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REST IN THE REST OF THE WORLD

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The European laws generally . . . are much more free than the American States in legislating as to the length of daily labor permitted . . . to men and women of full age But the more free the form of government according to the American point of view, the less autocratic it is; and the more progressive and democratic in form, the more we find the American tendency to avoid legislating as to the liberty of labor of competent male citizens. Thus we find at the one extreme Russia, where the laws make practically no mention of the age of persons to whom they apply.

U.S. House of Representatives, *Report of the Industrial Commission: On the Condition of Foreign Legislation upon Matters Affecting General Labor* (1901).

Men are not the physical giants that failure to give them legal protection would seem to assume.

Elizabeth Baker, *Protective Labor Legislation* (1925).

As in so many other areas of state intervention into entrepreneurial control, rest-period legislation in the United States has lagged far behind that enacted in western Europe. This national gap is in some respects even wider at the end of the twentieth century than it was in the nineteenth century. Whereas most European countries (with the notable exception of Britain) that initially reserved mandatory rest periods for women ultimately extended them to men, not only has the United States failed to enact national norms for workplace rest, but most state governments that had established gender-biased restrictions on continuous work hours earlier in the twentieth century repealed them altogether rather than apply them to male workers.¹ This chapter provides an overview of the history of statutory rest periods in Europe.

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1. Beginning with World War I, the French state required employers to provide nursing mothers with two half-hour breaks to feed their infants. *Loi concernant l'allaitement maternel dans les établissements industriels et commerciaux*, Sirey, *Legislation* 596 (Aug. 5, 1917). For a limited period, the French Labour Code provided for a one-hour rest period for women. Labour Code, L. 212-9, in ILO, *Legislative Series*, 1981—Fr. 1, at 62, *repealed* by Act No. 87-423 regard-

Despite extraordinarily rapid industrial development in the United States prior to the New Deal, legal restrictions on the length of the working day, "the most essential limitations on freedom of contract," lagged behind such intervention in Europe. The importance that the European socialist labor movement attached to state regulation of working time was signaled by Karl Marx's attention to it. Although Marx is best known in this regard for his analysis of the political-economic basis of the statutory limitation of the working day in Britain, his conceptualization of how the intensification of labor, driven by mechanization, affected the length and structure of the workday—rest periods—is particularly relevant here. In 1866, in connection with preparations for the first congress of the International Working Men's Association (First International), its Central Council unanimously adopted the recommendation of the standing committee that the congress "make an enquiry into the condition of the working classes," including information on "Meal times and treatment." Marx then included this question in his "Instructions for the Delegates," glossing the call for a statutory eight-hour day thus: "all legal restrictions will fail and be broken through by Capital if the period of the day during which the 8 working hours must be taken, be not fixed. The length of that period ought to be determined by the 8 working hours and the additional pauses for meals. For instance, if the different interruptions for meals amount to one hour, the legal period of the day ought to embrace 9 hours, say from 7 a.m. to 4 p.m." In his critique of the German workers' party program in 1875, Marx assumed as self-explanatory that any statutory norm regulating the length of the working day would incorporate pauses.²

Although lack of resources prevented the International from carrying out the survey, Marx returned to the matter in 1880, composing a "Questionnaire for Workers" for the French labor movement. Of the ninety-nine questions, four were devoted to pauses. In the second

ing the duration and arrangement of working time, June 19, 1987, § 12, in ILO, Legislative Series, 1987—Fr. 1, at 4. Italy requires employers to allow working mothers two one-hour paid rest periods during their child's first year; if the mother uses an employer-furnished nursery, the periods may be reduced to thirty minutes. Act to provide for the protection of working mothers, Dec. 30, 1971 (No. 1204), § 10.

2. Emil Lederer & Jakob Marschak, "Arbeiterschutz," in 9:2 *Grundrisse der Sozialökonomik: Das soziale System des Kapitalismus: Die autonome und staatliche soziale Binnenpolitik im Kapitalismus* 259, 270 (1927) (quote); 1 Karl Marx, *Das Kapital: Kritik der politischen Ökonomie* 198-281, 399-409 (1867; photomechanical reprint 1959); *The General Council of the First International 1864-1866: The London Conference 1865: Minutes* 217-18 (Institute of Marxism-Leninism of the C.C., C.P.S.U. ed., n.d. [ca. 1964]) (Meeting of July 31, 1866); Karl Marx, "Instructions for the Delegates of the Provisional General Council. The Different Questions," in *The General Council of the First International* at 340, 343 (1866); Karl Marx, "Randglossen zum Programm der deutschen Arbeiterpartei" (1875), in 19 Karl Marx [&] Friedrich Engels, *Werke* 15, 31 (1962).

section, which was devoted to working time and child labor, following two questions concerning hours and days of work and “holydays,” Marx asked:

Which are the interruptions of the working day?

Are mealtimes fixed at certain regular intervals or are they irregularly taken? Are they taken in or outside of the building?

Is work performed during mealtimes? . . .

Which are the regulations and penalties with regard to the exact attendance of workmen at the time when the day’s work begins or when it recommences after meals?³

The working conditions that Marx sought to explore were at the time subject to statutory regulation primarily in Britain, where protective legislation for female workers both preceded and outlived similar regimes in the United States. Such intervention was designed to restrain the prolongation of the working day associated with the rise of the factory system in Britain: “Those who laid down expensive machinery gruded seeing it stand a moment idle They gruded even to pause for a meal. In Manchester at the time of the Reform Bill, the mills ran from 5 in the morning till 9 at night without any stoppage but an hour for dinner, and the hands had to breakfast as they best could while standing and attending the machinery.”⁴

As early as 1818, Robert Owen, the capitalist and utopian socialist, urged a ten-hour workday and two hours for breakfast and dinner for all manufacturing workers. But not until the Factories Act of 1844 did Parliament confer on women above the age of eighteen the same protections previously confined to children; it mandated at least one and a half hours for meals, specifically prohibiting employment for more than five hours before 1:00 p.m. without an interval for a meal of at least thirty minutes. Marx himself could not find a more fitting illustration of capital’s insatiable hunger for surplus labor than employers’ illegal but frequently successful attempts to steal back some of this time statutorily set aside for eating and resting; by shortening the meal periods, they required workers to work a few minutes longer each day. Indeed, the meal-period regulations that many viewed as “vexatious meddling of petty-minded legislators and officials . . . were literally forced upon the State, as a necessary part of the protection of young workers from the exploitation of unscrupulous employers.”⁵

3. Karl Marx, “Questionnaire for Workers” (1880), in I:25 Karl Marx [&] Friedrich Engels, *Gesamtausgabe* (MEGA) 199, 200, 203 (1985).

4. John Rae, *Eight Hours for Work* 9 (1894).

5. Robert Owen, “On the Employment of Children in Manufactories” (1818), in *A New View of Society and Other Writings* 130, 137 (1949); An Act to Amend the Laws Relating to Labour in Factories, 7 & 8 Vict., ch. 15, §§ 32-33 at 82, 92, 93 (1844); An Act to Limit the Hours of Labour of Young Persons and Females in Factories, 10 & 11 Vict., ch. 29 (1847); An Act to

Despite efforts in the latter part of the nineteenth century by Liberal women and advocates of freedom of contract to remove women from the reach of British legislation that allegedly restricted their opportunities, these provisions of the earliest factory acts underwent repeated revision and consolidation during the nineteenth and twentieth centuries.⁶ The major codification of 1878 required in textile factories meal periods totaling at least two hours for women, who were not permitted to be employed continuously for more than four and a half hours without at least a half-hour interval for a meal. In nontextile factories women were entitled to a total of one and a half hours for meals and could not be employed longer than five continuous hours without a meal break. A member of Parliament characterized these provisions as a "great relief to those who were compelled to use the same mechanical operation of the hands and feet, which was so wearying, and from which they required relaxation."⁷ The version of 1901, which prompted the prominent British legal scholar Albert Dicey to accuse the state of aiming at "omnipotence and omniscience" regarding labor regulation, merely carried forward the existing schedule. In 1937, however, the prohibition was amended to apply to the employment of women "continuously for a spell of more than four and a half hours without an interval of at least half an hour for a meal or rest, so, however, that where an interval of not less than ten minutes is allowed in the course of a spell, the spell may be increased to five hours." This revision, in addition, expressly prohibited employment of women during such meal or rest intervals. Although some feminists at that time urged the degendering of restrictions, that view did "not receive . . . any support from . . . the women workers themselves." These provisions were reenacted without change in 1961.⁸

Amend the Acts Relating to Labour in Factories, 13 & 14 Vict., ch. 54, § 3 at 328, 329 (1850); 1 Marx, *Das Kapital* at 207-11, 257-69; B. Hutchins & A. Harrison, *A History of Factory Legislation* 81 (2d ed. 1911) (quote). To be sure, Marx also concluded that the class antagonism between factory owners and landowners that had made the factory laws possible had been mitigated by the ruling classes' joint hatred of the people; consequently, Parliament intentionally inserted loopholes in the statutes that promoted evasion and circumvention. Karl Marx, "The State of British Manufactures" (1859), in 16 Karl Marx & Frederick Engels, *Collected Works* 190 (1980).

6. Mrs. Sidney [Beatrice] Webb, *Women and the Factory Acts* 9 (Fabian Tract No. 67, 1896) ("Unfortunately, working women have less power to obtain legislation than middle-class women have to obstruct it"); Hutchins & Harrison, *A History of Factory Legislation* at 183-99. On the struggle between these two groups in Britain, see Robin Jacoby, *The British and American Women's Trade Union Leagues, 1890-1925: A Case Study of Feminism and Class* 89-118 (1994).

7. Factory & Workshop Act, 1878, 41 Vict., ch. 16, § 11(5)(a) & (6), 13(3)(a) & (4), at 137, 141, 142; 219 *Parl. Deb.*, H.C. (3d ser.) 1416-17 (1874) (Asheton Gross) (quote). Already the Factory Act, 1874, 37 & 38 Vict., ch. 44, § 5(3), at 248, 249, required a total of two hours for meals.

8. A.V. Dicey, *Lectures on the Relation Between Law and Public Opinion in England* 290 (2d ed. 1930 [1st ed. 1905]) (quote); An Act to Consolidate, with Amendments, the Factory and

These special pauses for women in factories survived until the 1980s, when they were repealed in the course of Thatcherite deregulation and as a British accommodation of European Economic Community directives. British capital's desire "to get rid of protective legislation because it interfered with management's freedom to manage" found its traditional rhetorical support in the parliamentary Right's appeal to equality: "Why cannot women be left to sort out meal and rest breaks for themselves?" In his capacity as a member of the House of Lords, Britain's leading labor law scholar was impelled to respond: "We have no quarrel with the principle of equality. Indeed, we demand that it be real and not the equality of everyone having tea at the Ritz which is the well known falsehood of mere semantic equality." In his scholarly capacity, Lord Wedderburn was even less diplomatic, observing that the "absence of any auxiliary measures . . . to mitigate the possible exploitation of women workers" suggested that the "Bill was more concerned to relieve business of its 'burdens' than to proffer real social equality to women." Britain's much more class-conscious feminist movement, unlike its U.S. counterpart, not only vigorously opposed repeal but advocated extension of protection to men, arguing, for example, that "there is no justification for making men work for longer stretches than women."⁹

As early as 1875, New Zealand mandated a half-hour meal period for women after four and a half hours of continuous employment. In 1891, the New Zealand Factories Act, which merely continued in force that provision and a similar one from 1881, was denounced by its parliamentary opponents as making it "absolutely impossible for persons to turn their capital to profitable account." Growing dissatisfaction with the discriminatory impact of this and other gender-biased labor-

Workshop Acts, 1 Edw. 7, ch. 22, §§ 24(5) & (6), 26(3) & (4) at 60, 71-73 (1901); An Act to Consolidate, With Amendments, the Factory and Workshop Acts, 1901 to 1929, and other enactments relating to factories, 1 Edw. 8 & 1 Geo. 4, ch. 67, §§ 70(c) & (e), 767, 827, 828 (1937) (quote); [U.K.] Equal Opportunities Commission, *Health and Safety Legislation: Should We Distinguish Between Men and Women?* 15 (1979) (quote); Factories Act, 1961, 9 & 10 Eliz. 2, ch. 34, § 86(c) & (e), 165, 225 (1961).

9. Sex Discrimination Act 1986, ch. 59, 2033, 2039, § 7(3)(a); Sally Kenney, *For Whose Protection? Reproductive Hazards and Exclusionary Policies in the United States and Britain* 32 (1992) (quote); 472 *Parl. Deb.*, H.L. (6th ser.) 572 (1986) (Lord Trefgarre) (quote); 477 *Parl. Deb.*, H.L. (6th ser.) 1186 (1986) (Lord Wedderburn); Lord Wedderburn, *The Worker and the Law* 408 (3d ed. 1986 [1st ed. 1965]); Jean Coussins, *The Equality Report* 84 (1976) (quote). See also Jeanne Gregory, *Sex, Race and the Law: Legislating for Equality* 17-19 (1987); Kenney, *For Whose Protection?* at 37-41. The Equal Opportunities Commission's agnosticism on the issue—it merely listed repeal and universalization as options—may have been a function of its unsubstantiated speculation "that better factory conditions may obviate the need to have formal meal breaks." [U.K.] Equal Opportunities Commission, *Health and Safety Legislation* at 94-95. Like the British feminist movement, the organization of female attorneys in Germany, in opposing a statutory ban on night work for women, also argued that the ban should be retained during a transition period until it could be extended to men. 85 *BVerfGE* 191, 201-202 (1992).

protective legislation on both male and female workers prompted re-examination of the underlying principle "that male workers should have full liberty to work what hours they please, or be worked whatever hours their employers please, because . . . males, possessing voting-power as citizens, could at any time complain to Parliament . . . if oppression was practised on them." Once women gained the same political rights as men, however, observed Secretary of the Department of Labour Edward Tregear in his 1897 annual report, such laws became "instruments of annoyance and distress. Both in factories and shops, wherever men and women are employed together . . . the longer hours a man is allowed to work give him a strong preference in an employer's eyes, and handicap the woman out of her occupation or into accepting a far lower rate of pay." In response, Tregear urged not deregulation but universal protection.¹⁰

Two years later, the secretary of the Department of Labour, with an even greater sense of urgency, pressed the New Zealand legislature to act in accordance with his view that it was "unfair that in factories the restriction of working-hours should only apply to women. It gives men an unfair advantage in competition, and, if the restriction was imposed for health's sake, it is fully as necessary for many men as for women This is urged not that women should have less protection from the law, but that men should have more." Reiterating his recommendation that "adult men should share all the benefits of the Act as women and youths now do," Tregear noted in 1900 that the competitive "advantage" that the male worker derived from standing outside the regulation was "only apparent[,]. . . for the employer's 'request' for him to stay several hours in the evening has to be acceded to at cost of all hours of rest and recreation to the employé." In the following year, the New Zealand General Assembly, after sharp debate, amended the Factories Act to ensure male workers three-quarters of an hour for a meal period after five hours of work, while women received the same, longer break after four and one-quarter hours. In 1946, the standard previously reserved for women was extended to men.¹¹

10. An Act to Amend the Acts Relating to the Employment of Females, § 5, N.Z. Stat. 1875, No. 89, at 377, 378; The Factories Act, 1891, § 37, N.Z. Stat. No. 32, at 146, 155; An Act to Consolidate the Law Relating to the Employment of Females and Others in Workrooms and Factories, § 7(1), N.Z. Stat., 1881, No. 23, at 184, 184; 71 *New Zealand Parl. Deb.* 151 (1891) (remarks of W.P. Reeves); 73 *New Zealand Parl. Deb.* 319-20 (1891) (remarks of Sir George Stoddart Whitmore) (quote); New Zealand, *Department of Labour (Report of the)* iv (1897) (quote).

11. New Zealand, *Department of Labour (Report of the)* ii (1899) (quote); New Zealand, *Department of Labour (Report of the)* ii (1900) (quote); Factories Act, 1901, §§ 18(1)(c) & 19(c), N.Z. Stat. No. 59, at 207, 213. This statute was reenacted in 1908 and 1922. Factories Act, 1908,

Switzerland enacted the world's first gender-neutral national rest period statute in 1877; in addition to setting a maximum eleven-hour day, it required factory employers to give their workers at least one hour off for lunch during the middle of the workday. The statute built on earlier cantonal factory laws, especially that of Glarus (1864); its gender-neutral provisions were born of male workers' "feeling of equal weakness," which persuaded them that they were unable to negotiate or strike to protect themselves from exploitation. Switzerland's pioneer status may have prompted lax enforcement with a view toward not excessively burdening Swiss firms, which competed with German companies not yet subject to such restrictions. When these provisions were revised in 1964 in connection with the enactment of the comprehensive Labor Statute, the legislature prescribed a rest pause of at least a half hour for a seven-hour workday; if the workday extended beyond nine hours, the minimum rest period had to be expanded to an hour; a fifteen-minute rest pause was mandated for those working between five and a half and seven hours. The purpose of the mandatory rest periods in Switzerland is to permit workers to recover and relax and thus to prevent excessive stress and the associated risk of increased injuries. Based on physiological considerations, according to which rest periods must be lengthened the longer the work periods they interrupt, these minimum periods may not be broken into several shorter periods; if the main rest period is so scheduled that an uninterrupted work period of five and a half hours results, then an additional pause has to be inserted.¹²

§§ 18(1)(c) & 19(c), N.Z. Stat. 1908, No. 59, 358, 363-64; Factories Act, 1921-22, §§ 17(1)(c) & 18(c), N.Z. Stat., 1921-22, No. 42, 304, 316-17; Factories Act, 1946, § 19(1)(c), N.Z. Stat. 1946, No. 43, 521, 531, *repealed* by the Factories and Commercial Premises Act, 1981, N.Z. Stat. 1981, No. 25, 211. The 1901 bill in the House of Representatives proposed the same conditions for men and women, but the Legislative Council rejected the 4½-hour rule for men on the ground that it "would, in many instances, cause inconvenience both to men and employers." The House of Representatives acceded to the Council's position. 119 *New Zealand Parl. Deb.* 1171,1200-201,1219 (1901).

12. Bundesgesetz betreffend die Arbeit in den Fabriken, art. 11, 3 Amtliche Sammlung der Bundesgesetze und Verordnungen der schweizerischen Eidgenossenschaft (n.s.) 241, 246-47 (1877); K. Bücher, "Arbeiterschutzgesetzgebung in der Schweiz," in 1 *Handwörterbuch der Staatswissenschaften* 588, 588-93 (J. Conrad et al. eds., 2d ed. 1898); Regina Wecker, "Equality for Men? Factory Laws, Protective Legislation for Women in Switzerland, and the Swiss Effort for International Protection," in *Protecting Women: Labor Legislation in Europe, the United States, and Australia, 1880-1920*, at 63, 67 (Ulla Wikander et al. eds., 1995) (quote); Victor Böhmert, "Arbeitszeit in der Schweiz," 1 *Handwörterbuch der Staatswissenschaften* at 1034-35; Bundesgesetz über die Arbeit in Industrie, Gewerbe und Handel (Arbeitsgesetz), art. 15, Sammlung der eidgenössischen Gesetze, 1966, at 57, 64; R. Canner & R. Schoop, *Arbeitsgesetz* 47-59 (1968); Manfred Reh binder, *Schweizerisches Arbeitsrecht* 133 (1979). The gender neutrality of the 1877 law was punctured by the fact that women who ran a household were to be released a half hour before the general lunch period. Bundesgesetz betreffend die Arbeit in den Fabriken, art. 15 at 248.

The Swiss legislation was a model for developments in Austria, which, as the European country that had throughout the nineteenth century created the greatest degree of formal equality for women in a variety of economic areas, lacked a tradition of differential treatment. Moreover, industrial employers, opportunistically championing equality, opposed special protective legislation for women that would have interfered with their unimpeded access to female workers at a crucial stage in the development of capitalism during the late 1860s and early 1870s. A political coalition that included representatives of anti-laissez-faire small crafts finally succeeded in amending Austria's Industrial Code in 1885 to provide all workers in commercial businesses with rest pauses totaling at least one and a half hours daily, of which one hour was as far as possible to be set aside for the noon meal. The limitation of the working day to eleven hours, excluding the pauses, for all workers in factories did not hamper business operations or international competitiveness as employers had warned the government would be the case if women were singled out for protection. More than a century later, those working at least a six-hour day are still entitled to a thirty-minute rest pause in Austria. Although Hungary, where industry was barely two decades old, did not generally limit the hours of adult workers, the Industrial Law of 1884 required work in factories to be stopped for a half hour in the morning and afternoon and a hour at noon.¹³

In 1890, the Berlin international conference on labor legislation, which Kaiser Wilhelm II had convoked to press for international standards that would be easier for the German state to impose on German employers as part of his effort to defuse the growth of the socialist labor movement, adopted a nonbinding recommendation that it was "desirable" that women's work, which was not to exceed eleven hours, be interrupted by rest periods lasting a total of at least one and a half hours.¹⁴ The following year, while the Social Democratic Party of

13. Margarete Grandner, "Special Labor Legislation for Women in Austria, 1860-1918," in *Protecting Women* at 150,150-60; Gesetz vom 8. März 1885, betreffend die Abänderung und Ergänzung der Gewerbeordnung, §§ 74a, 96, Reichsgesetzblatt at 35, 36-37, 46 (if the work time before or after the meal period amounted to less than five hours, the remaining thirty minutes could be dispensed with; various ministries were charged with reducing work pauses in industries where interruption of operations was impracticable); Arbeitszeitgesetz vom 11. Dezember 1969, § 11(1); *Reports from Her Majesty's Representatives in Europe and the United States on the Laws Affecting the Hours of Adult Labour in the Countries in which They Reside* 3 (C.-5866,1889).

14. Ulla Wikander, "Some 'Kept the Flag of Feminist Demands Waving': Debates at International Congresses on Protecting Women Workers," in *Protecting Women* at 29, 34-35; Sabine Schmitt, "All These Forms of Women's Work Which Endanger Public Health and Public Welfare": Protective Labor Legislation for Women in Germany, 1878-1914," in *ibid.* at 125, 131-35; *Conférence internationale concernant le règlement du travail aux établissements industriels et dans les mines* 199 (par autorisation officielle, 1890). The German delegation had at first urged pauses amounting to two hours. *Id.* at 72, 78.

Germany (SPD) was demanding the eight-hour day for all workers, the amendments to the Industrial Code not only limited the length of the working day (to eleven hours) for adult female workers for the first time, but also prescribed a midday pause of at least one hour for women factory workers. Women fourteen or older who took care of a household were also entitled, upon request to the employer, to a further half hour before midday—an accommodation that twentieth-century paternalistic mill owners in the U.S. South as well as Swiss and German employers in certain industries and regions as late as the 1960s granted married women employees to enable them to prepare the midday meal for the other working family members. The code primarily elevated to a legal norm working conditions that had become widespread but not yet general industrial practice.¹⁵

The SPD criticized the rest provision as a mere “decoration” because workers would seldom dare make such a request—a prediction that was promptly confirmed by factory inspectors. Although factory employers were obligated to post whatever work regulations they imposed, including the starting and stopping times for adult workers and the pauses allowed, the code imposed no obligation to provide such pauses for men. The SPD voted against this bill not because the party opposed special legislation for women, but because the bill failed to limit employers’ powers; moreover, any measure that the entire aristocratic and bourgeois entrepreneurial class applauded automatically incurred the party’s suspicion. Nevertheless, in factories in which both sexes were employed, the regulations for women practically established hour norms for their male colleagues as well even while some employers violated the rest-period provision for women.¹⁶

15. “Programm der Sozialdemokratischen Partei Deutschlands, beschlossen auf dem Parteitag zu Erfurt 1891,” reprinted in Dieter Fricke, *Die deutsche Arbeiterbewegung 1869-1914: Ein Handbuch über ihre Organisation und Tätigkeit im Klassenkampf* 172, 174 (1976); Gesetz, betreffend Abänderung der Gewerbeordnung, June 1, 1891, § 137 para. 3, RGBl 1891, 261, 282; Sabine Schmitt, *Der Arbeiterinnenschutz im deutschen Kaiserreich: Zur Konstruktion der schutzbedürftigen Arbeiterin* 80-108 (1995) (on the political history of the amendments); Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* 239 (1983 [1982]); Viola Klein, *Women Workers: Working Hours and Services* 38, 40 (OECD, n.d. [1965]); Dorothea Schmidt, “Wenn der Staat die Arbeitszeit regelt: Die Geschichte der Arbeiterschutzesetzgebung für Frauen im Kaiserreich und ihre Verwirklichung in Bremen,” 12 *Leviathan* 50, 65, 81 (1984).

16. A. Bebel, “Die Gewerbeordnungs-Novelle,” 9/2 *Neue Zeit* 324-36, 364-74, 406-15 at 372 (1890-1891) (quote); Christoph Deutschmann, *Der Weg zum Normalarbeitstag: Die Entwicklung der Arbeitszeiten in der deutschen Industrie bis 1918*, at 267, 221-22 (1985); Gesetz, betreffend Abänderung der Gewerbeordnung, § 134b at 279; 18 Jürgen Kuczynski, *Die Geschichte der Lage der Arbeiter unter dem Kapitalismus: Studien zur Geschichte der Lage der Arbeiterin in Deutschland von 1700 bis zur Gegenwart* 154-55 (1963); Schmitt, *Der Arbeiterinnenschutz im deutschen Kaiserreich* at 199-200, 204.

Based on findings by the Imperial Health Office and other agencies that irregular, hurried, and interrupted meal periods had impaired store workers' health, the code was amended again in 1900 to provide for a mandatory, gender-neutral "suitable nooning" for all shop assistants, apprentices, and workers. The minimum duration of the meal period was set at one and a half hours for those workers who ate outside of their place of business.¹⁷

While some early-twentieth-century work scientists found rest periods indispensable for maintaining workers' health and efficiency, others held that reducing or eliminating rest periods as "dead time" was compressed, in tandem with the shortening of the working day, was a hygienic and psychological gain for workers. These German industrial fatigue investigators determined that hectic, noisy, and dirty factories provided an inferior site of recovery and recuperation compared with the effect of spending the same amount of time at the end of the workday at home. Moreover, they argued, the disappearance of breaks meant that no output was lost when workers slowed down and started up before and after each break. The steel industry, in Germany and elsewhere, with its now almost unimaginably long hours (culminating in twenty-four-hour shifts), offered the best example of a site whose high temperatures and poisonous gases made it impossible for workers to recuperate during brief and unscheduled pauses.¹⁸

The early-twentieth-century German debate over the length and structure of the workday was conducted in part by reference to so-called English working hours. This eight- or nine-hour workday with only one meal was contrasted with what, at least until the beginning of the twentieth century, had been the widespread German custom, also inscribed in collective agreements, of a quarter to a half hour for breakfast, an hour for lunch, and another quarter to a half hour in the late afternoon or early evening (*Vesperpause*). German efficiency researchers assigned responsibility for long workdays to this "outmoded custom." In contrast, on its introduction in Britain in the 1880s, some employers lauded the advantage of the shorter day with only one break. By enabling the workers to breakfast before going to work, to avoid an extra round-trip walk home during the day, and to save stop-

17. 2 Robert von Landmann, *Kommentar zur Gewerbeordnung für das Deutsche Reich* 419, 423 (5th ed. 1907); Gesetz, betreffend die Abänderung der Gewerbeordnung, June 30, 1900, § 139c, ¶ 3, 1 RGBl 321, 326.

18. Ernst Bernhard, *Höhere Arbeitsintensität bei kürzerer Arbeitszeit: ihre personalen und technisch-sachlichen Voraussetzungen* 43-44 (1909); Ilse Costas, *Auswirkungen der Konzentration des Kapitals auf die Arbeiterklasse in Deutschland* (1880-1914), at 150-64 (1981).

ping and starting time associated with midmorning breakfasts, it made "better men and better animals."¹⁹

German researchers, however, exaggerated the prevalence of the one-break workday in Britain; in fact, "Before 1914 most working men put in not less than a 54-hour week . . . with a break of half an hour and one hour for breakfast and dinner." The prominence of the single-pause regime had been due to a few widely publicized efforts in the machine industry. William Allan, who operated a marine engine-building firm in Sunderland, testified before the Royal Commission on Labour in 1893 that production had risen in the wake of the elimination of the prebreakfast work period and the reduction in weekly hours from fifty-three to forty-eight, in large part because the workers' punctuality had improved.²⁰

More important still was the much more systematic experiment abolishing the prebreakfast spell conducted by William Mather at the Salford Iron Works in Manchester in 1893-94, which British fatigue researchers later regarded as "the first recognition that the human factor in industry was deserving of scientific study." A member of Parliament and capitalist advocate of a high-age economy provided that all competitors were subject to it, Mather had accepted the collectivist view that "time—i.e., the working hours, is the sole possession of Labour, which it must lay out, as its capital, to the best advantage, so as to secure for itself the longest possible period of robust life; and that this can only be done by men combining to make rules affecting their working hours, which it is incumbent on all of them to observe and enforce."²¹ Carrying out the experiment in agreement with the machinists union (Amalgamated Society of Engineers), Mather concluded that the prebreakfast spell was "unprofitable to Employers, and not very enjoyable to Workpeople, [whose] many recreations and amusements [made] 'it . . . not quite as easy to go to bed at nine or ten o'clock as it was 20 or 30 years ago [when] there was nothing much . . .

19. Marie Bernays, *Untersuchungen über die Schwankungen der Arbeitsintensität während der Arbeitswochen und während des Arbeitstages: Ein Beitrag zur Psychophysik der Textilarbeit*, in Max Morgenstern et al., *Auslese und Anpassung der Arbeiterschaft in der Lederwaren-, Steinzeug- und Textilindustrie* 183, 283-308 (135 Schriften des Vereins für Socialpolitik, pt. 3, 1912), Deutschmann, *Der Weg zum Normalarbeitstag* at 128, 145, 157, 231-32, 251-55, 266-67 (giving examples of rest periods in various industries); Bernhard, *Höhere Arbeitsintensität* at 45 (quote); Rae, *Eight Hours for Work* at 56 (quote).

20. Robert Roberts, *The Classic Slum: Salford Life in the First Quarter of the Century* 146 (1983 [1971]) (quote); *Fourth Report of the Royal Commission on Labour*, QQ. 6862-72, at 466-67 (39 pt. 1 *Parl. Pap.* 1893-94, C. 7063, 1893).

21. Industrial Fatigue Research Board, *Results of Investigation in Certain Industries* iii (No. 27, 1924) (quote); Sidney Webb and Beatrice Webb, *Industrial Democracy* 726-27 (new ed. 1920 [1st ed. 1897]); William Mather, "Labour and the Hours of Labour: The Industrial Problem of the Day," 62 *Contemporary Rev.* 609, 630 (1892) (quote).

but work and sleep." The realization of Mather's expectation that shorter hours would increase workers' attendance, punctuality, and energy, and the resulting constancy of daily output and reduction in machine and energy costs, prompted him to make the new schedule permanent and to propagate its adoption at government ordinance factories and dockyards. Nevertheless, private employers, who continued to deny that it was possible to produce as much in a shorter as in a longer workday, remained largely hostile until World War I, when the one-break day was still regarded as an "experiment."²²

Even German advocates of a short working day—shorn of pauses and from which the nooning (*Mittagsruhe*) was shifted to after hours—conceded that this "ideal" could be implemented only for those performing physically undemanding mental work; for industrial workers, the rise in injury rates toward the afternoon urgently demonstrated that *Mittagsruhe* remained indispensable, even given short schedules. The whole point of shorter workdays, from the perspective of efficiency, was to increase labor intensity: they made possible the heightened discipline, concentration, and attention that faster machines required by eliminating the "certain *laissez-aller*" that penetrated the whole production process in porous long workday regimes. It was, therefore, hardly surprising that early-twentieth-century German experts argued that a half-hour midday pause, which they viewed as almost a norm in the United States, was the "hygienic minimum" for any but the strongest male workers. Indeed, in 1893, when an employer in Switzerland petitioned the Swiss Department of Industry for permission to halve the statutorily mandated one-hour meal period in order to introduce "English" working hours, the government refused to grant the request even as an experiment on the ground that the legislature had adopted the provision "for purely hygienic reasons." Three decades later an association of German factory medical inspectors reinforced this viewpoint by publishing guidelines calling for a combined midday rest and meal period of at least one hour in addition to a ten- to fifteen-minute pause in the morning and afternoon.²³

22. William Mather, *The Forty-Eight Hours Week: A Year's Experiment and Its Results at the Salford Iron Works, Manchester* 9-10, 15-20 (1894) (quote); A. McIvor, "Employers, the Government, and Industrial Fatigue in Britain, 1890-1918," 44 *Brit. J. Indus. Med.* 724, 726-28 (1987); *The Engineer*, Apr. 20, 1894, at 330 (letters to editor from employers affirming). *Annual Report of the Chief Inspector of Factories and Workshops for the Year 1917*, at 5 (10 *Parl. Pap.* 1918, Cd. 9108) ("experiment").

23. Bernhard, *Höhere Arbeitsintensität* at 45-47 (quotes); Deutschmann, *Der Weg zum Normalarbeitstag* at 178, 201; *Das Bundesgesetz betreffend die Arbeit in den Fabriken vom 23. März 1877: Kommentiert durch seine Ausführung in den Jahren 1878-1899*, at 195-96 (Schweizerisches Industrieministerium ed., 1900) (quote); R. Hofstätter, *Die arbeitende Frau: Ihre wirtschaftliche Lage, Gesundheit, Ehe und Mutterschaft* 44-45 (1929).

The achievement of the statutory eight-hour day (excluding pauses) in the wake of the revolutionary upheaval in Germany that brought down the old regime in November, 1918, did not initially universalize mandatory rest periods. To the extent that pauses were not established by agreements between employers' associations and unions, they were to be agreed upon between the employer and the plant-level workers' committee or the entire workforce. The following month a supplementary directive specified that female (and child) workers were entitled to a fifteen-minute break if they worked between four and six hours, thirty minutes for workdays lasting six to eight hours, and one hour for longer days. By 1919, all salaried white-collar employees (*Angestellte*), who traditionally had been treated differently by employers and state insurance programs, were afforded a mandatory thirty-minute rest period for workdays in excess of six hours; if their scheduled workday ended after 4:00 p.m., those who ate their principal meal away from the plant had to be given one and half hours off.²⁴

Beginning in the 1880s, especially in large cities such as Berlin and Leipzig, where many workers had travel times in excess of one hour, the desire not to remain a minute longer than absolutely necessary at the plant prompted male workers to pressure their protected coworkers to accept the shortest possible pauses or even their complete elimination. As late as the Weimar Republic, during the course of which repeated and insistent demands by employers for a longer workday led to a weakening of state-guaranteed shorter hours standards, conflicts arose between protected female (and child) workers and their male colleagues over the impact of statutory breaks.²⁵ Dis-

24. Anordnung über die Regelung der Arbeitszeit gewerblicher Arbeiter, §§ II & VIII, Nov. 23, 1918, RGBl I, 1334, 1335; Anordnung zur Ergänzung der Anordnung über die Regelung der Arbeitszeit gewerblicher Arbeiter vom 23. November 1918, § I, Dec. 17, 1918, RGBl I, 1436; Verordnung über die Regelung der Arbeitszeit der Angestellten während der Zeit der wirtschaftlichen Demobilmachung, § 2, Mar. 18, 1919, RGBl I, 315. Morris Hillquit, *Socialism in Theory and Practice* 220 (1912), incorrectly stated that the hours of adult male factory workers were legally limited to eleven in Germany; prior to 1918 there was no such general limitation.

25. Dora Landé, "Arbeits- und Lohnverhältnisse in der Berliner Maschinenindustrie zu Beginn des 20. Jahrhunderts," in von Biefkowski et al., *Auslese und Anpassung der Arbeiterschaft in der Elektroindustrie, Buchdruckerei, Feinmechanik und Maschinenindustrie* 303, 413-14 (134 Schriften des Vereins für Sozialpolitik, 1910); 5 Jürgen Kuczynski, *Die Geschichte der Lage der Arbeiter unter dem Kapitalismus: Darstellung der Lage der Arbeiter in Deutschland von 1917/18 bis 1932/33*, at 232-33 (1966) (quote); Deutschmann, *Der Weg zum Normalarbeitsstag* at 192-93, 200; U.S. BLS, *Postwar Labor Conditions in Germany* 94-122 (Bull. 380, 1925) (by R. R. Kuczynski); Verordnung über die Arbeitszeit, Dec. 21, 1923, Reichsgesetzblatt I, 1249. Commenting on the industrial inspectors' reports on these developments, the extremely orthodox and dogmatic East German economic historian Jürgen Kuczynski expressed amazement at the "cunning and cruelty of capitalist working and living relations, which bring the workers into a situation" in which they engage in an "appalling" struggle for short pauses while the government

putes also developed between German workers and employers over rest periods even where management was finally persuaded of their value. After World War I, for example, especially after the eight-hour day became a statutory norm, workers commonly favored short breaks so that the workday would be over as early as possible; employers and medical factory inspectors (and subsequently unions too) instead preferred longer periods, which would counteract fatigue during and not only after the working day and thus also benefit capital.²⁶

The bifurcated perspective of the urbanized German workers, which split work and life, separated them definitively from preindustrial workers' task-oriented rhythms, although two-hour midday meal breaks to permit workers to eat at home with their families remained traditional in Belgium, France, Italy, Spain, and Switzerland at least into the 1970s. At that time, the distance between work and residence in large cities became too great and the so-called break-free day became more common. Significantly, in the 1950s and 1960s, newly arrived U.S. multinational firms played an important role in the battle in Italy over the siesta, an institution that displayed the lamentable flaw that "nobody has figured out how to make it show a profit." At a time when work and life, labor and social intercourse were intermingled, there was, E.P. Thompson observed, "no great sense of conflict between labour and 'passing the time of day.'" But "to men accustomed

officials "set themselves up as humane hygienists." 5 Kuczynski, *Geschichte* at 233. What epithet would Kuczynski reserve for Nazi "work scientists" who both thoughtfully urged "enlightenment" for workers—who, understandably, had failed to grasp that in the long run too-short pauses undermined their "labor power"—and resisted German workers' tendency during World War II to shorten their rest periods in order to get home sooner and employers' calls to abolish them altogether? Arbeitswissenschaftliches Institut der Deutschen Arbeitsfront, *Zur Arbeitszeitfrage* 118 (1939); "Recent Aspects of the Employment of Women in Germany," 45 *Int. Lab. Rev.* 286, 289 (1942).

26. "Recommendations of German Medical Factory Inspectors as to Rest Periods," 20 *Monthly Lab. Rev.* 992 (1925); Ludwig Preller, *Sozialpolitik in der Weimarer Republik* 149 (1978 [1949]); Alf Lüttke, "Arbeitsbeginn, Arbeitspausen, Arbeitsende: Skizzen zu Bedürfnisbefriedigung und Industriearbeit im 19. und frühen 20 Jahrhundert," in *Sozialgeschichte der Freizeit: Untersuchungen zum Wandel der Alltagskultur in Deutschland* 95, 118 (Gerhard Huck ed., 1980). Indeed, in West Germany, where legal scholars continued to write methodologically more self-conscious analyses of rest periods than in the United States, authors maintained this pro-capital or, at least, pro-production bias not only by repeating this particular argument about why the pause must be scheduled within the workday, but also by arguing that work-free time and vacations in general are designed to enable workers to regenerate sufficiently to resume their work with "fresh powers." Since these two sources of regenerative time, however, do not permit workers to work uninterrupted during the workday, the state has mandated rest pauses at prescribed intervals. J. Denecke & Dirk Neumann, *Arbeitszeitordnung: Kommentar* 163 (9th ed. 1976); Peter Meisel, "Die arbeitsrechtliche Bedeutung von Erholungszeiten," 19 *Recht der Arbeit* 163 (1966) (quote). The stress on output of this version of rest periods, in which workers are merely instrumentalized for ever more efficient physiological processes without serving their own purposes, is striking.

to labour timed by the clock, this attitude to labour appears to be wasteful and lacking in urgency.”²⁷

Following reenactment of the Weimar rest-period provisions in 1934, the Nazi regime finally promulgated the first general German legislation securing rest periods for male production workers in 1938. Those working more than six hours had to be given at least one thirty-minute or two fifteen-minute rest pauses. Although workers employed in continuous operations were excepted from this provision, their employers were nevertheless obligated to afford them “brief pauses of appropriate length.” The Nazi state also modified the rest periods for women to their advantage and disadvantage: for workdays of four and a half to six hours, female workers received twenty-minute breaks; six- to eight-hour days were to be interrupted by thirty-minute breaks; forty-five minutes off were to be granted for eight- to nine-hour workdays; and one hour was given only for days in excess of nine hours. Unfortunately for the German proletariat, the rush of war production and the concomitant long hours placed in the service of an unprecedentedly destructive regime interfered with their newly promised leisure.²⁸

This Nazi-era hours legislation remained intact in West Germany long after World War II. The chief innovation was the empowerment of works councils to codetermine the scheduling of rest periods. These plant-level entities can intervene even in nonunionized firms: for example, when employers schedule rest periods at the beginning or end of a shift, which would be unlawful because they would no longer serve their “social-hygienic” purpose. Not until 1994 did the newly merged Germany, in response to the directive of the Commission of the European Communities that the member states implement EC-wide working-hours standards, promulgate a gender-neutral rest-period provision. Workers in Germany are now entitled to a thirty-minute break when they work between six and nine hours, and forty-

27. Organisation for Economic Co-operation and Development, *New Patterns for Working Time: International Conference, Final Report* 43-44 (1973); Archibald Evans, *Hours of Work in Industrialised Countries* 83-84 (1975); Martha Lear, “Plea to Let Sleeping Men Lie,” *N.Y. Times Mag.*, Sept. 27, 1964, at 49, 51 (quote); “Quick Lunch,” *Newsweek*, Apr. 28, 1969, at 76; “Storm over Snoozes,” *Newsweek*, May 4, 1959, at 42; Paul Hoffmann, “Taps for the Siesta: Reveille for Romans,” *N.Y. Times Mag.*, Aug. 16, 1959, at 30; E.P. Thompson, “Time, Work-Discipline, and Industrial Capitalism,” *Past & Present*, No. 38, at 56, 60, (Dec. 1967). Even during World War I, when the French factory workday was almost twelve hours, a ninety-minute meal break was common so that workers could go home for lunch. Laura Downs, *Manufacturing Inequality: Gender Division in the French and British Metalworking Industries, 1914-1939*, at 55 (1995).

28. Verordnung über die neue Fassung der Arbeitszeitordnung, § 21, Sept. 4, 1934, RGBI I, 803, 810-11; Arbeitszeitordnung §§ 12 & 18(1), Apr. 30, 1938, RGBI I, 447, 449, 450 (quote); 6 Jürgen Kuczynski, *Die Geschichte der Lage der Arbeiter unter dem Kapitalismus: Darstellung der Lage der Arbeiter in Deutschland von 1933 bis 1945*, at 210-11, 215, 261 (1964); Timothy Mason, *Sozialpolitik im Dritten Reich: Arbeiterklasse und Volksgemeinschaft* 280-81 (1977).

five minutes on workdays longer than nine hours. Although the rest periods can be divided into segments no shorter than fifteen minutes, no employee can be employed more than six consecutive hours without a rest break. Since 1975 employers of ten or more employees have also been required to provide them with an easily accessible break room.²⁹

As advanced as this national norm may be by U.S. standards, it nevertheless continues to remain subject to the criticism that German trade unionists forty years ago directed against any rest-period regulation that makes the length of the pause a function of the length of the working day regardless of the intensity of labor demanded and performed: any such regulation that applies equally to assembly-line sewing and underground construction "is absolutely insufficient and hopelessly obsolete." Moreover, the new German statute must be evaluated in light of the existence since 1977 of an East German Labor Code that created as a gender-neutral norm the interruption of the workday by "sufficient pauses for the workers' recuperation." After four and a half hours workers were entitled to a break of at least fifteen minutes; a meal period of at least thirty minutes was also required.³⁰

Although German workers, through statute and collective bargaining agreements, have gained a shorter workweek and much longer vacations than U.S. workers, labor unions in Germany continue to focus more attention than their U.S. counterparts on the need for rest periods to combat the effects of labor intensification. Such attentiveness is rooted in their postwar experience: many firms achieved a reduction in the length of the workweek during the 1950s by increasing the pace of production and cutting rest breaks. The most spectacular union success in this area was the wage-framework collective agreement that the Metalworkers' Union (IG Metall) achieved with the metalworking industries in North Württemberg/North Baden after a brief strike in 1973. Characterized by the union district leader as having established "1 hour of work = 52 minutes," the agreement for the first time guaranteed a five-minute break (in addition to three minutes for "personal needs") every hour for eight hours to all workers com-

29. Betriebsverfassungsgesetz, § 87(1) 2., Jan. 15, 1972, BGBl. I, 13, 30; Wilhelm Herschel, "Die Lage der Ruhepausen," 1965 *Der Betrieb* 553 (quote); Gesetz zur Vereinheitlichung und Flexibilisierung des Arbeitszeitrechts (Arbeitszeitrechtsgesetz- ArbZRG), § 4, June 6, 1994, BGBl. I, 1170, 1171; Verordnung über Arbeitsstätten (Arbeitsstättenverordnung-ArbStättV), § 29, Mar. 25, 1975, BGBl. I, 729, 735.

30. Hans Rehhahn, "Produktivität, Arbeitsintensität und Lohn," 6 *Gewerkschaftliche Monatshefte* 489, 492 (1955); Arbeitsgesetzbuch der Deutschen Demokratischen Republik vom 16. Juni 1977, § 165(1) & (2), Gbl. I, 185, 209. Alternative (paid) short rest periods totaling twenty minutes were also provided for workers in continuous operation plants. *Id.* § 165(3).

pensated according to a payment-by-results system. Even the impartial chairman of the conciliation service involved in the negotiations observed that rest periods for assembly-line and piece-rate workers, as “the fundamental requirement” of the humanization of work, should long since have been accorded priority; anchoring them in a collective bargaining agreement was, in the absence of statutory regulation, completely justified.³¹

German metalworkers displayed considerable creativity at the plant level in implementing this agreement so as to use the total of forty minutes in larger blocks of time in order to “chop up the 8 hours of sweating into tolerable portions,” promote communication among themselves, and assert a degree of cultural autonomy from management’s notions of what was necessary from a purely physiological viewpoint regarding the length, number, and scheduling of breaks.³² Workers in very few plants chose to schedule any part of them at the end of the day in order, in effect, to shorten their workday. In this regard metalworkers differed little from German workers generally, two and a half times as many of whom in the early 1980s expressed a wish for more work pauses than for fewer pauses that would enable them to go home earlier. The rest periods gained by the metalworkers set a standard that remains unmatched in the United States—or, for that matter, in Germany, where IG Metall was unable to extend this aspect of its so-called humanization of working life program except to the Volkswagen works, which became virtually the last workplace operating under that system and where the rest periods were finally re-

31. Otto Graf, *Arbeitszeit und Produktivität: Untersuchungsergebnisse wissenschaftlicher Forschungsinstitute: Ganztägige Arbeitsablaufuntersuchungen an 200 Arbeitsplätzen* 68-69 (1959); Franz Steinkühler, “Nach dem Streik: 1 Arbeitsstunde = 52 Minuten” (1973), in *2 Kollektives Arbeitsrecht: Quellentexte zur Geschichte des Arbeitsrechts in Deutschland 1933-1974*, at 298 (Thomas Blanke et al. eds., 1975) (quote); Lohnrahmentarifvertrag II: Zwischen dem Verband der Metallindustrie Baden-Württemberg e. V. und der Industriegewerkschaft Metall für die Bundesrepublik Deutschland, Bezirksleitung Stuttgart, ¶ 3.14, reprinted in *Werktage werden besser: Der Kampf um den Lohnrahmentarifvertrag II in Nordwürttemberg/Nordbaden* 174, 179-80 (Vorstand der IG Metall für die Bundesrepublik Deutschland ed., 1977); Hans Güntner, “Begründung des Einigungsvorschlags der Schlichtungsstelle für einen Lohnrahmentarifvertrag für die Arbeiter in der Metallindustrie in Nordwürttemberg/Nordbaden in den geschichteten Hauptregelungen” (Oct. 1, 1973), in *Werktage werden besser* at 168, 171 (quote).

32. Paul Schobel, *Dem Fließband ausgeliefert: Ein Seelsorger erfährt die Arbeitswelt* 71 (1981) (quote); Hans Joachim Sperling, *Pause als soziale Arbeitszeit: Theoretische und praktische Aspekte einer gewerkschaftlichen Arbeits- und Zeitpolitik* 107-38, 156-59 (1983); Eckart Hildebrandt & Boris Penth, “Humanisierung in der Krise: Der Stand der Humanisierungs-Experimente als Hintergrund der derzeitigen DGB-Position,” in *10 Gesellschaft: Beiträge zur Marx’schen Theorie* 246, 256, 276 (H.-G. Backhaus et al. eds., 1977); Eva Brumlop & Wolf Rosenbaum, “‘Humanisierung der Arbeitsbedingungen’ durch gewerkschaftliche Tarifpolitik,” in *Beiträge zur Soziologie der Gewerkschaften* 264 (Joachim Bergmann ed., 1979); Friedrich Fürstenberg, “Recent Trends in Collective Bargaining in the Federal Republic of Germany,” in John Windmüller et al., *Collective Bargaining in Industrialised Market Economies: A Reappraisal* 207, 219 (1987); Kathleen Thelen, *Union of Parts: Labor Politics in Postwar Germany* 187-89 (1991).

duced to two and a half minutes in 1995. Ironically, five-minute hourly breaks for assembly-line workers had been recommended by Germany's quasi-hegemonic Taylorist time-and-motion study organization as early as 1951. Proceeding from the physiological insight that without appropriate periodic recuperative rest periods, fatigue can irreparably undermine the vitality of a worker's labor power, the Verband für Arbeitsstudien had proposed shutting down assembly lines once an hour for five minutes where the forced pace did not allow any brief pauses.³³

The retrograde state of current U.S. rest-period law can be gauged by the laws that several countries enacted in the wake of the first International Labor Conference held under the auspices of the League of Nations in 1919. As long ago as 1920, Uruguay mandated rest breaks of one to two hours for workers after five hours of work, and in 1922, Yugoslavia enacted a comprehensive labor code, which guaranteed virtually all workers in industry, mining, commerce, and transport at least a one-hour rest pause during an eight-hour day. The 1931 Labour Code in Chile provided for at least a two-hour break. Nor was this post-World War I legislation some kind of quirk peculiar to underdeveloped countries, cultures with Latin traditions of siesta, or Bolshevik Russia, which prescribed rest and meal breaks for all workers in 1920. For example, the Dutch Labor Law of 1919, breaking with a thirty-year-old gender-biased labor-protective tradition, mandated an uninterrupted half-hour rest period for all workers in factories and other workplaces after four and a half hours of work.³⁴

The United States may not be the world's only industrialized country without national statutorily mandated rest periods—in some heavily organized countries such as Denmark industrywide collective

33. Sperling, *Pause als soziale Arbeitszeit* at 134; Uwe Engfer et al., "Arbeitszeitsituation und Arbeitszeitverkürzung in der Sicht der Beschäftigten: Ergebnisse einer Arbeitnehmerbefragung," in Claus Offe, "Arbeitsgesellschaft": *Strukturprobleme und Zukunftsperspektiven* 167, tab. 6 at 180, tab. 7 at 182 (1984); "Einigung auf Haustarif für fast 100000 Beschäftigte," *Süddeutsche Zeitung*, Sept. 13, 1995 (Lexis); "IG Metall weist Angebot von VW erneut zurück," *Süddeutsche Zeitung*, Sept. 9, 1995 (Lexis); "60000 Beschäftigte im Warnstreik," *Süddeutsche Zeitung*, Sept. 5, 1995 (Lexis); Schobel, *Dem Fließband ausgeliefert* at 34, 71 (reporting that at the Daimler-Benz plant at Sindelfingen the assembly line ran faster after the new break system was introduced); 1 *Verband für Arbeitsstudien - REFA - E.V., Das REFA - Buch: Arbeitsgestaltung* 37-38 (5th ed. 1955 [1st ed. 1951]).

34. League of Nations, *International Labor Conference: First Annual Meeting, October 29, 1919-November 29, 1919* (1920); 3 Decreto de Mayo 21 de 1920 sobre nueva reglamentación de la ley jornada obrera, §§ 13-16, in ILO, Legis. Ser. 1920—Ur. 3-5 at 4; M. Finch, *A Political Economy of Uruguay Since 1870*, at 41-42 (1981); Zakon o zashtiti radenka, §§ 1, 3, 11 (1922), ILO, Legis. Ser., 1922, SCS.1; Labour Code, § 30, May 13, 1931, in ILO, Legis. Ser., 1931—Chile 1; Obshchee polozhenie o tarife, §§ 15-18 (1920), ILO, Legis. Ser., 1920—Russ. 1, at 2-3; Ulla Jansz, "Women or Workers? The 1889 Labor Law and the Debate on Protective Legislation in the Netherlands," in *Protecting Women* at 188; Wet houdende tot beperking van de arbeidsduur in het algemeen en tot het tegengaan van gevaarlijke arbeid, November 1, 1919, art. 31(1).

bargaining can be relied on to create de facto standards—but most of its world market competitors have created such protections. The other Scandinavian countries, for example, have established national norms. As early as 1946, workers in Finland became entitled to a one-hour rest period for workdays in excess of seven hours. Sweden not only mandates rest periods so that employees do not work for more than five hours consecutively but also requires employers “to arrange work so that employees can take the pauses that are needed over and above the breaks.” Norway too prescribes a break after five and a half hours, which must last at least thirty minutes for those working an eight-hour day.³⁵ The European Union in 1993 adopted a Council Directive on the organization of working time in the member states. Among its main principles is the prescription of an entitlement to a break when daily working time exceeds six hours. In all the Canadian provinces and territories except Nova Scotia “there is some regulation of how long an employee may be compelled to work without being granted a meal period or rest break.” Typically, Canadian workers are entitled to at least one thirty- or sixty-minute pause after five consecutive hours of work.³⁶ The Japanese Labor Standards Law requires employers to give workers at least a forty-five-minute rest period after six hours of work, and at least one hour during an eight-hour work day; the rest period must be scheduled toward the middle of the work

35. *Legal and Contractual Limitations to Working-Time in the European Community Member States: European Foundation for the Improvement of Living and Working Conditions 37* (R. Blanpain & E. Köhler eds., 1988) (on Denmark); An Act Respecting Hours of Work, No. 604, Aug. 2, 1946, § 16, in ILO, *Legis. Ser.*, 1946—Fin. 4. at 6; *Arbetstidslag*, June 24, 1982 (No. 763), §§ 15 & 17, at 1391, 1394; *Lov om arbeidervern og arbeidsmiljø*, Feb. 4, 1977, No. 4, § 51, *Norges lover* 2517, 2533. Although the Norwegian Workers' Protection Act of 1936 was in many ways quite stringent, its gender-neutral break provision was timid, requiring two breaks amounting to at least forty-five (but reducible by agreement between employer and employees to thirty) minutes only if daily hours exceeded eight, which constituted the statutory normal working day (§§ 17, 19-20, 22 (1)). *Lov om arbeidervern*, June 19, 1936, *Norges lover* 1682-948, 1948, 1952-53 (1950).

36. Council Directive 93/104/EC concerning certain aspects of the organization of working time, art. 4 (Nov. 23, 1993), *European Industrial Relations Review No. 242*, at 29, 30 (Mar. 1994); Roger Blanpain, *European Labour Law* 232-33, 235 (3d ed. 1995); Innis Christie, Geoffrey England, & Brent Cotter, *Employment Law in Canada* 239-40 (2d ed. 1993) (quote); Employment Standards Code, § 32(3), *Alta. Stat.* 1988, ch. E-10.2 at 7, 24 (thirty minutes); Employment Standards Act, § 32(1), *B.C. Stat.* 1980, ch. 10, at 47, 58 (half hour); *Manitoba Minimum Wages and Working Conditions Regulation*, § 8, *Reg.* 187/87 R, 116 *Man. Gaz.* 1303, 1305 (1987) (one hour); *Labour Standards Act*, § 24, *Nfld. Rev. Stat.*, 1990, ch. L-2, at 1, 12 (one hour for wholesale/retail employments and half hour for other employees); *Employment Standards Act*, § 22, *Ont. Rev. Stat.* 1990 ch. E14, at 1, 11 (half hour); *Labour Act*, § 63.1, *P.E.I. Rev. Stat.* 1988, 1407, 1446 (half hour); An Act Respecting Labour Standards, § 79, *Que. Rev. Stat.*, N-1.1 (1994) (thirty-minute rest period for meals); *Saskatchewan Minimum Wage Board Order* (No. 2) 1981, § 7 (one hour except for employees who earn 25 percent or more above the minimum wage); *Labour Standards Meal Reg.*, 2 *Rev. Reg. N.W.T. ch. L-4* (1990) (thirty minutes); *Employment Standards Act*, § 12.(1), *Yuk. Rev. Stat.* 1986 (thirty minutes). On the thirty-minute provision in New Brunswick, see Labour Canada, *Employment Standards Legislation in Canada, 1993-94 Edition* 20 (1993).

day. Although given Israel's laborite origins, the requirement of its Hours of Work and Rest Law that "work shall cease for rest and refreshment for not less than three quarters of an hour" is not surprising, remarkably South Africa introduced a one-hour meal interval in 1983. Finally, even Hungary's post socialist Labor Code mandates a twenty-minute interwork break.³⁷

37. Rödökijunhō § 34(1), Law No. 49 of 1947; Hours of Work and Rest Law, May 21, 1951 (as amended), § 20(a) (Israel); Basic Conditions of Employment Act, 3 of 1983, § 7(1)(a) (S. Africa); Act on the Labour Code of the Hungarian Republic 1992 (No. XXII), § 122(1) (in *International Encyclopedia for Labour Law and Industrial Relations: Legislation 2* (1994)). A number of socialist countries enacted rest provisions: Act No. 49 to promulgate the Labour Code, Dec. 28, 1984, § 84, in ILO, Legis. Ser., 1984—Cuba 1, at 15 (30 minutes for rest and personal needs); Labour Code, June 16, 1965, § 89, in ILO, Legis. Ser., 1965—Cz. 1, at 34 (fifteen minutes for food and rest); Labour Code, July 3, 1973, § 57, in ILO, Legis. Ser., 1985—Mongolian PR (no more than two hours for rest and meals); Act No. 2-VIII of Supreme Soviet, § 29, in ILO, Legis. Ser., 1970—USSR 1 (no more than two hours for rest and meals).