

**A Veblenian Dichotomy re-examination of labour brokerage and South
African labour market functionality**

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ABSTRACT

Labour markets around the world have witnessed a great change in labour relations. The introduction of globalisation, increased competition and technological advancements has caused business organisations to change their employment methods. While trying to survive and remain profitable, employers have adopted a new form of triangular employment relationship. This form of employment relationship known as labour broking and which forms part of the Temporary Employment Services (TES) involves a relationship between the worker, labour agent (broker) and a client company. Although it may seem like a good strategy for business organisations, the change in employment relationships has had negative effects and contributed to labour market dysfunctions. This has resulted in critics of labour broking calling for an end to labour broking and supporters of labour broking asking for better regulation of the industry. Labour markets are me

When it comes to analysing labour broking and its impact on labour market functionality in South Africa. Scholars and analysts such as Budlender (2013) and Bhorat, Lilenstein, Oosthuizen, & Thornton (2016) have used the Neoclassical, New Institutional Economics and Marxist approaches. The current views on labour broking and the current schools of thought fail to look at the underlying behavioural aspect of labour brokers and the client companies. Hence making it easy for labour brokers and their client companies to continue with their unscrupulous activities.

However, this thesis adapted the Veblenian Dichotomy framework which focuses on understanding the role of the evolutionary process and the role of institutions in shaping economic behaviour. The Veblenian dichotomy shows that power plays an important role in how labour markets are run. Similarly, behaviour also influences the manner in which labour brokers and client companies treat workers. And lastly the Veblenian dichotomy shows that in order for the industry to be run better there has to be change in the behaviour and culture of the labour brokers and client companies. This view allows for deeper analysis of the reasons for the flourishing nature of labour broking and the rationale behind the behaviour of economic players and attempts to provide solutions on how labour broking can be correctly administered in South Africa.

The Veblenian Dichotomy categorises institutions into two sets, namely the ceremonial institutions and instrumental institutions. Where Ceremonial institutions are said to be institutions that foster the interests of business such as profitability and earning of free income, even if there is no corresponding increase in production. While Instrumental institutions, usually working through the influence of technology, address the interests of the common person and the labourer as well as business (Waller, 1982; Foster, 1981; Veblen, 1919). These two systems of values and institutions are antagonistic and the relative strength of one to the other determines economic outcomes and in whose interests the outcomes would be (Waller, 1982; Foster, 1981; Veblen, 1919). The Veblenian Dichotomy further looks at ceremonial encapsulation which occurs when ceremonial systems prevail over instrumental systems. Ceremonial encapsulation presents the hypothesis that the institutional structure will absorb new technology only to the extent that it can do so without disrupting the existing value structure (Waller, 1987; Bush, 1979).

The thesis used various sources, such as working papers, public hearings, court cases, trade union submissions, integrated reports from companies, employee submissions and media publications on the debate about labour broking whether labour broking and applied the Interpretative Phenomenological Analysis (IPA) research approach, in the process of data collection and analysis. The thesis further applied thematic analysis to derive themes that would be used to analyse the impact of labour broking on labour market functionality in South Africa. The emergent themes and subthemes were Exploitative labour relations subthemes; job Insecurity, increased financial burden and no skills development. The second theme was; Competitive advantage and the subthemes were; increased profits and organisational efficiency. The third theme was labour market efficiency and the subthemes were; employment creation and labour market flexibility. And, the last theme was ambiguous labour regulations with subthemes; no freedom of association and a tool for circumventing labour regulations. Lastly, Tool's (1994) criteria of judgement for institutional adjustments was used to evaluate the emergent themes and to evaluate the impact of labour broking on the overall welfare of individuals, which includes determining whether employees in the TES sector gain skills and improved standards of living.

The findings of the research the TES sector is characterised by ceremonial values. Ceremonial values (as mentioned in section 3.3) are those values that are warranted by the ways of life

that prescribe status and hierarchies and unpleasant distinctions to apply value and status on other people (Bush, 1987, 1988; Ayres, 1967). Thus changing the way in which labour brokers conduct themselves or handle labour broking activities would prove to be difficult. The power that is mostly used in TES employment sectors is condign power. Condign power is explained as the form of power that is predominantly used in ceremonially encapsulated markets. And it involves making use of punishment or fear in order to get people to do something. This is because workers in the TES sector are forced to submit to conditions that they would not normally have submitted to if they did not have a fear of losing their jobs. This supports existing literature which shows that in the TES sector, TES employers use force and power in order to get the workers to do something, and this results in a master-servant relationship between the employer and the employee. Furthermore, the protests that erupt in the TES sector agree with Marxist theory which notes that the frustrations in the way workers are treated would result in a revolution of the working class against the employers. However, now, workers have not been able to overcome the employers and take over the industry.

In addition to what current literature says, the research found that some managers make use of labour broking as a way of manifesting their exploitative characteristics on the labour market, thus creating information asymmetries in order to advance their own personal needs. Situations such as these reveal characteristics of opportunistic behaviour, which is perpetuated by the imperfect flow of information. This means that the market is imperfect, and imperfect markets are characteristics of dysfunctional labour markets.

The research also found that it is the South African Constitution that protects labour brokers and client companies from accounting for the unfair treatment of workers. Labour brokers and client companies rely on the South African Constitution to defend them when it comes to banning labour broking. This is because section 22 of the Constitution talks about the right of every individual to trade freely in South Africa (Kutumela, 2015).

When institutional adjustments do not meet the requirements of the progressive criteria, it means they are regressive. Based on the data that was collected and the responses and remarks of the workers, trade unions, and trade union federations, it can be said that TES employment and labour broking hinders labour market functionality. Hence, it can be

concluded that, due to the characteristics mentioned, labour broking does indeed have a regressive element which hinders labour market functionality.

An area for further research for TES employment would be to look at the impact of the amendments to the Labour Relations Act. Specifically focusing on the Constitutional Court ruling, which forces labour brokers to treat employees who have been employed for longer than three months as permanent employees.

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“When the time is right, I the Lord will make it happen”.

Isaiah 60: 22

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I acknowledge that all references are accurately recorded and that, unless otherwise stated, all work herein is my own. I certify that this thesis has not been submitted for a degree at any other university

ABBREVIATIONS

BCEA	Basic Conditions of Employment Act
CCMA	Council for Conciliation, Mediation and Arbitration
COSATU	Congress of South African Trade Unions
NUM	National Union of Mineworkers
NUMSA	National Union of Metal Workers in South Africa
SAFTU	South African Federation of Trade Unions
ANC	African National Congress
TES	Temporary Employment Services
NIE	New Institutional Economics
TCE	Transaction Cost Economics
COIDA	Compensation for Occupational Injuries and Diseases Act
CIETT	Confederation of Private Employment Agencies
CAPES	The Confederation of Associations in the Private Employment Sector
CSP	Community, Social and Personal Services
EPWP	Expanded Public Works Programme
QLFS	Quarterly Labour Force Survey
GDP	Gross Domestic Product
FEDUSA	Federation of Unions in South Africa
SAMWU	South African Union of Municipal Workers
APSO	The Association of Personnel Service organisations
ILO	International Labour Organisation
JOI	Job Opportunities Index
LRA	Labour Relations Act

OIE.....Old Institutional Economics

NEDLAC.....National Economic Development and Labour Council

STATSSA.....Statistics South Africa

DOL.....Department of Labour

SARS.....South African Revenue Services

UIF.....Unemployment Insurance Fund

SAFTU.....South African Federation of Trade Unions

NACTU.....National Council of Trade Unions

FEDUSAFederation of Unions of South Africa

USO.....Universal Service Obligation provision of postal services nationally

SAPO.....South African Post Office

BEE.....Black Economic Empowerment

CV.....Curriculum Vitae

GIWUSA General Industries Workers Union of South Africa

UWC.....University of the Western Cape

MHSA..... Mine Health and Safety Act

OHSA.....Occupational Health and Safety Act

ECC..... Employment Conditions Commission

COSAWU.....Commercial Services and Allied Workers' Union

CWU..... Communications Workers' Union

LEWUSA.....Labour Equity General Workers' Union of South Africa

SAGWATU.....South African Gaming, Waitron and Admin Workers Trade Union

SAPWU..... South African Postal Workers Union

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Chapter 1 Introduction

“Labour broking fills the pockets of labour brokers at the expense of the employee, while the client gets the fruit of the employee’s labour leaving the employee with no protection.... I’m afraid that the merging entrepreneurs, especially those who were previously disadvantaged need to be reined in. Otherwise, as history has shown, the poor will be ground into the dust under punishing labour conditions and declining wages, so that the captains of the industry grow fatter”

(Judge President Dunstan Mlambo, 2012, p.1)

1.1. A contextual view of labour broking

Labour broking can be defined as the act of subcontracting labour, which is commonly known as temporary employment services (TES). This involves a person or company providing labourers to client companies on a temporary basis for a stipulated fee. When workers are contracted, although they work at the client company, they are not considered as the employees of the client, but of the labour broker (Du Toit, 2004; Mostert, 2011; Deloitte, 2016). This means that the labour broker is responsible for all the administration related to the employee, such as payroll, taxes, and leave administration, amongst other things.

A similar concept to labour broking is the concept of labour outsourcing. For this study it is important that a clear distinction is made between the two concepts. While labour broking involves the subcontracting of workers for short periods of time, labour outsourcing is different, because it creates permanent and longer-term employment (Hira & Hira, 2005; Buckholder, 2006; Deloitte, 2016). The period for which the outsourcing contract is valid is determined by the outsourcing period, which is usually from three to five years, unlike labour broking contracts, which can run for about a few months. With outsourcing, the workers are remunerated by the outsourcing company and the outsourcing company is bound by labour legislation (Deloitte, 2016; Nieves-Rodríguez, Palacios-Chacón, Pérez-Rivera & Quiñones-Cintrón, 2018). The outsourcing company is also responsible for the termination of the contract if the proper procedure that is outlined in the labour legislation is adhered to. Unlike

TES, outsourcing service providers offer services that the end user would most likely be unable to perform themselves or would not be able to perform effectively due to a lack of skills. As these functions require specific skill sets, those hired by outsourcing service providers cannot be easily replaced (Deloitte, 2016; Nieves-Rodríguez *et al.*, 2018).

From a transaction cost point of view, employers choose labour broking because for them it means greater flexibility, as extra labour can be brought in quickly when necessary and removed from site when there is less work to do (Du Toit, 2004; Mostert, 2011; Deloitte, 2016). This reduces the costs that come with the administration, search activities, interviews, accommodation and other costs that are related to the recruitment process (Schmid, 2015; Lockett & Thompson, 2015). The buying and selling of labour contracts does not only benefit the labour brokers and employers, it also benefits the employees, because they can also resign from employment that does not benefit them. This is advantageous, because employees will not be held in breach of contract by the employer, because they contracted with the labour broker and not the employer (Bowles & Gintis, 1990). Labour broking can help to create greater flexibility, cost reduction and increased efficiency for the client company and employer. It also means that any workers who are sick or away from work for any other reason can be quickly replaced to ensure there is always a full complement of staff (Du Toit, 2004; Mostert, 2011; Deloitte, 2016). Furthermore, uncertainty and the asymmetrical distribution of information may result in costs for employers; thus employers make use of labour brokers to avoid the costs that come with the uncertainty (Bowles & Gintis, 1990). However, Shi, Chen, You, & Yao (2018) argue that in temporary employment, employers often engage in opportunistic behaviour that leads to the exploitation of the employees. Asset specificity, which is used to explain the situation where an asset can only be used for a specific task and not any other, contributes to this exploitation by affecting the transaction costs that are involved in inflexible contracts and uncertainty (Shi, Chen, You, & Yao, 2018).

In contrast to the transaction cost debate, the old institutional economics (OIE) point of view holds that labour broking leads to the exploitation of workers in the quest for making profits (Rasool, 2010). While he was with the Confederation of South African Trade Unions (COSATU), Zwelinzima Vavi claimed that labour broking arrangements and TES industries displaced individuals, destroy decent jobs and further contribute to the inequality that is faced in South

Africa (Vavi, 2012). Hence, the TES industry is said to promote contractual relationships that are insecure, and which result in the paying of very low wages. Furthermore, Vavi (2012) also contends that TES industries intensify the rate of exploitation of individuals and can also result in hidden slavery and human trafficking. Similarly, Magdoff and Magdoff (2004, p.19) assert: "Capital's push to enhance the profitability of investments in the countries of the centre has resulted in decreased job security and social benefits". The term 'centre' is used to refer to countries that are situated in the centre of the world, outside of America, that suffered most from the effects of capitalism

The Secretary General of the South African Federation of Trade Unions (SAFTU), Vavi maintains his views on labour broking and argues that it contributes to the growing problem of inequality, poverty and further increases unemployment. Vavi argues that labour brokers do not create employment opportunities, but rather sponge off the hard work and efforts of the employees (Mbude, 2017). Similarly Mpedi (2014). also agree with this claim, adding that labour brokers do not create new employment, they focus on filling existing vacancies with temporary work. The unions claim that TES trade humans as if they were a commodity and that they are only placing temporary workers in existing jobs, not actually helping to create new employment. The 'sponging' from worker's efforts can be compared to what Veblen (1919) calls the earning of free income. This means that labour brokers earn a free income for the work that is done by employees.

Veblen's thought, unlike that of the New Institutionalists, has been synthesised into the Veblenian Dichotomy, which interrogates institutions and institutional change from an economic power perspective (Veblen, 1919; Tool, 1977; Foster, 1981; Tool, 1993; 1994). Veblen argues that institutions determine how technology is used in society (Foster, 1981). He argues that some institutions are founded on the ceremonial system, while technology is founded on the instrumental system (Foster, 1981). A ceremonial system is one that is based on and makes use of ceremonial values that are warranted by mores and folkways and that incorporate status hierarchies as well as invidious distinctions to validate the worth of individuals and classes in the community (Bush, 1983). 'Ceremonial values' is a term that refers to practices that make use of power and coercion when conducting human affairs and require unpleasant distinctions and status relationships to justify their existence in society

(Bush, 1983). In contrast, instrumental systems make use of instrumental values that are warranted through the systematic application of knowledge to the problem-solving process which emerge from the processes of inquiry into causal relationships (Bush, 1983). Instrumental values refer to the patterns of behaviour that are manifest through problem solving activities upon which life processes of the community depend. The difference between ceremonial and instrumental values is that instrumental values are subject to change and modification as the instrumental character of the problem changes, or, when the scientific processes produce better technology with which to address those problems, while ceremonial values remain fixed (Bush, 1983).

Veblen (1919) outlines two systems: the industrial system vs the price system, where he notes that through their instrumental values, the industrial system, the technological system and the instrumental system improve the material welfare of society by increasing the volume of goods and employment of productive resources. While the price system, the business system and the ceremonial system, through their ceremonial values are judged by the amount of profit made. The industrial system is a system that involves the careful organisation of mechanical processes that function together for the common goal. All systems in the industrial system work in unison and are equally important, in the sense that the system is not complete without all the components to it. The industrial system therefore runs as a moving equilibrium of forces in action (Veblen, 1919).

The business system, on the other hand (using business custom) is concerned with making the largest Profit possible by acts of economic sabotage (blocking maximum output), while the technological system is concerned with the production of the largest amount of goods with the least possible resources. The business system represents the joint interests of many owners who are not interested in the resources (specifically human resources) that are involved in the production of goods. The values of the owners in the business system are the same in the sense that even when one owner is given individual ownership of the business, they still have limited liability to the corporate ownership of the firm. This limited liability can therefore result in economic sabotage, as it does not contribute to deduction from the net productive capacity of the industrial system as it runs (Veblen, 1919; Tool, 1977).

From a Veblenian Dichotomy point of view, labour broking would be an example of a labour market ceremonial system. Ceremonial systems create monopoly power and can therefore have a negative impact on the economy, which can be in the form of a reduction in output, restriction, reduced wages, harsh treatment and exploitation and unemployment (Veblen, 1919; Foster, 1981; Waller, 1982; Gimble, 1991; Theron & Godfrey, 2000; Lund, 2002; Theron, 2012; Standing, 2014).

This introductory chapter starts off by presenting the rationale for the study by providing a brief global perspective of the emergence of labour broking, and then moves on to the African case, putting emphasis on South Africa. Examples from other countries will also be included. A brief introduction of the South African labour market, as well as the labour regulations that govern the South African labour market, will be provided. This will ensure a clear illustration of the significance of the study. From there on the goals of the research will be provided, followed by the structure of the thesis and finally the conclusion.

1.2. Rationale of the research

1.2.1. Labour broking around the world

Labour broking has grown tremendously both in South Africa and on a global level. The growth has been related to firms wanting to lower adjustment costs in certain economic environments, such as poor macroeconomic conditions (Deakin, 2002; Borat & Van der Westhuizen, 2010; Nieto & Rodríguez, 2011; Benjamin). The need for firms to compete in global markets paired with the growing competition on the market are factors that can be attributed to the growth of TES industries (Saha, Sen & Maiti, 2013). According to Holmlund & Storrie (2002) poor macroeconomic conditions in Sweden in the 1990s resulted in employers offering more temporary contracts, and employees being more willing to accept this form of employment. In India, institutions that support the rights of workers and the increased demand of imports has led to the increase in the employment of temporary employees, especially in the manufacturing sector (Saha *et al.*, 2013). In Japan, the increasing globalisation and reliance on tradable goods, especially in the sectors where the bulk of

tradable goods are in formal markets, has led to the increase in TES employment (Kenjoh, 2005).

A broader view of the TES sector across the world shows that as at the end of 2011, there were 140 000 agencies in the world, and 2 684 of those agencies are private employment agencies in South Africa. This number places South Africa eighth out of 39 labour agencies worldwide. When it comes to branches of labour brokers, there are approximately 179 000 branches internationally and 4 827 in South Africa, placing South Africa seventh. There are internal staff of 863 000 world-wide, and SA has 31 500 placing South Africa seventh (Budlender, 2013).

In the United States, TES industries are known as labour contractors. The Bureau of Labour Statistics (2018) reports that 4 percent of employment is made up of temporary employment of migrant labour in the US. Labour brokers in the US facilitate the sale of migrant labour contracts. Because employees are foreigners, they are moved from one place to another, and experience challenges in that they are charged a fee for transport and accommodation, which is in turn deducted from their already low income. The working situation of the migrant labour in the US can be compared to forced labour, based on the way these workers are treated and the exploitation they experience. Workers in the TES sector receive payment for the tasks they do, which is not in line with the minimum wages stipulated in the US labour legislation (Mathekga, 2009).

Like in the US, TES employers in Thailand, who are known as informal brokers, contract mainly with foreigners. Informal brokers are paid for services provided by workers, even if it sometimes means dangerous work which is also abusive (Mostert, 2011; Brown, 2016). Workers who are uninformed and vulnerable move to Thailand and therefore rely on the labour brokers to assist them with finding work. This creates a dependence on labour brokers. Some also become indebted to the labour brokers. Being unaware of their rights as migrants and being vulnerable causes workers to accept the conditions they are in. They are therefore supplied as cheap labour to the clients who are mostly farm owners. Corruption is very dominant in the TES sector in Thailand (Mostert, 2011; Brown, 2016). With the knowledge and assistance of law enforcement officers, workers are illegally trafficked into the country and sometimes across borders. When they get to the other country, the law enforcement

officers provide the labour brokers with permits (Mathekga, 2009). Informal brokers can limit the movement of the workers by keeping their permits, which is known as slave labour (Mathekga, 2009).

TES employment is known as labour hire in Namibia, which is also a form of outsourcing that began in the 1990s (Joubert & Loggenberg, 2017). Labour hire companies supply labour to companies with whom they have a commercial agreement. This applies to part-time and full-time employees. Unlike in other countries, the labour hire in Namibia also deals with the placement of permanent employees as well as temporary employees, and its focus is not only on the temporary employees (Mathekga, 2009). The labour broking industry in Namibia was characterised by slavery and unfair treatment, where the indigenous people of Namibia were forced into accepting bad working conditions and were paid low wages (Joubert & Loggenberg, 2017). With those wrongs in mind, the Namibian government decided to ban labour broking outright (Bösl, Horn & Du Pisani, 2010; Van Eck, 2010). In many cases, workers are confused about who their employer is, which raises issues when the worker wants to raise a concern or grievance. Workers in the labour hire industry do not receive paid leave, because they work on a no-work, no-pay basis, and there is no severance pay for workers in the labour hire industry. The labour hire industry places mostly migrants who come to seek refuge and employment in Namibia (Bösl, Horn & Du Pisani, 2010; Van Eck, 2010; Botes, 2013). Although labour hire companies claim to be black economic empowerment companies, their unscrupulous activities are nothing of the sort; they do not contribute to the economy nor the empowerment of black people and the decent work principle. This is the reason the Namibian government decided to ban labour broking in 2008 (Mathekga, 2009; Bösl, Horn & Du Pisani, 2010; Van Eck, 2010).

1.2.2. TES in South Africa

The introduction of world-class manufacturing and globalisation in South Africa resulted in tough competition in the form of quality, quantity and production costs (Holmlund & Storrie, 2002; Mpedi, 2014). This gave rise to a different form of labour hire. The birth of labour broking was due to the response to these conditions of global competition and uncertainty (Barker, 2011; Mpedi, 2014). . The Democratic Alliance (DA) ex-deputy Shadow Minister of

Labour Ian Ollis argues that the TES sector is beneficial to the country because it offers individuals – even those who have lost hope – a better chance at finding employment (Joubert & Loggenberg, 2017). Similarly, Business Unity South Africa (BUSA) also argues that labour broking is essential in the economy because it gives South Africa the platform to compete with countries such as Brazil and China for their wages (Joubert & Loggenberg, 2017).

In contrast, Rasool (2010) argues that the number of previously discouraged individuals who were absorbed by the TES sector only makes up 4% of the country's total employment, and this value alone does not show the significant impact of the TES sector on creating employment in the country. Vavi also disagrees with the claims made by Ollis, arguing that labour brokers do not create opportunities for work; they only act as intermediaries who point out jobs that already existed within the market, most of which existed as permanent jobs that are now being offered as temporary work (Vavi, 2012; Mbude, 2017).

Similarly, the South African Trade Union representatives argue that although the country is in dire need of job creation, it is important that only decent jobs with decent wages are created, and therefore they are against labour broking (Anker, Chernyshev, Egger, Mehran, & Ritter, 2003; Areff, 2012; Vavi, 2012; Mbude, 2017). High Court Judge Dustan Mlambo compares labour broking to “bakkie brigades”, a term that describes employers who pick workers off the streets and provide them with work (Areff, 2012). In this instance, if the client to whom the labour broker has provided the employees refuses to pay the employees, or mistreats the employees, the employees have no say or cannot retaliate against the client, because they are not employed by the client, but by the labour broker (Areff, 2012). There is no remedial solution or grievance procedure that the employees can follow to have their say. More importantly, the client cannot be sued directly at the Commission for Conciliation, Mediation and Arbitration (CCMA) or in the Labour Court (Areff, 2012). This is because the South African labour legislation allows labour brokers to apply for exemptions that excuse them from taking part in collective bargaining. When that happens, unions are unable to afford TES workers' protection and representation during labour disputes, leaving the workers vulnerable to exploitation and abuse.

The South African Labour Relations Act (LRA) was amended in 2015 to be in line with the ILO's decent work agenda. This amendment was in line with the findings of the ILO that the TES

sector is characterised by discrimination and unscrupulous activities by the employers, or by agents towards the employees. The amendment was meant to cover and better regulate the industry to make it beneficial for employees as well. This means that employees are offered better protection from unscrupulous activities and better working conditions and benefits. According to Berg (2015), workers in temporary employment and non-standardised work face great uncertainty over their work, have lower or no social security benefits, and often work in unsafe and unhealthy working environments and are denied representation from labour unions. In addition, Mostert (2011) also argues that labour broking has been compared to the ILO definition of forced labour.

Although the LRA defines what a labour broker is, it is silent on the duration of the labour broking relationship. The LRA does not stipulate the ideal duration of the labour broking relationship; it does not stipulate whether the relationship should be only for a few months, years or weeks. This has resulted in people being contracted in the TES sector for many years without being employed permanently and therefore not receiving the benefits that other permanent employees receive (Budlender, 2013). This has caused difficulties in the regulation of labour broking, making it difficult to legally differentiate the employment provided by labour brokers. On top of the objective difficulty of differentiating labour broking from other services, there is a lack of institutional capacity to do so.

As much as the government and political parties have tried to intervene by introducing amendments and laws that govern the TES industry, to date there is little evidence on the extent of the penalty for those who break the law. Many employers are still treating employees in an inhumane manner, which has been degrading to the dignity of the employees. According to Budlender (2013), the reason for the lack of evidence on the punishment for the perpetrators is because the current labour force survey in South Africa does not explicitly capture the TES sector.

A labour force survey was conducted in September 2007 and the findings concluded that, for that year the number of TES employees in South Africa was estimated at 11 million. Of these 11 million employees, 37 000 (0.3 per cent) were employed by labour brokers, while 274 000 (2.5 per cent) employees were recorded as being employed by a contractor or agency (Stats SA, 2007). According to Segal & Sullivan (1998), these figures are too low and are not a full

representation of the South African labour market. This led to Benjamin, Borat & van der Westhuizen (2016) attempting to estimate the size of the TES sector and concluding that there were just over 600 000 TES workers in 2008. Furthermore, Budlender (2013) undertook a similar exercise and found that between the years 2008 and 2012, the number of employees in the TES sector tended to increase on a yearly basis reaching a high of over 865 000 in 2012. In 2008 and 2009 the study showed an increase that reached a high of 883 000, which was attributed to the global and financial crisis of 2008. Also, Quarterly Labour Force Survey (QLFS) data estimated that there were just under 1 million temporary jobs in 2014. Similarly, Borat, Cassim & Yu (2014) added that in 2014 approximately 5.6 million jobs were created in South Africa, and about 14 percent of those jobs were created in the TES sector.

Despite several problems with this employment model and the challenges faced by labourers, labour broking is crucial to South Africa's economy and overall employment structure. Labour broking has proven to be an explanatory factor for the country's high unemployment figures (Bhorat, Lilenstein, Oosthuizen, & Thornton, 2016). Although labour broking leads to the placement of employees in different sectors of employment, the argument that remains is that there is no guarantee that the types of jobs that are provided are decent jobs. TES, which is a platform for first-time job seekers, is often associated with labourers with few skills; however, according to Borat *et al.*, (2016a), more than 50% of 784 000 workers who were employed by the TES sub-sector in 2014 were sales and service labourers, which indicates that they had reached a secondary education level. Furthermore, TES's economic contribution cannot be overlooked, as this sub-sector accounted for close to 1.3 million jobs created in the economy Borat *et al.*, (2016b).

1.3 Problem Statement

When it comes to analysing labour broking and its impact on labour market functionality in South Africa. Scholars and analysts such as Budlender (2013) and Borat, Lilenstein, Oosthuizen, & Thornton (2016) have used the Neoclassical, New Institutional Economics and Marxist approaches. Which mainly focus on transaction costs, information asymmetries and the effects capitalism on the labour market. The Neoclassical school of thought studies human behaviour as a relation between scarce means having alternative uses and therefore views

labour broking as a method for creating employment opportunities and improving the welfare of the individuals. The New Institutional economics on the other hand is a perspective that attempts to extend economics by focusing on the social and legal norms and rules that underlie economic activities and views labour broking as an institution for improving labour market efficiency. While the Marxists view which focuses on the labour and what Marx considered to be the exploitation of labour by Capital views labour broking as a manifestation of capital digging into the share of labour in national income. Marxists argue that in the labour market relationships between the worker and the employer are exploitative and create class conflict which would ultimately result in the revolution of the workers causing the workers to overcome the employers and to seize control of the economy (Marx, 1867).

This thesis introduces a new perspective to how labour broking should be viewed in South Africa. The Thesis focuses on the Old institutionalist view namely the Veblenian dichotomy which is explained below (Chapter 3) and which focuses on understanding the role of the evolutionary process and the role of institutions in shaping economic behaviour. This view shows labour broking as a system that increases labour market dysfunctions by increasing unemployment, promoting exploitation and creating slave labour.

The debates about labour broking have resulted in the supporters of labour broking calling for better regulation of the industry in order to deal with the recurring problems, while the critics of labour broking are calling for an end to labour broking in South Africa. The focus on the Veblenian dichotomy shows that labour broking is an institution that is embedded in the value structure of the communities, and therefore regulating the industry may prove to be futile because the industry is ceremonially encapsulated.

[1.4. Role players and structure of TES sector in SA](#)

The South African TES industry is made up of key players. These key players range from employer bodies, and associations to trade unions. The key players are responsible for implementing laws, mitigating grievances and ensuring adherence to prescribed regulation. This section presents an overview of the key actors.

Table 1.1 Key Actors and role players

Key actor	Type of actor
Confederation of Associations in the Private Employment Sector (CAPES)	Umbrella body of employment agencies
Congress of the of South African Trade Unions (COSATU)	Trade Union
South African Federation of Trade Unions (SAFTU)	Trade Union Federation
The African National Congress (ANC)	Political party
Constructional Engineering Association (CEA)	Association
Adcorp	Individual company
Kelly Group	Individual company
Workforce Holding	Individual company

Source: Own analysis

The three individual companies i.e. Adcorp, Kelly group and Workforce Holding were chosen because they are the biggest companies that deal with TES employment and labour broking in South Africa. They are more suitable to give a broader view of labour broking in South Africa. CAPES serves as the umbrella body of private employment agencies, especially those that are part of the TES industry. CAPES' direct membership consists of four associations with members who range from very small staffing businesses to large national and multinational corporations. Through these associations, it reportedly represents over 1 200 staffing businesses, which employ an estimated 10 000 permanent employees and an estimated daily average of more than one million temporary (TES) workers (Budlender, 2013). Capes is affiliated with other federations, with its largest affiliate being the Federation of African Professional Staffing Organizations (APSO), which is affiliated with the International

Confederation of Private Employment Agencies (CIETT). Other direct members are the Allied Nursing Association of South Africa (ANASA), the Constructional Engineering Association (CEA) and the Information Technology Association of South Africa (ITA). Furthermore, Capes has several large corporate members, i.e. companies listed on the Johannesburg Stock Exchange, as well as private South African companies and international companies. Capes and its members appear to cover virtually all sectors of the economy aside from domestic work (Budlender, 2013). Although Capes is there to represent employees, their website says very little about employees. The information posted on the website is meant to inform employers of their obligations and as to the percentages they should add to charges to clients to cover the various rights and obligations and employees of their legal rights, but the information mentions little about employees. This is very concerning because the confederation is meant to represent the workers as well (Budlender, 2013).

The Congress of the of South African Trade Unions (COSATU), which acts as the major trade union in the country, is affiliated to the ruling party the African National Congress (ANC). Through its members and through its position as a federation, COSATU has been the federation that has been the most vocal about private employment especially in the TES industry. COSATU's attention has focused mainly on TES, and it has called for a banning of the TES sector claiming that this industry does not benefit the people. Although the union focuses on TES, it has paid no attention to recruitment and placement services of such agencies (Budlender, 2013).

In addition to the issues already mentioned, other issues that COSATU raised regarding labour broking and the need to ban the practice relates mostly to: decent work, better wages across sectors, employee benefits such as medical aid and pension funds, training opportunities for employee's job security and properly defined working hours. Furthermore, COSATU aimed at addressing issues related to employment procedures; namely, dismissal and dispute resolution, and collective bargaining agreements (Budlender, 2013).

In December 2017, the South African Federation of Trade Unions (SAFTU) held a protest the use of labour brokers and the exploitation of workers in both the private and public sectors. These protests were sparked by the Life Esidimeni tragedies, where use of outsourcing and labour brokers resulted in the psychiatric patients being badly treated (SAFTU, 2017).

“The Life Esidimeni outrage has highlighted in the most extreme and horrific way the dire consequences of outsourcing to outside organizations work as important as medical care, without any proper checks on the quality of the care being offered” (p.1).

This resulted in the ill-treatment of psychiatric patients, they were transported in an inhuman way and sometimes tied to “*bakkies*” (a colloquial term used in South African and Namibia to refer to a pick-up truck possibly fitted with a removable canopy or similar accessories) and dumped at NGOs. On top of that, they were deprived of decent accommodation and were malnourished, which resulted in the death of 143 patients due to a lack of adequate medical assistance and medication. All this could have been prevented, if the institution was not trying to save money (SAFTU, 2017).

Similarly, Makgoba (2018: p.36) also added that

“The conditions to which MCHUs were subjected to during the period of transfer from LE and into the NGOS were negligent and devoid of respect for human dignity and rights. These conditions in many respects breached and violated the patient’s Constitution Rights to Health and breached the NHA and the Mental Health Act 2002”. (p.36).

The Life Esidimeni tragedy was not the only negative consequence of outsourcing. To reduce costs and shrink their budgets, organisations in the private and public sector have resorted to outsourcing and making use of temporary workers. However, there is evidence that these organisations do not really end up saving money, because their profits are earned by the private companies and labour brokers, who end up earning free incomes which could have been saved had the organisations employed directly (Areff, 2012).

SAFTU believes that there is a need for permanent workers in many organisations. However, many South African companies refuse to hire workers because they want to save money and to push the agendas of the capitalistic individuals who are looking out for their own interests (SAFTU, 2017).

According to SAFTU (2017)

What makes it even worse is the growing evidence that outsourcing is often linked to corruption, as contracts for outsourced functions are awarded to families and friends at an inflated price (p.1).

Although the government, through amendments to the Labour Relations Act, has tried to regulate the use of labour brokers through laws that state that individuals employed for three months or more should be deemed as permanent employees, many labour brokers are still using labour for periods of more than three months, or even years without making the employees permanent workers (Areff, 2012). Furthermore, employers are in breach of the judgment of the Labour Appeal Court (LAC) in the case NUMSA v Assign Services and 3 Others, 10 July 2017, which stated that employees in the TES sector should be treated equally to permanent employees (SAFTU, 2017).

The African National Congress (ANC) created an election manifesto in 2009 that committed to introduce laws that would regulate the nature of contract work, subcontracting and outsourcing, and address the labour broking challenges (ANC, 2009). Speaking on behalf of the ANC at a press conference, the National Spokesperson maintained that:

The ANC is committed to redressing past exploitative practices at workplace and would like to see the creation of decent work and sustainable livelihoods taking root in all sectors of the South African economy (Duarte, 2009:1).

Years later, the ANC still maintains the promises made in the manifesto by proposing the implementation of labour laws that would deal with unfair labour practices (ANC, 2019). The implementation of the laws would protect the employment relationship and ensure that employees are protected from exploitation and provided with decent work and wages (Benjamin *et al.*, 2010). The manifesto commits to introducing provisions “to facilitate unionization of workers and conclusion of sectoral collective agreements to cover vulnerable workers in these different legal relationships and ensure the right to permanent employment for affected workers” (ANC, 2009).

In its 2009 election manifesto, the ANC committed to addressing the issue of labour broking (ANC, 2009). The activities related to labour broking included mobilisation of members as well as participation in parliamentary public hearings. The party has advocated for the banning of

labour brokers instead of the regulation of labour broking (ANC, 2019). The party argues that regulation for labour broking is not appropriate since the Department of Labour has been struggling to enforce and maintain the existing regulation (Budlender, 2013).

CEA is one of 39 associations that form part of the Steel and Engineering Industries Federation of South Africa. Members of CEA form part of the structural, mechanical, electrical, instrumentation, piping and project management fields of the engineering industry. According to the company's website, most companies involved in this field "rely on flexible workforce arrangements, most often managed by labour broker service providers" (Adcorp, 2019:48). CEA sees its role as ensuring compliance with bargaining council agreements and sectoral determinations. Although labour broking forms part of the TES sector, the CEA divides its sections into two, with one section dealing with labour broking, and the other section dealing with TES sectors. The labour broking section was established by labour brokers in 1949. According to Bamu (2009) labour broking membership increased to 168 in 2009. In June 2013 the CEA experienced a sharp decline in its membership numbers of 107. The CEA explains this as being related to the decline in the engineering industry since 1990, which is also reported on the CEA website. The decline may also, in part, reflect the impact of the controls placed over labour broking in the industry. For an organisation or individual to become a member of the CEA, the labour broker company must register with the Metal and Engineering Industry Bargaining Council (MEIBC). This ensures that labour brokers are subject to collective bargaining agreements. The decision to grant a new labour broker membership relies on the vote of existing members. Existing members are responsible for either voting for the new member to join, or rejecting the application (Budlender, 2013).

Known as the largest labour broker in the country, Adcorp is made up of different divisions which cover different types of workers and/or industries. Services offered by Adcorp include training, outsourcing, consulting and resourcing (Adcorp, 2019). Adcorp also provides skills development opportunities by facilitating training and providing opportunities for learnerships, work readiness and corporate short courses. Through consulting, Adcorp leverages knowledge on HR processes and human resource management to provide thought leadership in the labour market (Adcorp, 2019). Adcorp claims that they have good working relationships with their clients and provide them with strategies needed to enhance the value of human capital, remain competitive and increase their profits.

“Our ability to provide flexibility and enhance labour productivity makes us a key contributor to our clients’ efforts to weather economic challenges and mobilise large workforces to meet project and cyclical demand in a cost-effective manner” (Adcorp, 2019:48).

Adcorp employs approximately 80 000 employees daily, which shows that an approximate 80 000 jobs are created in South Africa daily (Budlender, 2013). However, Vavi (2012) argues that labour brokers do not create new vacancies, they only fill up existing vacancies. In 2013, Adcorp accounted for an estimated 10-11 percent of all TES employees in the country. As at 31 March 2019, the total number of TES employees employed by Adcorp stood at 50 146 000, where 18 205 000 were employed for more than three months and 31 941 000 were employed for less than three months. Although Adcorp claims to promote fair working conditions and relationships, including freedom of association, which is emphasised by the ILO, it is sad to note that only 23 percent of Adcorp employees are part of collective bargaining. According to Budlender (2013), this is problematic when taking into consideration the large spread of TES placements made by the company. The CEO does, however, promise to create decent jobs by 2030

By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities and equal pay for work of equal value (Adcorp, 2019:48).

In terms of skills development and training, Adcorp placed 1 032 South African youth in learnerships, including 775 disabled people, and further provided 419 artisan learnerships (Adcorp, 2019). Adcorp’s financial standing as the end of February 2019 shows that there was a reduction in total revenue in 2019 from R15 325 391 billion in 2018 to R15 065 369 billion in 2019. Gross profit has declined to 2 032 870 billion from 2 227 761 billion in 2018. While operating profits increased to 387 741 million from 8 030 000 in 2018 (Adcorp, 2019).

The Kelly Group, which currently forms a partnership with Quest, has various companies and divisions such as Accountants on Call, Executive Secretary Appointments, Frontline Recruitment, InnStaff, Professional Assignments Group, Renwick Talent and Sizano Staffing Services (Budlender, 2013). Kelly Group operations are divided into three segments: Americas Staffing, Global Talent Solutions (“GTS”) and International Staffing (Kelly, 2018). Americas

Staffing deals with staffing needs of companies by providing temporary and permanent employees in countries such as the United States, Puerto Rico, Canada, Mexico and Brazil. International Staffing provides similar services to those provided by Americas Staffing. GTS is different from the other two because it combines the delivery structure of the Company's outsourcing and consulting group and centrally delivered staffing business (Kelly, 2018). In 2012, the Kelly Group had 838 permanent internal employees in South Africa, and 18 044 temporary employees. Despite the retrenchments, the number of temporary employees provided with temporary work in 2012 was larger than the 17 202 provided with temporary work in 2011 (Budlender, 2013).

In their 2012 annual report, the Kelly Group objectives mainly focused on long term sustainability of the society and communities in which the company operates. This includes creating decent work and increasing sustainable socio-economic development initiatives. Furthermore, the report also stated that the group was focused on supporting four pillars of decent work throughout all its divisions. Of the annual reports considered for this report, it was the only one to have "decent work" as an objective. In addition, the report also mentions engagement with trade unions to work towards developing a positive relationship and facilitating wage and benefits discussions. Another objective of the group, which may at times conflict with the 'decent work' aspirations, is to improve the company's cost position in all key divisions and sectors (Budlender, 2013).

Established in 1972, Workforce Holding stands at the forefront of the TES sector in South Africa. The group provides solutions for employers that ensure efficiency and productivity (Budlender, 2013). Employing a total of 34 241 employees per week the group considers itself as a gateway for employees into the labour market through their skills training and development processes (Workforce, 2017). As at the end of 2017, the Workforce group trained a total of 137 000 individuals, with 797 individuals trained per week, and 4 600 placed in learnerships programmes. The group claims that with the skills and knowledge gained at Workforce, workers can be successful and productive in the workplace beyond Workforce (Budlender, 2013).

The group has seven staffing and recruitment divisions, namely Workforce Staffing, Fempower, Workforce Worldwide Staffing, Accotech, Only the Best, Teleresources, and Albrecht Nursing Agency. Only the Best, Teleresources, Fempower and Accotech service companies in the agriculture and the public sector. The workforce group prides itself in creating long-lasting relationships as contributing to the development of the communities. In 2017, the Workforce group continued with investments for enterprise development in the Qunu workforce a division of workforce that is situated in the Eastern Cape, providing 1 297 learnerships for the unemployed, where 141 individuals successfully completed their learnerships. Furthermore, the group created 149 apprenticeship opportunities in bricklaying for the unemployed and assisted 67 interns with internships which they successfully completed (Workforce, 2017). The report does not mention whether the individuals who completed internships, learnerships and apprenticeships were permanently placed in employment during the year. By the end of February 2017, the Workforce group showed tremendous improvements in its financial position, with profits increasing by 11.3 percent to R2.8 billion by February 2019. Gross profits increased by 6.1 percent. Profit after tax increased by 7.6 percent to R98,5 million and lastly headline earnings per share increased by 7.0 percent to 42.8 cents (Workforce, 2017).

1.5 Goals of the research

The overall goal of the research is to determine the effect of labour broking and temporary employment services on the functionality of labour markets in South Africa.

Specific objectives include:

- To determine whether labour broking hinders or enhances labour market functionality in South Africa.
- To evaluate the impact of labour broking on the overall welfare of individuals, which includes determining whether employees in the TES sector gain skills and improved standards of living.
- To evaluate the effects of labour broking on employers and client companies broadly i.e. the impact on profitability and productivity

- And lastly, to determine what form of regulatory regime is most reasonable for labour broking in South Africa.

1.6. Thesis Structure

This thesis is organised into seven chapters. Chapters 2 and 3 present the literature review and the theoretical framework on which the thesis will be based. Chapter 2 is divided into two sections, (1) the Neoclassical section, which presents the information asymmetry debate i.e. adverse selection and moral hazard; (2) the New Institutional Economics' Transaction Cost Economics which presents the principles that govern transaction costs as explained by Oliver Williamson, and the theory of the firm as explained by Coase. Chapter 3 presents the Old Institutional Economics section, which presents the Veblenian Dichotomy.

Chapter 4 looks at the South African labour market and how labour broking has evolved, the rationale for labour broking and the legislative framework that governs labour broking in South Africa, paying special attention to the Labour relations Act, the Constitution, the Basic Conditions of Employment Act, the Skills Development Act and the Employment Equity Act.

Chapter 5 looks at the research methodology. It presents the interpretivist research methodology, specifically looking at the Interpretative Phenomenological Analysis (IPA) approach. The chapter also presents the data collection methods, the research design, research limitations and the process for analysing data.

Chapter 6 is the data analysis chapter which will present the results of the research, also making use of Tool's Veblenian-based framework to determine whether institutional adjustments are progressive or regressive.

Chapter 7 presents the conclusions and recommendations.

Chapter 2 Literature Review

2.1 Introduction

Labour broking, which is also known as TES employment, is a form of triangular labour practice between an employer, an employee and the client. It involves the practice of acquiring a casual workforce through an agent, known as a labour broker (Deloitte, 2016). The rationale behind labour broking has sparked a lot of debate, with many workers, workers' associations, and trade unions arguing for an end to labour broking, and some employer associations, and labour brokers calling for better regulation of the system. This chapter presents the literature review, which provides the theoretical framework on which the research will be built. The chapter starts off by presenting the Neoclassical paradigm (a paradigm of Neoclassical economics), which views labour broking as an institution for improving labour market efficiency by reducing information asymmetry. Within the Neoclassical framework, issues of adverse selection, moral hazard, the principal agent problem and the market for lemons and how they relate to the labour market are presented. Second is the Transaction Cost Economics paradigm (of the New Institutional Economics paradigm), which views alternative contracting mechanisms in the labour market as instantiations of transaction cost minimisation (Williamson, 1975; Tsang, 2006). Within the New Institutional Economics paradigm, transaction costs, asset specificity and opportunism are discussed. Last to be considered is the Original Institutional Economics paradigm, which views labour broking as an exploitative institution premised on prescriptive rights that entitle labour brokers to earn free income (Veblen, 1919). Within the Old Institutional Economics paradigm, the Veblenian Dichotomy will be presented, and it will focus on the principles of prescriptive rights, ceremonial encapsulation, progressive and regressive institutional change and finally conclude by presenting a tool that can be used to determine whether labour broking enhances or hinders labour market functionality.

2.2 Neoclassical economics – Information Economics

2.2.1 Introduction

‘Information asymmetries’ refers to the irregularities or differences in the information that one party holds over the other. This can refer to the difference in information when the workers know more about their productivity rates as compared to the employer. Similarly, in the insurance industry the person taking out health insurance knows more about their own habits in terms of the health lifestyle, such as whether the person smokes or drinks, than the insurance broker (Balakrishnan & Koza, 1993; Healy & Palepu, 2001; Stiglitz, 2002; Sufi, 2007; Tumay, 2009; Yakovlevich, 2015; Abdioglu, Bamiatzi, Cavusgil, Khurshed, & Stathopoulos, 2015; Fosu, Danso, Ahmad, & Coffie, 2016). Information asymmetries affect all market transactions, such that; in the automobile trading industry, the car owner knows more about the car than the potential buyers. Similarly, the borrower in the finance sector knows about the riskiness of a transaction as compared to the lender, and the owner of the firm knows more about the firm as compared to the investor (Balakrishnan & Koza, 1993; Healy & Palepu, 2001; Yakovlevich, 2015; Abdioglu *et al.*, 2015; Fosu *et al.*, 2016).

Information asymmetries are said to be an important characteristic of flexible market structures because different people have different information, along with the asymmetrical distribution of information and uncertainty. Bowles & Gintis (1990) and Tumay (2009) introduce the role played by an asymmetrical distribution of power, which either limits or increases the appropriation of rent (which refers to the amount of goods or services that are received over and above what is socially acceptable). The value of the information that people possess determines their power and position in the market hierarchy, putting them at the top or bottom of the market hierarchy (Balakrishnan & Koza, 1993; Healy & Palepu, 2001; Stiglitz, 2002; Sufi, 2007).

For example, before an employee is hired in an organisation, the employee has more power over the employer based on the information that the employee possesses. However, once the person is employed, the power suddenly shifts to the employer who now gains information on the productivity of the employee. This information puts the employer in a further position of power over other potential employers, simply because the employer has

information about the employee that no other employer has (Eisenhardt, 1989; Stiglitz, 2002; Tsang & Blevins, 2015).

When applied to the labour market, labour brokers have power in the market based on the information they gain on the employees. Labour brokers know about the available jobs in the market, they also have information on the productivity, skills and qualifications of the employee and they use that information to gain a position of power and make demands in the market. These actions intensify the problem of the “winner’s curse” (Capen, Clapp, & Campbell, 1971; Samuelson & Bazerman, 1984; Schoeman & Blaaw, 2016). The ‘winner’s curse’ is a term that is prevalent in industries that deal mostly with auctions. It explains a situation where the winning bid exceeds the true worth of the item being bid for (Samuelson & Bazerman, 1984). This gives bidders a difficult time in determining the intrinsic value of the item and the item ends up being valued for more than it is worth (Brown, 1986; Mukherjee, 2015). In addition, the intrinsic value of an object is subjective, and situations are not as they look; so, in markets with perfect information all players in the market are assumed to be rational and are skilled at valuation and therefore no over-valuing occurs. However, due to missing information and imperfect markets, people tend to be irrational and manipulate prices to exceed the true value of objects involved (Brown, 1986; Mukherjee, 2015).

2.2.2 Information asymmetries and wage discriminations

In the past, Neoclassical Economics focused on how to overcome the issue of information asymmetries. However, more recent work is now paying attention to how actors in the market create information asymmetries. For example, managers who are seeking their self-interests in the market create information problems. They do this by attempting to reduce competition and partaking in activities such as rent seeking (which occurs when companies want to gain something, especially wealth without contributing to the productivity of that wealth) which increase information asymmetries in the market (Shleifer & Vishny, 1989; Edlin & Stiglitz, 1995).

Wage differences between workers are vast and persistent over the world. These wage differences are attributed to the different conditions that workers are faced with, the

differences amongst productivity levels, education levels and experience levels. Although this may prove to be true for some employers, sometimes employers apply these discriminations based on prejudiced intentions (Hirsch, 2016). More recent research attributes the wage gaps to monopsonistic wage discrimination, which refers to the situation in which employers exploit their wage setting power over employees rather than any prejudice (Burger, Jafta & von Fintel, 2016; Hirsch, 2016; Ravetti, Sarr, Munene & Swanson, 2019). Similarly, employers apply a monopsonistic wage discrimination in markets to raise their profits whilst exploiting workers. Monopsonistic wage discrimination refers to the act of offering workers who supply the same employer with the same service different wages based on their elasticity and responsiveness to the wages (Hirsch, 2016). Employers are successful in implementing this discriminatory wage because it is applied to those workers who are less responsive to wages and who do not have a choice but to remain with the employer; therefore, employers have a vested interest in ensuring that these wage discriminations continue because they benefit from them (Hirsch, 2016).

Furthermore, some workers are wage takers, this means they do not determine the wage that they receive, they cannot even negotiate or dispute the wage that they have been given, workers are paid a rate that is below their levels of productivity and in most cases the rate is even below the stipulated minimum wage (Burger *et al.*, 2016; Hirsch, 2016; Ravetti *et al.*, 2019). These wage discriminations are successful due to imperfect labour market competition.

Workers in the labour market might be unresponsive to the wages that they receive because:

- In some communities there is usually a predominant employer, which forces workers to remain with one employer and bear with the wages that they are given (Hirsch, 2016).
- Some individuals value their wages based on the incentives that they receive on top of their wages. It may be possible for their wages to be low, but if the benefits and incentives received are more than their wages they choose to stay and bear with the low wages received (Hirsch, 2016).

- The costs of mobility, relocation, and other commitments may outweigh the costs of the low wages, in which case workers may choose the low wages over the other costs (Hirsch, 2016).
- Due to many social challenges such as lack of education, illiteracy and poverty, many workers have limited knowledge of alternative job offers because markets are search markets, and with the current technological developments most employers place job advertisements online, which limits access for employees who do not have enough money. This is termed 'friction' (Hirsch, 2016).

2.2.3 Forms of information asymmetries

a. Moral hazard

Moral hazard was first discovered in the insurance industry when insurance companies were worried that protecting their clients might result in their clients behaving more recklessly because they would not have to bear the costs of the risk (Linnerooth-Bayer, Warner, Höpfe, Burton, Loster & Haas, 2009). In the insurance industry moral hazard causes market inefficiencies in the form of market failure, because insurance companies are discouraged from offering the amount of protection that is requested by the clients (Linnerooth-Bayer, Warner, Höpfe, Burton, Loster & Haas, 2009). Moral hazard occurs when someone increases their exposure to risk when insured, especially when a person takes more risks because someone else bears the cost of those risks. A moral hazard might occur where the actions of one party change to the detriment of another after an economic transaction has taken place (Linnerooth-Bayer *et al.*, 2009). Furthermore, a moral hazard occurs when the interest of the agent and the principal are not aligned (Mishra, Heide & Cort, 1998). Moral hazard has negative externalities, in the sense that when an economic transaction takes place, one party decides the amount of risk that it can bear, while the other party to the transaction bears the costs of the risk.

Furthermore, the party that is excluded from the risk behaves differently from how it would if it were fully exposed to the risk. A moral hazard occurs because the risk-taking party has more information on the economic transaction as compared to the party that will bear the

costs of the risk (Mishra *et al.*, 1998). More broadly, moral hazard can occur when the party with more information about its intentions has a tendency or incentive to behave inappropriately from the perspective of the party with less information (Arrow, 1963; Pauly, 1968; Holmstrom, 1979; Rogerson, 1985; Mas-Colell *et al.*, 1995; Dembe & Boden, 2000; Ahrens, 2008; O'Hare, White and Connelly, 2016).

Moral hazard can be prevented through constant monitoring and surveillance. In the insurance industry, if insurance companies were always able to monitor the customers, then insurance companies would be willing to offer their clients unlimited protection. This would mean insurance companies have enough information on the behaviour and activities of their clients that are signals of risk. However, since surveillance and monitoring have proven to be difficult and insurance companies must rely on the information that is provided by the clients, insurance companies would rather hold back on the amount of protection to offer their clients (Linnerooth-Bayer *et al.*, 2009). Moral hazard is divided into two types; namely, ex-ante moral hazard and ex-post moral hazard. An ex-ante moral hazard occurs when there is a change in behaviour before the outcome of the random event, whereas the ex-post moral hazard involves the behaviour after the outcome of a random event (Linnerooth-Bayer *et al.*, 2009).

Moral hazard problems also occur in the labour market, when employers are unable to monitor or observe the productivity or actions of the employees. Employers might be unable to achieve maximum productivity and maximum profit because employees might act carelessly, since they do not have to bear the costs of the risk they impose on the organisation. Moral hazard problems are common in situations where the employee has high protection afforded to them. This protection can be in the form of labour regulations and sectoral determinations that prevent the employer from acting freely in the event of risky behaviour from the employee (Linnerooth-Bayer *et al.*, 2009). Also, employees tend to act carelessly when they are protected by an individual or institution that has high power over the employers, which can be in the form of the amount of protection that employees are afforded by labour unions, or the Department of Labour, when the failure of the business is of minimal impact to the employee (Arrow, 1963; Pauly, 1968; Holmstrom, 1979; Rogerson, 1985; Mas-Colell *et al.*, 1995; Dembe & Boden, 2000; Ahrens, 2008; Linnerooth-Bayer *et al.*, 2009; O'Hare, *et al.*, 2015).

b. The principal-agent problem

The principal-agent problem is one concept that can be used to further explain moral hazard. It occurs when one party known as the agent, is hired or contracted by the party known as the principal to conclude transactions on the principal's behalf, resulting in conflicting priorities between the principal and the agent. This dilemma exists in circumstances where agents are motivated to act in their own best interests, which are contrary to those of their principals (Sappington, 1983; Stiglitz, 1989; Gong, Tang, Liu & Li 2017; O'Donoghue & Somerville, 2018). During this period the agent has more information regarding the transaction than the principal. Furthermore, the agent is clearer on his/her intentions for the transaction than the principal is. As a result, the agent may have an incentive to act in a manner that would result in negative consequences for the principal (Linnerooth-Bayer *et al.*, 2009; Linnerooth-Bayer & Hochrainer-Stigler, 2015). When the principal and the agent have different interests, the principal cannot directly ensure that the agent is constantly taking care of their interests.

When an agent is faced with carrying out activities that are useful for the principal but harmful to the agent, a conflict of interest arises and the agent may be forced to act in a manner that will protect the interest of the agent himself at the expense of the principal (Bebchuk & Fried, 2005). The principal-agent problem sometimes contributes to the prevention of contracts because the principal may be worried about being exploited by the agent and therefore decide to not pursue the contract, when it would have been mutually beneficial: a suboptimal outcome that can lower welfare overall (Bebchuk & Fried, 2005). The principal-agent problem is intensified in situations where the agent is serving multiple principals. In this situation, since principals' interests often diverge, they face incentives to advance their individual interests instead of the joint interests by all principals, in addition to the moral hazard problem that is still faced by the agent. Not only is there still asymmetric information between the principals and agent that can bring moral hazard, but there is also asymmetric information between the principals themselves that can lead to moral hazard between the principals (Bernheim & Whinston, 1986).

In the labour market, the labour broker is the agent and the employee is the principal. The labour broker contracts with the employee and helps the employee to find employment and

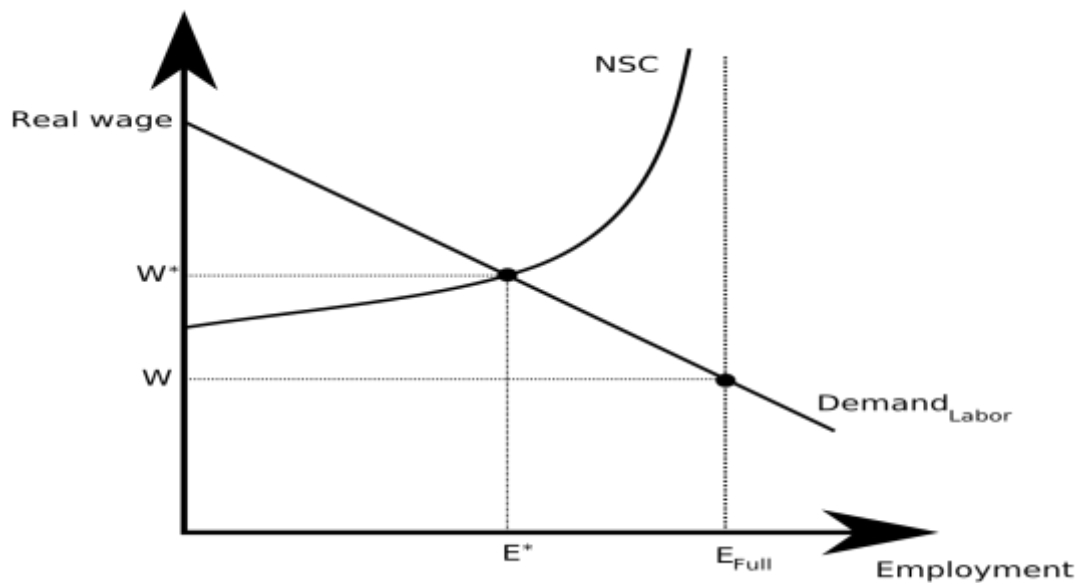
to negotiate employment contracts including the conditions of employment. The labour broker signs the service level agreement on behalf of the employee, though sometimes the labour broker withholds the information that is contained in the contract from the employee. In some cases, the labour broker could be motivated to act in a manner that enhances their own interests, which might be contrary to those of the employees. The labour broker fails to comply with the labour legislation because they are aware that it would result in a loss for the labour broker and therefore, they choose to divert the loss to the employee. During this period, the labour broker has an incentive to act in a manner that proves to be harmful to the employee.

In some instances, employees who are aware of the principal-agent problem choose not to make use of the labour broker as an option for finding employment. If labour brokers have all the information about the jobs available in the market, this scenario could result in a loss for all players in the labour market. The labour broker would lose out on the services of the employee, the client company would lose profits due to no productivity, and the employee would lose out on getting an income. This situation creates a market failure and would result in unemployment in the labour market. Furthermore, when a labour broker is serving the workers and the client, sometimes the needs of the workers can clash with those of the clients. This creates a moral hazard problem between the clients and the workers.

c. Moral hazard and the shirking hand problem

Shirking refers to the tendency of individuals to do less work when the return or benefits from the doing the work is smaller. Individuals have no incentive or motivation to do more because the benefits outweigh the costs (Akerlof & Yellen, 1986; Di Cintio & Grassi, 2015; Atolia, Einarsson & Marquis, 2015; Martin & Wang, 2016; Saracoğlu, 2017). Shirking is a characteristic of information asymmetries because it can lead to the 'shirking hand dilemma', which is caused by firms having imperfect information about the effort that workers exert when it comes to performing tasks in the workplace (Akerlof & Yellen, 1986).

Table 2.1 The Efficiency wage and Shirking hand model



Source: Shapiro & Stiglitz (1984)

The figure above represents a labour market in the presence of shirking. In the labour market, workers have discretion regarding their levels of productivity. Workers have a vested interest in keeping their productivity levels hidden, because employment contracts do not reveal such information. Under these circumstances, employers have no option other than to pay the employees a wage that exceeds market clearing wages to motivate the employees to work rather than shirk (Ellingsen & Kristiansen, 2019). In figure 2.1 employers pay workers the wage W^* , known as the efficiency wage, and it can be described as the situation in the labour market where the employer might have an incentive to pay workers a wage that is above the market wages in order to increase the worker's productivity rates (Moll, 1993; Kingdon & Knight, 2001).

Efficiency wages sometimes lead to unemployment, because when the workers are paid more than they should earn, or more than is being earned in the market, equilibrium employment may not be reached. The Area E to E^* depicts a situation where there is unemployment. This explains the market failure that is caused by efficiency wages (Moll, 1993; Kingdon & Knight, 1999; Blanchflower & Oswald, 2008).

2.2.4 Adverse selection

Adverse selection is a problem of asymmetric information that is commonly used in the market to describe a situation where one party has better private information compared to the other party in a contractual relationship (Akerlof, 1970; Laffont & Martimort, 2002; Finkelstein & Poterba, 2006; Bardong, Bartram & Yadav, 2009; Chiappori & Salanié, 2013). Like moral hazard, adverse selection also results in negative externalities for one party and benefits for another party. This occurs when the party with the private information selectively participates in activities that will benefit them at the expense of the party with less information (Akerlof, 1970; Hart & Bengt, 1987; Bolton & Matthias, 2002; Laffont & Martimort, 2002; Finkelstein & Poterba, 2006; Bardong, Bartram & Yadav, 2009; Chiappori & Salanié, 2013). The party without the information therefore remains worried about the outcomes. The worry causes the party without the information to withdraw from the activities or transactions in the market (Akerlof, 1970; Hart & Bengt, 1987; Bolton & Matthias, 2002; Laffont & Martimort, 2002; Finkelstein & Poterba, 2006; Bardong, Bartram & Yadav, 2009; Chiappori & Salanié, 2013).

Another effect of adverse selection is that it can work as an entry deterrence that leads to high margins without additional entry (Bebchuk & Fried, 2005). Similarly, if employers do not have enough information on the potential of the employees, they might therefore withdraw from conducting any activities related to the recruiting and employing of employees, leaving those activities in the hands of the labour brokers who have more information than the employers (Senne & Nkomo, 2015). Labour brokers and employers gain more information on employees through labour broking contracts. Labour brokers act as agents who assist the employees in their job search activities (Senne & Nkomo, 2015). This causes a deterrence in the market, because in some instances employees are exploited by the labour brokers and they do not benefit from the contractual relationship (Barrientos, Kritzingler & Rossouw, 2004; Fletcher, 2004; Barrientos, 2008; Rogally, 2008; Koettl, 2009; Harvey, 2011; Theron, 2012; Selwyn, 2012; Di Paola & Pons Vignon, 2013; Mathekga, 2016; Dickinson, 2017a; Dickinson, 2017b). Furthermore, Paton, Anderson, Becker, & Petersen, 2015 argue that the act of keeping information can be harmful to the wellbeing of individuals.

Adverse selection can also occur in the labour market. Employees have better knowledge of their skills, productivity and knowledge of the work compared to the employers. For example, in a high-skill and professional industry, employers have no way of knowing the productivity of the employees unless they hire the employees. In this case, employees are more likely to look for jobs where they will earn higher wages or salaries even though they know that their skills do not meet the requirements of the jobs (Akerlof, 1970; Hart & Bengt, 1987; Bolton & Matthias, 2002; Laffont & Martimort, 2002; Finkelstein & Poterba, 2006; Bardong, Bartram & Yadav, 2009; Chiappori & Salanié, 2013).

Before the introduction of labour brokers, recruiters made use of labour bulletins, advertisements in newspapers, word of mouth and face-to-face applications. Recruiters had no way of telling if the candidates were suitable candidates or not. This resulted in adverse selection problems. Recruiters relied on what they were told by the candidates, who only revealed their productivity once they were employed. However, in more recent times the employer suffering from adverse selection can protect him- or herself by screening the employees or by identifying signals of productivity. But because employers want to cut costs and save time, they turn to labour brokers to assist with the screening and signalling of productivity of the employees (Akerlof, 1970; Hart and Bengt, 1987; Chiappori & Saline, 2000; Finkelstein & Poterba, 2006). Similarly, employers are not keen on hiring new graduates because they are not certain of the productivity levels or the employee's ability to do the job. This means that although new graduates may be qualified academically, for employers, the academic performance does not signal productivity and ability to perform in the organisation (PPS student Index, 2017).

In the labour market, adverse selection is used to further explain the relationship between productivity and wages. In a market where worker performance is heavily reliant on the ability of the workers to perform the job and workers have a diverse set of skills, the productivity of the workers is positively correlated to the wages that workers receive, and those firms that offer higher wages will attract the workers that are very productive. In this situation, firms pay wages that are more than the market clearing wage and can turn away workers that are not productive. Workers who are willing to work for a wage that is below the market wage signal that they have low skills and are poor workers. The adverse selection model provides an explanation of the wage differentials and different probabilities of being fired. For this

model to be convincing it must provide evidence of involuntary unemployment, which means that firms must be unable to measure effort and pay piece rates after workers are hired or to fire workers who are not productive. Therefore, firms have started making use of external recruiters and designing self-selection or screening devices that induce workers to reveal their true characteristics.

2.2.5 Eliminating information asymmetries

a. Using education as a measure of knowledge and training

In a perfect market where wages are fixed, rather than competitively determined, the decision to invest in education is based on the premise that a better education ensures people better jobs, and that the private returns to educations are different from the social returns. The difference is evident in the fact that as people become more educated, the private returns on education are bound to increase more than the social returns. From this perspective, it is clear to see that improvements to education have a positive benefit on human capital and productivity (Boeri & Van Ours, 2009). In contrast, Stiglitz (1975a; 1975b) argues that markets are not perfect because information asymmetries exist.

Therefore, there must be an equilibrium in the market with wages that are set equal to marginal products. Stiglitz's argument led to the analysis that gave rise to questions such as what were the incentives and mechanisms for employers and employees to acquire or transmit information? Alternatively, Stiglitz (1975a; 1975b) found that in such situations, the employer has an incentive to determine who is most suitable for the job. The employer does that by searching for information through recruitment and selection processes and by screening the candidates to find the most suitable. Once the employer has the required information, the employer will try to hide the information from other potential employers, because should they find out the wage will be bid up, and the employer will be unable to appropriate the return to the information (Stiglitz, 1975a; 1975b).

Similarly, in the labour broking industry, labour brokers have an incentive to find out information on the workers and the available jobs in the market. Once they find out the information they act in a monopolistic manner and keep the information to themselves to gain an advantage in the market, which is monopsonistic discrimination (Hirsch, 2016). When

the employees acquire information on the available jobs in the market, labour brokers will no longer be able to benefit from their activities, because the employees will no longer rely on them. When there are information asymmetries between the employee and the employer, the employees at the bottom of the skills and knowledge hierarchy have an incentive to keep the information regarding their productivity hidden (Stiglitz, 2002). This is because if the employer knew their information, they would not consider them for employment. In addition, should other employers gain information on the productivity of the employees, they might offer employees better wages and risk them leaving the labour brokers and moving to other forms of employment methods (Stiglitz, 2002).

The human capital theory argues that formal training received in higher education institutions improves the productive capacity of individuals, while the screening theory argues that the value of higher education credentials flows from their value as signals to potential employers of the abilities of the holders of the qualifications (Van der Merwe, 2010). The core assumption of the human capital theory is that education increases the productivity levels of who are educated, as compared to those who are not educated. The assumption is based on the belief that with formal education, individuals obtain cognitive skills that are essential for the completion of jobs (Blaug, 1992). The theory further assumes that the marginal productivity of an individual can be correctly determined. However, the human capital theory argues that it is impossible to demonstrate that education increases an individual's productivity. Furthermore, Hansen (1970) and Blaug (1987) argue that it cannot be determined exactly what elements or ingredients of the schooling system make people more productive. In South Africa, the human capital theory has proven to be true. According to Moleke (2005) approximately 60 percent of graduates find jobs immediately after obtaining their degrees, while 28 percent find employment after one to six months after getting their degrees. Furthermore, six percent were employed within 7 to 12 months after graduating and only six percent were unemployed for more than a year after obtaining their degrees. 66 percent of graduates secured permanent employment, 19 percent were in temporary employment and 15 percent had contract work.

b. Setting an efficient wage

Unemployment is a challenge for many countries. Though the impact of the types of unemployment may differ from country to country, unemployment remains a contributing factor to decline in economic growth and welfare of individuals. For some countries, although the government does set minimum wages for the labour market, there are still some companies that pay their workers' wages that are far below those set by the labour regulations. This makes it appear as though the government and the labour unions are not doing much to encourage employers to pay the minimum wages (Stiglitz, 2002). In many countries, employers would rather pay wages, termed 'efficiency wages', based on the productivity of the employees. Put more simply, efficiency wages are the wages that are attached to the level of productivity of the employees. The theory of the efficiency wage proves to be problematic and according to (Stiglitz, 2002) efficiency wages are contributing factors to unemployment in equilibrium. In a labour market that is characterised by information asymmetries, employers have limited means of finding out about the productivity of employees, hence they are unable to know the true value of the employee. Information asymmetries exist, which force the employer to withhold the jobs they have available until they are confident that they have the best employee for the job. On the other hand, employees who have an incentive to hide their productivity levels will attempt to apply for as many jobs as possible, but because of the information asymmetries employers will not be willing to hire as many, so there will be unemployment at equilibrium (Stiglitz, 2002).

c. Labour contracting and devising an incentives system

Transactions are conducted honestly. Furthermore, in the labour market, workers perform their jobs to the best of their ability and, once done, the employers pay them according to what they contracted on (Stiglitz, 2002). However, in markets where there is imperfect information, contracts are characterised with dishonesty and exploitation (Hirsch, 2016). Imperfect information means that firms must create a system for incentives and monitoring. The systems allow for employers to reward employees who perform their duties and punish those who do not. The system of labour broking can be compared to what Stiglitz (2002) calls sharecropping. Sharecropping is explained as a form of rent system that is used in developing

countries and that requires tenants or land occupiers to pay a portion of their harvest to the landlord in return for the usage of the land.

In the labour broking or TES industries, labour brokers assist employees to get jobs and in return they must pay a portion of their salary or wages to the labour brokers. At first glance, share cropping seems like an inefficient system because it is sometimes equivalent to 50 percent tax on the tenants. However, Stiglitz (2002) argues that sharecropping might not be such a bad idea, as it cuts the costs for the tenants. For example, if the tenants were left with the responsibility of owning the land, they would have to be responsible for the entire maintenance and repairs and therefore would incur more costs, as compared to the 50 percent they must give up. Similarly, this is the same argument that labour brokers use. Labour brokers assist the workers to gain jobs in the market and charge them a fee, and without the assistance of labour brokers, finding work would be costlier for the employees as compared to the amount they pay to the labour broker.

Traditionally the assessment of economic performance has relied heavily on the conventional factors of production such as land, capital and human resources. However, we cannot ignore the importance of knowledge-based assets as contributors in the productivity of the firm. Knowledge assets or intellectual capital may be mentioned as the “hidden” assets of a firm which is based on human capital (Malhotra, 2002; Bianchi, 2017). This implies that the selection of human capital weighs heavily on the firm and must be achieved for firms and other agents. Globalisation and the dynamic labour market have both made it easy for employers to gain a cost advantage when employing workers (Malhotra, 2002; Bianchi, 2017). For a Human Resources Manager (HRM), choosing an appropriate candidate for the suitable position is as easy as clicking a button on a computer. However, efficiency requires all labour forces to be employed under the assumption that the supplier (candidate) knows the true quality of him/herself, whereas the HRMs (dealer) are unable to find the true quality of a specific candidate and the adverse selection effect could cause the labour market to collapse entirely (Malhotra, 2002; Bianchi, 2017).

2.3. Transaction Cost Economics

2.3.1 Introduction

Transaction cost theories are part of the New Institutional Economics (NIE) and have become a subject of growing interest over several decades. North (1990) argues that the size of transaction costs is considered an indicator of the superiority of institutions and institutional arrangements. Transaction cost, as a concept was first coined by Ronald Coase in the 1930s in his popular article "The nature of the firm", in which Coase tried to explain why individuals choose to form partnerships, business units and other business entities rather than trading jointly through contracts in the market. Put simply, Coase attempted to offer an economic explanation to the reasoning behind the existence of vertical integration. Hence, transaction costs today represent the cornerstone of efficiency analysis over comparative institutional arrangements (Coase, 1988; Shelanski & Klein, 1995; Marinescu, 2018).

Transaction cost economics (TCE) at its core focuses on transactions and the costs that are involved in the completion of transactions by one institutional mode rather than another (Williamson, 1975). Furthermore, Williamson (1975) distinguishes between transaction costs and production costs. While 'transaction costs' refer to all the costs involved in the movement of the product from one partner to the other within the supply chain, 'production costs' refer to all the costs associated with the production of a good or service within the same entity. The transaction cost theory's central claim is that transactions will be handled in such a way as to minimise the costs involved in carrying them out.

In the labour market, transaction costs do not only include the direct financial costs such as the wages that are paid to the workers, the employer contribution, the costs that are involved in replacing an employee that is absent from work, and the costs of compensating an employee that has been injured on duty in the organisation. They also take the form of indirect costs, such as administration costs involved in attaining information on the productivity of workers, the costs of meeting contractual obligations, and the costs involved in dispute resolution such as arbitration and mediation (Williamson, 1975; Tsang 2006; Burkholder, 2016).

In addition, labour market transaction costs also include costs of compliance with labour laws and regulations. For example, in South Africa the costs of adhering to labour regulation such as the *Labour Relations Act 66 of 1995 (LRA)*, the *Employment Equity Act 75 of 1997* and the *Basic Conditions of Employment Act (BCEA) 55 of 1998* (Eisenhardt, 1989; Joubert & Loggenberg, 2017). In contractual settings, transaction costs include the cost of obtaining information, negotiating costs and those of writing contracts, the costs of protecting property rights and those of enforcement rules and agreements from different contractual arrangements (North, 1990). Transaction costs also include the costs of designing, exchanging, monitoring, and enforcing rights in markets, which processes involve information costs, administration costs, etc. (Williamson, 1975; Tsang, 2006; Burkholder, 2016; Marinescu, 2018). All these costs affect the organisation and may impact the profitability of the organisation, because the minimisation of these costs increases the profitability of the organisation.

The transaction, which can be defined as a transfer of a good or service from one institution mode to another, is the unit of analysis in TCE and the means of effecting the transaction is the principal outcome of interest (Williamson, 1985). Transaction costs exist because, for any action performed there are costs involved, which is supported by the fact that human actions involve a choice and therefore sacrifices, and opportunities forgone (North, 1990). The concept of opportunity cost forms part of the building blocks of economic science. The concept of opportunity cost does not focus on a specific type of cost, but places emphasis on the behaviours of economic agents, mainly their ways of thinking. The central argument in the concept of opportunity cost is based on the idea that the cost phenomenon derives naturally from human action, which means choice and exchange. So individuals will only make choices that will give them benefits that exceed the opportunities foregone (Coase, 1937; 1988).

Costs vary enormously across transactions; for example, it may cost an employer more to hire an employee through the market because an employer incurs costs such as search costs, interview costs, travel and accommodation costs and so forth, whereas it would only cost the employer agent costs if the employer were to hire employees through labour brokers. More importantly transactions costs vary across alternative organisational forms. For example, it might cost an employer less to hire a temporary or contract employee to do seasonal work,

as compared to having permanent employees who will require social contributions such as medical aid and pension funds, which are not paid to temporary employees (Lockett & Thompson, 2015).

Thus, Lockett & Thompson (2015) note that transaction cost economics is based on the principle of efficiency and profit maximisation, where firm owners want to produce a maximum number of goods for the lowest cost possible. Transaction costs arise because market players are forced to engage in business activities that require them to acquire and process information. This then increases the possibility that the transacting parties may want to engage in opportunistic behaviour by exploiting situations to their own advantage. According to Lockett & Thompson (2015), markets function better when they are presumed to be perfect. This perfection ensures the perfect flow of information from the parties that are transacting. The presence of imperfect markets prevents actors from having full information, thus impeding their ability to acquire and process information and therefore encouraging opportunism (Lockett & Thompson, 2015). Opportunism can have a direct and indirect influence on the organisation's costs, and an indirect effect if its threat causes market users to require costly safeguards in their transacting. Furthermore, Shelanski & Klein (1995) state that transaction costs are the study of alternative governance institutions. Alternatively, this means that TCE attempts to explain the way organisations go about choosing institutional alternatives that offer protection for their relationship-specific investments at the lowest total cost.

An important factor in the study and application of transaction costs is information. Information forms a very important aspect in that it is the key to the costs of transacting, which consist of the costs of measuring the valuable characteristics of what is being traded in the market and the costs of protecting rights and policing and enforcing agreements. This simply means that transaction costs also form part of the social, political and economic environments. How they are applied and governed is largely determined by those three environments.

2.3.2. The Theory of the Firm

In his 1937 article Coase explains the arrangement of institutions by first examining the reason for the existence of vertical integration. He found that it is much cheaper for business organisations to transact through the market or to produce from within. This brought rise to the desire to reduce transaction costs on the part of the firm. However, in some instances, transaction costs may also occur because of opportunism. Williamson (1985) describes " from the employer or the employee (depending on the situation) as self-seeking actions with guile. When there is a limited number of resources, in the presence of small number bargaining and where information is asymmetrically distributed, it can be risky for parties to transact. Small-number bargaining and asset specificity make it costly for parties to enter economic relationships. Individuals in such situations are limited by the information they can acquire and process and thus also in the number of options they can choose from.

Coase (1988) argues that firms partake in vertical integration as a way of minimising costs that come with the day-to-day running of the firm. When firms are faced with projects or seasonal work, the hiring of those workers for different activities increases the hiring costs that are incurred by the firm. These costs could be eliminated if both parties had the expectation of a continuing contractual relationship (Coase, 1988; Lockett & Thompson, 2015). Therefore, if contracts could be cost less, and written and enforced over long periods of time, investment in specific assets would not be problematic. However, uncertainty over the future prevents parties from signing detailed written contracts. In addition, Williamson (1975) argues that the expansion of the firm and vertical integration was used by firms as a way of economising on the costs of using intermediate market transactions. Williamson (1975) further argues that small-number bargaining, uncertainty and asymmetric distribution of information are drivers of transaction costs. However, Klein, Crawford & Alchian (1978) demonstrate that small-number bargaining was a derivative condition from asset specificity. Thus, the following section attempts to illustrate how opportunism in the presence of asset specificity and uncertainty plays out in the labour market.

a. Opportunism on the part of the employee

When workers have distinctive skills and specific knowledge pertaining to a job, they are considered to have high asset specificity. Asset specificity refers to the degree of the asset being used for various purposes and the ability of the owner to resale or deploy the asset without having to incur high costs (Willman, 1982). Morita & Tang (2017) argue that asset specificity “refers to the extent to which the firm tailors its asset to the unique features of the firm’s business strategies and products” (p. 2). Thus, in asset-specific situations, employees have more information on how complex equipment is operated, as well as information on job-specific processes and how teams should be operated (Willman, 1982; Morita & Tang, 2017). The employer as the buyer of the labour is faced with small-number bargaining and a tendency to opportunism from the workers. This occurs because information is in favour of the employee, and therefore the employee has a vested interest to keep the information hidden from the employer, because it puts the employee in favourable and advantageous positions during competitive bidding with outsiders and the small numbers condition holds.

Consequently, there is a connection between asset specificity and labour mobility, because the acquired human capital of the workers who utilize the specificity of the asset loses its value if workers switch employers (Morita & Tang, 2017:2).

A tendency to engage in opportunistic behaviour guarantees that the workers will themselves realise by doing and therefore reduce the efficiency of the organisation (Willman, 1982).

b. Opportunism on the part of the employer

Sometimes, employers contract with employees and keep some information hidden from them. For instance, an employer may contract with an employee for a wage that is below market value and convince the employee that it is the right wage. The employee may conduct market research, but due to imperfect flows of information, the employee may end up taking the wages that the employer offers. The employer may also convince the employee that if the employee wants to earn a higher wage or a bonus, the employee would have to work twice as much. This can be done by working longer hours or increasing productivity of the

employee. This situation might be unfavourable for the employee, but because the employee wants to earn higher wages, they have no option but to comply. When the employee works twice as much, productivity increases in the organisation, as does the profits of the organisation. This means that the employee has achieved the desired performance for the bonus, which is not really a bonus, but a wage that the employee should have been getting to begin with. The employer gains extra productivity and extra profits at the expense of the employee (Willman, 1982).

The asymmetric distribution of information ensures that the employees are kept in the dark, for the sake of being exploited regarding the market transaction that they entered (Willman, 1982). In order to protect themselves against opportunism from the workers, employers will have information regarding external conditions that affect the organisation, and which may have a direct impact on the employment relations. These changes may involve changes in conditions of labour, changes in labour costs as a proportion of total cost, changes in the value of the contribution of the different categories of labour, and changes in production technology, which may influence the shedding of labour. Employers may use this information to misrepresent real-world situations and in the process maximise their own scope of opportunism, while at the same time minimise their chances of being affected by worker opportunism (Willman, 1982).

Shi, Chen, You, & Yao (2018) further distinguish between weak and strong asset specificity. In the labour market, employers usually part take in opportunistic behaviours. Asset specificity has a positive effect on contractual relationships. This positive effect of asset specificity on opportunistic behaviour is manifested in the reduction of opportunism as contractual complexity increases. In addition, the effect of weak-form opportunistic behaviour reduces as contractual complexity increases. In contrast, the effect of asset specificity on weak-form opportunistic behaviour decreases as trust is increased (Schmid, 2015).

2.3.3 The existence of separate firms

Coase (1988) gives reason for the existence of separate firms within the market. One of the reasons that Coase (1988) gives for the separation of the market and the firm is that firms want to increase the cost for each additional market transaction until the cost of organising

marginal market transaction is equal to marketing cost of that transaction. Secondly, as transactions increase, they might not carry out their objective of reproducing market conditions, which include making use of the most factors of production at the lowest cost possible (Coase, 1988). Coase used an example of the tube industry, in which he analysed the market system and market activities. Coase found that some organisations in the market have opted to trade in things that they specialise in, that is why selling in a foreign market was left to people who specialised in that market to eliminate the costs that came with the organisation doing everything.

The same can be said about labour brokers. Organisations have stuck to the main business, which is producing goods and services, and have left the activities that involve the acquiring and recruitment of labour to those who are specialised to do it, namely labour brokers. This is what Fowler 1960 (cited in Coase, 1988) terms the decreasing returns to managerial ability. Simply put, managers and organisation owners have delegated their managerial responsibilities to external sources (Coase, 1988). Similarly, Kotabe, Mol & Murray (2009) argue that the creation of a separate firm helps to reduce the transaction costs related to institutional, cultural and language barriers. Overall, the creation of a new firm through outsourcing and externalisation is attractive when the savings in production costs are more than the transaction costs incurred (Farrell, 2005; Kang, Wu & Hong, 2009; Sinha, Akoorie, Ding, & Wu, 2011). Therefore, firms subcontract human resource functions such as the administration of personnel functions, i.e. payroll, insurance and other benefits, employee training and testing, compliance, relocation, and recruiting, to an outside firm (such as labour brokers). By doing so, employers divert transaction costs to a third party (the subcontracting company or labour broker) (Williamson, 1975; Tsang, 2006; Burkholder, 2016). Depending on the levels of HR-related spending, subcontracting organisations can save between 15-30 percent of their annual costs. This can be done through a variety of sources, such as increased operational efficiencies and access to resources, or expanding return on investment (ROI) by leveraging economies of scale by reducing capital spending, which results from no longer having to upgrade aging back-office computer systems and reducing the wage bill through eliminating internal jobs that oversee burdensome administrative tasks (Williamson, 1975; Tsang, 2006; Burkholder, 2016).

According to Shelanski & Klein (1995), in transaction cost economics, transactions need to be governed, designed and carried out. TCE places emphasis on studying how parties to a contractual relationship protect themselves from hazards that are associated within an exchange relationship. In addition, North (1990) states that to understand the existence of institutions and the role that institutions play in society, it is important to combine the theory of human behaviour and the theory of cost of transacting.

Earlier reviews of the TCE literature have been completely narrational, with no obvious selection and evaluation criteria (Mahoney, 1992; Joskow, 1993; Shelanski & Klein, 1995). As a result, there is limited validation regarding the pragmatic support for TCE, which resulted in a very low 'evidence/theory ratio' (Holmstrom & Tirlé, 1989; Peltzman, 1991; Coase, 1992). With regards to the labour market, TCE theory explains that the higher the costs involved in the process of attaining, training, retaining and retrenching labour, the greater is the perceived risk of loss by employers; therefore, the greater the likelihood of labour broking (Williamson, 1975; Tsang, 2006; Burkholder, 2016; Marinescu, 2018).

Williamson (1991) therefore identifies three alternate forms of transaction governance, i.e. market, hybrid, and hierarchy. Each of these alternate forms is reinforced by a diverse system of contract law, and each employs its own coordination and control systems. Market governance corresponds to classical contract law, whereby the identity of the transacting parties is irrelevant, and no dependency relation exists between them (Williamson, 1991). This means that market transactions are governed by formal terms that are construed in a legalistic way and are characterised by 'hard bargaining' between parties. In the hybrid form of governance, the parties to the transaction maintain self-government, but are consensually dependent in a non-trivial way. The identity of the transacting parties in the hybrid form is of importance, because neither party cannot be replaced by the other for free. Hybrid forms are supported by neoclassical contract law, which is more 'elastic' and adaptive than classical contract law (Williamson, 1991). This form predicts unforeseen instabilities, provides a 'tolerance zone' within which misalignments are absorbed, and requires information disclosure when adaptation occurs, and provides for arbitration (prior to resorting to the courts) in the event of disagreement.

Hierarchy or internal organisation is more elastic and adaptive. Here, adaptation to disturbances occurs mostly through agreement. Rather than relying on the courts, and external private ordering, parties within a hierarchy resolve disputes internally. They work out their differences themselves or appeal unresolved disputes to the hierarchy for decision. This form of governance is supported by what Williamson (1991) calls the contract law of forbearance. TCE argues that there are 'rational economic reasons' for selecting the means of governing transactions (Williamson, 1985). This is explained in what Williamson (1991) called the 'discriminating alignment hypothesis', which maintains that transactions that differ in their attributes are aligned with governance structures, i.e., market, hybrid, or hierarchy in a discriminating (i.e., transaction-cost-economizing) way. Alternatively, this means that the preferred mode of governance is the one that minimises transaction costs (Williamson, 1991). The principal attributes of transactions, according to TCE, are asset specificity, uncertainty, and frequency. First, the asset specificity of a transaction refers to the degree to which the assets used in support of the transaction can be redistributed to different uses by different users without deviating from the assets original use (Tsang, 1975; Williamson, 1991).

2.3.4 Principles governing Transaction Cost Economics

As asset specificity increases, the chances of the asset being redistributed decreases, which increases bilateral dependency and contracting hazards between parties. TCE predicts that the high-powered incentives of market forms of governance hinder adaptability among transacting parties, and that markets are therefore ill-equipped to deal with these situations of high mutual dependency (Tsang, 1975; Williamson, 1991; Leider & Lovejoy, 2016). This results in maladaptation costs and pushes transactions with high asset specificity into more integrated (adaptive) forms of governance. While this implies added bureaucratic costs, those costs are offset by the bilateral adaptive gains that result. Therefore, TCE predicts that transactions with low asset specificity will be undertaken in the market: those with intermediate asset specificity in hybrid forms, and those with high asset specificity in hierarchical forms of governance (Williamson, 1991; Leider & Lovejoy, 2016).

Asset specificity in the labour market refers to the degree in which an asset can be used for various purposes across multiple situations. When an asset has low asset specificity it has

multiple uses, but assets with high asset specificity can be used for only a limited number of purposes. In the labour market, when a worker is considered to have high asset specificity it means the worker has acquired distinct skills that will put the worker at an advantage in the workplace (Willman, 1982; Morita & Tang, 2017). The worker is in high demand and firms will compete against each other to gain the worker. An example of a worker with high asset specificity would be a specialist in a certain field (Willman, 1982; Morita & Tang, 2017). On the other hand, general workers tend to have very low asset specificity and have no power in influencing their working conditions because they are easily replaceable. The more specific an asset is, the lower the potential of it being resold or deployed to another organisation or unit (Willman, 1982; Morita & Tang, 2017). Because many employees in the TES sector have low skills, they tend to have very low asset specificity, which allows for employers to use and misuse them as they please. Contracts that are concluded in situations where the assets have low specificity tend to not be as strict as contracts that are concluded when assets have high asset specificity; the opportunity cost of letting go of an asset that has high asset specificity is higher than the opportunity cost of letting go of an asset with low asset specificity (Willman, 1982; Morita & Tang, 2017).

The second important dimension of transactions is uncertainty. Uncertainty results from the way information on outcomes is distributed in exchange and used in transactions. Different views exist on the complete nature of information and the degree of certainty with which economic decisions are taken; the way decisions are made based on this information and the (allocation) efficiency; as well as the (cost) effectiveness of the outcome of these decisions (Summers, 1986). However, the effect of uncertainty on the choice of governance form is conditional. Ideally, when asset specificity is low, market governance is preferred whatever the degree of uncertainty, since continuity matters little and new transaction arrangements can easily be made by both parties if necessary (Williamson, 1985). Employers are uncertain about the ability of the employees to perform the work given. The ability of the workers could be caused by a lack of knowledge and training, and a lack of skills. South Africa faces wide-ranging skills shortages, and formal education qualifications cannot be used as measures of productivity due to misalignment of education and training system and workplace skills demands (PPS Student Index Survey, 2017). In conditions of asset specificity, increases in uncertainty therefore render market governance subject to costly bargaining and non-

adaptive behaviour, and increase the relative attractiveness of hierarchies and hybrids (Williamson, 1985). However, at high levels of uncertainty, the 'intermediate range' of asset specificity within which hybrid forms are preferred tends to shrink and might even disappear (Williamson, 1991). This is because hybrid adaptations cannot be made unilaterally (as with market governance), or by approval (as with hierarchy), but require mutual consent (Williamson, 1991). The result is that high uncertainty renders both market governance and hierarchies preferable to hybrids.

Non-price variables such as biased power and decisions motivated and based on non-economic factors do play a pertinent role in labour market uncertainty and contested exchange in the labour market in South Africa market (Bowles & Gintis, 1990). It is therefore probable that these factors are a cause of conflict, employment uncertainty, performance uncertainty, and contested exchange in the labour market, which then result in underemployment (Fick & High, 1987; Jones & Inggs, 1994; Kingdon & Knight, 2001a; 2001b; Deane, 2005).

Finally, the frequency of the transaction operates in a similar way. Asset-specific transactions that occur frequently require constant monitoring effort in the market. Those that occur only occasionally need not be attended to continuously and do not merit the bureaucratic costs of establishing a hierarchy. Therefore, in the presence of asset specificity, frequency also pushes transactions away from the market and into hierarchy (Williamson, 1985; Shelanski & Klein, 1995).

Labour is the most valuable and yet costly resource that an organisation has. This is because, through its productivity, labour has the power to help an organisation achieve its goals and objectives. But labour can also cost the organisation its goals when disputes and misunderstandings arise). Labour regulation requires that employers follow certain procedures when it comes to hiring and firing workers (RSA Department of Labour, 2002). Employers cannot just act on their instincts and on their own accord, because they are limited by the law that is applicable to them (Department of Labour, 2002). For example, the Basic Conditions of Employment Amendment Act (BCEA) 11 of 2002 requires that for an employment relationship to be terminated, the employer must serve the employee with a notice of termination. Depending on the period for which the employee has been employed

in the organisation, the notice for termination can be for up to four weeks. Should the employer choose not to serve the notice, the only available alternative is to pay the employee for the period for which the employee would have been employed: failure to do so can result in serious consequences for the employer (Department of Labour, 2002). Labour markets such as the South African labour market are highly regulated and therefore increase the transaction costs that come with procuring labour directly. Employers must think twice before procuring labour directly and one method that bears the lesser costs is using labour brokers (Deloitte, 2016).

Since much of the literature in the South African context is either in the neoclassical tradition or in the heterodox tradition, with a stronger bias towards Marxism, this Thesis proposes to approach similar questions from the Old Institutional Economics' Veblenian Dichotomy. To provide a more critical institutionalist lens, it is necessary to discuss the contribution of Veblen (1919) to the evolution of social institutions that are exploitative and those that are facilitative of the welfare of the common person. His contribution has since been synthesised into what has become known as the Veblenian Dichotomy, to which the discussion turns in Chapter 3.

Chapter 3 Veblenian Dichotomy

3.1 Introduction

Thorstein Veblen's thought has been synthesised into the Veblenian Dichotomy, which interrogates institutions and institutional change from an economic power perspective. Veblen argues that institutions determine how technology is used in society (Foster, 1981). He argues that some institutions rely on the more ceremonial side, while others rely on the instrumental side (Foster, 1981). Furthermore, he defines the 'ceremonial' side as the more established, historical and traditional conserving attitudes and conduct; while on the other hand, he defines 'instrumental' as relying mostly on technology and judging value by the ability to control future consequences (Foster, 1981).

The Veblenian Dichotomy thus, categorises two sets of institutions – ceremonial institutions and instrumental institutions. Ceremonial institutions foster the interests of business such as profitability and earning of free income, even if there is no corresponding increase in production. Instrumental institutions, usually working through the influence of technology, address the interests of the common person and the labourer as well as business (Waller, 1982; Foster, 1981; Veblen, 1919). These two systems of values and institutions are antagonistic and the relative strength of one to the other determines economic outcomes and in whose interests the outcomes would be (Waller, 1982; Foster, 1981; Veblen, 1919).

When ceremonial systems prevail over instrumental systems, *ceremonial encapsulation* becomes the logical outcome. Ceremonial encapsulation presents the hypothesis that the institutional structure will absorb new technology only to the extent that it can do so without disrupting the existing value structure (Waller, 1987; Bush, 1979). In the labour market, this means that labour brokers will hire labour only if the labourers will not have power over them, for example through collective bargaining, union representation and labour regulation. Ceremonial encapsulation is the product of institutional path dependence and therefore constrains progress in the society through change. The Veblenian Dichotomy recognises other factors, which are non-price factors, as a motive for ceremonial change.

Ceremonial encapsulation results in regressive change. However, when instrumental systems prevail over ceremonial systems, we have progressive change, which is undermining to the welfare of the society.

Veblen's (1919) theory of prescriptive rights can be used to explain the phenomenon of labour broking in the current labour market regime. Prescriptive rights are rights to earn free incomes for no work done and in the present case the prescriptive rights will be parasitic on the wages of ordinary workers (Veblen, 1919). Prescriptive rights can be gained by lobbying government for special/preferential regulatory treatment or for specific protection. Prescriptive rights are created by government either through overlooking/turning a blind eye to the regulation of a regressive spontaneously emerging institutional system in the productive system, or by responding to lobbying efforts of organised capital (Veblen, 1919).

3.2 Overview of Veblen's thought

The foundations of the Veblenian Dichotomy are: instrumental and ceremonial values, the instinct of workmanship, absentee ownership and prescriptive rights. Veblen made use of value theory as a tool for judging whether institutions were compatible or incompatible with the effective evolutionary process, and to further distinguish between institutions which are "imbecile" and those which are not (Tool, 1977). While observing the fact of social change forms, Veblen contributed to social value theory mainly through his work on the theory of instincts, which is found in the fundamental Veblenian distinction or dichotomy (Veblen, 1914; Tool, 1977). It is through his work that Veblen sought to identify those types of behaviours and thoughts that improve or hinder the progress of culture and the development of a community. These supportive and inhibitive modes of thought and behaviour are for Veblen reflective of distinctive and persistent tendencies of human nature (Veblen, 1914).

In Veblen's thought, the term "instincts" is used to refer to the most basic human tendencies, which can also be used to describe the driving forces or urges that cause individuals or communities to act in a certain manner (Veblen, 1914; Cordes, 2005). Veblen does not use instincts to mean that people inherit tendencies to choose to act in particular ways, because

Veblen understood cultural conditioning, habitual behaviour, and the mores principle. Furthermore, Veblen argues that instincts are not the hereditary transmission of choice behaviour; they are "fundamental tendencies", which are channelled by consciousness and intellect into modes of behaviour that are culturally acceptable. Veblen notes that like other animals, man is an agent who acts in response to stimuli afforded by the environment in which he lives. Man (Referring to humans in Veblen's terms) is a creature of habit and propensity, however, in a higher degree than other species, man mentally digests the content of the habits under whose guidance he acts and appreciates the trend of these habits and propensities. In other words, although men are cultural animals who subscribe to their given conditions in a world that is full of cultures, men choose conditions that are suitable to them (Veblen, 1898).

Therefore, the instinct theory of cumulative evolutionary change takes the following shape, the starting point of institutional change always consists of a given instinctive endowment of man comprising the instinct of workmanship and some established way of life related to the habits of thought and institutions (Veblen, 1914; Jensen, 1987). For Veblen, the constructive or supportive tendencies of man are "the instinct of workmanship," the "parental bent", and "idle curiosity (Veblen, 1914; Tool, 1977). The parental bent refers to the unselfish considerations of the current generation for the wellbeing of the future generation. This results in a bias for the highest efficiency and fullest volume of life in the group, with drift to the future (Tool, 1977). Idle curiosity suggests that men have a natural tendency to seek knowledge and value it (Tool, 1977).

Veblen further argues that men are naturally gifted with an idle curiosity, the term "idle" used to explain that a knowledge of things is sought apart from any ulterior use of the knowledge so gained. However, this does not mean that the knowledge gained in such a manner will not be used (Veblen, 1914; Tool, 1977). The instinct of workmanship is based on the premise that during the process of human evolution, natural forces would have led to the selection of a natural propensity or instinct to engage in working activities that would ensure survival. This would entail an increase in the production of goods and services, distaste for fruitless efforts and a drive for technological improvement and innovations (Veblen, 1914; Edgell, 1975; Rutherford, 1984; Cordes, 2005). This means that institutions behave according to how they

were taught, they adapt to conditions that are available to them, and sometimes these habits or situations are native/ distinctive.

Furthermore, the instinct of workmanship promotes the idea that during times of change and evolution, institutions would naturally engage in working activities that are useful for survival, which would mean more effective and productive work and less fruitless work and also an increased drive for technological improvements, 'technology' being used to refer to knowledge and innovations and not only machinery and equipment (Edgell, 1975; Rutherford, 1984; Cordes, 2005). Similarly, the players in the business system have the desire to have a maximum consumption of goods produced by labour but have no interest in the labour that produces those goods, for example a fully functional production chain without having permanent employees, or free labour to do the work (Cordes, 2005). In the labour broking industry, labour brokers pay employees less wages for great deal of work done, they have fewer workers and overwork workers with work, no breaks, poor working conditions in order for them to produce maximum profits and they employ temporary workers (Joubert & Loggenberg, 2017; Theron, 2017).

In Veblen's concept, the instinct of workmanship is the driver of technological change and progression. Furthermore, it is workmanship that facilitated the process from "industrial employments" of primeval man to the "machine process", which taught men to use skills that would manipulate physical objects into useful objects (Ayres, 1958; Veblen, 1914). In addition, Veblen argues that the instinct of workmanship directs man to account in a system of ways and means whatever knowledge becomes available. This results in a theoretical organisation, a logical articulation of things known that must not be altered for the sake of consideration or convenience and therefore results in the derivation of knowledge characterised for its effective use in the pursuit of cultural continuity to initiate and guide social change along constructive channels (Tool, 1977).

Contrasted as "contaminants" there exist equally universal propensities which operate to impede or obstruct the constructive propensities. These parallel and inhibitive tendencies are impulses that are used either to match the power of other individuals, or simply to exert power and superiority over other individuals and discriminatory self-regard. The former is predominant in practices of exploit, prowess or mastery (warfare), ownership (material

acquisition), and in pecuniary control of the industry. The latter are predominant in the characteristics or behaviour of primitive societies, in practices of conspicuous display and noticeable waste, and in leisure class elitism (Tool, 1977). Evident in the distinction between the constructive and contaminating instincts is an embryonic value principle. The constructive, which is the desirable value principle, accounts for the progressing of culture while at the same time it is contributing to the net gain in the comfort or in the fullness of life, while in contrast the contaminant value principle sabotages that quest and should therefore be discouraged (Tool, 1977).

Veblen's implicit theory is apparent in the dichotomy, which is offered as a descriptive classifying principle, but it is also used as an evaluative principle. Veblen distinguishes between two forms of institutions; the one being institutions of acquisition and of production, pecuniary or industrial institutions, and the other being institutions serving the invidious or the non-invidious economic interest – in other words, the distinction is a dichotomy (Tool, 1977). Communities are interested in industrial efficiency and serviceability of the product, while the business interest demands the vendibility (saleability) of the product. The business system results in economic sabotage, which occurs when those with power in the industry, through their own discretion, authorise the reduction of output in the industrial system for earning profits (Tool, 1977). Veblen therefore argues that such authority does not intend to produce the largest and most serviceable output of goods and services and does not make the most economical use of the country's material resources and manpower, regardless of the economic consequences. It is this thought that causes Veblen to characterise vested interests as prescriptive rights to get something for nothing. Veblen sees the objective of competitive advertising as the establishment of differential monopolies resting on popular conviction which are of slight if any immediate service to the community.

Veblen's main concern is on the progression of human life to achieve maximum production of goods and services. Veblen's theory on instincts therefore indicates which sorts of basic impulses are progressive and which ones are regressive to the process. When Veblen applies the value theory, his concept of what ought to be becomes evident. Veblen's thought has been synthesised into the Veblenian Dichotomy, which interrogates institutions and institutional change from an economic power perspective. Veblen argues that institutions

determine how technology is used in society (Foster, 1981). He argues that some institutions rely on the more ceremonial side while others rely on the instrumental side (Foster, 1981).

Veblen distinguishes two systems: the industrial system vs the price system. Veblen argues that the Industrial system, technological system and instrumental system are what improves the material welfare of society by increasing the volume of goods and employment of productive resources. However, the business system, price system and ceremonial system, which are judged by the amount of profit made, do not result in the progress of the society. The first three systems according to Veblen (1919) are instrumental, and the last three systems are ceremonial responding to lobbying efforts of organised capital (Veblen, 1919). Prescriptive rights do not advance the interests of the labourer, but they advance the interests of employers (Veblen, 1919). However, Mayhew (1987) argues against Veblen's statements by claiming that the measure of human progress should not rely solely on the instrumental aspect.

According to Mayhew (1987), continuous universal human goals serve as standards for measuring performance. This means that institutions are dynamic and are characterised by constant change; therefore, performance cannot be measured based on institutional values, but, can only organise efforts into achieving universal goals. Furthermore, Mayhew (1987) argues that the way economic activities are organised is discontinuous, that is the prescriptive arrangements, property rights, legal constraints and the like are all products of human decisions and hence potentially discontinuous. Mayhew's (1978) arguments contrast with the view that ceremonially warranted institutions are characterised by path dependence, which explains a situation where a set of current decisions that an individual or society faces is limited by past decisions, or by events that happened in the past (Page, 2006). This means that current institutional adjustments are dependent on the path of the previous states, actions or decisions. Path dependence is based on the notion that a minor shock would alter the course of history, thus leading communities into disaster (David, 1985). Thus, path dependence is backward, in that it prevents technological change and innovation.

3.3 The Veblenian Dichotomy

The Veblenian Dichotomy categorises two sets of institutions – ceremonial institutions and instrumental institutions. Ceremonial institutions foster the interests of business such as profitability and earning of free income even if there is no corresponding increase in production. Instrumental institutions, usually working through the influence of technology, address the interests of the common person and the labourer as well as business (Waller, 1982; Foster, 1981; Veblen, 1919). These two systems of values and institutions are antagonistic and the relative strength of one to the other determines economic outcomes and in whose interests the outcomes would be (Veblen, 1919; Foster, 1981; Waller, 1982).

When ceremonial systems prevail over instrumental systems, ceremonial encapsulation becomes the logical outcome which is undermining to the welfare of the society. This results in regressive institutional change. However, when *instrumental* systems prevail over ceremonial systems, we have *progressive* change, which improves the welfare of society. As explained earlier in the chapter, ceremonial encapsulation presents the hypothesis that the institutional structure will absorb new technology only to the extent that it can do so without disrupting the existing value structure (Bush, 1979; Waller, 1987). This means that labour brokers will only hire labour if the labourers will not have power over them, for example through collective bargaining, union representation and labour regulation. Ceremonial encapsulation is a product of institutional path dependence and therefore constrains progress in the society through backward-looking processes of change. The Veblenian Dichotomy recognises other factors, which are non-price factors, as a motive for ceremonial change.

Institutions are defined as the set of patterns of correlated behaviour which are socially prescribed by the value structure of a society. Therefore, values serve as the criteria for the correlation of behaviour within the institutional domain (Bush, 1983). It is the value structure that in turn derives its social warrant from the two systems of value formation. The value structure of a society is either made up of the ceremonially warranted or instrumentally warranted patterns of behaviour (Bush, 1983). This forms the essence of the institutional dichotomy. While these two value systems are inherently incompatible, they are intertwined within the institutional structure through a complex set of relationships.

Characteristics of a ceremonial system are features of a system of false knowledge and socio-economic behaviour (Ayres, 1967). Ceremonial values are warranted by those customs and ways of life that prescribe status, hierarchies and unpleasant distinctions as to the relative "worth" of various individuals or social classes in the community. Ceremonial values rationalise power relationships and patterns of authority embedded in the status quo (Ayres, 1967; Bush, 1987; Bush, 1988). Ceremonially warranted values rationalise habitual modes of thought and behaviour embedded in traditional practices, and tend to be backward (Bush, 1983; Bush, 1987). Furthermore, it is through ceremonial values that the lower, middle and working social classes are undermined and deemed as powerless, which then allows the upper classes to exercise power over the powerless and prescribe rules that may be unfavourable for the powerless social class (Bush, 1987).

In addition, Bush (1987) argues that the values of the ceremonial system and its validation lies in what appears to be tradition and ideologies which have no basis for legitimacy which justifies their existence. Even though ceremonial values are made in a way that prevents a formal investigation and scrutiny to prove their validity, they can be rationalised through reasonable argument, and may never be subjected to any sort of test. Ceremonial values are accepted based on authority, meaning they are passed down and enforced by people who occupy a power position and have power over other individuals (Bush, 1978). The operative criterion by which such patterns of behaviour are judged within the community is that of "ceremonial adequacy" (Bush, 1987).

In contrast to ceremonial values, instrumental behaviour refers to the mutual set of functions and activities that result in the progressing of the welfare of the people (Foster, 1981; Bush, 1989). Instrumental values correlate behaviour by providing the standards of judgment which make use of tools and skills in the problem-solving process of communities. Unlike ceremonial values, instrumental values do have a basis for validating their existence. They can be validated in the continuity of the problem-solving processes. When behavioural patterns have been correlated using instrumental values, they are referred to as "instrumentally warranted" patterns of behaviour. The criterion by which the community judges instrumentally warranted patterns of behaviour is that of "instrumental efficiency" (Bush, 1987). Therefore, instrumental value theory provides guidance for the formulations of judgements in the regulation of economic activity and power in the public interest. Instrumental value theory

has provided a criterion that is employed when regulation has been deemed 'progressive', implying the resolution of actual problems encountered. Furthermore, instrumental values are warranted through the systematic application of knowledge to the problem-solving process and are derived from the process of inquiry into causal relationships and serve as a criterion for correlating behaviour, while ensuring causal continuity in the problem-solving process. Instrumentally warranted values are characteristic in the processes of scientific inquiry and technological innovation, and thereby function as standards by which behaviour can be correlated in the dynamics of institutional change (Bush, 1983). Furthermore, instrumental valuing is used as a tool or strategy for measuring policy prescription by analysts in institutions, they prescribe measures of what ought to be (Tool, 1990).

Therefore, patterns of behaviour correlated by ceremonial values are observed to be those social practices that manifest the use of power and coercion in the conduct of human affairs: social practices that require invidious distinctions and status relationships to justify their existence. On the other hand, patterns of behaviour correlated by instrumental values are manifest in those problem-solving activities upon which the life processes of the community depend. They are subject to change and modification as the instrumental character of the problems changes or as the scientific processes evolve to produce better technology with which to address those problems (Bush, 1983).

Although the value system is dichotomous, behaviour is dialectical. An activity or behaviour may have either ceremonial or instrumental significance, or it may possess both ceremonial and instrumental significance. The behavioural pattern and the behaviour to which a community is correlated with other behaviour in an institutional arrangement defines its social context. Therefore, the correlation is the function of the value that defines the behavioural pattern (Bush, 1987). Thus, if the value that correlates a behaviour is ceremonial, the behaviour will be interpreted as ceremonial; similarly, if the value that correlates behaviour is instrumental, the behaviour will be interpreted as instrumental (Bush, 1987).

Ceremonial and instrumental values play a great role in institutional adjustments; however, power also plays a role. In the market economy, power lies in different sectors and it is used differently in conducting institutional adjustments. The role that power plays has a great impact in the success or failure of institutional adjustments and how they will be interpreted

and received by society. The following section will deal with power, how it is manifested or applied and lastly how it is perceived in the economy.

3.4 The role of power in institutional adjustments

3.4.1 Forms of power

One important realisation is that power plays an important role in the economy; therefore, the market lies mainly on the use and abuse of power. The structure and functioning of economic systems reflect the exercise of discretion by those who hold economic power, public and private. Power is held publicly and privately and is used to design and shape pricing practices as institutional structure; including, for example, administered pricing of resources and industrial products. Central here is the recognition that holders of discretion determine who will have the opportunity to frame and political capacity to implement institutional adjustment as economic policy shifts (Galbraith, 1983).

Skidelsky and Craig (2016) attempt to answer the question to who holds power in the economy. They provide different explanations as to how power is used, and who holds the power. Furthermore, Lukes and Hearn (2016) also attempts to explain power by giving a triadic view of power. He explains that popular knowledge only makes mention of two forms of power, namely power over decision-making and power over agenda-setting; however, there is a third type of power which is known as 'the power of conditioning'. This form of power has a manipulative factor, in the sense that it can shape the preferences of other individuals, making them disregard their own real interests, and forces individuals to unwillingly submit to the purposes of other individuals with a sense of attendant virtue (Skidelsky & Craig, 2016). According to Hearn (2012) conditioning power differs from other forms of power in the sense that it is perceived to have an element that is a critique of harm. This is visible in the behaviour of those who hold the power, but not in the effects of the harm that is done to those who are ruled with the power.

Similarly, Galbraith (1983) provides a few definitions of general power. He defines power as the submission of one person or group to the will of another person or group wherever it occurs. Consequently, he looks at the instruments through which power is exercised; namely,

force or the prospect of punishment. This form of power is termed 'condign power'. The ceremonial system mostly makes use of condign power. This power is evident when individuals or institutions have power over other individuals or institutions: it can result in unfair treatment or exploitation. Galbraith (1983) notes that punishment is used as an instrument of enforcing condign power. Furthermore, Galbraith explains that this punishment can be enforced through the law, military or the judicial system.

The ceremonial system is more concerned with using its power to gain control over the marginalised. This control can come with consequences that can be detrimental to the institutional forms. The ceremonial system gains its power through dominating the legal, property and information systems. They gain monopoly power over the institutions and markets (Junker, 1982). Furthermore, Veblen (1919) and Junker (1982) compare the ceremonial system to colonisers. They both claim the actions of the players in the ceremonial system allows them to develop a system that allows them to exploit the marginalised players in the system to pursue their needs (Veblen, 1919; Junker, 1982). Similarly, labour brokers have managed to manipulate the labour regulations, by making use of sectoral determinations (which allow labour brokers to determine their own wages, even if the wages are below the market clearing wages) and allowing labour regulations to apply to them when necessary, making them work in their favour while at the same time allowing them to exploit workers in their quest for profits (Rasool, 2010; Barrientos, 2013; Chirume, 2017).

Those who have power in the ceremonial system maintain their power and dominance over the markets through spurious technological developments. Spurious technological developments are those developments that are ceremonially encapsulated by individuals, groups or institutions whose main concern is to control the use, direction and consequences of the developments. At the same time, they serve as the institutional driving force for the definition of limits and boundaries on the technological developments by dominating the legal, property and information systems (Junker, 1982). The ceremonial power system is concerned about the control, use, direction and consequences of the development, while at the same time it also places limits and boundaries over the technology by manipulating the legal system, the property system, and the information system (Ayres, 1967). The limits and boundaries enable institutions to avoid the acceptance of responsibility for the generated waste and additional price to be paid for access to the means of life by the community.

Ceremonial behaviour is characterised by the simplistic difference between myths and traditions, over and against modern technological development, but also ceremonial behaviour is not tool using, tool dominating, or tool orientated. Ceremonial systems serve to justify and legitimise the domination of control systems and groups over real technological development.

The second form of power that Galbraith explains is 'compensatory power', the power which arises when there is a purchase of submission in one form or another. This form of power is visible when an employee submits to an employer in return for a salary, or when an individual submits to an organisation in return for a bonus or a salary (Galbraith, 1983). Compensatory power cannot be met where there is no purchase of the submission, for example it can take the form of a submission to a lobbyist in return for a bribe, such as a politician who is trying to buy the vote of the people by lobbying for votes to the people (Galbraith, 1983).

Lastly, Galbraith defines 'conditioned power' as the power that is exercised when someone or some group accepts or is persuaded to accept the will of others in the belief that it is right, virtuous, or proper (Galbraith, 1983). Conditioned power is also dominant in the ceremonial system. which (Veblen, 1919) describes as a system that makes use of false knowledge and manipulation, to gain power over the majority. Furthermore, (Galbraith, 1975) uses 'military power' to explain the concept of corporate power. He explains that military power makes large use of conditioned power and combines all instruments of power with the three sources of power. Military power has massive deployment of compensatory power to weapons firms, scientists and engineers, the bureaucracy of the Pentagon, the members of the military services themselves, and the military services can enforce their discipline by punishment and by condign power. For military power the personality of the individuals is not that important because military power is enforced by faceless individuals who disappear when their term in office is complete. However, property in the form of disposable income does serve an important role in military power, because it is through property that most activities are conducted (Galbraith, 1975).

3.4.2 Power of financial markets

The ceremonial system is a system that makes of use conditioning power. This can be visible in markets that are dominated by few individuals or small groups who hold power over the

majority. Thus, Veblen (1919) argues that ceremonial systems are concerned with using their power to gain control over the marginalised groups. The domination of ceremonial systems over instrumental systems leads to regressive institutional change (Veblen, 1919). Financialisation explains the increased presence and power of finance within an economy which results in macroeconomic policy and economic policy being dominated by financial interest. Financialisation therefore increases the significance of the financial sector relative to the real sector, transfers income from the real sector to the financial sector, increases the financial sectors share of GDP and lastly contributes to the stagnation of wages and increases income inequalities (Palley, 2016). Thus, the financial system can be said to have prescriptive rights over the economy in that those who have power in the financial markets gain and use their power for their own benefit, to advance their own interest and not the interests of the common man in society. Finances' power to restructure the economy can be seen in the Keynesian Virtuous Cycle of growth model in which wages were the engine of demand growth. The logic of the Keynesian model is that productivity growth drove wage growth, which fuelled demand that promoted full employment, which provided the incentive to invest and which drove further productivity growth. Tool (1994) makes use of the pecuniary gains test amongst others as a tool for valuing institutional adjustments. The pecuniary gains test explains a situation that is similar to the power that financialization has on the financial markets. Furthermore, this power is the manifestation of a ceremonial system, because the benefits that are acquired in this system are acquired by those who have financial power. Finance's power in the financial markets therefore depicts a ceremonially encapsulated system.

Finance within the Keynesian framework was regarded as a public utility model, with its role being to provide businesses with insurance and households with continued future savings (Palley, 2016). The virtuous cycle of growth model paid its attention to a commitment to full employment; however, the introduction of the neoliberal growth model resulted in the abandonment of the policy and replaced it with a policy that focused on lowering and stabilising inflation rates, which threatened the linkages between wages and productivity growth (Palley, 2016).

The neoliberal policy is one that constrains workers into a box, which resulted in the workers being pressured from all sides through a corporate model of globalisation, the 'small

government' agenda that attacks public sector activity; the so-called labour market flexibility agenda that attacks the union and worker protections; and the replacement of full employment policy with low inflation targeting policy (Skidelsky & Craig, 2016). Deregulation saw the gradual clearing of the neoliberal policy framework, which resulted in the deregulation of financial markets. Furthermore, the deregulation of the public utility model, together with the introduction of the neoliberal policy box model, resulted in the creation of new financial systems that were characteristic of wage stagnation, income inequality and financial instability (Palley, 2016).

When it comes to the creation and maintenance of the new economic model, finance plays an integral part by making use of its ceremonial power, which is derived from money to promote the economic policies on which the model rests. Thus, the prescriptive rights and the power that finance has allowed the powerful players in the financial markets to lobby for financial deregulation, shifting macroeconomic policy from focusing on full employment attainment to targeting inflation. Finance also supported corporate globalisation and expanded the international mobility of capital. In addition, finance promoted privatisation; decreased regulation and promoted a more regressive tax code. It also promoted the non-unionisation and non-protectionist agenda against employees hoping to lower wages and strengthen the hand of the management (Palley, 2016).

The financial sector makes use of condign power, this is visible in the manipulative power of finance where finance managed to take control of the business sector, and as a result many businesses were forced to adopt the behaviours and perspectives of the financial sector. The change was justified by convincing economists that their shareholder value would be maximised. Finance had the power to change the behaviours and perspectives of the people and manipulated the people to adopt the behaviours and beliefs of the financial sector even though it would be disadvantageous for the people. And as a result, the change in corporate behaviour resulted in the adoption of the leverage buyout model that increased firms' debts, and the adoption of a short-term business perspective. The short-term business perspective undermined the willingness to undertake long-term investment projects, and the adoption of impossibly high required rates of return that also undercut long-term investment, as well as support for off-shoring of production to take advantage of lower labour costs, and the adoption of Wall Street-styled pay packages for top management and directors. The

relaxation of the financial markets did not benefit the people, as it allowed individuals to create debts that spiralled out of control, and plunged them into further debt (Palley, 2016).

Recent scholarship has argued for putting finance back in the policy box, which refers to the act of creating and implementing instrumental institutional adjustments that will ensure that finance support real economic activity, rather than parasitically extract income from the real sector. One way of doing this would include revising the wage productivity growth link as well as committing to full employment in the economy. According to Palley (2016), the task is twofold; firstly, new rules and policies that govern the real economy must be made so that the workers also have a share in the products of economic growth. The second task is to reign in the financial sector which serves as the main driver of change in the real economy. Quite evidently, 'financialisation' refers to finance's ability to use its powers to restructure the economy's transactions to its advantage, while 'putting finance back in the box' refers to the design of different institutions that are involved with delivering other socially preferred outcomes (Palley, 2016).

Delivering socially acceptable institutional adjustments can be achieved by replacing the neoliberal policy with the Keynesian paradigm that focuses on taking workers out of situations that are not beneficial to them and replacing them with the large cooperation's and financial markets. By doing so, instrumentally realistic goals are achieved. In addition, corporate organisations need to be replaced with organisations that focus on improving the standards of labour, while improving the environment ensuring environmental continuity. Furthermore, there has to be a restoration of macroeconomic policy commitments which will ensure that power is restored back into the hands of the workers and taken away from the large corporations. This power change can be achieved through increased trade union membership and allowing employees to part take in collective bargaining and ensuring adequate protection of the workers in the different workplaces (Palley, 2016).

3.5. Criteria of judgment for institutional adjustment

Institutions are faced with problems and therefore the problem-solving process of the institutions relies heavily on the values that are dominant in the institutional structure. When the levels of instrumental judgment and performance displace and increasingly exceed levels of ceremonial or undesirable judgments and performance, the creation or modification of

institutional structure will contribute to the resolution of problems and therefore institutional adjustments are said to be *progressive* (Hickerson, 1988). In contrast, when the levels of ceremonial or undesirable judgements and performance exceed the levels of instrumental judgement, the results are said to be *regressive* (Tool, 1994).

3.5.1 Progressive criteria

Progressive criteria are characterised by their contribution to the successful and productive progression of the social process. They are made up of the democratic test, the instrumental efficiency test, the growth of knowledge test, the minimal needs test and lastly, the environmental continuity test (Tool, 1994).

a. Democratic test

Firstly, the democratic test tests to see whether the structural change and the policies implemented through it are inclusive or not. It places emphasis on the inclusive involvement of individuals in the implementation and application of values that govern how they should relate to each other. What is important here is to find out how flexible the policy is for those it is implemented for; can they influence or change the policy? Or can they gain practical, non-discriminatory consequences from the purpose or implementation of newly introduced institutional adjustments? These questions are based on the premise that there should be no individual or institution that should be allowed to govern or rule others without their consent, which forces inclusivity and participation as well as transparency in policy design and implementation. The moral criterion here is that as walls of privilege and monopolistic possession are broken down through the elimination of inherent discriminatory characteristics, individuals can participate and contribute to share in the development of institutional adjustments (Tool, 1994).

The second issue that the democratic test tries to deal with is on accountability of those who possess power in an institutional structure. It explores questions such as “Can they be constrained and kept insecure about the continuity of their discretionary roles?” Is it possible for the discretion to be widely and “non-invidiously shared”? For democratic participation to be successful, a discretion is required which entails the continuing right and access to relevant

warranted knowledge, and the continuing right and opportunity to make genuine choices that may alter institutional outcomes when applied (Tool, 1994).

b. Instrumental efficiency test

An underlying institutionalist social value principle provides for the continuity of human life and the fair recreation of community through the instrumental use of knowledge, which is why the instrumental efficiency test is concerned with measuring the productivity and efficiency of policies that are implemented. The instrumental efficiency test helps to define a criterion that determines which policies for institutional adjustment should be recommended, and asks the question, "Can decision makers identify, introduce and support instrumentally efficient productive and distributive mechanisms?" Thus, instrumental efficiency advocates for the skilful use of appropriate conceptual tools defining problems and of formulating options as institutional changes (Tool, 1994).

c. The growth of knowledge test

For institutional adjustments to be deemed as progressive they must pass the growth of knowledge test. This aims to test whether institutional adjustment will increase acceptable knowledge and causal understanding of economic knowledge. Instrumental adjustments rely heavily on the creation and access to warranted knowledge. The growth of knowledge test emphasises the support and maintenance of educational access, open inquiry, intellectual freedom, and full provision of public information in some institutions. Warranted knowledge is generated and enhanced through the encouragement of progressive education needed for research and development purposes and for cross-cultural borrowing. Hence transparency, communication, and public involvement has expanded the growth of knowledge, and encouraged the sharing of ideas and communication in institutions. When warranted knowledge is encapsulated or sequestered by public agencies or private corporations, ceremonial encapsulation occurs which hinders the growth of knowledge (Bush, 1988; 1987).

d. The minimal needs test

The minimal needs test questions whether priority can be given to the maintenance of at least minimally adequate real income flows. It looks at whether institutional adjustments can emphasise the important factors that promote the welfare of individuals. The test emphasises the importance of ensuring that an adequate provision of real incomes that are accessible to individuals is maintained. The underlying issue here is protecting those who are less powerful in society from opportunistic exploitation by those who are more powerful in society. Hence it is important to align instrumental valuation to the “basic needs” strategy. This approach is mainly utilised in the underdeveloped countries where there are many poor people. The approach helps to ensure that individuals satisfy their basic needs with the employment opportunities offered, the output produced, and the income generated (Tool, 1994). The minimal needs test approach differs from other tests in sense that efforts are made to ensure that any institutional adjustments introduced can address the needs of the poor. The most important strategies are those that help the poor to get better opportunities by getting an education, becoming involved in skills development programmes, improving health facilities and ensuring active participation in enhancing their own being (Tool, 1994).

e. Environmental continuity test

Institutional adjustments should be designed and implemented in a manner that will not result in the destruction of the environment or the mutual dependence of the inhabitants and the environment. The environmental continuity test emphasises the importance of preserving life in all forms. This means that institutional adjustments should be in line with the needs of the community to preserve and enhance the environment including all life forms. When institutional adjustments are not in line with the environmental continuity test, they are being regressive – for example, if a government or institution introduces laws that lead to environmental degradation, or which cause individuals to act in a manner that degrades the environment through protests and strikes, the institutional adjustments (the laws introduced) are regressive. This then brings us to the discussion on regressive criteria for institutional adjustments (Bush, 1988; 1987).

The progressive criteria that will be used for the evaluation of labour broking as an institutional adjustment are the democratic test, the instrumental efficiency test, the growth of knowledge test and finally the minimal needs test. These tests are the most relevant and will help with answering the research questions.

3.5.2 Regressive criteria

The justification for regressive criteria is based on authority or status. Like ceremonial values, regressive criteria are enforced by those who have power in society (in the form of wealth and resources) over those who have no or less power in society (Tool, 1994). The regressive criteria are made up of the possession of power test, the democratic test, the status quo preservation test, the invidious defence test and lastly the pecuniary gains test (Tool, 1994).

a. Possession of power test

The possession of power test seeks to answer questions that are related to the power in a society. The test seeks to answer what gives individuals who hold power the right to rule over others. Is it the fact that they have power? What justifies them having control over others? In many institutional forms, the acquisition and use of power is based on the notion that “might is right” meaning that those who have power are always right in acting the way they do, and in doing what they do. This notion does not allow the powerless to question or dispute the actions or views of those who have power (Bush, 1988; 1987).

b. Democratic test

The democratic test seeks to answer what makes it possible for power to be held by a few in the economy when it rules many. The answer to this question lies in two parts. The autocratic leaders believe that democracy is impossible, therefore power should be held by one party. They believe that authoritarian control goes hand in hand and is an inevitable result of the forms of governance attempted, therefore the possession of it ensures self-preservation. Such power makes it possible for coercive power to be used on those who are powerless in a society. Coercive power is regressive because it is not warranted on instrumental grounds. Autocrats believe that democratic rule conveys ignorant messages that fail to generate solutions for problems (Tool, 1994).

c. Status quo preservation test

Some institutional adjustments can be backward looking and path dependent. This raises questions whether the economy can be sustained by individuals who seek to maintain what currently exists. The issue at hand here is determining to what extent a political economy would be open to the consideration of redesigning institutional reforms to ensure that they are non-self-serving and acknowledge and utilise the past only for instrumentally warranted reasons (Tool, 1994).

d. Invidious defence test

Institutional adjustments should be designed in a way that does not arouse anger and resentment based on distorted or discriminatory judgements of access and opportunity that is based on gender, race, ethnicity, ancestry, religion. The issue at hand is recognising that any institutional adjustments that is bound on these terms is likely to destroy the unity in a community and ignites conflict by destroying instrumental motivation and impairing the community's ability and capacity to provision and sustain itself.

The discriminatory distinctions amongst individuals in a community defines the participatory involvement in discriminatory fashion in terms of property ownership, educational choices, health care access, professional opportunities and credit availability being denied in a manner to exclude and demean segments of community. This promotes a master-servant culture and provides hierarchical perspectives that places those individuals identified in an ingratiating class. In many institutional adjustments, especially those that involve fiscal allocation and budgeting, it is interesting to note that only the benefits to the poor are at issue, whereas those received by the upper class are characterised as deserved benefits.

e. Pecuniary gains test

In many exchange economies having access to and possessing money or secured flow of real income (including access to credit) guarantees individuals or institutions power in the economy. This power can result in pecuniary gains, which can be defined as benefits that are

acquired by an individual or group of people with an intention to commit an illegal act which cannot be traced back to a criminal offense due to there being not enough evidence of the origin. Progressive economies use these issues as a measure of economic success and wellbeing (Scorzafave & Soares, 2009). Personal acquisition of money and profits is the ultimate goal of players in regressive economies.

For the evaluation of the regressiveness of labour broking, all five criteria will be used. This is because all the criteria are relevant and will help the researcher to answer the research questions.

3.6 Progressive and regressive institutional change

Table 3.1 The partitioning of Institutional space by the interface of the knowledge fund and the value structure of the institution

	INSTRUMENTALLY FEASIBLE	INSTRUMENTALLY NON-FEASIBLE
CEREMONIALLY FEASIBLE	SECTOR I (Sector of Ceremonial Encapsulation)	SECTOR III (Sector of Lysenko Effects)
CEREMONIALLY NON-FEASIBLE	SECTOR II (Sector of lost instrumental efficiency)	SECTOR IV (Empty set)

Source: Bush (1987) The Theory of Institutional Change.

This model was created by Bush (1987), and it provides a good analysis of market outcomes based on the knowledge fund and values by making use of four sectors. The four sectors which are represented in the diagram are identified as follows: Sector I in which the behavioural patterns are both ceremonially and instrumentally feasible; Sector II in which behavioural patterns are instrumentally feasible but ceremonially non-feasible; Sector III in which the behavioural patterns are ceremonially feasible but instrumentally non-feasible; Sector IV in which behavioural patterns are both ceremonially and instrumentally non-feasible. Since the outcomes in sector IV are both ceremonially and instrumentally non-feasible; they would not fall within either the myth structure or the technology of the community. It is therefore reasonable to disregard this sector (Bush, 1987).

When looking at Sector I, it can be noted in this sector, an institutional structure does exist, furthermore the patterns of behaviour in this structure are technologically feasible, and they meet the standard of ceremonial adequacy (Bush, 1987).

Sector II, on the other hand, defines the knowledge fund for a given state, also showing the technological possibilities of the community that are denied to it by the existing level of ceremonial dominance. In other words, this sector contains those behavioural patterns that the knowledge fund makes possible, but which cannot be undertaken because of ceremonial restraints on behaviour (Bush, 1987). Ceremonial dominance is what happens when ceremonial values and instrumental values are fused together to form one value that governs the society (Bush, 1987).

Therefore, Sector II is the desired sector because it allows for growth and productivity as well as technological innovations. Sector II results in progressive institutional change, which occurs when ceremonial patterns of behaviour are displaced by instrumental patterns of behaviour. When applied to the labour market, initially there existed conventional methods of employment, where workers would apply for jobs directly to the organisation and employers would deal with the applications personally, these methods can be interpreted as instrumental because they enhanced the welfare of individuals as well as the organisations they worked for (Veblen, 1919).

Consequently, ceremonial dominance poses limitations to the existing fund of knowledge to absorb and diffuse new forms of knowledge in the form of technology, skills and technological innovations. Communities would move into this sector if progressive institutional change reduced the degree of ceremonial dominance (Bush, 1987). Ceremonial dominance can be seen in the labour market, where labour broking has been accepted by employers and employees, which happens when ceremonial values are infused with instrumental values to form one set of values (Bush 1987). Similarly, ceremonial encapsulation happens when the ceremonial values encapsulate the instrumental values and prevent them from being progressive in the society (Bush, 1987).

Lastly, Sector III at first glance this sector appears to be irrelevant, because the sector contains behavioural patterns that involve an extension of the myth structure, that not even the ceremonial encapsulation of instrumental behaviour can sustain without a loss of

instrumental efficiency to the community at large. Sector III is undesirable because it is backward and does not lead to productivity and growth in the economy

These extensions found in Sector III are what is referred to as 'the Lysenko effect'. Although Sector III appears to be irrelevant, with further scrutiny the sector becomes more socially relevant. This sector and its values have always been part of the human history, especially the history of the twentieth century (Bush, 1987). It is into this sector that the community would move if "regressive" institutional change increased the degree of ceremonial dominance.

The Lysenko-type of ceremonial encapsulation results in regressive institutional change. This happens when instrumentally warranted patterns of behaviour are displaced by ceremonially warranted patterns of behaviour and therefore increases the effects of ceremonial dominance in the community (Bush, 1987). The Lysenko effect results in a net loss of instrumental efficiency, because there is no way of maintaining a legitimate scientific or technological practice, especially in those parts of the community that are directly or indirectly affected by the intrusion of the spurious science (Bush, 1987). It is important to note that there is a link between progressive institutional change and the growth of the knowledge fund. The change that is generated by communities in the problem-solving process provoke institutional adjustment which further lowers the index of ceremonial dominance in the community and makes it easier to absorb and diffuse technological innovations and accelerates the process of the growth of knowledge (Bush, 1987).

Furthermore, the higher the improvements in technology through innovations and the lowering of the index of ceremonial dominance, the more chances of there being a social environment that is conducive to the knowledge enquiry in a community. Simply put, when there is less ceremonial dominance and more instrumental dominance, individuals can explore the knowledge fund and make enquiries that are beneficial to the community, which results in more innovations and problem-solving skills. Similarly, if the labour broking and TES industries were characterised by instrumental dominance, individuals in the sector would be able to explore their knowledge fund and gain skills that would ensure they are able to be employable and not depend on labour brokers for employment. This would not be beneficial for labour brokers because they would lose their business; hence they use ceremonial values to govern the labour broking industry so that they can maintain a dependence on them. Thus,

the growth of knowledge is both the cause and consequence of "progressive" institutional change (Bush, 1987). Furthermore, Veblen argues against the perfect market by claiming that the pursuit of profits results in the reduction of output (monopoly power) international competition, war, depression and mass unemployment (Seckler & Robins, 1975).

Chapter 4 South African labour market context

Guesthouse Temps, Marvellous Maids, Choose-a char offers 'WONDERFUL WORKERS' available for your selection at a nominal fee: domestics, chars, housekeepers, kitchen hands, restaurant workers, cooks, childminders, nurse aids, clerks, receptionists, drivers, cashiers, labourers. Make one phone call to find staff to your requirements, one call can solve any staffing problem that you may have.

Marlea Clarke (2004:569).

4.1 Introduction

Since early days, employers and businesspeople who wanted to increase their profits developed a new form of employment method, which showed a great shift from the traditional employment method to a more flexible employment method. The introduction of globalisation and the growth of global value chains also created a lot of uncertainty for employers and business owners. Employers feared that this new market reform would result in high costs of production, and therefore responded by adjusting their employment methods to cut costs. From there onwards, nonstandard employment methods spread and became popular (Kenny & Webster, 1998).

Between 1994 and 2004 the South African labour market experienced great shifts in employment relationships. Employers shifted from the traditional employment methods which were made up of relationships between the employer and employee, to a more triangular relationship made up of the client company, employee and labour broker (Senne & Nkomo, 2015). Labour broking or TES employment has become one of the most popular employment methods under the triangular relationships. TES employment contracts are characterised by short-term or fixed-term contracts, some of which can last for as long as five years but used for certain intervals or cannot be considered as ongoing. This happens when labour brokers create short-term contracts of employment that last for three months, after they terminate the contract and create a new one even though the employee is still the same

(Van Eck, 2010; Swanepoel & Slabbert, 2012). Labour broking was meant to help employers deal with rising employment costs as well as the costs that came with globalisation and world-class manufacturing (Swanepoel & Slabbert, 2012). However, it became one of the most contentious forms of nonstandard employment (Budlender, 2013; Theron, 2017; Joubert & Loggenberg, 2017).

The end of apartheid in South Africa brought great expectations in terms of political, economic and social issues. It also allowed South Africa to join the ILO, which compelled the South African government to comply with the labour regulations as stipulated by the ILO. These regulations set standards for decent work, freedom of association and decent wages (Budlender, 2013; Theron, 2017; Joubert & Loggenberg, 2017). Although there has been significant change, sadly the changes in the labour market, especially with the nature of employment contracts, has resulted in great unrest. This unrest is evident in large protests, some of which are violent. The following sections will provide a snapshot of the South African labour market and how it has evolved in the past years with the presence of labour broking and TES employment.

[4.2. Rationale for labour broking in south Africa \(Section 198\(1\) LRA\)](#)

Labour broking or TES employment, which is also a form of nonstandard employment methods, was introduced in South Africa post-1994. The growth of labour broking in South Africa can be attributed to the democratisation of South Africa, which led to labour law reform, specifically to the Labour Relations Act of 1995. The introduction of this Act was based on the notion that South African employers lacked flexibility and therefore brought flexibility in the South Africa labour markets (Lee & Faller, 2005). The problem with labour broking in South Africa is the lack of regulatory frameworks to govern the TES sector (Van Eck, 2010).

Section 198 of the Labour Relations Act attempts to regulate and set standards for the nature of TES employment relationships in South Africa; however, labour broking is still characterised by poor working conditions and exploitation of the workers (Budlender, 2013; Senne & Nkomo, 2015; Theron, 2017; Joubert & Loggenberg, 2017). Furthermore, Pons-Vignon & Ansew (2009: 1) argue that, “Despite formal labour market regulation, processes of externalisation have been pervasive, turning previously oppressed wage labourers into poor, casualised workers eking a living in a liberalised economy”.

The labour broker agreements grant employers the freedom to hire and fire workers as they please without having to account for their actions at the CCMA. This lack of regulation in the labour broking sector has resulted in the abuse of employees by the labour broking companies (Van Eck, 2010). Labour brokers manage to get away with all these actions, because the labour regulation that regulates labour broking and the TES sector is incoherent, inadequate and ineffective even after two decades of democracy (Van Eck, 2010). This has resulted in the ongoing challenges that are faced by employees in the TES sector. These challenges include, but are not limited to, the exploitation of workers, unclear working terms, unclear job descriptions, low wages and poor working conditions (Joubert & Loggenberg, 2017; Theron, 2017).

Before it was amended in 2015, the LRA defined the triangular relationship by stating that although the worker provides services to the client of the labour broker, the employee is not the employee of the client company but that of the labour broker. The omission of this information created conflicts and inequalities that are still present today between the client's employees and the employees brought in through labour brokers. This resulted in discrimination, in terms of wages whereby labour broker employees received less wages, and no employee benefits. There were no opportunities for collective bargaining and employment contracts could be terminated at any point without even a warning or waiting period.

South Africa has a flexible labour market, which allows labour broking and TES sectors to thrive. Flexibility allows companies and labour brokers to find holes in the labour legislation. As the demand for temporary workers increases so do the number of labour brokers and TES employers (Kenny & Webster, 1998). When taking into consideration socioeconomic challenges that the country faces, unemployment and lack of education and skills being the top of the list, labour broking and TES employment seems ideal, because it affords even those with no education or those who lack skills an opportunity to earn an income (Harvey, 2011). However, this flexibility has also created conditions characterised by little or no protection for the workers, no job security and no defined working periods (Kenny & Bezuidenhout, 1999).

The debate about TES services and labour broking in South Africa is more in line with the ILO's debate regarding decent work and decent wages and benefits that are afforded to the

employees in the TES industry (Bhorat, Caetano, Jourdan, Kanbur, Rooney, Stanwix, & Woolard, 2016). In the labour market, there is a huge gap between the wages received by permanent workers and those employed in the TES sector (Cassim & Cassale, 2018). It has been found that while the wage gap seems to decline after controlling for certain characteristics, where the gap does exist for temporary workers it is in terms of benefits, such as pension, medical aid, and unemployment insurance (Cassim & Cassale, 2018). Temporary workers have been found to have far lower levels of access to benefits than permanent workers, even after controlling for factors such as race, education, and location (Houseman, 2001). This suggests that employers use labour brokers to lower costs in terms of both the base wage and benefits (Williamson, 1979; Pons-Vignon and Anseew, 2009; Barrientos 2013).

Trade union members and leaders, together with employee associations and labourers are constantly in a battle with labour brokers and their associations (Mbude, 2017). Trade unions such as the Congress of South African Trade Unions (COSATU) and National Council of Trade Unions (NACTU) advocate for the ban of labour broking. On the other hand, business organisations such as the Business Unity of South Africa (BUSA) and the Federation of Unions of South Africa (FEDUSA) are arguing for the retention of labour brokers, agreeing that there needs to be improvements in the regulatory regime for labour broking (Van Eck, 2010). Amendments that were made to the LRA in 2015 attempted to better regulate the TES sector and to prevent the unfair treatment of workers; however, to date employees in the TES sector are still being exploited and are underpaid (Senne & Nkomo, 2015; Joubert & Loggenberg, 2017; Theron, 2017).

According to Bhorat & Van Der Westhuizen (2009), the number of TES agencies registered with the Services Sector Education and Training Authority (SSETA) alone rose from 1 076 in 2000 to 3 140 in 2006, while the National Association of Bargaining Councils (NABC) estimated that almost one million workers were employed through labour brokers in 2010. To contextualise the rapid growth of TES, we consider the growth of this subsector relative to the finance and business services sector and overall employment growth. The TES employment as a percentage of finance industry employment increased rapidly from 26.64% in 1996 to 47.36% in 2014. As a proportion of total employment, TES employment nearly trebled from 2.22% to 6.44% during the same period (Bhorat *et al.*, 2016).

4.3 Overview of the South African labour market

The South Africa economy is one that is characterised by high unemployment rate and high levels of inequality. On the onset of democracy, the former President of the Republic of South Africa Thabo Mbeki stated that South Africa was a dual economy country. Mbeki spoke of the existence of a second economy that was made up most of the population but was marginalised, underdeveloped, and which contributed minimally to the Country's Gross Domestic Product (GDP). The second economy is the one that faces the triple threat challenge of unemployment, inequality and poverty. According to Mbeki the second economy lacks coherence and has inadequate systematic data and it here where labour broking and TES employment thrives. Furthermore, Mbeki stated that in terms of the structural design, the second economy was separated from the first global economy and operated concurrently. The first economy was more developed, advanced and more substantively documented (Di Paola & Pons-Vignon, 2013) .

Although the country experienced long periods of uninterrupted growth since the 1960s, the South African post-apartheid era is one that is characterised by great policy challenges and the triple threat socio-economic challenges such as poverty, unemployment and inequality, with the unemployment rate being at its highest at 29 percent (Stats SA, 2019). A comparison of the official definition and the expanded definition of unemployment in South Africa is helpful. The official count includes the individuals who are unemployed but are actively searching for work. The expanded definition accounts for those who are unemployed, but are not actively seeking for employment due to being discouraged. As at August 2019, the official unemployment rate in South Africa stands at 29 percent, a total of 6.7 million unemployed individuals. The expanded definition accounts for 10 million, or 38.5 percent unemployed individuals in South Africa (Webster, 2017) . On average over a 20-year period, one out of every four members of the South African labour force is unemployed, leading to an increasing rate of discouraged workers. Furthermore, Bhorat, Cassim, & Tseng (2016) argue that since 1994 the unemployment rate has been steadily increasing at a rate consistent with economic growth. In addition, TES workers in the South African labour market receive wages that are below the national minimum wage, while the provision of facilities and infrastructure needed by the citizens is weak. Workers pay high prices for transport even though there is limited transport available for them (Theron, Godfrey & Lewis, 2005).

Economic factors and economic related frictions are not the only factors that cause unemployment in the South African economy. Non-price factors such as social and welfare variables and structures as well as power play (politics) create environments that are characterised by uncertainty about employment, worker performance and in underemployment (Kingdon & Knight, 2001a and 2001b; Schoeman, Blaauw & Pretorius, 2008; Schoeman & Blaauw 2009; Botha & Blaauw, 2010). Non-price factors include institutional, cultural, political, social, welfare, and racial factors as well as historical and historic factors (Bowles & Gintis, 1990; Cabarello & Hammour, 1997; Blanchard & Wolfers, 2000; Belot & van Ours, 2001; Blanchard & Philippon, 2004).

Post-apartheid labour legislation is in line with the South African Constitution which outlines the rules for fair labour practices, decent wages, decent work and collective bargaining (Budlender, 2013). However, the introduction of labour brokers has contravened the regulations as stipulated in the constitution and in the Labour Relations Act. The events that have taken place in the TES from the early introduction of labour broking, to the amendment of the Labour Relations Act in 2015 have sparked a lot of debate and unrest in South African labour markets. Unions argue that employees are treated unfairly in the workplace and many are prevented from joining labour unions (Joubert & Loggenberg, 2017; Theron, 2017). Business organisations argue that labour brokers are essential for the labour market.

This section attempts to add substance to the arguments by presenting data that represents both sides of the argument. Firstly, a snapshot of the differences in wages for TES employees in and Non-TES employees will be provided, then it will move on to highlight the treatment of TES employees in South Africa, making use of media publications, court judgements as well as public hearing submissions.

4.4 Wage differences in the TES sector

Table 4.1. Monthly earnings by unionisation for TES and Non-TES workers

Monthly earnings before tax	Unionised		Non-unionised	
	TES	Non TES	TES	Non TES
Less than R1500 per month	9	4	33	21
More than R1500 but less than R2500	30	13	39	36
More than R2500 but less than R5000	35	21	9	26
More than R5000 but less than R8000	9	19	0	4
More than R8000 but under R15 000	6	24	0	5
More than R15 000 per month	3	10	0	0
Refuse	7	10	19	8
Don't know	0	0	0	0
Total	100	100	100	100

All figures in the four right-hand columns are percentages.

Source: Own analysis of COSATU worker survey data.

Table 4.1 presents a snapshot of the differences in wages that are received by employees in the TES sector who are unionised and those who are not unionised. Based on the findings in table 4.1, it is evident that among both unionized and non-unionised workers TES workers were more likely to report monthly earnings of less than R2 500 per month, which is less than the minimum wages stipulated in the South African labour legislation. Furthermore, TES workers were less likely to report monthly earnings of more than R8 000 per month. This provides evidence that even with the amount of protection that is afforded to TES employees, when it comes to issues of decent work and decent wages, TES employees will always be on the shorter receiving end. In addition, union members reported that employees in the TES sector were required to sign contracts monthly, however, this did not guarantee employees work for each day of the week. TES employees did not receive benefits such as provident fund contributions, bonus and annual leave pay. There were huge differentials in terms of wages that were afforded to TES employees and other employees. TES employees received wages that were sometimes substantially less than those received by directly employed workers, and when production fell, TES employees were the first to be considered for the retrenchments and dismissals (Budlender, 2013).

The differences in wages and treatment that employees in the TES sector receive has sparked a lot of debate and unrest. The following section will now focus on the debates and unrest created by TES employees, and employers.

4.5. South African labour regulation regarding labour broking

4.5.1 The South African Constitution

The South African Constitution is the supreme law of the country. Therefore, the constitution is the cornerstone of the nation. Section 23(1) of the South African constitution states that all South African citizens have the right to fair labour practices (South African Constitution, 1993). Fair labour practices mean that all individuals in the workplace have a right to freedom of association, the right to join and form a trade union and to participate in the union's activities. Furthermore, the constitution states that every worker has the right to strike. In addition, every employer has the right to form and join an employer's organisation and to participate in the activities of the organisation. And lastly every trade union, employer organisation and employer has a right to engage in collective bargaining (South African Constitution, 1993; International Labour Organisation, 2019).

4.5.2 The Labour Relations Act of 1995

The Labour Relations Act of 1995, which is nested in the South Africa Constitution, outlines the regulation that is applicable to every individual in the South African labour market. The South African Constitution outlines the right to fair labour practices and the right for every individual to participate in the activities of a labour union, to engage in collective bargaining and to strike. The LRA further outlines the rules for collective bargaining and provides a framework which can be contained by employers and employees and which internalises all workplace conflicts. The LRA provides a framework for dispute management and resolution and allows for two sides to come to an agreement through collective bargaining and using the Council for Conciliation, Mediation and Arbitration (CCMA), Labour Court and Labour Appeal Court (Dickinson, 2015)

Amendments that were made to the 1956 Labour Relations Act (LRA) in 1983 also perpetuated labour broking in South Africa. The amendments created a triangular relationship by providing an explanation that the employee in a labour broking relationship such that he/she is the employee of the labour broker and not of the client company. Similarly, the amended section 198 of the LRA maintains that the labour broker (TES) is the employer in a triangular relationship. The Basic Conditions of Employment Act (BCEA) of 1997 also agrees with the LRA. Both the BCEA and LRA agree that the client and the TES are “jointly and severally” liable for any breaches of the labour regulation (Kutumela, 2013; Clarke, 2015; Benjamin, 2016).

a. Amendments to the Labour Relations Act

In 2015, the South African government amended the Labour Relations Act to make provisions for labour broking and to better regulate the employment relationships in the TES sector. These amendments that were made state that:

- The TES and client are jointly and severally liable for contraventions of employment laws.
- Workers should be treated as the employees of the client company if they work for the client for a period in excess of three months. Dismissal of the employee will not be considered unfair if the employer has been granted exceptions.
- After three months, there must be equal pay for equal value work (Dickinson, 2015).

b. Addressing labour broking

- The amendment proposed the deletion of section 198, which deals with TES employment, and proposes that TES employment should be dealt with under the Employment Services Bill (Van Eck, 2010).
- The amendment provided a narrower definition of the employer and employee and presumption of being an employee regardless of form of contract; this meant that the TES will be the supplier of labour but will not be considered as the employer (Van Eck, 2010).

c. Regulating contract work

Section 200B declares temporary work permanent unless the employer can prove beyond reasonable doubt and establish a justification for employment on a fixed term basis (Dickinson, 2015).

d. Prohibiting abusive practice

By clarifying who the employer is in a TES employment relationship, it is hoped that the instances where employees are denied their rights will be eliminated, and that employees will be allowed to freely associate and collectively bargain (Dickinson, 2015)

e. Commission for Conciliation, Mediation and Arbitration (CCMA)

- Amendments to the LRA grant the CCMA power to assist workers and employers with serving notice and or enforcing an arbitration award. The CCMA may make rules that limit or prohibit representation in conciliation and arbitration proceedings. Furthermore, the CCMA may give arbitration awards the status of a writ of execution. The LRA further grants the CCMA powers to intervene and resolve public disputes in the public interest (Van Eck, 2010).

f. Collective bargaining

- The LRA grants a party permission to refer matters to arbitration or to the labour court and grants bargaining council's permission to charge for dispute resolutions where the CCMA charges a fee (Van Eck, 2010).

4.5.3 Basic Conditions of Employment Act (1997)

The Basic Conditions of Employment Act (BCEA) deems the TES to be the employer of the workers in the TES sector. However, the BCEA also recognises the joint and several liability of the TES employer and the client. This liability for compliance is within the minimum standards set by the Act as well as those contained in sectoral determinations issued by the Minister in terms of the BCEA, on the recommendation of the Employment Conditions Commission (ECC) (Benjamin, 2013; Kutumela, 2013; Clarke, 2013).

The impact of the joint and several liabilities on the client is that if the labour broker fails to pay the employees who have rendered a service to a client, then the client is liable to make those payments to the employee. This liability prevents labour brokers from defaulting on its obligations to the employees and transfers the risk to the client. The client's liability is a form of default liability that prevents the employee from suing the client directly in the Commission for Conciliation, Mediation and Arbitration (CCMA) or Labour Court because it is not an employer. The employee can only proceed against the client if it has obtained a judgment or order against the labour broker that the labour broker has declined to pay (Benjamin,2013; Kutumela, 2013; Clarke, 2013).

a. Amendments to the BCEA in terms of labour broking

Amendments to the BCEA regulates the contribution of employers to the benefits of employees. The BCEA maintains that employers should contribute equal or similar benefits for employees who are permanent, casual, or fixed-term employees. Furthermore, the Sectoral Determinations may prohibit or regulate the placement of employees by temporary employment services, sub-contracting and contract work. Lastly, the Minister may publish sectoral determinations expanding coverage to employees who were previously not covered.

b. Sectoral Determinations

Sectoral determinations apply to bargaining councils and deal with matters that are not dealt with by collective agreements concluded by the council. The function of the sectoral determination is to prescribe minimum increases in remuneration, and to prescribe a threshold for representativeness for a registered trade union to have organisational rights of access to employer premises and deduction of trade union subscriptions.

c. Strengthening the power of the inspectorate

The amendments to the BCEA grant inspectors the power to no longer secure undertaking or issue compliance order in the TES sector. However, inspectors are required to be

accompanied by an interpreter, members of the SAPS or any other assistant when performing functions in terms of the BCEA.

4.5.4 Employment Equity Act (1998)

Chapter 2 of the Employment Equity Act was aimed at ensuring that organisations create policies that will not result in the unfair treatment of the workers based on arbitrary grounds such as race, gender, religion and so forth. When it comes to dealing with working conditions, the EEA left that to the Labour Relations Act as well as the Basic Conditions of Employment Act (Van Eck, 2010). The EEA is applicable to all South African employees whether they are permanent or in the TES sector. Affirmative action in the EEA provides that individuals supplied by the TES are considered the employees of the client company when placed at the company for long periods (three months or more). This enforces accountability on the employer's part in preparing and implementing employment equity plans and measures to promote equity. Employees placed at TES sites are employees of the client when they are placed on the client's site indefinitely from the beginning, and when they have been placed at the client's site for periods of three months or more.

Amendments to the EEA bind employers into paying equal pay for equal work. The Act prohibits the paying of different wages for employees who do the same work where they are casual or permanent employees. This clause is proposed to prohibit the unfair treatment of TES workers in terms of working conditions and wages. Any employer who pays workers different wages for doing the same job will be found in contempt of the EEA, unless the employer can prove that the differences in pay are a result of differences in experience, skill, responsibility and qualifications.

4.5.5 Skills Development Act (SDA) (1998)

The Skills Development Act (SDA) does not make any reference to temporary employment services. In this case, the identification of the employer relies heavily on the application of the conventional test of the employment relationship developed by the courts. The test is

relevant for determining whether the employer can conclude learnerships agreements with the employee who was supplied by a labour broker. For TES employers and client companies, the granting of learnership opportunities is voluntary and is based on their own discretion. Although the SDA empowers the Minister of Labour to issue regulations requiring private employment service agencies to register with the Department of Labour, but no regulations on this have been published since the 2003 amendments. Regulations for private employment services passed in 2000 require these services to register and regulate the fees that they may charge.

4.5.6 Skills levies, unemployment contributions and income tax

For the purposes of the Skills Development Levies Act and the Unemployment Insurance Act, Schedule 4 to the Income Tax Act is used to determine whether a TES is an employer. A TES employer that has been issued an exemption certificate known as the IRP 30 by the South African Revenue Services (SARS) is deemed as an employer. The exemption allows the employer to deduct tax from the employee's incomes and pay it to SARS. When an employer does not have the IRP certificate, the onus of paying the skills development levy as well as the employer's and employee's contribution to the Unemployment Insurance Fund to SARS lies with the client company. The employer may not use the TEA to deduct and make tax payments on behalf of the employees it places.

4.5.7 Health and safety legislation

As an employer the labour broker is liable for the Compensation for Occupational Injuries and Diseases Act 1993 (COIDA). It is the duty of the labour broker to register with the Compensation Fund as an employer and comply with the Act's reporting obligations, which involve the paying of contributions to the fund and reporting occupational accidents and diseases in terms of the Act. In addition, the protection from civil claims applies to the TES and not to the client.

For the purpose of compliance with health and safety legislation, the client is the employer. This is true of both the Occupational Health and Safety Act (OHSA) and the Mine Health and Safety Act (MHSA). This causes a lot of confusion and delays because when an employee gets injured, the accident needs to be reported by the labour broker to the Compensation Fund, but it must be reported by the client to the inspectorate in terms of OHSA or MHSA.

Chapter 5 Research Methods

Themes are identified by "bringing together components or fragments of ideas or experiences, which often are meaningless when viewed alone"

Leininger (1985: 60).

5.1 Introduction

This chapter presents the research methodology based on the theoretical framework that was discussed in chapter 3. The rationale for the choice of research methodology, the research subjects, and the sample for the research design will also be explained making use of phenomenology or interpretivist research method. Lastly the Interpretative Phenomenological Analysis (IPA) research approach, which was used in the process of data collection and analysis, is discussed.

Making use of working papers, public hearings, court cases, trade union submissions, integrated reports from companies, employee submissions and media publications on the debate about labour broking, this thesis specifically set out to determine whether labour broking hinders or enhances labour market functionality in South Africa.

Tool's (1994) criteria of judgement for institutional adjustments was used to evaluate the impact of labour broking on the overall welfare of individuals, which includes determining whether employees in the TES sector gain skills and improved standards of living.

Integrated company reports and court cases were used to evaluate the effects of labour broking on employers and client companies broadly i.e. the impact on profitability and productivity

Court cases, public hearings and employee's submissions were used to determine what form of regulatory regime is more reasonable for labour broking in South Africa.

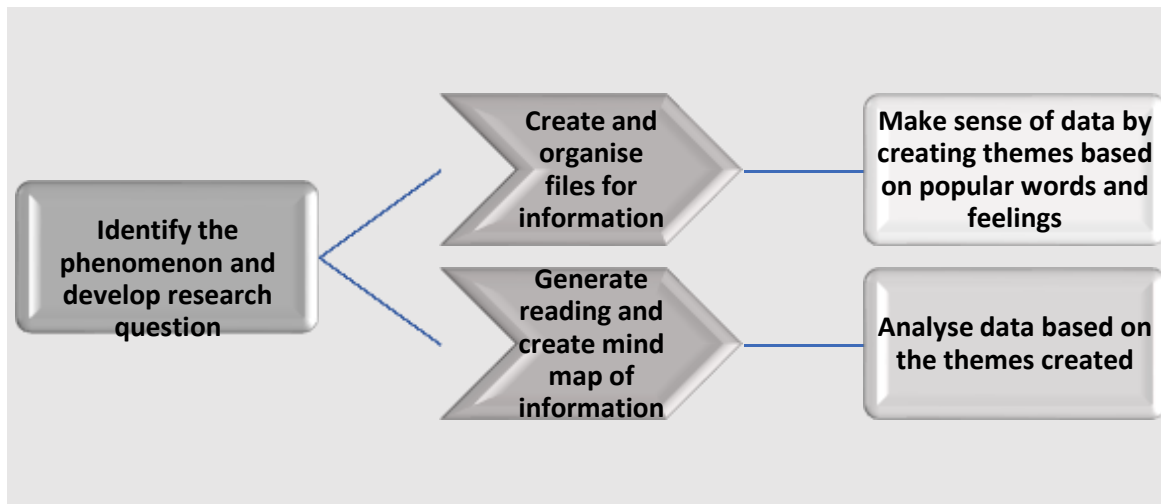
5.2 Research design

The research design can be described as the process that a researcher undertakes in order to answer the research questions (Leedy & Ormrod, 2001; Creswell & Creswell, 2017). This process involves a series of planning decisions, actions and thought processes in order to reach the end goal. Furthermore, the research design assists the researcher to control or attempt to have control over the factors that may cause hindrances in the research process leading to the invalidation of the research findings (Burns & Grove, 1997). Lastly, Rajasekar, Philominaathan & Chinnathambi, (2013) describe research methodology as the process that researchers undertake to explain, describe and predict phenomena in the world.

The interpretivist or phenomenological paradigm is a research phenomenon that relies mainly on qualitative research analysis, thematic analysis and content analysis. Thematic research analysis involves the identification of themes and patterns from the data that was gathered, which may include patterns of living or behavioural patterns that are linked to the research question. Furthermore, it is concerned with the systematic reflection and analysis of phenomena associated with lived experiences, such as human judgment, perceptions and actions (Aronson, 1995). For the purpose of this research, the participants lived experiences were analysed from the source documents through key words and recurring feelings and themes. According to Creswell (1994) and Creswell (2002) qualitative research is an enquiry process of comprehending social and human problems, which is formed with words. Qualitative research reports detailed views of informants and it is conducted in a natural setting, which allows the researcher to have a natural feel of the experiences and phenomena being researched (Creswell, 2017). Furthermore, qualitative research allows the researcher to conduct research as a social phenomenon from his or her viewpoint (Williams, 2007). Qualitative methods usually involve inductive reasoning, with the basic assumptions being that reality is socially constructed and variables are difficult to measure, are complicated and interwoven, that there is a primacy of subject matter and that the data collected will consist of an insider's viewpoint (Almalki, 2016). Qualitative research is advantageous because it grants researchers the opportunity to explore and investigate their research studies by applying their interpersonal and subjectivity skills to their research exploratory process (Alase, 2017).

The research paradigm that was employed in this research was an Interpretative Phenomenological Analysis (IPA) approach, and thematic analysis was used. The purpose of the design was to investigate and analyse the impact of labour brokerage on the functionality of South African labour markets. A documentation technique was employed to gather secondary data in the form of court cases, media publications, public hearing submissions and integrated company reports for labour broking companies. Other published research theses and working papers were also used to gather data and the grounded theory paradigm was used on these documents to explore the experiences, perceptions, and emotions of the workers regarding labour broking in South Africa, and to find out what influences the decision to make use of labour brokers or to create labour broking agencies. According to Thomas, (2006: p.241), phenomenology “Seeks to uncover the meaning that lives within experience and to convey felt understanding in words”; thus implementing a phenomenological approach helped the researcher to gain a better understanding of the research phenomenon by finding felt understanding on paper.

The research was divided into two parts: first, the data collection which explains the methods that were used to collect data, the rationale for using the method, and the advantages and disadvantage of that method. Second, the data analysis follows the paradigms that were used to gain better understating of the data and how the data was analysed.



Source: Authors own analysis, based on Alase (2017). *The interpretative phenomenological analysis (IPA): A guide to a good qualitative research approach*

5.3 Participants and research sampling

The most important factor to be considered with sample size is that the participants should reflect and represent similarities that relate to the phenomenon being studied (Alase, 2017). Creswell (2013) notes that when primary data is being used in an interpretative research, it is important that the researcher obtains written permission from the participants. For this research, no written permission was obtained because the researcher made use of secondary data which is readily and publicly available on various internet sources. The researcher chose articles and stories on the internet that related to the research topic and made use of them to answer the research question. According to (Alase, 2017:5):

...in a phenomenological research investigation there should be two objectives in mind: One is to either corroborate the 'lived experiences' as told by the research participants in an 'across the board' corroboration; or two, dispute the allegations altogether, if they're not found to be true or credible.

Hence the objective of this research was mainly to corroborate the experiences of people in the labour broking industry.

5.4 Data collection

Following the recent uproars and debates about labour broking in South Africa, a theoretical sampling strategy was employed to collect a series of secondary data. Data was collected on media publication sites, trade union websites, law websites and other search engines to ensure a variety of views and perceptions. The rationale for collecting data that was already published and readily available for public knowledge was based on efficiency and savings costs in terms of travelling to gather data and doing fieldwork. Another reason was to prevent uneasy situations between the researcher and the participants due to the sensitivity of the topic. Hence, Nicholas, Lach, King, Scott, Boydell, Swaatzky, Reisman, Schippel, & Young (2010: 159) argue that “online data collection helps create a nonthreatening and comfortable environment and provides greater ease for participants discussing sensitive issues”. The use of multiple sources, also known as triangulation, allowed the researcher to have a broad view and understanding and to also eliminate any bias in the research results. The researcher gathered information that showed both sides of the debate, those who are against labour broking and those who are for labour broking. Once all data was collected, the researcher organised the data based on the two themes, those who argue for labour broking and those who argue against labour broking. The researcher had information from labour brokers, trade union representatives, the workers, and the client companies. The themes were organised from the information that was received. as well as paraphrased common ideas by the researcher.

Table 5.2 Major data sources

Data source	Description of data item	Website or publisher
COSATU	Position paper on labour brokers	http://www.sabcnews.com/sabcnews/gordhan-needs-to-tackle-unemployment-poverty-and-inequality-COSATU/
NUMSA	Con Court judgment	http://www.saflii.org/za/cases/ZALCJHB/
Court cases	Labour Court judgements	http://www.saflii.org/za/cases/ZALCJHB/

Committee reports	Public hearings on labour broking	http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/100323labour.pdf
SABC News online article	COSATU's views on regulating labour broking in South Africa.	http://www.sabcnews.com/sabcnews/COSATU-welcomes-concourts-ruling-on-labour-brokers/
Integrated company reports	Position papers on labour brokers	http://www.annualreports.com/Company/kelly-services-inc https://www.Adcorpgroup.com/investors/financials/annual-reports/ https://www.workforce.co.za/annual-reports/
Young Communist League	Position paper on labour broking	https://www.polity.org.za/article/ycls-a-statement-by-the-young-communist-league-supporting-the-sgstrike-against-e-tolling-and-labour-brokers-06032012-2012-03-06
Politics Web	Position paper on labour broking	https://www.politicsweb.co.za/party/13-reasons-why-labour-brokers-must-be-banned--vavi

Source: Authors own analysis

The above table presents a snapshot of the source documents that were used in the data analysis section. These source documents are made up of secondary data and they are easily available to the public. The integrated company reports are documents that are produced by the companies in order to report back on the activities and financial standing of the company. This allows the public to have an idea and understanding of what is going on in the companies. Community reports are reports that constitute debates between various parties on a matter that needs to be resolved, these reports are summaries of what goes on during forum meetings, what was discussed, by which party and what the final judgement was. Court judgements are produced by the courts, in this case the researcher made use of the Constitutional court judgment on the ruling on labour broking. the judgement is published by the court and placed on South African law websites so that the public can have access. Court judgements serve the purpose of informing the public on new developments in law, as well as to provide a form of reference for those practising law. and finally position papers are published by different individuals or organisations who want to reveal their position or where they stand in a debate. Position papers depending on the publishing party are either placed on company websites, trade union websites, institution websites or individuals publish them individually on general internet sources.

Table 5.3 Data Analysis

5.3.1 criteria for evaluating regressive and progressiveness of labour broking

Criteria for progressive institutional change	Criteria for regressive institutional change
The democratic test	The democratic test
The instrumental efficiency test	The possession of power test
The growth of knowledge test	The status quo preservation test
The minimal needs test	The Invidious defence test

Source: Tool (1994).

The researcher made use of the above criteria as a valuation tool to determine whether labour broking is progressive or regressive. The researcher made use of the themes that were gathered from the data that was analysed and compared them with the criteria for institutional adjustments developed by Tool (1994). As mentioned in section 5.4 above, the researcher organised the themes into arguments against labour broking and arguments for labour broking. The researcher then compared the arguments against labour broking with the regressive criteria, because most sources argue that labour broking is regressive. Then again, the researcher compared the arguments for labour broking with the progressive criteria, because most sources arguing for labour broking argued that labour broking is progressive. The researcher analysed the data which presented both arguments and how they matched the criteria, looking at which criteria best match labour broking. From those arguments the researcher then drew conclusions.

Data collection and analysis can occur simultaneously in interpretive research designs. This allows the researcher to modify and correct any discrepancies that may occur in the research, which may lead to the invalidation of the results. The first step in thematic analysis is to collect data. Once all the data has been collected the researcher can then proceed with analysing the data. The researcher analysed the documents that were collected to gain better understanding of the perceptions of people towards labour broking, and the impact of labour broking on labour market functionality. After analysing the documents, the researcher came up with themes that depicted lived experiences of the people dealing with labour broking. The first lived experienced included the process of being recruited by a labour broker for the

employees and the process of recruiting workers by the labour brokers, which included the explanations of the employees as to why they chose labour brokers, and the explanations of client companies and labour brokers as to why they chose to use this form of recruitment method. The second lived experience that the researcher found involved the attitude that people had towards labour broking, this included the attitudes of union members and representatives, workers, labour brokers, client companies and government officials.

During the data collection process, the researcher made note of popular themes, in the form of common feelings, views, and words that were used to describe labour broking. It is important for the themes to relate to the already existing patterns that have been identified. The researcher made it a point to focus only on relevant themes to avoid going off topic. Thus, Alase (2017:4) argues that

[the] phenomenological approach will give in-depth descriptions and interpretations of the research participants' 'lived experiences' vis-à-vis how the phenomenon, which is being studied, has impacted the lives of the research participants.

Themes are identified by "bringing together components or fragments of ideas or experiences, which often are meaningless when viewed alone", (1985: 60). Themes that emerge from the informants' stories are pieced together to form a comprehensive picture of their collective experience. The researcher focused on the language, signs, and meanings created by the participants in the research study. Making use of Guba's (1990) critical theory paradigm and Morgan's (1980) interpretive paradigm, the researcher was able to critically investigate and interpret the impact of the phenomenon on the 'lived experiences' of the research participants.

The researcher made use of Guba's critical theory to explore labour broking as experienced by the participants, and Morgan's interpretative paradigm to explicitly and interpretatively narrate how labour broking impacted the lived experiences of the research participants. The combination of the two paradigms helped the researcher to identify and accentuate the issues of labour broking being investigated and how they impacted on the lives of the participants.

Under normal circumstances where the researcher made use of primary data, the researcher would have had to go back to the participants to validate the gathered themes. However, the use of secondary data prevents the researcher from doing that. The researcher then had to move on to the next step in the data analysis process, which involved the researcher building a valid argument for choosing the themes. The researcher did this by reading literature that is related to the themes and going over the information gathered. From there onwards the researcher was able to develop a storyline that would assist in answering the research question.

The researcher made use of the generic data coding cycle as developed by Alase (2016). First, the researcher first coded lengthy chunks of information and made them into meaningful statements. Secondly the researcher cut the length of the information from the first coding attempt and summarised them into a much more meaningful statement. And lastly the researcher came up with the final themes that assisted with answering the research questions. (See Chapter 6.) The final stage to the coding process is what Alase (2016) calls the “category phase” and it involves narrowing down all responses from the participants into meaningful responses.

5.6 The role of triangulation in the study

Triangulation involves the combination of various research methodologies to study the same phenomenon. Furthermore, triangulation also involves the use of various data sources to gain a better understanding of the research phenomenon being studied and to give a more comprehensive view of the factors contributing to an occurrence (Donward & Mearmen, 2007). Triangulation shows the linkage of the aspect being investigated to more than one data source. Triangulation enables better understanding of the issues being investigated from various perspectives and various economic and social thoughts (Donward & Mearmen, 2007). The use of multiple sources which presented various views from oppositions and supporters of labour broking in this research to investigate aspects such as the impact of labour broking on the welfare of employees helped to reduce the risks that are associated with reporting and processing information that is biased.

5.7 Data validity and credibility

It is important for the research to produce data that is valid and credible and that will not cause the results of the research to be doubted. It is the duty of the researcher to ensure that all data collected meets the minimum requirements of the research; namely, credibility and transferability. It is important for data collected in an IPA study to contain the following characteristics: trustworthiness, member checking, triangulation and auditing. These are the tools that should be used for navigating and gathering phenomenological data (Alase, 2016). In an interpretative data collection process, the researcher should ensure that the selection process of the data sources is done with caution and integrity (Alase, 2016). Furthermore, the researcher must ensure that all data sources contain organisational views that are not harmful and are a true reflection of the phenomena being studied. In this study, the researcher made sure to select information from credible internet sources. Data and source documents were downloaded from Google scholar, the views and arguments of the labour unions and trade unions were downloaded or viewed on trade union websites, judgements and court cases were accessed from the South African law journals, the position and arguments of major labour broking companies such as company integrated reports were viewed on , and accredited websites. The researcher was aware that some data found on websites and the internet may not be reliable or credible, hence the researcher relied mostly

on already published data from various journals. Throughout the entire research process, the researcher was careful not to influence the research results by not including the researcher's experiences and perceptions on the information gathered. The results were based purely on the participants' lived experiences as analysed from the source documents.

5.8. Limitations of the study

With interpretative research, researchers can never be sure whether they have the right number of participants, or data sources to fully answer the research question. Time can also be a constraint in the data collection and analysis process. This becomes a limitation, because too little data can lead to false or premature assumptions, while too much data may not be effectively processed by the researcher. Due to the amount of data available online, the researcher had to cut down on the number of sources to use, in order to save time and to be able to properly analyse the data. Because the topic at hand is a sensitive one that is causing a big debate in the country, there may have been sources that are not credible and are biased while pushing their undisclosed political agendas, which could have affected the results and gave the wrong impression.

Chapter 6 Results and Discussion

6.1 Introduction

This chapter presents the results of the study. The methodology that was used for this study was presented in Chapter 5. Data were collected on media publication sites, trade union websites, law websites and other search engines to ensure a variety of views and perceptions. The data were analysed, and the results were interpreted to present the findings. The main goal of the research as stated in section 1.5 was to determine the effect of labour brokerage and temporary employment services on the functionality of labour markets in South Africa. The main goal of the study led to the secondary goals of the study which set to determine whether labour broking hinders or enhances labour market functionality in South Africa; to evaluate the impact of labour broking on the overall welfare of individuals, this includes determining whether employees in the TES sector gain skills and improved standards of living; to evaluate the effects of labour broking on employers and client companies broadly i.e. the impact on profitability and productivity; and lastly to determine what form of regulatory regime is more reasonable for labour broking in South Africa.

The literature and documents that were reviewed in this study included debates around labour broking. Literature was chosen based on its relevance to the topic and research question at hand. This helped the researcher to gain better knowledge and understanding of the issue at hand. The four main themes and subthemes that were identified from the data allowed the researcher to answer the research question and to achieve the objectives of the research as set out in section 1.5. Making use of Tool's (1994) criteria of judgement for institutional adjustment, this chapter will set to determine whether labour broking is regressive or progressive. The conclusion, limitations and recommendations will be dealt with in Chapter 7.

The labour market is a system that ensures a balance between the need for labour resources and the possibilities of their coverage and shares the common labour market characteristics (Serena, 2016). Features of the labour market are supply and demand, therefore for a labour market to be fully functional there must be perfect harmony between the demand and the

supply of labour (Serena, 2016). When there are inconsistencies, the labour market is known to be dysfunctional, resulting in unemployment when the supply of labour exceeds the demand for labour, and underemployment when the demand for labour exceeds the supply of labour a functional labour market functions in equilibrium (Serena, 2016). Based on the themes discovered above, the research will now determine whether labour broking leads to labour market functionality or dysfunctionality.

6.2 Emergent themes

Source documents were reviewed, and data analysis was conducted in order to come up with themes. The documents and data sources that were analysed reflected the perceptions of workers, client companies, labour brokers, union members and representatives as well as worker associations regarding labour broking and TES employment.

The researcher discovered four main themes and several subthemes and sub-sub themes from the data sources. The emergent themes are;

1. Exploitative labour relations
 - Job Insecurity
 - Increased financial burden
 - No skills development
2. Competitive advantage
 - Increased profits
 - Organisational efficiency
3. Labour market efficiency
 - Employment creation
 - Labour market flexibility
4. Ambiguous labour regulation
 - No freedom of association
 - A tool for circumventing labour regulations

Table 6.1 Themes and contenders

6.1.1 Themes speaking to the welfare of the workers

Theme	Proponents	Opponents
Exploitative labour relations	COSATU, SAFTU, GIWUSA, ANC, NUM, Solidarity, Deaf Federation of South Africa, the Young Communist League	APSO
Job insecurity	Workers from	RSV LTD consulting, Click Labour brokers, Landelani recruitment group, Workforce, Kelly, Adcorp group
	INTCS corporate solutions, Dynamic Commodities, Shoprite, Transet, Sapo, Spar, Lonmin, UWC, CPUT, and Witwatersrand.	
Increased financial burden	Workers from	RSV LTD consulting, Click Labour brokers, Landelani recruitment group
	INTCS corporate solutions, Dynamic Commodities, Shoprite, Transet, Sapo, Spar, Lonmin, UWC, CPUT, and Witwatersrand	
No skills development	NCAWU, Samwu	Workforce, Kelly, Adcorp group

Source: Owners' own analysis

6.2.1. Exploitative labour relations

Arguments against labour broking are centred around the exploitative nature of labour broking. Trade unions such as Metal and Electricity Workers Union of South Africa (Mewusa) argue that in situations where labour brokers are involved, the working conditions are bound to be worse than they were before labour brokers came in (Committee Report, 2010). Similarly, workers from various industries as well as trade unions argue that labour broking is exploitative of the employees. Workers from INTCS corporate solutions, Dynamic Commodities, Shoprite, Transet, the South Africa Post Office, Spar, and Lonmin, the University of the Western Cape, and the University of Witwatersrand also expressed their dissatisfaction with labour broking. The workers claimed that labour broking brings job insecurity, and a loss in the standard of living. Similarly, Vavi (2012: 1) argues that:

Labour broking is equivalent to the trading of human beings as commodities. Generally, this form of employment structure requires that the main commercial contract is agreed to between the labour broker and the so-called “client” enterprise which sets out the various stipulated labour services to be supplied and the price at which these services are to be supplied. Whereas the true suppliers of labour (namely the employees) are excluded from this process, thereby undermining their rights to negotiate their wages and employment terms.

The above remarks reveal that within the TES sector workers are not treated as active agents in the conclusion of the employment contract. Workers have a right to be informed about their working conditions and terms of employment; however, labour brokers keep that information hidden from the workers creating information asymmetries. Workers from various companies argue that they are treated unfairly, and their rights are violated. According to Nogoqa, a representative from the Security Officers Civil Rights and Allied Workers Union (SOCRAWU), workers at Dynamic Commodities work for over 12 hours in the fridges without any form of special protective clothing. Furthermore, workers are not allowed to have toilet or tea breaks, which has resulted in some of the workers urinating on themselves and some have even defecated on themselves and ended up losing their jobs (Chirume, 2017). Another example is from a TES worker from the University of Witwatersrand who was quoted in an interview saying:

“It was very hard. We felt like outsiders because we could not access simple things like the different entrances at Wits. We were only allowed to access Wits through one entrance. We were only allowed to use certain toilets even though we cleaned all of them. We were not allowed to be seen – to sit in the shade, on the lawns and benches. We did not have access to computer and library facilities. We did not have access to Wits buses even if we needed to move from one side of campus to another.” (Mzobe, 2016: 55)

These remarks show the way workers in the TES sector are exploited and unfairly treated. The workers at Wits University had access to the Universities premises, but once they became casual workers, a lot of the privileges they had access to were taken away, which is common in TES employment. There is a deterioration of living standards which affect the welfare of

the workers when they are hired as casual workers. The problem of unfair labour practices in the TES sector are revealed, because at Wits only TES workers were exploited, whereby permanent workers of the University were treated with dignity. In contrast to these arguments about exploitation, the Association of Personnel Service organisations (APSO) members argued that the perceptions that labour brokers are exploitative should not be generalised for all labour brokers. These perceptions are not characteristic for all labour brokers; therefore, they should not be allowed to tarnish the entire industry (Committee Report, 2010). They stressed that some labour brokers are part of regulating bodies and therefore are forced to comply with labour regulations. Furthermore, APSO members stressed that those who do not comply should be punished. These remarks from the association show that although labour broking is regarded as being beneficial to the employees, there are some loopholes with the labour legislation that need to be tightened. It is also clear that TES employment does indeed have an exploitative nature, however no labour brokers want to take accountability for the bad treatment. The power that labour brokers and TES employers have over the workers causes workers to submit even to the most indecent and unfair situations. A TES worker was quoted in an interview saying:

“Over and above my normal duties, I am expected to work on weekends to help his friends or some Urban Comprehensive University (UCU) senior managers to move furniture, clean carpets or even fix their electrical appliances, free of charge. I am not paid for that. It would help if they paid me. I am afraid to complain because I fear that I would lose my job.” (Senne & Nkomo, 2016: 66)

TES workers submit to something employees know is not right and the fear of losing their jobs, this reveals the condign power that rules over the TES sector when explaining the types of power and the tools through which power is exercised. The above remarks show that fear and punishment are used in the TES sector. Because the worker fears losing his job he submits to unfair treatment from his employer.

Making use of Tool's (1994) criteria to evaluate the above theme, two tests will be applied for evaluating theme 1, the democratic test and the invidious defence test. The democratic test is a progressive criterion, while the invidious defence test (which reveals that there is an

invidious distinction between permanent and temporary workers in the TES sector) is a regressive criterion.

In the TES sector, employees are excluded from negotiating their terms of employment. Only labour brokers and client companies are present when the contractual relationships are concluded. This reveals a violation of the democratic test which places emphasis on the inclusiveness of institutional adjustments, while the invidious defence tests places emphasis on avoiding discriminatory or unfair treatment towards individuals who are involved in the institutional adjustments. Furthermore, the invidious defence test emphasises that institutional adjustments should be designed in a way that does not arouse anger or create resentments based on perceived or actual discriminatory characteristics. Thus, based on the data that was collected and the responses and remarks of the workers, trade unions, and Trade Union federations, it can be said that TES employees are subjected to unfair and exploitative labour relations. When institutional adjustments do not meet the requirements of the progressive criteria, it means they are regressive, hence it can be concluded that due to the characteristics mentioned, labour broking does indeed have a regressive element which hinders labour market functionality.

a. Job insecurity

Labour brokers and their supporters argue that labour broking contributes positively to job creation in South Africa. Integrated company reports comment on the number of job opportunities created daily, however they fail to comment on the quality of the work that is created. Furthermore, the TES sector hardly reports on the number of jobs that are lost daily in that sector. TES sectors have high employment rates because they are hiring and firing workers daily (Community report, 2010).

The following labour brokers in South Africa reported on the employment trends in South Africa over the years. The Workforce Group was responsible for employing a total of 34 241 employees per week, and the group considers itself as a gateway for employees into the labour market through their skills training and development processes (Workforce, 2017). While the total number of TES employees employed by Adcorp stood at 50 146, 18 205 were

employed for more than three months and 31 941 were employed for less than three months. The Kelly group claims to have had 838 permanent internal employees in South Africa, and 18 044 temporary employees. And lastly, Adcorp claims to have employed approximately 80 000 employees daily, this shows that on approximate, 80 000 jobs are created in South Africa daily (Budlender, 2013). It is evident from these remarks that indeed the TES sector does employ many people daily, however the type of work that the workers are provided with is not secure. It is evident at Kelly Group, whose report states that more temporary workers were hired as compared to permanent workers. This allows for employers to move workers around and dispose of them when they feel like it. A TES worker was quoted in interview saying:

“I had no choice. I was employed by a previous labour broker. When his contract ended, I was told the day before the expiry about my appointment with the new one. I was told to sign papers immediately because I might lose my job. I have children who are more educated than me. If given the chance I would have consulted them so that I could understand my new working conditions. I had no choice but to sign. I needed the job. After a week, I realised that I was appointed on more hours than the previous one, but with the same salary. The contract did not reflect the mistake. The result was that I was paid less than the hours I worked. What can I do, I had no choice, and I have to provide for my family even if I knew beforehand I will still have taken the job” (Senne & Nkomo, 2015: 65).

The emerging theme from these remarks shows that employees in the TES sector are taken advantage of by labour brokers. The level of job insecurities that are faced by workers in the TES sector are visible from these remarks. Similarly, Vavi (2012) also argues that labour brokers treat workers like commodities to be passed on. When labour brokers have had enough of the workers, they pass them on to another client, or release them without proper compensation. TES employees do not sign proper work contracts; furthermore, they do not have proper job descriptions or specifications. This allows for labour brokers and client companies to dismiss the workers when they please (Budlender, 2013).

Many TES workers are illiterate, or lack skills, and this makes it easy for labour brokers to take advantage of them (Senne & Nkomo, 2015). Workers are exploited and as a result they have no

hope but to rely on labour brokers to provide them with jobs. TES workers are placed in situations that they cannot dispute. Labour brokers have managed to create a master-servant relationship between the client companies and the TES workers (Senne & Nkomo, 2015). which is visible when labour brokers withhold information from the workers. There is also a lack of respect for the workers' fundamental human rights. There is a great disregard of the current labour regulations that govern the TES sector, and which stipulates the rules to be followed when it comes to issues of over time, leaving the workers feeling insecure in their jobs and with a sense of hopelessness (Committee Report, 2010). Furthermore, the remarks show that the most vulnerable people in TES industries are the ones who are either disadvantaged or previously disadvantaged, they are left at the mercy of labour brokers who use them as they please. Another worker was quoted in an interview saying:

"I am a father of two. I live in a shack in a nearby informal settlement. Subcontractors dismiss workers instantly because they know that there are many workers who are hunting for employment and who are ready to fill the vacancies of those dismissed."
(Mathekga, 2009:24)

From the above remarks it can be concluded that although those who support labour broking argue that labour broking benefits both workers and client companies, the ones who benefit more from labour broking are the client companies and labour brokers. TES workers are treated unfairly, and they do not have job security (Committee Report, 2010; Budlender, 2013).

Judging from the above discussion and making use of Tool's (1994) criteria for evaluating institutional adjustments, an application of the minimal needs test shows that labour broking does not meet the criteria for progressive institutional adjustments. This is because the abovementioned theme does not satisfy the minimal needs test, which puts emphasis on the maintenance of adequate real income flows, maintenance of factors that promote the welfare of individuals as well as creating institutional adjustments that address the needs of the poor. The lived experiences (gathered from the data sources) of the workers and the remarks from the trade union representatives reveal a ceremonial aspect to labour broking. As mentioned in section 3.1 ceremonial values are used to prescribe status and hierarchy and are accepted based on authority. Institutions that are run by making use of ceremonial values

do not advance the welfare of the individuals are characterised by exploitation (Bush, 1987). In the TES labour sector, the ceremonial aspects are visible in the power that labour brokers and client companies have over the workers. The power is one that promotes a master-servant relationship that is perpetuated by condign power. There is a recurring issue of exploitation in the TES labour markets, exploitation which undermines the welfare of the workers, and therefore signals labour market dysfunctionality because labour markets are meant to improve the welfare of the workers.

b. Increased financial burden

Supporters of labour broking claim that labour broking improves the welfare of individuals and improves their financial status. Labour brokers assume that because they assist workers to get jobs they are contributing positively to the welfare of the individuals. However, most TES workers complain that their welfare deteriorates due to labour broking, because the wages they earn are not enough to meet their basic needs. And instead of improving their welfare, labour broking has resulted in increased financial burdens (Lucket & Mzobe, 2016). There is also an element of income inequality that is caused by the differences in the wages that TES workers and permanent workers receive. Berg (2015) argues that income inequalities are causes of labour market dysfunctions because they cause the workers to be stuck in poverty traps that prevent them from improving their welfare. At most client service sites, TES workers and permanent workers receive different wages, even though they might be doing the same work, and sometimes TES workers work longer hours, but still receive lower wages than permanent workers (Community report, 2010). This results in income inequalities and creates tension between the TES workers and the permanent workers. The democratic test prohibits treatment of workers that is based on discriminatory terms.

The differences in the wages that are paid to TES workers who work together with permanent workers at a company contribute to the increasing issue of income inequality, which is very problematic in a country already facing high rates of poverty and inequality.

Labour Brokers do not practise the principle of equal pay for work of equal value. Workers employed by the Labour Brokers work longer hours without any compensation, they work Monday-to-Monday and 365 days without any compensation for working on Sundays and public holidays. (Vavi, 2012: 1)

Similarly, workers from INTCS Corporate Solutions, Dynamic Commodities, Shoprite, Traset, the South African Post Office, Spar, and Lonmin, the University of the Western Cape, The Cape Peninsula University of technology (CPUT) and the University of Witwatersrand also expressed their dissatisfaction with labour broking. Workers and students from the University of Witwatersrand expressed their dissatisfaction with labour broking and outsourcing through a protest that was victorious for the workers. The #FeesMustFall movement had two objectives: to fight against temporary employment services and for free education at South African Universities. The workers claimed that labour broking brought a sense of job insecurity and a loss in their standard of living. This loss in the standard of living came about through wage discriminations. Wage discrimination like any form of negative discrimination is an example of invidious distinction. Workers claim that they are unable to afford necessities even though they are working. Some have opted to take out loans, which have put them in more debt, increasing their financial burdens. Some workers are unable to get loans because they have bad records at the Credit Bureau. These remarks show that labour broking has resulted in the creation of what is called the working poor and contributes to unfair discrimination of the TES workers in the workplace.

The Basic Conditions of Employment Act stipulates the minimum wages that workers should be paid in South Africa. However, for employers in the TES sector that legislation does not apply because they can apply for sectoral determinations and exemptions. This is an example of the application of prescriptive rights over the labour market, which are gained by labour brokers when they apply for preferential regulatory treatment of TES employment. Veblen argues that prescriptive rights are created by the government by allowing regressive and spontaneously emerging institutional system, or by responding to opportunistic efforts of organised capital (Veblen, 1919). This reveals a ceremonial element to labour broking, because labour brokers use their power and influence to manipulate and affect labour legislation for their own benefit. Ceremonial encapsulation is at play here, as labour brokers and client companies are willing to modify labour legislation only to the extent that it does not erode their existing value structure. Labour brokers can modify labour legislation to apply for exemptions and sectoral determinations; however, they are unable to modify their regulations to create better working conditions for the workers.

The possession of power test seeks to answer questions that are related to the issues of power. The test looks to answer who gives the individuals who hold power in society the authority to rule over other people. It also investigates answering what justification the powerful must rule over others. Lastly, the test does not allow those who do not have power in the society to ask questions, it only forces them to comply with the existing institutional adjustments.

Judging from the arguments presented above it is evident that labour broking satisfies the requirements of the possession of power test. This is because labour brokers and client companies have power over the labour market. Labour brokers make use of what Galbraith (1978) terms “condign power”. The condign power that labour brokers have and use it given to them by the current labour legislation. One of the requirements of the possession of power test emphasises that those to do not have power in society are not allowed to pose questions to those who are already in power. Similarly, TES workers hardly question their bosses or raise concerns because they fear raising their concerns would result in losing their jobs. Thus, it can be argued that labour broking and the way it is practiced is regressive and therefore does not positively contribute to labour market functionality.

An application of the minimal needs test to the above-mentioned theme shows that labour broking does not meet the requirements of progressive institutional change based on the minimal needs test. The test puts emphasis on the maintenance of real income flows and on improving the welfare of the workers, which means improving their living standards. However, based on the remarks by the workers and those against labour broking, labour broking does not improve the welfare of the workers but instead causes the workers to be in more financial problems. Showing that labour broking has a regressive criterion that contributes to labour market dysfunctionalities.

c. No skills development

Proponents of labour broking argue that labour broking aids in skills development and in expanding the knowledge fund of the workers. Thus, in terms of skills development and training, Adcorp claims to have placed 1 032 South African youth in learnerships, which includes 775 disabled people, and further provided 419 artisan learnerships (Adcorp, 2019). While in contrast, a TES worker was asked about the benefits in terms of skills development

and the expansion of her knowledge fund that she receives from working in the TES sector and her response was:

“I am young and ambitious. I thought working for UCU could provide me with opportunities to study part-time. My employer (labour broker name) made me a supervisor within weeks due to my education compared to my colleagues. I supervise others, write reports, resolve work related disputes and problems and I know he recognises my potential. I have hinted to him that I would like to further my studies, but he just ignored me. I really think the labour brokers could negotiate a deal for those who want to advance in their studies with UCU but the real reason they do not is because they do not care. Sometimes we really think that the people involved with these contracts in UCU are receiving kickbacks from the labour brokers, maybe that is why they do not care.” (Senne & Nkomo, 2016: 66)

Integrated reports from the biggest labour brokers in the country reveal that labour broking does contribute to skills development through learnerships, traineeships, apprenticeships and internships. According the Business Unity South Africa (BUSA) the TES sector facilitates more than 20 000 learnerships daily (Committee Reports, 2010). While Vavi (2012: 1) argues, “Labour brokers contribute to the progressive de-skilling of workers, especially as a result of the short-term and irregular nature of the contracts associated with labour brokering and other forms of atypical labour.”

Similarly, the Committee Report (2010) on labour broking public hearings also reported that labour broking is problematic when it comes to skills development. TES workers are unable to access skills development programmes because of the nature of their contracts, which are short and prevent employers from contributing to the skills levy which provides skills development benefits for the workers.

South African labour regulation makes provision for the advancement of the skills of the workers. However, the Skills Development Act does not make provision for temporary workers. Therefore, labour brokers and client companies do not feel pressured to develop the skills of the workers. Ceremonial encapsulation happens because although client companies know that they are supposed to contribute to the development of the skills of the workers, they do not contribute, because that is how it has been done in the past. But also because

they first must see if that contributes to their profit first. If it does not immediately contribute to profit, even if it is good for workers and for society at large, they will not do it. Furthermore, they are following from the examples of those client companies and labour brokers who have existed before them, which is what is referred to as path dependence. Here the labour brokers are satisfying the requirements of the status quo preservation test. This test looks at the extent to which those who hold power and status in the economy would be open to change or to redesigning institutional change. The test is a regressive criterion for institutional change, which means that any theme that meets this criterion is known to be regressive. Thus, labour broking and TES employment can be said to be regressive.

Applying the growth of knowledge test from the criteria for evaluating institutional adjustments to this theme, it becomes evident that this theme fails to meet the requirements of the test. The growth of knowledge test, which is the cause and consequence of progressive institutional change, puts emphasis on the growth of society's knowledge fund and that is measured by the extent to which problem-solving knowledge is generated (technological solutions to (i.e. new ways to solving) society's problems) knowledge fund. The failure of the labour brokers and client companies to meet the requirements of the test reveals that labour broking does not satisfy the criteria of progressive institutional change and is therefore regressive.

6.1.2 Themes speaking to the welfare of the employers

Theme	Proponents	Opponents
Competitive advantage	Workforce group, Kelly and Adcorp holdings	Vavi, workers from Wits University
Increased Profits	Workforce group, Kelly and Adcorp holdings	VAVI, SAFTU, COSATU, NUMSA, ANC, workers from Wits University
Organisational efficiency	Landelani Recruitment group	

Source: Owners' own analysis

a. Competitive advantage

Supporters of labour broking claim that labour broking assists companies to gain a competitive advantage in a market that is riddled by competition. Globalisation and increased competition has forced countries to lower production costs and increase their output. This has forced companies to make use of cheap casual labour (Barrientos, 2013). In contrast, critiques of labour broking argue that employers use labour broking as an excuse to exploit workers and earn free incomes (Vavi, 2012). Employers claim they are cutting costs and cannot afford to employ many permanent workers, but in fact, employers can afford to hire permanent workers because they earn a lot of profit from labour broking. Therefore, the use of labour broking has got nothing to do with cutting costs, but with gaining power over the marginalised in society. Thus Lockett & Mzobe (2016: 57) claim that:

“Insourcing has been possible all along. It was just that management used it as a disguise, that there are no finances. But they waste money all the time on big salaries, parties and security. This is the money that can be used for the working class.”

Similarly, Vavi, 2012 argues that;

“Significant emphasis is placed on the commercial rationale of using labour brokers to lower costs for clients, which is commonly achieved by reducing wages and excluding employment benefits”

These remarks show that in some companies, there is no need for companies to make use of labour broking, because they can survive well without the use of casual workers.

b. Increased profits

“Our ability to provide flexibility and enhance labour productivity makes us a key contributor to our clients’ efforts to weather economic challenges and mobilise large workforces to meet project and cyclical demand in a cost-effective manner” (Adcorp, 2019: 48).

Labour brokers argue that labour broking ensures great amounts of efficiency and increases their company profits. Thus, labour broking is seen as being good for the economy. Big labour broking companies have reported large amounts of profits since the introduction of labour

broking in South Africa. Globalisation and competition has threatened the prospects of companies earning enough profits; however, due to labour broking companies have managed to keep up with their competition and managed to earn great profits. This is because companies make use of cheap labour to produce large amounts of goods and services, thus saving costs that come with hiring permanent workers. Critics of labour broking argue that companies earn profits at the expense of the workers. They exploit workers to gain large profits. This is what Veblen (1919) terms “free income”. Free income is the income that is derived from having to do nothing. Critics of labour brokers argue that labour brokers earn free incomes for work that is done by the workers and this proves to be parasitic on the wages of the workers (Community report, 2010).

The pecuniary gains test can be used to evaluate this theme. The pecuniary gains test looks to the power that the capitalists or those who have an abundant endowment of capital resources have on the powerless and poor in society. It also looks at how the powerful use their power to control those who do not have power in the community. It is evident from the above remarks that labour brokers and client companies use their power to gain incomes in an unfair manner at the expense of the workers.

c. Organisational efficiency

Supporters of labour broking, such as engineers and project managers at RSV Ltd Consulting, claim that labour broking is very useful because it is through labour broking that companies can gain highly skilled and suitable workers for the more complicated and urgent jobs. Employers are saved the money and time of having to go through many applications and can focus their time and resources into ensuring that productivity is at its optimum level. Allowing labour brokers to handle all activities that are associated with recruiting workers has had positive impacts on many organisations, especially when it comes to avoiding issues of information asymmetries.

Workers further argue that labour brokers are useful in assisting companies to source the right individuals for the jobs, especially for large and complex tasks (Committee report, 2016). Furthermore, the use of labour brokers provide both workers and the companies a great

amount of flexibility to match skilled individuals to fixed term projects. Thus they argued for the regulation instead of the ban of labour broking (Committee report, 2016). Critics of labour broking argue that temporary employment and the use of outsourced workers can have dire consequences on the efficiency of the organisation. This can be seen in the Life Esidimeni case, where the results of outsourcing (which also involves temporary employment services and is similar to labour broking) were fatal (SAFTU,2017).

“The Life Esidimeni outrage has highlighted in the most extreme and horrific way the dire consequences of outsourcing to outside organisations work as important as medical care, without any proper checks on the quality of the care being offered” (SAFTU, 2017:1).

These remarks show that although labour brokers and client companies argue that labour broking leads to efficiency in the organisation, the way that efficiency is achieved may be detrimental to the welfare of other individuals. The Life Esidimeni tragedy was not the only negative consequence of outsourcing. To reduce costs and shrink their budgets, organisations in the private and public sector have resorted to outsourcing and making use of temporary workers. However, there is evidence that these organisations do not really end up saving money, because their profits are earned by the private companies, and labour brokers end up earning free incomes which could have been saved had the organisations employed directly (Areff, 2012)

6.1.3 Themes speaking to labour market functionality

Theme	Proponents	Opponents
Increased labour market efficiency	RSV Ltd consulting, Click Labour brokers, Landelani recruitment group, Busa	COSATU, SAFTU, GIWUSA, ANC, NUM
Labour market flexibility	RSV Ltd consulting, Click Labour brokers, Landelani recruitment group, Busa	COSATU, SAFTU, GIWUSA, ANC, NUM

Source: Owners Own Analysis

a. Increased labour market efficiency

The efficiency debate on behalf of labour broking notes that labour broking is instrumental, because it results in labour market efficiency. Thus, the Business Unity of South Africa (BUSA) advocated for labour broking by claiming that:

It provides speedy access to temporary and permanent employment, skills development and reduces administrative burden on employers. Also recognising other forms of labour broking that have given rise to abuse and consequently eroding workers' rights and decent work. Business does not support such abusive practices (Committee Report, 2010, p. 607).

Labour brokers and their supporters claim that labour broking promotes flexibility in the market. For employers, they can get skilled workers instantly without having to negatively affect their productivity or profits. In addition, workers who are not happy with their working conditions and their employer (client company) can choose to leave the client company and find better working conditions. This does not hold in our current labour market, because labour brokers control the working conditions and they negotiate the terms of the contract, so it is hard for the workers to determine if they are being treated badly or not. Sometimes workers may be aware of the bad treatment, but because they do not have control over their contractual obligations, they are unable to leave without facing penalties, which means workers do not really benefit from the flexibility in the labour markets.

“South Africa’s productivity is also hampered by the disruptiveness caused through industrial action, primarily due to the unstable relationship between employers and employees. The country ranks 138/142 in respect to “co-operation between labour-employer relations” and this can be attributed to the millions of lost work days each year due to strikes”. In 2010, 14.2 million work days were lost due to strikes and work stoppages and in 2011 this number is estimated to rise by 22% to at least 17.8 million work days lost. To make matters worse, the nature of strikes in South Africa is becoming ever more violent and destructive, causing massive losses to infrastructure, equipment and even human lives” (CAPES,2012, p.21).

Thus, it can be argued that the amount of distress and the eruption of violent protests in the TES sector are a cause for loss of efficiency in the labour market. This is because during constant strikes and protests, workers are absent from work, productivity comes to a halt,

and buildings and equipment are damaged. Furthermore, the loss of lives during these protests leads to a greater loss of productivity and morale. An example would be with the Marikana Massacre, when the treatment of workers in the mines resulted in a deadly massacre when thousands of workers in Marikana took to the streets to protest for better working conditions and better wages (Forrest 2013; Chinguno, 2016). When workers approached the Lonmin mine owners to ask for better wages and better living conditions their grievances were not heard. Miners complained that the wages they earned were not enough to sustain them and they could not afford to meet their basic needs (Chinguno, 2016). When the miners began to strike against their employer, they started losing their jobs (Chinguno, 2016).

b. Employment creation

Supporters of labour broking claim that labour broking leads to employment creation. The Landelani recruitment group argues against the banning of labour broking by claiming that the labour broking industry contributes positively to employment in the country. They argue that labour broking is a bigger contributor to the economy than other industries such as agriculture, forestry, oceans economy, aquaculture and renewable energy. They argue that the labour broking industry employed between 500 000 and one million people and created an entry point for the most vulnerable groups, namely women, youth and school leavers. The group calls for the regulation of the industry instead of the ban to avoid exploitation of workers and the loss of jobs.

In contrast, Confederation of South African Workers Union (CONSAWU) argues against labour broking, claiming that labour broking should be banned in the country because of its exploitative nature. The Union claims that labour brokers trap workers into continuous poverty cycles. They pay workers less for long hours of work and they also exclude workers from striking or taking part in collective bargaining, leaving the workers vulnerable to exploitation and abuse. The Union further argues that when it comes to employment creation, labour brokers do not really create decent work: "Since the rise of temporary employment and decline of permanent employment, SA Human Index has declined from 0,702 in 1985 to 0,670 in 2006" (Committee Report, 2010). The decrease in permanent

employment means that workers are losing their permanent work for more unstructured and less satisfactory work.

c. Labour market flexibility

Labour market flexibility refers to the extent to which an organisation can change various components of the work and resources to accommodate the dynamic demands of the business. Employers may choose to hire workers or alter the working hours and terms of employment of the workers (Barker, 2007). Labour flexibility does not always yield positive results for the workers, because, flexibility may mean less hours of work and poor working conditions. In the TES sector, employment flexibility allows employers to terminate the contracts of the workers without having to bear any consequences or bearing the liability of dismissing workers without prior notice. Those who argue for labour market flexibility lean on the efficiency debate. According to Barker (2007), labour market flexibility allows for greater flexibility and increased profits for the organisations. The South African labour market regulations are very rigid, and they prevent the employer from firing employees as they please. This causes inefficiencies for the organisation because they are unable to replace unproductive workers. According to Kenny (2001: 5), "Labour market flexibility is disadvantaging workers by reducing wages. Many flexible workers such as casuals and subcontracted workers are earning lower wages than permanent workers." This results in increased feelings of tension and frustration against the employers, because workers are losing their permanent jobs only to be replaced by temporary work. Similarly, in universities the increasing use of casual workers has resulted in various protests and strikes. Thus Senne & Nkomo (2015: 61) argue that:

"the common practice adopted by employers is that when the services of permanent staff in a category are terminated through resignation, retirement, death or disability, no replacement is appointed. So, through natural attrition, these services will ultimately be wholly outsourced. Currently the reality is that within universities there are two classes of employees working in the same categories – those employed by the university and those employed by the labour brokers.

Labour brokers claim that they make use of casual workers in order to fill in the gaps that are created by seasonal work. However, based on the remarks above, it is evident that client companies and labour brokers are increasingly replacing permanent work with casual work that is less beneficial to the workers because it results in a drop in their standard of living.

6.1.4 Themes speaking to the regulatory regime

Theme	Proponents	Opponents
Ambiguous labour relations	Constitutional Court, NUMSA	Labour brokers
No freedom of association	Minister of Labour	APSO, Busa, DA, IFP, Cope
A tool for circumventing labour regulation	NUM, COSATU, Workers	APSO, Busa, DA, IFP, Cope

Source: Owners' own analysis

a. Ambiguous labour relations

Even though the LRA does provide a definition of labour broking, there is still some confusion regarding the applicability of section 198, where workers, client companies and labour brokers are not clear about who is the employer. As mentioned in section 2.3, opportunism is self-seeking interest with guile. Therefore, it can be argued that labour broking opens opportunities for opportunism on the part of the employer. The ambiguity in the labour regulation allows labour brokers and client companies to act in a manner that seeks to benefit them at the expense of the workers. Thus, client companies are only willing to take responsibility when they must punish the workers, however when it comes to compensating the workers, or being liable for injuries that workers get while working on their company site, client companies defer responsibility to the labour broking company. Opportunism and profit maximisation go hand in hand: it can be found in situations where firm owners want to

produce a maximum number of goods for the lowest cost possible (Lockett & Thompson, 2015). Furthermore, the presence of imperfect markets prevents actors from having full information, thus impeding their ability to acquire and process information and therefore encouraging opportunism.

Court cases consulted were the National Union of Metal Workers of South Africa obo Nkala vs Durpo Workforce, Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others [2018] ZACC 22 and the third case was the case of Simon Nape vs INTCS Corporate Solution (Pty) Ltd. In both these cases there was confusion regarding who the employer is between the client company and the labour broking company. The client company refuses to be the employer and shifts the onus of being the employer to the labour broker. Thus Vavi (2012: 1) argues that:

Workers under labour brokers are unable to enforce their rights against any party that may be identified legally as the employer. In cases where this may be imposed against the labour broker agency, its precarious financial standing, especially in cases on insolvency, renders workers' rights of enforcement as merely notional.

However, TES workers regard themselves as the employees of the client company since they work on the premises of the client company. Before it was amended, The Labour Relations Act (LRA) was not clear as to who is the employer between the labour broker and the client company. From the cases it is evident that labour brokers and client companies choose to abide by labour regulations when it suits them. Furthermore, labour brokers have the interest of the client companies over that of the workers, this brings to rise the principal agent problem. Because, when labour brokers are faced with a situation of choosing to act against the client company in order to protect the worker. The labour brokers choose to protect their own interest, which means keeping the client company happy at the expense of the workers.

In the case of Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others [2018] ZACC 22, the ambiguities were cleared when the Constitutional Court provided clarity on matters that have been an issue in the TES sector since the introduction of the Amendments to the Labour Relations Act in 2015.

The amendments to the Labour Relations Act were introduced to better regulate TES employment and labour broking and to clear up some ambiguities regarding the terms of the contractual relationship between the labour broker, the workers and the client services. Emphasis is placed on the protection of vulnerable workers who earn on or below the threshold that is prescribed in section 6 (3) of the Basic Conditions of Employment Act. The amendments also deal with limiting temporary employment to three months by stating that client companies who make use of labour broking services for more than three months should be considered the employer of the TES worker and should grant the workers the same benefits as other permanent workers. The amendments to the Labour Relations Act, and the Constitutional Court ruling reveal that there are major problems with the TES employment system, and it has been going on for a long period and that TES workers have been suffering.

The above theme reveals the challenges that are present in the TES sector. The ambiguity present in the labour regulation is a result of path dependence and the test that can be used to test for evaluating this theme is the status quo preservation test. The test looks at the willingness of those who hold power in society to adopt new labour regulations. In the TES sector labour brokers and client companies are not willing to adopt new regulations because the market is ceremonially encapsulated. They are only willing to accept change if it does not erode their existing value structure. This means that labour brokers will only be willing to understand labour regulations to the extent that it will not cause them to lose their profits and opportunity to exploit workers.

b. No freedom of association

Section 18 of the South African Constitution gives all citizens the right to freedom of association. This means that all South African workers working in South Africa should be allowed to join a union of their choice and collectively bargain. However, this does not hold in the TES sector. The remarks below by former Minister Membathisi Mdladlana show that labour brokers and their client companies infringe on the rights of the workers in the TES sector to associate freely with a union of choice. Thus the former Minister of the Department of Labour Mdladlana (2009: 1) claims that labour broking is:

A form of human trafficking and extreme form of free market capitalism which reduces employees to commodities that can be traded for profits as if they were meat or

vegetables. The agenda of labour brokers is pro-employer and anti-trade unionism. Labour brokers are anti-trade union because they constantly move employees around from one place to another often with no access to union officials, with no possibility of stop order deductions for union subscriptions.

The remarks show that labour broking can be compared to human trafficking, which also promotes slave labour because employees are treated in an inhumane manner and their basic human rights are violated. Workers in the TES sector are not allowed to join a labour union or to part take in collective bargaining. However, it is their fundamental human right to join any union that they want to join and be associated with any organisation that they want to be associated with (Budlender, 2013). The Basic Conditions of Employment Act, which stipulates the basic conditions of employment that should be practised in South African organisations, also grants labour brokers permission to not apply the labour regulation on the TES sector (Department of Labour, 2006). This permission is granted through sectoral determinations, which have resulted in misapplication because they are not monitored by trade unions, and the Department of Labour does not have enforcement mechanisms (Di Paola & Pons Vignon, 2013). Coleman, cited in Di Paola & Pons Vignon (2013) argues that:

...the system of Sectoral Determinations . . . is both partial (only covering some low paid sectors), uncoordinated, with big variations in the minima, and without any coherent rationale in terms of the basic subsistence needs of workers" (631).

Thus it can be argued that Sectoral determinations have thus resulted in increased casualisation because they are not monitored by trade unions, and because of poor enforcement mechanisms

It can therefore be argued that labour legislation in South Africa is pro-labour broking because labour brokers are protected by the law. It is the law that grants these labour brokers and client companies the privilege they have over workers in the TES sector, which is why many are calling for a ban to labour broking. Similarly, a member of the public claimed that emphasising the regulation of labour broking will not cause labour broking to be less exploitative, because labour brokers and client companies always find a way of manipulating

the Labour Relations Act (Committee Reports, 2010). In contrast, The Association of Personnel Service Organisations (APSO) members argue that the perceptions that labour brokers are exploitative should not be generalised for all labour brokers and should not be allowed to tarnish the entire industry. They stressed that some labour brokers are part of regulating bodies and therefore are forced to comply with labour regulations, furthermore, they stressed that those who do not comply should be punished. The Young Communist League also supports the view that labour broking is a form of human trafficking and calls labour brokers slave traders. This is because labour brokers own the labour power of the workers and sell that power to client companies (Committee Reports, 2010).

c. A tool for circumventing labour regulations

The South African Government has put various regulations in place to deal with labour markets and how they are run. The International Labour Organisation (ILO) also sets standards for decent work and how it should be practiced. There are various conventions that determine the standards of decent work. However, many labour brokers in South Africa have avoided labour regulation through labour broking practices. Thus, NACTU argues (Committee Report, 2010: 909) that:

The system of labour broking undermines the Constitutional provisions such as the right to human dignity and equality... They also undermine international labour standards: labour brokers violated at least six fundamental conventions: No. 87, 98, 29105, 100 and 111.

One of the biggest challenges is that some of these labour market regulations are not applicable to temporary employment. With the TES sector growing daily, this challenge becomes worrying, because it means most of the working force in South Africa is not protected (Budlender, 2013). A major challenge with the TES sector is that there is an inadequate legislative framework to govern labour broking. Unions such as COSATU-FAWU, NEHAWU, NUM, NUMSA, SACCAWU, and SATAWU argue that employers use labour broking as a tool for avoiding their obligations (Committee Report, 2010). This has resulted in the abuse of the TES workers by the labour brokers and client companies. These abuses include, but are not limited to, the contravention of employee rights, exploitation and job insecurity (Lee & Faller, 2005; Valodia & Devey, 2010; Van Eck, 2010).

The concerns that have been raised regarding the exploitation of individuals employed labour brokers are in some cases real and need urgent attention. It is likely, however, that an outright ban or excessive legislation will deepen exploitation by driving the industry to the ground (Kutumela, 2013: p.8).

These remarks contribute significantly to this study in that it shows that the industry can be problematic and that there are loopholes in the labour legislation that governs labour broking, which leads to exploitation. Labour brokers and client companies are aware of the abuses that workers are subjected to in the TES sector; however, very few are willing to account for the abuses. Those who can engage on the matter claim they are not the perpetrators but are willing to work towards improving the situation and ensure an elimination of exploitation in the labour market (Committee Report, 2010). Thus, it can be concluded that proper legislation is required if labour broking is to be allowed to continue. Regulating the industry would put workers at a better position because companies would be obliged to abide by the law.

Supporters of labour broking argued that proper regulation of labour broking is desirable instead of banning labour broking. Furthermore, to avoid further exploitation, there should be laws that are introduced to regulate the TES sector thoroughly, laws which will specifically deal with employment contracts, working hours, collective bargaining and wages. However, critiques of labour brokers argue that regulating the market will not improve the current challenges that are being faced by workers in the TES sector. The government and trade unions lack the proper structures that are needed to regulate the industry, making it difficult for regulation of the TES sector to be possible. Thus Vavi (2012: 1) argues that:

Increased regulation of the industry will not work because of capacity constraints within the Department of Labour to enforce existing legislation and a ban against labour brokers may be administratively simpler than detailed regulation, thereby simplifying enforcement.

These challenges that come with not being able to regulate the industry have resulted in oppositions arguing for a ban against labour broking. The Department of Labour is aware of the abuses that are taking place in the TES sector, however, they also acknowledge that they

lack the capacity and resources to ensure full regulation and to prevent further abuses (Department of Labour, 2006). Solidarity trade union argues against the banning of labour broking by claiming that the banning or partial banning of it in South Africa will have a negative impact on the labour market and infringes on the right of labour brokers to practice free trade (Community Report, 2010). Employer associations and labour brokers argue against the banning of labour broking by claiming that it would infringe on the rights of labour brokers to freely trade in South Africa. Banning labour brokers would result in the infringement of these individuals. Thus, regulation of the industry will ensure that the rights of these individuals are balanced with the right of the employer in the industry to fair labour practices. Banning labour broking in SA will not necessarily ensure that labour practices are ensured for all employees (Kutumela, 2015).

6.3 Discussion

6.5.1 How current findings relate to previous studies

From the above literature (based on secondary data) it is evident that the TES sector is characterised by ceremonial values. Ceremonial values (as mentioned in section 3.3) are those values that are warranted by the ways of life that prescribe status and hierarchies and unpleasant distinctions to apply value and status on other people (Bush, 1987, 1988; Ayres, 1967). Thus changing the way in which labour brokers conduct themselves or handle labour broking activities would prove to be difficult. This is because labour broking is attached to the values that govern the industry. Furthermore, because of ceremonial encapsulation, it would prove difficult for the system of labour broking to be changed or altered in anyway because it attached to the value structure of the industry.

The research has found that the power that is mostly used in TES employment sectors is condign power. Condign power is explained as the form of power that is predominantly used in ceremonially encapsulated markets. And it involves making use of punishment or fear in order to get people to do something. This is because workers in the TES sector are forced to submit to conditions that they would not normally have submitted to if they did not have a

fear of losing their jobs. This supports existing literature which shows that in the TES sector, TES employers use force and power in order to get the workers to do something, and this results in a master-servant relationship between the employer and the employee. Furthermore, the protests that erupt in the TES sector agree with Marxist theory which notes that the frustrations in the way workers are treated would result in a revolution of the working class against the employers. However, now, workers have not been able to overcome the employers and take over the industry.

The information asymmetry debate argues that companies make use of labour broking to eliminate or limit information asymmetries that may be caused by the workers. Supporters of labour broking claim to make use of casual work to avoid information asymmetries that come in the form of moral hazard and adverse selection. However, in addition to what current literature says, the research found that some managers make use of labour broking as a way of manifesting their exploitative characteristics on the labour market, thus creating information asymmetries in order to advance their own personal needs. Situations such as these reveal characteristics of opportunistic behaviour, which is perpetuated by the imperfect flow of information. This means that the market is imperfect, and imperfect markets are characteristics of dysfunctional labour markets. Thus, in section 2.3.1, Shelanski and Klein (1995) mention that the presence of imperfect markets prevents actors from having full information, thus impeding their ability to acquire and process information and encouraging opportunism.

Due to many TES workers being illiterate, or lacking skills, it is easy for labour brokers to take advantage of them. Workers are exploited, and as a result they have no hope but to rely on labour brokers to provide them with jobs. Furthermore, the remarks show that the most vulnerable people in TES industries are the ones who are either disadvantaged or previously disadvantaged. They are left at the mercy of labour brokers who use them as they please.

The punishment that workers are threatened with is enforced through the law and the judicial system. Employees in the TES sector are not treated like normal employees; hence some labour regulations do not apply to them, making it easy for labour brokers and client companies to exploit them (Benjamin, Borat, and Van der Westhuizen, 2010a). The research has found that it is the South African Constitution that protects labour brokers and client

companies from accounting for the unfair treatment of workers. Labour brokers and client companies rely on the South African Constitution to defend them when it comes to banning labour broking. This is because section 22 of the Constitution talks about the right of every individual to trade freely in South Africa (Kutumela, 2015). Labour brokers believe banning labour broking would mean their rights are being violated, because they will not be able to trade freely in the country. Here it is clear that labour brokers are not willing to accept change to their ways of doing things. In support of current literature on labour broking, it is visible that labour brokers have prescriptive rights, because they value their own interest over the interest of the workers. Prescriptive rights are also evident from the fact that labour brokers want to lobby the South African government to protect their rights and grant them the right to continue abusing and exploiting workers.

The transaction cost debate argues that labour brokers partake in labour broking to avoid the costs that come with information asymmetries, as well as the costs that come to administrative tasks that involve the acquisition and firing of workers. However, in contradiction to already existing literature the research has found that, labour brokers and client companies are the biggest contributors to information asymmetries that cause labour market dysfunctionalities. Furthermore, the treatment of workers which results in “rebellious” behaviour in the form of protests and strikes causes the companies to lose out on productivity and incomes by replacing striking employees, replacing damaged property and trying to revive the company’s reputation from bad publicity.

The findings of this research agree with what the critics of labour broking say when they claim that labour broking is not beneficial for the workers because it contributes to massive deskilling of the workers. This deskilling comes about when workers are moved around from one area to the next. They do not gain better knowledge and understanding, and sometimes workers are placed in situations that are not suitable, leaving their knowledge and skills unused.

Judging from the above discussion and making use of Tool's (1994) criteria for evaluating institutional adjustments, labour broking does not meet the criteria for progressive institutional adjustments. This is because although the TES sector assists workers to earn an income, job insecurities prevent workers from maintaining an adequate flow of real income because workers earn below the national minimum wage. Labour broking causes divisions; arouses anger and resentment in the labour market; and arouses conflict; a characteristic of a regressive institutional adjustments. And lastly, labour broking has resulted in increased information asymmetries which prevent the voluntary participation of the workers in their employment relationship. This fails to meet the criteria for progressive change such as the democratic test, the instrumental efficiency test and the deskilling of workers which prevents the growth of knowledge and thus fails to meet the requirements of the growth of knowledge test.

As mentioned in section 3.1 ceremonial values are used to prescribe status and hierarchy and are accepted based on authority. Institutions that are run by making use of ceremonial values do not advance the welfare of the individuals (Bush, 1987). In the TES labour sector, the ceremonial aspects are visible in the power that labour brokers and client companies have over the workers; the power is one that promotes a master-servant relationship which is perpetuated by condign power. There is a recurring issue of exploitation in the TES labour markets, exploitation which undermines the welfare of the workers, and therefore signals labour market dysfunctionality because labour markets are meant to improve the welfare of the workers.

When institutional adjustments do not meet the requirements of the progressive criteria, it means they are regressive. Extracts from the documents that were reviewed, direct quotations from workers in the TES sector, labour union and confederations of trade unions as well as integrated company reports representatives, and trade union representatives revealed that TES employment and labour broking hinders labour market functionality. This can also be seen in the CAPES (2012) labour review report which provided statistics on the number of working days that are lost on South Africa due to employee industrial movements that relate to TES employment. Hence, it can be concluded that labour broking does indeed have a regressive element which hinders labour market functionality.

6.4 Implications of the findings

Firstly, the research results show that Institutions that are run by making use of ceremonial values do not advance the welfare of the individuals (Bush, 1987). In the TES labour sector, the ceremonial aspects are visible in the power that labour brokers and client companies have over the workers; the power is one that promotes a master-servant relationship which is perpetuated by condign power. There is a recurring issue of exploitation in the TES labour markets, exploitation which undermines the welfare of the workers, and therefore signals labour market dysfunctionality because labour markets are meant to improve the welfare of the workers. Therefore, when institutional adjustments do not meet the requirements of the progressive criteria, it means they are regressive. Thus, it can be said that TES employment and labour broking hinders labour market functionality. Policy implications that would be needed to improve this aspect to labour broking would include creating policies that constantly monitor labour brokers, and assigning independent labour inspectors to monitor the treatment of workers in the labour broking sector.

Secondly, labour broking is not beneficial for the workers because it contributes to massive deskilling of the workers. This deskilling comes about when workers are moved around from one area to the next. They do not gain better knowledge and understanding, and sometimes workers are placed in situations that are not suitable, leaving their knowledge and skills unused. Furthermore, workers are not given a job description, nor are they given prior training before doing the actual job. One can argue that this is a form of forced labour; hence, hidden slavery. In some instances, workers are forced to work long hours, with less pay and sometimes workers are exploited and 'forced' to do work that is not part of their contracts.

A policy implication that would be needed in order to improve this aspect of labour broking would be to make it compulsory for all labour brokers to register their workers with a skills development programme, and ensure that workers are benefiting from the Skills Development programme.

Thirdly, the results show that labour brokers and client companies earn great amounts of profits from labour broking. The reduction in working hours and wages, allows client companies to save large sums of money which could have been in recruitment processes had labour been acquired the traditional way. Client companies do experience a loss in productivity due to strikes and protests, thus experiencing a loss in income. The labour regulations should forbid labour brokers from applying for sectoral determinations, and ensure that no workers earn below the national minimum wage, this will ensure equal and decent salaries for all workers.

Lastly, the results show that current labour regulations are not fully effective when it comes to regulating the TES sector and allow for the exploitation of workers in the TES sector. The existence of labour regulations such as the Basic Conditions of Employment Act, the Skills Development Act and the Labour Relations Act does not always assist in ensuring that TES workers are protected in the labour market, because labour brokers and client companies are able to circumvent these labour regulations. The amendments that have been made to the labour regulations will continue to pose threats to the welfare of the workers because of the ceremonial values that are dominant in the TES sector. Increasing the mechanisms for regulation of the TES sector will not force labour brokers to comply with labour regulations because the Department of Labour and the South African Government lack the capacity to fully regulate the industry. Furthermore, banning labour broking would prove to be problematic, because it would mean the government is violating the rights of labour brokers to practise free trade. The implications of these research findings on policy involve considering a change in how the South African Constitution interprets the right to trade freely. The constitution must be clear when the right is applicable and what should happen in the case where one right is used to violate another, which rights take precedence over other rights. Furthermore, labour regulations should not allow labour brokers and client companies to apply for exemptions. All labour markets should be regulated by the same labour regulations. Furthermore, employers should only be allowed to make use of casual workers for work that is not continuous and permanent. Labour broking should only be used for obvious seasonal work, such as for holiday seasons.

An area for further research for TES employment would be to look at the impact of the amendments to the Labour Relations Act. Specifically focusing on the Constitutional Court

ruling, which forces labour brokers to treat employees who have been employed for longer than three months as permanent employees.

Chapter 7 Conclusions and Recommendations

7.1 Introduction

Chapter 7 will present the conclusions, limitations, and recommendations of the research study, with regards to the impact of labour broking on the functionality of labour markets in South Africa. The possibility of further research on this topic will also be discussed in this chapter.

The conclusions and recommendations of the study are based on the information that was gathered from the source documents and the themes that were developed. The discussions and debates surrounding labour broking from individuals, organisations and labour brokers helped to shape the conclusions.

7.1.1 The goals of the research

The overall goal of the research was to determine the effect of labour brokerage and temporary employment services on the functionality of labour markets in South Africa.

Specific objectives included:

- To determine whether labour broking hinders or enhances labour market functionality in South Africa.
- To evaluate the impact of labour broking on the overall welfare of individuals, which includes determining whether employees in the TES sector gain skills and improved standards of living.
- To evaluate the effects of labour broking on employers and client companies broadly, i.e. the impact on profitability and productivity
- Lastly, to determine what form of regulatory regime is more reasonable for labour broking in South Africa.

Chapters 2 and 3 were made up of the literature review, while Chapter 4 outlined the South African context of labour broking. All these chapters allowed the researcher to collect information on the problem and objectives of the study. After the researcher formulated the objective of the study, documents were gathered and analysed, and thematic analysis was applied making use of the interpretivist phenomenological analysis method.

The researcher analysed various source documents that were readily available on media publication sites, trade union websites and various search engines.

During data analysis, the researcher made use of thematic analysis, coming up with 10 themes (See annexure A) at the beginning and later cutting the number of themes to four (See annexure B) and subthemes based on their relevance to the topic.

The following themes and subthemes emerged from the research:

1. Exploitative labour regulations.
 - Job insecurity.
 - Increased financial burden.
 - No skills development.
2. Competitive advantage.
 - Increased profits.
 - Organisational efficiency.
3. Labour market efficiency.
 - Employment creation.
 - Labour market flexibility.
4. Ambiguous labour regulation.
 - No freedom of association.
 - A tool for circumventing labour regulations.

Subthemes also emerged from the main themes (See annexure A and B), which helped the researcher to formulate the findings, draw conclusions and make recommendations

7.2 Conclusions

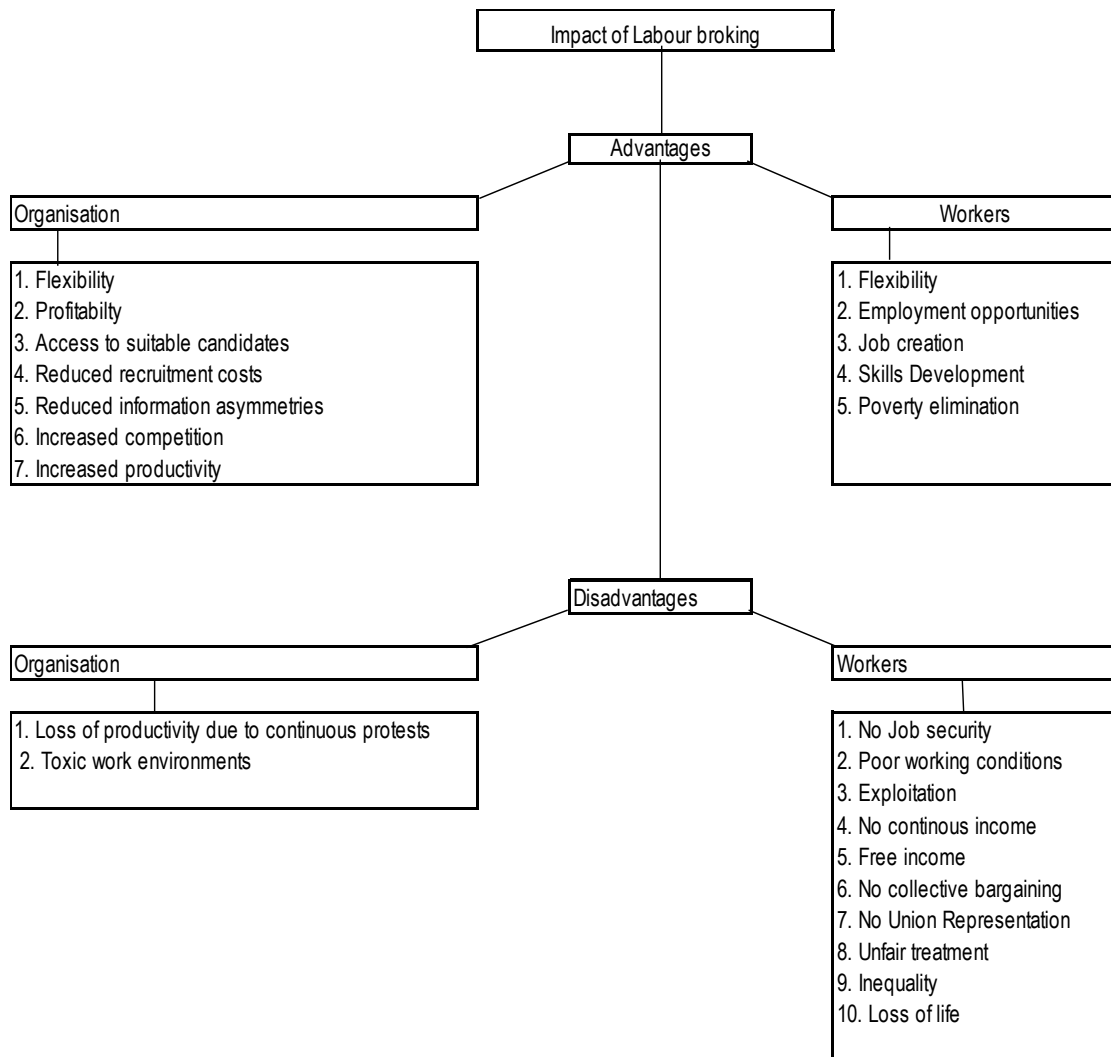
Characteristics of a ceremonial system are features of a system of false knowledge and socio-economic behaviour (Ayres, 1967). Ceremonial values are warranted by those customs and ways of life that prescribe status, hierarchies and unpleasant distinctions as to the relative 'worth' of various individuals or social classes in the community. Ceremonial values rationalise power relationships and patterns of authority embedded in the status quo (Bush, 1987, 1988; Ayres, 1967). Ceremonially warranted values rationalise habitual modes of thought and behaviour embedded in traditional practices, and tend to be backward (Bush, 1983, 1987). Furthermore, it is through ceremonial values that the lower, middle and working social classes are undermined and deemed as powerless, which then allows the upper classes to exercise power over the powerless and prescribe rules that may be unfavourable for the powerless social class (Bush, 1987). When institutional change is characterised by ceremonial values, the resultant behaviour is ceremonial, resulting in regressive change which hinders progress in the society.

The results presented in Chapter 6 allowed the researcher to draw conclusions relating to the objectives of the study. The conclusions will now be discussed according to the themes presented in the annexures.

7.2 1 Summary of the impact of labour broking on labour market functionality in South Africa

Figure 7.1 below summarises the conclusions drawn in section 5.4 and presented in section 6.2 of this study, illustrating the advantages and disadvantages for the organisation and employees regarding the impact of labour broking.

Figure 7.1 Summary of perceptions regarding the impact of labour broking on the organisation and workers



Source: Own interpretation

The research found that the TES sector is characterised by exploitative labour relations. Exploitation is a major issue in the TES sector, because it results in the deterioration of living standards of the workers. Labour brokers, trade unions, the South African government and the workers are aware of the exploitation and abuse that is happening in the TES sector; however, they lack the capacity to prevent or control the issues that come with exploitation. The government has tried through amendment to labour regulations to affect labour broking and eliminate these abuses. But to date workers are still complaining and experiencing abuse in the TES sector. South African labour regulation is pro-employer, meaning that it favours the

employer more than the workers, therefore labour brokers can apply for sectoral determinations and exemptions from labour regulations. Unions are not able to protect or represent the workers, because labour brokers and client companies strategically move workers around from one workplace to another, making it impossible for workers and union members to collectively organise. The exploitation that workers experience in the TES sector includes working long hours for low pay or wages, denial of company facilities, not being afforded dispute resolution resources, not being given employment benefits and lastly being forced to do work they are not qualified for, not skilled for and which they have not consented to. And lastly the omission of poor, mostly uneducated individuals from the benefits of employment equity policies and practices in organisations points to workplace inequalities experienced by the most vulnerable employees.

Secondly, the research found that even though the use of labour broking results in great profits for the client companies as well as the labour brokers, this does not necessarily mean labour market efficiency will be guaranteed. When it comes to organisational efficiency, companies achieve efficiency by hiring and firing workers daily. Companies can replace sick, injured or incompetent workers without having to perform administrative work and incurring costs. Organisational efficiency only comes to a halt when workers are on strike. Mass strikes cause the workers to lose money and the organisations lose out on productivity. Some strikes have resulted in the death of workers and civilians.

Thirdly, the research found that making use of labour broking results in great flexibility for the labour market, especially during times of globalisation and increased competition. Labour broking has resulted in great employment creation. The TES sector has employed and continues to employ many people daily. This is what is needed in a country that currently has an unemployment rate of 29 percent. A challenge that is posed here is the quality of work performed by the labour brokers, because workers and trade unions have complained that some employers are partaking in practices and using employment methods that contravene the ILO international labour conventions.

Lastly, the research has found that there are great ambiguities when it comes to who the real employer is in a labour broking sector. Employers are willing to account only when they must punish the worker. However, when it comes to compensating workers for injuries or extra

work, they refuse to take accountability and push it on to the labour broker. Although recent amendments to the Labour Relations Act deal with clarifying those ambiguities, it might be possible for some employers to continue with their exploitative ways. Therefore, based on the literature that was consulted, the documents that were reviewed, the debates on labour broking, and the application of Tool's criteria for evaluating institutional adjustments, it can be concluded that labour broking does not enhance labour market functionality in South Africa.

7.3 Limitations of the study

The researcher mentioned in section 5.8 that interpretative research makes it difficult for the researcher to know when data saturation has been reached. Time can also be a constraint, which causes problems with the finalisation of the research. Due to the usage of secondary data, some research questions might not be answered due to the non-availability of data, causing the researcher to constantly modify the research goals. Because the topic at hand is a sensitive one that is causing a big debate in the country, there may have been sources that are not credible and are biased while pushing their undisclosed political agendas. This might have affected the results and gave the wrong impression.

7.4 Recommendations for the industry

From a Veblenian Dichotomy point of view, labour broking would be an example of a labour market ceremonial system. Ceremonial systems create monopoly power and can therefore have a negative impact on the economy and for all. This impact could be in the form of a reduction in output, restriction, reduced wages, harsh treatment and exploitation and unemployment (Waller, 1982; Foster, 1981; Tool, 1977; Ayres, 1967). Labour broking has resulted in the ongoing challenges that are faced by employees in the TES sector. These challenges include, but are not limited to, the exploitation of workers, unclear working terms, unclear job descriptions, low wages and poor working conditions (Joubert & Loggenberg, 2017; Theron, 2017).

An important fact to be considered is whether the gains of banning labour broking are worth the cost of access to the labour market. This implies that labour broking contributes to employment creation in the country. Furthermore, given South Africa's unemployment crisis, it is vital that the mechanisms that link available jobs and job seekers from all backgrounds be effective and efficient and add to employment creation.

Opponents argue that labour broking does not add value to economic growth or aid job creation. However, one must consider the effect of an outright ban on a country that faces massive poverty and unemployment.

The TES sector in South Africa is highly ceremonially encapsulated. Ceremonial encapsulation occurs when ceremonial systems prevail over instrumental system. Ceremonial encapsulation presents the hypothesis that the institutional structure will absorb new technology only to the extent that it can do so without disrupting the existing value structure (Waller, 1987; Bush, 1979). This makes it possible for changes to be made in the TES sector that will not be exploitative of the workers. The application of stricter rules would mean that labour brokers are not given the freedom or power that they currently have and that would prove to be difficult for them, because labour brokers and client companies are the ones who hold power over the labour market.

Client companies and labour brokers value their own interest over those of the workers and thus will continue to promote policies that favour them over the workers, by continuing to apply for sectoral determinations and exemptions that discriminate against TES workers. When warranted knowledge is encapsulated or sequestered by public agencies or private corporations, ceremonial encapsulation occurs which hinders the growth of knowledge (Bush, 1988, 1987). Labour brokers and client companies will only be willing to accept change in the regulatory regime to the extent that it does not cause them to lose any of their current benefits and power. It can be concluded therefore that labour broking should be banned in South Africa because it hinders labour market functionality.

Most of the workers, including labour trade unions, called for the total banning of labour broking as they are of the view that the system exploits workers. Labour brokers, including some workers working under labour brokers believe there are some labour brokers who do

operate according to labour laws and therefore suggest that the industry should be regulated instead (Committee Reports, 2010: 672).

Ceremonial encapsulation is a product of institutional path dependence and therefore constrains progress in the society through change. The Veblenian Dichotomy recognises other factors which are non-price factors as a motive for ceremonial change.

Ceremonial institutions foster the interests of business such as profitability and earning of free income even if there is no corresponding increase in production. Instrumental institutions, usually working through the influence of technology, address the interests of the common person and the labourer as well as business (Waller, 1982; Foster, 1981; Veblen, 1919). These two systems of values and institutions are antagonistic and the relative strength of one to the other determines economic outcomes and in whose interests the outcomes would be (Waller, 1982; Foster, 1981; Veblen, 1919).

In conclusion a management regime that would be suitable for the TES sector in South Africa would be one that enforces accountability on the part of the labour broker, the client company and the workers. This can be achieved in the form of a new business practice that requires labour brokers and client companies to register all employees at the department of labour upon being hired. This would mean that employees become permanent workers when they are hired initially and not only after three months of service. By so doing, labour brokers and client companies will be prevented from contracting with employees for a period of three months and then ending contracts when the three months is over. The registration of the workers would also ensure that workers receive employee benefits such as medical aid, skills training and unemployment insurance fund. This would improve the welfare of the workers and also improve employee morale, thus resulting in improved productivity levels in many companies. Sectoral determinations and exemptions that result in the ill treatment of TES workers should all be banned. All companies that require casual and seasonal workers should also register with the department of labour, these companies must prove that the work is seasonal and that it is not recurring, however they should be encouraged to take on the same casual workers when the cycle begins again. Companies that do not adhere to the labour legislation should be fined heavily and lastly the South African Government should work hand in hand with labour brokers and TES companies by providing assistance in the form of financial

subsidies to ensure that the financial burden does not rely solely on the labour brokers and client companies, this would serve as a form of reinforcement and compensation for companies that behave well.

Theme 1	Exploitative labour regulations
Subthemes	Job Insecurity Increased financial burden No skills development
Theme 2	Competitive advantage
Subthemes	Increased profits Organisational efficiency
Theme 3	Labour market efficiency
Subthemes	Employment creation Labour market flexibility
Theme 4	Ambiguous labour regulation
Subthemes	No freedom of association A tool for circumventing labour regulations

Annexure B Certificate from language editor

4 Winding Lane

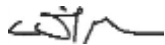
Hogsback

5721

6 December 2019

To whom it may concern

I hereby confirm that I have proofread Tina Haaketa's thesis, checking for language errors and inconsistencies to the best of my ability (and under tight time constraints).



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