public sympathy in the lumpers’ dispute. (This no doubt was a sore point as the government had involved itself in the dispute,¹³² and had extensively exercised itself on behalf of the shipping companies, including by deploying police to protect nonunion labour during the five weeks of the dispute.) Finally, he implied that employers’ comments would assist his legal advisers to change the Bill.¹³³ In short, Forrest conveyed the message that the legislation was inevitable, while reassuring employers that he could accommodate their concerns about it.

The parliamentary debate that ensued demonstrated that the lessons of the lumpers’ dispute were still fresh in the minds of members. Acceptance of the principle of the legislation appeared general, illustrating the success of labour and its allies in generating consensus on the issue of legal resolution of industrial disputes. However, most considered the conciliation provisions of the Act to be the key to industrial peace. Even when F. Wilson, MLA, President of the Perth Chamber of Commerce as well as of the Timber Merchants and Millowners Association,¹³⁴ asked that the Bill

131. *Ibid.*, 30 September 1899.

132. The Government’s direct involvement in the dispute was through wharf labourers loading and unloading cargo moving between warehouses and the wharves, who were employed by the Railway Department, but were members of the lumpers’ union (vanden Driesen, “Confrontation and Reconciliation”, p. 31).

133. *West Australian*, 11 October 1899.

134. Wilson, the future advocate for the mining companies in the Court of Arbitration, later a Premier of Western Australia (1910–1911, 1916–1917), also had mining and coal interests.

be postponed, he emphasized he was not doing so in opposition to the Bill as “everyone believed in the principle of conciliation”.¹³⁵ A.E. Morgans, MLA, formerly the President of the Coolgardie Chamber of Mines and a mine owner himself, also argued for postponement rather than withdrawal of the Bill. His reasons were the enormous distances to the goldfields¹³⁶ and “the great importance of the Bill” which required “great consideration”. Once postponements had been agreed to, they allowed the Bill to be overtaken by the estimates debate, leaving no time towards the end of the parliamentary session to debate the Bill in committee. The Bill was therefore shelved, just as the Kalgoorlie Chamber of Mines, but also the MMA¹³⁷ and the Perth Chamber of Commerce had demanded be done.¹³⁸

The Bill of 1900

The Bill was not reintroduced until late August 1900, this time during the first fortnight of the parliamentary session.¹³⁹ In early January 1900, however, long-standing grievances, including, particularly, the refusal of the Railway Commissioner to recognize the railway unions officially, led to a three-day locomotive engine drivers’¹⁴⁰ strike. This strike, short as it was, disrupted supplies of mail, water, fresh food, fodder, and other essentials to the goldfields, including transport of wood fuel to the mines. (By contrast, the five-week-long lumpers’ dispute had never posed a threat to goldfield supplies.) East Fremantle politician, J. Holmes, and the Rev. G. Wheatley mediated the railway dispute, after the striking men agreed to submit to arbitration, in response to appeals by goldfields municipal councils and, ironically, the Kalgoorlie Chamber of Mines. In the wake of the strike, the Minister for Railways continued to deny railway unions recognition, and railway management continued to seek to control workers by means of increasingly restrictive internal regulations. The department also flouted the strike settlement agreement.¹⁴¹ Within weeks of the men’s return to work, the strike threatened to erupt again.¹⁴² Later, the engine drivers concluded that they had buckled too early to public

135. *WAPD*, 14, p. 1333.

136. *Ibid.*, p. 1332.

137. *Kalgoorlie Miner*, 5 September 1900.

138. For the opposition of the Perth Chamber of Commerce to the 1899 Bill see its *Annual Report [...] for the Year Ending 30 June 1899* (Perth, WA, 1899), also *West Australian*, 11 October 1899.

139. The session did not begin until 15 August 1900.

140. The Railway Employees’ Union was involved to the extent of refusing to do “loco work” during the strike, but did not itself come out on strike (Railway Employees Union, *Minute Books*, 9 January 1900).

141. *Western Argus*, 26 August 1900.

142. *Kalgoorlie Miner*, 23 January 1900 and 30 January 1900.

pressure, before their grievances concerning union recognition and injustices to their members were fully resolved.¹⁴³

This three-day-long railway strike of January 1900 was, more than any other dispute, the catalyst for compulsory arbitration legislation in Western Australia. The extent of the government's anxiety about this short strike and the possibility that it would recur can be gauged from the intensive police surveillance of railway workers in mid-January 1900, and for several months thereafter, to assess whether a new railway strike was planned, as well as to monitor adherence to regulations that prohibited railway employees engaging in politics or airing grievances to any but their superiors in the service. The surveillance revealed "very private" arrangements between the railway unions and lumpers to prevent use of railway shed hands to replace striking lumpers during future troubles.¹⁴⁴ (During the lumpers' dispute, the government, in attempts to break the strike, had repeatedly ordered railway shed hands to take the place of striking lumpers.)¹⁴⁵ Such an arrangement between the two unions, and the level of organization it implied, raised the spectre of more extensive and damaging future conflicts, involving both the railways and the wharves. The implications for the goldfields mines and population as well as for the government were serious, especially before an election, and more especially so since the government's own workforce was involved.

Also playing a role in the considerations of the government may have been the concern that invariably in major, and even some minor, industrial conflicts police played an important role on the side of employers, thereby enraging labour.¹⁴⁶ The magistracy, too, inevitably involved the state in industrial disputes when it granted mining companies security from forfeiture (that is exemptions from labour conditions) during strikes, leading to accusations that the state was chipping "into an industrial dispute to help the side with the boodle".¹⁴⁷ Such obvious interventions on behalf of employers undermined any claims the government could lay to being the worker's friend¹⁴⁸ or even to being an impartial arbitrator between capital and labour. Such perceptions were especially damaging to the government's popularity in predominantly working-class goldfields

143. *West Australian*, 6 February 1900.

144. H. Mann to W.C. Lawrence, 10 February 1900; also W.F. Hopkins to E.G. Back, 19 March 1900, "Inspector Drewry, Railway Strike at Fremantle Rumours as to Repetition of", 18 January 1900, Police Department, 231/1900, SROWA Acc. 430, AN 5/1.

145. Vanden Driesen, "Confrontation and Reconciliation on the Waterfront", pp. 33–34; also *Kalgoorlie Miner*, 20 March 1899, which reports the refusal of shed hands to cease working.

146. See, for example, *WAPD*, 14, 1899, p. 1172.

147. *Murchison Advocate*, 5 August 1899.

148. That it was attempting to appear so is evident from the warning sounded by Vosper (*Sunday Times*, 30 September 1900): "[...] A word to the Worker: since when has the Forrest Ministry become the workers' friend? [...] the sweets of office are in the cupboard and one of the keys is in the breeches pocket of the AWA".

electorates, which, some believed, would decide the next election.¹⁴⁹ Compulsory arbitration legislation, on the other hand, was a very popular measure in the goldfields.¹⁵⁰

Apart from these immediate considerations, and perhaps equally important in government calculations, was the need to bring open industrial warfare under control, since instability created by industrial clashes could undermine Western Australia's creditworthiness¹⁵¹ and the reputation of its mines, already affected by adverse publicity about mismanagement and share manipulation. There were, consequently, multiple reasons why Forrest would wish to introduce a compulsory Conciliation and Arbitration Act in late 1900. At the same time, in introducing the Bill, he had to face his own conservative rural constituency, who wished to ensure their exclusion from the Bill,¹⁵² a fractious gold-mining industry and a Minister for Railways spoiling for a fight with the railway unions and implacably opposed to conferring recognition on them by including them in the scope of the arbitration legislation.

When the Bill was reintroduced, on 29 August 1900, it was in a pre-election atmosphere. This time Forrest had provided an advance draft of the Bill to the TLC, to mining companies and to Chambers of Mines, but not, apparently, to other employers – a fact underscoring the importance of the mining industry in his considerations.¹⁵³ The Chamber's proposals for amending the Bill were placed on the notice paper by A.E. Morgans, MLA.¹⁵⁴ They included a narrow definition of "worker" that sought to confine the scope of the Bill to male, over-twenty-one-year-old workers who were not apprenticed and were either casually employed (that is dischargeable at short notice) or on contracts for less than a month. (Some argued that the last provision aimed to exclude all skilled workers from the Act, though this remains uncertain. The Opposition would later allege that such a definition allowed employers to evade the Bill by choosing the

149. *Kalgoorlie Miner*, 5 June 1900; also *Sunday Times*, 30 September 1900. See also Vosper's claim that the Government was "trying to get the hump [of the Goldfields cat] down" (*WAPD*, 1900, 17, p. 88).

150. See, for example, *Kalgoorlie Miner*, 21 August 1900 (Editorial).

151. Concern over the impact of industrial disputes on the state's creditworthiness was clearly expressed over a Southern Cross strike in 1892 which, it was feared, would affect the government's London credit rating (Crowley, *Big John Forrest*, p. 114). The same concern was implicit in several of the parliamentary speeches supporting the 1900 Arbitration Bill, as here in Briggs's: "[...] and the State should intervene to prevent industrial war, which might, like the last railway strike, inflict an immense amount of mischief on noncombatant and dependent interests, and obstruct the whole progress of the colony". (*WAPD*, 17, p. 1008, emphasis added).

152. They were effectively excluded by virtue of the complete absence of union organization in the agricultural sector at that time.

153. *WAPD*, 17, pp. 344, 564.

154. *WAVP* 1900, 1, Legislative Assembly, Notices and Orders of the Day, 25 September, pp. 86–89; 26 September 1900, pp. 97–99, 106–107.

method of engaging the worker.)¹⁵⁵ The Chamber also wished to introduce a high registration fee, of £200, for unions of workers as well as a £50 deposit to secure costs when moving the Court of Arbitration. The registration fee would have been a barrier to the registration of all but a small number of unions of workers.¹⁵⁶ The Chamber further proposed an impossibly stringent procedure for referring disputes to Boards of Conciliation, requiring a vote by ballot of the total registered union membership to be won by a three-quarters majority. This provision would have prevented a large union like the AWA from referring disputes to the Conciliation Board as its membership was dispersed geographically and also to some extent itinerant.¹⁵⁷ (Blocking access to conciliation was important since a party's access to the Arbitration Court was via an unresolved dispute referred from the Conciliation Board.)¹⁵⁸ The Chamber also suggested limiting the length and scope of inquiries under the legislation and securing "freedom of contract", meaning the right to pay nonaward rates to nonunion labour and to isolate such labour from flow-on effects from the arbitration system.¹⁵⁹ Finally, the Chamber sought to confine the Arbitration Court's considerations in wage disputes to the following heads:

- (1) the requirements for a "living wage" ("a term [the Chamber had taken] from some of the home statutes"),¹⁶⁰ which it defined as a wage that should be sufficient for a worker, his wife and three children, and, if a bachelor, sufficient to enable him to marry;
- (2) allowances particular to the district in which the work is undertaken;
- (3) the danger of the work undertaken;
- (4) skill required for the work;
- (5) the cost of living.¹⁶¹

In proposing these provisions, the Chamber, with considerable foresight, was making a systematic attempt to establish and delimit the general criteria on the basis of which wages would be determined by the Arbitration Court. Contrary to many of its contemporaries, the Chamber focused on the arbitration clauses rather than the conciliation provisions of

155. *WAPD*, 1900, 18, p. 1963.

156. According to McIntyre, "of the fifty-two unions supplying financial statements with their registration in 1901, only nine had balances greater than £200" (McIntyre, "Development of Trade Unionism in Western Australia", p. 122, fn. 37).

157. *West Australian*, 17 September 1900.

158. Except where both parties agreed to approach the Court "in the first instance" (64 Vict. No. 20, c. 52).

159. *WAVP*, 1900, 1, Legislative Assembly, Notices and Orders of the Day, 25 September, pp. 86–89. See also *WAPD*, 18, p. 1824.

160. *WAVP*, 1900, 2, A17, p. 11.

161. *Ibid.*, pp. 10–11.

the Bill. Its concern, couched within the liberal discourse of equity and harmony, even at this early stage was clearly for consistency and predictability in the Court's decisions. That the Chamber advocated the concept of the "living wage" many years in advance of the concept's institutional incorporation in Australia indicates the perspicacity of the Chamber's legal adviser, Norbert Keenan, which would be displayed repeatedly in the future, especially in his guiding of the Chamber's relations with labour. Whether the Chamber's espousal of criteria for determining wages was also an attempt to establish "an automatic means of regulating wages", thereby seeking to reduce the importance of trade unions, is impossible to infer from the available evidence.¹⁶² Significantly, the Chamber's proposed amendments indicate a new level of forward collective thinking in key industrial matters and show the Chamber beginning to function as a fully organized employer body.

Unionists' three main proposals for amending the legislation were, at this stage, inclusion of "partnerships, companies and heads of Government departments in the definition of employers",¹⁶³ altering "workmen" to "workers" in the definitions under the Bill so as to include female workers, and "obliterating" the registrar's power to publish union balance sheets.¹⁶⁴ Delegates at the August 1900 Trade Union and Labour Congress debated whether to settle for the Bill as Forrest proposed it, imperfect though it was, or whether to fight to introduce a long list of amendments, and thereby maybe imperil the Bill. Some union leaders, anxious to have the legislation passed, argued for expediency,¹⁶⁵ expecting to be able to amend the legislation "with the labor members they expected to return to the next Parliament".¹⁶⁶ While those arguing for principle prevailed at first, under the apparent threat to the Bill from a potential political crisis arising from the no-confidence motion against Forrest, labour's leadership succeeded in uniting the Congress behind the motion to have the Bill passed speedily. To ensure the Bill's passage, the Congress also resolved to threaten parliamentarians obstructing the Bill with the enmity of labour (that is with running candidates against them at election time). The Congress determined on a speedy passage of the Bill even if this should mean "that the railway employees should stand out [of the scope of the

162. See V.L. Allen, "The Origins of Industrial Conciliation and Arbitration", *International Review of Social History*, 2 (1964), pp. 235–254, 252–253, for a discussion of the effect on English nineteenth-century trade unions of the adoption of such "self-adjusting principles" in wage regulation.

163. *Kalgoorlie Miner*, 18 August 1900.

164. *Ibid.*

165. *Ibid.* See also earlier AWA reluctance to amend the Draft Conciliation and Arbitration Bill (*Kalgoorlie Miner*, 27 June 1900).

166. *Ibid.* This was somewhat optimistic, considering the composition of the Legislative Council.

Bill]”.¹⁶⁷ Consistent with the Congress resolution, Vosper, one of labour’s leading liberal supporters in Parliament, promised during the parliamentary debate that the Opposition would not press labour’s amendments.¹⁶⁸ This left the responsibility for wrecking the Bill, should they choose to do this, fully with labour’s opponents.

The Chamber of Mines lobbied vigorously for its amendments, sending copies of its proposals to the Premier and every Member of Parliament. Twice it dispatched a representative to lobby parliamentarians personally. As the Bill began its progress through Parliament, parliamentarians received circulars from both employers and unions and a debate developed between unions and the “Employers’ Association” in the press.¹⁶⁹

Under the banner of the “Employers’ Association”, some unity, but also some further differences, emerged in major employers’ camps. For example, the “Employers’ Association” opted for a single high financial barrier to use of the Court, but for no additional registration fee. Unconcerned with the finer differences between employers, the newly launched *Westralian Worker* declared that all employers’ amendments were intended “to render the measure nugatory”.¹⁷⁰

The 1900 parliamentary debate

As the Arbitration Bill tortuously wound its way through the two parliamentary chambers and repeatedly between them, some members responded to the “class legislation”¹⁷¹ before them as the employers they were. Thus they attempted to include all government workers in the scope of the Bill so as to impose on the government what they perceived as the disadvantages private employers would suffer under the Bill.¹⁷² They were unsuccessful. In fact, even the Railway Department was only partially included, clerical workers being excepted, which contributed to another railway strike within less than a year.¹⁷³ Tensions arose among members over the conflicting goals of obstructing unions’ access to conciliation and arbitration on the one hand, and of ensuring a maximum number of unions being incorporated into the arbitration system on the other, thereby reducing the likelihood of strikes. Complicating this tension was the political imperative of producing a bill that would not “invite strenuous

167. *West Australian*, 17 August 1900.

168. *WAPD*, 17, pp. 612, 622.

169. *West Australian*, 18 September 1900.

170. *Westralian Worker*, 21 September 1900.

171. *WAPD*, 1900, 17, p. 684.

172. See, for example, *ibid.*, p. 623.

173. *Ibid.*, 19, p. 2399.

efforts for amendment before many months were over”,¹⁷⁴ that is once labour entered Parliament.

The general debate reflected a preoccupation with the railway strike and the trouble in the Railway Department.¹⁷⁵ It also acknowledged the level of organization of capital and labour, and by implication, the increasing “social and political significance of wage conflicts”¹⁷⁶ ensuing from this level of organization. Of the Chamber of Mines’ key amendments, at first none passed the Legislative Assembly, the members of which faced an election in early 1901. However, the *Westralian Worker*’s joy at the House having “jumped with both feet on Morgans’ little list”¹⁷⁷ was premature.

It was in the Upper House, which was not threatened by the approaching election because its members were elected by rotation, that amending the Bill according to the Chamber of Mines’ wishes proceeded in earnest. The chief proponent of the Chamber’s amendments was R.S. (Dickie) Haynes, a solicitor, whose electorate included the Murchison Goldfields. Other goldfields members assisted him. Advocating the government position was J.W. Hackett, MLC, considered to be Forrest’s henchman,¹⁷⁸ an editor and part owner of the influential daily newspaper, *The West Australian*. Hackett was personally opposed to compulsory arbitration,¹⁷⁹ but nevertheless urged the House to recognize that “the day of organized labour [was] now at hand”,¹⁸⁰ and to support the Bill. He claimed that the legislation “had been introduced principally to meet the circumstances of the Goldfields”,¹⁸¹ and warned those considering wrecking the Bill that “if the Bill were defeated now, they would get far worse terms in future Parliaments”,¹⁸² once labour were elected to the legislature. To Haynes, who argued that the Legislative Council (with its restricted franchise, which was based on property qualifications and plural voting),¹⁸³ could stem the tide of future, more extreme, arbitration legislation, Hackett explained that the Council must bend to public opinion and that “[i]f this Council chose to put its foot down and oppose the wishes of the whole community – well, the Hon. Member would

174. *Ibid.*, 18, p. 1768.

175. *Ibid.*, 17, pp. 565, 627, 698, 887.

176. Rudolf Hilferding, *Finance Capital: A Study of the Latest Phase of Capitalist Development* (London, 1981), p. 361.

177. *Westralian Worker*, 5 October 1900.

178. Geoffrey Bolton, “A Trinity Man Abroad: Sir Winthrop Hackett”, in Bob Reece (ed.), *The Irish in Western Australia*, Studies in Western Australian History, 20 (Nedlands, WA, 2000), pp. 67–80, 73.

179. *WAPD*, 18, p. 1767.

180. *Ibid.*, 17, p. 1005.

181. *Ibid.*, 18, p. 1816.

182. *Ibid.*, pp. 1767–1768.

183. F.R. Beasley, “The Legislative Council of Western Australia”, *Res Judicatae*, 3 (1946–1947), pp. 149–154.

remember the old adage about Stevenson and the cow crossing the rails in front of the locomotive: it would be ‘varra bad for the coo’”.¹⁸⁴

The Council referred the Bill to a seven-member Legislative Council Select Committee chaired by R.S. Haynes, which included three goldfields members, one of whom, T.F. Brimage, was an active member of the Chamber of Mines.¹⁸⁵ Solicitor J.M. Speed, was the only labour man on the Committee, having recently been proposed as member of the West Perth branch of the Political Labor Party of Western Australia.¹⁸⁶ The composition of the Committee should have somewhat pacified overseas mining interests, who, while preferring to see the Bill abandoned, had petitioned that if the Bill were regarded as indispensable, it be “referred for revision to a Special Commission upon which the great body of Western Australian mine owners shall be adequately represented”.¹⁸⁷

The Select Committee of the Upper House

The Select Committee of the Legislative Council took evidence from Richard Hamilton, the President of the Chamber of Mines, and from the Chamber’s legal adviser, Norbert Keenan,¹⁸⁸ who was also a member of the Chamber’s Executive. No other employer organizations were called or represented. This was consistent with the deference to the gold-mining industry and the attempt to accommodate its wishes, but also with the primary intention to have the Bill address conditions in the mining industry. It also conformed with the strategic role the Chamber assumed in representing the interests of capital generally, a role it continued to play to some extent until the emergence of the Western Australian Employers’ Federation in 1913.¹⁸⁹ Two unionists, J.W. Diver (coastal Trades and

184. *WAPD*, 18, p. 1767. Hackett was referring to the reply George Stephenson, father of the locomotive, made to a committee of the House of Commons, when asked whether a cow straying upon the lines in the way of an engine advancing at the rate of nine or ten miles an hour, would not create “a very awkward circumstance?” His reply was: “Yes, very awkward for the coo!”. Robert Thurston, *A History of the Growth of the Steam Engine* (New York, 1878), ch. 4, (e-text <http://www.history.rochester.edu/steam/thurston/1878/Chapter4.html>).

185. COM, *Minute Books*, 4, 17 January 1901.

186. *Westralian Worker*, 5 October 1900.

187. *WAVP*, 1900, 2, Paper A32.

188. A Dublin-born and trained barrister, Norbert Keenan, undertook much work for mining companies and their staff through his flourishing Kalgoorlie practice. Mayor of Kalgoorlie between 1901 and 1905 and Liberal representative of the seat of Kalgoorlie in 1905, his legal and political career spanned several decades. Later a QC, he was known for a somewhat uncompromising temper. See David Black, *Biographical Register of Members of the Parliament of Western Australia* (Perth, WA, 1990), p. 110; B. Sewell, *The House of Northbourne Parkers: Pioneers of Western Australia* (Goomalling, WA, 1983), pp. 86–87; Nairn Bede and Geoffrey Serle (eds), *Australian Dictionary of Biography* (Melbourne, VIC, 1985), vol. 9, p. 545).

189. For example, the Chamber participated on behalf of Western Australia in founding national employer bodies (COM, *Minute Books*, 5, 20 July 1904) and took part in the meetings of such

Labour Council) and Fergie Reid (Secretary of the Coolgardie branch of the AWA), also appeared before the Committee.

The process of taking evidence was, in the main, a formality, in which Select Committee members prompted Keenan and Hamilton to provide their justification for the amendments the Chamber had proposed. Only Speed challenged this evidence, but with little success. Keenan's testimony was in line with the industry's strategy towards the Bill: to limit the scope of the Bill as much as possible, and to place procedural and financial obstacles in the way of unions of workers resorting to arbitration. The exclusionary definition of "worker", the insistence on security of costs and the referral to the Court by a majority ballot vote of total union membership constituted the core of demands of mining employers. Further, they demanded a guarantee for "freedom of contract" and a limit on the heads under which wage fixation could proceed, as had been put forward by A.E. Morgans, MLA in the Lower House. Signalling to the Select Committee the inopportune timing of the Bill, Keenan also explained that arbitration, once in place, would tend to restrain or "check" wage movements in whatever direction, and since wages in Western Australia presently were "possibly at a maximum",¹⁹⁰ the Western Australian Bill would work to the disadvantage of employers.¹⁹¹

Both Keenan and Hamilton insisted in their evidence that they preferred no legislation and the risk of strikes to a Bill that did not include provisions for securing penalties and costs from unions of workers, essentially declaring this to be their "bottom line". The role of the two worker representatives was limited, as far as the Select Committee was concerned: they were goaded into replies which according to some Committee members showed that labour agreed with the employers' amendments,¹⁹² a claim the AWA was forced to disown.¹⁹³

The Select Committee's final recommendations were, in the main, faithful to the gold-mining industry's wishes. The only industry amendments the Select Committee rejected were the concept of a "living wage",¹⁹⁴ proposals to include guarantees for freedom of contract in the Bill, and an extension of the scope of the Bill to agreements between employers and individual nonunionized workers. Quite gratuitously,

bodies. It contributed to national employer initiatives (for example legal challenges to Federal Arbitration Court rulings) and informed national bodies about the general Western Australian industrial situation (*ibid.*, 28 November 1904).

190. *WAVP*, 1900, 2, A17, p. 13.

191. For additional, circumstantial evidence that mining employers wished to delay the time the Act came into operation, see fn. 205.

192. For example, *WAPD*, 18, pp. 1703, 1709–1710, 1761, and especially 1818–1819; also *ibid.*, 1900, 2, A17, p. 3.

193. *Kalgoorlie Miner*, 24 November 1900.

194. Haynes misunderstood the concept, considered it impractical and therefore rejected it (*WAPD*, 17, pp. 926–927).

Haynes made it known that any attempt to introduce a “preference to unionists” clause would lead him “to use all his power” to wreck the Bill.¹⁹⁵

In their subsequent protracted progression through the Upper House, then between the two Houses, the twenty-four amendments proposed by the Select Committee were progressively diluted. Select Committee amendments that survived the Upper House debate were the restrictive definition of “worker”, legal representation without the consent of both parties, and a sliding scale of security for costs. Referrals of disputes under the Act were to be by vote (ballot or proxy) of a simple majority of registered union membership, not, as the Chamber had originally demanded, by a three-quarters majority of balloted total registered membership. The Lower House modified the Legislative Council’s amendments further by halving the sliding scale of security for costs and denying lawyers acting for the parties’ recovery of their fees through the Court. Ultimately, none of the core Chamber amendments survived as proposed. Nevertheless, even in their diluted form, they were sufficient to limit the usefulness of the Act to unions, most of which would balk at the cost and financial risk of arbitration under the 1900 Act.¹⁹⁶

The London petition

The local Chamber of Mines was not reconciled to the legislation, notwithstanding its attempts to modify the Bill to its advantage. Even less favourably disposed to the initiative were the London boards of overseas mining companies, who, in October 1900, brought their collective weight to bear on the colonial government to prevent the dominance of their economic interests being eroded by state regulation of wages. In the process they demonstrated that the London company representatives were unaware of the implications of the political, social and industrial changes in the colonial environment on the eve of Federation. Nor did they appear to appreciate that a new relationship had emerged between them and their colonial agents, the mine managers, as the industry shifted to productive deep mining in the new political and social environment.

On 25 October 1900, before the Select Committee of the Legislative Council had reported on the Bill, a large deputation from the Incorporated London Chamber of Mines provided the Agent-General in London with a petition against the Bill, to which seventy-seven mining and financing companies with interests in Western Australian mines were signatories. They essentially asked for the Bill to be withdrawn. The twenty-eight-

195. *WAPD*, 18, p. 1822. A “preference to unionists” was an amendment unionists had proposed (*West Australian*, 18 September 1900), but on which they had not insisted.

196. Dufty, “Genesis of Arbitration”, p. 558, also Table 1, p. 557.

person deputation included many of the bigger names among British investors and speculators in Western Australian mines. If their arguments are to be taken seriously, they were ignorant of the most elementary facts concerning the Arbitration Bill and the colony's political and social life. For example, they complained about lack of consultation on the Bill, which they believed had been introduced into Parliament by labour. They belittled the representation they received in Western Australia from their mine managers and agents and seemed unaware of the collective activities undertaken on their behalf by this grouping. Mainly, however, they perceived the Bill as an attack on their status, privilege, and economic advantage. Thus, they objected to being up in court against "propertyless" workers from whom it would not be possible to exact penalties and feared the legislation would interfere with the exercise of the control "which the value of their interest justly entitled them to do".¹⁹⁷ They considered the Arbitration Bill unnecessary, as there had not been enormous strikes in Western Australia. More than once, they threatened a capital strike.

In response, Agent-General, E. Wittenoom, delivered an elementary lesson in the new politics of the colony, soon to become the State of Western Australia. He explained that the Bill was intended to prevent strikes, and that Western Australia had had two strikes already, "with the most disastrous results", the lumpers and the railway strike, the last, in particular, illustrating the "extreme harm that can be done to every industry in the colony" by such a strike. Implying that the government was acting in the petitioners' long term interests, he also emphasized the political reality of a more democratic Parliament and the need for politicians to take "some notice of the desires and wishes of those whom they represent". Contrary to their belief, he said, there had been consultation with mining companies and the (local) Chamber of Mines, and, even more importantly, the mining industry had several representatives in the colonial Legislative Assembly and a larger number yet in the Legislative Council. He contrasted the poor representations the mining industry had made to government with that of the workers and advised them to work with their representatives. "[The government] have watered [the Bill] down as much as possible",¹⁹⁸ he reassured them, but more would be done in the Upper House. He explained that the government, who had introduced the Bill, would find it difficult to alter on its own initiative, and supplied them with the names of the representatives through whom they should work. Apparently only one of the complainants, W.H. Trewartha-James, had seen the amendments the Chamber of Mines had proposed (which, he considered did not go far enough) and was aware that

197. [Petition], Agent General, Conciliation Bill. Protest from London Companies against Forwarding, 27 October 1900, Premier's Department, Files 1564/1900, SROWA Acc. 1496, AN 2/1-4, p. 3.

198. This would have been a reference to changes to the Bill before it was tabled in Parliament.

the Kalgoorlie Chamber of Mines represented the overseas companies' collective interests in Western Australia in the matter of the Arbitration legislation. Wittenoom advised Forrest to heed the wishes of the deputation (that is abandon or defer the Bill). Forrest refused, arguing that the "necessity for the Act [was] so great that it has not been possible to postpone it". He reassured the overseas representatives that it would work well.¹⁹⁹

This episode is important in several respects in the history of the emergence of compulsory arbitration legislation in Western Australia. First, it illustrates that key overseas mining investors at that stage perceived their colonial involvement in purely short-term financial terms and that they expected that their financial control would automatically translate to control over labour. Second, the interview demonstrates that overseas financiers lagged in their awareness of the increasingly independent role of local mine managers and managers' expanding activities as they dealt with local contingencies. Most importantly, it shows the colonial state seeking the collaboration of capital in an attempt to legitimate, through the parliamentary process, a public policy intended to protect capital's short- and long-term interests (from which, however, the state perceived its own interests to be inseparable).

The passing of the legislation

The Western Australian Chamber of Mines' strategy in relation to the arbitration legislation was, in the final analysis, at odds with that of the London Chamber. In conveying its position on the legislation to the wider membership at its November annual meeting, the Kalgoorlie Chamber President announced that they had opted for the policy of "going for a moderately fair bill rather than oppose the Bill altogether".²⁰⁰ A week later, Keenan reassessed the situation: "the Upper House had practically adopted all the Chamber's principal amendments, and the measure as amended very nearly met the wishes of the London people".²⁰¹ However, he anticipated, as it turned out correctly, that the Legislative Assembly would not accept the Bill as amended by the Legislative Council. And, while in Perth, he had established that (under the new franchise) there were only 20,000 voters who could be considered conservative out of 90,000 voters on the electoral rolls, "the remainder representing the views of the workers". Consequently, "it was clearly in the interest of the employers that a moderate bill should be passed this session. The rejection of the

199. *Ibid.*, Forrest to Wittenoom, 3 December 1900.

200. COM, *Minute Books*, 3, 10 November 1900.

201. *Ibid.*, 24 November 1900.

measure now simply meant the postponement of the evil and that in all probability we should have a much worse Parliament to deal with".²⁰²

The Chamber's decision to allow the Bill to proceed even if it did not comply with all its wishes rather than have the Bill rejected was made in the shadow of labour's imminent election to Parliament. But the decision was at odds with the wishes of the Incorporated London Chamber of Mines. Consequently, both the Kalgoorlie Chamber of Mines and individual managers wrote to London to explain the strategy adopted. Some of the managers felt sure that "when London knew exactly what we had done, they would agree that the wisest policy had been adopted at this end".²⁰³ In other words, in what was to be one of the first of such instances, the Chamber, with a clearer understanding than the overseas directors of the changed political relations under organized capitalism in the emergent state, overruled the advice of the overseas boards. It was consistent with these developments that, once the arbitration legislation had been passed, the Chamber would ask overseas boards to give company representatives in Western Australia "complete freedom to act in Arbitration matters", warning the London boards that the Act would be operative in February 1901 and that "in order to convert the Act into an effective weapon in the hands of employers, the mine owners must act unitedly and in perfect concert".²⁰⁴

Thereafter, there was only one more, misdirected, direct attempt by the Chamber of Mines to avoid the strictures of the Arbitration Act,²⁰⁵ demonstrating that a section of the Chamber's executive was unresigned to the new legislation. In April 1901, after an internal debate within the executive, the Chamber wrote to F.W. Moorhead, King's Counsel (later a Judge of the Arbitration Court), to establish whether employers were bound to comply with the Act or "whether it could be ignored or evaded".²⁰⁶ Specifically, they sought his advice on whether the Act covered local and foreign companies equally, whether awards of the court could be enforced, whether there was a right of appeal from the decision of the Arbitration Court and whether there were any points in the Act which could be used to make it unworkable. Moorhead, however, was out of town, so his office informed the Chamber. Wisely, at a subsequent

202. *Ibid.*

203. *Ibid.*

204. *Ibid.*, 20 December 1900.

205. A further delay in the application of the Act involved the nomination of C. Jobson to the position of employer representative to the Arbitration Court. Jobson's absence from the state following his appointment prevented the Court from hearing cases referred to it until his replacement in 1902. While there were procedures in the Act to overcome repeated absences of members of the Court, the then government chose not to apply them (Dufty, "Genesis of Arbitration", p. 558). Jobson was the mining industry's nominee to the Court (COM, *Minute Books*, 4, 15 May 1901).

206. *Ibid.*, 4, 15 April 1901.

meeting, the Chamber decided that in future all matters of the [Moorhead] kind should go through the hands of the Chamber's solicitors, that is Norbert Keenan.

CONCLUSION

This article argues that compulsory arbitration legislation emerged in Western Australia in the context of a confluence of social, political and demographic changes in the wake of the gold rushes, changes which included accelerated industrial expansion, the emergence of a mass, mainly immigrant, industrial workforce and new capitalist fractions. In 1900, the potentially explosive problems of the restive and demonstrably well-organized and strategically positioned locomotive engine drivers, together with planned wage reductions in the mines, threatened to disrupt the key sector of gold mining and a colonial economy dependent on it. High political costs were attached to such disruption, especially before or during elections on a new, more liberal franchise, in which goldfields electorates were expected to play a critical role. These and other considerations played a role in propelling Premier John Forrest into introducing compulsory arbitration legislation.

The shift of gold mining from a speculative financial phase to productive mining introduced into the colony a stratum of highly-trained professional mine managers and associated professionals with a sense of collectivity. This sense of collectivity was expressed mainly through the Kalgoorlie Chamber of Mines, the members of which represented the most productive and co-located sector of the industry. It was this group, chiefly, which secured and wielded considerable local political power. It was this group which, though it did not initiate arbitration legislation, to a large extent determined its shape and fate in the legislature. And it was this group of representatives of capital in the periphery that perspicaciously appraised the developing social and political forces within this site of British settlement.

Arbitration legislation was passed in 1900 primarily because the West Australian Chamber of Mines calculated that it was in its interest for the legislation to proceed in the last term of the Forrest government, and in the old Parliament. Admittedly, the option of rejecting the Bill outright had been made more difficult by prolonged and effective labour and liberal promotion of the concept of arbitration which, by 1900, had succeeded in generating consensus around it. However, labour's success did not extend to determining the shape and content of the legislation in Western Australia to a significant degree. In the main industrially weak and focused on gaining parliamentary representation, the Western Australian organized labour movement, dominated by goldfields unions, was, in 1900, fearful of the pain, danger, distraction, and possible expense attendant on



Figure 4. “Very awkward for the go-between”. Detail of a cartoon on arbitration, by Ben Strange. On the back of the man standing on the railroad track in-between the rushing trains it reads “arbitration”.

From *Western Mail*, 1 November 1902; courtesy of Battye Library

industrial battles, no doubt more so before and during an election campaign. So concerned was it to avoid these risks that it was prepared to accept an ineffectual Arbitration Act, even one that excluded the railway unions. But even had labour fought strongly for a more effective Act, examination of the process by which the legislation passed suggests that the unworkable form of the Act was a condition of the Bill’s passing, a condition if not prearranged, then at least assumed between government and capital.

In due course, as L.B. McIntyre began to document, Western Australian organized labour would discover the difficulty of amending the Arbitration Act, the slowness of proceeding under it, the crippling financial burden of arbitration hearings, the legalism of the proceedings, the capriciousness of some of the Court Presidents’ decisions, the constraints the Act imposed on union organization by discouraging industrial unions such as the AWA, and much more.²⁰⁷ A minimalist union position would still hold that Arbitration Court wage cuts that did eventuate were lower than those that would have been imposed on weak unions in a direct confrontation with capital at the turn of the century and for some years thereafter.²⁰⁸ Union leaders also continued to believe that the State Arbitration Act, imperfect though it was in 1900 and continued to be even

207. McIntyre, “Development of Trade Unionism”, chs 5–7.

208. *Ibid.*, p. 219.

after several further amendments, was preferable to a system of wages boards which did not recognize unions as parties to disputes.²⁰⁹

Finally, how does this article's description of the inception of arbitration in Western Australia as a state-initiated and state-driven collaboration with opportunistic capital, compare with the existing Australian historiography of such events?²¹⁰ It agrees with Stuart Macintyre's analysis to the extent that it does not accord primacy of agency in the adoption of arbitration in Australia to either capital or labour. It also supports Macintyre's interpretation in its emphasis on the role of the state in the process of passing the legislation. It diverges from Macintyre in demonstrating a close correspondence of interest between the state and gold-mining capital at a period in Western Australia's development dominated economically essentially by a single industry. The Forrester government, like other Australian nonlabour governments, may still have, as Macintyre claims, "implemented a system [of arbitration] of [its] choice (subject to amendment or rejection in the upper house)"²¹¹ and done so when it chose.²¹² However, to a large extent, the exigencies of Western Australia's dependence on the gold-mining industry limited these choices, as did the specific political arrangements, especially in the Western Australian Upper House, in which the gold-mining industry had both significant support and representation. Thus, it was inevitable that, in spite of several years of highly effective agitation by labour and its liberal sympathizers and notwithstanding labour's growing electoral power, the first Australian Conciliation and Arbitration legislation proved a disappointment to workers and their leaders.

209. *Ibid.*, pp. 259–260.

210. It has not been possible to engage here in comparative analysis extending beyond Australia. However, I note that this study is relevant both to the debate about Charles Tilly's model for the emergence of citizenship rights (including social rights) which emphasizes the "struggle, self-interest, and inadvertence involved" (Charles Tilly, "Where Do Rights Come From?", in Lars Mjøset (ed.) *Contributions to the Comparative Study of Development: Proceedings from Vilhelm Aubert Memorial Symposium 1990*, (Oslo, 1992), pp. 9–36, 26), and to alternative hypotheses. (I am grateful to an anonymous member of the Editorial Board of *IRSH* for alerting me to the Tilly reference.)

211. Macintyre, "Neither Capital Nor Labour", p. 193.

212. *Ibid.*