Bringing in the Inspector: the Framing and Enforcement of the Early Factory Legislation in Britain, 1825-1900

Per Bolin Hort

1996:14
Preface

The road to the completion of this text has been uncommonly long and winding. The major points on the enforcement issue were written during some intense and sleepless nights in Edinburgh in the early spring of 1987, and the final additions and alterations have been made almost nine years later, in the autumn of 1996.

At this moment, I would like to express my gratitude to Dr. Roger Davidson, Edinburgh University, and Dr. Ingemar Norrlid, University College of Karlskrona, for encouraging me during the initial stages of my work on the British Factory Inspectorate. I am also grateful to Dr. Colin Heywood, University of Leicester, for several discussions on French labour legislation and its enforcement during the 19th century.

Finally, to Professor Bengt Sandin and my former colleagues at the Department of Child Studies, Linköping University, I want to express my deep gratitude for all the stimulating and thought-provoking seminars we have had together during these last few years.

Stockholm, November 1996

Per Bolin Hort
Part I

The Making of the British Factory Legislation, 1825-1834,

The question of child labour in textile factories was a recurrent issue in British politics during the early decades of the 19th century. In fact, during the turbulent politics of the early 1830s the issue of 'infant slavery' in the textile mills was an issue which threatened to make or break governments. This fact leads to a row of questions that need to be asked. How can we explain that child labour in factories could emerge as a major political question? Why was this kind of child labour perceived, and formulated, as a major problem? Which were the social forces behind the child labour agitation? In what way was the issue resolved politically? How was the actual legislation on industrial child labour constructed?

I

The perception of child labour in factories as problematic in the early 19th century indicates that a major change in mentalities had taken place. Material from the 18th century abounds with references to child labour in overwhelmingly positive terms. In the heyday of mercantilism, child employment was seen as a way to increase the wealth of the nation, while at the same time disciplining the children to a life of industry. As the saying went, "the devil finds use for idle hands". The main concern of the day was, in fact, not the labour of children, but their unemployment.¹

While child labour in agriculture, proto-industrial trades, and small workshops continued to be perceived as unproblematical in the early 19th century, this was not so with the factory employment of children. From 1800 and onwards, a growing public opinion focussed on the factory children, and demands for government interference and protective

legislation became more frequent. Why was factory labour singled out as particularly unsuitable for children? There were probably several reasons for this. The sheer scale of the new industrial enterprises, with hundreds of small children brought in as "apprentices" from urban poor-houses to work the powered machinery, was increasingly seen as "unnatural". These children lacked the supervision and care of parents at the workplace: a fact which separated factory work from the "family-unit" organisation of labour in agriculture or proto-industry.

In the factories, pauper children were subjected to the power, and sometimes brutality, of mill-owners, overlookers, and matrons. The absence of parental control over the factory children appeared to be in stark contrast to central tenets of the kind of family ideology which was rapidly becoming predominant within, primarily, middle-class and professional circles. Here, childhood was increasingly seen as a protected period in life, dominated by family life and maternal care. Influenced by the early Romantics, the conception of childhood became tied to notions of innocence, vulnerability, and even a closer proximity to heaven.

The contrast between these middle-class conceptions of childhood and the actual circumstances of factory labour for children was indeed a strong one. This perceived disparity served to mobilise middle-class opinion in the "factory question"; an opinion which furthermore increased greatly in political importance after the passing of the 1832 Reform Bill. In the same way, middle-class conceptions on childhood, what it should and should not contain, continued to supply political ammunition for campaigns on the behalf of poor, vagrant or underfed children during the rest of the 19th century.

3 Pinchbeck and Hewitt have argued that it was mainly the concentration of children in the textile factories which aroused the sentiments of the reformers, not that children were in any sense better treated in agriculture or in small workshops. However, I believe that they have underestimated the new and threatening quality of the social relations in the factory setting as they were perceived by critical contemporaries. See Pinchbeck, I and Hewitt, M (1972-73): Children in English Society, pp. 390-413, but esp. p. 403.
Middle-class conceptions of the family and a "proper" childhood continued to permeate the campaign against factory child labour in the early 1830s, in spite of the fact that the early recruitment of indentured pauper children had now been abandoned in favour of the employment of "free" wage labour. In addition to the criticism directed at the mill-owners, campaign retorics was now often directed at the "avaricious" working-class parents who sent their children to the mills. When measured against the middle-class ideals of family life, these parents simply did not fulfil their proper role as guardians.

However, changes in middle-class notions of childhood only partly explains the mobilisation behind the factory children. The British Parliament was at this time still dominated by an aristocracy whose main commercial interests lay in agriculture and coal. The owners of the northern textile mills, whose young labour force now came into focus, did not have an extensive representation or backing in Parliament. Since the "problem" of child labour could be narrowed down to encompass the new textile factories only, it became politically possible to invent some new legislative measures to deal with it.

II

The political movement against factory child labour was initially dominated by conservative landowners, clergy, and middle-class professionals. Their aim was to achieve some legislation which would abolish or at least regulate the use of children in factories, and for that reason it was essential to represent factory child labour as a serious problem which needed to be solved.

One way of defining child labour as problematic was to emphasise the detrimental effects of factory work on the health and physical constitution

---

7 Some middle-class groups were conspicuous by their absence. Teachers played a very small part in the British Factory Movement in the 1830s; which is hardly surprising since Britain did not have a system of compulsory schooling for working-class children until the 1870s. In most other European countries where compulsory schooling predated industrialisation and the emergence of factory children, teachers' associations were an important part of the 'crusades' against child labour. On Britain after 1880, see Bolin-Hort (1989), pp. 211-214. For a Swedish agrarian context, see Sjöberg, M (1996): Att säkra framtidens skördar. Barndom, skola och arbete i agrar miljö: Bolstad pastorat 1860-1930, pp. 89-142.
of the children. Long working hours, the physical strain of tending incessant machinery, and the heat in the workrooms caused, it was claimed, various bodily distortions, skin diseases, and weak lungs. Regarding the process of 'medicalising' factory child labour, however, the medical profession was clearly divided. While some doctors in the textile district had played a major role in early campaigns against pauper child labour in the early mills, and a few were very active in the factory movement in the early 1830s, others kept a low profile or deferred to the local manufacturers. Medicalisation was therefore hardly the most prominent feature in factory reform campaigns.

A more common way of 'problematising' factory child labour among the reformers was to claim that it was a phenomenon, or 'social ill', on the increase, and that government interference was urgently required to check the situation in the industrial districts from deteriorating even further. However, as I have shown in another context, child labour levels in textile factories had in fact declined gradually since the late 18th century. Early factory legislation can therefore hardly be seen as the response to a growing social problem, or as a 'logical' development of early industrial capitalism, but rather as a result of the concerted efforts of a number of political actors.

However, initial attempts to legislate on factory child labour were not particularly successful. Initiatives by, among others, Robert Owen, Sir Robert Peel, and John Cam Hobhouse did result in legal enactments in 1819, 1825, 1829, and 1831, but these laws were generally disregarded. Initiatives by the Manchester mule-spinners' union and by individual mill-owners to prosecute offending manufacturers were in most instances unsuccessful, and these attempts soon ceased. In the terminology of the criminologist W. G. Carson, factory offences constituted a

---

"conventionalised" crime during this early period.\textsuperscript{12} Mill-owners did not regard the factory laws as binding, and overstepped the prescribed time limits as a part of everyday activity. Since offending mill-owners were not convicted by the local magistrates, there was no effective stigmatisation of offenders.

The obvious inefficiency of the early factory legislation was one reason behind the substantial increase in popular support in the textile districts in the late 1820s for more forceful measures. On the popular level the main aim was to achieve a legal enactment which limited the working day in factories to ten hours.

The history of the Factory Movement is well known, and I will not go into any details here.\textsuperscript{13} Still, it has to be said that the established historians of the Factory Movement have probably overstated the importance of upper-class figureheads like Lord Ashley (later Lord Shaftesbury) and Richard Oastler at the expense of the popular following among the textile workers.\textsuperscript{14}

As Hugh Cunningham has shown, the traditional histories of the Factory Movement have also tended to obscure the long-term problems of factory reform. By casting some of the movement's parliamentary leaders, especially Lord Shaftesbury, in the role of heroes in a 'success story', these historians have too easily concluded that the child labour issue was practically 'solved' by mid-19th century. On the contrary, problems concerning the employment of children in various trades which were either unregulated or very difficult to control for factory inspectors continued to emerge in Britain well into the 20th century.\textsuperscript{15}

The parliamentary leaders of the Factory Reform movement were also strongly dependent on large-scale popular support in the industrial districts. Local Short-Time Committees, dominated by Radicals and textile unionists, emerged during the factory reform campaigns. In the Lancashire


\textsuperscript{14} See Kirby and Musson (1975), pp. 347-50.

\textsuperscript{15} Cunningham (1991), pp. 8-17, 164-189. For contemporary complaints on child labour in small workshops towards the end of the 19th century, see Hird, F (1898): The Cry of the Children. An Exposure of certain British Industries in which Children are Iniquitously Employed; Alden, M (1908): Child Life and Labour, chap. 7, and Bray, R A (1911): Boy Labour and Apprenticeship, chap. 5.
context, the cotton mule-spinners' unions played a vital role in the Short-Time Committees.

The aim of the spinners was clearly not merely to limit the working day of the young workers, but to obtain a Ten Hour Day for all operatives. Their overt demands, however, were formulated in terms of restrictions on child labour. The adult operatives calculated that restrictions imposed on any part of the workforce would in practice mean a restriction for all. Since the factory children primarily served as assistants to the adult operatives, the workforce could not be easily separated.\textsuperscript{16}

These tactics left the spinners' unions open to allegations of using the child labour issue purely as a front to achieve the Ten Hour Day for themselves. While there is undoubtably some substance in this allegation, the spinners' choice of strategy should rather be seen in the context of a comparatively limited repertoire of possible actions.\textsuperscript{17} In a context where union activity was associated in the public mind with acts of violence and intimidation, and by political economists deemed to be entirely detrimental to society, it was problematic to use more straightforward union tactics.\textsuperscript{18} Moreover, since the ballot was restricted to the upper and middle classes, Radical politics with a popular backing very often had to concentrate on issues which could win at least some support among the eligible voters. Making factory reform a matter of regulating child labour, the chances of forming alliances with aristocratic and middle-class circles increased dramatically.

III

The popular pressure orchestrated by the Short-Time Committees and a generally felt discontent with existing legal provisions were important prerequisites for the enactment of more stringent factory laws. One of the reformers' main strategies was to achieve an effective criminalisation of


\textsuperscript{17} On the repertoires of popular discontent in British politics, see Tilly, C (1995): *Popular Contention in Britain, 1758-1834*. Tilly, however, does not examine the repertoires involved in the factory question.

\textsuperscript{18} Hostile attitudes towards union activity abound in contemporary parliamentary investigations, like PP 1824 V, *Artizans and Machinery: Six Reports with Minutes of Evidence*; PP 1825 IV, *Minutes of Evidence taken before the Select Committee on Combination Laws*, and PP 1837-38 VIII, *First Report from the Select Committee on Combinations of Workmen*. 
the offending mill-owners, above all by demanding the imprisonment of offenders. Richard Oastler, one of the major factory reform orators, maintained in 1832 in his usual exaggerated rhetoric that the law would only be effective if convictions resulted in imprisonment, flogging, and pillory. Denying the manufacturers who disregarded the factory legislation a place in honourable society, he designated them as lawbreakers who were "as honourable as thieves".

As Robert Gray has recently shown, the battle over factory reform was fought in languages belonging to many different discourses. Since the reform movement comprised landed gentlemen and clergy as well as operatives, it is not surprising that the different reform discourses contained conservative notions of the mutual responsibilities between master and man as well as traditional popular conceptions of 'moral economy' and more radical assertions of factory workers' right to independence and respect.

While some of the middle-class reform rhetoric focussed on the suffering, innocent child and the lamentable absence of parental protection, Tory campaigners like Oastler made frequent use of the image of factory children as 'slaves'. 'Factory slavery' and 'infant slavery' became standard expressions among the Tories involved in the campaign, who believed that they scored political points by comparing the continuing ordeal of the factory children in Britain with the newly liberated black slaves in the West Indies.

In retrospect it is perhaps not so strange that these very disparate social forces could actually unite in the defence of the unfortunate factory children. By focussing on the plight of children in obvious need of protection, only the most principled liberal economists could continue to argue that that state should not interfere. This meant that the opponents of factory reform were in dire straits to put up a defence. As the factory inspector Leonard Horner claimed in a pamphlet a few years later, the

---

19 PP 1832 XV, Report from the Committee on the Bill to Regulate the Labour of Children in the Mills and Factories of the United Kingdom, evidence of Oastler, p. 460.  
20 Infant Slavery. Report of a Speech delivered in favour of the Ten Hours' Bill by Richard Oastler, Esq, at a numerous meeting held at Preston, on the 22nd of March, 1833..., p. 6.  
22 See Cunningham (1991), pp. 75-82. They also hoped to embarrass the Whigs and the textile mill-owners, who had generally supported the abolition of slavery.
protection of children ought to be recognised even by the "most cold and severe principles of political economy".  

IV

Some unifying tendencies in the disparate reform discourses have, however, largely been ignored by historians. Irrespective of social or political background, factory reformers were united in their commendation of patriarchal relations within household and family. The emphasis on the protection of children shifted gradually towards demands for the regulation of women's work, coupled with efforts to define the women's sphere as the home rather than the workplace. The reformers alleged that the long working hours made the women operatives useless in domestic matters, being unable to cook, sew, or to fulfil basic familial duties. Such was the view of James Turner, a cotton yarn dresser, in 1832:

...when [the factory girls] come to get married, they are quite ignorant of the domestic duties they have to discharge, so much that many of them don't know how to repair their own linen, or cook their own victuals; and this renders the condition of the working classes in the manufacturing districts the most miserable of any we have to deal with, the ignorance of our females.

There were also sexual allusions that the heat of the spinning-mills caused "scantily dressed" males and females to work in close proximity. Factory work was described as an inroad to vice and prostitution. One gentry observer claimed that factory work induced young women to live "unchaste", frequent the galleries of theatres, and indulge in drink. When

23 Horner, L (1840): On the Employment of Children, in Factories and other Works in the United Kingdom and in some Foreign Countries, p. 15.
25 PP 1832 XV, Report from the Committee on the Bill to Regulate the Labour of Children in the Mills and Factories of the united Kingdom..., evidence of James Turner, p. 308.
one Glasgow mule-spinner, James McNish, giving evidence in 1833 claimed
that several former girl piecers in his workroom were now prostitutes in
the city, he consciously alluded to middle-class fears and obsessions with
the immoralities caused by factory work.27

McNish's evidence was no doubt influenced by the fact that his union
had striven for more than ten years to keep women operatives out of the
spinners' trade. These exclusion strategies on the part of the male
operatives were clearly formed in combination with the domestic ideology
embraced by the middle and upper-class adherents of the factory
movement. Lord Ashley, the prime Parliamentary spokesman of the reform
movement, saw the "domestic system" as "one of the first ordinances of
God", which had to be revived by factory legislation.28 These upper-class
sentiments on family and society constituted a considerable political force
behind the regulation of work of adult women in the 1842 Mines Act and
the 1844 Factory Act.

It was also a position which was readily embraced by the mule-spinners'
unions in Lancashire and Glasgow, being already under the threat of
displacement by the introduction of the newly constructed self-acting
mule.29 The notion of a male breadwinner supporting his wife and children
remained an important ideological theme within the British working class
for more than a century.30 This aim very often led the male operatives to
formulate demands for the exclusion of women workers in a language
clearly adapted to upper-class conceptions of the family and the role of
women.31

Patriarchy, I would argue, was not only a common theme within the
reform coalition. It was probably a unifying factor which made the

27 PP 1833 XX, First Report of ...Commissioners... on the Employment of Children in Factories,
28 Glasgow Sentinel 25/10/51, report from a public meeting with Lord Ashley in
Manchester.
30 See Seccombe, W (1993): Weathering the Storm. Working-Class Families from the
Industrial Revolution to the Fertility Decline, pp. 111-124. The specific and possibly formative
role of the early factory legislation campaigns of representing female labour as 'problematic'
should be emphasised.
31 Cotton spinners' unions continued to spread the notion of the 'unsuitable' employment
of women whenever their trade was investigated. In 1873, for instance, a deputation of
Burnley mill workers explained that no females were employed as piecers since "strong
objections would be entertained... on the ground of decency, owing to the postures
frequently rendered necessary by the work, and the scanty clothing commonly worn in
consequence of the high temperature". PP 1873 LV, Report... on Proposed Changes in Hours
movement cohesive and, eventually, successful. Naturally, there were also certain areas in common in the discourses on the plight of the factory children. As I have argued previously, the image of the suffering factory child cut across social divides and provided important support for factory reform among middle-class professionals, clergy, and landowning gentry. Actually, the emerging conception of childhood presupposed the patriarchal family roles of an economically supporting father and a nurturing, protective and domestic mother.

V

So far I have only dealt with the various discourses on factory reform; how conceptions of the plight of the children were used in the early stages of the movement. Is it possible to gain some solid knowledge on how the factory children were actually treated? Naturally, there are several problems involved in such an undertaking. The reformers claimed that instances of brutality, of overseers beating and maltreating small children, were frequent occurrences. Not surprisingly, the manufacturers generally denied these charges. Edward Baines, a contemporary historian of the cotton trade connected to the manufacturing interest, admitted that instances of cruelty had occurred in some factories, but claimed that these were exceptions rather than the rule.\(^32\)

Is it possible to come to any conclusion on this matter? One important point is that the evidence brought forward by the reformers, especially the testimony produced in the first parliamentary investigation, the 1832 Select Committee, was based on the experiences of adult operatives, very often former parish apprentices who had worked in the textile factories at the turn of the century.\(^33\) This means that, apart from other kinds of distortions, they were really giving evidence on conditions and occurrences which had taken place twenty or even thirty years before, and not the actual situation in the factory districts. As I have indicated earlier, the use of parish apprentices had declined dramatically after 1815, and by the time of the parliamentary investigations in the 1830s this system was only retained in a few minor country factories.


\(^{33}\) PP 1832 XV, *Report from the Committee*...
Indeed, it is probable that changes in production, recruitment, and supervision practices had made physical assaults on child workers less common. The transition from a factory system built on parish apprentices and hired children supervised by a few overlookers to the urban setting where the younger workers were all 'free' wage earners probably tended to make beatings both less frequent and less severe. The concentration of child workers to the mule-spinning process where they were constantly under the eye of an adult spinner probably worked in the same direction.\textsuperscript{34} This lends some credibility to the conclusion of the 1833 Factory Commissioners that the maltreatment of children had lessened compared with previous times.\textsuperscript{35}

VI

Nevertheless, the beating and overworking of small children in textile factories remained an important part of the public discourse of the reform movement. Early in 1832, an alliance between Tories and Radicals secured the appointment of a select committee on the question of child labour in factories, and also made sure that the committee was dominated by reformers. Starting the proceedings by taking evidence from witnesses in favour of legislation, the committee presented a sequence of enfeebled, stunted, and deformed operatives, whose injuries were allegedly caused by overwork and maltreatment.\textsuperscript{36} The intention of the reformers was to use the arousal of public opinion which this evidence occasioned to press for a legal enactment of the Ten Hour Day.

However, these matters were overshadowed by the parliamentary reform of 1832, and the return of a Whig majority later in that year. The new government did not support the legislation of a Ten Hour Day, mainly because the regulation of work or wages of adult operatives was an

\textsuperscript{34} For details, see Bolin-Hort (1989), pp. 35-58.
\textsuperscript{35} PP 1833 XX, \textit{First Report of...Commissioners}, p. 24. With an obvious reference to the Short-Time Committees, the Commissioners added that the maltreatment of children in the English industrial district was performed by the adult operatives who hired children as assistants. See also ibid., evidence of Humphrey Dyson, an operative cotton twiner, p. D1 101.
\textsuperscript{36} PP 1832 XV, \textit{Report from the Committee...}. Most of the doctors who appeared to give evidence were of the opinion that factory work at too early ages could cause various physical problems, but the political opponents of the committee were quick to point out that 16 of these medical men lived in London, and only 5 in the industrial towns. See Gray (1991), pp. 26-27.
absolute anathema in current political economy. On the other hand, the popular reform movement in the textile districts as well as the public opinion incensed by the revelations of the 1832 Select Committee demanded a solution of the child labour issue. Choosing to disregard the evidence of the previous committee, the government instead decided to appoint a special commission of inquiry to re-examine the question and suggest remedies.

The commissioners performed their task with great speed in spite of the resistance and partial boycott of the reformers. Demonstrations met the commissioners in the worsted district of Yorkshire, accompanied with allegations of their being "engaged in the work of Murder". In Scotland, the commissioners took part in a heated argument with the Glasgow Short-Time Committee over the purpose of their appointment. John Doherty, the spokesman of the Manchester mule-spinners, was clearly of the opinion that the investigators were instruments of the mill-owners.

The reformers suspected that the Whig government planned to introduce some superficial measure and thereby bury the question of the Ten Hour Day. However, later events show that the manufacturers were not especially happy either with the proposals put forward by the commissioners.

In this context, the political and ideological composition of the 1833 commissioners has to be taken into account. The investigation was led and dominated by persons connected to the 'philosophical radical' wing of the Whig grouping. Being much influenced by the philosopher Jeremy Bentham and his ideas on effective legislation, many of the commissioners were inclined towards an early form of social engineering. Edwin Chadwick, the co-ordinator of the investigation, later assumed the same pivotal role in poor law and sanitary reforms.

The concept of 'inspectability' had been very important to Bentham, as is also evidenced by his construction of the panopticon model of prisons. The commissioners argued that due to the concentration of factory children in distinct buildings, and their work being regulated by "military

38 PP 1833 XX, First Report of...Commissioners, p. A1 69.
39 See Kirby and Musson (1975), p. 381.
discipline", inspection was indeed possible. They also suggested a bureaucratic solution to the problem of factory law enforcement, where the reformers had merely striven to strengthen the criminalisation process by making the penalties more severe. The commissioners proposed the appointment of special factory inspectors, salaried by the Home Office and invested with powers to fine and to prosecute offenders:

The necessity of the appointment of Inspectors has been most urgently stated by those manufacturers who have had chiefly in view the restriction of the hours of labour in other factories to the level of their own. The greatest necessity of the appointment of some special agency for the enforcement of the measures we have recommended must be admitted, when it is recollected that they relate solely to the children, and are not directly conducive to the immediate interests either of the master manufacturers, or of the operatives, or of any powerful class, and are not therefore likely to receive continuous voluntary support.

The commissioners concluded that it was consistent with the principles of political economy for the state to interfere on the behalf of children, since these could not be regarded as free agents capable of securing their own interests. Exploited by manufacturers, older operatives, and even their own parents, the only likely guardian of the factory children was the state. Legislation was deemed to be required since the very long hours worked by children led to "permanent deterioration of the physical constitution" or various kinds of disease, and also because it excluded the children from the possibility of obtaining elementary and moral education. The legal working day for children below 13 years of age in the textile trades should therefore be limited to eight hours, and the minimum age set to 9. The commissioners further suggested that the children should be used in relays, and their working day thus separated from that of the adult operatives. In this way the work of the factory children would be regulated, and their hours reduced more than had been demanded by the reformers, while at the same time the law avoided the interference with the conditions of older workers.

42 PP 1833 XX, First Report of...Commissioners, p. 51.
43 Ibid., p. 68.
44 Ibid., p. 52. Even Edward Baines admitted that state intervention to check the overworking of children was justified, but argued that the work was very light. See Baines (1835), pp. 455-56.
The question of age had riddled the factory question from the start. While the reformers preferred to speak in terms of *infant* labour and to publicise cases of very young children working in the mills, their opponents instead used the term *juvenile* rather than child. In order to make legislation work, the commissioners had to suggest certain age limits, or, in other words, to define when a child ceased to be a child. The manufacturers, realising that some concessions had to be made, advocated an age limit of 10 years of age. The commissioners, however, found this unreasonable, and after some deliberation decided to suggest an age limit of 13. When a child had attained that age, the commissioners supposed that he was old enough to take responsibility for himself.  

Against the recommendations of the commissioners, Parliament chose to include young persons below 18 in the category of protected workers in the 1833 Factory Act, setting their working day to twelve hours, and also proceeded to include adult women workers in this regulation in the 1844 Amendment. Only the work of adult men in textile factories remained unregulated.  

Besides the proposals on government inspectors and the above age limits, the commissioners made some further suggestions which were duly included in the 1833 Factory Act. The factory children had to produce medical certificates, issued by a surgeon, stating that they had attained the legal age to be eligible for employment. They also had to attend school for two hours per day, and certificates of school attendance were to be kept by the employer. The manufacturers were not formally held responsible for educational facilities, but since in most instances the number of schools was insufficient, they were in practice very often forced to organize factory schools for their young workers below 13.

Incidentally, this meant that the commissioners one of the first and most binding formal demarcations on childhood. In the absence of compulsory education, the question at what age childhood was supposed to end had not previously been addressed in a formal way. Factory legislation, therefore, contributed to the mapping and, to some extent, construction of childhood which escalated in the course of the 19th century. See Hendrick (1994), pp. 21-36. For a similar discussion on factory legislation and definitions of childhood and adolescence in France, see Alaimo, K (1992): "Shaping Adolescence in the Popular Milieu: Social Policy, Reformers, and French Youth, 1870-1920", pp. 419-435.

The very substantial political obstacles in Parliament on the issue of regulating the labour of adult men is illustrated by the case of the handloom weavers, who remained unprotected in spite of severe distress and several Parliamentary investigations. See Richards, P (1979): "The State and Early Industrial Capitalism: The Case of the Handloom Weavers", pp. 94-114.
In the absence of compulsory education, the schooling provided by the early Factory Acts was the only form of elementary education which the state could force working-class children to attend. There can be no doubt that the education clauses of the early Factory Acts met with substantial support in Parliament, and they should really be seen as one important reason why the 1833 Act was actually passed. The fear of an uneducated and inflammable factory proletariat was widely felt among the classes represented in Parliament, and a measure of Christian and moral education was seen as a vehicle of societal cohesion.\textsuperscript{47} As a consequence, after 1833 the politics of factory and school legislation became very much intertwined. One of the recurrent arguments when factory legislation was to be extended to comprise new branches of industry was that the children employed in those works would be given the benefit of education.\textsuperscript{48}

Consequently, the making of the 1833 Factory Act was a very complex process which involved popular pressure, a political alliance which centered on the protection of children and patriarchal notions on women's work, and also a final draft much influenced by benthamite social engineering. In the political process on factory legislation, the manufacturer interest was isolated and marginalized by a compound of radicals, landowners, and liberals in favour of popular education and government interference.

\textbf{VII}

This interpretation of the making of the 1833 Factory Act is, however, not accepted in all quarters. Some researchers have adopted an entirely different view, claiming that the manufacturers actually played a decisive role in the making of the early factory legislation. W. G. Carson has maintained that the report of the commissioners shows the substantial

\textsuperscript{47} In the Swedish context, the work of Bengt Sandin on this issue has been very influential. See especially Sandin, B (1986): \textit{Hemmet, gatan, fabriken eller skolan. Folkundervisning och barnuppföstran i svenska städer 1600-1850}, and Sandin, B (1987): "Om skolans nu svaga makt. Barnarbetslagstiftning och folkundervisning i Sverige under 1860- och 1870-talen."

\textsuperscript{48} Leonard Horner, one of the first factory inspectors, argued along this line when proposing the extension of the 1833 Act to comprise industrial trades outside textiles. See Horner (1840), pp. 16-18.
influence of the manufacturers in the drafting of the proposals. Carson, however, does not take account of the fact that the commissioners undoubtedly wanted to give the impression that their proposals had some support among the manufacturers. Similar objections have been raised from other theoretical quarters, and I will therefore subsequently treat them in more detail.

Some attempts have been made to link the passing of the 1833 Factory Act with divisions among the manufacturers, claiming that the large mill-owners promoted the legislation as a way to impede the competitiveness of the smaller firms. Initiatives in this direction have been made by H. P. Marvel and Clark Nardinelli. Both Marvel and Nardinelli are connected to the Chicago school of neo-classical Economics, and their hypotheses are generated from a paradigm which holds that governmental interference in the sphere of production is both undesirable and ineffective. Not surprisingly, their contention is that the 1833 Factory Act was a part of a successful strategy among the larger mill-owners, especially those of Manchester, to use the state as an instrument to restrict the competition from water-powered factories in the countryside.

Is this interpretation convincing? Since it is only Marvel who has actually tried to produce any evidence in support of this thesis, I will focus entirely on his contribution. The main problem is, of course, that a substantial body of research holds that the 1833 Act was the result primarily of the public pressure initiated by the Factory Reform Movement. Marvel sets out to show that the notion of "public pressure" is inconsistent, and that the vital political force behind the legislation was the large urban manufacturers. He finds it paradoxical that the Ten Hour Bill did not pass the unreformed Parliament in 1831, while the 1833 Factory Act was made law in spite of the fact that the manufacturing interest had been considerably strengthened by the Reform Act. Therefore, he argues, the large textile mill-owners must have supported the factory legislation.

51 Marvel, pp. 380-84.
52 Ibid., pp. 385-87.
The logic of this reasoning is, however, somewhat flawed. First, this is clearly to ascribe the large textile mill-owners an influence in post-Reform Parliament which they did not possess.\(^{53}\) The English aristocracy was largely able to retain their political hegemony in spite of the changes brought about by industrialisation and Parliamentary reform. Second, Marvel overlooks the fact that the contentious issue in the Ten Hour Bill was that it would restrict the working hours of adult men, not merely that of children. Government interference to protect adult operatives was abhorred by current political economy and clearly had very little support in Parliament in the 1830s.

The 1833 Factory Act was passed precisely because it solved the dilemma of protecting the factory children without interfering with the adult workers. The commissioners suggested that the children should be organised in relays, each child working eight hours per day. Not only did this leave adult work unregulated; the limitation of child labour to eight hours instead of ten served to outbid the factory reformers in humanitarian feeling.

This explains why the 1833 Factory Act could pass the reformed House of Commons, and also why the Reform Movement lost a major part of its impetus. When the reformers could no longer use the image of the suffering factory child as a vehicle to obtain the Ten Hour Day, the conflict necessarily narrowed down to the much more contentious issue of protecting all factory operatives irrespective of age. This was an ideological battle which the reformers simply could not win.

Returning to Marvel's argument, the next step is to examine the qualitative evidence. He claims, for instance, that the vital role of the mill-owners in the 1833 investigation is substantiated by statements from Lord Ashley, spokesman of the reformers in Parliament, and some representatives of the Bradford Short-Time Committee.

I would argue that this evidence is completely useless since it derives wholly from the representatives of the Ten Hour Movement who were clearly interested in discrediting the work of the 1833 commissioners. In fact, after the 1833 Act was passed, the reformers continued their agitation by pointing out various deficiencies, real or alleged, in the legislation. This was their only chance to bring back the Ten Hour Bill on the Parliamentary agenda. It is therefore not difficult to find evidence during this period from

factory reformers claiming that the law had been framed by the mill-owners and that the factory inspectors were really under their control. I find it remarkable that neither Marvel nor Nardinelli have observed the obvious bias of these sources.

A close reading of the evidence collected by the 1833 commissioners shows that a great majority of manufacturers actually favoured a law with a minimum age of ten and no restrictions whatsoever on workers above that age. The mill-owners undoubtedly felt the pressure of popular agitation subsequent to the publication of the testimony heard by the 1832 select committee. Their main objective was to avoid the Ten Hour Bill becoming law, and in order to do so some of them were prepared to make concessions.

Even so, it is hard to find empirical traces of any vital force of large urban mill-owners wanting to implement factory legislation in the line of the Marvel thesis. Of the large Manchester mill-owners giving evidence, only one, Charles Hindley, came out clearly in favour of restricting the working day. Birley and Hoole, both substantial Manchester mill-owners, emphasised the danger of foreign competition if restrictions were imposed on the British cotton industry. G. Murray, another major Manchester manufacturer, claimed that a reduction in working hours would reduce the wages of the operatives. The main strategy of the Manchester mill-owners seems to have been their support for a legislated working week of 69 hours, which was merely a confirmation of the existing practice in their own city.

None of them advocated the working of children in relays. Henry McConnel positively stated that the inconvenience of having "two sets of hands" would lead him to reduce the employment of factory children as much as possible. Birley claimed that he was against all legal

---

54 See, for instance, PP 1837-38 XXVIII, 1st and 2nd Memorial of the Short-Time Committee of Manchester and the Surrounding District.
57 Ibid., pp. 131-32.
59 PP 1833 XX, First Report of...Commissioners, evidence of McConnel, p. E 8.
interference, but in this case he was "willing to waive my opinion in deference to public clamour". Still, he insisted that if the cotton industry was to be regulated, so should sixteen other trades which likewise relied heavily on child labour.  

Indeed, recent work by Robert Gray shows that the support for factory legislation was equally lukewarm among the manufacturers in other Lancashire mill-towns as in Manchester. He also shows that in the cotton industry as a whole, the few gestures of support for the proposed legislation that the commissioners received came primarily from relatively small manufacturers. 39 mill-owners out of 260 responded to the commissioners that they were in favour of legislation, and of these 23 were owners of relatively small factories. This hardly shows any major support for the 1833 Act among the large urban manufacturers. The empirical support for the suggestions brought forward by Marvel and Nardinelli therefore seems to be very slim indeed.

VIII

Instead, the conclusion must remain that the public and political pressure generated by the Factory Reform Movement is a major explanatory factor behind the genesis of the 1833 Factory Act. At the same time, it should be emphasised that the reform movement was welded together by common patriarchal notions of domestic ideology and the dependency of women and children on the male 'breadwinner'. The agrarian interest, middle-class professionals, and the male mule-spinners' unions, could all share in this discourse. But the actual solution of the problem, the framing of the legislative measures and the appointment of a special factory inspectorate to enforce them, was primarily the work of the benthamite commissioners.

This is not to say that other solutions or lines of development were wholly impossible. W. G. Carson has argued that the harsher penalties suggested by the reformers would have criminalised factory offences more effectively than the mere fines imposed by the 1833 Act. It is undeniable that offending manufacturers did not risk imprisonment even after gross or

60 PP 1833 XXI, Second Report of...Commissioners, p. D2 34.
repeated transgressions, and that this demonstrates the essential class character of the early factory laws. Still, the 1833 Factory Act should perhaps not be measured primarily against alternatives which were never politically possible to implement, but rather in the light of the effects that it actually had.

In a wider perspective, it should perhaps be pointed out that the British factory legislation also served as a distinct model for other industrialising countries. None of the other European or American states which introduced child labour laws could, however, compete with the British original in terms of stringency and enforceability of the legislation, and the independent position of its inspectorate.\textsuperscript{63} International comparisons therefore give further indications that the 1833 Act should be seen as an unusually strong piece of factory legislation, and that the reasons for this should be sought in the very central role that the question of factory reform was able to assume on the political scene in the early 1830s.

\textsuperscript{63} See, for instance, Weissbach (1989) on the early factory legislation in France, and Olsson, Lars (1980): \textit{Då barn var lönsamma}, on the situation in Sweden. The initial system of inspection in these two countries was based on voluntary local inspectors, who were seldom in a position to retain an independent position in their dealings with local manufacturers. Weissbach also shows that the French government clearly did not want 'over-zealous' inspectors, stressing that the inspectors should show respect for the entrepreneur and the principle of private property. Weissbach, pp. 93-94.
Part II

Government Inspectors and the Regulation of Industry: On the Problem of True Enforcement of the Early British Factory Acts

The estimation of the actual effects or level of enforcement of the early Factory Acts still causes a considerable amount of controversy among researchers. To some extent, this situation may be seen as the legacy of a historical tradition which has viewed the early British factory inspection as a great achievement. The work of Hutchins and Harrison and M. W. Thomas was concentrated on the gradual increase of governmental initiatives to ameliorate social conditions during the industrial revolution, and stressed the important roles of the factory inspectors in the enforcement of the law in spite of the resistance from mill-owners, operatives and magistrates. The prime object of study was the expansion of the inspectorate and the gradual "improvement" in factory legislation, while the more difficult issue of the true level of enforcement was largely avoided. This perspective dominated historical writing up to 1970.

During the last two decades several new directions have emerged. The earlier emphasis on the inspectorates has been criticized by P. W. J. Bartrip, who rightly claims that it is not sufficient merely to chart the emergence of certain inspectorates; it is also necessary to evaluate the actual effects of their performance. However, being intent to show that the achievements of the early inspectors have been overstated, Bartrip tends to portray all types of inspectorates as equally inefficient. This is clearly not a satisfactory approach. It has to be recognized that some forms of government inspection were more successful than others.

1 Hutchins, B L and Harrison, A (1911): A History of Factory Legislation; Thomas, M W (1948): The Early Factory Legislation.
2 See Martin, B (1969): "Leonard Horner: A Portrait of an Inspector of Factories". Naturally, there were also some dissenting voices, above all in the discussion on "the Revolution in Government". Historians like Oliver MacDonagh argued that the growth of the Victorian inspectorates was more a response to changing societal conditions than an experiment in social engineering. However, the value of that perspective is rather doubtful. See MacDonagh, O (1958): "The Nineteenth-Century Revolution in Government: A Reappraisal"; and the subsequent criticism in Parris, H (1960): "The Nineteenth-Century Revolution in Government: A Reappraisal reappraised"; Hart, J (1965): "Nineteenth Century Social Reform: A Tory Interpretation of History".
The dominating tendency among researchers during recent years has been to emphasise the enforcement problems and relatively poor efficiency of the early factory legislation. This contention is evident in the work of Ursula Henriques, W. G. Carson, P. W. J. Bartrip, and P. T. Fenn.

The aim of this article is to scrutinize the achievement of this historical tradition. Re-examining the empirical evidence, I will argue that the researchers mentioned above have underestimated the real efficiency of the early Factory Acts. Moreover, they have not succeeded in developing a satisfactory theoretical framework for the estimation of true enforcement.

I

In the following text I will concentrate mainly on the work of P. W. J. Bartrip and P. T. Fenn, who have provided the most recent and also the most theoretically innovative framework for the contention that the early British factory legislation was relatively inefficient.

Their main focus is on the "regulatory style" of the inspectorate and the variations in inspector policy. They claim that there was a gradual transition from an enforcement policy based on prosecutions to one based on persuasion. The reasons for this transition were the serious restrictions facing the inspectors: understaffing, the low level of fines imposed by the local magistrates, and also the complexity and shortcomings of the law itself. These obstacles led the inspectors to abandon prosecutions as a policy instrument and resort increasingly to a persuasion strategy. The relative level of prosecutions under the Factory

---


Act is shown to have fallen after an initial hectic period in 1837-38, and this is explained by Bartrip and Fenn as a case of the inspectors having lost their appetite for prosecutions when faced with severe enforcement problems.\(^6\)

Bartrip and Fenn also claim that the substitution of "negotiated compliance" for prosecutions was a rational and cost-effective response to the situation. Backing up their argument with game theory, they assert that the inspector-manufacturer situation can be seen as a two-party variable sum game, where the most rational outcome was a persuasion-compliance strategy based on the assumption that the inspector would not prosecute and the manufacturer would correct the discovered illegalities.\(^7\)

Coupled with this transition perspective is an emphasis on the policy choices of the individual inspectors, which are found to have varied quite markedly.\(^8\) However, these two perspectives do not easily mix. One major problem is the actual timing of the policy shift. Bartrip and Fenn are never very clear on this point. In one of their articles, the shift is seen as occasioned by the setbacks in 1838, when magistrates very generally imposed only minimum fines on offending mill-owners.\(^9\) In another contribution Bartrip wants to place this shift well before 1855, while in a third article the period of transition is stretched from 1836 to 1876.\(^10\)

A major problem with this approach is that only a clear minority of the inspectors advocated measures of persuasion before the early 1850s. Among the four early inspectors, only James Stuart in the Scottish district is said to have favoured this policy.\(^11\) Horner, Saunders and Howell, the main figures in early factory inspection, are all portrayed as prosecutors. But since Stuart hardly ever brought any factory cases to court, the entire decline in prosecution levels after 1838 must be attributed to those three inspectors who still favoured a prosecution policy. Alexander Redgrave, the inspector lauded by Bartrip and Fenn as the most important proponent of persuasion measures, only received his post in 1852 and had no major influence before replacing the retiring Leonard Horner in 1859. Before that

---

\(^6\) See Bartrip and Fenn (1980a); Bartrip and Fenn (1980b) and Bartrip and Fenn (1983).
\(^7\) Bartrip and Fenn (1983), p. 212.
date the alleged policy shift seems to have lacked human agency. Moreover, Redgrave's overt statements on policy stems from the 1870s.\textsuperscript{12}

A further difficulty with Bartrip and Fenn's thesis is that prosecution levels by no means fell in an even way. There were renewed bouts of prosecution in the late 1840s and early 1850s over the legality of relays and neglect of the safety measures. If the persuasion policy had taken root already in the, how are we to explain these prosecution campaigns?

The problems mentioned above are due to a much too narrow conception of the actors involved in the enforcement process. Focusing only on inspector policy, Bartrip and Fenn do not seem to recognise that the strategies employed by the mill-owners in connection with the Factory Acts had an impact both on prosecution levels and enforcement practices. The inspectors' actions and policies were always influenced by the kind of resistance or compliance they encountered from the manufacturers. Indeed, I would argue that factory offences were always assessed by the inspectors according to their perception of the character and intentions of the offender. This means that the inspector's choice of policy cannot be separated from his perception of the offender.\textsuperscript{13} Apart from the simplistic game theory exercise, this variable is entirely missing in Bartrip and Fenn's theoretical structure.

Secondly, Bartrip and Fenn do not take any account of the fact that the early factory legislation contained several different clauses, and that some of these were more easily enforced than others. This is quite remarkable, since they have overtly stated their opinion that "the nature of the law and the legal system conditioned enforcement practice".\textsuperscript{14} As I will show below, it was definitely the case that enforcement possibilities varied considerably according to the type of offence which was committed. Above all, a distinction should be made between offences which could be detected at each inspection, like the absence of time-books or the insufficient fencing of machinery, and illegal practices which could only be detected when actually being performed, for instance overworking or the cleaning of machinery in motion. Strangely enough, previous research on the implementation of the early Factory Acts has not made this vital distinction.

\begin{itemize}
\item \textsuperscript{12} Parliamentary Papers (PP) PP 1876 XXX, \textit{Report from the Commissioners appointed to enquire into the Working of the Factory and Workshops Acts}, Vol II, Q. 495 pp. 34-35.
\item \textsuperscript{14} Bartrip and Fenn (1980b), p. 182.
\end{itemize}
Thirdly, Bartrip and Fenn have not recognised that the inspectors possessed a wider range of enforcement measures than merely prosecutions and persuasions, for example the often used measure of increased surveillance and repeated inspections of mills owned by suspected or repeated offenders. Bartrip and Fenn also tend to have a rather primitive view of the policy making process. Their main explanation of the allegedly poor enforcement results - strained resources - does not take account of the fact that the means at the inspectors' disposal was the result of political and administrative actions. Their notion of a "community" making rational decisions as to how much resources should be apportioned to factory inspection is a simplification which cannot be accepted. Many of the workers who desired improvements in factory and workshop inspection were not allowed to take part in the political process. This was especially the case with women employed in factories or working in the "sweated trades". The resources at the disposal of the inspectors must therefore be seen as created by political actors, and also in a context of gender and class.

II

It is now time to re-examine the drop in prosecution levels after 1838. In the English cotton district, the inspectors secured 466 convictions between May and December 1836, 498 in 1837, 403 in 1838, 183 in 1839, and 86 in 1840.16

According to Bartrip and Fenn, the cause was the resignation among the inspectors after only having obtained minimal fines against offending manufacturers: "this development must have disheartened, as the practice [of laying several informations against an offender] did not continue, and the levels of both prosecutions and informations declined after 1838".17 However, they do not produce any real evidence indicating that the inspectors stopped prosecuting out of resignation, but merely point to the

16 PP 1837 L, A Return of the Number and Names of Persons Summoned for Offences against the Factory Act..., pp. 4-55; PP 1837-38 XLV, A Return of the Number and Names..., pp. 2-57; PP 1839 XLII, A Return of the Number and Names..., pp. 2-68; PP 1840 XXXVIII, A Return of the Number and Names..., pp. 2-34; PP 1841 XVIII, A Return of the Number and Names..., pp. 2-22.
inspectors' complaints to the Home Office on the insufficient level of fines. More importantly, they do not recognise that the phrasing of these reports may well have been influenced by their wish to stir the Home Secretary into action.

The second part of Bartrip and Fenn's argument is that the manpower resources of the inspectorate was insufficient for the assigned task. The inspectors were "supported by seven grossly underpaid Superintendants whose powers did not even include the right of entry to mills". Because of this, "virtually the whole burden of inspection...fell upon just four officials". This is clearly to stretch the empirical evidence. The records of the factory inspectorate show that already in 1837 the number of Superintendants had been increased to 15. Furthermore, even if the Superintendants did not have the actual legal right to enter the workrooms in the factories, in practice very few mill-owners denied them access. Leonard Horner estimated in 1840 that not more than 15 manufacturers in his district refused Superintendants to enter their factories. The final report of the 1840 Select Committee on the operation of the Factory Act also concluded that the mill-owners had "very generally admitted the sub-inspectors to all parts of their mills". The point of interest when estimating the level of enforcement must naturally be the actually established practice, not the legal text itself. In the case of Superintendants' right to enter, the inspectors managed to establish a practice which exceeded the letter of the law.

Bartrip and Fenn have therefore seriously underestimated the prospects of enforcement. This also means that they have probably misinterpreted the reasons for the observed decline in prosecution rates after 1838. An alternative explanation, which is never overtly discussed in their work, is naturally that there was a real drop in the level of detected offences.

This interpretation is supported by a substantial amount of qualitative evidence. When taking up his duties as factory inspector in Lancashire and Yorkshire in 1836, Leonard Horner found "a very imperfect observance of

---

21 Public Record Office, Kew, London. LAB 15/1, Minutes of the Meetings of the Inspectors of Factories, 24/7/1837.
23 PP 1841 IX, Report from the Select Committee on the Act for the Regulation of Mills and Factories, p. 10. Still, the Committee recommended that the Superintendants should be given right of access, and this was included in the 1844 Amendment Act.
the law”. He reported that there had been a great many flagrant violations of the most important clauses of the Act, and that children had very often been employed without the required certificates. But already in the summer of 1838, the inspectors reported to Lord John Russell that the Act was “on the whole better observed than at any former period”.

The lower number of detected offences could have been the result of four different processes: first, a lessening of mill-owner resistance to the new Act which lowered the actual number of transgressions; second, a movement away from easily detected offences to others more difficult to find out; third, improved evasion strategies on the part of the mill-owners; and fourth, a change in the organization of the labour process, above all a tendency among employers to stop using child workers below 13 years of age, and in this way avoid being subjected to the main clauses of the Factory Act.

It is evident that the first of these possibilities has a solid backing in the available qualitative sources. Leonard Horner’s reports from the 1830s serves as an indication that the initial employer resistance towards the introduction of the Act lessened after a few years. Early in 1837, Horner reported that employer resistance to the Act was still substantial:

I regret to have to report that it has been necessary to institute many prosecutions in the last quarter. My Superintendents, in a large proportion of instances, where they found things wrong, were satisfied with assurances that there was no intention to break the law, and by promises that it should be strictly attended to in future; but there were unfortunately too many cases where this disobedience went greatly beyond mere acts of omission, and where there was evidently a wilful disregard of the statute.

Prosecutions were obviously used as a means of enforcement when the inspectors interpreted the actions of the manufacturers as wilful and deliberate offences. However, already in June 1837 Horner stated that the Factory Act was “viewed with less dislike than formerly” by the mill-owners, who had found that it was less onerous to observe the Act than

24 PP 1837 XXXI, Reports of the Inspectors of Factories, [RIF], p. 4.
25 PRO, London. LAB 15/1, Minutes of the Meetings of the Inspectors of Factories, joint report to Lord John Russell, 6/7/38.
27 PP 1837-38 XXVIII, RIF, 1st Quart. Rep 1837, p. 4.
they had previously believed. Horner claimed that this was one major reason why the number of prosecutions had been reduced by more than half. By 1839 Horner estimated that the main provisions of the law were "very commonly observed", and in 1840 he stated that "the chief evils that formerly existed have been remedied to a great extent".

This does not mean that the manufacturers fully accepted the Factory Act; rather that they gave up their overt resistance and instead developed various strategies to minimize the actual impact of the legislation on the operation of their mills. Some indication of this shift in strategy can be found in the factory prosecution statistics for the years 1836 to 1840. The great majority of the convictions obtained during these years were on the formal clauses of the factory regulations, which prescribed that time-books, registers of workers, and medical and school certificates should be kept. From 1 May 1836 to 31 December 1837, of the 964 convictions under the factory law in the cotton district, 656 or 68 per cent were on the formal clauses. Approximately 200 of these convictions were on the complete absence of time-books and registers. After that, the level of convictions fell and the cases of complete neglect of time-books and registers became rare. In the early 1840s, no more than a couple of such cases were recorded each year.

This proof is not conclusive on its own, but combined with the available qualitative evidence I would argue in favour of the following interpretation: in 1836-38 resistance to the implementation of the Factory Act was widespread among the mill-owners in the cotton district. Many manufacturers simply refused to adjust to the new regulations. In this situation, the main strategy employed by the inspectors was to force the employers to adhere to the formal requirements of the Act. Absence of registers or certificates was taken as an indication of wilful neglect, and prosecution immediately followed. In 1837, multiple convictions were used against employers who had obviously ignored the Act completely. They were prosecuted separately for each offense: missing time-book, register of

28 Ibid., 2nd Quart. Rep. 1837, p. 15.
30 Horner had introduced a system of registers and time-books in the period 1835-36, and it was soon adopted by the other inspectors. See PRO, London. LAB 15/1, Minutes of the Meetings of the Inspectors of Factories, 8/9/36; Thomas (1948), pp. 142-45.
31 PP 1837 L, A Return of the Number and Names of Persons Summoned for Offences against the Factory Act, pp. 4-55; PP 1837-38 XLIV, A Return of the Number and Names..., pp. 2-57.
32 PP 1843 XLII, A Return of the Number and Names..., pp. 2-16; PP 1844 XXXIX, A Return..., pp. 2-18; PP 1845 XXXVII, A Return..., pp. 2-22.
workers, school certificates, medical certificates, not hanging a sign of
rules in the mill, not having a sign indicating meal times, and so on.33

This strategy proved successful, for basically three reasons: first,
because these offences were easily detected. It was mainly a question of
checking the book-keeping and the signs displayed in the factory. Second,
because the undertaking of the required book-keeping did not cost very
much, and third, because the clauses in the Factory Act on the formal
requirements were unequivocal and not open to interpretation by the local
magistrates.34

A major point is that in the case of the prosecutions for neglecting the
formal requirements of the Act, even a low level of fines seems to have
been sufficient. Since compliance with these clauses was so easily
checked, and subject to multiple fines, the mill-owners had in the long run
to abandon this kind of obstruction. It has to be noted that when the
inspectors complained loudly of the insufficient level of fines meted out by
the magistrates, this mainly concerned cases of children or juveniles
working beyond the legal day. In such cases, the inspectors complained
that the gain from the illegal work exceeded the cost of the fine.35 In
contrast, there was no immediate gain for the manufacturer when refusing
to keep the required books. It is therefore plausible that after a few years,
this kind of open resistance to the factory legislation was largely
abandoned.

This does not mean that all kinds of evasions of the law disappeared.
But it is important to note that efficient inspection presupposed the
existence of certificates and registers. The observance of these clauses
was necessary in order to go further and enforce the length of the legal
working day, and the ages and schooling of children.

33 The strategy of using multiple convictions on the formal clauses is very clear in PP 1837-
38 XLV, A Return of the Number of Names..., pp. 2-57. See also Horner’s report in PP 1837
XXXI, RIF, p. 6.
34 Not surprisingly, A. E. Peacock has found a high conviction rate for factory offences
during this period. See Peacock (1984): "The Successful Prosecution of the Factory Acts,
1833-55", passim. However, the very low level of fines meted out by most magistrates serves
as an indication that these officials hardly enforced the law in a zealous manner. See
passim; Henriques (1979), p 103. See also Horner’s complaints of lenient magistrates in PP
35 PP 1837-38 XLV, RIF, p. 3; PP 1844 XXVIII, RIF, 4th Quart. Rep. 1843, p. 12; PP 1852-53
Theoretically, what the inspectors did in the late 1830s was to break up a consensus among mill-owners as to the nature of factory crime. Returning to the concept introduced by W. G. Carson, what the inspectors strove to do was to turn a "conventionalised crime" into a socially recognised crime. Prior to 1833, several factory acts had existed but, due to the essential class character of the judicial process and the absence of any independent machinery of enforcement, they had not been generally observed. During this early period, factory offences were "conventionalised", that is, the dominating opinion among mill-owners was that these regulations could be broken without stigmatisation and as a part of everyday life. The initial resistance among the Lancashire manufacturers can thus be seen as a struggle over the societal conception of factory offences. This is also one reason why the inspectors largely resorted to prosecutions in the period between 1836 and 1838. By convicting the offending mill-owners in court, the symbolic message was brought home that breaches of the Factory Act were no longer socially acceptable and were to be regarded as crimes.

Prosecutions were used both as a symbolical measure to designate crime, and also because the inspectors estimated that the offences had been wilfully committed. The choice of enforcement measures was therefore dependent on the strategies of the manufacturers. It should also be noted that the lukewarm support from the local magistrates did not constitute a major obstacle in this process. Since prosecutions were mainly brought on neglect of required book-keeping and the over-working on children, clauses which were stringently formulated in the regulations, the magistrates were in most instances forced to convict. The court-room was clearly the public arena where the re-definition of the nature of factory crime took place. This was probably one reason why the inspectors hardly ever fined "on the spot", a power which was given them in the 1833 Act. The designation of crime was a public affair.

In this process, the consensus among mill-owners broke down. While some, according to Leonard Horner, were "insensitive to the discredit of a prosecution", others reacted more strongly. Robert Hyde Greg wrote very emotionally about the inspectors being "spies" of the government, and in

---

36 Carson (1979). Carson, however, working on the question of white collar crime, uses the term to signify factory offences after the Act of 1844.
similar terms about the prospect of being "dragged into a court of justice" and convicted.\textsuperscript{38} Henry Ashworth, another substantial Lancashire mill-owner, was convicted for a trivial factory offence in 1837, and reacted by dismissing nearly all of his child workers. Three years afterwards he still employed only half the previous number of children.\textsuperscript{39}

Naturally, the potency of the legislation rested to some extent on the cultural notions of honesty and respectability among the class of manufacturers. Employers who aspired to some standing in bourgeois society were naturally rather sensitive to the prospect of being prosecuted in public. The inspectors successfully used these notions of respectability to split the mill-owners into an "honest" and a "dishonest" fraction. The policy of prosecuting offenders publicly was the wedge, and the high rate of convictions was the hammer. Once the evaders had dwindled to a small minority, the inspectors could claim they had the support of the "honest" mill-owners and were combatting unfair competition. One crucial factor, therefore, was the inspectors' ability to break up the consensus among the manufacturers on factory offences. In the struggle over the implementation of the Factory Act in the late 1830s, this objective was achieved.

Several objections may be raised against this interpretation. Previous research has, for instance, emphasized that the local magistrates constituted the "ultimate" obstacle to the implementation of the Act, not only by imposing minimum fines but also by frequently mitigating them even further.\textsuperscript{40} It is true that the inspectors regarded this as a very serious problem.\textsuperscript{41} Mitigation of the penalties not only lowered their deterrent effect; it was also a symbolic gesture which obscured the impact of the conviction as a designation of crime. But two things have to be borne in mind regarding this question: first, that the inspectors used their reports to put pressure on the Home Secretary to intervene in cases where magistrates did not conform to the spirit of the Act.

Second, from a close reading of these reports it is possible to distinguish a geographical pattern in the complaints on recalcitrant magistrates. In 1837 Horner specifically pointed out the magistrates in Bury, Rochdale, and Huddersfield for only imposing minimal fines in


\textsuperscript{40} See Henriques (1979), pp. 103-4.

\textsuperscript{41} See, for instance, Horner's report in PP 1837 XXXI, RIF, pp. 6, 48-49.
factory cases. In the following year the Rochdale and Oldham area had become the main centre of magistrate opposition. Horner stated that 7/8 of all prosecutions were made in that district, and he was convinced that this was connected with the practice of the Rochdale magistrates to mitigate penalties. The official return of prosecutions confirms that a substantial number of fines imposed in this court were mitigated.

However, these findings do not suggest that magistrate resistance was a general problem. Even if the actions of the Rochdale magistrates made the enforcement process difficult in that district, this was clearly not the case in other areas. Mitigation of penalties was obviously not a problem in other parts of the cotton district.

Furthermore, the inspectors employed several counteracting strategies. Besides putting pressure on the Home Office to intervene, Horner increased the possibilities of surveillance by placing one of his Superintendents permanently at Rochdale, while at the same time using himself and other Superintendents as a more mobile force. Far from being discouraged by the enforcement difficulties, the evidence suggests that the inspectors' response to resistance was to increase the levels of both surveillance and prosecutions. By the time of the 1840 Select Committee on the operation of the Factory Act, the instances of open resistance to the Act seem to have all but vanished.

42 PP 1837 XXXI, RIF, p. 6.
43 PP 1837-38 XLV, RIF, p. 3.
44 PP 1839 XIX, 4th Quarterly Report 1838, RIF, p. 4; PP 1839 XLII, A Return of the Number and Names..., pp. 14-44. Horner's criticism of the Rochdale magistrates was sustained by the 1840 select committee. See PP 1841 IX, Report from the Select Committee..., p. 18.
45 PP 1839 XLII, RIF, pp. 2-68. As to the question why the resistance was stronger in the Oldham-Rochdale district than in other parts of Lancashire, I can only make a suggestion. The area was probably dominated by smaller mill-owners, and it is possible that they formed a sub-culture which persisted in regarding factory offences as inconsequential and which had a different notion of respectability from the areas dominated by larger mill-owners. On the structure of the manufacturer class in Oldham, see Gadian (1978): "Class Consciousness in Oldham and the other North-West Industrial Towns", pp. 168-70.
46 PP 1837-38 XLV, RIF, p. 3. However, these tactics were initially impeded because the resident Superintendent proved unsatisfactory. Superintendent Webster borrowed considerable sums of money from the local mill-owners, and was finally dismissed in 1839. See PRO, London. HO 87/1, Letter from Maule, Home Office, to Superintendent Webster, 2/7/39. But even this measure did not stop enforcement problems from reappearing in the Rochdale district in 1841. See PP 1842 XXII, RIF, 3d Quarterly Report 1841, p. 4.
47 PP 1840 X, First Report from the Select Committee..., evidence of Horner, p. 32 Q. 511.
This does not mean that the enforcement of the 1833 Factory Act was entirely successful. The question remains if the manufacturers changed their evasion strategies away from easily detectable offences to others more difficult for the inspectors to control. But in this context it should also be recognized that there were wholly legal ways for the mill-owners to reduce the impact of the factory regulations; above all their ceasing to hire children below the age of 13. Indeed, I would argue that yet another reason why the mill-owners split over the implementation of the 1833 Factory Act was that for many the most feasible strategy to minimize the impact of this legislation was to stop employing child workers altogether. It has to be remembered that the main provisions of the 1833 Act dealt with the use of children below 13 years of age in textile factories. Especially in larger cities like Glasgow and Manchester with large supplies of unskilled juvenile workers, children could with comparable ease be replaced with 13 and 14 year-olds.

This is an important reason why the factory statistics at the time showed a substantial reduction in the level of child labour. The proportion of the work performed by children below 13 in the cotton district decreased from 13.4 per cent in 1835 to 3.3 per cent in 1838.

Naturally, this was not the only reason for the fall in child labour statistics. The manufacturers' second option was to evade the Act by using children below 13 who could produce medical certificates of having attained that age. This seems to have been one of the most difficult enforcement problems which faced the early inspectors. The objective of this strategy was to be able to keep these young workers for the full twelve hours, and also to avoid being held responsible for the children's schooling. Consequently, in the late 1830s the inspectors found themselves confronted with a great many child workers clearly younger than 13, but

---

48 Cf Thomas (1948), p. 83.
49 Bartrip and Fenn's main empirical work has been on the safety regulations of the 1844 Act, and they do not seem to be aware that the strategies which the manufacturers employed in connection with the child labour clauses were very different from those which were used on the safety measures. Above all, they have not seen that in the former case there were wholly legal ways of escaping the impact of the legislation, while such was not the case on the safety regulations - apart from the option to observe them.
50 PP 1836 XLI; PP 1839 XLII, Factory Returns. Consideration has been taken to the fact that the working day for children in 1838 had been reduced to 8 hours.
who had all obtained certificates stating that age. In 1836 Horner wrote that "fully one half" of the children certified to be 13 were in fact below that age. During the course of inspection, Horner often reacted on the prevalence of certified young workers who were clearly below the legal age of 13:

In my visits to the mills of Stalybridge, I found no less than one hundred and twelve children certified by one surgeon as being thirteen years of age, not one of whom had, in my judgement, the ordinary appearance of children of that time of life in that part of the country; and seventy-five of them were either indisputably younger, or palpably defective in growth and strength for that age.

Horner tried to establish reliable indications of age, such as height or the development of second teeth, but these attempts were not successful. In the absence of such indicators, the inspectors very soon realized that in order to enforce the age limits prescribed by the 1833 Act they would need to exercise some control over the issuing of medical certificates. Rickards found that such documents had been issued by a "drunken ale-house keeper" and a "druggist's apprentice", and declared already in 1835 that he would accept medical certificates only from surgeons of his own appointment.

Horner immediately adopted this practice when he took over from Rickards the year after. But it is interesting to note that they had very little backing in the legal text for this measure. The 1833 Act did not give the inspector the right to dismiss certificates he believed were manifestly wrong; this measure was only included in the 1844 Amendment. Initial attempts by Horner to make the appointment of surgeons a part of the regulations issued by the inspectors received a setback in 1837, when legal opinion ruled that any person acting as surgeon was entitled to grant

---

52 Senior, N (1837): Letters on the Factory Act, p. 34.
53 PP 1839 XIX, RIF, 4th Quart. Rep. 1838, p. 3.
55 PP 1834 XLIII, RIF, p. 28; PP 1835 XL, RIF, pp. 6-8.
56 PRO, London. LAB 15/1, Minutes of the Meetings of the Inspectors of Factories, 8/9/36.
Moreover, the safeguard prescribed by the 1833 Act, that the certificates should be countersigned by a local magistrate, was never effective. Magistrates simply signed the documents without seeing the children in question.  

Nevertheless, the inspectors seem to have achieved some measure of control over the appointment of surgeons in spite of the very limited backing of the law. The evidence of Leonard Horner indicates that at least by 1840 his right of appointing surgeons was no longer challenged by the manufacturers. In the same way as with the Superintendents' right of access to the workrooms, the inspectors managed to establish a praxis which exceeded their actual legal position. Consequently, while the actual level of evasions by means of incorrect medical certificates remains very difficult to estimate, we do know that control over the issuing surgeons tightened after a few years, and also that the inspectors' complaints of this type of evasion became more rare. We also know that Horner did not hesitate to dismiss surgeons he found to be incompetent or unreliable. It therefore seems reasonable to infer that this problem was coming increasingly under control.

In terms of enforcement policy, it should be noted that the inspectors did not resort primarily to either persuasions or prosecutions. Only in the cases of obviously forged certificates could prosecutions be made, most often of the parents of the child workers in question. The mill-owner's acceptance and use of incorrect certificates did not constitute an offence. The only option open to the inspector was to disqualify the certificates he was convinced to be incorrect, and to make the mill-owners use only the services of the appointed surgeon.

Here is one important reason for the drop in prosecution levels after 1838. When the employers changed their evasion strategies away from overt resistance to the use of incorrect medical certificates, the response from the inspectors was no longer prosecutions. The implication is that

57 PRO, London. HO 87/1, Letter from Secretary of State Phillipps to Horner, 11/8 1837. See also PRO, London. LAB 15/1, Minutes of Meetings of the Inspectors of Factories, joint report 22/7/37, minutes 5/7/38.
58 PP 1837 XXXI, RIF, p. 43; PP 1837-38 XXVIII, p. 26; PRO, London. LAB 15/1, Minutes of Meetings of the Inspectors of Factories, 19/7/37.
59 PP 1840 X, First Report from the Select Committee..., evidence of Leonard Horner, pp. 52-54 Q. 743-46, 777-78. In their final report, the committee acknowledged that the inspectors had managed to gain control over the appointment of surgeons, but still demanded that this should be formalized in law. See PP 1841 IX, Report from the Select Committee..., pp. 8, 10. See also Henriques (1979), p. 100.
60 Horner dismissed at least three surgeons between 1836 and 1838. See PP 1837 XXXI, RIF, p. 5; PP 1839 XIX, RIF, 4th Quarterly Report 1838, p. 3.
the court system was at this point not the prime arena of the enforcement process, and the actions of the local magistrates consequently of less importance. These findings undermine the notion that small fines and partial magistrates constituted a decisive obstacle to the implementation of the Factory Act in the late 1830s.

V

However, one type of offence continued to be difficult to counter: the working of children beyond the legal hours. One especially weak point of the 1833 Factory Act was that it limited the legal working day of children and juveniles, but allowed the manufacturer to use them within a time span of fifteen hours. The correct keeping of time books and registers was therefore absolutely necessary for enforcement, but the inspectors still found it very difficult to ensure that protected persons were not worked beyond the legal time. Rickards found this task almost impossible:

I believe too that the limitation of one class of children to a certain number of hours, and another class to another, in the same mill, can never be put in force by legal or official means. Evasion is so easy in the interior of mills, and detection so difficult, that when private interests combine, the vigilance of public officers, if not always on the spot, may and will be continually defeated. 61

As long as a child was allowed to work for eight hours at any time during a working day of fifteen hours, it was very difficult for the inspectors to know if the regulations were really obeyed. Also, the very low level of fines was hardly a deterrent against this type of offence. In 1840 Horner pointed specifically to these problems in a pamphlet, claiming that the eight hour clause was "frequently evaded with impunity". 62 His attempts to promote the working of children in relay systems remained only a very modest success, as is evidenced in one of his reports from 1843:

In two-thirds of the mills where children are employed (522, with 4113 children), they work them eight hours, and do without them the other four hours. In a great many cases, this I am confident amounts to no more than they say they do without the children; there is no doubt

61 PP 1834 XLIII, p. 39.
62 Horner, L (1840): On the Employment of Children, in Factories and other Works in the United Kingdom and in some Foreign Countries, p. 7. This pamphlet was written to promote suggestions for changes in the law which he was not free to publish in his official reports.
that the liberty given by the Act to employ children at any period of the day between half past five in the morning and half past eight in the night, opens the door wide open to fraud very difficult of detection. 63

However, it should not be forgotten that Horner's writings were probably somewhat influenced by his intention to have the 1833 Act amended in certain respects. It should also be remembered that by 1839 only 48 per cent of the Lancashire mills employed children below 13 at all.64 The main manufacturer policy in connection with the 1833 Factory Act was obviously to avoid hiring children altogether. Still, overworking was difficult to check in those mills where they were employed. This problem remained until the passing of the 1844 Act, which prescribed a regular half-time system for children below 13.

The Amendment Act of 1844 introduced two important new elements: firstly, the protection of adult factory women, and secondly, a clause on the fencing of machinery. The changes in the structure of the factory legislation influenced the pattern of evasions as well as the enforcement strategies of the inspectors. After a brief flourish of prosecutions on the overworking of children in 1845, this type of offence became much more unusual.65 Instead, the energies of the inspectors were turned towards offences against the legal working day for women and juveniles, and the enforcement of the new safety clauses.

VI

The 1844 Act restricted the labour of women and juveniles to twelve hours, but the work could still take place within a longer time span of fifteen hours. After a few years, some mill-owners started to use relays in order to keep the work going for the full 15 hours. The majority of the inspectors

63 PP 1844 XXVIII, 4th Quarterly Report 1843, p. 15. See also PP 1840 XXIII, 2nd Quarterly Report 1840, p. 12; PP 1840 X, First Report from the Select Committee..., evidence of Horner, p. 31 Q. 511.
65 The number of convictions of employers on the child labour clauses in the cotton district rose from 15 in 1843 and 16 in 1844 to 62 in 1845. The main reason for this was that some employers had not realised that the new Act prohibited children from working both before and after the mid-day meal hour. See PP 1844 XXXIX, A Return of the Number and Names..., pp. 2-18; PP 1845 XXXVII, A Return of the Number and Names..., pp. 2-22; PP 1846 XXXIV, A Return of the Number and Names..., pp. 2-58. But the rise in convictions was also a result of the 1844 Act permitting the inspector to prosecute for each individual case of overworking. See Peacock (1984), p. 201.
resisted this interpretation of the law, mainly because it made efficient inspection very difficult. If factories were run by complicated systems of relays, it would be almost impossible to detect instances of illegal overwork. Horner frequently complained in his reports about the overworking of women and juveniles. He also instigated several courtroom battles over the legality of relays, which in a sense constituted a second wave of prosecution activities by the inspectors. Again, the triggering factor was employer resistance to the inspectors' interpretation of the factory law. In this case, however, the outcome was at first not very successful. After intricate legal procedures, relays were ruled to be legal. Several factors contributed to this defeat. The inspector in Scotland, James Stuart, broke the ranks of the inspectorate by condoning the relay system in his district. There was also a problem with the backing on the political level. The Home Secretary, Sir George Grey, did not support the view of Horner, Saunders and Howell that the relay system as such was illegal. Moreover, the mill-owners were united in their efforts to have the option to use relays, and this clause of the law was clearly open to various kinds of interpretations in the different courts of magistrates. The result was a considerable setback for the inspectors, but it proved to be shortlived. Bowing to popular and Parliamentary pressure, the law was altered in 1850 and 1853 to make the use of relays impossible. The legal working day was given set limits.

On this successful note, the traditional histories of factory legislation usually end. However, even if the Acts of 1850 and 1853 materially reduced the possibilities of illegal overworking, these practices were not

---

67 See PP 1847-48 XXVI, RIF, 1st Half-yearly Report 1848, pp. 6-7; PP 1849 XXII, RIF, 2nd Half-yearly Report 1848, pp. 5-13; Ibid., 1st Half-yearly Report 1849, pp. 4-5; PP 1852 XXI, RIF, 2nd Half-yearly Report 1851, p. 4. Naturally, this does not mean that the problem was completely out of control. Horner's reports were part of a deliberate campaign to have relays declared illegal.
70 On the pressure from the manufacturers, see PRO, London. HO 45/1851, Memorial to the Home Secretary from 591 mill-owners in Lancashire and Glasgow in favour of relays.
71 See Hutchins and Harrison, Thomas.
eradicated. The general problem was that overworking was very profitable, and the fines imposed by magistrates often low. In his reports from the late 1850s, Horner stated that illegal overworking remained his most important problem, and that the other clauses of the Act were much better adhered to.72

In my theoretical discussion with Bartrip and Fenn, however, the most important thing to point out is that the policy used against overworking offences was always and invariably prosecutions. The inspectors repeatedly complained about the insufficient level of fines, but this did not stop them from prosecuting again and again the offenders of this category. In letters to the Home Office, Leonard Horner stated that he always prosecuted when there was any probability of conviction, and generally pressed for maximum penalties.73

The use of a prosecution policy was largely dictated by the character of the offender and the offence. Overworking was profitable and difficult to detect, since the offender had to be caught in the act. It was also in most cases a clearly intentional offence, and was taken as evidence of open resistance to the law. Increased surveillance and repeated prosecutions remained the prime inspector policy in the context of overworking offences.74 The inspectors took the view that only substantial fines could be sufficiently discouraging. Moreover, a policy of persuasion was not viable in this context because it was impossible to check at future inspections that overworking had not occurred in the interlude.

Theoretically, this points to the fundamental weakness of Bartrip and Fenn's use of game theory as a proof of the superiority of "negotiated compliance". In the case of overworking offences, the inspector could never be sure that the law was observed in his absence. One of the prerequisites in the game theory exercise, the guarantee of real compliance, was simply lacking. Instead, as can be shown empirically, the inspectors chose to prosecute whenever actual detections were made.

---

74 One of the recurring demands of the Lancashire cotton operatives in the context of overworking practices was to have more Sub-Inspectors appointed and the level of surveillance increased. See PRO, London. HO 45/6583, Memorial from the Factory Operatives of Lancashire and Cheshire to the Home Secretary, April 1858; LAB 15/4, Minutes of the Meetings of the Inspectors of Factories, 25/5/58; ibid., letter from Waddington, Home Office, to the inspectors, 18/6/60.
A revision of Bartrip and Fenn's estimation of true enforcement is also required. Even if overworking offences remained a problem for the inspectors during the decades to come, it was hardly a cause for despair. Cases of overworking were mainly confined to country locations where the risk of detection was relatively low. Horner stated in 1858 that these offences were committed by a small minority of mill-owners.75

When overworking practices became prevalent in certain areas, as in the Ashton district in the mid-1850s, special measures were employed. Horner dismissed the residing Superintendent, whom he believed to be incompetent. His successor, Mr. Coles, was given the temporary assistance of two other Sub-inspectors and two police officers, and instructed to press for maximum penalties in all detected cases. Before the local court, Coles motivated the decision to press for full penalties in all cases by referring to the open manner in which the Factory Act was "defied" in the district.76 In this context it has to be remembered that the 1844 Act made it possible to lay prosecutions for each person being illegally worked. When the allegedly main offender in the Ashton district was caught in 1854, Horner was able to prosecute him on thirty different charges.77

Strangely enough, this considerable strengthening in prosecution viability is not given much weight by Bartrip and Fenn. Instead, they persist in taking the inspectors' complaints on the insufficient levels of fines as evidence of resignation with the prosecution policy and a drift towards "negotiated compliance".78 But their case clearly rests on a selective reading of the evidence. On the very same page of Horner's report given by Bartrip and Fenn as evidence for the general futility of prosecutions, he clearly spells out his intention to continue with this very policy of enforcement! "...no other proceeding less severe is practicable...in cases of obstinate and inexcusable neglect, when warnings had been

---

75 PRO, London. HO 45/6583, Letter from Horner to Walpole, 26/4/58; see also PP 1860 XXXIV, RIF, p. 8.
76 Glasgow Sentinel 15/11/56. However, in the same way as in the late 1830s, the tendency of these magistrates only to impose minimum penalties made the inspectors' task more difficult. See Glasgow Sentinel 2/6/55; 15/11/56; 22/11/56; 6/12/56; 30/5/57. On the resistance of female operatives to the overworking practices in the Ashton district, see Morgan, C E (1992): "Women, work and consciousness in the mid-nineteenth-century English cotton industry", pp. 37-39.
77 PRO, London. HO 45/5221, Letter from Horner to Waddington, 29/7/54. For a similar description of enforcement tactics directed at overworking practices among manufacturers in the Glossop area in 1852, see HO 45/4074, Letter from Horner to Walpole, Home Office, 14/7/52.
disregarded...". Overworking was described as "the offence which admits of no excuse, for it is always committed knowingly and for the purpose of gain". Also, Horner makes it clear that apart from the repeated instances of overworking, the factory legislation was well observed. There was no general disregard of the regulations.

Indeed, Bartrip and Fenn's inclination to take all inspectors' complaints at face value while dismissing their evidence of the law being observed must be regarded as a strange way of using qualitative evidence. This is not a minor methodological point. As Bartrip himself has indicated, an estimation of the real enforcement of the factory legislation must rest on an interpretation of qualitative material in the form of inspectors' reports, minutes, and other documents. I would argue that their mode of interpretation is highly questionable. They have decided to rely on scattered inspectors' complaints that insufficient fines were not strong enough deterrents to ensure the enforcement of the factory legislation. In order to do so, Bartrip has maintained that "the reforming and policy-making roles of inspectors has been somewhat exaggerrated. The inspectorate is more realistically seen as an example of disinterested professionalism". After designating the inspectors as impartial observers, Bartrip then goes on to accept their complaints at face value. In several respects, this is a grave mistake. While it might be correct that the effect of the early inspectors' actions on social reform has been exaggerated at the expense of other political and social actors, it nevertheless remains true that some of them can be depicted in no other way. This is especially the case with Horner and Saunders. It is well known that Leonard Horner used his reports to bring notice to weaknesses in the legislation and to suggest amendments to such an extent that he was cautioned by his superiors in Home Office. In 1840 Horner published a pamphlet with suggestions on the improvement of the Factory Act. In the same year he gathered Lord Ashley, Edwin Chadwick, and Kay-Shuttleworth to discuss

82 Ibid., p. 426.  
83 See Thomas, p. 258.  
84 PRO, London. HO 87/1, Letter from Maule to Horner, 16/5/38. See also Martin, pp. 430-31.  
85 Horner (1840), passim.
the extension of the 1833 Act to other industrial trades. During the 1840s and 50s, he and Saunders worked hard to achieve improvements in the enforcement of the clauses on overworking, safety measures, and factory schools.

Describing these activities as "disinterested professionalism" is simply not compatible with facts. By taking this position, Bartrip has clearly misjudged the qualitative evidence. The inspectors' complaints must be read with the insight that these men wanted to bring attention to certain weaknesses they wanted to see amended. This does not disqualify their evidence, but it raises the question how wide-spread or serious the problem really was. The generality of evasions has to be investigated empirically in order to assess the level of true enforcement. As I have shown previously, in the matter of recalcitrant magistrates in the late 1830s it is possible to see a concentration of this difficulty in a certain geographical area. In contrast, Bartrip and Fenn simply take scattered complaints from the inspectors as an indication that the problems were both serious and general in character. By doing so, they have severely underestimated the degree of real enforcement.

Returning to the theoretical discussion on enforcement strategies, the most important point is that overworking offences continued to be countered by a prosecution policy for at least sixty years. Even Alexander Redgrave, who personally leaned towards persuasion strategies, did employ prosecutions in cases of overworking. In 1870 Redgrave secured 81 convictions, 70 of which were on overworking offences. The difference between him and his colleague Baker in this respect was that Redgrave

---

86 Letter from Horner to his daughter Susan, 5/7/40, in Memoir of Leonard Horner (1890), Vol II, p. 16. The mentioned persons were all involved in questions of social reform.


88 It is slightly ironic that Bartrip, who is normally so keen to put emphasis on the policy differences between the inspectors, in this specific context seems to be happy to define them all as "disinterested professionals". There is also a substantial lack of logic in Bartrip's interpretation. If the inspectors' evidence is to be treated as reliable assessments emanating from "disinterested professionals", how can Bartrip ignore their repeated statements that the Factory Act was well observed in most of its provisions? If, on the other hand, the early inspectors' interest in social reform is recognised, their evidence of substantial enforcement must be considered as carrying great weight.

only went to court if his evidence was extremely clear. In fact, instances of overworking clearly dominated among prosecutions in the cotton industry towards the end of the 19th century. Of the 172 convictions obtained in the cotton district in 1881, 69 per cent were on illegal overworking. The conclusion must be that instead of a general tendency towards persuasion policies, certain types of offences continued to be met with prosecutions.

These implications are born out by research into factory offences in the cotton district between 1890 and 1914. Minor overworking offences, 'time-cribbing', continued to be the most difficult part of the factory legislation to enforce. Reporting from the Lancashire district in 1889, Inspector Brewer stated that nearly all the mills in his district were addicted to 'time-cribbing'.

As I have shown above, the profitability of this kind of offence and the lack of possibilities to ensure real compliance between inspections made prosecutions the only viable policy instrument. However, the effectiveness of those measures continued to depend on the zeal, persistency, and manpower resources of the inspector as well as on the level of fines meted out by the magistrates. As the union weekly Cotton Factory Times formulated it, the only way to counter 'time-cribbing' was by "repeated exposures and prosecutions".

The cotton union officials often expressed their dissatisfaction with certain inspectors or magistrates in the context of persistent time-cribbing. Before the 1892 Royal Commission of Labour, James Mawdsley of the Spinners' Amalgamation singled out the factory inspectors of Preston and Stockport for their outstanding inefficiency. William Mullin of the Cardroom Amalgamation even stated that two-thirds of the factory inspectors were inefficient and should be replaced.

But the true enforcement of the clauses on the length of the working day was not only a matter of surveillance levels. One reason why it was so difficult to bring down the number of 'time-cribbing' offences was because

---

91 PP 1882 XVIII, RCIFW, pp. 43-211.
92 PP 1889 XVIII, RCIFW, p. 114.
93 Cotton Factory Times 18/12/96.
95 Ibid., evidence of Mullin, p. 15 Q. 474-75.
the practice was supported by some of the factory operatives. Both spinners and weavers were paid on stable piece-rates and would see their earnings increased if they worked beyond the legal hours or took shorter meal breaks than was defined in the Factory Act. The factory inspectors in Lancashire often complained that the operatives effectively hindered them from checking 'time-cribbing' practices. In 1901, one inspector remarked that the 'time-cribbing' in Rochdale in some places amounted to a scandal, and that it was difficult to detect "because the instinct of the whole community, where it prevails, is favourable to it".96 Similarly, Superintending Inspector Henderson claimed that many Lancashire operatives obstructed the inspectors' efforts to bring 'time-cribbing' under control:

They do everything they possibly can to baffle the inspector. If an inspector is seen approaching the factory to visit, say at a mealtime, they will at once announce his approach...and they immediately get everyone out of the way as fast as possible that comes within our inspection if they are there illegally. /.../ It is a matter I cannot understand. We are supposed to be their protectors and their friends, and that is the way they treat us."97

If time-cribbing was committed in a collusion between managers, overlookers, and operatives, the inspectors found that the enforcement prospects were very much reduced.98 Oldham continued to be a centre of this type of illegal overworking in spite of having one of the most persistent and able factory inspectors in the district.99

While individual operatives took part in time-cribbing, the unions were firmly against it. Indeed, research into the Preston and Burnley weaving unions shows that they regularly informed the local inspector when certain employers resorted to overworking.100 In 1905, a union official in Burnley admonished the operatives not to participate in time-cribbing

---

96 PP 1901 X, RCIFW, p. 311. See also PP 1905 X, RCIFW, p. 169; PP 1906 XV, RCIFW, pp. 172-3.
98 See PP 1902 XII, RCIFW, pp. 100-1; PP 1906 XV, RCIFW, p. 173.
99 Inspector Crabtree's efforts to counter overworking practices in Oldham made him very popular among union officials. In 1908, he was referred to as "our old friend the terror of the time-cribers" by the Cotton Factory Times. CFT 24/4/08.
100 See Lancashire Record Office (LRO), Preston: Preston Weavers' Minutes, 17/3/65; 5/4/65; 4/8/65; 11/3/70; 2/7/74; 16/7/75; 9/5/79; 28/7/82; 27/10/82; 15/12/82; Burnley Weavers' Minutes, 6/1/92; 21/1/92; 24/6/92; Burnley Weavers' Letter Book, 27/9/07.
practices: "Our astonishment is that any workman can lend himself to this
practice. Time after time the efforts of the inspector are frustrated by
those whom he is trying to benefit."\textsuperscript{101}

But it is also very probable that there was an important shift in attitude
among manufacturers towards the factory legislation, especially in regard
to the time-cribbing offences. This, in turn, was connected to a change in
owner structure and management. Towards the end of the 19th century,
there was a marked change in the nature of capitalistic enterprise in the
English cotton industry. Privately owned firms gave way slowly to large
limited companies. This seems to have changed employer attitude towards
the factory legislation. The new limited companies were directed by
managers whose main objective was to secure a proper dividend to the
shareholders. This seems to have made them more prone to resort to
illegal overworking than were the owners of private firms. The Cotton
Factory Times claimed that while the old type of mill-owner was sensitive
to the disgrace of public conviction, and "somewhat amenable to public
opinion", it was proverbial that managers of limiteds had no consciences in
respect to the Factory Act.\textsuperscript{102}

The Oldham limited companies were renowned as the worst
time-cribers in the cotton industry.\textsuperscript{103} The Superintending Inspector
remarked in 1890 that the increase of limited companies and the growing
practice of renting factory premises lay behind a perceptible change of
attitude on factory offences. As a result, the sense of responsibility
towards the Factory Act among the manufacturers had grown less, and a
great increase of prosecutions had taken place.\textsuperscript{104} This suggests that the
process of conventionalisation of factory crimes in the Lancashire cotton
industry was partly caused by a transition of the large capitalist firm
towards the more "anonymous" status of public limiteds. A strata of paid
managers were less concerned about social prestige and were more prone
to treat factory offences as a mere economic risk. In the context of the
Lancashire cotton industry, the result was an increase of the overworking
offences in spite of the concerted efforts of inspectors and trade unions.

These findings have some important theoretical implications. The
countering of overworking offences depended not only on the surveillance
level and the performance of inspectors and magistrates. The managers of

\textsuperscript{101} Burnley Weavers' Quarterly Report, 29/3/05.
\textsuperscript{102} Cotton Factory Times 6/2/85. See also CFT 18/12/96.
\textsuperscript{103} See Cotton Factory Times 9/6/99; 19/7/01; 20/3/03.
\textsuperscript{104} PP 1890-91 XIX, RCIFW, pp. 5-7.
the new public limited companies seems to have been less restrained by societal notions of honesty and respectability than had been the case with owners of family firms. Also, one very important determinant of enforcement prospects was the degree of co-operation between the managers and operatives in overworking practices. Indeed, the indications are that time-cribbing was finally abolished by the unions gaining control over their members and persuading them to stop their participation in overworking practices. This shows the great complexity of the enforcement process, and also the necessity of including the operatives among the actors. Assessments of true enforcement should include an investigation of the strategies of the inspectors, manufacturers, operatives, magistrates, and the State. Bartrip and Fenn's theoretical perspective is therefore inadequate.

VII

The final clause of the early factory legislation to be investigated is that on safety measures. Introduced in the 1844 Act it prescribed that all machinery should be "securely fenced". The inspectors went on the offensive and demanded that even horizontal shafts as high as 7 feet above the floor should be fenced. The mill-owners reacted violently against this prospect, and a prolonged legal battle over the safety clauses ensued. The eventual outcome was a serious setback for the inspectors. The main reason for this was the concerted opposition against this clause among mill-owners and magistrates. For the manufacturers, extensive fencing requirements, including the overhead revolving shafts, would have meant a considerable cost. It would also fall on all mill-owners as a body - there was no viable alternative strategy of evasion, since detection was extremely easy. The result was a consensus among the mill-owners to

---


106 This regulation had been recommended by the 1840 Committee. See PP 1841 IX, p. 27.
oppose the inspectors' interpretation of the safety requirements, and to lobby Parliament for its repeal. Moreover, the wording of the fencing clauses left them wide open to magistrate interpretation. The discussion hinged on the definition of "securely fenced", and the inspectors soon found that many magistrates were not prepared to treat the horizontal shafts as coming under this clause.107 As Bartrip and Fenn have shown, the conviction rate in cases on the safety measures deteriorated from over 80 per cent in the mid 1840s to little over 40 per cent in the mid-1850s.108 The inspectors simply could not make the magistrates accept their interpretation of the safety clauses. Undoubtedly the concerted pressure from the mill-owners played a decisive part in this process.

The mill-owners' undivided resistance to the inspectors' interpretation of the safety clauses led them to organise in "the National Association of Factory Occupiers".109 The chief object of this organisation was to achieve an amendment of the safety clauses excluding the necessity to fence horizontal shafting. Within a few years, their lobbying was successful. After hearing a deputation of mill-owners in 1854, the Home Secretary Lord Palmerston decided that it was sufficient to fence shafts within reach of the operatives.110 That interpretation was subsequently made law in 1856. In contrast to the other clauses of the Factory Act which were gradually sharpened and improved in the period between 1844 and 1853, the opposite was the case with the safety regulations. The passing of the 1856 Act on safety measures constituted the worst defeat the early inspectors had to experience.

In this context, it has to be pointed out that Bartrip and Fenn's main empirical research has been on the enforcement of the safety clauses.111 This means that they have concentrated on the greatest setback of the early inspectors. Apparently, this has influenced Bartrip and Fenn in their general perspective that prosecutions were increasingly futile and "negotiated compliance" a more rational strategy. In the case of the clauses on safety, I have no doubt that after 1856 a policy based on

107 PRO, London. LAB 15/2, Minutes of the Meetings of the Inspectors of Factories, 2/6/46; 26/6/46; LAB 15/3, Minutes..., 8/6/55.
109 Representatives of the Association worked hard for the dismissal of Leonard Horner as factory inspector due to his activities on the fencing of machinery question. See LRO, Preston. DDX 1115/1, Minutes of the Factory Law Amendment Association, Preston, 25/5/55.
110 PRO, London. LAB 15/3, Minutes of the Meetings of the Inspectors of Factories, 6/3/54.
111 Bartrip and Fenn (1980a), passim.
persuasion was the more effective one. The very limited backing of the law to demand improved safety measures clearly had this result. Also, in contrast to overworking offences, fencing requirements were easily inspected. As I have indicated earlier, it was not difficult for the inspector to check if his previous complaints on insufficient fencing had been attended to at his subsequent visit. In other words, compliance was easily checked. In this particular context, persuasion strategies were indeed rational.

But there were other parts of the safety regulations where persuasion was hardly the best policy. The practice of using children and juveniles to clean machinery in motion proved to be very difficult to eradicate. In fact, this clause had many features in common with that on illegal overworking. Offences of this kind left no trace other than occasional injuries, and were therefore very difficult to detect. In the same way as in time-cribbing, the adult operatives who subcontracted the younger ones were an active party in the illegal cleaning practices. Already in 1849, Leonard Horner complained that accidents of young piecers from sweeping under self-acting mules in motion were "perpetually occurring", even though this practice had been made illegal by the 1844 Factory Act. This clause continued to be difficult to enforce for at least fifty years.

It is also an example of the seldom recognised connection between factory offences and the organisation of work. Superintending Inspector Richmond claimed in 1902 that the piece-rate structure of pay and the subcontracting of young assistants in cotton spinning and weaving were the real reasons behind the many accidents caused by the cleaning of machinery in motion. Indeed, the indications are that proper enforcement of this clause in the mule-spinning sector of the industry was only achieved in 1918 by an agreement on cleaning time allowances between the Spinners' Amalgamation and the employers' federation. This

112 It seems to have taken an Employers' Liability Act to have the machinery fencing improved in the Lancashire cotton industry. See PP 1882 Xd VIII, RCIFW, pp. 3-4; PP 1886 XXI, Second Report of the Royal Commission Appointed to Inquire into the Depression of Trade and Industry, Part I, evidence of James Mawdsley, Spinners' Amalgamation, p. 174 Q. 5,098.
115 PP 1902 XXV, Minutes of Evidence taken before the Inter-Departmental Committee on the Employment of School Children, p. 6 Q. 175. See also Clarke, A [1899]: The Effects of the Factory System, pp. 98-100.
116 See Spinners' Amalgamation, Quarterly Report 31/1/17; 31/4/18.
points to the necessity of including the world of work in an analysis of the enforcement of factory regulations.

Regarding inspector policy on illegal cleaning, prosecutions seems to have been the only viable option. The only difficulty was to determine if the employer or the adult operative should be held responsible. This clearly shows that even between the different parts of the safety regulations there were variations as to viable inspector policies.

However, the general mistake Bartrip and Fenn have made is that they have generalised the enforcement processes and strategies on the fencing clauses to encompass all parts of the Factory Act. As I have shown above, that approach tends to obscure the important differences in enforcement processes between various parts of the early factory legislation.

It also means that they have misplaced the timing of dominance of persuasion policies within the inspectorate. Instead of connecting it with the enforcement difficulties in the late 1830s, it would be more reasonable to place it in the context of the great extensions of the factory legislation to include new branches of industry which occurred after 1864. In that year, potteries, lacemaking and match-factories were put under inspection. In 1868 metal works were included, and the number of factories to be inspected nearly doubled. However, it was not simply a case of altered enforcement practices being occasioned by strained resources. The new factories differed very much in character compared with the textile mills. Employing mainly male juveniles and men, and comparatively few women and children, inspection in these works was mainly a matter of checking the safety measures. Since the adult male operatives in these branches generally had secured a normal working day which was equal or shorter than that prescribed by legislation, overworking was not here any major problem. Child labour seems largely to have been

117 The inspectors seems to have investigated if sufficient cleaning time was paid for by the employer when deciding who was to be held responsible. The solution of the problem with young piecers cleaning mule-frames in motion seems to have hinged on the operative spinners being granted compensation for doing the cleaning within "engine hours". Harris Library, Preston, Preston Spinners' Association, Minutes, 9/4/10; 4/4/11; 9/5/11; 7/9/11; 7/11/11.
120 PP 1867-68 XVIII, RIF, 2nd Half-yearly Rep. 1867, p. 36.
abandoned in the industries coming under the scope of the Factory Extension Acts.\textsuperscript{121}

Therefore, I would suggest that with the addition of the new industries inspection practice tended to gravitate towards an enforcement of safety measures, thereby giving the pre-eminence to policies based on persuasion. Moreover, when the inspectors were given the responsibility for the enforcement of the Workshops Act in 1872 and for all bakehouses in 1876, they found themselves in a situation of strained resources and of being expected to enforce very badly framed legislation.\textsuperscript{122} This not only lowered the relative level of prosecutions, it was also an obstacle to a reasonable degree of enforcement.

There were also other reasons for the apparent decline in the use of prosecutions as an enforcement policy. It is important to note that there is no sign of any serious or consorted employer resistance to the factory legislation in the period after 1856. Alexander Redgrave pointed out several times that the changed nature of factory inspection was very much due to a general acceptance of the law among the manufacturers: "...the main cause...was the total change in feeling in the manufacturers. Their opposition was given up; they saw the benefits of the system...and the great portion of them were as strenous supporters of the Factory Acts as they had originally been opponents to them".\textsuperscript{123} While I see no reason to accept Redgrave's eulogy of the manufacturers wholly at face value, it does support my general argument that it is necessary to analyse employer strategies and policies in connection with the Factory Act as well as those of the inspectors. This Bartrip and Fenn have entirely failed to do. Concentrating only on policy differences between the inspectors, the complex relationship between manufacturers, operatives, inspectors,

\textsuperscript{121} See PP 1868-69 XIV, RIF, 1st Half-yearly Rep. 1869, p. 36; PP 1870 XV, 1st Half-yearly Rep. 1870, p. 9. However, it should also be recognised that manufacturers had the option to evade the more stringent factory regulations simply by keeping their workforce below 50, which meant that in legal terms it did not constitute factory employment. Child labour and the overworking of women could therefore continue in the much less regulated workshops. In the same way, factory and workshop legislation towards the end of the century undoubtedly tended to change the form of exploitation of woman and child labour towards "sweating", i.e. unregulated outwork in the homes. See Schmiechen, J A: Sweated Industries and Sweated Labor. The London Clothing Trades, 1860-1914, chapter 6.


\textsuperscript{123} PP 1876 XXX, Report of the Commissioners..., Vol II, evidence of Redgrave, p. 31 Q. 473. See also PP 1878-79 XVI, RCIFW, p. 4; PP 1880 XIV, RCIFW, pp. 61-65.
magistrates and the State in the enforcement process is completely obscured.

VIII

This is not to say that policy differences between the inspectors did not matter. On the contrary, the early factory inspectorate can be seen as a bureaucracy deeply involved in ongoing social reform. They did not only administer a defined set of rules, but very much participated in the process of improving the factory legislation. Especially in the administration of social reform with no clearly or ultimately fixed boundaries, the policies employed by the administrators must be regarded as very important.

The extension of the inspectorate in the 1860s and 1870s was accompanied by a centralisation of power to two inspectors in 1862, and to one Chief Inspector in 1878. Naturally, this meant that policy decisions taken at top level by a few officials probably had great influence over enforcement practices in the whole organisation. It is therefore important to see exactly who made these decisions, and for what reasons. In this context, I will also re-evaluate the efficiency and policy choices of the factory inspectorate in the 1870s and 1880s.

In their eagerness to show that "negotiated compliance" was a more rational policy than prosecutions, Bartrip and Fenn focus on the policy differences between the inspectors Alexander Redgrave and Robert Baker in the 1860s and 70s. While Redgrave was an active proponent of persuasion strategies, Baker is described as a "zealot" keen on prosecutions.124 Showing that Redgrave had a conviction rate of 69 per cent compared to Baker's 55 per cent, and that the former also could show a slightly higher staff visiting rate at factories, they conclude that prosecutions were inefficient, costly and time-consuming. Redgrave's approach is therefore described as an optimal allocation of scarce resources.125

This conclusion, however, is highly questionable. Since Baker prosecuted much more often than Redgrave, he achieved a considerable higher number of convictions in spite of the lower rate. The 1876

Commission which investigated the operation of the Factory Acts duly noted, with obvious approval, the higher conviction rate in Baker's district.\textsuperscript{126} Also, Bartrip and Fenn do not take into account the fact that inspectors often withdrew their prosecution on payment of costs if they felt that they had proved their point. With the system of multiple convictions, the inspector had the option to lay many separate informations, and when he felt that the amount of fines was sufficient, he could withdraw the remaining points on the payment of costs.\textsuperscript{127} This means that a simple conviction rate really says very little about the degree of successful prosecutions.

For instance, in 1873 Baker reported that during the past six months he had made 389 prosecutions in his district, and only 8 of these cases had been dismissed by the magistrates.\textsuperscript{128} Naturally, some cases were withdrawn on costs on the decision of the magistrates. But Baker seems to have been of the opinion that in most of those cases, mainly against poor parents not sending their children to school, even the mere payment of costs was a sufficient punishment.\textsuperscript{129} This raises the question if factory prosecutions really can be considered "costly". The evidence indicates that in a very great majority of factory cases costs were not paid by the inspector at all. What remains of Bartrip and Fenn's evidence is a slightly higher visiting rate among Redgrave's staff, and it has yet to be proven that this caused the law to be better enforced than it was by Baker's method of more frequent prosecutions. Bartrip and Fenn do not produce any evidence indicating that the actual compliance with the law was greater in Redgrave's district than in Baker's. As I will argue below, it is probably the opposite.

Bartrip and Fenn's staunch support of Redgrave's choice of policy is somewhat strange in the light of their own empirical findings. When Redgrave replaced Saunders as inspector in the Western district in 1852, the proportion of accidents actually increased.\textsuperscript{130} This would actually tend to support the view that Saunders' prosecution policy was the more effective. Indeed, their article on the enforcement of the safety regulations only highlights the very limited success of their theoretical conceptions. It

\textsuperscript{126} PP 1876 XXIX, Report of the Commissioners..., Vol I, p. lxxxix.
\textsuperscript{127} Peacock has maintained that the inspectors themselves regarded "withdrawn on the payment of costs" as a conviction. Peacock (1985), p. 431.
\textsuperscript{128} PP 1873 XIX, RIF, 1st Half-yearly Report 1873, p. 39. In the same period, Redgrave authorised 127 prosecutions. Ibid., p. 5.
\textsuperscript{129} Ibid., p. 40.
\textsuperscript{130} Bartrip and Fenn (1980a), pp. 98-100.
contains some interesting empirical data, but is flawed by a decided lack of cohesion between the theoretical framework and the empirical material. While emphasising the importance of different inspector policies, they are unable to show any real correlation between these policies and accident levels. Redgrave used persuasion policies and saw a rise in the proportion of accidents, while Stuart adhered to the same policy and saw a decline. Horner prosecuted, but accident levels remained stable and high, while Saunders used the same policy and achieved a decline. The only reasonable conclusion is that there was no simple causal link between inspector policy and accident level, but that is clearly an inference which Bartrip and Fenn did not want to make.

There are also other indications that Redgrave's policies did not serve to improve enforcement. When Redgrave's quarrel with Baker was examined by a special Home Office Inquiry in 1868, it emerged that Redgrave had a different strategy on staffing and surveillance levels than his colleague. While Baker increased the number of Sub-Inspectors to meet the increased pressure occasioned by the Factory Extension Acts, Redgrave instead responded by increasing the workload of his staff. Before the Inquiry, he stated that his Sub-Inspectors performed much more work than those in Baker's district, presenting figures indicating that his staff were each in charge of more than double the amount of factories compared to Baker's Sub-Inspectors. Redgrave then used this as an argument for a raise in salary for his staff. However, the Inquiry was not much impressed, pointing out in their confidential report that the extent of travelling also had a great impact on Inspectors' workloads. They also maintained that the staff were paid for the time worked, not according to the size of their districts.

These findings put Bartrip and Fenn's conclusions on enforcement levels in an entirely new light. Even if Redgrave's staff had a slightly higher visiting rate than their colleagues in the other district, their larger workloads meant that they were not able to inspect each factory as frequently as Baker's Sub-Inspectors. Naturally, the best measure of enforcement must be the visiting rate of each factory, and not, as Bartrip and Fenn have maintained, that of the individual inspectors.

131 PRO, London. HO 45/8002/21, Confidential Report of the Inquiry into the Factory Inspectors' Department, Minutes (printed), evidence of Redgrave, pp. 41-42 Q. 447-57. For earlier evidence of the quarrel between Redgrave and Baker, see also HO 45/7563.
132 PRO, London. HO 45/8002/21, manuscript report.
The 1868 Inquiry really shows that the level of surveillance was considerably lower in Redgrave's district than in Baker's. In the large part of the cotton district which was under Redgrave's inspectorate, it is clear that there was a deterioration of surveillance levels. Finding some districts "too small", Redgrave merged Burnley/Colne with Blackburn and Ashton with Oldham. Naturally, this must have worsened the prospects of enforcement of the clauses of the Act which required a high surveillance profile, for instance the provisions on the legal working day.

These findings also indicate that it is a mistake to see the conventionalisation process as simply caused by stretched manpower resources. In fact, Redgrave's staffing policies materially contributed to a general lowering of inspection levels. Being more interested in raising salaries and the prestige of the inspectorate rather than an increase in numbers of staff, Redgrave actually directed the inspectorate away from offences requiring high levels of surveillance and towards an emphasis on the function as advisors on safety measures. His policy of 'gentrifying' the inspectorate and the priorities this involved should therefore be seen as an important part of the gradual conventionalisation process of factory crimes.

This is not the only indication that Redgrave's choice of policies may have been detrimental to strict enforcement. It is questionable if Redgrave's emphasis on persuasive means was really a rational strategy. Indeed, in the light of the evidence before the Factory Act Commissioners in 1876 it would be nearer the truth to characterise Redgrave's policy as an avoidance of prosecutions rather than a use of persuasion. It was revealed that Redgrave had hindered his staff from prosecuting if the evidence was not extremely clear. In spite of the fact that the 1844 Act ruled that it was enough to find restricted workers in the mill after legal hours to secure a conviction for overworking, Redgrave instructed his staff that they were not allowed to prosecute unless they had found the operatives actually at work.

In fact, Redgrave's policy not to prosecute even in very obvious cases of overworking seems to have surprised the Commissioners, judging from the number of times Redgrave was pressed on this issue. In contrast, Baker

---

134 See Bartrip and Fenn (1980b), passim.
seems to have had no problems in obtaining convictions for overworking when finding restricted workers in the mill after legal hours. The Commissioners remarked with special emphasis on this difference in policy in their report, and also supported Baker's view that the Assistant Inspectors should reside in their districts in order to raise surveillance levels.

As I have shown previously, there is no evidence that persuasion was a viable strategy when countering overworking practices. Redgrave's marked reluctance to prosecute in these cases undoubtedly made the enforcement process more difficult.

This conclusion is borne out by the evidence given by Redgrave's own staff. Several of his Assistant Inspectors, among them Walker and Patrick, complained that the necessity to apply to Redgrave in London for sanction for every prosecution led to great delays. Patrick recounted instances when he had received sanction to prosecute only to find that Redgrave had written directly to the Sub-inspector instructing him to drop the case.

Even more importantly, Walker claimed that being in practice unable to resort to prosecutions, his authority with the mill-owners had very much decreased. Not having the power to prosecute also meant having less force when using cautions and persuasions. This evidence indicates that Redgrave's reluctance to sanction prosecutions lowered the morale among his staff, lessened their authority with the manufacturers and actually lowered their ability to enforce the law with the use of cautions and persuasions.

These findings question both Bartrip and Fenn's theoretical framework and their depiction of Redgrave. Persuasion was not a more rational or effective policy to ensure enforcement than prosecutions. Instead, persuasions carried more weight when accompanied with real powers to take offenders to court. Bartrip and Fenn's tendency to view them as separate policies have obscured the fact that they were most efficiently used together. As for their appreciation of Redgrave, the evidence does not support their view that his methods were the most rational and cost-

---

137 Ibid., evidence of Baker, p. 53 Q. 931-32.
138 PP 1876 XXIX, Report of the Commissioners..., Vol I, p. lxxxix, xc-xci. Redgrave's policy was to have the Assistant Inspectors stationed in London.
140 Ibid., evidence of Walker, p. 121 Q. 2431-33.
effective. His reluctance to provide his staff with the full measure of enforcement strategies limited their repertoire of possible actions and, therefore, tended to lower the degree of adherence to the law.141

Actually, an investigation into Redgrave's subsequent tenure as Chief Inspector for a period of thirteen years shows him to have been very much inferior compared to his predecessors. The early inspectors frequently managed to establish a praxis which went beyond the letter of the law, and participated in the process of social reform. Redgrave, on the other hand, seems to have been satisfied with merely administrating existing legislation. The role of the factory inspectors, he claimed, was to explain the law and be the adviser of all classes.142

Redgrave's insistence on avoiding friction actually impaired the possibilities of enforcement. In 1885 the Cotton Factory Times claimed that the Lancashire inspectors were held back by instructions from the Factory Department which stressed the need for "creating harmony instead of discord", thereby lowering the level of enforcement.143

There are also some indications that Redgrave was remarkably slow to exercise the powers at his disposal to improve the degree of enforcement. One example of this kind is that of the certifying surgeons of Dundee. The local factory inspector complained several times to Redgrave that the Dundee surgeons frequently passed children for full-time work even though they were well below the legal age of 13. Redgrave himself was clearly of the opinion that the surgeons were indeed unreliable, but he did nothing to stop this practice. No Dundee surgeon was ever dismissed, even though Redgrave had full legal powers to do so.144

Also, Redgrave showed very little interest in extending and improving the protection offered by the Factory Act. While Baker seems to have been eager to improve the clauses on sanitation and health, Redgrave found it

141 The Commissioners seem to have acknowledged the importance of this matter when suggesting in their report that the power over prosecutions should be delegated to the Assistant Inspectors in their respective districts. See PP 1876 XXX, pp. xc-xci. However, this advice was not followed. Prosecutions continued to be staged only if approved by the Chief Inspector. See PP 1892 XXXV, Royal Commission on Labour, evidence of F. H. Whymper, Chief Inspector, p. 171 Q. 4264. Admittedly, Baker also reserved the right of deciding on prosecutions to himself, but did not at all show Redgrave's reluctance to sanction them. PP 1876 XXX, Report of the Commissioners..., Vol II, evidence of Baker, p. 53 Q. 943.
143 Cotton Factory Times 13/2/85.
unreasonable to stop women from working too soon after confinement. As Chief Inspector, Redgrave proved an able administrator of the existing organisation but without visions or conceptions either on possible improvements of the law or of the performance of the inspectorate. Here, indeed, is an example of "disinterested professionalism". His reports during this period are in fact little more than edited cuttings from the reports sent in by his inspectors. Moreover, there is no evidence that Redgrave initiated any reforms of the factory legislation during this period. The most important new piece of protective legislation, the Act against excessive steaming in weaving sheds, was the outcome of union agitation. In fact, Redgrave's administration of the Steaming Act was severely criticised by the Weavers' Amalgamation. He appointed a special inspector to have the full responsibility of the enforcement of this Act, instead of including it in the duties of the whole staff. The result was that one man was to check illegal steaming practices in all weaving sheds of the cotton district. In this context it has to be remembered that in enforcing clauses like those on steaming and overworking, it was impossible for the inspector to know if offences had actually been committed since his last visit. The only possible solution was to maintain a high level of surveillance, and this could simply not be achieved by one single inspector on steaming. The inspector in question, E H Osborn, stated himself in 1892 that more staff would be needed in order to check illegal steaming. Evidently, Redgrave had not been very successful in organising the enforcement of the Steaming Act.

In other respects, Redgrave's resistance to organisational change had the effect of lowering the quality of enforcement. While the inspectorate had been at least moderately successful in enforcing the law in factories, they were clearly insufficient in force when given the charge to inspect all the workshops and bakehouses in Britain. Baker seems to have been aware of this problem. He admitted that his staff was not at all sufficient to enforce the Workshops Act. Many workshops in his district had not been visited for four years, and overworking was common. As a remedy,

146 PP 1892 XXXV, Royal Commission on Labour, evidence of Thomas Birtwistle, secretary of the Weavers' Amalgamation, p. 53 Q. 1,303-5; Ibid., evidence of George Barker, Blackburn Weavers' Association, pp. 71-72 Q. 1,829-70. For some contemporary criticism of the operation of the Steaming Act, see also Clarke [1899], pp. 55-56, 157.
147 PP 1892 XXXV, Royal Commission on Labour, evidence of Osborne, p. 190 Q. 4,603. Osborne himself was highly appreciated by the cotton unions for his dedication and efficiency. See Cotton Factory Times 14/2/90, 7/3/90.
Baker suggested the recruitment of assistants to the inspectors, "men of lower standard", in order to make possible an efficient inspection of workshops.\textsuperscript{148}

In contrast, Redgrave stated that the number of staff was on the whole sufficient, and that overworking was unusual in workshops. When asked about the necessary level of surveillance, he claimed that it was "utterly unnecessary to visit every workshop once a year".\textsuperscript{149} Redgrave trusted that compulsory schooling and a "gradual growth of opinion" would improve the conditions in the workshops.\textsuperscript{150}

This policy was to remain for the next nineteen years. Redgrave would not consider the employment of "second-class" officers to enforce the Workshops Act, probably because he was unwilling to "dilute" the inspectorate with men from the working classes. He strenuously opposed attempts from the Liberal Home Secretary Harcourt to appoint workingmen as inspectors, arguing that they would not be able to "exercise discretion and display urbnity".\textsuperscript{151} His insistence on gentlemen inspectors led him to remain indecisive on increases in staff, sometimes to the irritation of his political superiors.\textsuperscript{152} In general, he went on insisting that manpower levels were sufficient. When criticized in 1883 for the inadequate inspection of bakehouses, he admitted that "not many bakehouses...were visited in 1879, but since then considerable progress has been made", and claimed that the endeavours of six factory inspectors equalled the work of 78 local officers.\textsuperscript{153}

The outcome was that the inspectorate was unable to control the prevalent overworking practices in the sweated trades. In his study of the London clothing trades, J. A. Schmiechen concludes that the workshop regulations were easily evaded, and inspection virtually nonexistent.\textsuperscript{154}

It was also probably the case that the force was insufficient to counter the increasing trend of overworking in the cotton industry. Expressing the view of the trade unions, the Cotton Factory Times called for the appointment of more inspectors, and the recruitment of workingmen rather than "retired military men and private tutors".\textsuperscript{155} As I have argued

\textsuperscript{149} Ibid., p. 9 Q. 117, 119, 128.
\textsuperscript{150} Ibid., p. 8 Q. 110; p. 35 Q. 503.
\textsuperscript{152} Ibid., pp. 152-53.
\textsuperscript{153} PP 1883 XVIII, RCIFW, p. 19.
\textsuperscript{154} Schmiechen, pp. 138-40.
\textsuperscript{155} \textit{Cotton Factory Times} 6/2/85.
previously, the result of Redgrave's staffing policies was to direct the emphasis of inspection away from clauses which required a high degree of surveillance.

Redgrave's conservatism about recruitment and reorganisation of the force postponed the necessary changes for many years. But it was probably also the case that neither the Tory government in the late 1880s nor the key officials in the Home Office were interested in large expansion of the factory inspectorate.¹⁵⁶

Only with the return to office of the Liberals in 1892 and the appointment of Sprague Oram as Chief Inspector in the following year were Redgrave's staffing policies finally abandoned.¹⁵⁷ Acknowledging that the level of staff had been insufficient, special officers were employed to increase the surveillance over the workshops. Inspector Lakeman, who had struggled for years to control the London sweated trades, was given nine such assistants.¹⁵⁸ Sprague Oram also demanded a sharpening of the rules on overtime working in workshops in order to improve the possibility of enforcement.¹⁵⁹ That initiative was much overdue.¹⁶⁰

My conclusion is that Redgrave's enforcement policies can hardly be described as an "optimal allocation of scarce resources".¹⁶¹ On the contrary, these scarce resources were to a large degree an outcome of his general policy of "gentrifying" the factory inspectorate. His tenure of high positions within the inspectorate is also marked by the absence of reform initiatives, a lowering of enforcement standards, and a gradual movement towards the conventionalisation of factory crimes. Seen in a longer perspective, the policy of "gentrifying" the inspectorate and the increasing centralisation of the power to allow prosecutions were two very important factors in this process. Combined with the tenure of a Chief Inspector with a documented great reluctance to prosecute and who expressly stated that he did not regard factory offences as crimes, this process must have accelerated during the 1870s and 1880s.¹⁶² This study would point to the

¹⁵⁶ See Pellew, p. 155.
¹⁵⁷ Redgrave's successor, F. H. Whymper, recognised that the number of his staff was inadequate, but he shortly retired due to illness. See PP 1892 XXXV, Royal Commission on Labour, evidence of Whymper, p. 172 Q. 4,295-96.
¹⁵⁹ PP 1894 XXI, RCIFW, p. 6.
importance of the authority structures within a bureaucracy and also to
the policy decisions which are allowed to dominate the organisation. But
contrary to the assertions of Bartrip and Fenn, it seriously questions the
achievement of the Factory Inspector Alexander Redgrave.

IX

Summing up my position, I would argue that the question of real
enforcement of the early Factory Acts is much more complicated than has
been claimed in recent research. Some parts of the legislation could be
more successfully enforced than others. Already by the late 1830s, the
manufacturers had largely given up their initial resistance towards the
formal requirements of the Act. The regulations on certificates and
registers were well enforced, mainly because evasions were very easily
detected and prosecuted against. The enforcement of the child labour
clauses was gradually improved, a process which also implied an increased
inspector control over the issuing of medical certificates. The 1844 Factory
Act laid down the foundation for a regular half-time system for children
below 13, and this structure of the law and of work practices made the
enforcement of the legal working day for children much easier.

On the other hand, overworking of women and juveniles continued to be
problematic. Successful overworking left no trace at subsequent
inspections, and had to be countered with a high level of surveillance and
repeated prosecutions. Even if major offences of this type became more
rare, it is clear that minor overworking offences, or "time-cribbing",
continued to prevail in certain districts well into the 20th century. Where
"time-cribbing" was performed in collusion between management and
workers, the inspectors found it virtually impossible to eradicate the
practice. This was also the case with the offence of cleaning machinery in
motion. However, the enforcement of the regular safety clauses was an
entirely different matter as to inspector policy. The legal enactment of 1856
made the safety regulations relatively toothless, and the inspectors turned
increasingly towards means of persuasion as the main enforcement policy.
This strategy was viable in the context of the safety measures since the
inspectors could easily check at subsequent visits if their advice had
produced any effects.
My overall conclusion is that the early Factory Acts were relatively efficient as regards the establishment of a formal system of certificates and registers, and on the child labour clauses, but less "successful" in the context of minor overworking offences and safety measures. But it should perhaps also be pointed out that in an international comparison, the early British factory inspection stands out as by far the most efficient one. The legal measures were weaker and inspector resources and independence much less in, for instance, France, the Nordic countries, and the U.S.A.\textsuperscript{163}

However, I remain critical of Bartrip and Fenn's evaluation of enforcement policies. In their general perspective of a transition from prosecutions to a persuasion policy, they maintain that this development was a rational and cost-effective move, and that "negotiated compliance" was much preferable to prosecutions. The grounds for this conclusion are given as: firstly, the strained manpower resources of the inspectors; secondly, the low level of fines inflicted; and thirdly, the complexity and shortcomings of the law. All these points have been challenged. Bartrip and Fenn have downplayed the number and usefulness of the Superintendants in the late 1830s in a way which is not compatible with empirical facts. Moreover, there was no essential stretching of manpower resources before the great extensions of the scope of the Act in the 1860s. This means that Bartrip and Fenn have very much exaggerated the lack of inspector resources during the early period.

Secondly, I have shown that in some kinds of offences, even limited fines could be effective. This was clearly the case in the enforcement of the book-keeping requirements in the late 1830s.

Furthermore, Bartrip and Fenn have not given any real importance to the possibility of multiple convictions for the same type of offence which was included in the 1844 Act. In instances of overworking, cases could now be brought against the mill-owner for each operative illegally worked. This greatly improved the inspectors' ability to have some control over the level of fines. Even more remarkably, they have not considered the effects of the

enforcement strategy of increased levels of surveillance and repeated prosecutions.

Lastly, in the case of the shortcomings of the law, Bartrip and Fenn have not analysed the different clauses separately, but draw inferences mainly from the enforcement of the safety clauses which unquestionably constituted the most serious defeat on the part of the inspectors. Taken altogether, the assertion that the transition towards persuasion polices was a rational response to inspection difficulties simply lack foundation as regards the other clauses than the fencing regulations. The result is that Bartrip and Fenn's estimation of real inspection efficiency is seriously flawed.

This investigation also challenges the conception of a conventionalisation of factory crimes starting already in the 1830s. The first decades of the factory legislation was, I would argue, a successful period of criminalisation of factory offences. Only by the late 1860s was there a marked trend towards persuasion measures and conventionalisation. This was partly caused by the passing of the Extension Acts. The great expansion of factory legislation in the late 1860s to encompass most industrial trades not only strained the resources of the inspectorate, it also very much changed the nature of inspection. The new trades were in many ways dissimilar to the textile industries which had been the first to be regulated. Female and child labour, and persistent overworking practices, were much less of a problem in the newly regulated industries. Inspection practices therefore tended to gravitate towards the enforcement of the safety clauses, a field where the structure of the law had made persuasion strategies a viable policy instrument.

The process of conventionalisation was also speeded up through the influence of the first Chief Inspector, Alexander Redgrave, who hesitated to use prosecutions as a policy instrument even against certain types of offences where persuasion measures were wholly ineffective. Moreover, his policy of "gentrifying" the inspectorate rather than raising surveillance levels also tended to lower the degree of enforcement as regards offences where frequent inspections were absolutely essential.

Finally, in the case of the Lancashire cotton industry, it is also possible that the process towards conventionalisation was reinforced towards the end of the century by a shift in the structure of capitalistic enterprise from family firms to the more anonymous public limiteds, which tended to view factory offences merely as an economic calculation.
References

Manuscript sources

Public Record Office, Kew, London.

LAB 15, Minutes of the Meetings of the Inspectors of Factories
HO 45 Home Office Correspondance and papers
HO 87 Home Office Letter Books on Factories

Lancashire Record Office (LRO), Preston

Preston Weavers' Minute Books
Burnley Weavers' Minute Books
Burnley Weavers' Letter Book
The Factory Law Amendment Association, Preston, Minute Book

Harris Library, Preston

Preston Spinners' Association Minute Books

Printed sources

Parliamentary Papers

Reports of the Inspectors of Factories, (RIF), 1834-1877
Reports of the Chief Inspector of Factories and Workshops, (RCIFW), 1878-1923
Returns of the Number and Names of Persons Summoned for Offences against the Factory Act, 1837-1846
Factory Returns, 1836-1870

PP 1824 V, Artizans and Machinery: Six Reports with Minutes of Evidence.
PP 1825 IV, Minutes of Evidence taken before the Select Committee on Combination Laws.
PP 1832 XV, Report from the Committee on the Bill to Regulate the Labour of Children in the Mills and Factories of the United Kingdom...
PP 1833 XX, First Report of... Commissioners... on the Employment of Children in Factories.
PP 1833 XXI, Second Report of... Commissioners...
PP 1834 XIX, Factories Enquiry Commission. Supplementary Report Part II.
PP 1837-38 VIII, First Report from the Select Committee on Combinations of Workmen.
PP 1837-38 XXVIII, 1st and 2nd Memorial of the Short-Time Committee of Manchester and the Surrounding District.
PP 1840 X, Select Committee on the Regulation of Mills and Factories, First Report.
PP 1840 X, Third Report from the Select Committee on the Regulation of Mills and Factories.
PP 1841 IX, Report from the Select Committee on the Act for the Regulation of Mills and Factories.
PP 1873 LV, Report... on Proposed Changes in Hours and Ages of Employment in Textile Factories.


Literature


PP 1876 XXX, Report from the Commissioners appointed to enquire into the Working of the Factory and Workshops Acts, Vol II.
PP 1892 XXXV, Royal Commission on Labour
PP 1902 XXV, Minutes of Evidence taken before the Inter-Departmental Committee on the Employment of School Children

Other

Burnley Weavers' Quarterly Reports
Spinners' Amalgamation, Quarterly Reports


Newspapers

Cotton Factory Times
Glasgow Sentinel

Contemporary pamphlets

Alden, M (1908): Child Life and Labour, London.
Clarke, A (1899): The Effects of the Factory System, Otley.
Greg, R H (1837): The Factory Question, Considered in Relation to its Effects on the Health and Morals of those Employed in Factories... London.
Hird, F (1898): The Cry of the Children. An Exposure of certain British Industries in which Children are Iniquitously Employed, London.
Infant Slavery. Report of a Speech delivered in favour of the Ten Hours' Bill by Richard Oastler, Esq, at a numerous meeting held at Preston, on the 22nd of March, 1833..., Preston.
Memoir of Leonard Horner (1890), K M Lyell (ed), London.
The Department of Child Studies

Linköping University hosts an interdisciplinary Institute of Advanced Study known as the Institute of Tema Research. The Institute of Tema Research is divided into five separate departments, each of which administers its own graduate program, and each of which conducts interdisciplinary research on specific, though broadly defined, problem areas, or "themes" (tema in Swedish, hence the name of the Institute). The five departments which compose the Institute of Tema Research are: the Department of Child Studies (Tema B), the Department of Health and Society (Tema H), the Department of Communication Studies (Tema K), the Department of Technology and Social Change (Tema T), and the Department of Water and Environmental Studies (Tema V).

The Department of Child Studies was founded in 1988 to provide a research and learning environment geared toward the theoretical and empirical study of both children and the social and cultural discourses that define what children are and endow them with specific capacities, problems, and subjectivities. A specific target of research is the processes through which understandings of 'normal' children and a 'normal' childhood are constituted, and the roles that children and others play in reinforcing or contesting those understandings. The various research projects carried out at the department focus on understanding the ways in which children interpret their lives, how they communicate with others, and how they produce and/or understand literature, language, mass media and art. Research also documents and analyses the historical processes and patterns of socialization that structure the ways in which childhood and children can be conceived and enacted in various times, places and contexts.