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**A Watershed Decade in British Industrial Relations, 1965 to  
1974? The Donovan Commission Report, In Place of Strife  
and the Industrial Relations Act of 1971.**

**Jacqueline Ann Lane**

**University of Huddersfield**

**PhD Thesis**

**Date: MAY 2017**

## Acknowledgements and Statement of Originality

“I certify that this thesis, and the research to which it refers, are the product of my own work, and that any ideas or quotations from the work of other people, published or otherwise, are fully acknowledged in accordance with the standard referencing practices of the discipline. I acknowledge the extensive support and expertise of my PhD supervisors, Professor Keith Laybourn and Professor John Shepherd, and the support, both in terms of fee remission and time off to research and write, from the University of Huddersfield. Doctor Yvonne ~~Downs~~ Novakovic gave invaluable support and advice as my research mentor, and my family was supportive throughout the process. I am grateful to all of them for the opportunity to study such a fascinating period of labour history. Any errors in this thesis are entirely my own.”

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## ABSTRACT

The Donovan Report (1965-1968) is often seen as one of the great failures in the overall attempt to deal with the thorny problem of the contentious nature of industrial relations in post-war Britain. This thesis re-examines that report and subsequent governmental responses, using numerous sources, many of which have barely been used by previous authors, in order to establish where it all went wrong. Such an examination is important to inform future governments on some of the problems of trying to legislate on industrial relations matters.

This thesis addresses the central question addressed by the Report – the validity of employing legislation to deal with the problems within industrial relations, asking what contribution had legislation made to the ordering of industrial relations in the past, and what lessons future governments could take from that? Why did both the Labour Governments under Harold Wilson and the Conservative Government under Edward Heath choose to go beyond Donovan in their attempts to alter the role of the state in industrial relations? Finally, could the *Industrial Relations Act 1971*, had it survived, have been to the benefit of trade unions in time?

This thesis suggests that legislation had an important role to play in the ordering of industrial relations, and that collective bargaining alone, although effective in many areas, was unable to address issues which had wider implications, such as those relating to health and safety or the reconciliation of differences due to the laws' interference with trade unions' rights to defend their members and their own collective rights. Both the Labour and Conservative Governments chose to go beyond the measures proposed by Donovan because economic and political necessity demanded a greater measure of control over strike action. However, the inquiry had undoubtedly focused the debate on whether or not legislation could ever be the most appropriate tool for controlling industrial relations, and therefore acted as a catalyst for the reforms that followed.

The *Industrial Relations Act 1971* failed to bring about the hoped-for industrial peace. Its repeal in 1974, however, did nothing to prevent further rises in strikes after 1974. Piecemeal legislation in the 1980s and 1990s did bring about a greater level of industrial peace, but this suggests that it was not legislation per se that was the wrong strategy for controlling industrial relations, but rather the method and pace of

implementation. Other means of maintaining industrial peace were experimented with and could have been successful if the political will had been there and the unions and employers had engaged more fully, but the seeds had been sown for legislative control and it was impossible to hold back the tide of restrictive legislation which followed these early forays into the concept of law as a means of controlling industrial relations. The Donovan Report did indeed represent the thin end of the legal wedge and opened the floodgates to the many enactments designed to control and emasculate the trade union movement which the Conservative governments of the 1980s and early 1990s were able to introduce.

The collective failures of the Donovan Report, *In Place of Strife* and the *Industrial Relations Act* to bring about industrial peace were, however, only indicative that legislation was not the most appropriate means of achieving this goal at this particular point in time. Alternative attempts to reduce strikes and engage trade unions in closer working relationships with employers and their associations, and with the government, did meet with some success in the 1970s and may be usefully attempted again in the future. This will, however, depend on whether government is able to keep an open mind on the utility, or perhaps futility, of legislative controls such as those attempted in the years between 1965 and 1975.

## TABLE OF ABBREVIATIONS

ACAS	Advisory Conciliation and Arbitration Service
AESD	Association of Engineering and Shipbuilding Draughtsmen
AEF	Amalgamated Union of Engineering and Foundry Workers
AEU	Amalgamated Engineering and Electrical Union
AUEW	Amalgamated Union of Engineering Workers
ASLEF	Associated Society of Locomotive Engineers and Firemen
ASTMS	Association of Scientific, Technical and Managerial Staffs
BJIR	British Journal of Industrial Relations
CAC	Central Arbitration Committee
CAS	Conciliation and Arbitration Service
CBI	Confederation of British Industry
CIR	Commission for Industrial Relations
CSCA	Civil Service Clerical Association
DATA	Draughtsmen's and Allied Technicians' Association
DEP	Department of Employment and Productivity
EEF	Engineering Employers Federation
EPA	Employment Protection Act



ETU	Electrical Trades Union
GMW	General and Municipal Workers Union
HSWA	Health and Safety at Work Act
ICR	Industrial Cases Reports
ILJ	Industrial Law Journal
ILO	International Labour Organisation
ILP	Independent Labour Party
IRA	Industrial Relations Act
IRLR	Industrial Relations Law Reports
IRJ	Industrial Relations Journal
ISTC	Iron and Steel Trades Confederation
IPOS	In Place of Strife
LRC	Labour Representation Committee
MFGB	Mining Federation of Great Britain
MLR	Modern Law Review
MPS	Manpower and Productivity Service
MSC	Manpower Services Commission
NALGO	National Association of Local Government Officers
NBPI	National Board for Prices and Incomes

NEC	National Executive Committee
NEDC	National Economic Development Council
NIRC	National Industrial Relations Court
NUGMW	National Union of General and Municipal Workers
NUM	National Union of Mineworkers
NUPE	National Union of Public Employees
NUR	National Union of Railwaymen
OUP	Oxford University Press
SI	Statutory Instrument
TDA	Trade Disputes Act
TGWU	Transport and General Workers' Union
TUC	Trades Union Congress
UCATT	Union of Construction, Allied Trades and Technicians
UKAPE	United Kingdom Association of Professional Engineers
USDAW	Union of Shop, Distributive and Allied Workers

## INTRODUCTION

The 1960s was a period of economic difficulties in Britain, a time when there was a popular view that trade unions were partly, or even largely, to blame for rising inflation and Britain's declining industrial competitiveness due to frequent damaging strikes. By 1964, the Conservatives, already in government for thirteen years, were aware of a growing public disquiet around trade union power and influence. In response, the Government announced that a Royal Commission would be established after the General Election, with a remit to examine all aspects of trade union law. Although the Conservatives subsequently lost the General Election in October 1964, the new Labour Government appeared also to perceive some benefits in this policy, and it announced the appointment of a Royal Commission in February 1965 under the chairmanship of Lord Donovan. The Royal Commission on Trade Unions and Employers' Associations was tasked with a thorough consideration of the relations between management and employees, and the role of trade unions and employers' associations in promoting the interests of their members and in accelerating the social and economic advance of the nation, with particular reference to the law.<sup>1</sup> The resultant Report, the ensuing White Paper<sup>2</sup> proposals which were to some extent based on its recommendations, and the legislation which implemented some of them, but added others,<sup>3</sup> would collectively prove to be a watershed event in the evolution of industrial relations and of the law relating to trade unions, although

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<sup>1</sup> *Royal Commission on Trade Unions and Employers' Associations, 1965-1968*, Chairman: The Right Honourable Lord Donovan, Cmnd. 3623, 1968.

<sup>2</sup> *In Place of Strife*, Cmnd. 3888.

<sup>3</sup> See Chapter 5 below on the *Industrial Relations Act 1971*.

not all historians and contemporaries would necessarily agree on the extent of the impact which this engendered.<sup>4</sup>

*i. Historiography*

This thesis considers the role of legislation from an historical perspective, focusing on the Donovan Report, the subsequent White Paper, *In Place of Strife*, and the *Industrial Relations Act 1971*. These three documents collectively provide a unique and rigorous focus on the role of the law in industrial relations, which can give a valuable insight into the extent that legislation can be an instrument for achieving and maintaining industrial harmony. The research seeks to address the debate about the value of legislation in industrial relations, and to examine whether or not the events of the 1960s and early 1970s suggest that legislation in industrial relations could ever be more than just a means of providing a floor of rights for workers. The effect and value of industrial relations legislation from an historical viewpoint, with the focus on these three documents, offers an opportunity to examine just how effective legislation in industrial relations was in the context of the contentious climate of the 1960s and early 1970s.

An additional factor which adds to the overall interest in these three documents is that they were the product of both Labour and Conservative governments, which thereby contributes a political element to the focus and the outcomes of the documents. The relationship between politics, legislation and trade unions has been widely considered by politicians, industrial relations experts, and labour historians whose findings are reviewed here. In addition, the diaries and biographies of politicians and trade unionists are able to provide personal, and often opposing,

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<sup>4</sup> For a comprehensive account of trade unions and their relationship with the law up to 1958, see D. N. Pritt and R. Freeman, *The Law Versus the Trade Unions*, (London, 1958).

views of the role of legislation in industrial relations.<sup>5</sup> Political commentators and historians such as Keith Middlemas, Peter Dorey, Lewis Minkin, Denis Barnes and H. M. Drucker have written extensively on the relationship between trade unions and the two main political parties.<sup>6</sup> Dorey noted a shift in attitude in the Conservative Party away from collective *laissez-faire*<sup>7</sup> as the accepted norm, particularly among the younger members and especially so after the 1964 General Election.<sup>8</sup> Minkin wrote extensively on what he termed the 'contentious alliance' between the Labour Party and the unions, suggesting that each operated in separate spheres, neither intruding on the work of the other.<sup>9</sup> Barnes noted the weakened partnership between Labour and the unions in the 1960s,<sup>10</sup> while Drucker observed that critics 'of both left and right objected that the unions had too much influence over the [Labour] party.'<sup>11</sup>

More specifically, the link between labour legislation and trade unions in the late 1960s and early 1970s has received extensive attention from labour historians and industrial relations experts, indicating the areas where such government legislation

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<sup>5</sup> B. Castle, *Fighting all the Way*, (London, 1993); B. Castle, *The Castle Diaries, 1964-1976*, (London, 1990); R. Crossman, *The Diaries of a Cabinet Minister, Volume Three, Secretary of State for Social Services, 1968-70*, (London, 1977); G. Goodman, *The Awkward Warrior, Frank Cousins His Life and Times*, (London, 1979); J. Jones, *Union Man: An Autobiography*, (London, 1986); H. Wilson, *The Labour Government, 1964-1970: A Personal Record*, (London, 1971); C. Wrigley, *British Trade Unions 1945-1995*, (Manchester, 1997).

<sup>6</sup> V.L. Allen, *Trade Unions and the Government* (London, 1960); P. Bell, *The Labour Party in Opposition 1970-74*, (London, 2004); P. Dorey, *The Conservative Party and the Trade Unions*, (London, 1995); J. McIlroy, N. Fishman, A. Campbell, (eds), *The High Tide of British Trade Unions: Trade Unions and Industrial Politics, 1964-79*, (Monmouth, 2007); K. Middlemas, *Politics in Industrial Society: The Experience of the British System since 1911*, (London, 1979); M. Moran, *Politics of Industrial Relations: The Origins, Life and Death of the Industrial Relations Act 1971*, (London, 1977); B. Pimlott, C. Cook, (eds), *Trade Unions in British Politics: The First 250 Years*, (London, 1991); B. Pimlott, V. Cook, (eds), *Trade Unions in British Politics*, (London, 1982); A. Seldon, *Churchill's Indian Summer: the Conservative government, 1951-55*, (London, 1981); J. Sheldrake, *Industrial Relations & Politics in Britain, 1880-1989*, (London, 1991); R. Taylor, *The Trade Union Question in British Politics: Government and Unions since 1945*, (Oxford, 1993); S. Webb, B. Webb, *Industrial Democracy*, (London, 1897).

<sup>7</sup> A reference to government policy to leave trade unions to bargain freely, with limited government intervention.

<sup>8</sup> P. Dorey, *British Conservatism and Trade Unionism, 1945 – 1964*, (Farnham, 2009).

<sup>9</sup> L. Minkin, *The Contentious Alliance: Trade Unions and the Labour Party*, (Edinburgh, 1991).

<sup>10</sup> D. Barnes, E. Reid, *Governments and Trade Unions; The British Experience 1964-79*, (London, 1980).

<sup>11</sup> H.M. Drucker, 'The Influence of the trade unions on the ethos of the Labour Party', in B. Pimlott, V. Cook, (eds), *Trade Unions in British Politics*, (London, 1982), p. 243.

has been actively sought and welcomed by the trade unions, and where it has been vehemently opposed.<sup>12</sup> Industrial relations and the associated problems and potential solutions have also been the subject of much literary attention from industrial relations experts, both in Britain and as a subject for comparative study from further afield. Collectively, these publications present a wide variety of interpretations of the nature of industrial relations of the 1960s and early 1970s which aims to shed considerable light on the wider debate about the reasons for and effectiveness of legislation in dealing with industrial relations.<sup>13</sup> However, very little attention has been paid to the role of legislation from the perspective of those who administer and interpret it – the lawyers. This thesis therefore aims to provide a new point of view, examining the law with the focus on the three key documents and related literature, and in particular how the legislation and proposals for new laws were received by those who were most affected by it, that is the trade unions.

The Donovan inquiry was the last attempt to comprehensively address the problems of industrial relations in the twentieth century, and historians have assessed the

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<sup>12</sup> P. Davies, M. Freedland, *Labour Legislation and Public Policy*, (Oxford, 1993); S. Deakin, G. Morris, *Labour Law*, (Oxford, 2012); B. Hepple, 'Great Britain' in *International Encyclopaedia of Labour Law & Industrial Relations*, (Dordrecht, 1977); O. Kahn-Freund, *Labour and the Law*, (London, 1977); R. Lewis, J. Clark, (eds), *Labour Law and Politics in the Weimar Republic: Selected German Writings of Otto Kahn-Freund*, (Oxford, 1981); O. Kahn-Freund, 'Industrial Relations and the Law – Retrospect and Prospect', *BJIR*, Vol. 7, Issue 3; W. McCarthy, (ed.), *Legal Intervention in Industrial Relations, Gains and Losses*, (Oxford, 1992); D. N. Pritt, R. Freeman, *The Law Versus the Trade Unions*, (London, 1958); R. Undy, P. Fosh, H. Morris, O. Smith, R. Martin, *Managing the Unions: The Impact of Legislation on Trade Unions' Behaviour*, (Oxford, 1996); K.W. Wedderburn, R. Lewis, J. Clark, (eds), *Labour Law and Industrial Relations: Building on Kahn-Freund.*, (Oxford, 1983); Lord Wedderburn, *The Worker and the Law*, (Harmondsworth, 1986); K.W. Wedderburn, *Labour Law and Freedom: Further Essays in Labour Law*, (London, 1995); K.W. Wedderburn, 'Labour Law and Labour Relations in Britain', *BJIR*, Vol. X, Issue 2, (1972); R. Lewis, 'The Historical Development of Labour Law', *BJIR*, Vol. XIV, Issue 1, (1976); G. H. Sorrell, 'The Role of the Law in an Industrial Relations System', *The Journal of Industrial Relations*, March 1969; J. Wood, 'Whither Labour Law Now?' *BJIR*, 1 November 1970.

<sup>13</sup> H. Clegg, *The Changing System of Industrial Relations in Great Britain*, (Oxford, 1979); H. Clegg, *The System of Industrial Relations in Britain*, (Oxford, 1970); A. Flanders, H. Clegg, (eds), *The System of Industrial Relations in Great Britain*, (Oxford, 1954); A. Flanders, *Collective Bargaining: Prescription for Change*, (London, 1967); A. Flanders, *Industrial Relations: What is Wrong with the System?* (London, 1965); A. Flanders, 'The Tradition of Voluntarism', *BJIR*, Vol. 12, Issue 1, 1974; E. Heffer, *The Class Struggle in Parliament: A Socialist View of Industrial Relations*, (London, 1973); O. Kahn-Freund, *Labour Relations: Heritage and Adjustment*, (Oxford, 1979); W.E.J. McCarthy, 'The Nature of the Strike Problem', *BJIR*, July 1970, Vol. 8, Issue 2; J.W. Garbarino, 'Managing Conflict in Industrial Relations: U.S. Experience and Current Issue in Britain', *BJIR*, November 1969.

value of the Report in its endeavours to find solutions to the problems in the 1960s in different ways. Broadly speaking, two schools of thought have emerged from the historiography on industrial relations in relationship to the Donovan Report, *In Place of Strife* and the *Industrial Relations Act 1971*. Some commentators have approved of the avoidance of any rush to legislation and the relatively modest recommendations of the Donovan Report, while others were critical that both the Report and *In Place of Strife* were missed opportunities.

Keith Middlemas, for instance, argued that the Donovan Commission was aware of the perils inherent in legislative interference in industrial relations. He reflected that the Donovan Commission understood only too well the danger of 'governments using the law for fundamentally incompatible political ends'.<sup>14</sup> He believed that, in the wake of the Donovan Report and *In Place of Strife*, there was in fact a real, constitutional danger,<sup>15</sup> suggesting that the use of legislation to circumscribe trade unions' political power gave rise to a 'dissociation between legally-prescribed activity and activity legitimised by a form of mass popular democracy'.<sup>16</sup> Since trade unions are essentially private, democratic organisations, any legislative attempt to circumscribe their activities would necessarily have to be approached with the utmost caution to ensure acceptance and compliance by the unions. To try and impose the will of Parliament on a reluctant union movement would also need strong justification in a country subject to both European Convention human rights laws and rules of the International Labour Organisation.

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<sup>14</sup> K. Middlemas, *Politics in Industrial Society: The Experience of the British System since 1911*, (London, 1979), p. 433.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

Stephen Dunn, writing 25 years after the publication of the Donovan Report, was aware of the accusations heaped upon it which had condemned the Report as an irrelevance, but nevertheless considered that 'it had weathered rather well'.<sup>17</sup> He pointed out that the desire of the Donovan Commission for a 'decentralized, management-driven collective bargaining system, stuffed with formal rule-making procedures' was a prominent feature of the UK private sector.<sup>18</sup> Peter Ingram went so far as to suggest that the 1980s were when the Donovan reforms 'came of age'.<sup>19</sup> These writers appear to suggest that proposals for reform, particularly in the form of legislation, must be suited to the particular period in which they are introduced. Furthermore, the evidence presented in this thesis also suggests that proposals for new legislation should not be based on historical successes, nor be designed to address future problems which have not yet manifested themselves. New legislation, it is suggested, should be appropriate for the prevailing circumstances.

Dunn also defended the purpose of a Royal Commission, proposing that Donovan had been able to get the government 'off the hook' by suggesting that it could actually do something about the disorder without offending the unions, and that it was not Donovan's fault if the government 'promptly got itself back on the hook by proposing legal penalties against unofficial strikers'<sup>20</sup> which were included in both *In Place of Strife* and the *Industrial Relations Act*. He went on to suggest that the 'juggernaut' *Industrial Relations Act* was not the only way to proceed, citing Crossley's alternative of developing the law experimentally, 'taking account of the initially limited capacity and motivation of the parties to move forward in the direction

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<sup>17</sup> S. Dunn, 'From Donovan to ... Wherever', *BJIR*, 31:2, June 1993, 169-187 at 170.

<sup>18</sup> *Ibid.*

<sup>19</sup> P.N. Ingram, 'Changes in working practices in British manufacturing industry in the 1980s: a study of employee concessions made during wage negotiations', *BJIR*, 29(1), 12.

<sup>20</sup> Dunn, 'From Donovan to ... Wherever', 171.



proposed.<sup>21</sup> The Conservatives in the 1980s had greater success in this regard by introducing industrial legal reforms only incrementally.<sup>22</sup> Despite this, Dunn argues that ‘Donovan’s pragmatic judgements on legal intervention were sound’ and even suggests that ‘the drama of the 1970s had to be played out and the stage littered with bodies before the cleansing could begin.’<sup>23</sup> Nevertheless, this was not the intention of the politicians or the unions at the time that these events played out.

Nevertheless, while those writing on the Donovan Commission in the 1970s, such as Keith Middlemas, may have approved of the Commission’s antipathy towards the law, David Metcalf, writing in 1993 and with the benefit of hindsight, considered that the Royal Commission had ‘underestimated the potential of the law to influence industrial relations’.<sup>24</sup> The evidence in his paper suggests that outcomes *can* be altered by legislation, noting the reduction in industrial action which resulted from a series of Conservative Government enactments to control union activity in the 1980s. He admits, however, that the Commission were right to be cautious, citing the disastrous experience with the *Industrial Relations Act 1971* as a warning against assuming that the unions would meekly accept new laws which interfered with the freedom to bargain collectively.

Labour historians, in particular, have noted the rise in demands for industrial legislation from across the political spectrum in the 1960s. Andrew Taylor observed that the Conservatives had seemed determined to undertake ‘legislative reform of

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<sup>21</sup> J. Crossley, ‘The Donovan Report: a case study in the poverty of historicism’, *BJIR*, 6(3), 301, cited in Dunn, *ibid.*, 172.

<sup>22</sup> W. Brown and S. Wadhvani, ‘The economic effects of industrial relations legislation since 1979’, *National Institute of Economic and Social Research Economic Review*, February 1990.

<sup>23</sup> Dunn, ‘From Donovan to ... Wherever’, 173.

<sup>24</sup> D. Metcalf, ‘Industrial Relations and Economic Performance’, *BJIR*, 31, 2 June 1993, 255-283.

the voluntarist tradition of non-intervention in industrial relations',<sup>25</sup> although Andrew Thorpe warned that such a top-down solution as the Conservatives proposed [in the *Industrial Relations Bill*] had very little chance of being effective. Indeed, he was eventually proved correct.<sup>26</sup> Chris Wrigley observed in the late 1990s that the 1960s had witnessed a 'substantial politicization of industrial relations through proposals for legislation'.<sup>27</sup> He was able to chart the start of the decline in voluntarism at around this time, and noted that there had never been a return to the status of collective *laissez-faire* as the dominant method of regulating industrial relations. These observations lend weight to the suggestion that the Donovan Report was the beginning of a watershed moment in the evolution of British industrial relations, and the start of a move towards greater legislative control from which there would be no turning back.

The Donovan Report may have failed inasmuch as many of its solutions were not implemented, but it is far from being an irrelevancy. Dunn's revisionist essay reconsidered Donovan's 'obsessive gnawing at the credibility of even the simplest proposal for legal reform' and 'the yawning gap in the explanation of why new voluntary regulation would work when fresh legal regulation would so dismally fail'.<sup>28</sup> He concluded that it was 'a pity that a *plan* for legal reform did not emerge from the Commission to be speedily implemented' and thought that the *Industrial Relations Act*, had it survived, would have been beneficial to the unions and would at least

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<sup>25</sup> A. Taylor, 'The Conservative Party and the Trade Unions', in J. McIlroy, N. Fishman, A. Campbell (eds), *The High Tide of British Trade Unions*, p. 151.

<sup>26</sup> A. Thorpe, 'The Labour Party and the Trade Unions', in J. McIlroy, N. Fishman, A. Campbell (eds), *The High Tide of British Trade Unions*, p. 138.

<sup>27</sup> C. Wrigley, *British Trade Unions 1945-1995*, (Manchester, 1997), p. 26.

<sup>28</sup> Dunn, 'From Donovan to ... Wherever', 182.

have put them on a solid legal footing and avoided them 'attaining their present semi-outlaw status.'<sup>29</sup>

The historiography surrounding the Donovan Report suggests that it provided the catalyst for change in industrial relations even though it came in for much criticism at the time of publication, with historians and other writers divided over its conclusions and recommendations, only a few of which were implemented. Many thought it did not go far enough. Dunn sums up the various views on Donovan by concluding, 'The more left-wing the commentator, the more likely he/she is to see Donovan as a success. The more right-wing, the more likely he/she is to find failure.'<sup>30</sup> Nonetheless, he argued that there have been lasting benefits which are directly attributable to the Report, such as the recommendation for a remedy for unfair dismissal, and which would not have come about in the absence of government 'interference', but that 'its essence – the pluralism at the heart of Donovan philosophy – was an optimistic hope, and that is being discarded.'<sup>31</sup>

Paul Davies and Mark Freedland, writing on *In Place of Strife*, considered the outcome of its proposals to be 'a matter of central significance to the whole history of labour legislation' in the post-war period.<sup>32</sup> The Labour Government's position was seriously weakened by its defeat over its proposals by the trade unions, and, 'in terms of its implications for the development of labour law, it was a climactic event', marking an important stage on the road away from collective *laissez-faire*.<sup>33</sup> Nevertheless, the White Paper was also seen by some as a missed opportunity, and that 'agreement could have opened up a much needed debate on trade union/state

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> P. Davies, M. Freedland, *Labour Legislation and Public Policy*, (Oxford, 1993), p. 273.

<sup>33</sup> *Ibid.*

relations, broadened the appeal of the Labour party and laid the foundations for the development of a planned economy in which full employment and low inflation could have been pursued.<sup>34</sup>

More recently, again Bob Hepple reviewed the law, and was still convinced that it had value as a body of regulatory norms which acted as a *supplement* to collective bargaining, as advocated by Kahn-Freund in 1969<sup>35</sup> and by many others on the Donovan Commission. He considered that the advice of Kahn-Freund for more law of *this* kind was 'ignored by the ill-fated *Industrial Relations Act*'.<sup>36</sup> Brian Weekes went further in his article, citing the reason for the failure of the Act as 'the simple-minded assumption that law directly and inevitably reduces conflict', saying that this was 'erroneous'.<sup>37</sup>

Collectively, the three documents could have been viewed as failures or even irrelevancies in the 1960s and 1970s, but the historiography suggests that they each, collectively and individually, marked a turning point in the evolution of industrial relations legislation. On that view they must be worthy of further examination in the twenty-first century, particularly in the light of the recent trend towards further legislation designed to emasculate the unions and restrict their legitimate activities.

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<sup>34</sup> R. J. Taylor, *Victims of our History, The Labour Party and In Place of Strife, 1968 to 1969*, (Unpublished thesis), 2004, p. 272. Also see R. Taylor, 'What if Harold Wilson and the unions had agreed In Place of Strife?' in, *Prime Minister Portillo and other things that never happened*, D. Brack and I. Dale (eds) (London, 2003).

<sup>35</sup> O. Kahn-Freund, 'Industrial Relations and the Law – Retrospect and Prospect', 1969, 7 *BJIR*, 323.

<sup>36</sup> B. Hepple, 'The Future of Labour Law', *Industrial Law Journal*, Vol. 24, Issue 4, 1995, 303-322.

<sup>37</sup> B. Weekes, 'ACAS – An Alternative to Law', *Industrial Law Journal*, Vol. 8, Issue 1, 1979, 147-159.

ii. *Aims and questions*

The primary aim of this research is to conduct an analysis of the place that legislation held within industrial relations through an examination of the *Donovan Report*, *In Place of Strife* and the *Industrial relations Act 1971*, to analyze academic writings on these three documents, and to suggest reasons why they failed to translate into workable solutions to the various problems within industrial relations in the 1960s and 1970s. In the light of those findings, alternatives to legislation which have been considered or attempted during the same period are examined to determine whether greater attention should have been paid to these, and whether they could have provided workable, alternative solutions to the problems of strikes that beset Britain, offering a more effective means of gaining the cooperation of unions with employers and governments. Greater support for collective bargaining was the preferred alternative to legislation of the Donovan Commission, but other important mechanisms include the Social Contract, the Conciliation and Arbitration Service, and employee participation or industrial democracy.

These three principal documents have been selected since, collectively, they represent a watershed moment in labour history, marking the beginning of a slow decline in voluntarism in collective bargaining from which the trade unions have never recovered. They also represent an outstanding example of the process of legislation of the most important kind, beginning with a thorough review of industrial relations and existing law by a Royal Commission, followed by a consultative White Paper, and culminating in an Act of Parliament. Critically, both the White Paper and the statute contained restrictions on trade unions which went well beyond the Donovan recommendations, thereby casting some doubt on the overall purpose of a

Royal Commission, which is to inquire, consider and make recommendations on the best possible way forward for future legislation.

The second aim is to establish whether the events of this period indicate that there is more of a role for the law in industrial relations than the Donovan Commission was prepared to admit. Indeed, a detached appraisal of the *Industrial Relations Act 1971* could, it has been suggested, have been to the benefit of trade unions in time, ensuring a degree of democracy among members on the decision to strike, with a secret ballot and a cooling-off period before strike action in vital services.<sup>38</sup>

The third and final aim is to consider whether the *Industrial Relations Act 1971* - in some respects a reaction to the failure of *In Place of Strife* – prepared the way for the incremental legislative approach of the Thatcher and Major Conservative governments in the 1980s and 1990s. Through a critical appraisal of the strategic and legislative errors made by both the Labour and Conservative Governments of this period, the thesis examines what lessons could be learned by subsequent governments. In particular, to demonstrate that there may be a middle way for industrial relations regulation – somewhere between voluntarism and highly restrictive legislation. That is, that historical lessons are taken into account by governments, that there are sound, well-defined reasons for introducing restrictive legislation, and that it is introduced slowly and through a process of small step-changes in order to gain acceptance through a gradual and consultative process.

The questions addressed here are therefore:

1. Why did the three documents fail to translate into workable solutions to the problems of industrial relations?

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<sup>38</sup> *Industrial Relations Act 1971*, ss. 138, 141 and 143.

2. Would alternative methods have been preferable?
3. Is there more of a role for legislation than the Donovan Commission was prepared to admit?
4. Did the *Industrial Relations Act* prepare for the incremental legislative approach which followed in the 1980s, and are there sound reasons for introducing restrictive legislation more slowly?
5. Is there a middle way, between restrictive legislation to control trade union activity and complete autonomy?
6. What lessons can be learned from this study which might inform future legislation?

### *iii. Methodology*

#### iii (a) Introduction

The purpose of this research is to establish what really happened in the industrial relations debate in the 1960s and 1970s, and what can be learned from the attempts to legislate at a time of burgeoning union strength and Conservative and Labour uncertainty and hesitancy about unbridled trade unionism and strike action?

The Donovan Report was heavily criticized when it was published. Very few of its recommendations were implemented, successive governments having instead pursued more radical policies, including extensive restrictive legislation. The Labour Government made several proposals for new laws in the White Paper, *In Place of Strife*, but it failed to gain agreement from the unions and these were not implemented. The subsequent *Industrial Relations Act 1971*, despite its numerous

provisions for the exercise of greater control over unions, also failed to realize its key objectives, which were to bring greater order into collective bargaining and reduce strikes, thereby casting substantial doubt on the efficacy of such legislation.

In order to determine whether legislation was in fact an appropriate medium for regulating trade unions during this particular period of history, it has been necessary to pursue a number of research objectives. The first was to examine and analyze these three primary sources in terms of proposed changes to the law which they contained. The second was to make a thorough investigation and analysis of written opinion on them, by historians, politicians, industrial relations experts, journalists, trade unionists, legal experts and employers' organizations. The final objective was to establish a synthesis from those resources, to establish the efficacy of legislation in industrial relations from an historical viewpoint, and to determine what lessons may be learnt from this for future legislators. Through careful examination and analysis of key primary and secondary sources, this thesis endeavours to advance theoretical explanations for the role of legislation within industrial relations of the 1960s and early 1970s, using these key historical documents as the focus for this study.

### iii (b) Ethical considerations

Ethically, such an examination posed few difficulties since the majority of those involved in the preparation of these primary sources, and many of the secondary sources, are deceased. The Thirty-Year Rule also implicitly suggests that the relevant government documents are no longer considered to be potentially damaging to governments or the Monarchy. Further scrutiny of them would therefore be unlikely to cause distress to their authors. Therefore, to meet the objectives set out



above, documentary and archival research methods were used as the primary focus of the investigations.

### iii (c) Initial research

In approaching this research I was mindful of the need to painstakingly examine the three documents, and consider them in relation to the contemporary and secondary articles, books and journals that have been written on them in a form of comparative historical analysis. This has involved examining the views of the key protagonists.

Since many of the authors had drawn on primary source material, the next stage was to investigate those sources, and related materials, including government records. Many of these documents had been classified as confidential, secret or 'top secret' and therefore offered an insight into what was said in private by politicians and in their meetings with industrialists and trade union leaders. To gain the views of trade unionists, the TUC archives gave access to the verbatim reports of TUC Congress meetings and minutes of other meetings. These archives combined to give access to a range of very different perspectives on the same subjects, enabling a fuller and more balanced understanding of events.

These documents were studied in chronological order in order to examine the sequence of events, some of which were compressed into a very short space of time, such as the discussions between the Government and the TUC over *In Place of Strife*. The single document which received lengthy and highly detailed consideration was in fact the Donovan Report itself, although much of the initial detail had to be omitted in the final thesis.

### iii (d) Extended research

Following a reading of *In Place of Strife* and the Donovan Report, the various views held by politicians, trade unionists and industrialists were examined to determine which issues they debated, and which proved to be the most controversial. These were found in newspapers, books, journals, trade union publications, TUC reports and in the collected papers of Eric Heffer and others, but government records and diaries offered a more personal insight into the focus of policy objectives of the time. Barbara Castle's diaries and the records of meetings which took place at the level of government revealed the anxiety over the parlous state of industrial relations and its effect on the economy. Similarly, the records of the major political parties revealed the often opposing views, both on trade unions themselves and on the correct course of action to be taken in order to reduce strikes and improve industrial relations.

For further analysis of parliamentary debates, and for a more focused examination of important political events, newspapers such as the *The Times* and *The Guardian* gave insightful, although often subjective, contemporaneous accounts. Parliamentary debates, on the other hand, were readily accessible through the Hansard website and were often reported verbatim in *The Times*. It was instructive to examine these accounts in order to gain multiple perspectives on the issues.

Biographies of key politicians and trade unionists gave yet another perspective, albeit a highly personalized one, on the controversy over the two documents. Jack Jones's biography, *Union Man*, offered a personal view of the strength of trade unions and their bargaining position *vis-a-vis* the government. In particular, the significance of the position held by Barbara Castle as virtually the only female

contributor to the debate, and certainly the only woman to have a major role in politics at the time, adds a further interesting dimension. Although this thesis does not touch on the significance of feminism in the 1960s, it is highly probable that Castle's determined and ambitious nature which led to her being elevated to such a powerful position in government may also have caused her to have overreached herself and overestimated what was achievable through legislation.

The overall research process focused on the purposes of triangulation, using different data sources which could support and validate each other, thereby giving a fuller and more rounded picture. This thesis therefore draws on a wide range of primary resources which have rarely been examined in relation to industrial relations, as well as many which are readily accessible. It uses a comparative historical analysis approach, comparing and contrasting a wide range of works from a number of authors in the fields of industrial relations, history and politics.

### iii (e) Material Selection

The selection process had the primary sources as its main focus, including government records, since these provided the most reliable source of original information. Secondary sources were then used to give a range of views and perspectives from trade unions, industrialists, and both Conservative and Labour politicians. These came from TUC Reports, biographies and diaries, letters and Hansard reports. An examination of the historiography was undertaken, measuring it against the primary evidence, while the writings of industrial relations experts and journalists were used to provide analytical commentary. The contemporary writings could take account of the current political and economic situation and offer views on how legislation might be appropriate *at that time*, while those who wrote later

accounts could offer a more detached and objective commentary on the events with the benefit of hindsight and distance.

### iii (f) Methodology Summary

The research is largely based on documentary evidence from a variety of sources, including major archives. Books and journals, pamphlets, and other material aim to give a rounded, holistic examination of both the polarized and the moderate views of the role of legislation in industrial relations, much of it in relation to the three documents which are central to this thesis. In work of this nature, covering almost a decade and examining three highly significant documents, it is impossible to include everything that has been written about them. Nevertheless, this thesis attempts to provide a broad overview from multiple perspectives with the aim of exploring the fundamental role of legislation in an area where, up until the 1960s, it had been largely absent.

#### *iv. Subject matter of the Donovan Inquiry and the nature of the 'problem'.*

Both trade unions and employers' associations (EAs) were the subjects of the Donovan Commission inquiry, as EAs served some of the same functions as the unions, and both they and the representative body for trade unions, the TUC, submitted evidence to the inquiry. (The subject matter of this thesis does, however, focus primarily on trade unions, with only minimal reference to employers' associations).<sup>39</sup> Company managers and employers also gave evidence to the

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<sup>39</sup> At the time of the inquiry, the Department of Employment and Productivity (DEP) listed around 1,350 employers' associations. The biggest of these was the EEF which covered 4,600 establishments and over two million employees. All of these EAs were concerned directly with the negotiation of wages and working conditions.

Commission.<sup>40</sup> The 108 employers' associations within the membership of the Confederation of British Industry (CBI) represented companies whose employees amounted to more than three-quarters of all employees in the private sector of industry and transport, and were thus an important and powerful voice in the debate over the role of legislation in industrial relations.

Trade unions had been the subject of legislative control to varying degrees for well over a century, giving rise to a statutory definition of trade unions. However, in the Report, the term 'trade union' is used to connote combinations of employees only.<sup>41</sup> By 1966, there were large numbers of trade unions, varying in size from 24 members of the Jewish Bakers' Union to almost 1.5 million in the TGWU. There were 574 different trade unions with a total of 10,111,000 members; 184 of these unions were affiliated to the TUC, but these unions between them had a total membership of nearly nine million employees.<sup>42</sup> Thus, although not all trade unions were affiliated to the TUC, it is frequently referred to in this thesis as the representative body for trade unions, and its influence with both workers and government was considerable.<sup>43</sup>

As to the legal status of trade unions, they were (and still are) private, non-profit making associations without corporate status. Agreements forged collectively between employers and unions do not have the force of a contractual, legally binding agreement, but are binding in honour only.<sup>44</sup> In this regard, trade unions are literally

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<sup>40</sup> In 1965 the three main central employers' organisations - the Federation of British Industries, the British Employers' Confederation and the National Association of British Manufacturers - formed one new organisation, the Confederation of British Industry (CBI).

<sup>41</sup> Royal Commission Report, Cmnd. 3623, para. 27.

<sup>42</sup> *Ibid.*, para. 28.

<sup>43</sup> Similarly, references to trade unions here are references to the leadership of the unions rather than their members, unless otherwise stated.

<sup>44</sup> Currently s. 179 *Trade Union and Labour Relations (Consolidation) Act 1992*.

a law unto themselves,<sup>45</sup> reliant upon a system of voluntarism to regulate their internal affairs, and it is therefore only through overarching legislation that they can be collectively regulated and managed. Prior to the comprehensive *Industrial Relations Act 1971*,<sup>46</sup> legislation relating to trade unions had been largely piecemeal. Certainly, there had been no previous attempt made before the Donovan Report to undertake such an extensive examination of the role of trade unions and employers' associations, and to consider how industrial relations legislation might be used to further the social and economic advance of the nation.

The Labour Government which established the Donovan Commission could not take the trade unions for granted, despite the historically close ties that existed between them. Some commentators thought that Labour could at least claim with some justification that it was better fitted to deal with the unions than its Conservative predecessors.<sup>47</sup> The trade union movement – key financial backers of the Labour Party - had often looked to Labour governments to legislate to make its life easier.<sup>48</sup> Nevertheless, in 1952, following the election of a Conservative Government, the TUC indicated that it had a 'long-standing practice to work amicably with whatever government is in power ... to find practical solutions to the social and economic problems facing the country'.<sup>49</sup> The problems which had led both Conservative and Labour Governments to call for a Royal Commission in the 1960s necessitated urgent governmental review. There was a growing belief among trade union

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<sup>45</sup> Trade unions were referred to as 'outlaws' in the literal sense by George Woodcock when commenting on the *Rookes v Barnard* decision to the Press, saying that unions were accustomed to operating outside the law, with reference to sections 3 and 4 of the 1906 Act. *The Times*, 11 September 1964.

<sup>46</sup> The need for 'comprehensiveness' was called for by Robert Carr, Shadow Spokesman on Labour and from 1970 Secretary of State for Employment, in both *Fair Deal at Work* and on introducing the Industrial Relations Bill: HC Deb., 26 November 1970, Vol. 807, c. 633.

<sup>47</sup> C. Crouch, *The Politics of Industrial Relations*, (Manchester, 1979).

<sup>48</sup> J. Sheldrake, *Industrial Relations and Politics in Britain, 1880-1989*, (London, 1981), p. 67.

<sup>49</sup> General Council Report to the TUC, *Annual Congress Report*, 1952, p. 300.

members that ‘the government was demanding unjustified sacrifices ... through the imposition of incomes policy’, a view that was beginning to be shared by trade union officers, the TUC and Labour backbenchers.<sup>50</sup> Nevertheless, the high level of industrial unrest, particularly unofficial strikes, led Labour leaders to believe that these were attempts to sabotage their attempts to deal with a difficult political and economic situation.<sup>51</sup> Harold Wilson, the Prime Minister, ‘became increasingly attracted to the idea of trade union reform and the use of legislative intervention to discipline industrial disputes.’<sup>52</sup> Wilson may also have harboured hopes that a Royal Commission would take the issue of industrial relations out of politics for two or three years, and that it could conceivably generate proposals which might improve industrial relations, satisfy public opinion and still be acceptable to trade unions.<sup>53</sup>

Legislation to control industrial relations was not a new concept when the Royal Commission was established in 1965. Indeed, there had been legislation of one kind or another for around two hundred years, all aimed at controlling the unions. Industrial relations were already in a state of flux, moving from the voluntarist, non-interventionist position that had become the accepted position from the end of World War Two, to an increased level of state, legislative control from the early 1960s onwards.<sup>54</sup> This fundamental shift from collective *laissez-faire* as the appropriate government policy immediately after the Second World War, when there was relatively little government control of industrial relations, through to a realization that such a position was no longer tenable, had some justification. Allan Flanders, who was a member of the Royal Commission, noted that the potential for conflict

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<sup>50</sup> Sheldrake, *Industrial Relations and Politics in Britain, 1880-1989*, p. 69.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> D. Barnes, E. Reid, *Governments and Trade Unions: The British Experience 1964-1979*, (London, 1980).

<sup>54</sup> For example, the *Contracts of Employment Act 1963* and the *Industrial Training Act 1964*.

between sectional (i.e. union) and national interests had become more pronounced in the post-war years, as full employment impacted on the conduct of collective bargaining, creating a wage-price spiral and bringing about a serious degree of under-employment of employed labour.<sup>55</sup> Employers offered little resistance to demands for higher wages, while national agreements did little more than fix minimum rates of pay, so there was minimal restraint on economic competition among employers for labour.<sup>56</sup> Without government intervention, it seemed, the wage-price spiral would continue to gather momentum and eventually spin out of control. Industrial relations were governed by collective bargaining, and employers and employees had the autonomy to regulate their own working relationships through non-legal means. However, the arrival of full employment from the late 1940s which continued throughout the 1950s, combined with the rise in the incidence of unofficial strikes, made it increasingly necessary to reconsider the non-interventionist position. The Donovan Commission would be required to provide guidance on how industrial society should be governed in the future, and the role that law should play, if indeed it should have any role at all. In particular, it would consider whether strict regulation was completely unacceptable, whether there was a place for light regulation, or whether any form of regulatory legislation could ever be acceptable to the unions.

v. *In Place of Strife*

The concerns of politicians in the 1960s, a decade of frequent strikes and an ailing economy, were of a more practical and urgent nature than of many of those troubling

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<sup>55</sup> A. Flanders, *Collective Bargaining: Prescription for Change*, (London, 1967), p. 20.

<sup>56</sup> *Ibid.*, p. 23.



the members of the Commission. The post-war consensus between trade unions and political parties began to break down in the late 1950s, and calls had begun to emerge - initially from the Conservative Party, but later from the Labour Government - for more radical policies.<sup>57</sup> Barbara Castle, as Secretary of State for Employment and Productivity, may therefore have felt compelled to go beyond the Donovan recommendations, although the problem for her was 'how to go further than the Donovan Report and give [a consultation paper] a more positive role without causing serious conflict with the trade unions.'<sup>58</sup> She quickly produced the White Paper, *In Place of Strife*, 'a coherent and strongly argued document', which 'proposed a radical, vigorous use of the state in industrial relations,' according to Robert Taylor.<sup>59</sup> Yet she failed to convince the TUC and key industrial leaders that her policies were necessary, and the proposals in the White Paper failed to be translated into legislation. The reasons for this are considered in Chapter 4 below.

vi. *The Industrial Relations Act 1971*

The Conservatives wrested power from Labour in 1970. The new Government pushed swiftly ahead with its own proposals for reform of industrial relations through a series of highly restrictive measures that went considerably further than Castle's. The *Industrial Relations Act 1971* was passed without delay and without meaningful negotiation or consultation with the TUC. The opposition from trade unions and from the TUC, both before and after the Bill passed into law, was unprecedented in political history, and eventually contributed to the downfall of the Government in

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<sup>57</sup> First noted in *A Giant's Strength*, Inns of Court Conservative Association, 1958. Crouch, a sociologist, noted that the Party was able to review its policies more radically when released from office in 1964. C. Crouch, *The Politics of Industrial Relations*, (Manchester, 1979), p. 66.

<sup>58</sup> D. Barnes, E. Reid, *Governments and Trade Unions: The British Experience 1964-1979*, (London, 1980), p. 113.

<sup>59</sup> R. Taylor, *The Trade Union Question in British Politics: Government and Unions since 1945*, (Oxford, 1993), pp. 159-160.

1974. The Act was quickly repealed by the next Labour Government. Its short life was one of the most controversial and ultimately unsuccessful enactments in labour history, and served to suggest the inadvisability of using legislation to restrict the activities of trade unions without first having meaningful consultation with the employers and trade unions. The controversial parts of the Act are considered in Chapter 5 and reasons are posited for its failure; in particular, that such restrictive legislation is likely to have a better outcome for the legislature if it is introduced in stages rather than *en bloc*, as the Thatcher Government would demonstrate in the 1980s.

*vii. Conclusion: the purpose of this thesis*

There is a substantial corpus of material on the role of law as it applies to trade unions, but this thesis attempts to provide an in-depth study of the first major post-war attempt to control strikes and regulate industrial relations in Britain. It takes an interdisciplinary approach, with the research sitting on the boundaries between Labour and Legal History. It asks whether industrial legislation can be to the benefit of workers and trade unions, and also whether there is a point beyond which the legislature would be advised not to stray in its efforts to control union activities. This particular period of history had already witnessed the development of large-scale intervention in collective bargaining through the *Prices and Incomes* legislation of 1966 and the *Redundancy Payments Act 1965*, and would be followed by the *Equal Pay Act* in 1970. Future legislators could derive valuable lessons from events of this period when considering further legislation which tries to take control of industrial relations, thereby ignoring or sidelining the value of voluntarism and the antipathy of trade unions towards laws which interfere with their long-established freedoms.

An analysis of the political documents produced between 1965 and 1970 show initial agreement between Labour and Conservative thinkers on the efficacy of such legislation, but as the economic situation worsened in the late 1960s, both sides grew more determined to exercise still greater legislative control over the unions. Although Castle called for the Labour Government to introduce more radical legal solutions than the Commission had recommended,<sup>60</sup> the Conservatives went considerably further in their paper, *Fair Deal at Work*<sup>61</sup> and the subsequent *Industrial Relations Act 1971*, despite a clear direction to the contrary produced in 1964 by their own think-tank.<sup>62</sup> The following chapters provide an analysis of the outcomes of these forays into new legislative territory, helping to determine the answer to the fundamental question – to what extent can legislation act successfully to regulate and control industrial relations in the light of the limited success of Donovan and the almost outright failure of the White Paper and the 1971 Act?

The writings of the Commission members, both before and after the Report, provide compelling and credible arguments for voluntarism and self-regulation which, with continuing governmental support and minimal control, may well have continued unabated. This may have given a wholly different aspect to industrial relations in the late twentieth and early twenty-first century, although the failure of the Commission to give serious consideration to non-legislative methods of regulating industrial relations such as industrial democracy and union representation on company boards was clearly a critical omission.<sup>63</sup>

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<sup>60</sup> White Paper, *In Place of Strife*, Cmnd. 3222, 1969.

<sup>61</sup> *Fair Deal at Work: The Conservative Approach to Modern Industrial Relations*, Conservative Political Centre 1968.

<sup>62</sup> NA CAB 129/117/1, Report of the Official Committee on Trade Unions and the Law, January 1964. See Chapter 3 below.

<sup>63</sup> Chapter XV of the Royal Commission Report, 'Workers' Participation in Management' ran to just four pages.

## Chapter 1. The Role of Legislation in Industrial Relations

### 1.1 Introduction: the role of legislation in industrial relations

Parliamentary legislation has been a constant companion to the trade union movement, initially with attempts to curtail union activity by declaring it to be unlawful, but later providing important immunities to enable unions to protect their funds. The trade unions welcomed certain instances of this state intervention. These include the *Conspiracy and Protection of Property Act 1875* which provided for the removal of criminal liability for conspiracy from acts done in contemplation or furtherance of a trade dispute, and the *Trade Union Act 1906* which provided protection to unions following the *Taff Vale*<sup>64</sup> and *Quinn v Leathem*<sup>65</sup> cases in which the House of lords had effectively created new forms of liability for certain trade union activities. Other examples include: the *Trade Union Act 1871*, which legalized trade unions in Britain for the first time; the *Employers and Workmen Act 1875*, which put the contract between workers and employers on a civil footing and removed liability for criminal conspiracy; the *Trade Union Act 1913*, which gave unions the right to divide their subscriptions into political and social funds; and the *Trade Boards Act 1918* which was aimed at tackling the problem of sweated labour. Later statutes include the *Wages Councils Acts 1945* which concerned the setting of minimum wages and encouraged the extension of collective bargaining, while the *Contracts of Employment Act 1963* required all employers to give written particulars of employment and reasonable notice of dismissal. In addition there were various statutes relating to health and safety.

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<sup>64</sup> *Taff Vale Railway Co. v Amalgamated Society of Railway Servants* [1901] AC 426 [HL].

<sup>65</sup> *Quinn v Leathem* [1901] AC 495 [HL].

Other statutory interferences were often reviled and resisted, however, as they were in the eighteenth and nineteenth centuries when trade union activities were banned or subjected to severe legislative controls. The *Combination Acts* of 1799 and 1800, which inhibited industrial action and banned all kinds of combination of workers, prohibited all trade union activity regardless of trade. These were put in place as generic pieces of legislation to avoid having to legislate for every instance of trade unionism or industry.

Nevertheless, by 1906, trade unions were not only legal, but free from the liabilities that afflicted other institutions and individuals. Pritt and Freeman described how this 'long journey from complete illegality to virtually complete and normal legality is a story of union activity, starting at a time when a variety of legal weapons could be ... used to render every such activity ... not merely illegal but criminal ... and continuing until the present state of legality was established.'<sup>66</sup> This was accomplished through these various Acts of Parliament, leading in due course to 'irresistible demands by the workers for further legislation.'<sup>67</sup> While restrictive laws were anathema to trade unions, they nevertheless recognized that without legislation they would be emasculated and powerless.

The advent of the Labour Party in the early twentieth century had brought with it a noticeable reduction in governmental interference with trade union affairs. Indeed, a greater threat to union autonomy at this time came from the courts in the form of

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<sup>66</sup> D. N. Pritt, R. Freeman, *The Law versus the Trade Unions*, (London, 1958), p. 15.

<sup>67</sup> *Ibid.*

highly damaging judicial decisions,<sup>68</sup> a state of affairs which has recurred from time to time throughout the twentieth century. Pritt and Freeman attributed this judicial antipathy to judges being ‘conditioned by their surroundings to understand fully only those [standards] of the employers.’<sup>69</sup> By the 1960s, the state of industrial relations had reached something of a crisis point, and it was clear to the governments of the day that they would have to address the ‘trade union problem’ – a combination of the fear that unions were becoming ‘over-mighty’ subjects;<sup>70</sup> unofficial strikes becoming a common occurrence;<sup>71</sup> and power ‘falling out of the hands of trade union officials and into those of the unofficial shop stewards’ movement.<sup>72</sup> Legislation was one possible solution to these problems, and the Royal Commission was required to inquire into the role that law could play in improving industrial relations in Britain.

This chapter examines the place of the law in industrial relations. It considers whether or not early twentieth century industrial relations legislation was still relevant to the 1960s when the unions were considerably stronger than at the turn of the century. Furthermore, it explores how those considerations may have influenced the Donovan Commission. It examines the writings of those who served on the Commission and their contemporaries, and also of historians writing more recently who were able to take a view of the Donovan Report in the context of later industrial relations developments. The key questions for the Donovan Commission were

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<sup>68</sup> Hornby v Close 1867 LR 2 QB; Curran v Treleaven [1891] 2 Q.B. 545; Temperton v Russell [1893] 1 Q.B. 715; Trollope and Sons v London Building Trades Federation, *The Times*, 28 April, 1,2, and 5 May 1896; Lyons v Wilkins [1899] 1 Ch.255. Quinn v Leathem [1901] AC 495. Taff Vale Railway Company v Amalgamated Society of Railway Servants, UKHL 1 1901; Amalgamated Society of Railway Servants v Osborne [1910] AC 87; Rookes v Barnard [1964] UKHL 1; Stratford v Lindley [1965] AC 269.

<sup>69</sup> Pritt, Freeman, *The Law versus the Trade Unions*, p. 23.

<sup>70</sup> The Inns of Court Conservative and Unionist Society, *A Giant's Strength: Some Thoughts on the Constitutional and the Legal Position of Trade Unions in England*.

<sup>71</sup> Bodleian, John Hare, *Unofficial Strikes* CPA/ACP3/10(63)103. Ninety per cent of strikes in 1960-62 were unofficial, according to Ministry of Labour statistics. For an alternative view of the nature of strikes in Britain see H.A. Turner, *Is Britain Really Strike Prone? A Review of the Incidence, Character and Costs of Industrial Conflict*, Occasion Paper No. 20, (Cambridge, 1969).

<sup>72</sup> K. Laybourn, *A History of British Trade Unionism, c.1770-1990* (Stroud, 1992).

whether or not legislation relating to trade unions still had a useful role to play in ensuring the economic health of the nation, and in particular, whether this could reduce the number and severity of strikes which threatened Britain's economic stability. To be able to answer those questions, it is first important to ask whether law is even necessary in industrial relations, and what its overall purpose and value are considered to be by various commentators.

### 1.2 Was law even necessary?

According to Hugh Clegg, a member of the Commission, the answer to the problem of industrial relations in the 1960s and 1970s lay in the role that the state played in industrial relations.<sup>73</sup> His answer was to keep to the traditional strategy in Britain of state support for voluntary agreements and organizations, with only minimal legislative interference. Nevertheless, this *laissez-faire* approach was coming under increasing pressure due to public and governmental concerns about inflation, restrictive practices and strikes,<sup>74</sup> (despite the fact that, in comparison with other countries, Britain's strike record was relatively low).<sup>75</sup> Clegg worked on the premise that trade unions could not change, and therefore other parties - management and government - had to.<sup>76</sup> His views came to play an influential role in the work of the Donovan Commission.

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<sup>73</sup> H. A. Clegg, *The System of Industrial Relations in Britain*, (Oxford, 1970).

<sup>74</sup> Bodleian, *Industrial Change: The Human Aspect*, CRD 2.7.17; *The Times*, 9 January 1964, 'Pitwinders strike costs 94,000 tons first day'; *The Times*, 28 January 1964, 'Move today to break ship strike deadlock'; *The Times* 27 February 1964, 'Strikes hit two car companies'.

<sup>75</sup> *The Times*, 4 June 1964, 'Britain gets off lightly with strikes'. Bodleian, John Hare, *Unofficial Strikes* CPA/ACP3/10(63)103. According to International Labour Office figures cited by Hare, from 1951 to 1960, less time was lost through strikes than in any other major industrial country in the free world apart from Western Germany, although the record was not as good as in other smaller countries such as Holland, Sweden and Switzerland.

<sup>76</sup> P. Ackers, 'The Changing Systems of British Industrial Relations, 1954-1979: Hugh Clegg and the Warwick Sociological Turn', *BJIR*, June 2011, 306-330.

While Clegg may have considered that most legal regulation would be unworkable, a more fundamental question was whether or not it was even *necessary*. There already existed alternative instruments or methods which would be more likely to achieve the same aims without arousing unnecessary hostility between unions and government, involving as they did an element of cooperation between the parties. The work of the National Economic Development Council (NEDC) was an example of how the two sides of industry could work together with the Government to achieve common aims. This economic planning forum of trade unionists, management and government, established in 1962 to address Britain's economic decline, was described as 'the most promising development in industrial relations in years.'<sup>77</sup> Later examples of tri-partite quasi-governmental organisations, with governing bodies consisting of employee representatives nominated by the TUC and employer representatives nominated by the CBI, included the Arbitration Conciliation and Arbitration Service (ACAS),<sup>78</sup> the Manpower Services Commission (MSC) and the Health and Safety Executive (HSE), although these differed from the NEDC in that they had administrative and policy-making functions and were not mere places for discussion.<sup>79</sup>

In 1971, in a similar spirit of cooperation, the leader of the Transport and General Workers' Union (TGWU), Jack Jones, called for a liaison committee bringing together the TUC and the Labour Party, saying that 'there is no reason at all why a joint policy cannot be worked out ... let us have the closest possible liaison.'<sup>80</sup> This liaison committee agreed on a Social Contract, to be effective if Labour was returned

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<sup>77</sup> *The Times*, 2 March 1964.

<sup>78</sup> See Chapter 6 for a discussion on the role of ACAS.

<sup>79</sup> P. Davies, M. Freedland, *Labour Legislation and Public Policy*, (Oxford, 1993), p. 409.

<sup>80</sup> J. Jones, *Union Man: An Autobiography*, (London, 1986). See Chapter 6 below for a discussion on the Social Contract.



to power in 1974, and continued to meet on a regular basis for many years.<sup>81</sup> This was an important and bold attempt to create and maintain industrial harmony without the need for restrictive legislation.

A further, but untried, possibility for closer working was the concept of industrial democracy, as the Bullock Committee proposed,<sup>82</sup> with trade union representatives as members of the board of companies.<sup>83</sup> Such industrial democracy is common in other countries including Germany and Denmark,<sup>84</sup> and was given brief consideration by the Donovan Commission,<sup>85</sup> although it failed 'to agree upon changes which might be expected to have the desired effect'.<sup>86</sup>

Legislation designed to regulate relationships between trade unions, employers and governments was not the only mechanism for achieving harmonious industrial relations, although it would have been the means by which certain bodies such as the Conciliation and Arbitration Service or industrial democracy would have to be introduced. These alternative mechanisms for regulating industrial relations are considered in detail in Chapter 6 below, demonstrating that legislation, while an immediate and powerful method of reforming industrial relations, is not an absolute necessity, but only one possible tool among an array of possible devices.

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<sup>81</sup> Labour Party Manifesto, October 1974, *Britain will win with Labour*, <<http://www.labour-party.org.uk/manifestos/1974/oct/1974-oct-labour-manifesto.shtml>>Accessed 10 December 2014.

<sup>82</sup> *Report of the Committee of Inquiry on Industrial Democracy* (1977) Cmnd. 6706; P. Davies, Lord Wedderburn, 'The Land of Industrial Democracy', *ILJ*, 1977, 6 (1), 197-211.

<sup>83</sup> This concept contrasts with Clegg's reductive model of industrial democracy which referred simply to effective collective bargaining: H. Clegg, *A new Approach to Industrial Democracy*, (Oxford, 1960).

<sup>84</sup> R. Lund, *International Studies and Management and Organisation*, Vol. 7, No. 2, 17-26; B. Wilpert, 'Research on Industrial Democracy: the German case', *IRJ*, Vol. 6(1), 1975, 53-64.

<sup>85</sup> *Royal Commission Report*, Cmnd. 3623, Ch. XV, 'Workers' Participation in Management'.

<sup>86</sup> *Ibid.*, para. 997.

### 1.3 The purpose of legislation

To be able to understand the role that law, specifically legislation, should play in industrial relations, it is necessary to first determine its purposes, and to consider why it is sometimes perceived as a necessary adjunct to such alternative ways of achieving industrial harmony. First, 'law' is not monotypic. Since the *Trade Union Act 1871*, when those trade unions which had registered with the Registrar of Friendly Societies finally became recognized as legal bodies, capable of protecting their funds in courts and striking legally,<sup>87</sup> a clearly enunciated legal framework for British industrial relations had begun to develop with two distinctive parts, according to Lord Wedderburn's analysis.<sup>88</sup> The first part is the floor of employment rights based on the *individual* employment contract with its gradual accretion of statutory rights, such as the duty to give employees written particulars of employment and minimum notice periods.<sup>89</sup> Health and safety legislation,<sup>90</sup> the right to redundancy compensation<sup>91</sup> and the proposed right of employees to challenge 'unfair' dismissal<sup>92</sup> are all part of a body of labour law establishing a floor of statutory rights and duties in the employment relationship, whether subject to collective bargaining or not.<sup>93</sup> These rights protected *all* workers, including those in non-unionized industries, thereby having a universal reach that the trade union movement was unable to match through collective agreements alone, since such agreements extended only to workers in the represented industry.

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<sup>87</sup> The 1871 Act was the result of the recommendations of the Royal Commission on Trade Unions, 1868-69.

<sup>88</sup> K.W. Wedderburn, 'Labour Law and Labour Relations in Britain', *BJJR*, Vol. X, Issue 2, July 1972, 270-290.

Lord William Wedderburn was an academic expert on industrial relations, becoming Professor of Law at LSE in 1964.

<sup>89</sup> Contracts of Employment Act 1963.

<sup>90</sup> For example: Mines and Quarries Act 1954; Factories Act 1961; Offices, Shops and Railway Premises Act 1963; Health and Safety at Work Act 1974.

<sup>91</sup> Redundancy Payments Act 1965.

<sup>92</sup> Industrial Relations Act 1971.

<sup>93</sup> Wedderburn, 'Labour Law and Labour Relations in Britain', 271.

The second part concerns legislation dealing with *collective* labour relations which, until the *Industrial Relations Act 1971*, was mainly based on non-intervention. There had been rare departures from this principle such as in the *Trade Disputes and Trade Unions Act 1927* (following the exceptional circumstances of the General Strike in 1926), during both World Wars, and as remedial action following judicial interference.<sup>94</sup> This type of law can be further sub-divided into two parts. The first sub-division is the negative protection of statutes relating to trade unions and trade disputes.<sup>95</sup> These statutes did not provide positive rights to organize and strike, but removed legal impediments to such activities. They provided exemptions from legal doctrines of restraint of trade and unlawful conspiracy, although it was Conservative lawyers who first labelled these exemptions as ‘privileges’, thereby attempting to undermine the rights of trade unions to enjoy such exemptions.<sup>96</sup>

Wedderburn’s analysis of the law identified the second sub-division of collective labour relations as relating to compulsory conciliation of disputes. Other jurisdictions, such as the USA, had compulsory procedures providing for 80-day ‘cooling off’ injunctions against strikes in emergency situations. Wedderburn pointed out that the problems with this were that the definition of ‘emergency’ is essentially a political decision, and also that the Executive should be presented with a *choice* of remedies - including conciliation.<sup>97</sup> Indeed, the *Industrial Relations Act 1971* would come to

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<sup>94</sup> Such legislation was enacted to deal with the very specific issues raised by labour shortages and war-time necessity. WW1 legislation included the *Munitions of War Act 1915*, requiring unions to forgo their right to strike and to recognize compulsory arbitration as a means of preventing stoppages on war work; and the *Trade Boards Act 1918* established trade boards which could fix pay rates in areas where organization was weak, but was primarily concerned with preventing labour unrest. In WW2, the *Emergency Powers (Defence) Act 1939* gave Ernest Bevin control over the labour force, while Order 1305 (18 July 1940) made strikes and lock-outs illegal. Judicial interference with union rights had also been common, a situation which could only be addressed and remedied through legislation such as the *Trade Disputes Act 1906*.

<sup>95</sup> *Trade Union Act 1871*, especially ss. 2, 3 and 4; *Conspiracy and Protection of Property Act 1875*, especially ss. 3 and 17; *Trade Disputes Act 1906*.

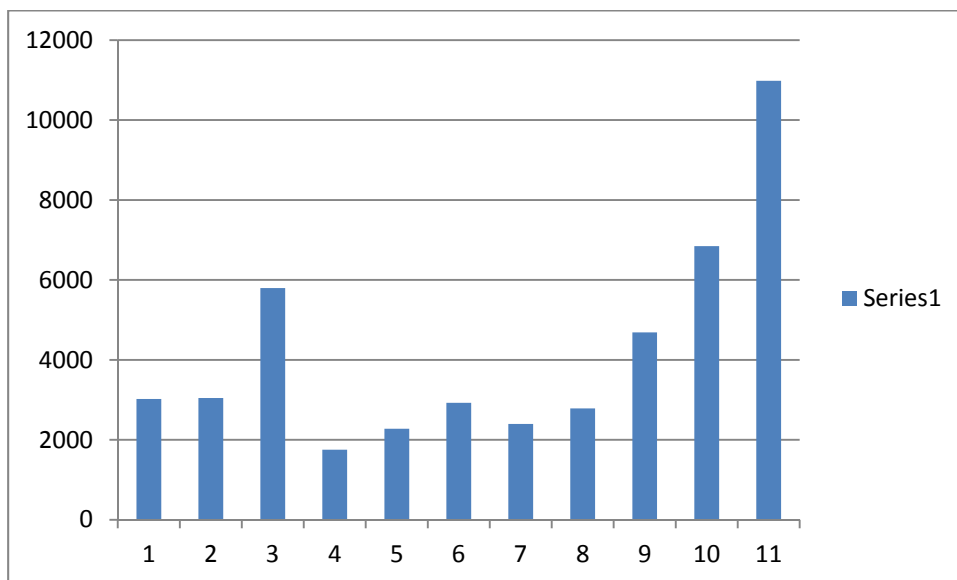
<sup>96</sup> *A Giant’s Strength*, 23: ‘we would like to see these substantial privileges ... given only to registered unions.’

<sup>97</sup> Wedderburn, ‘Labour Law and Labour Relations in Britain’, 274-5.

define 'emergency' so widely that almost any major industrial conflict would be included, and the remedy was not an arsenal of weapons as Wedderburn had recommended, but 'the rusty old flintlock of a 60-day "cooling-off" injunction'.<sup>98</sup> This approach mirrored that taken by the American 'Taft-Hartley Act', even though it had already proved to be completely ineffective in the United States.<sup>99</sup>

The Donovan Commission was set up to consider the potential for a more interventionist role for the law in industrial relations than had been the case hitherto. The aim was to address their rather chaotic nature and the prevalence of unofficial strikes taking place in the early and mid-1960s. The acute situation, brought about by the dire economic circumstances of the time, would have persuaded any responsible government to be seen to be addressing the problem.

Table 1: Number of disputes between 1960 and 1970.<sup>100</sup>

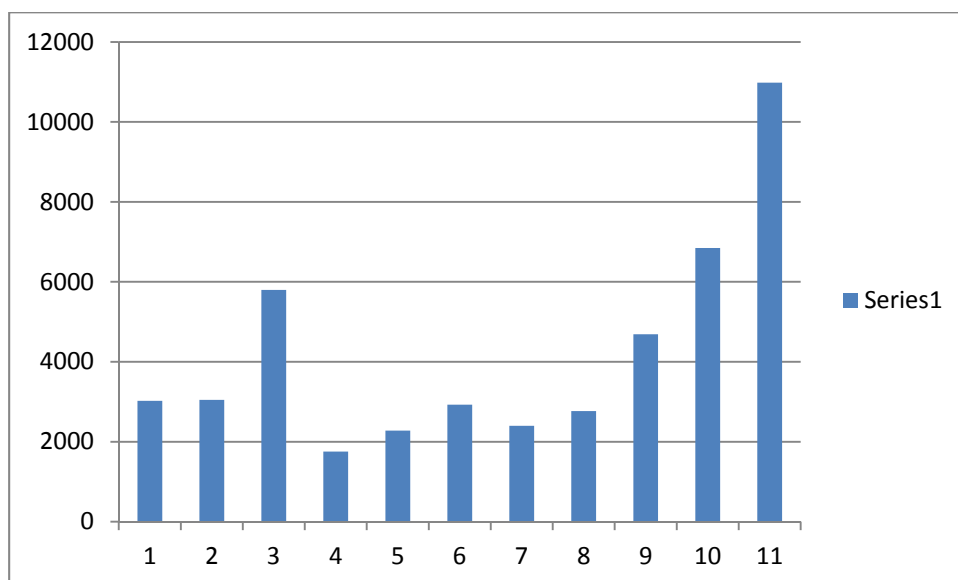


<sup>98</sup> *Ibid.*, 275.

<sup>99</sup> The Labor Management Relations Act 1947 was a United States federal law which restricted the power and activities of trade union; more commonly cited as the Taft-Hartley Act after its sponsors, Senator Robert Taft and Representative Fred Hartley Junior.

<sup>100</sup> <<http://visual.ons.gov.uk/the-history-of-strikes-in-britain>> Accessed 9 May 2017.

Table 2: Aggregate number of working days (x 000) lost between 1960 and 1970.<sup>101</sup>



Legislation could be an immediate response, although to be effective the potential consequences of such action would need to be given serious consideration.

Friedrich Hayek<sup>102</sup> cautioned against the use of legislation in general:

Legislation, the deliberate making of law, has justly been described as among all inventions the one fraught with the gravest consequences, more far-reaching in its effects even than that of fire and gun-powder.<sup>103</sup>

Hayek noted that the invention of legislation, unlike the common law which evolved over a long period of time, gave great power into the hands of man which needed to be controlled. He viewed legislation as a powerful tool that should be used with the utmost caution. This prudent approach would be reflected in the Donovan Report, which largely eschewed the use of legislation, but would go unheeded in the later *Industrial Relations Act 1971*, with fairly disastrous consequences. Nevertheless, although the Act was short-lived, it proved to be the first of many Parliamentary

<sup>101</sup> Source: *Employment Gazettes*.

<sup>102</sup> Friedrich Hayek was a twentieth-century economist and philosopher.

<sup>103</sup> F.A. Hayek, *Law, Legislation and Liberty: A new statement of the liberal principles of justice and political economy*, (London, 1982), Vol. 1, p. 72.

enactments designed to curtail, regulate and stifle trade union activity. It therefore merits some considerable attention in Chapter 5 below as an important event in the evolution of industrial relations legislation.

Indeed, the continuing interference of the law in industrial relations led a 1996 study of trade unions in Europe<sup>104</sup> to conclude that the UK stood out as one of the few EU states with strict regulation of union activity enshrined in legislation.<sup>105</sup> The conclusion drawn from the study was that:

Legislative intervention is seen as stunting the autonomous development of unions, as inimical to the maintenance of democracy on a societal level, and as counter-productive in that it would generate ill-afforded hostility among union members.<sup>106</sup>

In France, unions are subject only to the same legal restraints as other non-profit organizations, and there is no legislative prescription for internal organization, liability of union officials or the relations between unions and their members. In Spain, unions are free to organize their own affairs. The UK today, by contrast, is one of the most interventionist of the EU States considered in the study. The authors explain the level of recent legislative control as a shift from the view of the unions as voluntary associations, responsible for their own internal affairs, to organizations which were privileged in legal terms and therefore whose conduct should be subject to public accountability. The study suggests two key arguments against the deployment of legislation to control union activity:

The State may fear the objections of a strong union movement to the legal regulation of its affairs when it wishes to retain the unions' cooperation. Alternatively, the State

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<sup>104</sup> R. Undy, P. Fosh, H. Morris, O. Smith, R. Martin, *Managing the Unions: The Impact of Legislation on Trade Unions' Behaviour*, (Oxford, 1996), p.72.

<sup>105</sup> Currently largely contained within the *Trade Union and Labour Relations (Consolidation) Act 1992*, the *Trade Union Reform and Employment Rights Act 1993*, and the *Employment Relations Acts 1992 and 2004*.

<sup>106</sup> Undy *et al*, *Managing the Unions*, p. 272.

may be seeking to build up unions' weak bargaining strength in order that they may function efficiently as social partners and accordingly feel that creating a comprehensive legal framework for running unions' internal affairs would be counter-productive.<sup>107</sup>

Other EU countries are able to use alternative instruments to curb union power, and to work with unions as partners in a system of industrial democracy rather than against them as enemies. The question therefore arises as to why, since the 1960s, successive British governments have considered it necessary to employ legislative power to control union activity, despite the strong counter-arguments identified in the 1996 study.<sup>108</sup> The Donovan Commission would seek evidence for the most appropriate course of ensuring the future economic health of the nation. Although legislation would not feature prominently in their recommendations, the Report could now be perceived as the catalyst which sparked a tranche of restrictive legislation in the 1970s and 1980s.

#### *1.4 Views on the value of Legislation in the 1960s, 1970s and 1980s.*

Trade unions in the 1960s were concerned to preserve a system of voluntarism in industrial relations, with the State generally refraining from direct interference. Allan Flanders supported the principle of voluntarism, but he considered that the partiality of the bargaining parties for complete autonomy was an outmoded concept, since a commitment to a national productivity, prices and incomes policy inevitably places some restraint on the freedom to bargain collectively. To do otherwise, he thought, would be to leave everything to the market, which would mean advocating a return to

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<sup>107</sup> *Ibid.*, p. 276.

<sup>108</sup> E. H. Phelps Brown, *The Growth of British Industrial Relations*, (London, 1959), p. 355.

the nineteenth century.<sup>109</sup> He argued that there was a place for legislation in the modern era, and exemplified two legislative measures, neither of which undermined voluntary collective bargaining. These were the *Redundancy Payments Act 1965* and the *Industrial Training Act 1964*, both of which pointed the way to the type of measures that would be increasingly necessary in modern industry. One set minimum standards on terms and conditions of employment, and provided for fixed minimum notice periods, while the other set up institutions to solve urgent planning problems with an industrial training content.<sup>110</sup>

Andrew Shonfield, also a Donovan Commission member, made a strong argument for the role of law, with its wider remit and application, to supplement or replace the role of the trade unions in determining the rights of workers. He cited Frederic Meyers, an American authority, who noted that neither the employer nor the wage-earner had a clear idea of his rights, resulting in a lack of formal procedure for judging a case which made it more difficult for British employers 'than for their American counterparts to establish and maintain standards of industrial discipline or to dismiss when good cause in fact can be shown.'<sup>111</sup> Only centrally-imposed formal legislation could provide that certainty: it could not be achieved through collective bargaining alone, being too vague and subject to frequent changes. Shonfield also highlighted the transformational ability of legislation to alter deeply entrenched mindsets, in the form of the *Industrial Training Act 1964* which provided government with the power to impose a compulsory levy on industry to finance training, and 'the

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<sup>109</sup> *Ibid.*, pp. 34-35.

<sup>110</sup> *Ibid.*, p. 36.

<sup>111</sup> F. Meyers, *Ownership of Jobs*, Los Angeles, Calif. University, 1964, cited in Shonfield, *Modern Capitalism*, p. 116.



introduction of official representatives of the government into the boards to be set up to supervise training in each industry.’<sup>112</sup>

Thus, in the early 1960s the State was in fact already moving from a non-interventionist, non-paternal position to a less traditional role, directly addressing the problems that were plaguing British industry. Shonfield’s approval of this transition was apparent in his Note of Reservation in the Donovan Report: ‘It seems inconceivable in the long run that ... trade unions will be treated as if they had the right to be exempt from all but the most rudimentary legal obligations.’<sup>113</sup>

The system of industrial relations which the Commission examined in the 1960s was still very much based on voluntarism,<sup>114</sup> but it would need to consider whether it was desirable or even necessary to incorporate the law at some level. Wedderburn described the two schools of thought which gave evidence to the Commission, based on increased legal intervention on the one hand, and improved bargaining procedures on the other:

The first urged that ‘the law’ should be called in to change the pattern [of increasing informal bargaining at shop-steward level, wage drift and fragmentation] by regulation, compelling collective agreements to be legally enforceable in labour courts, penalizing strikers perhaps by automatic deprivation of rights to social security benefit.<sup>115</sup>

The Commission, however, rejected this view, and these options have never been pursued by any UK government since. The Commission did, however, accept the second school of thought that the preferred option was reform of industry-wide

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<sup>112</sup> Shonfield, *Modern Capitalism*, p. 119.

<sup>113</sup> *Royal Commission Report*, Cmnd. 3623, 289.

<sup>114</sup> A. Flanders, ‘The Tradition of Voluntarism’, *BJIR*, Vol. 12, Issue 3, 1974, 352-370.

<sup>115</sup> Lord Wedderburn, *The Worker and the Law*, (Harmondsworth, 1986), p. 48.

bargaining (with some legal stimuli) that kept with the tradition of existing legislation, and which did not regulate or undermine the 'voluntary' system of collective bargaining. The Commission also recommended a 'floor of rights', a move which was met with approval by Wedderburn as a necessary legislative adjunct to collective bargaining.<sup>116</sup> These were in relation to unfair dismissal, notice periods and redundancy, all employment protections which were introduced through legislation of the 1960s and 1970s.

The perception of legislation's value to industrial relations differed between political parties, suggesting that views were based on political objectives rather than objectively assessed needs. Andrew Thorpe wrote on *The Labour Party and the Trade Unions* and it is instructive to compare his references to the perceived value of legislation with Andrew Taylor's essay on *The Conservative Party and the Trade Unions* in order to determine differences in emphasis between the two parties.<sup>117</sup> Thorpe noted that the Donovan Commission's recommendations were broadly accepting of the status quo, although there was a recommendation that there should at least be a codifying Act of Parliament which would contain and simplify the rules relating to collective bargaining, industrial relations, unions and employers' associations.<sup>118</sup> This did, however, open the door to new legislation and, as Thorpe wrote, 'It was now up to ministers whether they simply consolidated the law, or whether they sought to give it a more substantial tweak.'<sup>119</sup> Thorpe considered that such a top-down solution had very little chance of being effective, and the unions in

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<sup>116</sup> Wedderburn, 'Labour Law and Labour Relations in Britain', pp. 270-290. He believed that Kahn-Freund and Clegg had used their own influence in convincing 'the majority of the Commission's members that direct legal regulation was not the correct answer' to the problems of unofficial strikes.

<sup>117</sup> Both essays are part of an edited collection: J. McIlroy, N. Fishman, A. Campbell (eds), *The High tide of British Trade Unions: Trade Unions and Industrial Politics, 1964-79*, (Monmouth, 2007), Chapters 5 and 6.

<sup>118</sup> *Royal Commission Report, Cmnd. 3623*, 1968, p. 204.

<sup>119</sup> A. Thorpe, 'The Labour Party and the Trade Unions', in McIlroy, Fishman, Campbell (eds), *The High tide of British Trade Unions*, p. 138.

fact firmly rejected the Labour proposals for legislation which were later incorporated into the White Paper, *In Place of Strife*<sup>120</sup>. The unions' objections to the subsequent *Industrial Relations Act 1971* demonstrated still further the impracticality of a top-down solution.

Andrew Taylor offered an alternative viewpoint, writing on the Conservative Party's determination to undertake 'legislative reform of the voluntarist tradition of non-intervention in industrial relations.'<sup>121</sup> While the Labour Government appeared to have openly accepted the idea of legislative reform only after 1968,<sup>122</sup> the Conservatives had been planning radical legislation since at least 1958 when *A Giant's Strength* was published.<sup>123</sup> The Conservative Government of 1951-1964 had already successfully secured the unions' approval for the *Contracts of Employment Act 1963* and the *Redundancy Payments Act 1965* which gave workers greater security, although it did expect in return that the TUC would impose greater order on the unions. Crucially, in the event that the TUC did not respond to this expectation, the Conservatives could thereby find sufficient justification for more extensive legislation in the future.<sup>124</sup>

In the same year that the Donovan Commission was appointed, the Conservative Trade Union Law and Practice Group made its own recommendations, suggesting greater government intervention. Taylor considered there was a serious weakness in this approach, which was that there was little consideration given to the political objective of reform.<sup>125</sup> He found no evidence that attempting to bring trade unions

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<sup>120</sup> *Ibid.*, p. 141. Also see Chapter 5 below.

<sup>121</sup> A. Taylor, 'The Conservative Party and the Trade Unions', in McIlroy, Fishman, Campbell (eds), *The High tide of British Trade Unions*, p. 151.

<sup>122</sup> *In Place of Strife*, Cmnd. 3888.

<sup>123</sup> *A Giant's Strength*, Inns of Court Conservative Association, 1958.

<sup>124</sup> Taylor, 'The Conservative Party and the Trade Unions', p. 152.

<sup>125</sup> *Ibid.*, p. 154.

within a greater measure of political control would have any effect on the central aims of government, the key one at the time being to control inflation.

There was undoubtedly little political or academic agreement over the value of legislation in the 1960s. It is interesting to note, however, that Keith Laybourn observed a *volte face* within the trade union movement itself over two decades later, going so far as to say that 'there is evidence that the trade unions and the TUC have modified their attitudes towards legislation since about 1987'.<sup>126</sup> He described this as an age of 'new realism', with unions responding to a series of new statutes passed in the 1980s<sup>127</sup> to deal with trade union issues which, among other things, devolved power from the trade union centre to the members by extending democratic rights into collective bargaining. He considered that the miners' strike of 1984-5 was in many ways 'the turning point in the attitude of trade unions and the TUC towards the government's industrial legislation'.<sup>128</sup> Arthur Scargill, leader of the National Union of Mineworkers (NUM), had refused to hold a national ballot, and it could be argued that the workers had grown weary of union leaders taking unilateral decisions which affected their livelihood, a situation that could only be resolved through imposing restrictive legislative measures. Davies and Freedland agreed, writing that, by the time of the *Employment Act 1990*,<sup>129</sup> 'the lengths to which the reduction of power had already progressed ... can be judged from the relative absence of public controversy surrounding an Act whose provisions would in 1979 have seemed absolutely revolutionary.'<sup>130</sup>

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<sup>126</sup> Laybourn, *A History of British Trade Unionism*, p. 192.

<sup>127</sup> *Employment Acts 1980, 1982, 1988, 1989, 1990, and the Trade Union Act 1984*.

<sup>128</sup> Laybourn, *A History of British Trade Unionism*, p. 211.

<sup>129</sup> The Act was 'to make it unlawful to refuse employment ... on grounds related to trade union membership', effectively abolishing pre-entry closed-shop practices.

<sup>130</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 508.

Nevertheless, the Donovan Commission would certainly not have entertained the notion that such radical legislation as the 1980s produced would ever have been acceptable to the trade unions, nor that it would effectively address the alleged defects of collective bargaining. Donovan's recommendations were for voluntary reform of collective bargaining and its extension into new areas of employment, which would be overseen by a new public agency, the Commission on Industrial Relations (CIR), and enforced with the aid of indirect legal sanctions. Unofficial militancy would be dealt with by making certain collective agreements legally enforceable<sup>131</sup> and by confining the statutory immunity from inducing breach of contract to registered unions only.<sup>132</sup>

Roy Lewis was able to reflect more critically on this position in 1976, noting that, while the Report had been largely against legal interference with industrial relations, its recommendation for eventual enforceability of collective agreements introduced an important *caveat*, strengthened by Shonfield's Note of Reservation. This could have reinforced the political argument for greater regulatory legislation which would eventually appear in the White Paper, *In Place of Strife*, and in the *Industrial Relations Act 1971*. 'If behaviour was to be changed the law's role was a question of degree and, perhaps unintentionally, the Donovan analysis represented the thin end of the legal wedge.'<sup>133</sup> This observation seems now to have been prophetic in the light of the plethora of legislation which has since been introduced to control trade union rights and activities. Stephen Dunn even argued that the *Industrial Relations Act*, had it survived, would have been beneficial to the unions and would at least have put them on a solid legal footing and avoided them 'attaining their present

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<sup>131</sup> *Royal Commission Report*, Cmnd. 3623, para. 508.

<sup>132</sup> *Ibid.*, para. 801.

<sup>133</sup> R. Lewis, 'The Historical Development of Labour Law', *BJIR*, Vol. XIV, Issue 1, 1976, 1-17.

semi-outlaw status.<sup>134</sup> Nevertheless, although Dunn may have been disappointed by the failure of the Labour Government to implement effective legislation, he was also giving an historical viewpoint, and had the benefit of hindsight and the knowledge of what happened to industrial relations legislation in the 1980s and 1990s under Conservative governments.

### *1.5 Conclusion*

When Harold Wilson led the Labour party back into power in 1964, he promised a 'new prosperity' and this involved reforming out-dated institutions – including the British trade union movement, with its restrictive practices operating as a major obstacle to economic growth.<sup>135</sup> Trade unions had evolved to be disparate bodies of various sizes, but the larger unions in the key major industries had achieved an unprecedented level of power.<sup>136</sup> While they had little protection from the law, particularly if they had chosen not to register with the Registrar of Friendly Societies, neither were they subject to significant legal regulation.

By 1965, therefore, it was unavoidable that legislation would be at the heart of discussions over what should be done about the 'problem' of trade unions and their alleged 'over-mighty' status, but equally clear that there were opposing views on the value of legislation, both within the Commission and among academics and politicians. The trade unions were anxious to maintain their privileged position as private associations with minimal statutory interference, but could not deny that legislation had produced a number of benefits from time to time, not just for the trade unions themselves, but for the wider working population. The politicians were also

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<sup>134</sup> S. Dunn, 'From Donovan to ... Wherever', *BJIR*, Vol. 31, Issue 2, 1993, 169-187.

<sup>135</sup> *The Times*, 19 October 1964.

<sup>136</sup> The TGWU had just over 1.5 million members by 1969: J. Jones, *Union Man*, (London, 1986).

concerned to be seen to be doing something about the unofficial strikes which were rife at the time,<sup>137</sup> and the Royal Commission was to be the first step on the long road to industrial reform.

The 1960s was a decade of major political and economic upheaval, and it was against this backdrop that the Donovan Commission was expected to conduct its inquiry and report. It was being asked to play a major part in the overhaul of industrial relations, and would do so by first conducting detailed research and analysis of the perceived problems, and then by positing reforms to deal with those problems. Nevertheless, the members of the Commission, many with detailed knowledge of the history of the role of law in industrial relations, could not help but be influenced and possibly discouraged by the experience of previous attempts of the legislature to interfere with the autonomy of trade unions.<sup>138</sup>

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<sup>137</sup> The Donovan Commission reported that 95 per cent of stoppages were due to unofficial strikes: *Royal Commission Report*, 1968, Cmnd. 3623, paras. 365, 368.

<sup>138</sup> See Chapter 2 below.

## Chapter 2. A History of British Industrial Relations, Governments and the Royal Commission Report.

### 2.1 Introduction

The history of law in industrial relations, from the late eighteenth century to the 1960s, had evolved from one of tight legislative control through to one of support and consultation with the trade unions. Chris Wrigley approved of the approach of Hugh Clegg and Allan Flanders in highlighting this long evolution of industrial relations.<sup>139</sup> He cited the regard which these industrial relations experts held for the role of the law in this field: 'The state supports and supplements collective bargaining in a number of ways, and the law of industrial relations therefore demands separate consideration.'<sup>140</sup> Kahn-Freund approved of this system, noting that 'the desire of both sides of industry to provide for, and to operate an effective system of collective bargaining is a stronger guarantee of industrial peace and of smooth functioning of labour-management relations than any action legislators or courts or enforcement officers can ever hope to undertake.'<sup>141</sup>

Even though the courts continued to maintain a level of mistrust of the unions in the twentieth century,<sup>142</sup> any fear and distrust which the legislature initially had of the union movement had begun to dissipate at the start of the century, when trade

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<sup>139</sup> C. Wrigley, 'Industrial Relations', in N. Crafts, I. Gazeley, A. Newell, *Work and Pay in 20<sup>th</sup> Century Britain*, (Oxford, 2009), p. 203.

<sup>140</sup> A. Flanders, H. Clegg (eds), *The System of Industrial Relations in Great Britain: Its History, Law and Institutions*, (Oxford, 1954), p. v.

<sup>141</sup> O. Kahn-Freund, Chapter on Legal Framework, in A. Flanders, H. Clegg (eds), *The System of Industrial Relations in Great Britain*, pp. 43-44.

<sup>142</sup> Case law tended to militate against the acknowledged freedoms and immunities of the trade unions, for example: *Taff Vale Railway v Amalgamated Society of Railway Servants* [1901] UKHL 1; *Rookes v Barnard* [1964] AC 1129 (HL).



unions began to be represented in Parliament.<sup>143</sup> The legislature was both willing and able to support union aims by passing laws to protect the unions from civil and criminal liability and thereby protect their funds.<sup>144</sup> Legislation was also used to protect vulnerable workers where unions were weak or non-existent,<sup>145</sup> to improve equality and maintain the health and safety of workers,<sup>146</sup> and eventually to provide protection from unfair dismissals.<sup>147</sup> Legislation and relations between workers and employers became progressively more integrated, while trade unions and the legislature enjoyed an increasingly symbiotic relationship.

As trade unions became more powerful in terms of size and influence in the twentieth century, the notion of using legislation to control their power became increasingly political. In 1957, the Minister of Labour, Iain Macleod, 'faced with the worst year of industrial unrest since 1926, announced that he was to draw up a list of the best industrial employment practices in the hope that they would become more widely adopted',<sup>148</sup> but the Conservative Government was unsatisfied with the response, deciding on legislative intervention by 1962.<sup>149</sup> The *Contracts of Employment Act 1963*, while giving redundant workers the security of guaranteed notice periods, threatened to take away that right if the worker had broken his

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<sup>143</sup> The Labour Representation Committee (LRC) had its founding conference in 1900, hosted by the TUC with the purpose of examining labour representation in Parliament. Two LRC MPs were elected in 1900, including Keir Hardie.

<sup>144</sup> The *Trade Disputes Act 1906* provided immunity for liability for damages arising from strike action.

<sup>145</sup> For example, the *Trade Boards Act 1918* regulated wages in industries where there was no effective representation.

<sup>146</sup> The first general statute on safety at work was the *Health and Safety at Work Act 1974*, although there were earlier examples of industry-specific Acts such as the *Factories Act 1937*, the *Baking Industry (Hours of Work) Act 1938*, the *Shops Act 1950*, and the *Mines and Quarries Act 1954*. Hours of work were regulated for women and children in the *Employment of Women, Young Persons, and Children Act 1920*, *Children and Young Persons Act 1933*, *Hours of Employment (Conventions) Act 1936*, *Employment of Women and Young Persons Act 1936* and the *Young Persons (Employment) Act 1938*

<sup>147</sup> *Industrial Relations Act 1971*.

<sup>148</sup> Nation Union, 77<sup>th</sup> Annual Conference Report (1957), p. 92, cited in Moran, *The Politics of Industrial Relations: The origins, life and death of the 1971 Industrial Relations Act*, (London, 1977).

<sup>149</sup> Moran, *The Politics of Industrial Relations*, p. 18.

continuity of employment by participating in unofficial industrial action. This legislative measure was designed to dissuade workers from participating in unofficial strikes, and the Government thereby hoped to cut the number of strikes by taking this threatening stance.

Industrial relations was fast becoming something of a political football, a potential vote-winner for whichever party could be seen by the electorate to be doing something about the escalating 'problem' of strikes which impacted on the ordinary citizen.<sup>150</sup> Lewis Minkin argued that Labour governments have rarely truly favoured the trade union movement, but worked for the good of the nation, while Conservative governments have been much more focused upon their own vested interests.<sup>151</sup> Nevertheless, by the 1960s it was becoming evident that both Labour and Conservative parties were equally concerned about the growing number of strikes, particularly the unofficial strikes, which were threatening the economic security of the nation. They each began to give serious consideration to legislative measures as a means of exercising greater control over the unions.

The union problem was beginning to gain a higher profile, and becoming the focus of attention for both politicians and labour correspondents. A review of trade unions by Eric Wigham, Labour Editor for *The Times*, had made a number of recommendations to resolve the inefficiencies and problems within the union movement, some of which involved legislation. He noted that 'in those countries where collective agreements are binding in law, unofficial strikes are much fewer than in Britain.'<sup>152</sup> John Hare, Minister of Labour, considered that unofficial strikes were 'a breakdown of loyalty

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<sup>150</sup> The number of days lost to industrial disputes rose sharply from 1965, reaching a peak in 1971. <<http://www.unionancestors.co.uk/Images/Strikes%201901-2000.pdf>> Accessed 16 October 2015.

<sup>151</sup> L. Minkin, *The Contentious Alliance: Trade Unions and the Labour Party*, (Edinburgh, 1992).

<sup>152</sup> E. Wigham, *What's Wrong with the Unions?* (Harmondsworth, 1961), p. 220.

and discipline,<sup>153</sup> and that 'there was a need for responsible trade union leaders to control militant members.'<sup>154</sup> It was becoming evident that nothing short of a full, official review was needed to address the multiple problems within trade union organization and in industrial relations in general. Both Conservative and Labour parties considered that another - the fifth - Royal Commission on Industrial Relations would be the best way forward to review and propose amendments to the law. The Royal Commission, headed by Lord Donovan, was established in 1965 and reported in June 1968.<sup>155</sup>

## *2.2 History of law in industrial relations up to the 1960s.*

The Commission, with its remit which required that it should make 'particular reference to the Law', would have to consider the type of legislation which could provide greater support for workers in terms of job protection, while at the same time bringing order and stability into industrial relations. Trade union legislation had certainly come far since the days of the early, interventionist laws<sup>156</sup> which attempted to impose restrictions on trade unions. This had been a manifestation of the fear of government towards any kind of combination of people; this had been exacerbated by the French Revolution (and William Pitt the Younger's fear of Jacobin<sup>157</sup> activity). By the 1960s, the fear that trade unions were again engendering among politicians threatened a potential return to such restrictive legislation.

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<sup>153</sup> National Union, 79<sup>th</sup> Annual Conference Report (1960), p. 74, cited in Moran, *The Politics of Industrial Relations*.

<sup>154</sup> Moran, *The Politics of Industrial Relations*, p. 19.

<sup>155</sup> The remit of the Royal Commission was to 'consider relations between managements and employees and the role of trade unions and employers' associations in promoting the interests of their members and in accelerating the social and economic advance of the nation, with particular reference to the Law affecting the activities of these bodies.'

<sup>156</sup> E.g. the Combination Acts 1799 and 1800

<sup>157</sup> Jacobin refers to a style of left-wing revolutionary politics and is named after a famous political club in the French Revolution.

In the nineteenth century, Friendly Societies<sup>158</sup> began to spring up all over Britain, members contributing small amounts of money which could be used to insure against hardship when workers lost their jobs, or where the main breadwinner died or was too ill to work. However, they were not legal bodies and therefore could not protect their funds, or members, in court. The *Friendly Societies Act 1855* established the Registrar of Friendly Societies. Those organizations which opted to register had their funds protected, but the case of *Hornby v Close 1867*<sup>159</sup> revealed the inability of friendly societies to use their own funds to support striking workers. The funds used in this way were taken as 'evidence' that these societies had similar objects to trade unions, and were thus held by the court to be operating illegally in restraint of trade.<sup>160</sup> This was one of the early examples of the courts demonstrating their distrust of trade unions, and would not be the last.

The effect of this case was considered by the Royal Commission on Trade Unions of 1868-69.<sup>161</sup> Its recommendations led to the *Trade Union Act 1871* which legalized trade unions in Britain for the first time, providing they registered with the Registrar of Friendly Societies, thereby protecting their funds. However, the *Criminal Law Amendment Act 1871*, passed at the same time, criminalized picketing, and this law was not amended until the *Conspiracy and Protection of Property Act 1875*. The later Act permitted peaceful picketing and also provided that acts committed in furtherance of a trade dispute should not be regarded as a criminal conspiracy unless the actions were themselves criminal. This Act, passed by Disraeli's

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<sup>158</sup> Regulated by the Registrar of Friendly Societies until 2001 before the role was taken over by the Financial Services Authority and subsequently by the Financial Conduct Authority.

<sup>159</sup> (1867) LR 2 QB 153.

<sup>160</sup> *Hornby v Close 1867* LR 2 QB was one of the key reasons for the formation of the Trades Union Congress in 1868: *TUC Annual Congress Report, 1894*, p. 73.

<sup>161</sup> The Eleventh and Final Report of the Royal Commissioners Appointed to Inquire into the Organization and Rules of Trades Unions and other Associations 1868-69.

government which was 'acutely aware of a growing working class vote', was the 'golden formula'<sup>162</sup> which attempted to 'settle the conditions under which industrial conflict could take place.'<sup>163</sup> Together with the *Employers and Workmen Act 1875*, the legislation fully decriminalized the work of trade unions, an outcome which was largely due to the success of union leaders who were able to present their unions to the Royal Commission as bastions of respectability.<sup>164</sup> 'The fledgling TUC which had campaigned for the change in the law 'was so ecstatic that a telegram of congratulation was sent to the Minister'.<sup>165</sup> Nevertheless, despite the fact that George Howell, the retiring TUC Secretary, cast doubt on any further need for the TUC,<sup>166</sup> so complete were its objectives, the organization continued to campaign for workers' and trade union rights. Almost a century later, the trade unions and the TUC would yet again present arguments to the Donovan Commission that they were still to be trusted to manage their own affairs effectively without legislative interference.<sup>167</sup> Nevertheless, new laws are best designed to deal with the prevailing circumstances, and the industrial relations landscape would be very different in the 1960s, thus making it necessary to provide different arguments if the unions were to retain their semi-outlaw status.

The Disraeli Government's legislation marked a major turning point in the attitude of politicians towards trade unions, acknowledging them as a positive aspect of the industrial scene, rather than part of the criminal underworld. The new laws provided social benefits to trade unions and their members, and were therefore naturally

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<sup>162</sup> Lord Wedderburn, *The Worker and the Law*, p. 520.

<sup>163</sup> Moran, *The Politics of Industrial Relations*, p. 7.

<sup>164</sup> J. Sheldrake, *Industrial Relations & Politics in Britain, 1880-1989*, (London, 1991), p. 5.

<sup>165</sup> Lord Wedderburn, *The Worker and the Law*, p. 520.

<sup>166</sup> *Ibid.*

<sup>167</sup> Industrial Relations and Trade Union Law, Comments on Ministerial Proposals by the General Council, 17 January 1969, TUC Archive, Modern Records Centre, University of Warwick, MSS/292 B/210/5.

welcomed by them, engendering a complementary alteration in the attitude of trade unions and socialists towards the law. Indeed, John Sheldrake observed that, 'State intervention, collectivism and socialism were depicted [by Sidney Webb, writing for the Fabian Society] as part of an irreversible process destined to provide a more efficient and equal society.'<sup>168</sup> The views of the Society<sup>169</sup> were also paralleled by the Idealist philosophy of T.H. Green as a central and positive element in social life. Green's work 'underpinned the New Liberalism which abandoned the nostrums of *laissez faire* and looked to piecemeal state intervention as the means to ameliorate social injustice.'<sup>170</sup> Almost a hundred years later, the Donovan Commission would likewise be required to consider how state intervention could yet again be used to reduce actual or perceived injustices in the workplace.<sup>171</sup>

### 2.2.1 *The State Intervenes*

The industrial relations landscape of the nineteenth century was one where the State was beginning to introduce a number of reforms designed to underpin the aims of trade unionism and combat judicial hostility. Collectively, the views of trade unions, philosophers and socialist reformers also reflected 'an increased willingness to use the state's legislative and administrative power'.<sup>172</sup> A major example of the legislature using its influence to correct an abuse of power by the state, specifically the judiciary, came in the *Trade Disputes Act 1906*. The apparent immunities created by the legislation of the 1870s, following the outcome of *Hornby v Close*, had been

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<sup>168</sup> J. Sheldrake, *Industrial Relations and Politics in Britain*, p. 8.

<sup>169</sup> A political think-tank which emerged in 1884 and had Beatrice and Sydney Webb as founder members.

<sup>170</sup> Sheldrake, *Industrial Relations and Politics in Britain*, p. 8.

<sup>171</sup> Particularly with reference to unfair dismissals and trade union membership: *Royal Commission Report 1968*, Cmnd. 3623, Chapters IX and X.

<sup>172</sup> G. Sabine, T. Thorsen, *A History of Political Theory*, (Hinsdale, Illinois, 1973), cited in Sheldrake, *Industrial Relations and Politics in Britain*, p. 8.

undermined by the House of Lords' decision in the *Taff Vale* case in 1901.<sup>173</sup> This was the latest in a decade of anti-trade union judicial decisions, beginning with *Curran v Treleaven* 1891.<sup>174</sup> In the *Taff Vale* case, the House of Lords held that a trade union could be sued in its corporate capacity for tortious acts committed on its behalf, thereby putting union funds at great risk. The House of Lords later decided in *Quinn v Leatham*<sup>175</sup> that a strike or boycott, or the threat of it, could be a conspiracy to injure, and that damages could be paid out of union funds.

These examples of judicial creativity, seemingly designed to undermine the strength and capabilities of trade unions, highlighted the insecurity of the legal foundations of trade union action, and raised new concerns, since the judgments determined that trade unions could be sued for damage inflicted by their officials. It seemed that the right to strike which Parliament had granted to unions in the *Trade Union Act 1871* and the *Conspiracy and Protection of Property Act 1875*, the judiciary had in effect taken away, once more leaving the unions vulnerable to the potential loss of funds. Faced with such hostility from the judiciary, the unions were left with no choice but to once again call on the supreme law-maker - Parliament - to restore the immunities they had relied on for so long. The question would be whether doing so would be of any benefit to the Government. This had been a major factor behind the Disraeli Government's decision to pass the previous legislation, and one which would underpin the attempts to legislate in the 1960s and 1970s.

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<sup>173</sup> *Taff Vale Railway Company v Amalgamated Society of Railway Servants*, UKHL 1 1901.

<sup>174</sup> [1891] 2 Q.B. 545. A lower court had decided that a threat to strike if the employer did not dismiss non-union labour was unlawful intimidation within the meaning of the 1875 Act, in that it was not to benefit the workman, but to injure the employer. The Court of Appeal reversed that decision, but this was the first of many cases in the 1890s that went against the trade unions involved: *Temperton v Russell* [1893] 1 Q.B. 715; *Trollope and Sons v London Building Trades Federation*, *The Times*, 28 April, 1,2, and 5 May 1896; *Lyons v Wilkins* [1899] 1 ch. 255, 267.

<sup>175</sup> [1901] AC 495. Later cases produced similar outcomes: *Read v Friendly Society of Operative Stonemasons* [1902] 2 KB 732; *South Wales Miners' Federation v Glamorgan Coal Co.*, [1905] AC 239.

### 2.2.2 Organized labour finds a political voice.

This period was a time of major change to the traditional two-party system in Parliament. In 1893, Keir Hardie helped to set up the Independent Labour Party (ILP), a socialist political party. In 1900 some trade unions within the TUC, along with the ILP, formed the Labour Representation Committee (LRC). 'The formation of the LRC (which became the Labour Party in 1906) had come about, primarily, as a result of trade unions' anxieties about their legal status.'<sup>176</sup> The LRC immediately grew in strength as a direct response to increased judicial interference in trade union affairs, more than doubling its number of affiliates by 1903. In this way the short-term results of the anti-union case law were both a strengthening of the LRC and increased independent labour representation at the 1906 General Election. These changes grew from a desire to change the law which was threatening the right of unions to strike, by creating a force capable of persuading the next Liberal government to address and overturn the effect of the *Taff Vale* case.<sup>177</sup> A tacit electoral alliance with the Liberals<sup>178</sup> led to a landslide victory for the Liberals in 1906, with 29 new LRC members, many of whom were trade union leaders.<sup>179</sup>

Following a further Royal Commission Report in 1906,<sup>180</sup> the new Government introduced the *Trade Disputes Bill* which was intended to reverse the effects of *Taff*

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<sup>176</sup> A. Thorpe, 'The Labour Party and the Trade Unions' in J. McIlroy, N. Fishman, A. Campbell (eds), *The High Tide of British Trade Unionism: Trade Unions and Industrial Politics, 1964-79*, (Monmouth, 2007), p. 134.

<sup>177</sup> Lewis Minkin noted the tradition of the union movement of political action on industrial issues which first led to the creation of the Labour Party, but also a deep-rooted ambivalence towards politics and a distrust of the state. The *laissez-faire* ideology of the union movement was rooted in traditions of self-help. 'Only when the courts intervened to handicap the unions in their industrial activities did frustration at the obstacles to labour representation through the existing parties turn into overwhelming support for an independent party of Labour.' L. Minkin, *The Contentious Alliance*, (Edinburgh, 1992), p. 7.

<sup>178</sup> Each party agreed to field only one candidate in each constituency – either Liberal or Labour.

<sup>179</sup> This arrangement between Herbert Gladstone and Ramsay MacDonald in 1903 was a well-kept secret for half a century. F. Bealey, H. Pelling, *Labour Politics 1900-1906: A History of the Labour Representation Committee*, (London, 1958).

<sup>180</sup> The Commission was chaired by Lord Dunedin.



*Vale*. This Bill was a highly significant one in terms of the shifting of influence and power from central government towards the trade union movement. Rather than proposing a simple return to the pre-*Taff Vale* position, where unions would be immune from actions in tort, the Government took the opportunity to try to impose greater order on union activity, proposing that unions should have executive committees for the conduct of disputes, and that they should take legal responsibility for the actions of those committees.<sup>181</sup> This was not acceptable to the unions, however, and they introduced a Private Member's Bill which would give them complete immunity from actions in tort, a move which prompted objections from the *Spectator*:

It seems to us highly dangerous to confer upon any body of men a power which it is so easy to misuse ... As citizens, we object to any class being accorded legal privileges which are denied to the rest of the community. Hard cases notoriously make bad law, and if the Trade-Unions get their will, the law made to reform their grievances will be bad indeed.<sup>182</sup>

Nevertheless, as radical as this new Bill was, it passed unopposed through both Houses of Parliament, becoming the *Trade Disputes Act 1906*. The 1875 Act had given immunity from criminal conspiracy in respect of strike action while the 1906 Act confirmed that such action would also be immune from civil conspiracy, but both had attributed to unions a form of protection that was not available to citizens in any other kind of collective organization. Unions were in effect outside the law, and it was even argued that this protection could be used as a political weapon against the

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<sup>181</sup> See W.H. Beveridge, 'The reform of trade union law', *Economic Review*, xv, 2, April 1905, 129-49; D. F. Pennant, *Trade Unions and the Law*, (London, 1905); H. Maxwell, 'Why lift trade unions above the law?' *Nineteenth Century*, LIX, 351, May 1906, 871-84.

<sup>182</sup> The *Spectator*, 31 March 1906.

government.<sup>183</sup> Nevertheless, for the first time in history, the unions had an effective voice in Parliament and were beginning not just to influence, but actually to dictate the law which would apply to them.

This Act remained in force when Donovan reported,<sup>184</sup> and had by now become one of the major causes of disquiet among employers, since it gave to trade unions an unparalleled immunity from criminal prosecution and from suit in tort, allowing them to take industrial action with impunity.<sup>185</sup> The Commission would need to consider whether it was appropriate in the 1960s to maintain such immunity for a trade union movement that had moved from a position of relative weakness to one of immense strength.<sup>186</sup> Indeed, it would seem sensible to consider whether the law should be used to re-adjust the balance of power between unions, employers and workers, since there was little doubt that unions and their members were beginning to dictate the terms of their contracts, and the employers were all but powerless to object.

Nevertheless, these events demonstrated how law could be used to protect the collective rights of trade unions to self-determination. At the same time, it could be used to give a floor of rights to individual workers, something that Lord Wedderburn approved of and considered an ideal role for legislation.<sup>187</sup> It is also important to bear in mind that not all businesses were unionized, and many workers suffered harsh working conditions, providing 'sweated labour'. When the *Trade Boards Act* was

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<sup>183</sup> In a letter to *The Times* 9 March 1905, A. Beasley warned of the effect of the Trade Disputes Bill, writing, 'Members of Parliament who support the Bill because they believe that it makes for the good of the working man may well ask themselves whether they ought to assist in the forging of a weapon which may be used – and used with effect – against him.'

<sup>184</sup> Repealed in 1971 by the *Industrial Relations Act*.

<sup>185</sup> *Trade Disputes Act 1906*, ss. 3 and 4. The Donovan Commission gave serious consideration to the need to modify or exclude the immunity given by sections 3 and 4 of the *Trade Dispute Act 1906*, Royal Commission Report, Cmnd. 3623, paras. 878-911.

<sup>186</sup> The Commission gave consideration to the need to modify or exclude the immunity given by sections 3 and 4 of the *Trade Dispute Act 1906*, Royal Commission Report, Cmnd. 3623, paras. 878-911.

<sup>187</sup> Lord Wedderburn, *The Worker and the Law*, (Harmondsworth, 1986).

passed in 1909, it represented a significant departure for the Government from the conventions of voluntarism which had dominated industrial relations,<sup>188</sup> and demonstrated the social value of legislation for working people. Rather than working against the unions, legislation was for the first time being used to address the gaps that unions alone could not fill, such as ensuring minimum wages in non-unionized industries.

However, while the Government was acting in this somewhat limited manner to protect vulnerable workers through legislation, the courts once again interfered with trade unions' right to self-governance, specifically the right to include a political levy in membership fees. The House of Lords' 'Osborne Judgment' in 1909<sup>189</sup> ruled that union members would have to 'contract in' if they wished for a portion of their subscriptions to go to support the emerging Labour Party, rather than the previous system whereby members would have to 'contract out'. It overturned a practice which had existed legitimately for forty years, and declared all union political funding to be unlawful. This decision resulted in severe financial difficulties for the Labour Party, but was eventually remedied by the *Trade Union Act 1913*, which effectively restored the legitimacy of union political funding and reaffirmed the supremacy of Parliament to legislate on union matters. The case was a reminder of the vulnerability of trade unions to judicial interference with their right to self-govern, but highlighted the very type of situation where legislation could be deployed to strengthen the trade union position rather than seek to undermine it, as later legislation would attempt to do.<sup>190</sup> The Donovan Commission would in due course

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<sup>188</sup> Sheldrake, *Industrial Relations and Politics in Britain*, p. 18.

<sup>189</sup> *Amalgamated Society of Railway Servants v Osborne* [1910] AC 87.

<sup>190</sup> The highly controversial issue would become a regular target of Conservative politicians for many years, e.g. in the *Trade Disputes and Trade Unions Act 1927* which required 'contracting in', and prohibited civil service unions from setting up political funds altogether. The issue has also re-emerged in the *Trade Union Act 2016*.

have to consider the benefits of this type of legislation which maintained the rights of trade unions when determining the overall role of legislation in industrial relations.

This was a key turning point in the developing relationship between trade unions, the new Labour party and the legislature, when trade unionists had the confidence, the influence and the power to make themselves heard on the political stage. Indeed, they would later play a crucial role in the examination of and proposals for reform of industrial relations which would be central to the Donovan Commission's remit in the 1960s. This would be in spite of the relationship between the Labour Party and the unions remaining a 'contentious alliance',<sup>191</sup> a factor which would undermine the ability of the Party to force through legislation of which the TUC did not approve.

### *2.2.3. The General Strike and a return to War*

The relationship between unions and the Government reached a crisis point in 1926. Stanley Baldwin, the Prime Minister, put the blame firmly on the *Trade Disputes Act 1906* and the burgeoning strength of the union movement. He condemned the fact that the Act ensured that, 'when once a strike was declared, anything that a man did on strike was legal', warning, 'whereas previously the trade union forces have moved in regiments and brigades, in recent years they have moved in armies.'<sup>192</sup> The previous year, Baldwin had supported the coal-owners' insistence that miners should take a 13 per cent pay cut by arguing that, 'All the workers in this country have got to take reductions in wages to help put industry back on its feet.'<sup>193</sup> When the pay cut was imposed in 1926, the TUC backed the Miners' Federation of Great Britain (MFGB) and a national sympathetic strike in support of the miners was called. This

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<sup>191</sup> L. Minkin, *The Contentious Alliance: Trade Unions and the Labour Party*, (Edinburgh, 1992).

<sup>192</sup> HC Deb, Vol. 205, 4 May 1927, c. 1655.

<sup>193</sup> *Daily Herald*, 31 July 1925.

'General Strike' confirmed what many politicians now believed – that the unions had become too powerful, thereby putting at risk the economic safety of the nation. In the debate in the House of Commons on 3 May 1926, Sir Robert Horne MP warned that, '... the whole instincts of the British people will revolt against any attempt to take them from their freedom and plant tyranny in place of constitutional government'.<sup>194</sup>

Baldwin therefore bowed to the demands of his party, and the highly restrictive *Trade Disputes and Trade Union Act 1927* was passed. This was a significant turning point in the relationship between unions and government, and the fears and motivations that underpinned it would be echoed by the Conservative publication, *A Giant's Strength*,<sup>195</sup> over thirty years later. The Act made secondary picketing unlawful, and any strike aimed at coercing the government was banned. Strikes by local government workers and all general strikes were henceforth illegal.<sup>196</sup> The Attorney General was also empowered to sequester the funds of unions involved in such strikes. Additionally, in a move which had a devastating effect on Labour Party funding, union members were mandated to *contract in* to any political levy their union made on their behalf, rather than contract out as they could previously do. This re-introduced the system which the *Osborne* decision had brought about in 1909. The fierce opposition to the Act from the unions brought the Labour Party into a closer alliance with them.<sup>197</sup> Of great concern at this juncture was that the Labour Party was pandering to union demands in order to safeguard its own funding and therefore its future. Just as Disraeli had done previously, politicians were making promises to the

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<sup>194</sup> *The Times*, 3 May 1926,

<sup>195</sup> *A Giant's Strength*, (A study produced by the Inns of Court Conservative and Unionists Society, subtitled *Some Thoughts on the Constitutional and Legal Position of Trade Unions in England*), 1958.

<sup>196</sup> B. Pimlott, C. Cook (eds), *Trade Unions in British Politics: The First 250 Years*, (London, 1991), p. 100.

<sup>197</sup> <<http://www.nationalarchives.gov.uk/cabinetpapers/themes/strike-consequential-legislation.htm>>  
Accessed 16 October 2015.

unions to manipulate the legislation for their own political aims rather than for the good of the economy or the country as a whole.

During the Second World War the unions regained much of their former respect and kudos for their help in mobilizing the economy for the war and its aftermath.<sup>198</sup> Industry was largely left to manage its own affairs and to operate autonomously. The Ministry of Labour showed a preference for the regulation of industrial relations through voluntary bargaining, stating in its own Industrial Relations Handbook that 'it is important to recognize that the main responsibility for the regulation of wages and conditions of employment rests with the joint voluntary machinery established by employers' organizations and trade unions.'<sup>199</sup> This theme would be picked up later by the Donovan Commission, which considered that strengthening this voluntary machinery was the best way forward for stable and effective industrial relations.<sup>200</sup>

This policy of state non-intervention under Conservative governments continued throughout the 1950s as conditions of almost full employment continued to be the norm.<sup>201</sup>

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<sup>198</sup> See C. Wrigley, *British Trade Unions Since 1933*, (Cambridge, 2002).

<<http://catdir.loc.gov/catdir/samples/cam033/2002067379.pdf>> Accessed 18 September 2015.

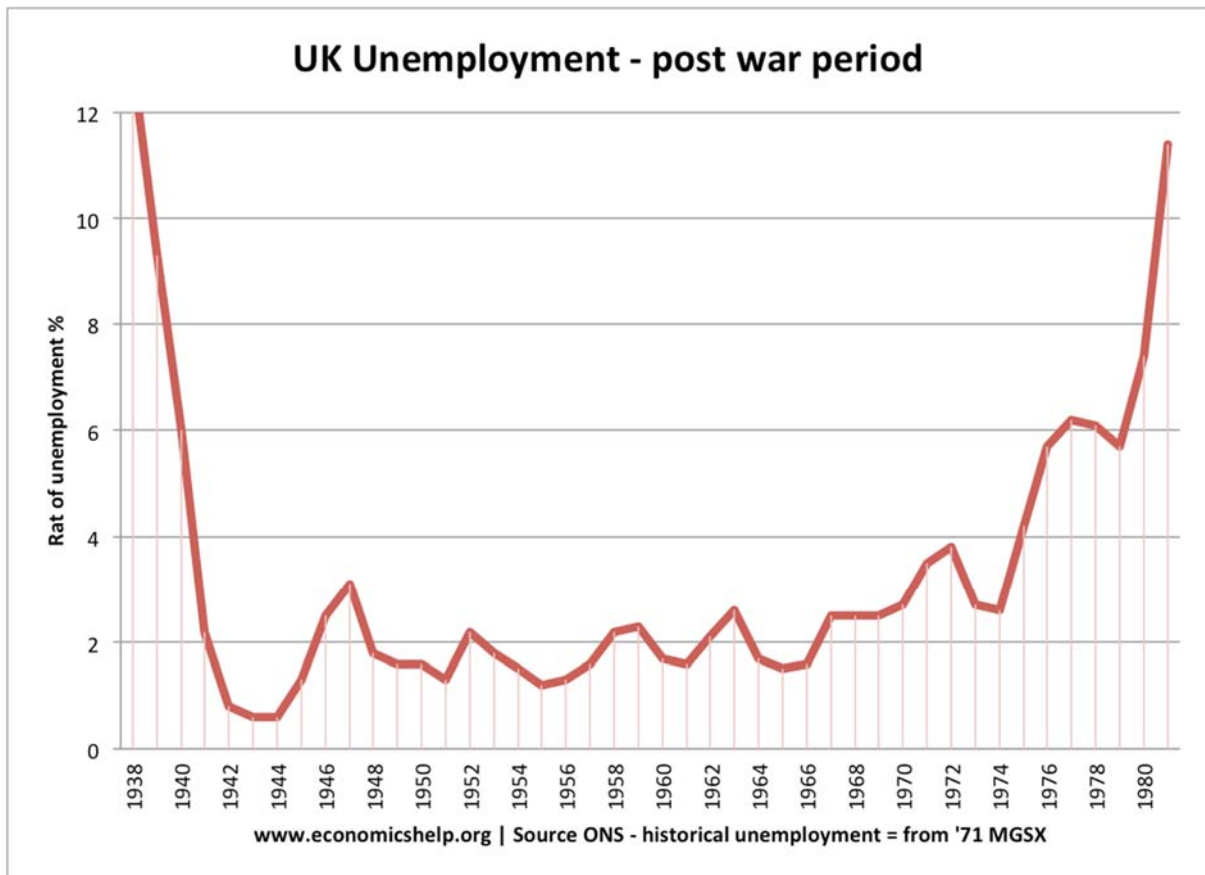
<sup>199</sup> Ministry of Labour, *Industrial Relations Handbook*, 1944.

<sup>200</sup> *The Royal Commission Report*, Cmnd. 3623, para. 162.

<sup>201</sup> Between 1951 and 1961 the average level of unemployment was just 1.7 per cent.

<[www.ons.gov.uk/ons/rel/lms/labour.../unemployment-since-1881.pdf](http://www.ons.gov.uk/ons/rel/lms/labour.../unemployment-since-1881.pdf)> Accessed 30 April 2014.

Table 3: UK Unemployment figures 1938-1980.



‘Thus the pattern of very limited legislative activity and, in its place, of broad reliance upon collective bargaining, so brilliantly analyzed by Kahn-Freund, was well and truly established in the 1950s.’<sup>202</sup>

This period also witnessed a fundamental shift in the way that trade unions perceived the value of legislation. It was no longer simply about protecting union rights - there was a growing recognition that it could have a positive effect on individual employment rights which would benefit all workers. Throughout World War II, and during its immediate aftermath, the TUC had demonstrated a willingness, not just to accept, but to actively demand legislation in certain areas. For example, the

<sup>202</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 104.

TUC saw that there could be a wider role for legislation when it called for the Government to implement a forty-hour week and provide for two weeks' paid holiday for all workers.<sup>203</sup> Additionally, the Crombie Code<sup>204</sup> for long-term compensation to workers who were made redundant because of nationalization of certain industries came about largely due to pressure from the TUC. This indicated a potential acceptance of future legislation by the trade unions and the TUC, leading Davis and Freedland to observe that, 'should government wish to expand general individual employment rights in this way [as it did in the 1960s], it would not meet with any strong opposition from the trade unions, even if collective *laissez-faire* were thereby and to that extent qualified.'<sup>205</sup>

#### 2.2.4. *Post-war consensus and legislation*

Following the end of the Second World War, trade unions were hailed as war heroes. Winston Churchill declared in the House of Commons: 'We own an immense debt to the trade unions and never can this country forget how they have stood by and helped.'<sup>206</sup> So began a pivotal moment in the evolution of trade unionism, since this formal recognition that the unions had an important part to play in maintaining the economic strength of the nation gave them immense bargaining power. J.V. Radcliffe, *The Times* labour correspondent, told the delegates at the 1945 TUC Congress, 'You do not go to 10 Downing Street but 10 Downing Street comes to you ... You have no longer any need to thunder; you have only to whisper and Ministers tremble and Field-Marshal bend their knees.'<sup>207</sup>

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<sup>203</sup> TUC, *Annual Report 1946*, pp. 183-6.

<sup>204</sup> NA/T/248/596. Statutory compensation for redundancy (Crombie code): compilation of a general code of regulations.

<sup>205</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 64.

<sup>206</sup> HC Deb., vol. 410, 2 May 1945, c. 1405.

<sup>207</sup> TUC Congress Report, 1945, p. 451.



This may well have been an exaggeration, but there is no doubt that trade unions were enjoying a new-found confidence, and were assured of a place at the political bargaining table. This was a pivotal moment in the evolution of trade unionism and the part that unions played in the economic strength of the nation. Robert Taylor wrote that, 'A strong harmony of interest and outlook existed between the political and industrial wings of the Labour Movement in 1945. The "contentious alliance" had never seemed more at ease with itself.'<sup>208</sup> He added that there was 'recognition that on the broad range of economic and social policy no genuine division of opinion existed between the Attlee Cabinet and the TUC Establishment.'<sup>209</sup> Indeed, Prime Minister Attlee assured the TUC Congress in 1945 of continued close collaboration and consensus.<sup>210</sup> His Foreign Secretary, Ernest Bevin, who had played a crucial role as Minister for Labour during the war in controlling the workforce and allocating manpower, was determined to strengthen the bargaining position of unions after the war. He continued to act as go-between between senior trade union leaders.

Legislation which had restricted the growth and bargaining power of unions was rapidly repealed. Kahn-Freund noted, rather poetically, that 'war-time controls of the labour market ... vanished in the sun of peace like snow in the spring, and "freedom of contract" emerged triumphant.'<sup>211</sup> There was a return to a system of voluntarism, and unions were free to negotiate their own terms and conditions. To the delight of trade union leaders,<sup>212</sup> the viciously anti-trade union *Trade Disputes and Trade Unions Act 1927*, which had outlawed sympathetic strikes, banned the closed shop

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<sup>208</sup> R. Taylor, *The Trade Union Question in British Politics*, (Oxford, 1993), p. 31.

<sup>209</sup> *Ibid.*, p. 39

<sup>210</sup> TUC Congress Report, 1945, p. 264.

<sup>211</sup> O. Kahn-Freund, *Selected Writings*, (London, 1978), p. 3.

<sup>212</sup> Taylor, *The Trade Union Question in British Politics*, p. 40.

in the public sector, introduced contracting-in to payment of the political levy and made secondary picketing illegal, was also finally repealed in 1946.<sup>213</sup>

The *Wages Councils Acts* of 1945 and 1948 were passed to ensure minimum wages in industries where wages were low and where there was little or no collective organization. The 1945 Act 'was based on the premise that the state should use its powers not simply to ameliorate the effects of 'sweating' [extreme low pay and casualization of employment], but to keep collective bargaining going when economic circumstances tended to destroy it.'<sup>214</sup> <sup>215</sup> Nevertheless, some trade unions leaders came under attack for the way in which they cooperated in the later wage freeze in 1948, thereby reducing the wage setting role of the unions: 'Their job is to look after wages and hours and conditions, not to play politics and ignore the troubles of their own men and women.'<sup>216</sup>

Labour market controls were relaxed after the end of the war, although Essential Work Orders in relation to agriculture and mining were maintained in the face of continuing unofficial strikes in these industries. In 1948, the Government passed the *Employment and Training Act*, but this had little effect on vocational training in industry and commerce.<sup>217</sup> However, in 1951, the newly-elected Conservative Government explicitly promised to maintain the status quo and avoid further legislation. 'The seal was set by Churchill's appointment of Walter Monckton as Minister of Labour in 1951. Monckton was chosen because he had no clear party

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<sup>213</sup> *Trade Disputes and Trade Unions Act 1946*.

<sup>214</sup> S. Deakin, F. Green, *A Century of Minimum Wages in Britain*, <<http://cep.lse.ac.uk/pubs/download/cp291.pdf>> Accessed 3 April 2014.

<sup>215</sup> Despite the noble premise on which this legislation was founded, the Donovan Commission would conclude that the councils had in fact 'done little to fulfil the aim of extending voluntary collective bargaining: *Royal Commission Report*, Cmnd. 3623, para. 234.

<sup>216</sup> Maxwell-Fyfe in *National Union, 70<sup>th</sup> Annual Conference Report* (1951) p. 56, cited in Moran, *The Politics of Industrial Relations*.

<sup>217</sup> P.J.C. Perry, *The Evolution of British Manpower Policy*, (London, 1976), 51.

affiliation and was given the brief of ensuring good relations with the unions.<sup>218</sup> It was nevertheless becoming very clear that industrial relations, despite concerns that trade unionists were working too closely with politicians, could not work effectively in isolation from the legislature. Parliament could strengthen the bargaining position of trade unions through legislation and ensure that certain groups of workers were protected through health and safety laws and restrictions on working hours. These were 'interferences' that would have been welcomed by the unions, but Parliament had also acted in the past to curtail the financial strength of the unions and to restrict industrial action, as in the *Trade Disputes and Trade Union Act 1927*. If a future government had designs on legislating for improved industrial relations, it would have to keep in mind the lessons of the past and attempt to balance any restrictions on trade union freedom with improved working conditions and further strengthening of trade unions. The Donovan Commission would have been acutely aware of the balancing exercise it was being asked to perform, and criticism of the subsequent Report would reflect the very difficult task of trying to satisfying all three protagonists - trade unions, employers and the Government.

### 2.3 'A Giant's Strength' and judicial interference

By the late 1950s the tide of political and public opinion had once again begun to turn against trade unions as they gained in power and size. In 1958, the Inns of Court Conservative and Unionist Society published *A Giant's Strength*,<sup>219</sup> a devastating critique of the union movement, in which the view was expressed that the trade union movement had become 'over-mighty subjects' and should be put under greater legislative control. The suggestions for future policy were laid down in

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<sup>218</sup> Lord Birkenhead, *Walter Monckton*, (London, 1969), pp. 274-276.

<sup>219</sup> Inns of Court Conservative and Unionist Society, *A Giant's Strength*, 1958.

the document and, although it had no immediate impact, it nevertheless came to form the foundation of far-reaching legislative proposals for reform of industrial relations. These would be considered with increasing seriousness through the 1960s, eventually finding legislative approval in the *Industrial Relations Act 1971*. This attitude represented a determined U-turn within the Conservative Party. The Industrial Charter of 1947 had stated that the official policy of the Party was in favour of trade unions, and that it attached the 'highest importance to the part to be played by the unions in guiding the national economy.'<sup>220</sup> Yet there was an emerging political determination to once again bring the trade unions within the remit of formal legislative control, a change of attitude which was very much in evidence in the proposals contained within *A Giant's Strength*. Statutory protection from suit in common law torts for those acting in the course of unofficial strikes would be lost under the proposals, while trade unions and those taking part in official strikes would only remain protected under certain conditions, including formal registration with the Registrar of Friendly Societies. There would also have to be an inquiry into the issues in dispute, and a 'cooling off period' before strike action. These were all proposals that would require legislation for their implementation.

However, shortly before the Royal Commission was set up to investigate the role for legislation, matters reached a crisis point for trade unions when the judiciary renewed its determination to intervene in the rights of unions in two cases: *Rookes v Barnard*<sup>221</sup> and *Stratford v Lindley*.<sup>222</sup> *Rookes* involved an employee who was dismissed under pressure from his former trade union, the AESD, and who successfully brought an action against his former employer. The decision to award

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<sup>220</sup> *The Industrial Charter*, Conservative and Unionist Central Office, (London, 1947).

<sup>221</sup> *Rookes v Barnard* [1964] UKHL 1.

<sup>222</sup> *Stratford v Lindley* [1965] AC 269.

damages against the trade union was upheld by the House of Lords, a decision which left unions financially liable, despite the apparent protection of the *Trade Disputes Act 1906*. *Stratford* was another House of Lords ruling in which the injunction to prevent the 'tortious' act of causing loss by unlawful means through inducing breach of commercial contracts was upheld, again denying to the trade union immunity from liability under the 1906 Act. This was later described by O.H. Parsons as a judicial act 'even more splenic in its anti-trade union attitude than in *Rookes*'.<sup>223</sup> Wedderburn attributed this change in the former judicial attitude of 'non-intervention' to the growing strength of trade unions and a popular view that they were over-powerful.<sup>224</sup> The unions were now under attack from the judiciary, the politicians and the public, and the pressure to deal with the problem was becoming ever more urgent.

The TUC appealed to the Labour Government to address the anti-trade union decisions of the courts. While the Government could have acted straight away to legislate to ameliorate or nullify the effect of the decisions, it took the opportunity to use the situation to gain agreement from the TUC to a full inquiry into the current state of industrial relations. The careful response from the Minister of Labour, John Godber, was that an examination of *Rookes v Barnard* could 'appropriately be made only within the framework of the general inquiry into trade union law.'<sup>225</sup> In fact, the Government was able to obtain the agreement of the TUC to an inquiry by making reversal of the effects of the *Rookes v Barnard* judgment through further legislation conditional on their acceptance of the inquiry. As Robert Kilroy-Silk observed:

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<sup>223</sup> *The Times*, 25 May 1977.

<sup>224</sup> K.W. Wedderburn, 'Labour Law and Labour Relations in Britain', *BJIR*, Vol. X, Issue 2, 1972, 270-290.

<sup>225</sup> *TUC Annual Congress Report*, 1964, para. 426.

There can be little doubt that the *Rookes v Barnard* case was a godsend for the Labour Government ... [providing] the excuse for the Commission, and the Commission provided the excuse for procrastination. The Government could claim to be doing something when, in fact, it was doing nothing. Or rather it had managed to pass what, to it, was a politically dangerous issue on to other shoulders.<sup>226</sup>

Nevertheless, whether the Donovan Commission was simply a ruse used by a government playing for time, as Kilroy-Silk maintains, or in fact a serious attempt to inquire into all aspects of activity of trade unions, the inquiry proved to be a pivotal event in the history of industrial relations.

#### *2.4 The Political and Economic Situation 1945-1965.*

It is important to set the legal changes within the context of the political and economic climate of this period, in order to better understand the calls for a full Royal Commission review of industrial relations. The Commission reported over twenty years after the end of the Second World War, a period which had witnessed major changes in the social and economic situation in Britain. In addition, there had been significant legislative gains for the trade union movement and for workers in general. These included the *Wages Council Act 1945*, ensuring minimum wages in certain industries and the *Trade Disputes and Trade Union Act 1946*, restoring the restrictions on strikes and trade union membership removed by the 1927 Act.<sup>227</sup> There had been a raft of Acts aimed at protecting the health of workers in specific industries, while the *Contracts of Employment Act 1963*<sup>228</sup> required employees to be

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<sup>226</sup> R. Kilroy-Silk, 'The Donovan Royal Commission on Trade Unions', in R. A. Chapman (ed.), *The Role of Commissions in Policy Making*, (London, 1973), p. 44.

<sup>227</sup> Repealed by s. 1 *Trade Unions and Trade Dispute Act 1946*. The 1927 Act was described as 'one of the most spiteful measures that was ever placed on the statute book': H.A. Mills, *The British Trade Disputes and Trade Union Act*, *The Journal of Political Economy*, 36(3), 1928.

<sup>228</sup> Widely recognised as 'the first modern employment protection statute'. S. Deakin, G. Morris, *Labour Law*, (Oxford, 2012).

given reasonable notice before dismissal and a written statement of particulars at the commencement of employment. The Second World War had brought the TUC into direct consultation with government on a wide variety of issues, and, since the TUC was now established as the centre of trade union representation, it could justifiably be said that the trade-union movement 'had arrived'.<sup>229</sup>

The first post-war government, under Clement Attlee,<sup>230</sup> made significant attempts to gain union consent to overall social and political policies. The Labour Government brought with it financial gains for the union movement, as well as policies that resulted in full employment.<sup>231</sup> This latter would prove to be highly significant, since it resulted in a shift in the balance of power between workers and employers:

There has been a decisive movement of power within industry itself from management to labour ... The change from a buyer's to a seller's market for labour, however, by transposing at once the interests, and therefore the attitudes, of the two sides, has dramatically altered the balance of power at every level of labour relations.<sup>232</sup>

However, as this balance of power shifted between workers and employers, so also did it move away from union leaders and towards the shop-stewards' movement.<sup>233</sup> This led to a gradual move away from national bargaining and towards plant-based bargaining systems, shifting control of pay away from central authority and towards a system of individualized awards which often bore little resemblance to pay levels

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<sup>229</sup> K. Coates, 'The Vagaries of Participation, 1945-1960', in *Trade Unions in British Politics*, B. Pimlott, V. Cook (eds), (London, 1982), p. 171.

<sup>230</sup> Attlee served as Prime Minister from 1945 to 1951.

<sup>231</sup> Figures for years 1948-1965 in Table 1 above.

<sup>232</sup> C.A.R. Crosland, *The Future of Socialism*, (London, 1956), pp. 30-31.

<sup>233</sup> It was noted in the Donovan Report that the shop steward is less likely to be applying industry-wide agreements than obtaining a concession in excess of that agreement. *Royal Commission Report*, Cmnd. 3623, para. 101.

agreed through national bargaining.<sup>234</sup> This led to rising prices and a worrying degree of inflation which the Government was anxious to bring under control.<sup>235</sup>

The 1950s was a time of economic decline in Great Britain in comparison with other competitor countries. There was a 'stop-go' cycle of economic management in Britain,<sup>236</sup> which appeared to be the cause of the relatively slow growth rate, since it deprived the industrialists of the necessary confidence to make large-scale and long-term investments.

Laybourn examined the political situation which prevailed between 1940 and 1969, observing that trade unions in this period were becoming increasingly conscious of their power and authority, 'seeking involvement in the economic decisions of governments, agreeing to wage freezes for the good of the economy and even contemplating the need for new productivity arrangements.'<sup>237</sup> Historians acknowledged that '... wartime and post-war consensus created the opportunity for trade union development.'<sup>238</sup> However, this consensus between union leaders, business leaders and politicians led to dissatisfaction among union members, who perceived that officials were ignoring the best interests of the ordinary members who began to take industrial action without the official approval of their leaders. Laybourn considered that, 'The emergence of such undisciplined industrial relations paved the way for both Labour and Conservative politicians to examine ways of making trade

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<sup>234</sup> The Commission referred to this state of affairs as 'the two systems of collective bargaining': *Royal Commission Report*, Cmnd. 3623, paras. 143-154.

<sup>235</sup> *UK Inflation since 1948*,

<https://docs.google.com/spreadsheet/ccc?key=0Asiju4DoCDhScFhNRIEzZTRhRlkxMW9Ra1RfN0ZoWmc#gid=0> The rate of inflation was beginning to rise in 1960, moving from -0.5 to 1.8 per cent between January and December; in 1965 the annual inflation rate was running at around 5 per cent.

<sup>236</sup> Defining stop-go policy, Dow wrote: 'Policy appear[ed] both to cause deviations from trend and (later) to reverse them ... [such] that growth would have been closer to a sustainable trend had it done neither.' J.C.R. Dow, *The Management of the British Economy, 1945-60*, (Cambridge, 1964), p. 284.

<sup>237</sup> K. Laybourn, *A History of British Trade Unionism*, p. 157.

<sup>238</sup> *Ibid.*, p. 158.



union leaders both more powerful within their unions and more accountable to the public.<sup>239</sup>

In response, the country began to take on a more active, less complacent role in economic management. The Conservative Government under the leadership of Harold Macmillan decided to modernize the economy during 1961. The idea of controlling wages through an incomes policy was a more acceptable option from the Government's perspective, but employers, desperate for workers in a period of full employment, were driven to undermining government-imposed wage freezes<sup>240</sup> by alternative means such as bonuses and systematic overtime. These were negotiated directly with shop stewards, thereby accelerating the shift of bargaining power away from union leaders to the shop floor.<sup>241</sup> The powerful grip which the unions appeared to exercise over the country's economy had to be loosened if Britain was to thrive and prosper, and the Conservatives now determined that this could only be achieved through legislation, other strategies such as wage polices having failed.<sup>242</sup>

Neither the Conservative nor the Labour parties were significantly eager to take on the unions at this time, even though rising wages fuelled the soaring inflation rates.<sup>243</sup> The favour of the trade unions was courted by both sides of the political divide, but this became a time of careful analysis of the whole relationship between government and trade unions, when both political parties were forced to examine the

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<sup>239</sup> *Ibid.*

<sup>240</sup> A number of incomes policies had been tried since 1948, but it was found that restricting rates of wage increases was not enough. The *Prices and Incomes Act 1966* was an anti-inflationary measure which allowed governments to scrutinize rising levels of wages, and 'showed a great willingness on Parliament's part to intervene in the system of industrial relations where it judged voluntary action had failed': *Royal Commission Report*, Cmnd. 3623, para. 160.

<sup>241</sup> K. Coates, 'The Vagaries of Participation 1945-1960' in B. Pimlott and C. Cook (eds), *Trade Unions in British Politics*, p. 177.

<sup>242</sup> The National Incomes Commission established in 1962 was ineffectual, largely due to the TUC boycotting it, and Macmillan's Incomes Policy of 1962 also failed in its objectives.

<<http://filestore.nationalarchives.gov.uk/pdfs/small/cab-129-109-c-99.pdf>> Accessed 13 March 2015.

<sup>243</sup> H/C Research Paper 99/20 *Inflation: the Value of the Pound 1750-1998*, Price Index, Table 1.

issue of intervention through legislation in what had been areas of concern traditionally left wholly in the hands of trade unions.

### *2.5 The decline of laissez-faire industrial relations*

Thus the hitherto *laissez-faire* period of labour relations, with little interference from government, began its slow and possibly inevitable decline in the early 1960s.<sup>244</sup> Harold Wilson's administration oversaw the birth of the Royal Commission in 1965. Wilson and his First Secretary of State for Employment and Productivity, Barbara Castle, were concerned to pitch their response to the Royal Commission Report in such a way that they could be sure of another term of office. The Conservatives, also concerned with regaining power, had their own plans. But who would win the battle for Downing Street and become the party that restored good sense and order to the trade union movement?<sup>245</sup> A radical solution had to be found, and therefore the Royal Commission was called upon to examine the whole system of industrial relations and propose suitable solutions to the trade union 'problem'.

One way to achieve this would be through legislation, provided that the right balance of control of union power and support for workers could be formulated. Reducing the political and industrial power of the unions was viewed as popular with the electorate and could help either Labour or the Conservatives win a general election if only they could find the correct formula.<sup>246</sup> The plan would have to seek a re-balancing of the power between union leaders and members, while continuing to involve unions with

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<sup>244</sup> Davies, Freedland, *Labour Legislation and Public Policy*, pp. 137-139.

<sup>245</sup> P. Jenkins, *The Battle of Downing Street*, (London, 1970).

<sup>246</sup> R. Undy, P. Fosh, H. Morris, P. Smith, R. Martin, *Managing the Unions: The Impact of Legislation on Trade Unions' Behaviour*, (Oxford, 1996) p. 1. This work examines the legislation imposed by the Conservative Government of the 1980s and early 1990s, but gives an indication of the importance attached to the public perception of visibly and firmly controlling union activity through legislation.

decisions affecting the economy, but at the same time trying to curb the growing influence of the union movement.

The growth in calls for restraining union action took legislation in an entirely new direction, and away from the voluntarist position that had characterized industrial relations for many decades. Although Wedderburn had asserted that 'most workers want nothing more of the law than that it should leave them alone,'<sup>247</sup> this was a desire that no British political leader, Labour or Conservative, was willing to contemplate by the late 1960s. The role of the law would prove to be the most controversial aspect of tackling growing concerns over trade union activities.

The first formal evidence of the change in Conservative attitude from one of *laissez-faire* to calls for greater state control had appeared in *A Giant's Strength*, demanding a new legal framework for industrial relations, including the loss of all legal 'privileges' if a union went on strike in defiance of union rules. This pamphlet would influence Conservative policy in the 1960s and lead to insistence on greater legal control over union activities, even though many Tory MPs still remained wary of legislation,<sup>248</sup> These even included the Minister for Labour, John Hare, who warned that:

Legislation would cut across the present policy of trying to bring about a general improvement in industrial relations on a voluntary basis in cooperation with employers and unions. It would end the prospect of further progress on these lines in

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<sup>247</sup> Lord Wedderburn, *The Worker and the Law*, p. 1.

<sup>248</sup> Many of the ideas contained in *A Giant's Strength* were contained in *Fair Deal at Work: the Conservative Approach to Modern Industrial Relations*, published by the Conservative Political Centre, CPC No. 400, April 1968.

the immediate future. It would cause a head-on collision with the trade union movement generally.<sup>249</sup>

Wilson too had little appetite for a confrontation with the unions, but the majority of Conservatives had far fewer reservations on the issue, recognizing that, 'One way to avoid disaster might be for the government to take on, and beat, the unions,' something 'on which the Conservative opposition under Edward Heath was now making the running.'<sup>250</sup> The Trade Union Law and Practice Group appointed by Heath reported in 1965 recommended a decisive break with the voluntarist approach of post-war Conservatism. Heath's new style of Conservatism was set out in the 1965 policy document *Putting Britain Right Ahead*,<sup>251</sup> while specific proposals for legislation were contained in the 1966 manifesto, *Action Not Words*.<sup>252</sup> This latter document called for 'legally enforceable collective agreements, a Registrar for union rules, an Industrial Court, action on restrictive labour practices and action to prevent intimidation.'<sup>253</sup>

This represented a seismic shift in the Conservative political ideology since the Churchill Government of 1951-55, when the Minister of Labour, William Monckton had been an arch-appeaser of the trade unions.<sup>254</sup> This period also saw the coining of the term 'Butskellism' in *The Economist*, a term which implied that Conservative and Labour policies were almost indistinguishable, and that both sides were agreed

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<sup>249</sup> Bodleian, CPA/ACP3/10(63)103, J. Hare, *Industrial Relations, Unofficial Strikes*, 3-4.

<sup>250</sup> *Ibid.*, 139.

<sup>251</sup> *Putting Britain Right Ahead: A Statement of Conservative Aims*, Westminster: Conservative and Unionist Central Office, 1965.

<sup>252</sup> <<http://www.conservative-party.net/manifestos/1966/1966-conservative-manifesto.shtml>> Accessed 17 July 2014.

<sup>253</sup> A. Taylor, 'The Conservative Party and the Trade Unions', 154.

<sup>254</sup> A. Seldon, *Churchill's Indian Summer: the Conservative Government, 1951-55*, (London, 1981), pp. 196-207.

on the importance of consultation with the unions.<sup>255</sup> By the 1960s, the very notion of appeasement by any political leader had subsided to such a degree that legislation to control the unions now appeared to be inevitable, whichever political party was in charge.

## 2.6 Conclusion

The period of history examined here, through the nineteenth century and up to the 1960s, had witnessed an ebb and flow of legislative and judicial interference with industrial relations and with the rights of trade unions to manage their own affairs autonomously.<sup>256</sup> The extent to which legislation should or should not be employed to act as a brake on union autonomy and for managing industrial relations and regulating the rights of trade unions and workers was once again attracting increasing political attention. The value of legislative interference in industrial relations was once more under the microscope, even though some Conservatives, led by Richard (RAB) Butler, continued to maintain that legislation would be unworkable.<sup>257</sup>

Any Royal Commission investigating legislative interference in industrial relations would need to consider what role, if any, the law had to play.<sup>258</sup> Wedderburn's description of the dual role of industrial legislation<sup>259</sup> noted how new laws had been welcomed when used to support workers where unions were weak or non-existent,

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<sup>255</sup> <[http://www.blackwellreference.com/public/tocnode?id=g9780631209379\\_chunk\\_g97806312093793\\_ss1-42](http://www.blackwellreference.com/public/tocnode?id=g9780631209379_chunk_g97806312093793_ss1-42)> Accessed 13 March 2015.

<sup>256</sup> See, for example, the thorough investigation in Davies, Freedland, *Labour Legislation and Public Policy*.

<sup>257</sup> The Conservative party's conciliatory approach to trade unions was criticized by the Inns of Court Conservative and Unionist Association in their pamphlet, *A Giant's Strength*, 1958, which advocated legislation. However, a report by a Conservative committee led by R.A.B. Butler, considered various aspects of industrial relations and concluded that legislation to limit the right to strike would be inappropriate and unenforceable: Bodleian, CRD 2/7/17 IRC, *Industrial Change, The Human Aspect*, 1962, 7.

<sup>258</sup> *Royal Commission Report*, Cmnd. 3623. *Written Evidence of the Ministry of Labour*, London: Her Majesty's Stationery Office.

<sup>259</sup> Wedderburn, *The Worker and the Law*.

and where they were used to strengthen and protect the unions' freedom to strike and manage their own financial affairs.<sup>260</sup> However, where legislation was deployed as a means of governmental control over those unions whose very strength was perceived as a threat to the economic health of the nation, it was viewed as a threat by trade union leaders and accordingly resisted.<sup>261</sup> Yet, it was positively demanded by the whole trade union movement when used to act as a counterbalance to the very real threat to union autonomy coming from the courts.<sup>262</sup>

The Donovan Commission, which would include several lawyers and industrial relations academics, would have been acutely aware of the history of state interference with trade union autonomy from both courts and legislature. While legislation had been shown to be an appropriate measure for moderating, supporting or even controlling industrial relations in certain circumstances, governments had learned to use it with some caution, particularly when it operated as a threat to union autonomy. The absolute disregard paid to this sense of caution by both Conservative and Labour Governments between 1968 and 1974 may have contributed to their subsequent fall from grace, a factor which will be examined below. Nevertheless, neither the Labour Government, which tried to introduce penal sanctions against the unions in 1969,<sup>263</sup> nor the Conservative Government, which brought in the *Industrial*

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<sup>260</sup> Examples include: *Trade Union Act 1871*, *Protection of Property Act 1875*, *Employers and Workmen Act 1875*, *Conspiracy and Protection of Property Act 1875*, *Trade Disputes Act 1906*, *Trade Union Act 1913*, *Trade Boards Act 1918*, *Contracts of Employment Act 1963*, *Wages Councils Acts 1945*; various statutes relating to health and safety.

<sup>261</sup> Examples include: *Combination Acts 1799 and 1800*, *Criminal Law Amendment Act 1871*, *Trade Disputes and Trade Unions Act 1927*, *Industrial Relations Act 1971*.

<sup>262</sup> For example, *Taff Vale Railway Co v Amalgamated Society of Railway Servants* 1901 UKHL 1 and *Rookes v Barnard* 1964 UKHL 1. These House of Lords cases seriously threatened union autonomy and finances.

<sup>263</sup> *In Place of Strife*, Cmnd. 3888.

*Relations Act 1971* that severely limited union activity, survived the subsequent General Elections.<sup>264</sup>

According to contemporary writers, including Wigham, Roberts and Flanders, the Donovan Commission Report was the first major step on the long and tortuous road to the reform of industrial relations, but the parlous state of those relations and of the economy generally were the catalysts for the call for a Royal Commission in 1965 to examine the whole area of voluntarism which characterized British industrial relations at the time.<sup>265</sup>

When the Donovan Commission was established, the most pressing problem for the Government was the number of unofficial strikes, often called by shop-stewards and without leadership approval.<sup>266</sup> There were also many strikes in the coal industry where there were no shop stewards. This was, however, merely a symptom of the way in which the trade union movement and industrial relations had evolved and developed. Rules governing their behaviour had developed through custom and practice, but many unions had by now become too large for effective self-regulation, a view held even by one of the most powerful and influential union leaders, Jack Jones of the TGWU.<sup>267</sup>

The questions that the Commission would have to consider were: whether a general code of practice would ensure a more effective system of regulation; whether there was a place for light regulation;<sup>268</sup> whether collective agreements should maintain

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<sup>264</sup> See Chapter 5 below.

<sup>265</sup> E. Wigham, *What's Wrong with the Unions?* (London, 1961); B.C. Roberts, (ed.), *Industrial Relations: Contemporary Problems and Perspectives*, (London, 1962); A. Flanders, *Industrial Relations: What is Wrong with the System?* (London, 1965).

<sup>266</sup> 95 per cent of all strikes were unofficial in the years 1964-66, and approximately half concerned wages. See Ministry of Labour Statistics, *Royal Commission Report 1968*, Cmnd. 3623, 101.

<sup>267</sup> J. Jones, *Union Man, An Autobiography*, (London, 1986), p. 199.

<sup>268</sup> The White Paper, *In Place of Strife*, would recommend light regulation of the unions.

their non-legal status; and whether legislation could set minimum standards which the unions would have to observe. Ultimately, the solutions that the Donovan Commission was required to find would be an exercise in compromise and diplomacy. It would be up to the Commission to ensure that its proposals would be acceptable to the government, to the unions and to business leaders if they were to achieve any level of success. Legislation of some kind would need to be considered, but there was a sufficiently diverse body of opinion within the Commission to ensure that a positive recommendation for legislative control was far from a foregone conclusion. The Donovan Commission would have been acutely aware of the past attempts of the legislature to interfere in industrial relations, those which had met with success and those which had not. This awareness would form the bedrock of its future inquiries and recommendations, but there was little doubt that the emerging patterns of post-war industrial relations would give a renewed urgency to consider some of the recurrent problems of British industrial relations, and to propose remedies to resolve them.



## Chapter 3. The Royal Commission on Industrial Relations Report

### 3.1 Introduction

The Royal Commission on Industrial Relations was set up for a number of economic, legal and political reasons. The Conservative governments in the 1950s and early 1960s had endeavoured to remain on good terms with the unions, thereby avoiding the possible exploitation of popular fears that they were a threat to industrial stability. Such reticence was absent from the more right-wing Conservatives and 'it was the lawyers who were to the fore in giving expression to these shades of opinion' such as in the booklet, *A Giant's Strength*.<sup>269</sup> The consideration of changes to the law would be central to the deliberations of the Commission, which would have to decide to what extent - if at all - legislation would be a suitable means of bringing greater order into industrial relations.

The economic situation which prevailed in the mid-1960s would need to be addressed through both long-term and short-term strategies, and while a Royal Commission could consider longer term goals, the Government also had to consider the immediate state of Britain's public finances. Harold Wilson took office as Prime Minister in 1964, inheriting a huge £800 million balance of payments deficit. He was therefore anxious to see a reduction in unofficial strikes and an improvement in productivity, but in the short term it would also be imperative to impose further wage restraints, with a cap of 3-3.5 per cent, in order to satisfy the international money markets. Nevertheless, as Taylor pointed out, 'the trouble was that the fragile British economy required a prolonged period of wage restraint to ensure international

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<sup>269</sup> P. Davies, M. Freedland, *Labour Legislation and Public Policy*, (Oxford, 1993), p. 243.

confidence, and this was hard to achieve with a collective bargaining system that was fragmented and based on voluntaristic principles, not legal regulations.<sup>270</sup> Taylor warned, however, that ‘the crucial question was whether the TUC’s affiliated unions were really ready and willing to cooperate in a policy that would require them to compromise with their traditional commitment to “free” collective bargaining’, particularly in relation to wage determination.<sup>271</sup>

Some form of industrial relations legislation as part of that revisionist strategy seemed unavoidable, and that would form the basis of the Royal Commission’s remit. While some aspects of the law required urgent attention, such as the restoration of trade union immunity which had been undermined by the decision in *Rookes v Barnard*,<sup>272</sup> other legislative amendments which could address such problems as unofficial strikes could be carefully considered over a longer period of time by a Royal Commission.

There had also been more recent calls from the Conservative Party for extended industrial relations legislation, and although the Labour Government may not have been aware of the details, it would have been anxious to have its own proposals, particularly in the light of the growing problems of high inflation, low productivity and unofficial strikes. The Conservative Governments of the 1950s and early 1960s had been equally anxious to avoid exploiting popular fears of trade unions as a potential threat to industrial stability. Nevertheless, the tide was turning against the unions movement, and the more right-wing Conservatives, particularly the lawyers, had

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<sup>270</sup> R. Taylor, *The Trade Union Question in Politics*, (Oxford, 1993), p. 138.

<sup>271</sup> *Ibid.*, p. 126.

<sup>272</sup> *Rookes v Barnard* [1964] A.C. 1129.

recently argued in *A Giant's Strength*<sup>273</sup> that the nation could no longer sustain the freedom of collective action prevalent at the time, and were dedicated to making radical changes to industrial relations through legislation.

The Conservative Policy Group therefore worked over the next few years to produce its own analysis based on some of the recommendations in this pamphlet, and eventually reported shortly before the Donovan Report was published.<sup>274</sup> Crucially, as Flanders had argued, a system of absolute voluntarism was no longer an acceptable option for either side of the political divide:

The time has come when not humanity alone but our very existence demands justice in industry. Justice between master and man, between employer and union, between a union and its members and, perhaps above all, justice to the public. To obtain these things, it may be necessary to question the validity of certain assumptions that have come to be very nearly articles of faith to trade unionists.<sup>275</sup>

Those assumptions were the freedom to engage in big, economically damaging strikes and in restrictive practices; to have damaging inter-union rivalries; and the freedom to run closed shops and thereby victimize individual workers.<sup>276</sup> *A Giant's Strength* reflected the political outlook upon industrial society of many lawyers, judges, employers and their associations, as well as senior Conservatives, who perceived the power of the unions as a challenge to the political and constitutional ordering of society. This may help to explain the stance taken by the House of Lords in 1964 in the case of *Rookes*, when the court 'encroached upon the assumption, crucial to the whole structure of collective *laissez faire*, that the *Trade Disputes Act*

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<sup>273</sup> *A Giant's Strength, 1958* (A study produced by the Inns of Court Conservative and Unionists Society, subtitled *Some Thoughts on the Constitutional and Legal Position of Trade Unions in England*).

<sup>274</sup> Bodleian, PG/20/66/58, *Report of the Policy Group on Industrial Relations, 1967*.

<sup>275</sup> *A Giant's Strength*, p. 13.

<sup>276</sup> P. Davies, M. Freedland, *Labour Legislation and Public Policy: A Contemporary History*, (Oxford, 1993), p. 244.

1906 had been intended to exclude economic tort law from the whole field of industrial disputes and should be construed accordingly.<sup>277</sup> The Law Lords had indicated that the policy embodied in section 3 of the Act<sup>278</sup> was unduly protective of all kinds of trade union action, and they were willing to develop the common law and to use statutory construction to achieve radical new policy outcomes. They decided that the law 'did not protect inducement of breach of contract where that is brought about by intimidation or other illegal means.'<sup>279</sup> Public, judicial and political perception of trade unions was militating against the ever-increasing power of the unions, and the time was ripe for radical reform.

This judicial decision gave further momentum to the pressure on the Government to respond to the perceived crisis in industrial relations.<sup>280</sup> The TUC had pressed the Conservative Government to legislate to reverse the decision, but the Government wanted a full inquiry to take place before legislating.<sup>281</sup> At the TUC Congress that year, one NUR delegate concluded the debate on the *Rookes* crisis by reminding Congress of the value of union freedom from legal restraints:

I believe we have to strain every nerve to secure at the earliest possible moment amending legislation which will fully restore that kind of protection [under the 1906 Act]. I believe that if we fail to do that, we shall betray our trust to those old pioneers who fought so hard to ... try to ensure that trade unions and trade union officials

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<sup>277</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 245.

<sup>278</sup> Section 3 prevented court challenges by employers, customers and suppliers to union action during trade disputes on the grounds that they had broken, induced a breach or interfered with an individual or commercial contract.

<sup>279</sup> Per Lord Reid, *Rookes v Barnard*, para. 1178.

<sup>280</sup> *The Times*, 2 March 1964. Some in the Conservative Government wanted to use a Royal Commission inquiry into trade unions to act as a *quid pro quo* for government action on resale price maintenance.

<sup>281</sup> *TUC Congress Report*, 1964, pp. 352-358, Modern Records Office, University of Warwick (MSS/292/PUB/4/1/64).

should be able to be able to exercise their legitimate and proper functions without ... legal fetters.<sup>282</sup>

Action to remedy the effects of *Rookes* was a priority for the union movement. Wilson was willing to agree to legislation which would restore the trade dispute immunities, having earlier declared an intention to consider major law reforms ahead of the Election.<sup>283</sup> He charged Ray Gunter, his Minister of Labour, with reversing the effect of *Rookes*. The appointment of the Royal Commission in 1965, tasked with a full review of the system of industrial relations, was directly followed by the publication of the *Trade Disputes Bill* which acted to undo the immediate effect of *Rookes*. This came as something of a relief to the trade unions, which had for over half a century been safe in the knowledge that, as non-corporate organisations, they could not be held legally responsible for economic torts. Legislation had protected that position, and it was evident that new legislation was the only way to 'correct' the position which the House of Lords had seen fit to disrupt. Evidently, trade unions were not entirely averse to legislation – if it suited their own purposes.

There was undoubtedly a crisis which had been sharpened, but not caused by the intervention of the House of Lords in *Rookes*. The Royal Commission was being asked to 'do nothing less than discover by rational inquiry the right normative order for industrial society for the future', and to consider whether law had a part to play in that order.<sup>284</sup> The new Labour Government showed little appetite for confrontation with the unions. Wilson may have complained that a Royal Commission would take

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<sup>282</sup> *Ibid.*, 526.

<sup>283</sup> *The Times*, 21 April 1964. Wilson had hinted at legislative reform in a speech to the Society of Labour Lawyers in the Temple.

<sup>284</sup> Davies, Freedland, *Labour Legislation*, p. 246.

years,<sup>285</sup> but he may also have seen a benefit in such a delay, relying on that fact to keep him in government for as long as possible while something was at least seen to be done about the 'trade union problem'. The timescale was set at two years, but in fact it would take three years to complete the report. The magnitude of the task was huge, with 640 trade unions and 1,500 employers' associations all potentially wishing to have some input into the inquiry.<sup>286</sup>

Meanwhile, the Conservatives would have ample time to reconsider their policies and formulate a plan that would not only restore them to government, but which would enable them to rein in the trade unions and their unbridled excesses of power once and for all.<sup>287</sup> (It would indeed be a Conservative Government that succeeded in this aim, under the leadership of Margaret Thatcher, but that would be in a different decade and involve considerable conflict.)

When the Donovan Commission Report was finally published in June 1968 it contained only tentative and minor recommendations, with no major role for the law. It was a disappointment to many, including Barbara Castle and Jack Jones, TGWU leader.<sup>288</sup> Meanwhile, the Conservative party succeeded in publishing its own recommendations in *Fair Deal At Work*, two months ahead of the Donovan Report.<sup>289</sup> The problem of unofficial strikes was clearly seen as a key election issue,

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<sup>285</sup> Per Lord Jellicoe, *HL Deb. 21 July 1965 vol. 268 c. 737*, speaking on the utility of a Royal Commission, which he supported.

<sup>286</sup> *The Times*, 3 February 1965.

<sup>287</sup> Bodleian, PG/20/66/58, *Report of the Policy Group on Industrial Relations*, 1967. This Report led to the Conservative Document, *Fair Deal at Work*, which offered alternative policies to Donovan, and was published shortly before the Royal Commission Report in April 1968.

<sup>288</sup> *The Donovan Report: An Assessment by the Engineering Employer's Federation*, January 1969; J. Jones, *Union Man: An Autobiography*, (London, 1986), p. 199; B. Castle, *Fighting all the Way*, (London, 1993), p. 414.

<sup>289</sup> *The Times*, 13 April 1968. Robert Carr, Minister of Labour, defended the proposals in a letter, writing that they 'were designed to create a new framework in which responsible voluntary action will be given new stimulus ... increase the authority of constitutionally elected and appointed union leadership and to weaken the growing and disruptive influence of unofficial elements.'

and it was likely that the party with the most effective proposals would have a distinct advantage in the next General Election.

### *3.2 The Royal Commission*

The House of Lords ruling in *Rookes* had delivered a severe blow to the concept of trade union immunity. The ruling made it clear that trade unions did not enjoy the blanket protection from liability, and against loss of their funds, which they believed they had possessed ever since the *Trade Disputes Act* was passed in 1906. The TUC, seemingly not averse to legislation which directly benefited workers and trade unions, had persuaded the Labour Government to intervene to reverse the effect of the decision. In return, it offered to accept the appointment of a Royal Commission to consider other aspects of industrial relations, with the proviso that trade union representatives were included among its members.<sup>290</sup> There was a long-standing and unshakeable assumption that trade unions had an important role to play in the post-war consensus, and the notion that the operations of unions should be central to a thorough examination of economic problems and suggested solutions did not question this assumption.

The Royal Commission had its terms of reference set out in the Royal Warrant by which the twelve members were formally appointed on 8 April 1965.<sup>291</sup> With such terms of reference, it was to be expected that there would be a number of lawyers on the Commission, but also trade unionists and experts on industrial relations. Since a Royal Commission has free rein in how it approaches its task, unconstrained beyond

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<sup>290</sup> *TUC Annual Congress Report 1965*, p. 377.

<sup>291</sup> *Royal Commission Report*, Cmnd. 3623, 1968, p. iii. '... to consider relations between managements and employees and the role of trade unions and employers' associations in promoting the interests of their members and in accelerating the social and economic advance of the nation, with particular reference to the Law affecting the activities of these bodies; and to report.'

its vague terms of reference,<sup>292</sup> it is instructive to first establish the background of the twelve Commission members. It is in the nature of group studies that individual personalities, with their prejudices and experiences, will influence the outcome of the group's enquiries and findings. Indeed, there is evidence to suggest that the members of the so-called Oxford School who were included on the Commission, played an unduly influential role in the outcome. The Commission constituted a group of people who collectively held a wide variety of strong opinions which may have played some part in the shortage of agreed solutions in the final report.

Lord Donovan was chosen to chair the Commission, and the other eleven members were selected over the next few weeks.<sup>293</sup> *The Times* reported on the choice of members, noting the importance of the legal experts:

The membership has been chosen to reflect relevant interests, including experience of labour relations, management, and trade unionism from the academic, practical, legal and independent viewpoints. The inclusion of legal experts is particularly important, since some of the demand for an inquiry into trade unions was stimulated by apparent anomalies in the law brought to light by the cases of *Rookes v Barnard* and *Stratford v Lindley*.<sup>294</sup>

Gosnell, in his study on Royal Commissions, noted that it was common to appoint a judge to chair a Commission, but suggested that the obvious qualities of an experienced judge may be counterbalanced by other tendencies such as a

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<sup>292</sup> See R. A. Chapman, (ed.) *The Role of Commissions in Policy Making*, (London, 1973) for a series of case studies on Royal Commissions.

<sup>293</sup> The complete membership list was announced by the Prime Minister, Harold Wilson, in the House of Commons, *HC Deb 29 March 1965 vol. 709 c.188*.

<sup>294</sup> *The Times*, 30 March 1965. In *Rookes v Barnard* [1964] A.C. 1129 the House of Lords held that the trade union was liable for the tort of intimidation, and imposed punitive damages. In *Stratford v Lindley* the union was found liable for the tort of inducing breach of commercial contract by unlawful means. In neither case was the union protected by the immunity in the *Trade Disputes Act 1906*.



willingness to accept compromise.<sup>295</sup> Indeed, with so many members, each from very diverse backgrounds, it was perhaps predictable that many compromises would have to be made in order to progress to a conclusion and final Report.

With a background in both law and politics, Lord Donovan had been elected as a Labour MP in 1945, but resigned shortly after the 1950 election to take up the post of High Court judge. He rose through the judicial ranks to become a Law Lord in 1964. Since the inquiry would focus on the role of the law, it was perhaps natural that a judge would be appointed to chair the Commission. Gosnell may have been correct in his analysis, however, since the final report was very much based on compromise, with clear disagreements within the membership and a lengthy Note of Reservation from one member, Andrew Shonfield.

The chairmanship of the Royal Commission was Donovan's only major appointment before his retirement in 1971. His influence as a judge and former Labour MP gave him the dual advantages of knowing the law and having the experience of dealing with trade unionists and working men in his capacity as an MP. Although he had limited experience of labour law, he would have found favour with the trade unions, since he was one of the Court of Appeal judges who had reversed the High Court decision in the *Rookes* case, in favour of the unions.<sup>296</sup> The TUC had always stressed the need for a wide-ranging inquiry which covered more than the law, but nevertheless accepted Donovan as a legal chairman. His relative ignorance of the subject matter, however, led to his relying heavily on the academic experts on the Commission who were eventually to produce the essential parts of the Report.

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<sup>295</sup> H. Gosnell, 'British Royal Commissions of Inquiry', (1934) 49 *Political Science Quarterly*, 84, 109.

<sup>296</sup> [1963] 1 QB 627. There was a further appeal against this decision to the House of Lords which, unfortunately for the unions, overturned the finding of the Court of Appeal.

The Prime Minister was challenged in Parliament on the choice of the remaining members. Mr Lubbock MP and Mr Godber MP asked whether the membership of the Commission should have included people with recent experience of negotiations at factory level, such as shop stewards and works' managers, or even wholly independent people who could be more objective. Nevertheless, Wilson professed himself satisfied with the make-up of the Commission.<sup>297</sup> *The Economist* also expressed doubts about the membership, querying before the full list was announced, 'whether it will also include some people who have in the past been critical of [the trade union movement].'<sup>298</sup> The full scepticism of *The Economist* was apparent in a later article when it described the Royal Commission as 'too large', having 'a nineteenth century air' and being 'unusual among British royal commissions in that it contains representatives of the two groups involved in the investigation'.<sup>299</sup> This reflected the opinions of the two MPs who seemed to be otherwise lone voices in Parliament concerned at the make-up of the Commission.

The members could be categorized loosely as academic and non-academic experts, representative and lay members, who were able to assist each other in providing the diverse range of experience and opinion that is fundamental to the production of a balanced report. Certain members of the Commission were known to be opposed to the use of legislation, and in favour of voluntarism. Others were inclined to take a more pragmatic stance, arguing that the economic situation and the transition of trade unions from weak organizations in the early twentieth century to monolithic, all-powerful and autonomous bodies in the 1960s necessitated greater regulation.

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<sup>297</sup> HC Deb, 11 May 1965, Vol. 712, cc. 264-265.

<sup>298</sup> *The Economist*, 23 January 1965, 309.

<sup>299</sup> *The Economist*, 3 April 1965, 24.

### 3.2.1 The Academic Experts

It was essential to include industrial relations specialists on the Commission, given its remit. Otto Kahn-Freund, ~~Allan Flanders and Hugh Clegg, together with~~ and Eric Wigham, were major contributors to the debate on the role of legislation. Their previous experience and opinions inevitably came to heavily influence the Report of the Commission.

Oxford University had by this time established itself as a pre-eminent place for the study of industrial relations, and several members of the Commission had an 'Oxford School' connection. The Oxford School was important for its role in creating a new academic social science field of industrial relations. It 'addressed a crucial policy moment in the development of social democratic corporatism with reference to the role of trade union'.<sup>300</sup> They group's members were academics who 'analysed industrial relations primarily by relying on empirical research and who were interested in applying their research to practical problems'.<sup>301</sup> In Hugh Clegg's words, 'we tended to be practical-minded – looking where possible for ways of improving things, and we tended to rely on empirical research – particularly in the workplace'.<sup>302</sup> The five key founder members were Hugh Clegg, Allan Flanders, Alan Fox, Bill McCarthy, and Arthur Marsh.<sup>303</sup> So influential were they, that it was written:

Dialling 0092, the Oxford prefix is a performance you can predict of an editor who wants an article on the role of the shop steward, of an employer's association which needs specialist advice, of a trade union seeking guidance. It is too a necessary ritual

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<sup>300</sup> <<http://www.historyandpolicy.org/docs/uploads/peter-ackers-introducing-the-oxford-school-of-industrial-relations.pdf>> Accessed 3 April 2017.

<sup>301</sup> *Ibid.*

<sup>302</sup> S. Lawrence, 'Professor Hugh Clegg', *Personnel Management*, May 1979, 23.

<sup>303</sup> J. Buglar, 'The New Oxford Group', *New Society*, 14 February 1968.

for a government department in need of an academic for a committee of inquiry into a strike.<sup>304</sup>

It came as little surprise, therefore, that ~~Flanders and Clegg were appointed as Commission members. Clegg was appointed as a Commission member, while Flanders was asked to submit evidence to the Commission.~~

~~Although the members of the Oxford school were generally opposed to legislative interference with industrial relations, Flanders was the one who was most in favour of legislation, which he admitted was increasingly necessary in modern industry.<sup>305</sup> Nevertheless, he also advocated retaining the long-standing of collective agreements as permitting flexibility and encouraging responsibility, which together 'induced a greater readiness to compromise and to stand by whatever compromise was reached.'<sup>306</sup>~~

~~The fact that industrial activity changes day by day, that technology and markets are constantly in flux, means that it cannot be directed with a sensitive regard for the manifold and diverse interest of those involved by a regime of strict external law and outside regulation. Fixed codes of rights and obligations, rigid notions of justice and equity, are not applicable to industrial relations.<sup>307</sup>~~

~~Flanders also advocated limited legislative measures to positively strengthen collective bargaining. Rather than general legal enforcement of procedural collective agreements, he could see a place for selective use of legal support for substantive agreements relating to wages.<sup>308</sup> He recommended retaining the flexibility of~~

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<sup>304</sup> *ibid.*

<sup>305</sup> *ibid.*

<sup>306</sup> A. Flanders, *Industrial Relations: What is Wrong with the System?* (London, 1965), p. 32.

<sup>307</sup> A. Flanders, *Collective Bargaining: Prescription for Change*, (London, 1967), p. 38.

<sup>308</sup> This principle had been used in the past, for example the Dock Labour Scheme 1946 gave negotiated agreements the force of law.

~~voluntarism and considered that 'the legal enforcement of procedural agreements would completely change the character of collective bargaining and force the actual conduct of negotiations and the process of dispute settlement into a restrictive legal form.'~~<sup>309</sup> Nevertheless, Flanders suggested that legislation could act as 'an important means of stimulating the negotiation of agreements' and 'a spur to their observance.'<sup>310</sup> The method which he advocated, therefore, was 'to use state regulation to set minimum conditions, while allowing the parties to opt out of legal enforcement when and where they negotiate agreements with not less favourable terms.'<sup>311</sup>

Hugh Clegg, ~~also a member of the influential Oxford School,~~ had been a Fellow of Nuffield College, Oxford since 1949, taking up the position of the first Professor of Industrial Relations at Warwick University between 1967 and 1979. He had written extensively on trade unions and industrial relations, having been a pre-war trade union activist. He published the first of three volumes of *A History of British Trade Unions* in 1964.<sup>312</sup> Together with Flanders, he had previously published the *System of Industrial Relations in Great Britain*.<sup>313</sup>

Clegg was a traditionalist who advocated state support for voluntary agreements and minimal legislative interference.<sup>314</sup> His preferred approach to industrial relations lay somewhere between voluntarism and legislation. He considered that the use of the law to restore industry bargaining, to make collective agreements legally binding, to

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<sup>309</sup> ~~*Ibid.*, p. 48.~~

<sup>310</sup> ~~*Ibid.*~~

<sup>311</sup> ~~*Ibid.*~~

<sup>312</sup> H. Clegg, A. Fox, A. F. Thompson, *A History of British Trade Unions Since 1889*, Vol. 3, (Oxford, 1964).

<sup>313</sup> H. Clegg, A. Flanders (eds), *System of Industrial Relations in Great Britain*, (Oxford, 1954).

<sup>314</sup> H. A. Clegg, *The System of Industrial Relations in Britain*, (Oxford, 1970).

regulate strike action or to reform trade union structures were all unworkable options.<sup>315</sup>

Although described more as an Oxford 'outsider',<sup>316</sup> one of the Report's main authors, Otto Kahn-Freund, was a distinguished academic lawyer and professor of Comparative Law at Oxford. He had studied History and Law at the Universities of Frankfurt, Heidelberg and Leipzig, a period of study which had 'helped him to realise that an understanding of the development of a law, and of the social context in which it was required to work, was an essential basis for the discussion of present day issues.'<sup>317</sup> He was strongly influenced by the teachings of Professor Hugo Sinzheimer who was widely regarded as the creator of German labour law. Kahn-Freund wanted to understand how the law worked in society at large and was highly critical of the German Federal Labour Court, comparing its attitude to that of the fascist Italian government which had attempted to restrict the collective action of workers while enhancing the benefits of individual labour law.<sup>318</sup> He was intensely interested in the scientific study of British collective labour law because of the apparent 'abstention' of the law, of which he was very much in favour, and the absence of any intention to create legal relations which would normally form part of any commercial agreement.<sup>319</sup>

With his background in the highly regulated German legal system, Kahn-Freund was one of the greatest proponents of the voluntary, *laissez-faire* nature of industrial

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<sup>315</sup> P. Ackers, 'The Changing Systems of British Industrial Relations, 1954-1979: Hugh Clegg and the Warwick Sociological Turn', *BJIR*, June 2011, 306-330.

<sup>316</sup> <<http://www.historyandpolicy.org/docs/uploads/peter-ackers-introducing-the-oxford-school-of-industrial-relations.pdf>> Accessed 3 April 2017.

<sup>317</sup> O. Kahn-Freund, *Selected Writings*, (London, 1978), p. x.

<sup>318</sup> O. Kahn-Freund, *Das Soziale Ideal des Reichsarbeitsgerichts (The Social Ideal of the Supreme Labour Court)*, Vol. 7, *Abhandlungen zum Arbeitsrecht*, J. Bensheimer, 1931.

<sup>319</sup> B.A. Hepple, "Great Britain" in *International Encyclopaedia of Labour Law & Industrial Relations*, Dordrecht: Kluwer, 1977, para. 36.

relations, which he thought was considerably better than the German system.<sup>320</sup> He had regarded statutory interventions as 'second best' so that 'all British legislation is, in a sense, a gloss or footnote to collective bargaining'.<sup>321</sup> Interestingly, his attitude towards the role of legislation would soften with his membership of the Donovan Commission, and he came to admit that there were benefits to legislative control over some areas of industrial relations.<sup>322</sup>

Kahn-Freund adopted a sociological approach to the law, but also wrote frequently of law in the political context and was able to compare English law with that in other jurisdictions. It is these qualities of insight into the purpose of law and the inherent dangers of a fascist-style regime, together with his ability to critique and analyze the law in its sociological, comparative and political contexts which gave Kahn-Freund the advantage of being able to view the problems and potential solutions from multiple perspectives. Kahn-Freund thought that 'the part played by the law in the regulation of relations between employers and their organizations on the one hand and trade unions on the other is problematical everywhere'.<sup>323</sup> He considered that the solutions to that problem in one country could be of interest to other countries and should not be dismissed as purely theoretical.<sup>324</sup>

In Britain, collective regulation was traditionally a matter of autonomy for the unions, taking place outside the law, and Kahn-Freund put this down to the fact that, while in

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<sup>320</sup> O. Kahn-Freund, 'Labour Law and Industrial Relations in Great Britain and West Germany', in W. Wedderburn, R. Lewis, J. Clark (eds), *Labour Law and Industrial Relations: Building on Kahn-Freund*, (Oxford, 1983).

<sup>321</sup> O. Kahn-Freund, 'Legal Framework' in A. Flanders and H. Clegg (eds). *The System of Industrial Relations in Great Britain*, (Oxford, 1954), Chapter 2.

<sup>322</sup> Kahn-Freund authored the chapter on legislation to address the problems on unfair dismissal: *Royal Commission Report 1968*, Cmnd. 3623, Chapter 9.

<sup>323</sup> Kahn-Freund, 'Labour Law and Industrial Relations in Great Britain and West Germany', in Wedderburn, Lewis, Clark (eds), *Labour Law and Industrial Relations: Building on Kahn-Freund*, p. 1.

<sup>324</sup> The Donovan Commission examined industrial relations in several jurisdictions, including Germany, Sweden and the United States.

Germany and France the political labour movement preceded the trade union-movement, in Britain the reverse was true by at least half a century. The disruption caused by industrialization in the late eighteenth and early nineteenth centuries, combined with the severe economic effects of the Napoleonic Wars, led to a surge in workplace combinations and trade organisation. This was despite the *Combination Acts* of 1799 and 1800 which made combinations of all trades illegal, replacing the need for individual pieces of legislation aimed at particular trades. Nevertheless, trade unions were well and truly established long before politicians considered it necessary to regulate them - rather than simply ban them - through legislation, and their organizational rules and procedures had already been developed internally through consensus and a process of custom and practice – a concept that Kahn-Freund admitted was hard for lawyers to grasp.<sup>325</sup> He explained that British laws, unlike those of Germany, ‘do not have a systematic, codifying character, but are intended to deal with abuses.’<sup>326</sup> There has never been an attempt to provide a code of practice in Britain that would regulate industrial relations and union activities; instead, successive governments have identified a problem or ‘abuse’ when it arose and passed legislation to deal with it.<sup>327</sup>

Kahn-Freund wrote on the role of law in industrial relations, both in retrospect and prospect, following publication of the Donovan Report, posing the questions:

What possible contribution can the law make to the ordering of industrial relations, what contributions has it made in this country in the past, and what are we expecting it to make in the future?<sup>328</sup>

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<sup>325</sup> Kahn-Freund, ‘Labour Law and Industrial Relations in Great Britain and West Germany’, p. 3.

<sup>326</sup> *Ibid.*, 4.

<sup>327</sup> See Chapter 2 for examples of such reactive legislation.

<sup>328</sup> O. Kahn-Freund, ‘Industrial Relations and the Law – Retrospect and Prospect’, *BJIR*, Vol. 7, Issue 3, 301-316.



He considered that law had three possible roles. He believed that law could support the autonomous system of collective bargaining; provide a code of substantive rules governing terms and conditions of employment; and it could 'provide the rules of the game', what is allowed and what is forbidden in the conduct of 'industrial hostilities'. He argued that the greatest defect in the law was 'the absence of any attempt to create a body of regulatory norms to provide the parties with a clear ruling where collective bargaining fails to provide it.'<sup>329</sup> There was no willingness on the part of either labour or management to ask for *direct* sanctions such as injunctions, the imposition of damages, or of criminal penalties, nor to recognize collective agreements as legally binding contracts.<sup>330</sup> However, the use of 'indirect sanctions provided by law' was one of the formative elements of British industrial relations.<sup>331</sup> Kahn-Freund considered that they provided a statutory framework for what he termed 'organized persuasion.' Direct sanctions, such as those used in wartime, were ineffective and usually withdrawn when peace was re-established.

Kahn-Freund wrote:

The trade unions have never in this country demanded the legal enforcement of an obligation to recognize them, just as they have preferred to rely on their own strength rather than on the law for the enforcement of the concluded agreement. This is an attitude which is deeply rooted in their history ... trade unions [have] achieved through industrial action a high degree of bargaining strength long before their members had achieved the political franchise and the unions had achieved the political pressure power that goes with the franchise of members.<sup>332</sup>

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<sup>329</sup> Kahn-Freund, 'Industrial Relations and the Law – Retrospect and Prospect', 303.

<sup>330</sup> This position would change dramatically in the *Industrial Relations Act 1971*.

<sup>331</sup> Kahn-Freund, 'Industrial Relations and the Law – Retrospect and Prospect', 304.

<sup>332</sup> *Ibid.*, 310.

Yet Kahn-Freund could see the benefits of limited legislative control over selected areas of industrial relations, and in fact authored Chapter 9 of the Royal Commission Report on 'Safeguards for Employees against Unfair Dismissal', and Chapter 10 which proposed the establishment of labour tribunals to deal with this and other employment-related issues. Kahn-Freund was demonstrably in favour of legislation to ensure that dismissals were done fairly, a protective measure that went beyond union members and which has protected all employees since 1971.<sup>333</sup> However, right up until shortly before his death, he maintained the belief in the importance of the strike as the 'necessary ultimate sanction, without which collective bargaining cannot exist', and that law could make no contribution to the solution of the problem.<sup>334</sup> He nevertheless admitted that the freedom to strike could be in danger of being lost if the unions did not do something about the problem themselves, a change of heart that may have been prompted by the shift in the pattern of strikes in Britain, and with the growth in large-scale strikes by public sector workers.<sup>335</sup> His 'ideal' of collective *laissez-faire* was certainly no longer sustainable at the time of his death in 1979, and was possibly already a concept that was no longer tenable in the mid-1960s, as the turmoil that characterized industrial relations for the next two decades was to suggest.

Kahn-Freund compared the voluntary system of industrial relations in Britain with the highly-regulated German system and found that almost every fault that he had seen in the industrial relations of the Weimar Republic could be matched by a virtue in the

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<sup>333</sup> First introduced in the Industrial Relations Act 1971.

<sup>334</sup> O. Kahn-Freund, *Labour Relations: Heritage and Adjustment*, (Oxford, 1979), p. 77.

<sup>335</sup> H. A. Clegg, 'Otto Kahn-Freund and British Industrial Relations', in K. W. Wedderburn, R. Lewis, J. Clark (eds), *Labour Law and Industrial Relations: Building on Kahn-Freund*, (Oxford, 1983), p. 27.

British system.<sup>336</sup> He considered that the obligations and liabilities of the British method 'do not lend themselves to enforcement by state-created legal machinery.'<sup>337</sup> Kahn-Freund had a preference for the system of voluntarism in Britain and thought that 'legal norms and sanctions are blunt instruments for the shaping of intergroup relations which have developed into a higher community.'<sup>338</sup> His concept of collective *laissez-faire* was both a descriptive model of British industrial relations and a normative model of how they should be, and it was heavily influential in the study of industrial relations. His attitudes were doubtless shaped by his earlier experiences in Germany as a judge, and his arguments against the use of the law to control workers were distinctly political. Nevertheless, this antipathy towards legal regulation altered significantly with his membership of the Donovan Commission, and Hugh Clegg, a fellow member, attributes this to the evidence of key witnesses to the Commission,<sup>339</sup> ~~one of whom was including~~ Allan Flanders.<sup>340</sup>

Together, [Flanders](#), Clegg and Kahn-Freund offered outstanding intellectual insight into the theoretical side of industrial relations and were heavily influential in the final Report.

### 3.2.2 Non-academic experts

An expert and author on trade unions, Eric Wigham worked as Labour Editor for *The Times*. In his book, *What's Wrong with the Unions?* he demonstrated a sympathetic,

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<sup>336</sup> R. Lewis, J. Clark (eds), *Labour Law and Politics in the Weimar Republic: Selected German Writings of Otto Kahn-Freund*, (Oxford, 1981).

<sup>337</sup> O. Kahn-Freund, 'Intergroup Conflicts and their Settlement', Vol. 5, *British Journal of Sociology*, 1954, 193-227.

<sup>338</sup> *Ibid.*, 202.

<sup>339</sup> H.A. Clegg, 'Otto Kahn-Freund and British Industrial Relations', p. 17.

<sup>340</sup> A. Flanders, *Collective Bargaining: Prescription for Change*, (London, 1967). This was a collection of the evidence which resulted from the Royal Commission inquiry.

but constructively critical view of trade unions.<sup>341</sup> He advocated legislation to control and modernize the trade unions, restricting legal privileges of trade unions to those which registered with the Chief Registrar of Friendly Societies, who would have responsibility for ensuring that the rules were observed. Wigham noted that 'laws have been passed specially to make it legal for them [the trade unions] to do things that would otherwise have been illegal', but argued that 'they were given their special status because they were weak ... [and] now they are much stronger.'<sup>342</sup> He recognized that while the prevailing social, economic and political circumstances had significantly altered since the 1906 Act, so had the status of trade unions, and that these changes should be recognized by amendments to the law. He did not restrict his recommendations to legislation alone, however, suggesting other reforms which could be undertaken by the unions, by the TUC and by employers.<sup>343</sup>

From his perspective, legislation was desirable as means of controlling and modernizing the trade unions rather than for the improvement of the workers' lot. He was concerned that there was much about trade unions that needed urgent improvement. Indeed, some of Wigham's calls for state control would be included in the Donovan Report and would eventually find statutory footing in the *Industrial Relations Act 1971*.

Andrew Shonfield, an economist, also disagreed with absolute voluntarism, and in the Report would call for greater formal control of industrial relations, which he claimed was necessary in an advanced industrial society; he authored the Note of Reservation which was almost a Minority Report.<sup>344</sup> Before becoming a Commission

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<sup>341</sup> E. Wigham, *What's Wrong with the Unions?* (Harmondsworth, 1961).

<sup>342</sup> *Ibid.*, p. 17.

<sup>343</sup> *Ibid.*, p. 231.

<sup>344</sup> Royal Commission Report, Note of Reservation by Andrew Shonfield, Cmnd. 3623, 1968.

member, he had published his views on the British system of industrial relations, noting the lack of any legal framework in Britain which he dubbed an 'unpaternal State'.<sup>345</sup> He opposed the ideas of the majority on the Commission for continuing with a system of voluntarism while strengthening workplace bargaining, and led the 'hawks' on the Commission. His philosophy of industrial relations was a legal-sanction-based one. He made a strong argument for the role of the law to protect workers where there was little or no collective organization, and agreed with Frederic Meyers in decrying the lack of formal procedures for maintaining industrial discipline or dismissing with good cause.<sup>346</sup> Shonfield had worked as economics editor on the *Observer* newspaper, and his expertise on economics and preference for legal sanctions formed the basis of his Note of Reservation attached to the Donovan Report. While the Oxford scholars drew on past experience of industrial relations, attempting to fit their recommendations into the voluntarist tradition, Shonfield took a significantly more pragmatic and forward-thinking approach to the problems, drawing on his experience as an economist.

Shonfield had also written in favour of industrial relations legislation in some form. He considered that 'the most striking illustration of the persistence of the traditional British attitudes is to be found in the legal framework of the rights of labour in relation to their jobs.'<sup>347</sup> What he was referring to was the general *lack* of any legal framework and the extreme lengths to which the government took this principle. As an example of governmental antipathy towards industrial legislation, when the International Labour Organization (ILO) had agreed that all countries should move towards a forty-hour week in 1963, Britain was the sole dissenter, believing that such

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<sup>345</sup> A. Shonfield, *Modern Capitalism: The Changing Balance of Public and Private Power*, (Oxford, 1965), pp. 112-120.

<sup>346</sup> F. Meyers, *Ownership of Jobs*, Los Angeles, Calif. University, 1964, cited in A. Shonfield, *Ibid.*, p. 116.

<sup>347</sup> *Ibid.*, p. 112.

matters should be left to independent collective bargaining, even though the TUC had pressed for the change to be enshrined in legislation.<sup>348</sup>

Yet the British Government was in fact already beginning to move away from the principle of non-intervention and becoming in a sense increasingly 'paternal'. For example, the *Contracts of Employment Act 1963* had provided for fixed periods of notice based on length of service.<sup>349</sup> This legislation was brought in as a result of the unions' own intransigence, holding 'rigidly to the principles of permanent employment, the traditional notion that the only form of protection for a wage-earner is to insist that he keeps on working in the particular job which he happens to occupy.'<sup>350</sup> Shonfield blamed the unions for clinging to an older ideology based on a scarcity of jobs, and a failure to demand the right to financial compensation for the inconvenience associated with the loss of paid employment. Nonetheless, along with legal protection for individual workers, he also advocated tighter regulation of the unions, a point on which he disagreed with the majority of the Commission members.<sup>351</sup>

### 3.2.3 Lay members

Lord Robens had many qualifications for his presence on the Commission. He had served in the Attlee Labour Government as Minister of Labour in 1951, following the resignation of Nye Bevan, prior to which he had held posts as junior minister at the Ministries of Transport and Labour. He was appointed as Chairman of the National Coal Board in 1961,<sup>352</sup> a role which gave him invaluable experience of politics,

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<sup>348</sup> TUC, *Annual Report 1946*, pp. 183-6.

<sup>349</sup> The Labour Government carried this principle further in the Redundancy Payments Act 1965 which provided for the payment of a lump sum based on length of service.

<sup>350</sup> Shonfield, *Modern Capitalism*, p. 113.

<sup>351</sup> *Royal Commission Report*, Cmnd. 3623, 288 (Note of Reservation).

<sup>352</sup> See Lord Robens, *The Ten Year Stint*, (London, 1972).

business and industrial relations, making his appointment to the Commission a natural and obvious one.

The sole female member of the Commission, Mary Green, was a successful headmistress of London's first purpose-built comprehensive school, Kidbrooke. She was described by Roy Hattersley MP as a 'public servant who kept properly detached from party politics.'<sup>353</sup> This could be one reason for her appointment, since she could offer objective views, untainted by political bias. She took on her new role with great fervour and her record of attendance at public hearings held by the Commission was second only to Donovan himself.<sup>354</sup> She was given a Damehood in 1968, and served on other public bodies, including as a governor of the BBC between 1968 and 1973.

The other lay member, John Thomson (later Sir John Thomson), was chairman of Barclays Bank between 1963 and 1973, and brought to the table his expertise in the service industries, rather than any particular knowledge of trade unions, although he would have been able to represent the views of commercial management. He was chairman of the Morlands brewery, and served in the army during the war. Educated at Magdalen College, Oxford, he had gone on to hold public office as High Sheriff of Oxfordshire and, later, as its Lord Lieutenant.<sup>355</sup>

#### *3.2.4 Representative Members*

Representative members are always likely to create dissension and disagreement and will occasionally be responsible for the minority reports which lie outside the majority report but which nevertheless present an enduring record of alternative

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<sup>353</sup> <<http://www.theguardian.com/news/2004/apr/23/guardianobituaries.obituaries>> Accessed 26 May 2014.

<sup>354</sup> Evidence to the Donovan Commission, Record of Attendance of Commissioners at Public Hearings.

<sup>355</sup> <[www.apps.oxfordshire.gov.uk/cgi](http://www.apps.oxfordshire.gov.uk/cgi)> Accessed 26 May 2014.

viewpoints and solutions. The interests of both employers and trade unions were represented on the Commission.

There were two trade union members of the Commission who were both at the very heart of union matters – the General Secretary of the TUC, George Woodcock, and his TUC colleague, Lord Collison, national leader of the agricultural workers and a member of both the Council on Tribunals and the National Insurance Advisory Committee. Woodcock, a graduate of Oxford University, had a keen interest in the future of trade unions, but in fact rarely attended the meetings of the Commission and in reality achieved very little, missing out on this rather unique opportunity to make a significant contribution to the eventual recommendations in the Report.

The employers' representative was Sir George Pollock; he was a successful former barrister,<sup>356</sup> becoming Director of the British Employers' Confederation in 1954.<sup>357</sup> Finally, although not strictly speaking a direct representative of employers, Lord Tangle was a businessman with several directorships, and a keen mountaineer and author of several books on business, mountaineering and the law. He too had been a lawyer, and at one time had been appointed as President of the Law Society.

### *3.2.5 The Composition of the Commission*

Thus, the Commission was an informed body of professional people, but did include four lawyers – Lord Tangle, Sir George Pollock, Otto Kahn-Freund and Lord Donovan himself. Hugh Clegg and Allan Flanders were experts in the study of industrial relations, an emerging branch of the law. The management interests of industry and commerce were represented by Pollock and Tangle, but also to some

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<sup>356</sup> Made Queen's Counsel in 1951.

<sup>357</sup> The Federation of British Industries merged in 1965 with the British Employers' Confederation and the National Association of British Manufacturers to form the Confederation of British Industry



extent by Thomson and Robens, while the views of workers and trade unions were represented by Woodcock and Lord Collison. A more critical and arguably less partisan view would be provided by Shonfield and Wigham, while Mary Green's inclusion on the Commission could debatably have been the result either of tokenism or the sheer paucity of women in politics, in journalism, in commerce or indeed in the law.

There was undoubtedly an imbalance of experience and opinion among the members of the Commission, which could have led to the suspicion that the group had been selected with a particular governmental view in mind. Women were clearly under-represented, which carried the danger of their particular problems in the workplace, such as unequal pay, going unrecognized. It could also be argued that there was insufficient representation of the trade union perspective, and an over-emphasis on the representation of lawyers on the Commission, (even though it was true that Lord Tangle and Sir George Pollock had 'travelled far since the days when they had practised law, and they had become very much, both in their knowledge and attitudes, men of business.'<sup>358</sup>) It would therefore be difficult to predict the emphasis that each member would give to the importance of the law when considering their remit with its overarching reference to law, although there would undeniably be divergent opinion on the extent to which legislation should be allowed to interfere.

There were further significant weaknesses in the membership, which may have contributed to the ultimate failure to create a comprehensive set of rules which could effectively govern and control trade union behaviour. By having representative

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<sup>358</sup> J. D. Derbyshire, *The Royal Commission on Trade Unions and Employers' Associations, 1965-1968*, (Unpublished thesis), 1976, 80.

members in Woodcock and Collison (for the TUC) and Pollock (for the employers' organizations), Ray Gunter - the Minister responsible for appointments to the Commission - had turned it into a representative body, and had thereby lost much of the element of objectivity. However, it was also fair to say that Gunter had an obligation to have a representative body with a range of interests, and that true objectivity is hard to come by in people of experience in any field. Lord Donovan may also have been a miscalculation, as he was relatively ignorant on the subject of industrial relations. Also, by choosing Kahn-Freund, Clegg and Flanders, Gunter should have been aware of 'the weight of a particular approach which he was unconsciously building into the Commission' ... and that 'the overall composition was ... one quite likely to polarize views within the Commission.'<sup>359</sup> The Royal Commission Report, published in 1968, bore out this view since it was largely a vindication of voluntarism, with very few recommendations for legislation.

### *3.3 The Nature of Trade Unionism in the early 1960s*

To understand the views and opinions of the Commissioners, which heavily influenced their recommendations, it is necessary to have some insight into the prevailing nature of trade unionism in the 1960s. Peter Dorey suggested that the 'problems' as the politicians saw it were threefold: there were too many unofficial strikes in Britain; unions were an obstacle to increased productivity by virtue of 'restrictive practices'; and wage increases sought by unions were a major cause of rising inflation.<sup>360</sup> The unions blamed the Tories for their policy of induced unemployment and failed economic policies, forcing the unions to employ unpopular weapons such as strikes and working-to-rule, but it was evident that many of the

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<sup>359</sup> *Ibid.*, 292.

<sup>360</sup> P. Dorey, *British Politics since 1945*, (Oxford, 1995), p. 70.

problems lay with the unions themselves. In 1962, Bill McCarthy wrote that ‘the outlook facing the leaders of the British trade union movement is uncertain, impossible to predict, and potentially disastrous.’<sup>361</sup> This gloomy viewpoint was based on some hard facts, with a slow growth in membership and a falling proportion of workers in trade unions.<sup>362</sup> Media reporting on union tactics also cast them in a poor light with the public. At the 1959 Trades Union Congress, Bob Edwards of the Chemical Workers hit out at the Press, saying that it had built up the unions as the ‘bogymen’ to distract attention from the real culprits – the big industrialists - who had ‘...forced trade unions into the last six strikes because they refused to negotiate and because they were carrying out the business of the present Government.’ He continued:

Those are the people who conspire to disrupt the economy of this country in order to destroy the British Trade Union Movement ... It is time the British people knew the facts. This is the most constructive, responsible Trade Union Movement in the world.<sup>363</sup>

He went on to cite ILO figures which demonstrated that Britain’s strike record was in fact one of the best in the Western world, and called for these facts to be made known.

Nevertheless, many of the trade union movement’s ills were not simply down to a conspiracy between Press and Tories, since there was much that the movement could do to help itself. McCarthy identified four basic problems within the trade union movement: membership growth, communications and control, bargaining priorities

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<sup>361</sup> W. McCarthy, *The Future of the Unions*, The Fabian Society, 1962, p. 1.

<sup>362</sup> Membership rose by just 3% and the proportion of workers in trade unions fell by 1%. Trade Union Membership, *Political and Economic Planning Broadsheet*, July, 1962, cited in W. McCarthy, *The Future of the Unions*, p. 1.

<sup>363</sup> *TUC Annual Congress Report*, 1959, 331.

and relations with Government and the public.<sup>364</sup> The role of the TUC, as chief negotiator on industrial relations and union rights, would be vital in any endeavour to reform the trade union movement and address these problems, and the inclusion on the Donovan Commission of both George Woodcock and Lord Collison as representatives of the TUC was highly significant. Indeed, there was a wealth of experience and viewpoints on the Commission, but they were also operating in the context of an emerging debate in which the Conservative Party was making its own stand on industrial relations.

#### *3.4 The Findings and Recommendations of the (Conservative) Official Committee on Trade Unions and the Law*

Although the Report of the Donovan Commission is the best known and most widely discussed in-depth analysis of trade unions in the 1960s, it was not the first body established around this time to inquire into trade unions and the law, and it is instructive to first consider the recommendations of the secret Conservative Government committee. This was set up in 1963 to consider the role of the law in industrial relations and 'to obtain better information about the points on which reform might be considered and about the implications about particular proposals for reform'.<sup>365</sup> There was no attempt to involve the trade unions in this inquiry, and therefore any conclusions reached by the committee would be necessarily biased and not altogether practicable, since any major changes to the law on industrial changes would require at least the acceptance, if not the full agreement, of the unions.

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<sup>364</sup> W. McCarthy, *The Future of the Unions*, The Fabian Society, 1962, 3.

<sup>365</sup> NA CAB 21/5779 Butler to Douglas-Home, 11 April 1963.

The committee members comprised representatives from the Ministry of Labour, including Sir James Dunnett (chairman) and Denis Barnes; Charles Cunningham from the Home Office; representatives from the Lord Chancellor's Office and the Law Officers' Department; and S. Musson from the Registry of Friendly Societies. The terms of reference of the committee were to 'consider the law relating to trade unions and employers' associations, and to report what changes, if any, were desirable.'<sup>366</sup> The Final Report was eventually produced on 19 February 1964.<sup>367</sup> This Report paid particular attention to the possibility of using legislation to control union activity, but its conclusions were almost entirely against this, despite the absence of any trade union representation on the committee which might have been expected to oppose them. The Report concluded that it would be unacceptable to make unofficial strikes illegal,<sup>368</sup> impracticable to impose criminal sanctions for striking in breach of contract,<sup>369</sup> and undesirable either to impose criminal penalties for inducing strikes in breach of contract<sup>370</sup> or to try to strengthen trade union rules so as to deal with unofficial strike leaders.<sup>371</sup> The Report likewise rejected altering the law to permit civil actions against individuals or trade unions for inducing employees to break their contracts of employment in pursuance of a trade dispute,<sup>372</sup> and the Committee concluded that legislation to make collective agreements enforceable at law could on balance not be recommended.<sup>373</sup>

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<sup>366</sup> NA LAB 10/1924 Trade Union Law and Organisation, Inter-departmental Inquiry, October 1963.

<sup>367</sup> NA CAB 129/117/1 Report of the Official Committee on Trade Unions and the Law, January 1964.

<sup>368</sup> *Ibid.*, para. 25.

<sup>369</sup> *Ibid.*, para. 26-27.

<sup>370</sup> *Ibid.*, para. 28-29.

<sup>371</sup> *Ibid.*, para. 31-32.

<sup>372</sup> *Ibid.*, para. 39-42.

<sup>373</sup> *Ibid.*, para. 43-57.

As to the conduct of union affairs, the Report rejected the idea of legislation to ban the closed shop,<sup>374</sup> and, while it was considered desirable for a person whose employment prospects were affected by exclusion from a union to have a right of appeal, legislation to enforce this was again considered to be unwarranted, although could be considered at a later date.<sup>375</sup> Legislation providing for appeals against irregularities in trade union elections was felt not to be justified, but again could be considered later; both of these latter considerations were to be left to the TUC to take effective action.<sup>376</sup>

As to other possible changes in the law, legislation was considered to be of no advantage in providing for a 'cooling off' period before a strike,<sup>377</sup> or in forcing unions to hold a secret ballot before calling a strike.<sup>378</sup> Nothing was to be gained in making all trade unions register, the Report concluded.<sup>379</sup> The Committee also rejected the proposal to amend section 4 of the *Trade Disputes Act 1906* to limit the immunity of trade unions from actions in tort to acts done in contemplation or furtherance of a dispute.<sup>380</sup> Legislation was considered desirable, however, in the area of the dismissal of workers, the Report recommending that employers should have to justify a dismissal, and that an employee would have a right of appeal to an independent tribunal.<sup>381</sup>

In short, the Report effectively amounted to an almost wholesale rejection of legislation as an appropriate vehicle for reform of industrial relations. Many of these findings would be reflected and confirmed in the Donovan Report, even though it

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<sup>374</sup> *Ibid.*, para. 101.

<sup>375</sup> *Ibid.*, para. 107.

<sup>376</sup> *Ibid.*, para. 131.

<sup>377</sup> *Ibid.*, para. 143.

<sup>378</sup> *Ibid.*, para. 149.

<sup>379</sup> *Ibid.*, para. 156.

<sup>380</sup> *Ibid.*, para. 157.

<sup>381</sup> *Ibid.*, para. 65.

was unlikely that the Commission would have had any awareness of this alternative Report, since it was designated as 'Secret' and therefore not intended to inform others who were undertaking a similar investigation. Nevertheless, the level of concurrence between the two studies is quite astonishing, and the report appears to show a quiet regard by the Conservative committee for the system of voluntarism that underpinned industrial relations, with no desire or sense of compulsion to alter the status quo.

Nevertheless, the Royal Commission would be required to consider many of the same aspects of the law and come to its own conclusions on whether the law should be extended or limited in its scope. The Conservatives would also revisit these issues, and proposals from their findings would appear in 1968 in *Fair Deal at Work*, and later in the *Industrial Relations Act 1971*. Yet while the Donovan Commission would largely reject legislation as a means of regulating industrial relations, the Conservative Government would make a dramatic departure from the traditions of voluntarism and bring in a raft of new legislative provisions. This manoeuvre would represent a sharp U-turn in Conservative thinking on the role of legislation in industrial relations, and disregards all the earlier recommendations from the earlier Report of the Official Committee.

### *3.5 The Royal Commission's Task and Methodology*

The Donovan Commission began its mammoth task of inquiry into trade unions and employers' associations in 1965, publishing the long-awaited report in 1968.<sup>382</sup> This was the culmination of possibly one of the most thorough investigations into industrial relations and the role of the law ever undertaken. Shortly before the report

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<sup>382</sup> *Royal Commission on Trade Unions and Employers' Associations Report, 1965-1968*, Cmnd. 3623.

was published, *The Times* commented with a wish-list of what the Commission ought to have achieved.<sup>383</sup> The writer anticipated ‘a major programme of legislative reform’ which would ‘make unions more responsible’; ‘strengthen the rights of the individual union member *vis-a-vis* his trade union’; ‘establish more order in the field of collective bargaining’; have comprehensive, negotiated contracts of employment with ‘impartial machinery for examining disputes’ arising out of such contracts; and establish a system of Labour Courts.<sup>384</sup> This particular writer was to be sorely disappointed.

The Commission had a slow start to its investigations, as it had to begin by gathering evidence from all the various stake-holders. It first issued a highly detailed and comprehensive questionnaire to all trade unions and employers’ associations and to some Government departments and individuals who had specialist knowledge of industrial relations. Members of the public were also invited to submit their own observations. This resulted in a considerable amount of written evidence from over four hundred organisations or persons, including the CBI and the TUC, as well as many trade unions. The Commission then took oral evidence from several of those who had submitted written evidence.

In order to obtain information about industrial relations at the workshop level, the Government Social Survey Department was asked to carry out interviews on the basis of a series of questionnaires with shop stewards, trade union officers, members and non-members, and many others. In addition, members of the Commission personally visited workplaces to speak with management and workers. Seven members of the Commission visited Sweden and Germany to gain first-hand

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<sup>383</sup> *The Times*, 13 November 1967.

<sup>384</sup> *Ibid.*



knowledge of the structure of industrial relations in those countries, including the system of industrial democracy practised in Germany, which is discussed in Chapter 6 below. They professed to find the experience very valuable.<sup>385</sup>

The methodology came in for some criticism from at least one commentator, while others were critical of the disregard that the Commission appeared to have towards the economic implications. J.R. Crossley, an economist, considered that the methodological approach was fundamentally flawed, predicting that this Royal Commission Report 'will not be the last' since the Commission had failed in one of its central tasks, but generously conceded that it was at least 'an excellent first draft'.<sup>386</sup> Crossley considered that the answer lay in the way that industrial relations is studied and taught in this country, separate from other social sciences, and especially economics. He also felt that there had been no sense of urgency, despite the prevailing economic difficulties of the time and the pressing need for reform, which were largely blamed on the disorder of industrial relations. There was a chapter in the Royal Commission Report on the efficient use of manpower but the research team did nothing to add to the *prima facie* evidence already available and which was in any case disputed: this aspect of the methodology seemed remarkable to economists.<sup>387</sup> Wage drift was given only scant attention while the section on incomes policy was 'perfunctory'. Despite the Commission's remit to consider the social and economic advance of the nation, these areas received minimal consideration.

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<sup>385</sup> *The Royal Commission Report*, Cmnd. 3623, para. 14.

<sup>386</sup> J.R. Crossley, 'The Donovan Report: A Case Study in the Poverty of Historicism', *BJIR*, Vol. 6, Iss. 3, November 1968, 296-302.

<sup>387</sup> *Ibid.*, 297.

The study was also criticized for its use of the historical method, while ignoring the more critical and scientific methods used in other social sciences. Karl Popper described 'historicism' as 'an approach to the social sciences which assumes that *historical prediction* is their principal aim, and which assumes that this aim is attainable by discovering the rhythms or the patterns, the laws or the trends that underlie the evolution of history.'<sup>388</sup> Yet, to look back is not necessarily the best way to predict the future, and other, economic, predictors may have been a preferable benchmark. For example, Chapter III of the Royal Commission Report *described* the way in which an informal, fragmented and autonomous process of bargaining at the work-place grew up alongside the formally recognized machinery of industry-wide bargaining, yet there was no analysis or explanation of the growth of workplace bargaining other than to suggest that it was due to full employment. It was explained merely as a trend, and as such 'contains its own justification, since the historicist finds ends as well as means in his identification of "trends" and is relieved of the uncomfortable task of writing down the criteria which a good industrial relations system should satisfy, supposing we were free to construct or reconstruct one.'<sup>389</sup>

Robert Kilroy-Silk<sup>390</sup> also questioned the approach to research, saying that the 'evidence' which the Commission received from organizations was no more than their opinions, and which could have been more efficiently gathered by means of a social survey. He expressed disappointment in the Report because it avoided the real issue of the role of trade unions and unofficial groups in a managed economy, and he concluded rather disparagingly, 'It is, as George Woodcock is reported as

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<sup>388</sup> K. Popper, *The Poverty of Historicism*, (London, 1960).

<sup>389</sup> Crossley, 'The Donovan Report', 298.

<sup>390</sup> Lecturer in Politics at Liverpool University, later elected as a Labour MP in 1974.

having said, a good handbook on industrial relations. It is no appraisal of groups in society.<sup>391</sup>

Thus, while the Royal Commission Report had much to commend it, it was also criticized on many fronts.<sup>392</sup> Donovan would have done well to pay greater heed to the prevailing conditions, not only economic, but also industrial and political. As Davies and Freedland commented:

... it was convenient for all concerned to proceed as if incomes policy and industrial relations, with their respective bodies of legislation, existed in two different spheres, to be kept apart on both theoretical and pragmatic grounds, so that the ephemerality of the intrusion upon free collective bargaining would be kept in full view.<sup>393</sup>

Yet, despite the criticisms of the methodology, the time taken to conclude the Report, and the failure to take the prevailing economic conditions fully into account, the findings of the Report were nevertheless extremely valuable, and were used to inform later proposals for legislation, principally in Barbara Castle's White Paper, *In Place of Strife*.<sup>394</sup>

### 3.6 The Problems: Two Systems of Industrial Relations, Multiple Unions, and Strikes

One major finding of the Report was the identification of the two very distinct systems of industrial relations: the formal and the informal. The disconnection between them was held to be responsible, at least in part, for uncontrolled wage rises. Pay negotiation at an industry-wide level was common in the private sector.

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<sup>391</sup> R. Kilroy-Silk, 'Trade Unions and Society: The Donovan Report', *Political Studies*, Vol. 17, Issue 1, 101.

<sup>392</sup> See 3.10 below.

<sup>393</sup> Paul, Freedland, *Labour Legislation*, p. 240.

<sup>394</sup> *In Place of Strife*, Cmnd. 3888.

National industrial negotiating councils met with consortia of trade unions to discuss pay and conditions, but companies were wary about giving away information about investments and their own finances in general, so pay negotiations were conducted on the basis of incomplete information. Hugh Clegg, in particular, had become disenchanted by the process. It was he, therefore, who distinguished between this formal system and the informal system of shop-floor bargaining which he considered was the better way forward.

Britain has two systems of industrial relations. The one is the formal system embodied in the official institutions. The other is the informal system created by the actual behaviour of trade unions and employers' associations, of managers, shop stewards and workers.<sup>395</sup>

The latter was so informal, however, with pay being informally negotiated in individual areas of industry - often despite the existence of formally negotiated national agreements - as to be impossible to control by external means such as legislation, and therefore needed to be supported by other means.

The Report concluded that the two systems were in conflict, with the informal system acting to undermine the formally negotiated agreements, which resulted in 'pay drift'. Nonetheless, there was no suggestion that the solution was to force the informal system to comply with the formal - 'reality cannot be forced to comply with pretences.'<sup>396</sup> The proposed solution was to eschew legislation and instead improve collective bargaining systems, since full employment and the decreased authority of employers' associations, which together induced pay drift, were outcomes which

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<sup>395</sup> *The Royal Commission Report*, Cmnd. 3623, para. 46.

<sup>396</sup> *Ibid.*, para. 150.

were considered by the Commission to be effectively beyond the power of governmental legislation to change.

However, there was a knock-on effect from this informal wage bargaining. The resultant chaotic pay structures were leading to an increase in unofficial strikes, indecision and anarchy at the factory level which could realistically only be tackled at the enterprise level.<sup>397</sup> Nevertheless, H.A. Turner thought the Commission was wrong to conclude on the basis of an examination of one type of industry, posing as it did a 'silver bullet' of a remedy which would cure all ills. He doubted whether it was realistic for the Commission to convert what was originally a description of a specific industrial situation (mainly in the engineering industry) into a *general* description of British industrial relations and a corresponding *general* panacea for their reform.<sup>398</sup> Furthermore, it surely cannot be appropriate to legislate to remedy a concern that is industry-specific and non-generic. This is another failing of legislation in general, since it is a blunt instrument which cannot discriminate between areas which need reform and those which operate more effectively when left alone.

Addressing the problem of unofficial strikes, the Report argued that measures to deal with them were urgently necessary, and considered a range of possible remedies, including legislation, but concluded that:

By far the most important part in remedying the problem of unofficial strikes and other forms of unofficial action will however be played by *reforming the institutions* of whose defects they are a symptom. Unofficial strikes are above all the result of the inadequate conduct of industrial relations at company and plant level.<sup>399</sup>

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<sup>397</sup> H.A. Turner, 'The Donovan Report', *The Economic Journal*, Vol. 79, No. 313, March 1969, 1-10.

<sup>398</sup> Turner, 'The Donovan Report'.

<sup>399</sup> *The Royal Commission Report*, Cmnd. 3623, para. 454.

The blame was thereby laid firmly at the door of the unions which, it was claimed, had 'failed to respond adequately to the challenge inherent in the growth of workplace bargaining.' Also, that 'the multiplicity of unions operating within plants has hindered the development of an organic link between negotiators at plant level and those higher up in the hierarchies of trade unions.'<sup>400</sup> This particular problem of multiple unions had been previously highlighted in *The Times*:

There is a case for following the United States pattern and allowing workers to decide by ballot which union they want to represent them in a particular plant. This might work in some cases but not in others ... But it should be an essential condition of any switch to plant bargaining that all contracts should be negotiated simultaneously so as to avoid leap-frogging.

This aspect of the Report on unofficial strikes came under fire from a number of commentators. Robert Kilroy-Silk produced a scathing analysis of one particular weakness, claiming that, while the Report recognized that the incidence of unofficial strikes was the main and most urgent problem, its proposals to deal with these was inadequate.<sup>401</sup> Turner had a different criticism, and considered that, in terms of days lost at work, the economic consequences were in fact manageable, complaining that 'informed discussion of the effect of strikes in Britain is limited by the absence ... of any close and systematic examination of what these might in general actually be.'<sup>402</sup> There was nothing beyond the official record of 'working days lost' which, as he calculated, averaged around one hour per head of the working population and therefore gave little real cause for concern. He also pointed out that savings were

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<sup>400</sup> *Ibid.*, para. 394.

<sup>401</sup> R. Kilroy-Silk, 'Trade Unions and Society: The Donovan Report', *Political Studies*, Vol. 17, Issue 1, 95-101.

<sup>402</sup> H.A Turner, *Is Britain Really Strike Prone?* (Cambridge, 1969).

made in a strike in terms of unpaid wages and unused power, and that 'lost' output was often made up when the strike was over.<sup>403</sup>

The Commission's analysis of the problems failed to stand up to close scrutiny, and the methodology used in the investigation was subject to profound criticism from several quarters. Nevertheless, despite the dubious nature of some of the evidence, and the methods used for its collection, the Commission's proposals for reform did enjoy some success and were well received by some, in particular the trade unions. Indeed, there were very tangible short-term benefits, with union membership rising by a third over the next decade, while workers enjoyed better working conditions.

### *3.7 Proposals for Reform*

#### *i. Collective Bargaining*

Having set out the results of their extensive enquiries and uncovered what the Commissioners saw as the root of the problem, the Commission went on to make its recommendations for reforming the system to bring a sense of order and logic to industrial relations. This began with a reconstruction of voluntary collective bargaining. Following recognition that 'the central defect [of the system of industrial relations] is the disorder in factory and workshop relations and pay structures promoted by the conflict between the formal and the informal systems' the Report, not unreasonably, proffered the solution of replacing disorder with order.<sup>404</sup> The solution, however, was not to concentrate on industry-wide agreements, but on those made at factory level, which could better deal with the finer details such as production methods, distribution of overtime and differential pay rates. It was

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<sup>403</sup> *Ibid.*, p. 28.

<sup>404</sup> *Royal Commission Report*, 1968, Cmnd. 3623, para. 162.

recognized that, while national agreements dealt with minimum rates, factory agreements regulated *actual pay*, and it was this that was of greatest concern to the Government.<sup>405</sup> Again, the Commission was encouraging better management of informal systems of collective bargaining, recognizing that industrial relationships work best when organized at the micro-level, whereas legislation was a macro-level solution which could not possibly take into account the diversity of problems, issues and needs which existed within the various workplaces.

Nevertheless, such agreements do not come about automatically or operate successfully without central management; it was recognized, therefore, that neither employers' associations nor trade unions could accomplish greater order by themselves, and that this could only be achieved by boards of directors.<sup>406</sup> This would require the co-operation of the unions who would be required to 'sign the agreements and take their share of responsibility under them.'<sup>407</sup> It was obvious that the notion of unions being willing to enter into legally binding agreements with management, and thereby become liable under them, was unlikely to be a popular or viable option for trade union leaders. Such an arrangement could render them financially responsible for losses incurred through strike action, a journey towards full trade union legal liability already embarked upon by the House of Lords in *Rookes v Barnard*. Indeed, the concept of legally binding collective agreements formed part of the later *Industrial Relations Act 1971*, and roused strong objections within the union movement.

The Commission recommended that boards of directors should review industrial relations within their organisations, with particular objectives in mind, including the

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<sup>405</sup> *Ibid.*, para. 163-167.

<sup>406</sup> *Ibid.*, para. 168.

<sup>407</sup> *Ibid.*, para. 171.



development of comprehensive collective bargaining machinery at factory level to settle terms and conditions of employment, and to develop joint procedures for the rapid settlement of grievances. The Commission stated that, 'We consider action by companies on these lines is as much in the interests of the trade unions and their members as the companies themselves.'<sup>408</sup>

Allan Flanders's 1964 thesis on productivity at the Fawley works<sup>409</sup> and its apparent success may have influenced the Commission to recommend that collective bargaining should be strengthened. The reform of pay bargaining which was founded on the Commission's recommendations did lead to a strengthening of the informal system, while national negotiating councils gradually faded into obscurity, but this left unions vulnerable to the legislative changes brought in after 1979. Smaller bargaining units only encouraged managers to act unilaterally. Holding on to large negotiating councils would have left unions better able to resist the changes brought in by the Conservative Government in the 1980s. Donovan could therefore be criticized for having thrown the baby out with the bathwater, declining to recognize the very important role played by the formal collective bargaining system.<sup>410</sup>

ii. *New Legislation.*

Could the law do anything to help bring about an improvement in the problems identified by the Royal Commission, particularly in the matter of unofficial strikes, and what form should such legislation take? One suggestion put to the Commission for dealing with the 'strike problem' came from the Society of Conservative Lawyers: to

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<sup>408</sup> *Ibid.*, para. 185.

<sup>409</sup> Flanders, A., *The Fawley Productivity Agreements*, ( London, 1964).

<sup>410</sup> See J. Edmonds, General Secretary of GMB, 1986-2003, speaking at the History and Policy conference, November 2015, The Oxford School of Industrial Relations, on 'The Oxford School at Donovan'.  
<<https://apple.com/gb/podcast/history-policy/id1008685226>> Accessed 4 April 2017.

further reduce the incidence of *official* strikes where a national emergency was threatened, the Minister of Labour should be empowered, through legislation, to apply for an injunction compelling the continuance of work.<sup>411</sup> This went further than the Society's own earlier recommendations for dealing with strikes, made in *A Giant's Strength* in 1958. The suggestion was in turn based on the USA's emergency powers act, the *Taft-Hartley Act 1947*,<sup>412</sup> which included powers to order a cooling-off period and to hold compulsory strike ballots. The Commission, aware that this legislation had met with minimal success in the USA, rejected the suggestion, since it considered that the existing, more flexible powers available to the government would be more effective in resolving a dispute.<sup>413</sup> These powers included the conciliation machinery of the Department of Employment and Productivity (DEP), the appointment of conciliators, or the potential to arrange arbitration or to order many different forms of inquiry.<sup>414</sup>

Account must also be taken of the occasions when strikes have been imminent but have been averted through our flexible procedures. If the more rigid arrangements of the fixed cooling-off period had been used in their place, strikes might have taken place which were in fact avoided.<sup>415</sup>

Unofficial strikes were common in a small number of important industries, although the breach of procedure that produced such strikes was not caused by trade unions but by their members. It was these individuals who stood to be sued for being in breach of contract under the *Contracts of Employment Act 1963*, and to be stripped of their continuity of employment. The employer could even take the strikers before a

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<sup>411</sup> *Royal Commission Report*, para. 419-420.

<sup>412</sup> Labor Management Relations Act 1947.

<sup>413</sup> *Royal Commission Report*, paras. 419-420.

<sup>414</sup> *Ibid.*, para. 422.

<sup>415</sup> *Ibid.*, para. 424.

magistrates' court to obtain damages under the *Employers and Workmen Act 1875*. Therefore no new legislation was necessary to make unofficial strikes 'illegal' since they already were. Understandably, however, employers rarely chose to litigate since their key aim was to get employees back to work rather than to sue them for relatively small amounts of money with all the loss of time and the expense that this involved, not to mention the potential damage to the relationship with their employees.<sup>416</sup> The Commission therefore had to conclude that, 'unless and until our system of industrial relations itself has been reformed, no proposal to impose legal sanctions is practicable if it assumes that the employer takes an active part in its enforcement.'<sup>417</sup>

Another possibility was to legislate to make collective agreements legally enforceable. In countries where they were legally enforceable, neither the union, nor the employer or employers' federation were permitted to breach the agreement, and would be subject to a heavy fine if they did so. The CBI and the Engineering Employers' Federation (EEF) were in favour of such a measure, although neither was sure whether this was appropriate within the British legal system.<sup>418</sup> Similar measures seemed to work satisfactorily in some countries such as Sweden, the Federal Republic of Germany and the USA, but the Commission was wise enough to be wary of trying to transplant measures into a country with different social conditions to those in the country of origin.<sup>419</sup>

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<sup>416</sup> *Ibid.*, para. 463.

<sup>417</sup> *Ibid.*, para. 464.

<sup>418</sup> *Royal Commission on Trade Unions and Employers' Associations; Selected Written Evidence submitted to the Royal Commission*. Evidence of the Confederation of British Industry, paras. 172-5; Evidence of the Engineering Employers' Federation, paras. 37-8.

<sup>419</sup> *Royal Commission Report*, paras. 460 – 461.

Collective agreements in Britain were not legally binding contracts, and neither side intended them to be so. This feature was deeply rooted in the British system of voluntary industrial relations. The agreement could be modified over time by a series of decisions or resolutions made by standing bodies such as joint industrial councils, thus making the agreement a continuous and flexible process. Furthermore, at the shop-floor level, agreements were often informal and fragmented, with the precise contracting 'party' being hard to identify. In legal terms, such informal agreements would be void for uncertainty and therefore impossible to enforce.

Although a move to render collective agreements legally binding would mean a fundamental departure from deeply-rooted principles of contract law, it was argued that it would be worth it if such a move were to remove the cause of the 'evil' which was the high number of unofficial strikes. The Commission concluded, however, that making procedure agreements legally enforceable would not remove the reason for the strikes.<sup>420</sup>

To overcome the difficulties outlined above, a further suggestion was to take the responsibility for action against strikers out of the hands of the employers and instead have a sanction that was imposed automatically by the removal of an existing statutory right. Examples included the statutory right given under the *Contracts of Employment Act 1963* whereby employees became entitled, after 26 weeks of continuous employment for the same employer, to a minimum notice period; and, under the *Redundancy Payments Act 1965*, employees with minimum employment periods were entitled to compensation when laid off or made redundant. Under neither Act did strikes break the necessary continuity of employment, but the suggestion was to remove that protection where the worker was on an unofficial

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<sup>420</sup> *Ibid.*, para. 475.

strike and deem his employment to have commenced only on the day that he returned to work.<sup>421</sup> While at first glance this appeared to be advantageous in that employers would not have to take action to impose the penalty, after further scrutiny this too proved to be unworkable for a number of reasons. It would have varied unfairly in the impact it would have on different members, particularly those with the longest periods of service who had the most to lose. The flexibility inherent in the current system would be lost, and therein lay one of the fundamental problems with using legislation to resolve complex, human problems where there is an infinite number of variables: its intrinsic rigidity effectively denies to the courts the opportunity to apply it in an equitable, fair and sensible manner.

### *iii. Unemployment Rights*

Strikers at that time, far from being penalized for taking action could, in certain limited circumstances, rely on social security benefits in the event of being unemployed due to strike action.<sup>422</sup> Payment for times when a workman was unemployed due to a trade dispute was specifically excluded, but a person who was thrown out of work by reason of a trade dispute would not lose his entitlement to unemployment benefit unless the dispute occurred at his place of employment. Nevertheless, the TUC considered that the conditions under which disqualification could be incurred were too severe, while the CBI wanted them to be broadened still further. The Commission referred at this stage to the observations on this matter

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<sup>421</sup> *Ibid.*, para. 489.

<sup>422</sup> Insurance against unemployment was provided for by the *National Insurance Act 1911* in order that, in return for contributions, the persons insured became entitled to money payments during periods of unemployment.

made by Lord Blanesburgh's Committee of 1925-27, which had been set up to consider the working of the unemployment insurance scheme:

This clause can never assume a form which will be entirely satisfactory. Frame it as you will, many will be entitled to benefit who, if the whole truth could be known, ought to be excluded as much as actual participants in the dispute, and some will be excluded from benefit who, if the whole truth could be known, ought to have it.<sup>423</sup>

The CBI wanted the disqualification for receiving unemployment benefit to be extended to include situations where the dispute occurred within one company, and that 'place of employment' should not be determined simply by geography.<sup>424</sup> The TUC, on the other hand, wanted the definition of place of employment to be narrowed. Nevertheless, the majority of the Commission believed that the present definition of employment should stand and thus refused to defer to the wishes of either the TUC or the CBI.<sup>425</sup> Although this was by far the safest option in order to avoid disappointing either unions or employers, this failure to take a bolder decision on the issue was a wasted opportunity to address the vague nature of the provision and provide more detailed guidance on the qualification requirement for unemployment benefit.

#### iv. *Unfair Dismissal*

Although generally not in favour of major changes to the law, where a change was considered advantageous by the Commission was in the sphere of unfair dismissal, a frequent cause of unofficial strikes. At common law an employee only had

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<sup>423</sup> *Royal Commission Report*, para. 968.

<sup>424</sup> *Ibid.*, para. 970.

<sup>425</sup> *Ibid.*, para. 971.

protection against wrongful dismissal, so an employer could still dismiss an employee lawfully provided he followed the correct procedure of giving due notice or paying wages in lieu of notice; the employer could also dismiss summarily for gross misconduct. This tied in with the recommendation earlier in the Report that any stipulation in a contract that an employee should not belong to a trade union should be made void in law and of no effect. If it were left open to an employer to dismiss an employee for joining a trade union, simply paying him the wages he would have earned had he not been dismissed, then the above recommendation would be undermined and of little use. The Commission was strongly of the opinion that the state of the law was wholly unsatisfactory and in need of urgent reform.<sup>426</sup>

Cyril Grunfeld considered that one of the most significant of the Commission's recommendations was the proposed jurisdiction of labour tribunals over such unfair dismissals.<sup>427</sup> This would help to ensure consistency and enable tribunals to develop expertise in the field of employment rights. The Commission also proposed a major extension of the area of remediable dismissals to include dismissals which were motivated by reasons that were deemed to be unfair.<sup>428</sup> The requirement for an employee to bring an action for unfair dismissal within five days could help to underline the urgency of such cases, and the tribunals would be empowered to give priority to dismissal cases.

Compensation rather than reinstatement was to be the primary remedy. This again recognized that an often irremediable rift would have formed between the employer and the dismissed worker. Since both parties would be required to agree to reinstatement, a preferable solution may have been for reinstatement to be the

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<sup>426</sup> *Royal Commission Report*, para. 542.

<sup>427</sup> C. Grunfeld, 'Donovan - The Legal Aspect', *BJIR*, November 1968, Vol. 6, Issue 3, 316-329.

<sup>428</sup> *Ibid.*, 319.

primary remedy, with compensation available to the employee if it were impossible to perform, or if he preferred to take compensation. Compensation was to be limited to two years' earnings (with a limit of £40 per week) so that employers could insure against this possibility. Grunfeld considered that the introduction of the above reforms in procedural and substantive law could have a revolutionary effect in British industrial relations.<sup>429</sup>

v. *Strike Ballots*

Compulsory strike ballots were also mooted, on the basis that members were likely to be less militant than their leaders and would take the opportunity of a ballot to vote against strike action. The Commission considered this an unlikely scenario, and indicated that it would not prevent smaller, unofficial strikes.<sup>430</sup> Nevertheless, these suggestions would later find favour in the Government's White Paper, *In Place of Strife*,<sup>431</sup> which took an altogether tougher line with the trade unions than the Commission deemed advisable.<sup>432</sup> Compulsory strike ballots could have prevented the greater part of unofficial strikes at a stroke, if combined with further measures to ensure compliance by the unions, but the Commission appeared to dismiss the suggestion as inappropriate and unworkable. Once again, this appears to be a missed opportunity to recommend legislative changes which could potentially have had a positive impact in reducing the number of unofficial strikes. It is suggested that, had the Commission taken a more flexible approach to the deployment of legislative measures to tackle particular issues, the Report may have had a more enthusiastic reception.

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<sup>429</sup> *Ibid.*, 320.

<sup>430</sup> *Royal Commission Report*, paras. 426-428.

<sup>431</sup> Cmnd. 3888.

<sup>432</sup> See Chapter 4 below.



vi. *Making Unofficial strikes Official.*

While the problem of unofficial strikes was more serious, it was decided that measures aimed at reducing their number simply by forcing unions to make them official would not lead to an improvement in industrial relations. The solution suggested in the Report was that the Secretary of State for Employment and Productivity should, in appropriate cases, place on an industrial relations officer the duty of obtaining the full facts about unofficial and unconstitutional stoppages where they were causing particular difficulties, usually after the event. In this way a much clearer picture of the circumstance of the stoppages would be gained than the Department could normally achieve.<sup>433</sup> These investigations would not, however, remove the underlying causes of unofficial strikes, and recommendations for addressing specific causes such as unfair dismissals and disputed claims to recognition were addressed elsewhere in the Report. In this regard at least, legislation was deemed to be an appropriate tool for the governance of good working relationships.

vii. *Local Agreements, the IRC, Penalties for Unofficial Action and Limited Immunity in Tort.*

The Commission's own inquiries into the causes of unofficial strikes found that disputes were over wages, working arrangements, discipline and redundancy – all workplace issues. The Commission did not, however, commission research into the results produced by legislation designed to control unofficial strikes in Sweden, West Germany and the USA. Instead, the proposed remedy was to have negotiated plant or company agreements covering all the issues which tended to be the cause of

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<sup>433</sup> *Royal Commission Report*, para. 448.

unofficial strikes, and supervised by an Industrial Relations Commission (IRC). In fact:

... all the legislative techniques suggested as means of preventing unofficial strikes were dismissed, with the exception of the majority proposal that *unofficial strikers* should lose immunity in tort and also the note of dissent from Lord Robens and Sir George Pollock arguing that unofficial strikers should lose all their accrued entitlements to benefits.<sup>434</sup>

The Report was clear that, until recent times, the State had considered it better to abstain from interfering in the affairs of employers and their workers, Parliament taking the view that the best means of resolving such questions was by voluntary collective agreements and by equipping the government to deal with such bargaining procedures.<sup>435</sup> It is this conviction that in the end produced a report that strongly favoured a voluntarist approach, but with an acknowledgement that collective bargaining could and should be supported by legislation. Yet, despite these recommendations based on a thorough examination of the British industrial relations system, the approach that would be favoured by the Labour Government's White Paper, *In Place of Strife*, and to an even greater extent by the Conservative's *Industrial Relations Act in 1971*, would be to move firmly away from the voluntarist approach and to seek to take greater legislative control over the trade unions.<sup>436</sup>

As the Donovan Report acknowledged, industrial relations were at a crossroads, and consideration would need to be given to whether the basic principles of industrial

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<sup>434</sup> Kilroy-Silk, 'Trade Unions and Society', 97.

<sup>435</sup> An example was the *Terms and Conditions of Employment Act 1959* which required an employer to observe terms no less favourable than those established for his industry by collective bargaining.

<sup>436</sup> See Chapters 4 and 5 below.

relations should be 'restored, revised or replaced'.<sup>437</sup> Any replacement would have to consider the viability of legislation to formalize industrial relations. The existing system already acted on both formal and informal levels, and any new legislation would have to consider whether it was possible to formalize the absolutely informal.

### *3.8 Further Legal Changes – an Industrial Relations Act and Commission*

Although the Report on the whole was against the implementation of far-reaching legislation in the field of industrial relations, it did include a proposal for a single Act of Parliament dealing with the principles relating to collective bargaining, to industrial relations, and to trade unions and employers' associations, with an Industrial Law Committee attached to the Industrial Relations Commission to keep the legislation under review.<sup>438</sup> If that was a step too far for the legislature, a less welcome alternative would be to consolidate all the existing statute law as an early measure.<sup>439</sup>

It was proposed that unions would be granted corporate status, which would necessitate keeping a register of unions, although no problem was envisaged here as 351 unions were already registered with the Registrar of Friendly Societies, these accounting for over 85 per cent of union membership. The Commission clearly did not anticipate any major reluctance on the part of the unions to registering as corporations. The majority of the Commission had been in favour of the recommendation that the sanction for a refusal to register should be the risk of damages claims from employers in the event of strikes. However, a system of fines

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<sup>437</sup> *Royal Commission Report*, para. 45.

<sup>438</sup> *Ibid.*, para. 755.

<sup>439</sup> *Ibid.*, para. 756-7.

for failing to carry out administrative duties as a registered trade union in the ensuing *Industrial Relations Act 1971*<sup>440</sup> proved wholly unacceptable to the unions and the risk of sanctions did nothing to persuade them to register as they were required to do. These events demonstrated that trying to force the trade unions into acting against their will with threats of financial sanctions was neither appropriate nor workable as a strategy for controlling their activities.

The Commission was not prepared to intervene with suggestions for legislation on the issue of trade union immunity. On being returned to power in 1964 the Labour Government had quickly passed the *Trade Disputes Act 1965* in response to the decision in the case of *Rookes v Barnard* by the House of Lords.<sup>441</sup> The *Trade Disputes Act 1906*, whilst granting immunity against the economic torts to participants in industrial disputes, precluded protection for 'acts done in contemplation or furtherance of a dispute' if unlawful means were used. The House of Lords held that a threat by persons that contracts of employment would be broken unless the employer agreed to their demands, was a threat to do something unlawful and therefore constituted the tort of intimidation; that is, unlawful means were used and the protection under the 1906 Act was thereby not available to them. The Commission accepted that the 1964 provision should not be repealed as it afforded trade union officials protection in the reasonable performance of their functions.<sup>442</sup> The unions must have heaved a collective sigh of relief on hearing this.

The single major piece of legislation that the Commission proposed was an Industrial Relations Act, recognizing that the pace of change needed to be stepped up, and that voluntary action alone would be insufficient to bring about rapid transformation.

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<sup>440</sup> Section 91.

<sup>441</sup> *Rookes v Barnard* [1964] UKHL 1.

<sup>442</sup> *Royal Commission Report*, para. 852.

Eager to learn from the experience of alternative jurisdictions, the Commission turned to patterns of industrial relations observed in other industrially efficient countries, namely the USA and the Federal Republic of Germany. In the USA there was an obligation on employers to bargain with trade unions where the majority of their employees wished it. In Germany, firms were obliged to set up Works Councils where elected employee representatives discussed and negotiated on a range of issues. However, both models were dismissed for present purposes, as collective bargaining was already strong in Great Britain. It was the nature of collective bargaining that required change, bringing greater order and control to bear on the way in which such bargaining was carried out. In this, the Commission was almost certainly mistaken in dismissing the lessons of other successful industrial nations so peremptorily, demonstrating an unwillingness to embrace radical change while continuing with the policy of making small, safe recommendations.

The Commission proposed the imposition of a registration requirement on businesses. This would require businesses of a certain size (initially over 5,000 workers, but with a gradual reduction in this requirement to encompass smaller companies) to register collective agreements with the DEP. The proposed Industrial Relations Act would also establish an Industrial Relations Commission. One of its duties would be to report on problems arising out of registration of agreements or on a failure to reach agreements.

At first glance, the solution as posited here was startlingly simple – persuade the unions and management to reach an agreement on fundamental issues and set up a commission to ‘deal’ with them if they fail to do so. The reality of such a mammoth undertaking does not seem to have troubled the Commission. Neither is there any suggestion as to the reasons why unions and management should be desirous of

making such agreements. The way to ensure compliance with registration, it was proposed, was to fine the company if it did not register the agreement, or failed to explain why there was no agreement. However, there would be no corresponding system of fines for companies which failed to recognize a trade union. What the Commission does not seem to consider here is the possibility that, to avoid a fine due to an inability to reach a settled agreement with the recognized union, the company could simply de-recognize it. Andrew Shonfield, a member of the Commission, is frank in his criticism of this, and other proposals, which he makes clear in his Note of Reservation within the Report.<sup>443</sup>

### *3.9 Summary of Main Conclusions of the Donovan Report*

The main finding of the Commission was that the two systems of industrial relations (informal and formal) were at odds with each other, with actual earnings having moved away from the rates laid down in industry-wide agreements, and many agreements taking place informally within the factory which were outside the control of the employers' associations and trade unions. This, it argued, helped to explain why resort to unofficial and unconstitutional strikes and other industrial action had been increasing. Collective bargaining had become decentralized under pressure of full employment, and the authority of the employers' associations had declined.

The central problem was the disorder in pay structures and in factory and workshop relations as a result of the conflict between the formal and the informal systems. To remedy this, effective and orderly collective bargaining was required over such matters as the control of incentive schemes, the regulation of hours actually worked, the use of job evaluation, performance management and so on. In most industries

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<sup>443</sup> See below.

such matters could not be dealt with effectively by means of industry-wide agreements.<sup>444</sup>

Nevertheless, the Commission believed that factory-wide agreements could provide the remedy, and recommended that boards of companies should review industrial relations within their undertakings, with six objectives in mind:

1. To develop comprehensive and authoritative collective bargaining machinery;
2. To develop joint procedures for the rapid and equitable settlement of grievances in a manner consistent with relevant collective agreements;
3. To conclude agreements regulating the position of shop stewards;
4. To conclude agreements covering the handling of redundancy;
5. To adopt effective rules and procedures governing disciplinary matters;
6. To ensure regular joint discussion of measures to promote safety at work.<sup>445</sup>

A key recommendation was to require large companies to register their collective agreements with the DEP. This would serve two purposes: first, to emphasize the primary responsibility for the conduct of industrial relations within a concern; and, secondly, to draw attention to the aspects of industrial relations which the public interest requires should be covered by clear factory agreements.<sup>446</sup> Together with the proposed Industrial Relations Commission (IRC), which would be charged with investigating and reporting on any problems arising out of the registration of agreements, it was envisaged that these proposals would assist an incomes policy to

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<sup>444</sup> *Royal Commission Report*, para. 1019.

<sup>445</sup> *Ibid.*, para. 182.

<sup>446</sup> *Ibid.*, para. 1024.

work effectively, exposing the whole process of pay settlement to the influence of policy.<sup>447</sup>

It suggested that there might be new measures to encourage the extension of collective bargaining. Stipulations in a contract of employment that an employee is not to belong to a trade union would be void, while the IRC would deal with problems of trade union recognition.

Recognizing that there was considerable scope for improving the efficiency of the use of manpower, the Report concluded that the reform of collective bargaining would lead to factory agreements which, if properly used, would contribute to higher productivity. Training would be a key component of the changes that would bring about objective standards in skills; trade unions would then be required to change their rules to ensure that no qualified worker was arbitrarily denied admission to a trade, and who would have recourse to an independent review body if that were to occur.<sup>448</sup>

A reform of the institutions of the collective bargaining system and a mechanism for dealing with recognition disputes and unfair dismissals (often the causes of strikes) were seen as fundamental to the solving of the strike problem. Since collective agreements were not legally binding contracts, and since making them so through statute would not in itself deliver better industrial relations, it was recommended that there should be no legalization of the agreements and no sanctions for individuals who acted in breach of agreements.

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<sup>447</sup> *Ibid.*, para. 1026.

<sup>448</sup> *Ibid.*, para. 1042.



The dismissed employee would have a right of complaint to a labour tribunal to seek either compensation or reinstatement.<sup>449</sup> It was considered desirable to improve the machinery for the judicial determination of disputes arising out of employment contracts and of statutory claims between employers and employees; existing tribunals that would deal with these matters were to be re-named 'labour tribunals' while actions for damages arising from accidents at work would still go to the ordinary courts. Their primary duty would be to promote the amicable settlement of disputes by way of conciliation.<sup>450</sup>

Having one union for all employees in the same industry regardless of occupation would have a number of advantages, but practical objections, too. However, merging unions that represented workers in the same industry was considered to be a positive step forward, providing this did not breach the Bridlington Agreement, an agreement made in 1939 that rival unions affiliated to the TUC would not poach members from each other. The TUC's involvement was envisaged to encourage unions to adopt closer working arrangements and adopt the principle of 'one union for one grade of work within the factory'. More full-time officials would be required and there should be a proper training programme for officers and shop stewards.

Unions should in future be granted corporate personality and should be registered, while the existing register kept by the Registrar of Friendly Societies could serve as the new Register. Legislation should remove the possibility of liability for civil conspiracy where persons have agreed together, in contemplation or furtherance of a dispute, to break their contracts of employment.

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<sup>449</sup> *Ibid.*, para. 1059.

<sup>450</sup> *Ibid.*, para. 1056-1060.

The Commission recommended that the *Wages Councils Act 1959* should be revised, and that there should be a re-introduction of unilateral arbitration on a selective basis. There should be statutory protection of employees against unfair dismissal and for union members (or applicants for membership) in relation to trade unions. There should be revision of the law relating to trade disputes.<sup>451</sup>

Overall, the recommendations amounted to little more than a proposal for a new Industrial Relations Act providing for registration of trade unions and a new Industrial Relations Commission, a nod towards unfair dismissal protection, greater protection from arbitrary expulsion from a union, and a reduction in the number of unions in each industry. The proposed legislation would not to any great extent interfere with trade unions' self-regulation. After three years of deliberation on potential improvements to industrial relations, these proposals were so timid as to invoke widespread criticism for the caution showed by the Commission, particularly from those who had expected much more radical solutions to the problems that had taken hold of industrial relations in many industries.

### *3.10 Dissension and criticism*

Although much criticism of the Report was to follow in the wake of its publication, there was also dissension within the Commission itself. This was almost an inevitability, given the diversity of backgrounds of the individual commissioners. As the lone voice of major dissent, Andrew Shonfield set out his reasons for disagreeing with major issues in the Report in his Note of Reservation - effectively his own minority report.<sup>452</sup> As an economist, Shonfield was an advocate of long-term planning and a mixed economy. Whilst he agreed with the remedies proposed in the

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<sup>451</sup> *Ibid.*, para. 1107.

<sup>452</sup> *Ibid.*, 288.

Report, he noted that, ‘...it barely concerns itself with the long-term problem of accommodating bodies with the kind of concentrated power which is possessed by trade unions to the changing future needs of an advanced industrial society.’<sup>453</sup> He was concerned that the control of vital services lay in the hands of a handful of powerful trade unions which could disrupt their supply and upset the lives of millions of ordinary people, and viewed the policies of the Donovan Report as short-term and reactive. He noted that industry and services were becoming more interdependent so that the disruption of the supply of one good or service could seriously affect the production of supply of another, additionally affecting the wage-earnings of the workers in interrelated industries.

Shonfield suggested that unions were in fact bullies, and that they acted as if they were somehow above the law, which he regarded as unjustifiable. ‘If organisations are powerful enough to act the bully then very special grounds are necessary to justify the decision not to subject their behaviour to legal rules.’<sup>454</sup> He considered the statement in paragraph 471 of the Report that collective bargaining should remain ‘outside the law’ to be wrong, suggesting that the current system of *laissez-faire* was a throwback to the nineteenth- and early twentieth-centuries. At that time, legislators regarded trade unionism as an unpleasant conspiracy which it would be wrong to support in any way, for example by treating any agreements between the ‘conspirators’ as ordinary, legally enforceable contracts.<sup>455</sup>

This ‘licensed conspiracy’ had helped the unions to grow in strength, but Shonfield argued that:

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<sup>453</sup> *Ibid.*

<sup>454</sup> *Ibid.*, 290.

<sup>455</sup> *Ibid.*

... now that they have evolved to this dominant role, it would be highly anomalous if the legal prejudices of an earlier generation were to continue to be used to encourage them to avoid undertaking ordinary contractual obligations in the relations with employers or to permit their actions to escape the public regulation which has come to be accepted as the common lot of corporate bodies wielding economic power.<sup>456</sup>

Shonfield suggested that, where union rules appeared to run counter to the welfare of the community, they should be subjected to public scrutiny, such as would be achieved by the registration of collective agreements with a central authority. These arguments may have seemed heretical at the time, suggesting that unions should be subject to greater accountability, but they do reflect the very real problems of the lack of central control over unions and the resultant economic chaos which could needed to be addressed.

On the subject of disputes over recognition and jurisdiction in the workplace, he suggested that where there was such a dispute between rival unions, and attempts at conciliation had failed, there should be an automatic reference to a judicial body (he proposed a special section of the IRC). This body would decide which union was the most appropriate bargaining agent for specific groups of employees, and issue an order to this effect. He proposed greater powers for the IRC than envisaged in the Report and a more autonomous function. Its powers of investigation would be able to be exercised, he thought, without waiting for the orders of the Secretary of State where there was serious friction in industrial relations. The IRC should also have a section with independent judicial authority and with jurisdiction over specific matters: recognition disputes; the range of matters to be covered in collective agreements

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<sup>456</sup> *Ibid.*, 290-291.

which were liable to compulsory registration; and restrictive practices. The judicial task of the IRC would be to supplement, rather than replace, collective bargaining, and to ensure that the parties bargained in good faith.<sup>457</sup> This independent body, working as a scrutineer of trade union activity, could have taken on the functions which would later be delegated to the National Industrial Relations Court, but its less formal nature may have found a more ready acceptance from the unions

On the subject of collective agreements in the form of contracts, Shonfield suggested that the current form of agreement lacked the necessary precision to be treated as enforceable contracts, but that there would be a new kind of collective agreement emerging from the reforms proposed in the Report. He wrote that:

... it has been made clear in the course of the investigation of the Royal Commission that the predominant view in Britain ... is that a collective agreement does not set up any obligation on the part of the trade union to do anything which in the event turns out to be less convenient than the framers of the agreement anticipated.<sup>458</sup>

He considered that a commitment to honour the bargain would eventually obtain better bargains from employers for their members, and that the agreement should be legally enforceable in the Industrial Court. This particular proposal was impractical and demonstrated a view that anything was possible if it was legislated for. The fact that such legislation would overturn well-established norms in collective bargaining, where such agreements were binding in honour only, does not appear to trouble him

Shortly after publication of the Report, he wrote in the *Sunday Times* on why he thought that it did not go far enough.<sup>459</sup>

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<sup>457</sup> *Ibid.*, 294-295.

<sup>458</sup> *Ibid.*, 300-301.

<sup>459</sup> *The Sunday Times*, 16 June 1968.

The Vice of the present British system of industrial relations is its hypocrisy. People pretend to have power which they do not possess while the important industrial bargains are made elsewhere, often out of sight and messily.

The remedy proposed in the Report of setting up an IRC, charged with the task of examining and approving the detailed and comprehensive agreements that would be produced by management and unions, makes the assumption that both sides would be willing to participate in the production of such agreements. Shonfield warned of the danger of having an 'unarmed institution' that invites defiance, and that, in his Note of Reservation, he had suggested a penalty for employers or unions bent on sabotaging the process of bargaining. He argued that the point of a legal sanction is not necessarily to punish the wrong-doers, but to reinforce the position of those inclined to obey anyway. He also thought it wrong to rely on the employers as the instruments of change when the unions were equally to blame for the disorder in industrial relations. 'The idea that the unions should continue to be treated as some species of private club grows increasingly absurd.'<sup>460</sup> He therefore advocated that they, as much as the employers, should be made to justify their actions to the Industrial Relations Court whenever they were observed to be supporting restrictive practices which held back progress in living standards.

There was also a great deal of external criticism of the Report. Michael Moran suggested that the whole Report had been unduly influenced by Allan Flanders in two ways.<sup>461</sup> He considered that the Report's identification of the central problem of the two systems relied heavily on his evidence, as did its recommendation to formalize the domestic, informal system. Perhaps unfairly, Moran also considers that

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<sup>460</sup> *Ibid.*

<sup>461</sup> M. Moran, *The Politics of Industrial Relations: The origins, life and death of the 1971 Industrial Relations Act*, p. 50.

there was evidence of undue influence, relying on the fact that the Research Director, Bill McCarthy, was a former pupil of Flanders, while Clegg was both a colleague and a friend. Clearly, Moran considered that Flanders was possessed of a strong sympathy with the labour movement, who had been able to exert a great deal of influence on other members of the Commission. Indeed, Moran was also convinced that only 'a minority of the Commissioners were from the beginning opposed to a legislative solution to the problems of industrial relations' and that 'this group managed after long debate to transform itself into a majority by gaining the support of a number of waverers'.<sup>462</sup>

Robert Kilroy-Silk claimed that the whole Report failed to examine whether the remedies it proposed 'were appropriate to our kind of society'.

What type of society do we want and what place have trade unions and unofficial groups in that society? Is it to be a society which allows freedom for groups to strike at the expense ... of the general standard of living, or a society that places its emphasis on material rewards and hence outlaws strikes?<sup>463</sup>

He claimed that it was hard to avoid the suspicions that the Commissioners were firmly against the idea of legal penalties to control unofficial action.<sup>464</sup> This suspicion is compounded by the fact that 'most of the research papers were written by people known to be against the introduction of the law into industrial relations ... by individuals sharing a similar frame of reference, what has been called the new

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<sup>462</sup> Moran, *The Politics of Industrial Relations*, p. 50.

<sup>463</sup> Kilroy-Silk, 'Trade Unions and Society: The Donovan Report', 100.

<sup>464</sup> *Ibid.*, 99.

Oxford group'.<sup>465</sup> He suggested that a wider catchment area with various perspectives might have been more valuable and produced a different report.

Indeed, he was highly critical of the Oxford approach as one which led the Commission inexorably to eschew legislative remedies. Of the various theoretical models of industrial relations, the Oxford approach was the one used by the Donovan Commission to provide the theoretical basis of its policy recommendations.<sup>466</sup>

H.A. Turner was also in no doubt that the Oxford approach was influential on the Commission, referring to the method disparagingly as:

... combining an industrious extension of established avenues of inquiry ... a preference for the short-term rule of thumb over the broader generalization, a rather low awareness of ... sociology, statistics and economics ... and a variety of propagandist mini-reformism which insists partly in leading people boldly in the direction they appear to be going anyway.<sup>467</sup>

The Oxford approach stressed the process of rule-making through collective bargaining and can be contrasted with the 'systems model', designed by John T. Dunlop<sup>468</sup> which put greater emphasis on the role of wider influences of rule determination. The Oxford approach sees political variables as of paramount importance, while the systems approach considers economic, sociological and ideological variables as of particular significance. The Oxford approach can therefore be criticized for being too narrow to provide a comprehensive framework for the analysis of industrial relations. No prominence is given to such variables as

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<sup>465</sup> *Ibid.*, 100.

<sup>466</sup> A.N.J. Blain, J. Gennard, 'Industrial Relations - A Critical Review', *BJIR*, November 1970, Vol. 8, Issue 3, 395.

<sup>467</sup> H.A. Turner, 'The Royal Commission's Research Papers', *BJIR*, November 1968, Vol. 6, Issue 3, 346-359.

<sup>468</sup> J.T. Dunlop, *Industrial Relations Systems*, (New York, 1958).



technology, the market and ideology, and it is suggested that the narrowness of this particular approach acted to severely limit the scope of the Commission's study.<sup>469</sup>

Kilroy-Silk argued that the Commission did not adequately perform its self-imposed task, failing to examine whether unofficial strikes had economic consequences, or to give adequate consideration to suggested legal remedies. He also suggested that it did not do the job set out in its broad terms of reference.

What the Commission did was to confine itself to a discussion of the efficiency of certain remedies for certain industrial problems. What it should have done was to consider whether or not the remedies were appropriate to our kind of society.<sup>470</sup>

Although the Commission's conclusion that legislation was mainly inappropriate for regulating industrial relations, the Report's legal aspects and light touch were considered with approval by Cyril Grunfeld. He considered it to be 'an outstanding public document, an affirmation of rationality in the conduct of human affairs'. He called the Report 'a profound diagnosis of the malaise of British industrial relations' which had 'propounded solutions at once apt, sophisticated and firmly founded on a painstaking investigation of facts.'<sup>471</sup> He concluded:

In the sphere of the power relationship between management and organised labour, [the law's] touch should be light and sensitive' and 'haste is to be made only slowly.'<sup>472</sup>

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<sup>469</sup> Blain, A.N.J., Gennard, J., 'Industrial Relations – A Critical Review', 396-7.

<sup>470</sup> Kilroy-Silk, 'Trade Unions and Society: The Donovan Report', 100.

<sup>471</sup> C. Grunfeld, 'Donovan - The Legal Aspects', *British Journal of Industrial Relations*, November 1968, Vol. 6, Issue 3, 316-329.

<sup>472</sup> *Ibid.*, 329.

Grunfeld approved of the Commission's view that legislation would only work in limited circumstances, if at all. Turner took a similar view, drawing on international strike figures to make one very important conclusion with regards to the impact of legislation on industrial action:

Nearly every country in the table has a higher degree of legal intervention in industrial relations than does the United Kingdom, yet the strike incidences of the various countries involved range vary widely on either side of the U.K. figure. So that the presence of a comprehensive legal framework for industrial relations would certainly not seem to lead automatically to a low national incidence of stoppages from industrial disputes.<sup>473</sup>

This may well have been one of the many aspects of the Commission's findings that led ultimately to the conclusion that legislation was not a panacea for poor industrial relations and multiple strikes in the UK. However, there was little doubt that the Commission's bias in terms of the Oxford approach, its failure to adequately consider economic factors sufficiently, and its reliance on historicism were all factors in the criticism which followed in the wake of publication of the Donovan Report.

### *3.11 Political Responses to Donovan*

In the meantime, the Conservative Party had been engaged in preparing its own investigation and report, described by Kilroy-Silk as an 'even stronger body of opinion to suggest that the law can play an important part in changing behaviour'.<sup>474</sup> This Report, entitled *Fair Deal at Work*, certainly went much further than Donovan, particularly in the area of legislative control which Donovan had largely rejected, and was published shortly before the Royal Commission Report in 1968, pre-empting

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<sup>473</sup>*The Times*, 15 May 1969.

<sup>474</sup> Kilroy-Silk, 'Trade Unions and Society: The Donovan Report', 100.

and no doubt undermining its impact.<sup>475</sup> The Commission had concluded that legislation had only a limited role to play in the governance of industrial relations, but the Conservatives were determined to use the law much more extensively to bring greater order into the workplace, into the economy and into the country as a whole.<sup>476</sup>

Meanwhile, Harold Wilson barely seemed to give the ongoing inquiry any of his personal attention over the three years while the Commission took evidence and wrote their report, with almost no reference to it in his published memoirs.<sup>477</sup> Nonetheless, events continued to bring the matter of strikes and pay restraint to the political forefront. A seven-week strike in 1966 by the National Union of Seamen had led to a Government declaration of a State of Emergency. A six-month freeze on prices and incomes, followed by a further six months of pay restraint, led to a government decision in 1966 to impose fines on unions and their members if they refused to comply with the freeze. Addressing the TUC, the Prime Minister, clearly still hoping to avoid the imposition of legal restraints, expressed an optimism that the 'freeze' measure would work by voluntary means. However, he threatened to use legislation if it became necessary, saying that 'if there is a breakaway action, whether in wages or prices or by any other challenge by any section of the community seeking to secure a privileged position for itself, then ... the Government will reluctantly have to replace voluntary action by operating the statute.'<sup>478</sup>

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<sup>475</sup> *Fair Deal at Work, The Conservative Approach to Modern Industrial Relations*, 18 April 1968.

<sup>476</sup> The justification for legislation was that 'many of Britain's problems in this field stem not from the absence of law but from existing laws which are incompatible both with the needs of an efficient industrial society and with basic human rights.'

<sup>477</sup> H. Wilson, *The Labour Government, 1964-1970: A Personal Record*, (London, 1971).

<sup>478</sup> *The Times*, 6 September 1966.

There were further calls for legal measures to restrict 'unconstitutional' action, and in November 1967 George Brown urged the immediate introduction of trade union legislation.<sup>479</sup> The CBI, in its evidence to the Royal Commission, had called for penalties for 'unconstitutional' action, the legal enforcement of procedure agreements and a registrar of trade unions who would have the power to take action against unofficial strikers.<sup>480</sup> These proposals now appeared to be finding favour with a wider audience, and the economic problems were being blamed largely on the trade unions, driving the Government inexorably towards consideration of more stringent measures to control strikes than were emerging from the Donovan Commission.

### *3.12 Conclusion*

The Donovan Commission concluded that collective bargaining, properly supported, was the best way forward in order to maintain harmonious industrial relations, but the problem with this straightforward solution was that it failed to address the multiple problems connected with shop-floor bargaining and the attendant uncontrolled rises in wages, nor was it able to demonstrate how better collective bargaining would reduce the number of unofficial strikes.

There is little doubt that the Commission aimed to judge the reform of industrial relations by these criteria of greater order and the extended reach of collective agreements. The problem was nevertheless a joint one, and it may have been more effective to approach it from both the employers' and the unions' perspective. The unions were demanding more consultation and participation in decision-making, while British management was reluctant to allow them such a role.

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<sup>479</sup> E. Wigham, *Strikes and the Government 1893-1981*, (London, 1982), p.142.

<sup>480</sup> D. Barnes, E. Reid, *Government and Trade Unions, The British Experience, 1964-79*, p. 95.

Lewis Minkin concisely summarized the outcome of the Donovan Report when he wrote that the Commission 'rejected the use of legislation as a means of enforcing adherence to the national pattern of bargaining' and instead 'recommended the voluntary encouragement of an orderly adaptation to this informal system'.<sup>481</sup> In the face of a growing body of evidence that some legislative measures were necessary to control union activities and strikes, it was remarkable that the Commission effectively disregarded this advice, a fact that could be attributable to the Oxford influence on the Report. It had achieved certain goals in that it provided a useful analysis of how the various institutions were involved in collective bargaining, and also an examination of very specific aspects of the law relating to unions. The result was a particular diagnosis (although not the only possible one) of the causes of industrial unrest in the UK. Nevertheless, there was still some doubt over its overall validity and there was a general paucity of definite proposals for remedial action.

The 'voluntary machinery' endorsed by both Kahn-Freund in 1954<sup>482</sup> and by the Ministry of Labour in its written evidence to the Donovan Commission<sup>483</sup> had worked well where industry was organized, but that left many workers without the protection that unions could afford them. History had shown how legislation could be used to positive effect in the realm of employment and industrial relations, extending beyond protection for unions and their members to workers in non-unionized industries. When used to protect vulnerable workers, to ensure the safety of the nation, to bolster the economy, to defend the legitimate activities of a union from criminal prosecution or suit in tort and to permit unions to raise funds without interference, the legislature and the unions operated more or less harmoniously side by side. The

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<sup>481</sup> L. Minkin, *The Contentious Alliance*, (Edinburgh, 1992), p. 114.

<sup>482</sup> O. Kahn-Freund, 'Legal Framework', in A. Flanders and H. Clegg, (eds), *The System of Industrial Relations in Great Britain*, (Oxford, 1954), chapter 2.

<sup>483</sup> *Royal Commission Report 1968*, Cmnd. 3623. *Written Evidence of the Ministry of Labour*, London: HMSO.

unions positively welcomed legislation that gave workers a measure of protection, and a more nuanced, negotiated approach to the deployment of legislation, where unions were given assurances of enhanced social and welfare rights in return for agreement to control wage rises could have been a more effective solution. Indeed, this notion was to be included in the Social Contract, an agreement between the TUC and the Government which dominated the direction of industrial relations in the mid-1970s.<sup>484</sup>

Despite the length of the Report and the time taken over the inquiry, it failed to address adequately the problems associated with the trade union movement, and it was almost inevitable that politicians would move in with legislative proposals to fill the gaps left by the Commission. The Commission had been handed the opportunity to create a comprehensive body of rules which would govern the organization of trade unions, but failed to do so. The lack of firm proposals for dealing with strikes was to prove a major source of frustration to Barbara Castle when producing her White Paper, *In Place of Strife*. It is notable in view of the undue haste with which the White Paper and the ill-fated Conservative *Industrial Relations Act 1971* were created, that the cautious approach advocated by the Commission had fallen on deaf ears.

In trying to answer the question of why the Commission failed to create a comprehensive body of rules which would address the problems within trade unionism, it is necessary to go back to its inception. Its biggest weakness lay in its membership, and in its terms of reference. Its composition was questionable and, while this defect might have been remedied by clear, unequivocal terms of reference, this did not happen, a double failure which resulted in an unsatisfactory Report. The

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<sup>484</sup> See Chapter 6 below.

Commission was a representative body, with the TUC represented by Woodcock and Collison, counterbalanced by a representative of the employers' organizations. The Conservatives may have had the better idea when they deliberately omitted union representation on the secret committee set up to inquire into trade unions and industrial relations, being fully aware that trade unionists would raise objections to any attempt to interfere with their autonomy or impose legislative restrictions on their activities. This meant, of course, that they were able to get the answers that they had set out to achieve, but the policies had little success in terms of resolving the industrial relations problems.

The terms of reference put the outcome largely in the hands of the Commission itself. It became progressively narrowed by the experts, while the Oxford school, with its particular restricted focus and reluctance to legislate, was able to exert its considerable influence over the overall shape of the Report. In the end, all that was really achieved was a study of the institutions, the machinery of collective bargaining and the law surrounding them.<sup>485</sup> Yet, despite their inadequacies and outright failures, the inquiry and subsequent Report still retain their watershed status in the history of industrial relations in the sense that it ensured that the State would impose controls because industrial relations did not seem to be working without them. It was probably the most thorough investigation into industrial relations ever undertaken. It undoubtedly served as a catalyst for the reforms that were to follow in its wake, beginning with the controversial White Paper, *In Place of Strife*, which, perhaps recognizing some of the shortcomings of the Donovan Report, demonstrated a determination not to be accused of similar failures. Its recommendations alone offered little prospect of change because it documented the problems while failing to

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<sup>485</sup> J. D. Derbyshire, *The Royal Commission on Trade Unions and Employers' Associations, 1965-1968*, 293.

offer a solution to the problem of the split between official and unofficial strikes. Strengthening the unions with some legislative support was not necessarily going to address the issue of large numbers of unofficial strikes and industrial relations chaos. It may therefore be viewed as a watershed due to its failures to address the issues which forced the Labour Government and the subsequent Conservative Government into turning to legislation to remedy the problems, despite the warnings in the Report that legislation had little to offer when it came to achieving harmonious industrial relations.



## **Chapter 4. “*In Place of Strife: A policy for Industrial Relations*” goes beyond Donovan.**

### *4.1 Introduction*

The Donovan Report suggested a tightening up of the voluntary system of industrial relations in Britain but faced a mixed reception. Whilst trade unions found it acceptable, employers and the Labour Government and the Conservative Party felt that it had not fully addressed the problem of strikes and chaotic industrial relations in Britain. The Government therefore turned to a major extension of industrial relations legislation, designed to exercise greater control over trade unions. The evidence suggests that the major political parties had to deal with the problem of industrial relations in Britain or lose political support. There were pockets of serious industrial unrest in the country, and the Conservative Party had shown its hand in their publication of *Fair Deal at Work* which demonstrated that it would not hesitate to legislate if re-elected. The Government was under pressure to bring about radical change, and the White Paper was the beginning of what proved to be a decline in voluntarism and greater politicization of industrial relations.

The Donovan Report’s ideological framework had identified a way forward for industrial relations, based on a tightening up the voluntary system and a rejection of State intervention. Despite its detractors, the Report was well-received in certain quarters, particularly by trade unions, the TUC and several Labour MPs:

The Report largely vindicates the aspirations, ideals and aims of trade unions ... If we implement the recommendations in the Report we shall have a much improved industrial relations system - a system to be envied, and one which I hope the Labour

Government will be able to say they have created in their lifetime. It will be the envy of the world.<sup>486</sup>

Following the criticism of the Donovan proposals, Barbara Castle and Harold Wilson may have felt that it would be a straightforward task to persuade Labour MPs and trade unions that the Report was in fact fundamentally flawed, too complacent, and little more than a tidying up of the existing, largely voluntary system. Indeed, as Robert Taylor and Andrew Crines put it, 'It read too much like an academic publication and seemed to fall far short of what Wilson believed the dire circumstances of the times required.'<sup>487</sup> Castle, recently appointed to the role of Secretary of State for Employment and Productivity, was in no doubt that greater restrictions should be placed on trade unions in order to address the problem of strikes in Britain, and she attempted to do this through the legislative proposals in her White Paper. In doing so she was trying to find a middle way between excessive restrictive legislation to control trade union activity and the complete autonomy that most trade unionists would have preferred.

She was appointed to her new role on 6 April 1968, moving from the Ministry of Transport. Wilson wished to transfer the responsibility for prices and incomes to the Ministry of Labour, renaming the department 'Employment and Productivity'. He recalled that Castle was 'not all that keen', but he 'wanted her, both in incomes questions and more widely, to take over a responsibility for increased productivity' and 'all aspects of manpower productivity would be hers.'<sup>488</sup> Ray Gunter, who had set up the Donovan Commission and finalized his report, had been looking forward to 'the post-Donovan phase of refashioning Britain's system of industrial relations in

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<sup>486</sup> HC Deb. 16 July 1968, c.1350, per Michael Maguire, Labour MP and former branch secretary of the NUM.

<sup>487</sup> R. Taylor, in A.S. Crines, K. Hickson (eds), *Harold Wilson: The Unprincipled Prime Minister?* (London, 2016), p. 115.

<sup>488</sup> H. Wilson, *The Labour Government 1964-1970: A Personal Record*, (London, 1971), p. 521.

the light of that report', but was thwarted in this particular ambition.<sup>489</sup> He was moved to Power, but resigned in June 1968, angry that he had been replaced by Castle, a move which he viewed as a lack of trust in his ability to take industrial relations forward.<sup>490</sup>

While there was disquiet within the Government, its management of the economy was also in disarray at this time, with successive incomes policies having run their course 'with no tangible upturn in the country's economic fortunes'.<sup>491</sup> The Government was coming under severe pressure from the Opposition to secure greater and more effective control over both the economy and industrial action. The Conservative MP Robert Carr put the blame for the economic problems in Britain squarely on the state of industrial relations: 'there are uncomfortable signs ... that over a considerable number of years we have been falling behind other countries in our ability [to provide resource to help people who need it]'.<sup>492</sup> Wilson also considered that 'action on industrial relations would reassure overseas holders of sterling'.<sup>493</sup>

Castle's task would not be an easy one, since not only were relations between the Labour Party and the unions under some strain, but 'Castle wanted unions to move away from the defence of sectional interests and towards corporate responsibility for national economic and social developments'.<sup>494</sup> Wilson was also in favour of more aggressive policies, warning that 'any lack of resolve now on Labour's part would inevitably let the Conservatives in at the next election'.<sup>495</sup> That resolve would include

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<sup>489</sup> *Ibid.*, p. 522.

<sup>490</sup> B. Castle, *The Castle Diaries, 1964-1976*, (London, 1990), entry for 30 June 1968.

<sup>491</sup> Taylor, in Crines, Hickson (eds), *Harold Wilson: The Unprincipled Prime Minister?* p. 115.

<sup>492</sup> HC Deb. 16 July 1968, c. 1260.

<sup>493</sup> Crines, Hickson (eds), *Harold Wilson: The Unprincipled Prime Minister?*, p. 49.

<sup>494</sup> <http://nationalarchives.gov.uk/cabinetpapers/themes/industrial-unrest.htm> Accessed 5 July 2012.

<sup>495</sup> *Financial Times*, 2 October 1968. Report from the 1968 Labour Party Conference.

a tough stance on trade unions, since the alternative was to enable the Conservatives to 'reap the benefits of the Government's long-term economic policies.'<sup>496</sup> These statements suggest that proposals for reform were politically motivated, at least in part, but also indicate that the Labour Government viewed legislation as a swift response, not only to the problems of a weakened economy, but also to the public perception that trade unions were largely to blame. The Government response to the Donovan Report was therefore to go beyond its largely non-legislative proposals.

The Government's controversial proposals were published in January 1969 in a White Paper entitled *In Place of Strife: A Policy for Industrial Relations*.<sup>497</sup> The White Paper began by stressing the considerable defects in the current system, and concluded that, 'Radical changes are needed in our system of industrial relations to meet the needs of a period of rapid and technical industrial change.'<sup>498</sup>

This was the first step in what Patrick Maguire termed a considerable alteration in the politics of labour legislation.<sup>499</sup> Chris Wrigley agreed, suggesting that, 'In taking up this issue and proposing interventionist solutions, both parties were politicizing industrial relations to a greater extent than had been the case since the period of the General Strike in 1926.'<sup>500</sup> It was quickly becoming apparent that the State was adopting an increasingly significant role in British industrial relations. As Gill Palmer

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<sup>496</sup> *Ibid.*

<sup>497</sup> *In Place of Strife*, Cmnd. 3888.

<sup>498</sup> *The Times*, 18 January 1969.

<sup>499</sup> P. Maguire, 'Labour and the law; the politics of British industrial relations', in C. Wrigley, (ed.), *A History of British Industrial Relations 1939-1979: Industrial Relations in a Declining Economy*, (Cheltenham, 1996).

<sup>500</sup> C. Wrigley, (ed.), *A History of British Industrial Relations 1939-1979: Industrial Relations in a Declining Economy*, (Cheltenham, 1996), p. 3.

concluded, 'the post-war consensus which supported collective bargaining and a passive, background role for the state, has crumbled.'<sup>501</sup>

Castle 'set herself the task of framing far-reaching legislation that would both provide the unions with legal recognition and protection, and also ensure that industrial discipline would be imposed on them to avoid unofficial strikes, irresponsible wage demands, disruptions caused by inter-union disputes, and the other plagues characteristic of British labour relations at the time.'<sup>502</sup> Simpson found justification for the White Paper proposals in the many objections to the Donovan Report, which he described as 'sadly lacking in the spectacular in its proposals to reform industrial relations.'<sup>503</sup> Nevertheless, the move 'threw the Labour Movement into turmoil', and the Government would eventually be forced into an embarrassing climb down, although with the assurance from the TUC of a 'solemn and binding undertaking ... to tackle the strike problems by changing its own rules to permit TUC intervention in unofficial and inter-union disputes'.<sup>504</sup>

It is not easy to understand why Castle decided to depart so radically from the Donovan recommendations, but her proposals were not without their supporters. She certainly had the backing of many in the Cabinet, including the Prime Minister, and she wrote that even George Woodcock 'listened to my full resume in silence and then, to my surprise, said that he didn't think there was anything there that need alarm the trade union movement.'<sup>505</sup>

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<sup>501</sup> G. Palmer, *British Industrial Relations*, (London, 1985), p. 186.

<sup>502</sup> K.O. Morgan, *Callaghan: A Life*, (Oxford, 1997), p. 332.

<sup>503</sup> R. C. Simpson, 'In Place of Strife: A Policy for Industrial Relations', *The Modern Law Review*, Vol. 32, No. 4, July 1969, pp. 420-426.

<sup>504</sup> Palmer, *British Industrial Relations*, p. 193.

<sup>505</sup> Castle, *The Castle Diaries, 1964-1976*, entry for 17 December 1968.

What combination of factors therefore led to the ultimate failure to place the White Paper proposals on to the statute book? Crucially, it would appear, she failed to find sufficient numbers of allies to back her more radical proposals. 'Key figures were determined to oppose her',<sup>506</sup> including Jim Callaghan, the Home Secretary, who proved to be a thorn in her side over her White Paper, 'a central combatant'<sup>507</sup> in the major war over the trade unions which was about to unfold. He was committed to the trade unions, and became 'their principled defender over *In Place of Strife* and their ally in drawing up the social contract',<sup>508</sup> discussed in Chapter 6 below. Although Castle noted in her diaries that Callaghan told her, 'Speaking for myself, I welcome 90 per cent of this White Paper', she was in no doubt that he would 'emasculate the rest.'<sup>509</sup> She was acutely aware of his loyalty to the unions. In the Cabinet meeting on 14 January to decide the fate of the White Paper, for which there was a majority in favour, she quipped:

The old carthorse [the trade union movement] is stirring in its stable. If we show doubts it will turn over and go to sleep again", and then wondered if I hadn't given a hostage to Jim Callaghan, who will no doubt repeat this to every influential trade unionist.

The draft white paper was drawn up by Castle, Tony Wedgewood Benn, Peter Shore and Castle's Personal Private Secretary, Harold Walker, with only the latter having any first-hand knowledge of trade unions and the only one to have reservations over the proposals, according to Kenneth Morgan, Callaghan's biographer.<sup>510</sup> The removal of Gunter, who had been a TSSA-nominated Member of Parliament, serving

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<sup>506</sup> Morgan, *Callaghan: A Life*, p. 332

<sup>507</sup> *Ibid.*, p. 330.

<sup>508</sup> *Ibid.*, p. 37.

<sup>509</sup> Castle, *The Castle Diaries, 1964-1976*, entry for 3 January 1969.

<sup>510</sup> Morgan, *Callaghan: A Life*, p. 332.

as its president from 1956 to 1964, was perhaps an error, as he had the trade union experience which Castle sadly lacked. This failure to consider the trade union perspective also meant that she would not win the support of major trade union leaders, who also opposed the proposals. Morgan noted that, while certain proposals were ‘congenial to the unions, including the compulsory registration of unions and a Commission on Industrial Relations to spread good practices in all aspects of collective bargaining’, uproar was caused by three other proposals – ‘a 28-day enforced “conciliation pause”; powers given to impose a settlement in inter-union disputes; and powers to impose a strike ballot.’<sup>511</sup> Fundamentally, she was guilty of a misunderstanding of the strength of feeling, both among trade unionists and among her own Labour Party colleagues, many of whom had fostered a long-standing mistrust of the type of restrictive legislation that she was proposing to deploy.

The White Paper, *In Place of Strife*, represented a final opportunity for a resolution of the ‘trade union problem’ and the instability within industrial relations. Nevertheless, following strenuous objections from the unions to several of its proposals, it failed to reach the statute book, the reasons for which are examined here.

#### *4.2 Reaction to Donovan - a case for new laws?*

Castle had serious doubts about the usefulness of the Donovan Report: ‘I was glad it had rejected the Tories’ legalistic approach, though I could not see it doing much to help with the problem of wild-cat strikes in the short term.’<sup>512</sup> Two such disputes

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<sup>511</sup> *Ibid.*, p. 333.

<sup>512</sup> B. Castle, *Fighting all the Way*, (London, 1993), p. 414.

appeared to reinforce her resolve to strengthen the Donovan Report:<sup>513</sup> – one at the Girling Brakes factory<sup>514</sup> and the other in the newly-nationalized steel industry.<sup>515</sup>

The Report had concluded that the right way to avoid strikes was to improve the machinery of collective bargaining and ensure that there were effective conciliation procedures in every plant. This may have disappointed Castle, since she would have been anxious to prove herself as a political reformer. Peter Jenkins considered that:

... she was not very impressed with it. It was an admirable enough exposition of the strengths and weaknesses of the British system of industrial relations but, to the taste of her orderly mind, lacked theory. Where was the philosophy behind it? What was the role of trade unions in a democratic society beyond the pursuit of their sectional interests?<sup>516</sup>

Indeed, Castle was openly sceptical about how the Donovan Report would help with the problem of unofficial strikes. She believed in the right of workers to organize themselves in trade unions, and in the Donovan argument that it was better to strengthen rather than weaken the unions,<sup>517</sup> but was nevertheless determined to exact the appropriate price for this from them. Castle's views of raising the status and rights of the unions, in return for their acceptance of greater responsibilities to avoid needless disputes, formed the basis of her proposals in her White Paper.<sup>518</sup> To eliminate industrial anarchy, she considered that it would be necessary to: improve conciliatory machinery; improve the status and organization of unions by encouraging mergers into fewer and larger unions to minimize inter-union disputes

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<sup>513</sup> *Ibid.*, p. 415.

<sup>514</sup> The unofficial action of 22 machine-setters who refused to accept instructions from a charge-hand of another union led to the laying off of 5,000 workers in the motor industry.

<sup>515</sup> This dispute was the result of rivalry between two unions over who should organize the clerical workers in the industry.

<sup>516</sup> P. Jenkins, *The Battle of Downing Street*, (London, 1970), p. 26.

<sup>517</sup> Castle, *Fighting all the Way*, p. 416.

<sup>518</sup> *Ibid.*



(thereby stopping the problems caused by the Bridlington Agreement, an agreement not to poach other unions' members);<sup>519</sup> fund the training of shop stewards; and strengthen the role of the TUC.<sup>520</sup>

Castle said, 'I wanted the trade unions not to abandon their sectional interest, but to fit them into a wider economic, national strategy pursued by a democratically-elected government, their Government, which they had financed and voted for.'<sup>521</sup> Castle had nevertheless made the fundamental error of assuming that removal of long-standing rights from trade unions could be somehow compensated for by gifting to them other 'advantages', even though these had not been sought by the unions. Such rights had been the exclusive preserve of trade unions for decades, and would not be easily relinquished.

Castle may have been encouraged by Andrew Shonfield's contribution to the Donovan Report; he had put forward sound arguments and support for a more radical approach than the main Report had advocated.<sup>522</sup> Nevertheless, the proposals in his own Note of Reservation were considered unacceptable, according to Denis Barnes and Eileen Reid, involving as they did 'a degree of legal intervention' that 'would have provoked determined opposition from the trade unions.'<sup>523</sup> Moreover, Shonfield himself expressed some alarm at the direction taken by the White Paper:

Hidden beneath the placatory style there are ... powerful devices which could bring the authority of the state powerfully \*to bear on certain kinds of industrial dispute ...

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<sup>519</sup> The Bridlington Agreement was made at the TUC meeting in 1939 and was essentially an agreement that unions should not try to 'poach' members from rival unions.

<sup>520</sup> Castle, *Fighting all the Way*, p. 416.

<sup>521</sup> <[mms://streamwm.londonmet.ac.uk/tucdial.asf](https://streamwm.londonmet.ac.uk/tucdial.asf)> Accessed 26 October 2013.

<sup>522</sup> See, for example, A. Shonfield's Note of Reservation in the *Royal Commission Report*.

<sup>523</sup> D. Barnes, E. Reid, *Governments and Trade Unions: The British Experience 1964-79*, (London, 1980), p. 112.

The White Paper in fact goes further in these ... matters than the majority of the Donovan Commission was prepared to go.<sup>524</sup>

Castle found herself in a very difficult position. Incomes policies, a central plank of governmental management of the economy in the 1960s, had been unsuccessful. The aim of a permanent incomes policy had been to enable government to maintain demand but prevent that demand from leading to high levels of wages. These policies had proved to be unpopular with the unions and had failed to work in key areas such as the docks. Meanwhile, unofficial strikes were continuing to have a devastating effect on important industries such as motor manufacture. She was therefore determined to put forward a more radical solution – even though it would later be described as a ‘bold and bonkers miscalculation from which at the time it seemed her reputation would never recover.’<sup>525</sup> She had been duly warned, and recorded in her diary that Woodcock told her as early as 2 January 1969 that, ‘Frank Cousins was making trouble over her White Paper and wanted the TUC to throw out the whole document.’<sup>526</sup> Indeed, Minkin was convinced that union opposition to her proposals had ‘led to the widespread belief that this was one area in which a Labour Government was powerless to act without trade union agreement.’<sup>527</sup> Castle made an initial attempt to gain union approval through George Woodcock. After offering Woodcock the position of chairman of the CIR, she recorded his admission that he, too, was disappointed with the Donovan Report, and that he had ‘wanted the Commission to be more forthcoming, but I had to compromise.’ She wrote that ‘he clearly inferred that my penal powers would act as an incentive to the unions to do

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<sup>524</sup> *The Sunday Times*, 19 January 1969.

<sup>525</sup> <<http://www.bbc.co.uk/news/uk-politics-11149803>> Accessed 12 April 2014.

<sup>526</sup> B. Castle, *The Castle Diaries, 1964-1976*, (London, 1990), entry for 2 January 1969. Cousins was formerly assistant General Secretary of the TGWU and was Minister of Technology between 1964 and 1966, when he resigned in protest at a Government-backed law to freeze prices and incomes.

<sup>527</sup> L. Minkin, *The Contentious Alliance: Trade Unions and the Labour Party*, (Edinburgh, 1992), p. 115.

the job themselves ... and I hinted hard that he could save an unnecessary cleavage with the unions if he would only say as much.'<sup>528</sup> Two weeks later, she noted that, 'George's attitude has not emerged as clearly as I hoped',<sup>529</sup> something that should have acted as a forewarning of his failure to follow her hint. The notion that Woodcock could do the job of persuading the unions on her behalf was just one of the many errors of judgement that Castle was to make over the next six months.

### 4.3 *The Economic Climate*

Jim Tomlinson contrasts the overall lack of governmental concern with industrial relations in 1964, when 'productivity, prices and incomes policy had been integral to Labour's 1964 vision of planned economic expansion', with the high politics surrounding *In Place of Strife* just five years later. This was at a time when worries over the impact of industrial relations on economic performance occupied a far more central position in government planning.<sup>530</sup> The Government was anxious to maintain stable industrial relations while bringing wage inflation under control. As part of this overall strategy, the Government brought industrial affairs and economic policy under one umbrella in 1968 by creating the DEP, thereby joining together two key aspects of governmental management of industrial society - incomes policy and industrial relations.<sup>531</sup> Castle's White Paper proposals were viewed by Wilson and Roy Jenkins as placing legislation in the context of short-term economic management, although 'Castle was keen to put them in the context of a longer-term policy of reshaping industrial relations.'<sup>532</sup>

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<sup>528</sup> B. Castle, *The Castle Diaries, 1964-1976*, entry for 2 January 1969.

<sup>529</sup> *Ibid.*, entry for 18 January 1969.

<sup>530</sup> J. Tomlinson, *The Labour Governments, 1964-1970, Economic Policy*, (Manchester, 2004), p. 142.

<sup>531</sup> P. Davies, M. Freedland, *Labour Legislation and Public Policy*, (Oxford, 2006), pp. 267-268.

<sup>532</sup> Tomlinson, *The Labour Governments, 1964-1970, Economic Policy*, p. 143.

Castle proceeded on the basis that both industrial relations and the economy could be reformed by reconstructing labour legislation, despite there being no precedent for such a strategy, and therefore no firm basis on which to base this course of action. Nevertheless, the economic situation in 1968 was of deep concern to many, and a radical solution was deemed to be an imperative. Wilson had been forced to devalue the pound against the dollar in November 1967. The *Bank of England Quarterly Bulletin* of March 1968 indicated the seriousness of the situation on the world markets, with the US dollar under threat, while 'the shock of devaluation was followed by a period of upheaval and rumour in foreign exchange and gold markets.'<sup>533</sup> This economic climate served to hand Castle the ideal excuse for introducing the more interventionist legislative stance adopted by her White Paper. Nevertheless, the TUC continued to favour minimal intervention and interference with trade union affairs, while some members of the CBI argued for the right to exercise greater control over workers and their wages, and were in favour of strict legislation and legally enforceable collective agreements.<sup>534</sup>

Incomes policies had been unpopular, not only with unions but with many members of the Labour Party which was attempting to impose them. Peter Dorey described how delegates at the 1968 Party Conference voted overwhelmingly to reject the incomes policy, in spite of Castle's own robust defence of it.<sup>535</sup> Incomes policy was also a problem for the TUC because of 'the visceral union belief in free collective bargaining.'<sup>536</sup> Dorey attributed the trade unions' increased apathy towards incomes policy, combined with the increase in unofficial strikes, to Castle's and Wilson's perceived need for industrial relations legislation, as foreshadowed by *In Place of*

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<sup>533</sup> Cited by Iain Macleod MP, *HC Deb.*, 20 March 1968, c. 430.

<sup>534</sup> Castle, *The Castle Diaries*, 1964-1976, entries for 22 May 1968 and 2 January 1969.

<sup>535</sup> P. Dorey, *The Labour Governments, 1964-1970*, (London, 2006), p. 89.

<sup>536</sup> Tomlinson, *The Labour Governments, 1964-1970*, p. 134.

*Strife*.<sup>537</sup> The policy went against all previous recommendations and against custom and practice, and was a complete step into the unknown in the realm of industrial relations.

By 1969, a growing number of MPs were growing disillusioned by the incomes policy,<sup>538</sup> since incomes were rising at a far higher rate than the Retail Price Index.<sup>539</sup> Dorey observed that this was 'having a detrimental effect on the strength and unity of the Labour Party itself.'<sup>540</sup> He cited a number of commentators who also agreed that the incomes policies had been unsuccessful. Robert Taylor, for example, wrote how, 'demands for wage restraint in the wider interest of resolving the underlying crisis of the British economy had come into conflict with the fragmented character of so much of the country's wage bargaining system.'<sup>541</sup> Brian Towers was also critical of the policies, but did at least concede that 'in spite of everything, the policy may have contributed towards a dampening of the course of pay and price inflation.'<sup>542</sup>

The disagreements among Labour backbenchers, within the Cabinet and among the trade unions over incomes policies were repeated in relation to the White Paper proposals, leading to their eventual abandonment. However, as Dorey pointed out, it was often the same MPs and trade unions who objected both to the White Paper and to incomes policies, thereby leaving the Government 'bereft of both trade union

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<sup>537</sup> Dorey, *The Labour Governments, 1964-1970*, p. 89.

<sup>538</sup> R. Crossman, *The Diaries of a Cabinet Minister, Volume Three, Secretary of State for Social Services, 1968-70*, (London, 1977), diary entry for 24 September 1969.

<sup>539</sup> The Treasury, (Annual Economic Trends 1964-1970), cited in Dorey, *The Labour Governments*, p. 90.

<sup>540</sup> Dorey, *The Labour Governments, 1964-1970*, p. 89.

<sup>541</sup> R. Taylor, *The Trade Union Question in British Politics: Government and Unions since 1945*, (Oxford, 1993), p. 172.

<sup>542</sup> B. Towers, *British Incomes Policy*, (University of Leeds, 1978), pp. 13-14.

legislation and an effective incomes policy as the next general election began to loom.<sup>543</sup>

Indeed, Andrew Graham, an economic adviser, argued in January 1969, that the White Paper would make any deal with the unions on incomes policy impossible, writing that, 'While a policy to improve industrial relations may be complementary to an incomes policy it cannot be a substitute for it ... and to push ahead with it at the expense of incomes policy would, in my view, spell disaster.'<sup>544</sup>

#### *4.4 The Draft White Paper – A Policy for Industrial Relations*

The first full draft of the White Paper<sup>545</sup> was debated along with a paper written by Bill McCarthy, a member of the DEP's research department and former Research Director for the Donovan Commission.<sup>546</sup> This paper more closely reflected Castle's own view - that sanctions should be linked to policy objectives - allowing her to 'avoid the Conservatives' blanket legalistic approach, whilst justifying the use of sanctions in relation to specific ends.'<sup>547</sup>

The second, revised, draft White Paper, entitled *A Policy for Industrial Relations*,<sup>548</sup> began:

The proposals ... comprise a radical programme for reform, designed both to strengthen trade unionism and make it more accountable, going well beyond the

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<sup>543</sup> *Ibid.*

<sup>544</sup> NA PREM 13/2724, 'The White Paper on Industrial Relations: a bargain with the unions?' 14 January 1969, cited in J. Tomlinson, *The Labour Governments, 1964-1970*, 145.

<sup>545</sup> Produced on 4 October 1968, and debated at the Civil Defence Staff College at Sunningdale in November.

<sup>546</sup> NA PREM 13/2727, W.E.J. McCarthy, *Strike Statistics and the White Paper: A Note on the Current Controversy*.

<sup>547</sup> R. Tyler, *Victims of our History, The Labour Party and In Place of Strife, 1968 – 1969*, Unpublished thesis, Queen Mary College, University of London, 2004, p. 65.

<sup>548</sup> NA CAB 129/136/33, *A Policy for Industrial Relations*, 30 April 1968, 374-425.

Donovan recommendations in certain respects. In my judgment this is the right approach for the Government.

Castle chose to share the contents of the Paper with both the TUC and the CBI on the day of its publication, but it soon became clear from the leaked reactions of both of them that, 'in seeking to occupy the centre-ground, Castle was in danger of slipping down through the middle.'<sup>549</sup>

Her proposals nevertheless found favour with the Prime Minister, who was becoming 'increasingly exasperated himself by certain kinds of unofficial strikes which threatened to sabotage the recovery of the British economy.'<sup>550</sup> The draft paper did accept, in principle, Donovan's analysis of collective bargaining arrangements, and its recommendations for the reform and extension of workplace bargaining. It also acknowledged that the Commission had been 'more concerned with intervention by the authorities in workshop bargaining, in order to bring local wage negotiations under central control, than it was with legal restrictions on strikes.'<sup>551</sup> It nevertheless contained proposals which went well beyond Donovan's largely non-legislative reforms. Castle was attempting to bring the law into industrial relations where Conservative Labour Ministers between 1951 and 1964 had feared to tread, a move which seems not just radical, but distinctly foolhardy.

One of the least controversial proposals, already suggested in the Donovan Report, was for a new Commission on Industrial Relations (CIR), Castle believing that 'this is necessary to give impetus to the reform of collective bargaining'.<sup>552</sup> The draft White

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<sup>549</sup> Tyler, *The Labour Party and In Place of Strife*, p. 88.

<sup>550</sup> Jenkins, *The Battle of Downing Street*, p. 31.

<sup>551</sup> O.H. Parsons, *Strikes and Trade Unions: Government White Paper explained*. Labour Research Department, 1973, 5

<sup>552</sup> NA CAB 129/136/33, *A Policy for Industrial Relations*, 30 April 1968, 375. This was one of the least controversial proposals, and was achieved without the need for legislation in the spring of 1969.

Paper also took a cautious line on the issue of making collective agreements between employers' associations and trade unions legally enforceable, stating that a change in the law would be made which would enable them to make such agreements legally enforceable if both sides wished it. The Conservatives had previously adopted a stricter policy which stated that the agreement would be legally binding *unless the parties opted out*, giving an early indication of their preference for legal measures to control industrial relations.<sup>553</sup>

A more controversial element was the proposal that the Secretary of State should have reserve powers to require secret ballots before official strikes were called,<sup>554</sup> and to require a cooling-off period, or 'conciliation pause' in the case of unconstitutional strikes, or any strikes where adequate joint discussions had not taken place and the effects of continued action were likely to be serious.<sup>555</sup> Fines could be imposed by a new Industrial Board on unions failing to carry out a ballot and on individuals not carrying out the period of postponement. Unions would also be required to register, and those failing to do so would be subject to the imposition of a financial penalty by the Industrial Board.<sup>556</sup>

These rather dramatic and controversial departures from the Donovan recommendations were, according to Owen Parsons, 'based on the false assumption that collective bargaining and the right to strike are unrelated and independent' since 'a crucial weapon in all collective bargaining is the knowledge that the workers have the ultimate sanction of the strike weapon.' Without it 'an inevitable tilt will occur in

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<sup>553</sup> *Fair Deal at Work* and the later policy statement *Make Life Better* advocated this approach. *The Times*, 7 October 1968.

<sup>554</sup> Eventually included in the final, published White Paper, *In Place of Strife*, Cmnd. 3888, para. 98.

<sup>555</sup> *In Place of Strife*, Cmnd. 3888, para. 93.

<sup>556</sup> NA CAB 129/136/33, 30 April 1968, 377-378.



the balance of negotiating power.<sup>557</sup> In going beyond the Donovan recommendations, the Government was effectively requiring the unions to surrender their most effective bargaining tool. These proposals on the freedom to strike were therefore of critical significance since, as Parsons wryly observed, ‘the assertion of an essential freedom does, indeed, tend to be a nuisance: it is also the thing that distinguishes a free man from a serf.’<sup>558</sup>

Castle’s proposals proved unpopular on many fronts. The media was largely critical of the White Paper.<sup>559</sup> *The Guardian* reported that the Cabinet discussion on the draft White Paper would most likely take place in ‘a mounting atmosphere of criticism and hostility ... ‘and it was made clear at once that the Government can expect a massive revolt at Westminster’.<sup>560</sup> The following day the same newspaper reported on Castle’s plans, as initial reaction from other sources emerged.<sup>561</sup> John Davies, Director General of the CBI had been scathing in his attack, saying that the proposals did not go far enough, and were like taking a nutcracker to crack a cannonball.<sup>562</sup>

John Torode, the Labour Correspondent on *The Guardian* agreed to some extent, writing that ‘laws that are unenforceable are provocative and dangerous’ and considered that the White Paper proposals were ‘even worse’.<sup>563</sup> Torode agreed with John Davies that the penal provisions were ‘trivial’ and considered that a compulsory

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<sup>557</sup> O.H. Parsons, *Strikes and Trade Unions: Government White Paper explained*, Labour Research Department, 1973, 6.

<sup>558</sup> *Ibid.*

<sup>559</sup> For further analysis of the influence of mass media, see J.G. Blumer & A. Ewbank, *BJIR*, Vol. 8, Issue 1, March 1970, 32-54. Barbara Castle herself had once been a journalist working for *The Mirror* and the *Bradford Pioneer* of which her father, Frank Betts, was editor. A contemporary of hers on the *Bradford Pioneer* was Victor Feather, and the two had a long history which would nevertheless find them with opposing viewpoints when it came to debating the finer points of the Labour Government’s proposed Industrial Relations Bill.

<sup>560</sup> *The Guardian*, 1 January 1969.

<sup>561</sup> *The Guardian*, 2 January 1969.

<sup>562</sup> *Ibid.*

<sup>563</sup> *Ibid.*

strike ballot would do nothing to reduce unofficial strikes, while the idea of a 'cooling off period' was 'so explosive that no Government would dare invoke it often'. He also warned that a pro-strike vote would make it less easy to force a reasonable compromise on the unions.<sup>564</sup>

Despite these reservations, Torode also thought that it would be a 'tragedy' if the Finance and General Purposes Committee<sup>565</sup> decided to recommend rejection of the whole package to the General Council of the TUC, since he considered it to be very good in parts, both for the unions and the nation. The CBI was less enthusiastic about these 'good parts'. It rejected the projected regional industrial courts which were designed to handle disputes between workers and employers (even though the existing voluntary procedures often resulted in disputes). The CBI also disliked the concept of worker-directors on boards;<sup>566</sup> the idea of a right of appeal against arbitrary dismissal; the proposal for union recognition being compulsory in certain cases; and even the new CIR. Nonetheless, Torode derided both the CBI and the TUC for throwing out the proverbial baby with the bathwater, since he considered that some of the Government proposals had much to commend them.<sup>567</sup>

Some Labour MPs were also concerned about the potential impact of certain proposals.<sup>568</sup> Union-sponsored MPs warned that the proposals would split the Labour Party, while *The Times* wrote that 'it would be unwise to antagonize [the unions] by proposals which seemed designed to curry favour with a new sector of the electorate at the price of losing traditional support.'<sup>569</sup> Eric Heffer MP warned that

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<sup>564</sup> *Ibid.*

<sup>565</sup> The TUC 'inner cabinet'.

<sup>566</sup> This was later given thorough consideration by the Report of the Committee of Inquiry on Industrial Democracy (the Bullock Committee), Cmnd. 6706, 1977. See Chapter 6 below.

<sup>567</sup> *The Guardian*, 2 January 1969

<sup>568</sup> *The Times*, 1 January 1969.

<sup>569</sup> *Ibid.*

the government would be in for a period of real trouble if it implemented the proposals.<sup>570</sup>

Minkin attributed part of the problem of unions and Government failing to see eye-to-eye over the proposals to the composition of the Cabinet at this period. These mainly university-educated ex-professionals reflected a shift away from Labour's traditional trade-union base, a loss of empathy between the Labour Government and trade unions, and an emerging insistence on the need for legal regulation in industrial relations:

The readiness of 'the intellectuals' to bring law permanently into the field of industrial relations was seen by union leaders as the action of those out of touch with shop-floor complexities and with the traditions of British industrial labour.<sup>571</sup>

#### 4.5 *The White Paper - The Cause of Strife?*<sup>572</sup>

Despite this initial hostile reaction to the draft paper, the White Paper *In Place of Strife* was published a little over a week later, giving little time for consideration and amendment, but arousing serious concerns, even within the Government. It contained 25 proposals for inclusion in an Industrial Relations Bill, three of which were effectively penal clauses and would prove highly contentious to many trade union leaders. The Paper set out the perceived deficiencies in the current system of industrial relations. To deal with these deficiencies, the policies were designed to secure four objectives:

- i. The reform of collective bargaining;

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<sup>570</sup> E. Heffer, *Never a Yes Man: the Life and Politics of an adopted Liverpoolian*, (London, 1993), p. 133.

<sup>571</sup> Minkin, *The Contentious Alliance: Trade Unions and the Labour Party*, p. 112.

<sup>572</sup> *In Place of Strife*, Cmnd. 3888.

- ii. The extension of the role and rights of trade unions;
- iii. New aids to those who were involved in collective bargaining; and
- iv. New safeguards for the community and individuals.<sup>573</sup>

Proposals on reform and extension of collective bargaining were largely an affirmation of the Donovan proposals, accepting the 'two-systems' analysis of formal and informal bargaining, and calling for a reappraisal of collective bargaining, supported by the new CIR. Controversial new powers were proposed for this body, however. It would have the power to impose financial penalties on individual strikers, unions or employers.<sup>574</sup> Owen Parsons was wary of a body which would have the powers of a court but none of the safeguards associated with the well-established courts, including their strict rules of evidence and procedure, likening it to a 'Star Chamber'.<sup>575</sup>

Who is going to control this Star Chamber body, what its procedure is to be, whether the rules of natural justice or of law or of evidence are to apply to its deliberations, what right of appeal (if any) there is to be, what right of representation is proposed, whether the hearings are to be public, none of these questions are raised, let alone answered, in the White Paper. The whole set-up sounds thoroughly sinister.<sup>576</sup>

(These concerns were more than borne out when the National Industrial Relations Court, (NIRC) was set up by the *Industrial Relations Act 1971*, suffering similarly from lack of consideration of such matters as rules of evidence and procedure. It

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<sup>573</sup> *Ibid.*, para. 18.

<sup>574</sup> *Ibid.*, para. 62.

<sup>575</sup> The Star Chamber was a court which sat at Westminster between the late 15<sup>th</sup> century to the mid-17<sup>th</sup> century; it was notorious for secretive and arbitrary proceedings.

<sup>576</sup> O.H. Parsons, *Strikes and Trade Unions: Government White Paper Explained*, Labour Research Department, 1973, 19. His concerns were justified, as the problems experienced in the National Industrial Relations Court would demonstrate – see Chapter 5 below.

proved to be deeply unpopular with the unions, and failed utterly to gain their respect and acceptance. See Chapter 5 below.)

The Bill would give the Secretary of State discretionary power to require the unions to hold a ballot on the desirability of strike action *if persuasion did not work*, and only where there was a threat to the economy or public interest and there was doubt as to the support for strike action.<sup>577</sup> This made clear Castle's view of the inadequacy of the Donovan proposals, and her determination to take a more interventionist stance. The American experience had led the Donovan Commission to reject strike ballots, saying that they could not be enforced in the case of small-scale unofficial stoppages, and that strike ballots in the USA were almost certain to go in favour of strike action.<sup>578</sup> Nevertheless, the Government did not agree with this view, the White paper stating that it was 'a matter for concern that at present it is possible for a major official strike to be called when the support of those involved may be in doubt.'<sup>579</sup>

A measure of protection would be provided to those unions which registered within a prescribed period. They would be expected to have rules relating to admission, discipline, strike ballots, appointment and function of shop stewards. Those agreements would have to be registered and, controversially, refusal to do so would lay a trade union or employers' association open to a fine by the Industrial Board.<sup>580</sup> This went against the Donovan proposal designed to secure registration which was

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<sup>577</sup> *Ibid.*, para. 98.

<sup>578</sup> The Labor Management Relations Act, better known as the Taft-Hartley Act, was passed to restrict the power of labour unions in the United States in response to a wave of strikes which followed the end of WWII. The Act prohibited unfair labour practices on the part of the union, as well as wildcat strikes, secondary boycotts, mass picketing and closed shops, while the government could take out injunctions to stop or prevent current or impending strikes. Unions were also required to give 80 days' notice of strike action.

<sup>579</sup> *In Place of Strife*, Cmnd. 3888, para. 98.

<sup>580</sup> *In Place of Strife*, Cmnd. 3888, para. 109.

to extend the protection of section 3 of the *Trade Disputes Act 1906* to registered unions only, arguably a much less threatening method of achieving registration.<sup>581</sup>

Castle acknowledged that her proposals were controversial, admitting, 'I'm under no illusions that Donovan may be the political end of me ... I am taking a terrific gamble and there is absolutely no certainty that it will pay off'.<sup>582</sup> In supporting her White Paper, she compared it with the Conservative's *Fair Deal at Work*, condemning their policy for being too legalistic.<sup>583</sup> Yet as negotiations on the White Paper proceeded, it became clear that she, and more particularly Harold Wilson, became less inclined towards peaceful negotiation and more inclined towards imposing legislation, despite trade union hostility towards the White Paper. Indeed, the stance of both Wilson and Castle became increasingly Machiavellian, as they seemed to be preferring expediency to morality. Jenkins wrote of their irregular and unusual procedure in steering their proposals through the machinery of government, frequently by-passing the established procedures of Cabinet Government by confronting the Cabinet with a *fait accompli*.<sup>584</sup> This inevitably angered some MPs who expected to be consulted over such controversial proposals. The Home Secretary, James Callaghan, the only major figure in the Cabinet with a significant trade union background, was opposed to the proposals in the Bill and 'argued the straight Donovan line', saying that this was in accord with moderate trade union opinion.<sup>585</sup> Robert Taylor also noted a deep disquiet inside the Cabinet, especially from Callaghan who thought that 'the unions

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<sup>581</sup> Section 3 reads: 'An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.'

<sup>582</sup> Castle, *The Castle Diaries*, 7 January 1969.

<sup>583</sup> <<mms://streamwm.londonmet.ac.uk/tucdial.asf>> Accessed 13 January 2013.

<sup>584</sup> Jenkins, *The Battle of Downing Street*, p. 35.

<sup>585</sup> He was described by Peter Jenkins as 'the keeper of the cloth cap' in *The Battle of Downing St*, p. 75.

should be allowed to be put on their honour to change themselves.<sup>586</sup> Indeed, much of the blame for the industrial unrest in the 1970s was placed on this very battle:

The clash of wills between Callaghan and Mrs Castle, the latter strongly backed by the Prime Minister, dictated high politics for much of 1969. The political and industrial fallout largely determined the gloomy course of British social and economic history throughout the 1970s.<sup>587</sup>

Callaghan was certainly scathing of Castle's drive towards legislative reform, and later recalled that 'Barbara galloped ahead with all the reckless gallantry of the Light Brigade.'<sup>588</sup> Richard Crossman was also concerned that Castle was 'able and driving, but like all the rest of us an amateur, quite new to trade union law and legislation, a tremendously complex subject.'<sup>589</sup> Tony Crosland considered that there was a viable alternative to the sanctions implied by the proposed legislative powers, and that was to follow Shonfield's recommendation for strengthening the CIR.<sup>590</sup>

Nevertheless, despite multiple reservations from several different quarters, there were also pockets of strong support from other members of the Government. Writing to the Prime Minister, Fred Peart<sup>591</sup> confirmed his belief in the need for more far-reaching proposals than Donovan had recommended:

I am convinced that, in the light of public opinion, it is essential that we bring more order into industrial relations, as well as helping the trade union system in areas

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<sup>586</sup> R. Taylor, *The Trade Union Question in British Politics, Government and Unions since 1945*, (London, 1979), 162.

<sup>587</sup> *Ibid.*, 332.

<sup>588</sup> J. Callaghan, *Time and Change*, (London, 1987) p. 74, cited in Taylor, *The Trade Union Question*, p. 163.

<sup>589</sup> A. Howard (ed.), *The Crossman Diaries*, (London, 1991), entry for 3 January 1969.

<sup>590</sup> *Ibid.*

<sup>591</sup> Lord President of the Council and Leader of the House of Commons.

where it has weaknesses. I am sure that there is a widespread view that we must go beyond Donovan.<sup>592</sup>

Peart supported the proposals for secret ballots and for a conciliation pause. He also recommended taking sufficient time over negotiations with the TUC which 'could save much trouble later', but also indicated that it would in any case be 'impossible for an Industrial Relations Bill to be ready for Second Reading before the Summer Recess.'<sup>593</sup> Despite this warning not to be too precipitate, the Government decided to aim to present an interim Short Bill to Parliament, with plans for a second Bill in the next Parliament.

When *In Place of Strife* was officially published in January 1969, *The Guardian* reflected on the likely outcry against its proposals, warning that, 'The White Paper may have been designed to lessen conflict in industry – it has certainly had the opposite effect within the Labour Party'.<sup>594</sup> The writer, Labour MP Eric Heffer, who also wrote a full critique of the White Paper,<sup>595</sup> considered that to most Labour MPs the White Paper's proposals were 90 per cent acceptable, but that there were three proposals that were 'thoroughly distasteful, totally unnecessary, and add nothing to better industrial relations.' These were: compulsory ballots for certain national official strikes; the conciliation pause of 28 days for unofficial strikes: and attachment of payment for fines to the worker's wage packet. These were all ideas based on the American experience, even though they had been less than successful there in curbing strikes. The real problem here, Heffer reasoned, was that the door to legal

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<sup>592</sup> NA PREM, 13 2724, 7 January 1969.

<sup>593</sup> NA PREM, 13 2724, 7 January 1969, 2.

<sup>594</sup> *The Guardian*, 28 January 1969.

<sup>595</sup> Labour Party Archive, Eric Heffer Collection, ESH/3/5, '*In Place of Strife: A Critique*', Labour History Archive and Study Centre [LHASC].



sanctions would have been opened and 'a Tory government could smash the door down altogether.'<sup>596</sup>

Heffer agreed that Castle's idea was to strengthen the unions, but that 'her theory is an elitist one, believing that the Government knows what is best for the unions.' In other words, the problem was that the two sides of industry could not be brought together and therefore the Government essentially felt that the control of the unions was the way to resolve the problem. Heffer's argument was that it was never going to work. Although the trade unions had created the Labour Party and contributed most of its finance, he warned that since July 1966, 'the strain on the loyalty of the trade union movement towards the Labour Government has been excessive', citing various indicators of disillusionment with the Party, such as the drift away from payment of the political levy by trade union members. He suggested that the offending clauses should be removed, leaving a White Paper that did not go beyond Donovan, and which would allow the party to go forward united.<sup>597</sup>

Outright opposition to certain proposals was maintained by some members of the Parliamentary Labour Party (PLP), led by Callaghan. Stanley Orme MP<sup>598</sup> objected to the White Paper on the basis that its philosophy was one of government intervention, and described the proposed grants to unions for amalgamations as 'insulting', saying that, 'A free trade union movement does not have to ask for such things from the employer or the Government as one may have to oppose them later on another issue.'<sup>599</sup> He also condemned the proposal to hold a postal ballot as too expensive for the larger unions, and described the cooling-off period as an insult to

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<sup>596</sup> This comment proved to be prophetic as the *Industrial Relations Act 1971* did indeed smash down the door to legal sanctions, discussed in Chapter 5.

<sup>597</sup> *The Guardian*, 28 January 1969.

<sup>598</sup> Labour MP for Salford West.

<sup>599</sup> HC Deb. 3 March 1969, c. 108.

the unions. When the White Paper was first debated in Parliament on 28 January 1969, he put down an amendment on behalf of the Tribune group which said simply, 'Rejects the White Paper "In Place of Strife" on the grounds that it contains certain proposals for legislation which would destroy certain fundamental rights of a free trade union movement'.<sup>600</sup> Michael Foot MP<sup>601</sup> observed that, in trying to find a middle way between highly restrictive laws and maintaining the status quo of voluntarism in industrial relations, the proposals in fact succeeded in satisfying no-one. He was particularly scathing of Castle's proposals, writing that 'too little attention was paid to the likely reactions either of the union leaders or of backbench MPs.'<sup>602</sup>

Nevertheless, despite considerable opposition, the White Paper was eventually approved as a basis for legislation with a majority of 162 votes, leaving the Government in no doubt that it had got it right.<sup>603</sup> The battle had, however, exposed the splits within the Labour Government, revealing a vulnerability which it could ill afford if it was to succeed in pushing through its proposed legal measures.

#### *4.6 Anxiety over the proposals – the Employers, Unions and the TUC*

Castle was anxious to find a solution that satisfied all parties, while endeavouring to ensure the popularity of the Labour Government for the forthcoming General Election. Following a meeting of the CBI with Mrs Castle on 21 April 1969,<sup>604</sup> John Davies was dismissive of Castle's motives behind the White Paper, which he

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<sup>600</sup> Heffer, *Never a Yes Man*, p. 139.

<sup>601</sup> Labour MP for Blaenau Gwent. Later Secretary of State for Employment, responsible for introducing the Trade Union and Labour Relations Act 1974 which repealed the Industrial Relations Act 1971. Leader of the Labour Party, 1980-1983.

<sup>602</sup> *The Times*, 19 April 1969.

<sup>603</sup> HC Deb. 3 March 1969, c. 166.

<sup>604</sup> *Financial Times*, 29 April 1969.

described as 'political', and repeated his earlier criticism<sup>605</sup> that her package of measures on industrial relations was 'inadequate'.<sup>606</sup> Davies declared the time to take action was before the workers walked out, not afterwards. 'Once work has stopped and men have left their posts, the damage is already done and is terribly hard to retrieve.' Pointing out that 75 per cent of unofficial strikes were in respect of disputes which there had been no opportunity to resolve, he urged Mrs Castle to bring those disputes under the control of the law by insisting that they were subject to an agreed negotiating procedure.<sup>607</sup> The employers' organization was thus supporting the use of legislation as the best means for controlling unofficial strikes, in a direct contradiction to the recommendations of the Donovan Commission and despite similar measures in America having had no discernible positive effect on strike figures.

A poll taken among rank-and-file trade union members, however, suggested that a majority of them, unlike the CBI, were in favour of both a secret ballot and a cooling off period to deal with unconstitutional strikes.<sup>608</sup> This also reflected the views of the majority of trade-union sponsored MPs.<sup>609</sup> Nevertheless, the TUC continued to maintain its opposition to the White Paper proposals while working on alternative proposals for dealing with unofficial and unconstitutional strikes. The contrasting views of different factions suggest that there were some acceptable suggestions in the White Paper, but that they did not fully take into account the various sectional interests and therefore stood little chance of being accepted.

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<sup>605</sup> *The Guardian*, 2 January 1969.

<sup>606</sup> *Financial Times*, 30 April 1969.

<sup>607</sup> *Ibid.*

<sup>608</sup> *Ibid.*

<sup>609</sup> *The Times*, 9 January 1969.

Castle, meanwhile, continued to emphasize that the unions had to play their part:

The aim of the [trade union] movement is to advance the standard of life of its members, but it does realise that it cannot do this in isolation from, or with indifference to, the national economy.<sup>610</sup>

She maintained that some industries were approaching a state of anarchy, with poor management leading to workers striking as a last resort in their bid to force management to listen.<sup>611</sup>

All of these discussions were predicated on the assumption that there was indeed a problem with excessive, highly damaging strikes in Britain. There was nevertheless an argument that Britain was not really strike prone after all.<sup>612</sup> While discussions and negotiations over the White Paper proposals were still on-going, H. A. Turner's influential paper on strike figures was seized upon by back-bench Labour MPs and members of the TUC General Council as evidence that there was in fact no real problem.<sup>613</sup> In response, Castle commissioned an official rejoinder to Turner's argument. It was perhaps inevitable that its author, Bill McCarthy, who had been the senior researcher for the Donovan Commission and was now a senior adviser on industrial relations in the DEP, would produce an analysis that would better suit the DEP's position.<sup>614</sup>

McCarthy pointed out that the strike statistics used by Turner did in fact indicate a growing trend over time for more unofficial or unconstitutional strikes, indicating a mounting disorder with ineffective means of dealing with this. That was the logic

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<sup>610</sup> *HC Deb. 3 March 1969, vol. 779, cc. 36-166 at 48.*

<sup>611</sup> *Ibid.*

<sup>612</sup> H.A. Turner, *Is Britain Really Strike Prone?* (Cambridge, 1969).

<sup>613</sup> *HC Deb. 22 May 1969 c. 631, per. E Heffer.*

<sup>614</sup> NA PREM 13/2727, W.E.J. McCarthy, *Strike Statistics and the White Paper: A Note on the Current Controversy.*

behind the proposals for greater central control. The problems were 'a steady upwards creep of small scale unconstitutionality, and the occasional example of unconstitutionality that results in serious injury to the economy or throws out of work large numbers of people not involved directly with the dispute.'<sup>615</sup> The Government's proposals to create a Commission for Industrial Relations and adopt a more active conciliation policy were designed to deal with the first; the conciliation was designed to deal with the second.

#### *4.7 TUC plans and a 'solemn and binding agreement'.*

The TUC took a broader view of the problems. It accepted that something needed to be done about the high number of unofficial strikes, but was not prepared to accept that legislation was the only way forward, particularly when it involved penal sanctions for failure to comply with the strict letter of the law. Many of the White Paper proposals threatened the fiercely-guarded and long-held independence of the trade union movement. Jack Jones recorded that:

The Government was determined to apply legal sanctions. It had tried it with the prices and incomes legislation and had failed, now it sought to control the trade unions by other means. This approach, the TUC declared, would 'worsen rather than improve industrial relations'.<sup>616</sup>

In a note to the Prime Minister, Gerald Kaufman<sup>617</sup> gave an initial indication of TUC attitudes towards the proposals. He stated that Vic Feather had informed him that 23 members of the General Council would vote against the White Paper, while only 16

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<sup>615</sup> *Ibid.*, para. 3.

<sup>616</sup> J. Jones, *Union Man, An Autobiography*, (London, 1986), p. 202.

<sup>617</sup> Parliamentary Press Liaison Officer for the Labour Party and later a member of Wilson's informal 'kitchen cabinet'.

would be for acceptance.<sup>618</sup> Notably, it was the unions in the heavy, blue-collar industries (and those most susceptible to strike action) which were against the proposals.

The DEP first met with the TUC on 2 January 1969, with a view to giving the TUC some of the assurances they were seeking.<sup>619</sup> Castle confirmed that her 'reserve powers' would only be used in 'an unusually serious situation';<sup>620</sup> that the discretionary power to demand a strike ballot would only be used 'in special circumstances – not as a matter of course'<sup>621</sup>; and that an 'unconstitutional stoppage' would need further legal definition.<sup>622</sup> It was quickly becoming apparent that many of the proposals were either ill-thought out in the haste to put the White Paper out for consultation, or that they had been left deliberately vague in order to gain initial acceptance. It could also be the fact that they had been intentionally excessive so that the Government could easily afford to give 'concessions' on the more controversial proposals and therefore be seen as reasonable and willing to negotiate.

The General Council responded shortly afterwards.<sup>623</sup> Its response clarified that there were several proposals which, the TUC was prepared to admit, 'could in principle help to improve industrial relations and to promote trade union objectives', but on other proposals it still held strong objections.<sup>624</sup> In particular it was noted that,

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<sup>618</sup> NA PREM 13 2724, Note from Gerald Kaufman to the Prime Minister, undated.

<sup>619</sup> Bodleian, MS 274-5, Note of a meeting with Representatives of the TUC on Thursday 2 January 1969.

<sup>620</sup> *Ibid.*, 45

<sup>621</sup> *Ibid.*, 46.

<sup>622</sup> *Ibid.*

<sup>623</sup> Bodleian, MS 274-5, TUC White Paper on Industrial Relations – comments by General Council (undated, but preceded publication of the White Paper on 9 January 1969).

<sup>624</sup> *Ibid.*, 103.

in some significant respects, the Government proposals 'discard advice given unanimously by the Royal Commission'.<sup>625</sup>

The TUC's main objections were to the imposition of financial penalties on a union for failure to register,<sup>626</sup> to the trade union development fund<sup>627</sup> and to any attempt to impose legal enforceability of collective agreements.<sup>628</sup> It also opposed the proposed discretionary powers to require a union to conduct a ballot (contrary to advice of the Royal Commission), under threat of financial penalties. Furthermore, there were objections to the proposed reserve powers to decide on the question to be asked in the ballot paper and to determine the appropriate majority.<sup>629</sup> The TUC opposed the conciliation pause (again contrary to the advice of the Royal Commission), and the notion that the Minister should have complete discretion to decide not only what constituted an 'unconstitutional strike', but the circumstances in which its consequences were 'likely to be serious', on the basis that this did not accord with democratic procedures.<sup>630</sup> Furthermore, the TUC objected to the requirement for compulsory registration of their rules,<sup>631</sup> since there was no evidence that the TUC was not capable of drawing up its own plans to ensure that all trade unions' rules were satisfactory.<sup>632</sup>

The TUC therefore pressed ahead with the preparation of its own alternative set of proposals, and had various meetings with Wilson to discuss these. They centred on an alternative to penal clauses and a programme of voluntary action based on the

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<sup>625</sup> *Ibid.*

<sup>626</sup> Cmnd. 3888, para. 109.

<sup>627</sup> *Ibid.*, para. 71-75.

<sup>628</sup> *Ibid.*, para. 42-46.

<sup>629</sup> *Ibid.*, para. 97-98

<sup>630</sup> *Ibid.*, para. 93-96.

<sup>631</sup> *Ibid.*, para. 109.

<sup>632</sup> Bodleian, MS 274-5, TUC White Paper on Industrial Relations – comments by General Council, 103-110.

Donovan Report and carried out on the basis of tripartite co-operation.<sup>633</sup> The TUC had already endorsed the central conclusion of the Royal Commission that the best way of promoting good industrial relations was through voluntary collective bargaining, but had failed to persuade the Government that the introduction of punitive measures would be counter-productive. On 23 April the General Council agreed that a statement should be produced for the Special Congress on 5 June; this was later published as '*Industrial Relations – A Programme for Action*'.<sup>634</sup>

The statement included comments on the Ministerial proposals, beginning with a general observation that:

... any attempt by Government to impose unreasonable, and therefore unworkable, constraints on the freedom of working people to pursue their legitimate objectives could only harm the relationships between the trade union movement and the government and between working people and employers.<sup>635</sup>

The General Council maintained its objections in particular to the 'penal clauses'. These included the 'conciliation pause' which could result in the imposition of fines on workers who failed to comply with an Order to return to work; the compulsory ballot; and the right of the Industrial Board to impose financial penalties on a union that refused to comply with a recommendation that it should, in the case of an inter-union dispute over recognition, be excluded from recognition. There was also strenuous opposition to the compulsion to register their rules, once again under

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<sup>633</sup> TUC Finance and General Purposes Committee, Minutes of the 10<sup>th</sup> (special) meeting 9 April 1969, Modern Records Office, University of Warwick (MSS 292B/24.1/8).

<sup>634</sup> Labour Party Archive, Eric Heffer Collection, *Industrial Relations – A Programme for Action*, Report of a Special Trades Union Congress Held at Fairfield Hall Croydon 5 June 1969, p. 3 and Appendix 1, ESH/3/5 – 11, Labour History Archive and Study Centre [LHASC]

<sup>635</sup> *Programme for Action*, Appendix 1, 87.



threat of financial penalty, and to include in those rules provisions that would have to be approved by the Registrar.<sup>636</sup>

Indeed, these 'penal clauses' would become a bone of contention in the negotiations between the TUC and the Government. A final meeting before the Special Congress took place at Chequers on 1 June between Vic Feather, Hugh Scanlon and Jack Jones, Wilson and Castle. Jones recorded how Castle had 'poured scorn on any ideas that did not involve legal enforcement' while he and Scanlon 'tried to explain why the idea of applying attachment orders on the earnings of workers not observing a "conciliation pause" before some antiquated procedure was exhausted, seemed so ludicrous'.<sup>637</sup>

Vic Feather said that the TUC had been 'puzzled, but not angered' by the Government's intransigence and its apparent lack of confidence in unions to manage their own affairs without the imposition of penal clauses.<sup>638</sup> Feather was also baffled as to why the Government chose to reject the recommendation of the Royal Commission that penal sanctions would be not only useless, but harmful, claiming that the TUC proposals would be more effective than the Government's, arguing that:

The pedantic precision of law cannot settle industrial issues ... To try to solve such issues by the threat of legal punishments will be to introduce an element of rigidity which will break under its own weight.<sup>639</sup>

The main thrust of the TUC's *Programme for Action*, on the other hand, was to examine the three main areas in which there were problems and propose workable

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<sup>636</sup> *Programme for Action*, 3-5. The reasons for the objections were set out in Appendix 1 of the Paper.

<sup>637</sup> Jones, *Union Man*, p. 204.

<sup>638</sup> Vic Feather, Speech given at the Special Congress 5 June 1969, *Programme for Action*, 28.

<sup>639</sup> *Ibid.*, 30. (Referring to the DEP).

solutions. These were relations between unions and employers, between unions themselves, and within unions.<sup>640</sup> The General Council did make clear that it welcomed some of the proposals in the White Paper and in the joint TUC-CBI statement on the Donovan Report on strengthening the role of trade unions,<sup>641</sup> and, perhaps in contrast to the Government, was trying to find a solution that was acceptable to all. The TUC was not simply refusing to accept the Government proposals, some of which it considered reasonable and constructive,<sup>642</sup> but was trying to negotiate a more acceptable, non-legislative and practical solution by taking on greater responsibility for overseeing the conduct of affiliated organisations.

The TUC's own proposals involved taking a much more proactive role in the governance of its affiliated unions, and were produced in the form of a 'solemn and binding undertaking'.<sup>643</sup> They included an amendment to Congress Rules 11, 12 and 13 - which governed the conduct of industrial disputes - to make more explicit the role of the TUC in disciplining unions. In future this would include an obligation on trade unions to keep the General Council informed of all matters arising between them and employers, or between organisations, '*including unauthorised and unconstitutional stoppages at work*'.<sup>644</sup> The undertaking agreement from the TUC was denigrated in the Press as 'no more than moral influence to wield over men who take part in unofficial strikes'.<sup>645</sup> A more generous assessment would recognize that the TUC had achieved a great deal in a few months in the face of the threat of legal sanctions, gaining agreement with the unions and proposing to involve the CBI to

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<sup>640</sup> *Programme for Action*, 6.

<sup>641</sup> Joint CBI/TUC statement, appended to *Action on Donovan*, Labour Party Archive, Eric Heffer Collection, ESH/3/5 – 11, Labour History Archive and Study Centre [LHASC].

<sup>642</sup> *Programme for Action*, 3.

<sup>643</sup> *Ibid.*, para. 42.

<sup>644</sup> *Ibid.*, Appendix 3, 92-3.

<sup>645</sup> *The Times*, 19 June 1969.

work together to prevent unofficial strikes in the future. In this way, legislation could be viewed as no more than a threat, a reminder of what a determined government could do, but which had effectively kick-started a valuable change in the attitude of the TUC, taking on a greater proactive role in controlling industrial action than ever before.

The Management Committee reconvened on 9 June.<sup>646</sup> In all there were 8 meetings between the Prime Minister and the TUC, either with the full General Council or the smaller negotiating sub-committee, to discuss the TUC proposals. This meeting was attended by high-level Cabinet members, including Wilson, Castle, the Chancellor, Lord President and the Secretary of State for Social Services, among others. The discussion revolved around what the Government was most likely to get agreement on from the TUC. The Government wanted to see a strengthening of Paragraph 42 of the TUC proposals.<sup>647</sup> In return, there was a suggestion of possible 'cold storage' of the Government's penal clauses proposal in the first (interim) Bill, and inclusion of 'model rules' in the second (full) Bill.

The unions' anti-legislation position was reiterated the next day at a meeting of Cabinet members and the Prime Minister with the full TUC General Council.<sup>648</sup> Feather reported that there had been virtually unanimous rejection of penal clauses at the special conference in Croydon, while the TUC's own proposals in *Programme for Action* had been voted for by an overwhelming ten to one majority. Feather insisted that the proposals in paragraph 42 for dealing with unconstitutional strikes

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<sup>646</sup> NA PREM 13/2727, Minutes of the Management Committee meeting, 9 June 1969.

<sup>647</sup> Paragraph 42 stated that the General Council would 'require unions to satisfy them that they had done all that they could reasonably be expected to do to secure compliance with a recommendation ...' NA CAB 6(69) 62, 6 June 1969, Note by the Secretary of the Cabinet.

<sup>648</sup> NA PREM 13/2727, Minutes of a meeting held between the TUC and the Management Committee, 10 June 1969 (incorrectly dated 9 June 1969).

were effective and had the necessary authority,<sup>649</sup> but these would be backed by the necessary sanctions imposed by the individual unions. They agreed that they would continue to liaise with the DEP, but not while penal clauses were still part of the Government plan, since the TUC could not be seen to be cooperating with arrangements that might lead to penal sanctions. Sir Frederick Hayday<sup>650</sup> was adamant on the futility of legal sanctions, illustrating this conclusion by pointing to past experience in relation to legislation: ‘the *Conspiracy and Protection of Property Act 1875* provided statutory penalties against strikes, but no-one had seriously considered using these powers to deal with the present strike affecting the Southern Gas Board.’<sup>651</sup> This remark serves the useful purpose of reminding legislators that legislation which is unworkable can simply fall into disrepute, and the legislator should be very slow to bring discredit on itself by legislating for threats that it has no intention or hope of carrying out.

Wilson was a skilful negotiator, and he knew that selecting his negotiating committee carefully would give him a better chance of having the proposals accepted. No doubt he thought that if he included Feather, Jones and Hugh Scanlon in talks, all of them formidable opponents, he may have a chance of forcing the measures through without significant opposition. This committee met again the following day, 11 June, at Downing Street, with Castle, Wilson, Denis Barnes and other Cabinet members for the Government, Hayday and Feather of the TUC, and Jones and Scanlon for the unions.<sup>652</sup> ‘Their unions covered the industries where unofficial disputes were most prevalent, and they made clear how far they were willing to go to prevent the

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<sup>649</sup> ‘The General Council also consider that it should be made clear in Rule 11...that in the unlikely event of a union refusing to abide by a decision of the TUC, the General Council can take action under Rule 13.’

<sup>650</sup> Chairman of the TUC General Council

<sup>651</sup> NA PREM 13/2727, 10 June 1969.

<sup>652</sup> NA PREM 13/2727, Meeting of Negotiating Committee, 11 June 1969.

government legislating on “their” business.<sup>653</sup> The meetings were now taking place almost daily, indicating a note of urgency as the Government tried to achieve an agreement on the contents of an Industrial Relations Bill before the summer recess. However, the meeting closed without agreement being reached, resulting in an *impasse*, with an intransigent Government apparently unwilling to budge on the issue of penal clauses.

The Management Committee met again on 12 June 1969. The Prime Minister concluded that, following the previous day’s meeting with the TUC, there were now three possible options. These were: to tighten up the TUC document to incorporate those points which the Government wished to see included, in which case the penal clauses would be dropped; to look at other possible legislation to give the TUC support in any action that they took under their own rules on unconstitutional strikes, but which would not involve fines; or to go ahead with the proposed legislation which did include penal clauses.<sup>654</sup> Castle added that ‘the TUC were [sic] not being offered a final settlement but were [sic] being asked to agree to a revision of Rule 11, which was just enough to make it possible for the Government not to go ahead with the interim Bill.’<sup>655</sup> The TUC wording of Rule 11 referred only to constitutional strikes, and the Government wanted unconstitutional strikes to be included. The TUC eventually agreed to an *amended* Rule 11 (c)<sup>656</sup> which gave it a more proactive role in trying to ensure a resumption of work. This was a dramatic turn of events in the light of the initial draconian legislative proposals and represented a remarkable

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<sup>653</sup> Tomlinson, *The Labour Governments, 1964-1970*, p. 144.

<sup>654</sup> NA PREM 13/2727, Minutes of the Management Committee, 12 June 1969.

<sup>655</sup> *Ibid.*

<sup>656</sup> ‘Having ascertained all the facts relating to the difference, the General Council shall tender to the organisation or organisations concerned their considered opinion and advice, which may take the form of an award or recommendation; in cases where they find the negotiations should proceed on the basis of a return to work, they will place an obligation on the organisation or organisations concerned to take immediate and energetic steps to obtain a resumption of work.’

climb-down from the early entrenched positions taken by both the Government and the TUC.

In his autobiography, Harold Wilson recorded the final days of these intense discussions, when, in an atmosphere of crisis, he offered his resignation for the reason that he had failed to secure a modernized industrial relations structure which would help to ensure a diminution in strike action. He wrote that, following further discussions with the TUC General Council and some minor amendments, the latter accepted the proposal that 'rule of Congress' be amended to equate the status of the undertaking in Rule 11 with the same binding force as the Bridlington Regulations.<sup>657</sup>

In fact, Jones and Scanlon had offered Wilson a way out, by offering a 'solemn and binding' agreement that the TUC would in future attempt to resolve unofficial disputes.<sup>658</sup> This was unanimously agreed both by the General Council and the Cabinet. Jones noted that, 'A victory had been scored in defence of the right to strike without fear of legal sanctions, but the TUC took aboard some big new responsibilities.'<sup>659</sup>

Wilson recorded that 'Surrender' was the headline the next day in the *Daily Express* (although whose surrender exactly is not clear), and concluded:

For good or ill, we had accepted the views of the TUC, but only because, under the catalytic action of our legislative proposals, they had 'moved forward forty years in a month'.<sup>660</sup>

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<sup>657</sup> The Bridlington Regulations of 1939 had, on endorsement from Congress, become a 'rule of Congress'; governing inter-unions relations, these were the most binding regulations that Congress had ever imposed.

<sup>658</sup> < <http://www.nationalarchives.gov.uk/cabinetpapers/themes/industrial-unrest.htm>.> Accessed 30 June 2014.

<sup>659</sup> Jones, *Union Man*, p. 206.

<sup>660</sup> H. Wilson, *The Labour Government 1964 – 1970: A Personal Record*, (London, 1971).

Although the number of inter-unions disputes was greatly reduced, and unconstitutional strikes were quickly settled by the new TUC fire-fighting machinery,<sup>661</sup> strikes did not diminish in either number or duration following this agreement. This generally disappointing outcome could only have strengthened the resolve of the Conservatives to tackle strikes with the introduction of the kind of legislation envisaged by *Fair Deal at Work*.<sup>662</sup> It could be said that the TUC and the Labour Government, having significantly damaged and weakened the relationship between them in their disputes over the details of *In Place of Strife*, had thereby dramatically strengthened Edward Heath's hand in the run-up to the next General Election.

#### *4.8 The CBI thoughts on TUC and Government proposals*

The CBI had earlier expressed reservations about this TUC approach and its proposals for joint action to deal with unconstitutional strikes.<sup>663</sup> The CBI was convinced that such joint fire-fighting was bound to fail, since neither it nor the TUC had sufficient authority over their members. The CBI also wanted no part in an exercise which seemed designed to embarrass the Government by introducing an alternative to legislation.<sup>664</sup> Indeed, the *Financial Times* declared that the CBI was likely to tell the TUC that it could not promise cooperation in the new plan by union leaders for voluntarily reforming industrial relations.<sup>665</sup>

John Davies continued to argue that TUC proposals were 'not good enough' and that the Government would come under heavy fire from industrial leaders if it accepted

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<sup>661</sup> Jones, *Union Man*, p. 206.

<sup>662</sup> *Fair Deal at Work: The Conservative Approach to Modern Industrial Relations*, Conservative Political Centre 1968.

<sup>663</sup> *The Guardian*, 5 May 1969.

<sup>664</sup> *Ibid.*

<sup>665</sup> *The Financial Times*, 5 May 1969.

the TUC's new policy on controlling strikes as an alternative to the Industrial Relations Bill, since 'the damage is really being caused by individuals and groups – union members and non-union members alike – acting unofficially in defiance of both the unions and working agreements.'<sup>666</sup>

The CBI was utterly opposed to the TUC's plans for voluntary intervention in unconstitutional disputes, and felt that the Government should keep its projected penal clauses in its Bill. Davies considered that the TUC had no effective sanction to back up such intervention, telling Castle that 'the CBI wanted union rules covering the right to call a strike, forbidding financial aid to unconstitutional strikes and providing penalties on unconstitutional strikers'. He added that 'such rules would be quite useless unless the Government took power to register unions', which Castle had by this stage already rejected.<sup>667</sup> She recorded that the CBI 'were appalled that we should have offered to give up the legislation under any circumstances' and that they 'were only interested in penal legislation at all costs.'<sup>668</sup>

Although the TUC had envisaged a tri-partite arrangement between itself, government and employers, the CBI appeared bent on rejecting their proposals. However, it also rejected the White Paper proposals as not going far enough. A less intransigent approach from the employers' organisation may have proved more constructive in the long term, but it was becoming apparent that employers viewed strict legislation with reserved powers and penal sanctions as a more favourable - in fact, the only - option in the war against unofficial industrial action.

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<sup>666</sup> *The Financial Times*, 20 May 1969.

<sup>667</sup> *The Guardian*, 29 May 1969.

<sup>668</sup> *The Castle Diaries*, 13 June 1969.



#### 4.9 The Final Throes

In April 1970 an *Industrial Relations Bill* - without the controversial penal clauses - was finally produced. Nevertheless, it was never implemented since the Conservatives secured victory in the General Election in June, enabling them to proceed with their own legislative proposals, previously outlined in *Fair Deal at Work*. The White Paper had ultimately failed in its objectives, and historians and industrial relations experts have suggested a number of reasons as to why this happened.<sup>669</sup> Peter Dorey considered that it was the opposition of Labour MPs that led to the abandonment of *In Place of Strife*.<sup>670</sup> Others were of the opinion that the proposals were ill-thought through and impractical, representing a knee-jerk reaction to the Conservatives' *Fair Deal at Work* which went far beyond the Donovan proposals in its suggestions for industrial relations legislation. Anne Perkins suggested that the White Paper was little more than a 'short-term political fix, a way of scoring off the Tories.'<sup>671</sup> Some thought that neither Castle nor Wilson truly understood the trade union movement, and that they failed to appreciate the impact which any proposals to limit the right to strike would have. Jack Jones found them to be 'basically academics' and that it was hard to get them to see things from the perspective of the shop-floor.<sup>672</sup>

A further theory is that Castle was in thrall to anti-trade union officials in the Ministry of Labour who had been sitting on draft legislative proposals for some time, waiting for a suitably compliant minister to pursue it.<sup>673</sup> Jones was of a similar opinion, and queried why a Labour Government was peddling 'the anti-trade union ideas of top

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<sup>669</sup> Tyler, *The Labour Party and In Place of Strife*, 2004.

<sup>670</sup> Dorey (ed.), *Developments in British Public Policy*, p. 144.

<sup>671</sup> A. Perkins, *Red Queen, The Authorized Biography of Barbara Castle*, (London, 2003).

<sup>672</sup> Jones, *Union Man*, p. 204.

<sup>673</sup> G. Goodman, *The Awkward Warrior, Frank Cousins: His Life and Times* (London, 1979), p. 572.

civil servants'.<sup>674</sup> Robert Taylor confirmed that the early 1960s had indeed seen a tougher government attitude towards the unions, with several outsiders given senior appointments at the Ministry of Labour, even though this was 'a department famed for most of its life for a stubborn and successful defence of voluntarism'.<sup>675</sup> The evidence suggests that Castle was propelled into taking a firmer stance with the unions due to a combination of all these factors, while the need to win the forthcoming General Election may have led her to place too much emphasis on convincing the electorate that the Government was determined to be tough on trade unions and to resolve the strike problem.

The 'solemn and binding' undertaking between the Government and the TUC was a failure for both Castle and Wilson and showed the problems of trying to shake off Labour's trade union roots. Jim Tomlinson called it a 'political humiliation', but agreed that the undertaking was 'as much as the TUC could offer, given the claims for autonomy of the major constituent trade unions'.<sup>676</sup> Despite Wilson's bravado as he publicly hailed the legislation-free agreement to be a success,<sup>677</sup> many politicians thought it an abject failure.<sup>678</sup> Denis Healey MP wrote that, 'The government wasted six months on a hopeless fight, which caused permanent damage to relations with the trade unions without making them any less necessary to our survival'.<sup>679</sup> He suggested that permanent damage had been done to the relationship, and came to believe that legislation on union affairs was best avoided.<sup>680</sup> Richard Crossman MP

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<sup>674</sup> Jones, *Union Man*, p. 204.

<sup>675</sup> R. Taylor, *The Trade Union Question in British Politics, Government and Unions since 1945* (London, 1979).

<sup>676</sup> Tomlinson, *The Labour Governments, 1964-1970*, p. 145.

<sup>677</sup> *The Times*, 19 June 1969.

<sup>678</sup> Tyler, *The Labour Party and In Place of Strife, 1968 – 1969*, 2004, p. 12.

<sup>679</sup> D. Healey, *The Time of my Life*, (London, 1989), p. 341.

<sup>680</sup> A. Thorpe, 'The Labour Party and the Trade Unions', in J. McIlroy, N. Fishman, A. Campbell, *The High Tide of British Trade Unionism: Trade unions and Industrial Politics, 1964-79*, (Monmouth, 2007), p. 140.

was equally blunt in his opinions, commenting that ‘they had just chucked it all away’.<sup>681</sup>

Nevertheless, it was the electorate who were the final arbiters on the question of whether legislation of an altogether tougher kind than Castle had proposed would resolve some of the economic problems faced by Britain in the early 1970s. In winning the General Election, the Conservatives took the view that this was, at least in part, ‘because the electorate thought that they could govern the trade unions who had seemed to prevail over the Labour Government’.<sup>682</sup> The final agreement worked out between the TUC and the Government had evidently been viewed as a climb-down by the voters, a surrender to the persuasive might of the trade unions.

In writing *In Place of Strife*, the Government was arguably attempting to address some of the alleged shortcomings of the Donovan Report, and therefore felt compelled to go beyond Donovan. The proposals were aimed at achieving results in either the medium- or the long-term, and went no further than attempting ‘to impose an obligation on both sides of industry to cooperate in working towards a restructured system of collective bargaining.’<sup>683</sup> The two legal ‘weapons’ of a conciliation pause and the strike ballot were, however, inconsistent with this policy, and were arguably purely political decisions. In the event, the proposed interim Industrial Relations Bill still contained the conciliation pause proposal, but had by this

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<sup>681</sup> R. Crossman, *The Diaries of a Cabinet Minister, Volume Three, Secretary of State for Social Services, 1968-70*, (London, 1977), 529, entry for 18 June 1969.

<sup>682</sup> Davies, Freedland, *Labour Legislation*, p. 274.

<sup>683</sup> R. C. Simpson, ‘In Place of Strife: A Policy for Industrial Relations,’ *The Modern Law Review*, Vol. 32, No. 4, (July 1969), 420-426, at 422.

time dropped the strike ballot proposal,<sup>684</sup> since the former had ‘more political appeal as manifesting the attitude of “tackling strikes”’.<sup>685</sup>

This struggle for supremacy in the war between organized labour and employers, in which the CBI was clearly the most determined to gain the upper hand, ignored the established wisdom of at least one of the members of the Donovan Commission – Kahn-Freund. He identified this struggle as something ‘fired by the need for workers to combine to “match” the natural power of employers in the labour market.’<sup>686</sup> Kahn-Freund was convinced of the importance of voluntary regulation by the parties themselves and contrasted this approach with the much greater dependence on legal regulation in other countries. His views were based on his own experience, and he was persuaded of the validity of self-regulation, believing that the excessive reliance on the law in the Weimar Republic had contributed to the collapse of the German unions during the great depression in the 1930s, paving the way for Hitler and the National Socialist Party. The traditional independence and self-reliance of the British unions had, in his opinion, helped Britain to weather this particular economic storm.

He wrote:

In many social and human spheres the application of the law to intra-community affairs signifies the collapse of the community. This is true of labour relations no less than of international affairs, of commercial associations, and of the family ... A surfeit of labour legislation is not always a sign of well functioning intergroup relations. It is

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<sup>684</sup> Announced by the Secretary of State on 16 April 1969, HC Deb. Vol. 781, cc.1180-1189.

<sup>685</sup> Simpson, ‘In Place of Strife: A Policy for Industrial Relations,’ 425.

<sup>686</sup> O. Kahn-Freund, ‘The Rise and Fall of Collective Laissez Faire’, in W. McCarthy, (ed.), *Legal Intervention in Industrial Relations, Gains and Losses*, (Oxford, 1992), p. 2.

the maturity of collective industrial relations in Britain which may explain the relative insignificance of legal sanctions.<sup>687</sup>

This view of the futility of legal sanctions was endorsed by the entire Royal Commission (with minor dissension expressed by Lord Robens and Sir George Pollock)<sup>688</sup> in the Donovan Report.<sup>689</sup> Barbara Castle said herself that the last thing she and the Prime Minister believed in was 'this legal framework'.<sup>690</sup> Why then did the Government ignore the views of the Royal Commission, fly in the face of established wisdom based on historical facts, and even go against previously-held personal views? The objective of this government policy was evidently focused on the need to court the popularity of the electorate, as are many government policies, but at the expense of considering the most effective and probable solutions to the strike problem. Still, Wilson never wavered from his conviction, expressed so forcibly at the annual Labour Party Conference in 1968, that a responsible government had to take more radical steps than those advocated by Donovan.

Much of the opposition by the TUC to the White Paper was directed against the principle of State intervention in collective bargaining, but as Peter Jenkins argued, 'A pluralistic political society and mixed economy cannot at the same time sustain full employment, an open-ended commitment to welfare and education and a system of unfettered collective bargaining.'<sup>691</sup> He also rejected the idea that the use of law in industrial relations would not work:

There is widespread misunderstanding about what the Donovan report actually said.

It did not rule out the use of law in helping to regulate industrial relations. Indeed it

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<sup>687</sup> O. Kahn-Freund, 'Intergroup Conflicts and their Settlement', *British Journal of Sociology*, 1954, Vol. 5, 212.

<sup>688</sup> *The Royal Commission Report*, Cmnd. 3623, para. 519.

<sup>689</sup> *Ibid.*, 'The Enforcement of Collective Agreements', Chapter VIII.

<sup>690</sup> < [mms://streamwm.londonmet.ac.uk/tucdial.asf](https://streamwm.londonmet.ac.uk/tucdial.asf) > Accessed 13 January 2013.

<sup>691</sup> *The Guardian*, 9 June 1969.

envisaged a role for the law in the future. Its chief point was that for the time being our system of industrial relations was so fragmented and chaotic that introduction of the law would be more harmful than helpful.<sup>692</sup>

Castle had gambled on going beyond Donovan because she considered that the economic and industrial situation in 1969 called for more radical remedies than the Royal Commission had proposed. It was arguably a reaction to the Conservative proposals, but Castle recognized that the Donovan reforms could not be implemented quickly enough to resolve the problem of ongoing industrial action, and therefore she proposed measures which were designed to control those strikes which were to the detriment of the national interest. In doing so, she risked antagonizing the unions by introducing what the TUC considered to be 'criminal sanctions', which was not something it was prepared to accept on behalf of their members. Even the promise of enhanced trade union rights, coupled as it was with a wider set of responsibilities, failed to convince the TUC, suggesting that both Castle and Wilson failed to fully understand the trade union movement and its history. Castle's gamble did not pay off, and her political eclipse would prove to be 'rapid and complete', as Peter Patterson asserted:

Trade union memories are a great deal longer than anyone else's in politics, and it is unlikely that Mrs Castle will ever be forgiven for her assault on their privileges and prerogatives in her ill-fated White Paper "In Place of Strife".<sup>693</sup>

The TUC's alternative proposals for greater responsibility to avoid unnecessary strikes were eventually accepted by the Government and proved successful to some

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<sup>692</sup> *Ibid.*

<sup>693</sup> The *Spectator*, cited in B. Castle, *Fighting all the Way*, p. 425.

extent. Some elements of the White Paper such as the establishment of the CIR<sup>694</sup> were also successful, but possibly the greatest achievement of the White Paper lay in the reaction to it from the TUC, since it was forced into facing up to its own responsibilities for governing the affiliated trade unions. Nevertheless, Taylor mourned the fact that ‘the long, sad decline of British trade unionism had begun ... It was a national tragedy and a lost opportunity.’<sup>695</sup>

#### *4.10 Conclusion*

*In Place of Strife* was very much the work of just one person – Barbara Castle – and it is to her that the failure of the White Paper to gain acceptance must be largely attributed. The Donovan proposals, when fully implemented, were meant to create an industrial relations system that would be ‘the envy of the world’, according to Michael Maguire MP.<sup>696</sup> They were not given that chance, however, as Castle ploughed ahead with her own proposals which were rejected not only by the TUC and by many trade unions, but by several Labour MPs, resulting in the compromise which was embedded in the TUC’s solemn and binding agreement. Industrial relations could have taken a very different turn if Ray Gunter had remained Minister for Labour, since he would have had a very personal interest in seeing through what he had begun when he set up the Royal Commission. Castle, however, seemed determined to forge ahead with much more radical changes, apparently discounting the Donovan proposals as not fit for purpose.

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<sup>694</sup> The CIR continued to survive for the next 5 years.

<sup>695</sup> R. Taylor, in A.S. Crines, K. Hickson (eds), *Harold Wilson: The Unprincipled Prime Minister?*, p. 128.

<sup>696</sup> HC Deb. 16 July 1968, c.1350.

Her proposals were viewed as a politicization of industrial relations and represented a new direction for labour legislation which met with little support, either from her own Party or from the trade unions. Industrial relations had a history of being controlled by politicians in the past, but successive governments had learned to treat the unions with at least respect, if not absolute trust. Castle was implying through her proposals that she did not trust the unions to govern themselves, and intended to reserve the right to intervene in industrial matters. As someone who had little personal knowledge of trade unions, hers was an ill-informed miscalculation that could have been at least partly responsible for Labour losing to the Conservatives in the next General Election.

The prime concerns of both Wilson and Castle had been to address inflation and control industrial action. Dorey was probably right to attribute the push towards restrictive legislation both to the growing unpopularity within unions to accept incomes policies and the increase in unofficial strike action. MPs were also becoming increasingly disenchanted with incomes policies, and it was possibly this combination of union hostility and government disillusionment with incomes policies as a means of controlling inflation that led Castle in another direction altogether. Nevertheless, the proposals satisfied neither Labour MPs nor the unions, and there was evidence of internal strife within the Labour Party over the proposals. The Government had been unable to carry the Parliamentary Labour Party (PLP) with it, as the PLP had in turn been pressured by the trade unions.

Nevertheless, there was some justification for the change in direction signalled by the White Paper. Highly damaging strikes were causing a loss of confidence in the British economy, a cause of major concern to the Government. A General Election was due at any time, and some more far-reaching policies were called for in order to



head off a possible defeat by the Conservative Party, which had also produced its own far more stringent policies. The final decision not to go ahead with the proposals was a prudent one, however. Implementation of the legislation could have exacerbated and exposed the domestic turmoil within the Labour Party at such a crucial period, and so it was politic to remove that particular bone of contention.<sup>697</sup> Nevertheless, the whole sorry saga was an indication of a reckless attitude towards industrial relations. It was indeed a 'bold, but bonkers' decision to take the Government into completely uncharted territory as far as industrial relations were concerned. If Donovan had unlocked the door to industrial relations legislation, *In Place of Strife* could be said to have opened it wide and issued an invitation to come in. The Tories responded enthusiastically to the enticement and rushed in to fill the void with their own carefully prepared legislative proposals in the form of the *Industrial Relations Bill*. This 'Conservative panacea' which followed in the wake of *In Place of Strife* proved to be even less appealing than anything that Castle's White Paper had attempted, and the TUC's successful campaign against its penal clauses was immediately followed by a battle against far more radical legislation.<sup>698</sup>

*In Place of Strife* represented probably the last opportunity to reform industrial relations with the agreement of the trade unions, but their rejection of any legislation which interfered with their right to self-regulation would lead to the next Government's attempt to totally emasculate the unions. Few writers have concentrated on the role of legislation and the central part it could play in maintaining harmonious industrial relations. Castle therefore had little in the way of informed research into the advantages and disadvantages of a fully legislated, comprehensive approach to the reform of industrial relations, and the next Government would also

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<sup>697</sup> Minkin, *The Contentious Alliance*, p. 114

<sup>698</sup> Palmer, *British Industrial Relations*, p. 193.

come to rely very much on the political solution of new laws to resolve the trade union 'problem'. This would result in a greater body of academic opinion on the role of law in industrial relations, since it would be the first time in history that any government would attempt to fully reform the way in which trade unions operated, by legislating to bring unions under the centralised control of government through a comprehensive *Industrial Relations Act*.

## Chapter 5. The Tory Threat turns to War over Industrial Relations

### 5.1 Introduction

The experience of Donovan and *In Place of Strife* suggests that legislation is a blunt tool for dealing with industrial relations, and that a more nuanced approach, directed at the needs and aspirations of workers should be a primary consideration. Legislation failed to gain acceptance from the unions at this particular period in history, and should have served as a warning that legislation has its drawbacks, although it is also true that circumstances change. The Conservatives, returned in the 1970 General Election, may have considered that the time was right to take a greater measure of central control, and therefore gambled on the introduction of far-reaching legislation to curb trade union activity and freedoms, despite the failure of the legislative measures of *In Place of Strife* to gain union acceptance. The introduction of the *Industrial Relations Bill* marked an acceleration in the evolution of industrial relations legislation, which had begun with the Donovan Report and carried forward with *In Place of Strife*. Voluntarism would be seriously undermined for the first time in decades, overturning years of tradition in the trade union movement, with a view to reducing strikes and exercising greater control over the unions, but without any evidence that this would be successful. Indeed, the American experience provided clear evidence that legislative controls had little or no effect on the number of strikes. The Act was short-lived, and was repealed in its entirety after just three years.

This chapter examines the reasons given by some historians and industrial relations academics for the abject failure of the Act in the light of the evidence. Paul Smith suggests that the failure was due to employers' reticence and the strength of union

opposition,<sup>699</sup> while Patrick Bell argues that the legislation was based on class, and therefore unlikely to encourage compliance among trade unionists.<sup>700</sup> Both Robert Taylor<sup>701</sup> and Roy Lewis<sup>702</sup> suggest that the Conservatives were encouraged to attempt far-reaching controls over the unions by the prevailing economic circumstances, although Denis Barnes<sup>703</sup> disagreed. However, the evidence gathered in this thesis suggests that, while it may be effective in certain circumstances, legislation was not an appropriate mechanism for regulating industrial relations in the 1960s and early 1970s. This was a point of view which was largely supported by the majority of the Donovan Commission members, and the attempt by the Conservatives to prove the alternative viewpoint was ill-considered, since the evidence which they relied on was both ideologically and politically driven. Furthermore, the evidence also suggests that the time was not right for such an experiment with industrial relations, since the unions were occupying a position of great strength from which to oppose the less acceptable legislative proposals, boasting around 12 million members in 1970.<sup>704</sup> It was the unions' intransigence and fierce opposition, first to the Bill and then to the Act, that contributed to and possibly caused its failure and eventual repeal.

Labour's surprise defeat in the General Election on 18 June 1970 left a clear field for the Conservatives under the new Prime Minister, Edward Heath, to bring in their own industrial relations policies. Indeed, the speed at which the Industrial Relations Bill

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<sup>699</sup> P. Smith, 'Order in British Industrial Relations: From Donovan to Neoliberalism', *Historical Studies in Industrial Relations*, April 2011, Issue 31-32, 115-154, at 133.

<sup>700</sup> P. Bell, *The Labour Party in Opposition 1970-1874*, (London, 2004), p. 57.

<sup>701</sup> R. Taylor, *The Trade Union Question in British Politics: Government and Unions since 1945*, (Oxford, 1993), pp. 1-15.

<sup>702</sup> R. Lewis, 'The Historical Development of Labour Law', *BJIR*, Vol. XIV, Issue 1, 1976, 1.

<sup>703</sup> D. Barnes, E. Reid, *Governments and Trade Unions: The British Experience 1964-79*, (London, 1980), p. 137.

<sup>704</sup> Source: Labour Force Survey, Office for National Statistics; Department for Employment (1892-1973); Certification Office (1974-2012).

was pushed through Parliament was in stark contrast to the drawn-out consultation surrounding *In Place of Strife*. Many of its proposals went beyond Donovan, but the Conservatives persisted with the traditionalist view that legislation was the best method for regulating industrial relations, despite the rejection of this perspective by Donovan and several similar previous reports on industrial relations.<sup>705</sup>

## 5.2 *The Historical Debate*

The 1960s and early 1970s was a period of deep economic difficulties in Britain, and the frequent strikes and wage demands from the unions became inevitable foci for a new government intent on reforming industrial legislation. The rationale used by the Government for new legislation was that it was vital to cut the number and length of strikes in a period of economic difficulty. It pointed out that there were record numbers of strikes in 1970, and almost twice as many in the first three months of 1971 than in the same period in 1970.<sup>706</sup> The *Industrial Relations Act 1971* was almost a knee-jerk response to that situation, with seemingly little consideration given to the possible consequences of a heavy-handed approach; legislation would be implemented swiftly and with little consultation with the trade unions.

Such a major development in labour law tends to happen only at times of economic and social conflict.<sup>707</sup> Many historians considered that the economic circumstances of the time gave the Government the justification it needed for overhauling industrial relations. Robert Taylor considered that the ailing economy worked to focus attention

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<sup>705</sup> *Royal Commission on the Organization and Rules of Trade unions, 1867-69; Royal Commission on Labour Laws 1874-75; Royal Commission on Labour 1891-94; Royal Commission on Trade Disputes, 1903-06*. The Donovan Report had been insistent that the law could not assist in the reduction of strikes.

<sup>706</sup> *The Observer*, 21 June 1970.

<sup>707</sup> For example, with the *Trade Disputes and Trade Unions Act 1927*, passed in response to the 1926 General Strike.

on the unions which had become the 'scapegoats of economic decline'.<sup>708</sup> Roy Lewis also considered it likely that public concern over the role of trade unions in the economic woes of the country had led the Conservative party to use this fact to their own electoral advantage during the election campaign:

The nature and extent of legal regulation has been determined not by some abstract rule-making force, but by the interplay of judicial innovations, public policy controversy, the relative power of management and labour interests, and party politics with a view to electoral advantage.<sup>709</sup>

Barnes disagreed with this analysis, viewing the proposed legislation as not even immediately relevant to the problem of wage inflation.<sup>710</sup> Such was the desperate economic situation at the time, however, that the Conservative Government was unlikely to follow Labour's failed attempts to persuade the unions to take a more ordered approach to collective bargaining, but to impose restrictions on union regulation and activity whether they agreed or not.

Whatever the motivation for the Bill, it was unusual in that governments up until this time had followed a largely abstentionist policy. As Barnes pointed out, 'Abstentionist legal policy was a central plank of the prevailing voluntarist ethos in industry';<sup>711</sup> while the trade union movement 'regarded the voluntary principle as an article of faith, and management seemed inclined in the same direction.'<sup>712</sup> However, those assumptions had been coming under some strain in the 1960s and 1970s. Donovan had persisted with a recommendation for voluntary reform of the collective bargaining system rather than restrictive legal regulation. Collective agreements

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<sup>708</sup> Taylor, *The Trade Union Question in British Politics*, pp. 1-15.

<sup>709</sup> Lewis, 'The Historical Development of Labour Law', 1.

<sup>710</sup> Barnes, Reid, *Governments and Trade Unions*, p. 137.

<sup>711</sup> *Ibid.*, p. 9.

<sup>712</sup> *Ibid.*

were often informal and vague and therefore did not lend themselves to legal enforceability. Nevertheless, this informality was one of the possible causes of disorderly industrial relations and the Conservative Government was determined to move forward with the new way of thinking which had its roots in the Donovan Report, even if the overall conclusion of the Report was to maintain the voluntarist principle while supporting collective bargaining.

If behaviour was to be changed the law's role was a question of degree and, perhaps unintentionally, the Donovan analysis represented the thin edge of the legal wedge which was to be driven home by Andrew Shonfield's Note of Reservation to Donovan, by *In Place of Strife*, and ultimately by the *Industrial Relations Act*.<sup>713</sup>

Nevertheless, there were some within the Government who were uneasy about the direction of legal regulation, and the speed at which it was introduced. In 1965, a document which had been drawn up by Viscount Amory's working group on trade unions had warned that there was 'a considerable political and psychological advantage in getting away from legislation dealing exclusively with trade unions' and that it was 'undesirable that the major piece of legislation we envisage should be capable of being presented as a Bill directed against the trade unions.'<sup>714</sup> Both Joseph Godber and Viscount Blakenham<sup>715</sup> had expressed doubts as to whether 'a complex and comprehensive piece of legislation was the most sensible way of improving trade union behaviour.'<sup>716</sup> Robert Taylor also referred to a number of

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<sup>713</sup> Lewis, 'The Historical Development of Labour Law', 10.

<sup>714</sup> Bodleian, 'Policy Group 20: Trade Union Law and Practices', chaired by Viscount Amory, draft report, 2 July 1965, CRD/3/17/20, PG/20/65/45, cited in S. Ball, A. Seldon (eds), *The Heath Government 1970-74: A Reappraisal*, (London, 1996), p. 165.

<sup>715</sup> Viscount Blakenham was formerly Lord Hare. Godber and Hare were both former Ministers of Labour.

<sup>716</sup> R. Taylor, 'The Heath government and industrial relations: myth and reality', in Ball, Seldon (eds), *The Heath Government*).

warnings which had come from the Conservative party itself.<sup>717</sup> Keith Joseph, when Shadow Employment Secretary in 1966, had specifically warned against legislation which would 'allow the unions to pose as political victims or martyrs in a class war'. He also suggested that the introduction of employee co-determination would be 'at least a gesture.'<sup>718</sup> This practice was enshrined in law in West Germany, where trade unions and works councils nominated up to one third of employee representatives on a company's supervisory board.<sup>719</sup> This and other alternatives to legislation are considered further in the next chapter to determine whether there were indeed other routes to industrial harmony and cooperation.

In the face of such unequivocal opposition to restrictive legislation, the Conservatives' motivation for pushing ahead with its proposals just a few years later is worth some scrutiny. Barnes suggested that there were three reasons why the Conservatives went ahead with this legislation.<sup>720</sup> First, there were parliamentary considerations, and a new Government would want to present a major piece of legislation in its first session. Second was the fact that much of the preparatory work had already been done while the Conservatives were in Opposition. Third, legislation early in the Parliament would give time for the expected opposition and controversy to fade and the benefits to become apparent before the next General Election. Indeed, Heath and many of his ministerial colleagues considered the proposed legislation to be 'rational, sensible and essentially modest', according to Taylor.<sup>721</sup> The Secretary of State also recorded that the proposals would be 'by and large

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<sup>717</sup> *Ibid.*, p. 164.

<sup>718</sup> Bodleian, 'Relations Policy: Matters for Further Consideration', memo by Sir Keith Joseph, for Policy Group on Trade Union Law and Practices, 1 January 1966, CRD/3/17/20, PG/20/65/60, cited in Ball, Seldon (eds), *The Heath Government*, p. 166.

<sup>719</sup> Betriebsverfassungsgesetz 1952.

<sup>720</sup> Barnes, Reid, *Governments and Trade Unions: The British Experience 1964-79*, p. 137.

<sup>721</sup> Taylor, *The Trade Union Question in Politics*, p. 184.



welcomed by the TUC as a sound basis for legislation' although 'the CBI are opposed to the Bill which they regard as one-sided and as mostly involving concessions to the trade unions'.<sup>722</sup> The differences in language suggest that, while the CBI had already made their objections well known, the Government had yet to consult with the TUC to gauge likely reaction, and the notion that the union movement would welcome such legislation was wildly over-optimistic, as events would prove. Wary of such misplaced optimism, Peter Jenkins predicted that the new Government 'would soon be in confrontation with the trade unions ... not only will it be a trial of strength, a test of governmental authority; the outcome will also help to determine the success or failure of the Heath Government in achieving an acceptable rate of increasing prosperity.'<sup>723</sup>

Some members of the Donovan Commission had conceded that legislation could be a useful tool when used in the right context. Kahn-Freund, for instance, considered that the law could be used to support collective bargaining and set rules for 'industrial hostilities' and for individual contracts of employment.<sup>724</sup> He also thought that there should be legislation to protect against unfair dismissal, as the Industrial Relations Bill proposed, but that collective bargaining could not exist without the strike weapon and that law had no part to play there. Allan Flanders approved of a role for the law in specific areas, including the regulation of redundancy and industrial training,<sup>725</sup> while Shonfield also favoured some form of legislation.

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<sup>722</sup> NA CAB, C (70) 48, *Industrial Relations Bill, Memorandum by the First Secretary of State for Employment and Productivity*, 7 April 1970.

<sup>723</sup> Jenkins, *The Battle of Downing Street*, 170.

<sup>724</sup> O. Kahn-Freund, 'Industrial Relations and the Law – Retrospect and Prospect', *BJIR*, Vol. 7, Issue 3, November 1969, 303.

<sup>725</sup> A. Flanders, *Collective Bargaining: Prescription for Change*, (London, 1967), p. 36.

Nevertheless, the contents of the Bill went far beyond any legislation envisaged by the Commission members, and its proposals were met with considerable and sustained opposition from the unions. Several reasons have been suggested for this. Bell, for instance, thought the Bill went too far, dismissing it as a 'vicious and pernicious piece of class legislation',<sup>726</sup> and thus unlikely to be acceptable to the unions, while in Taylor's view, Heath had 'failed to recognize that unions were neither structurally nor ideologically capable at that time of delivering the kind of agreement he wanted'.<sup>727</sup> The 1960s had been a period of 'neo-corporatism', with the emphasis on bargaining and negotiation with the unions, encouraging them to accept certain policies, including incomes policies.<sup>728</sup> Under the new proposals unions would reluctantly lose their status as social partners, a situation which the next Labour government would attempt to restore. Indeed, Dorey described the Conservative departure from voluntarism towards one of strict legal regulation as 'The Experiment with legalism, 1970-1974',<sup>729</sup> but noted that this departure was not sustained, and was in fact followed by a re-invigorated return to a neo-corporatist strategy.<sup>730</sup>

Keith Joseph may have had the better argument, but it was largely discounted at the time. His suggestion for employee co-determination could in time have provided a better solution for industrial peace. Yet while agreeing with many historians and legal commentators on this era that legislation *per se* may not be the most appropriate tool for regulating industrial relations, it can at least be the means of creating the mechanisms which can do that job far more effectively. These alternative means of

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<sup>726</sup> Bell, *The Labour Party in Opposition 1970-74*, p. 56.

<sup>727</sup> Taylor, *The Trade Union Question in Politics*, p. 184.

<sup>728</sup> P. Dorey, *Developments in British Public Policy*, (London, 2005), p. 135.

<sup>729</sup> P. Dorey, *The Conservative Party and the Trade Unions*, (London, 1995), p. 88.

<sup>730</sup> Dorey, *Developments in British Public Policy*, p. 135.

creating constructive and harmonious relationships within industry build on the neo-corporatism of the 1960s, and the extent of their successes and failures are analyzed in the next chapter.

### *5.3 The Conservative's Initial Plans*

The new Conservative Government had spent many years involved in research and planning for industrial relations legislation. In the early 1960s, the Conservative Government had been increasingly concerned over Britain's poor economic performance in comparison with that of the rest of Europe. Traditional voluntarism was under strain, and its proponents in the Conservative Government were finding it harder to justify this stance in the face of real economic difficulties,<sup>731</sup> while becoming exasperated by the failure of the unions to put their house in order.<sup>732</sup> It was nevertheless an over-simplification of the situation to blame the 'British disease' of low industrial productivity and frequent strikes wholly on the trade unions when there were many other factors to be considered.

The Conservative Party embarked on a thorough investigation of its own,<sup>733</sup> the outcome of which was a series of proposals on industrial reform, including trade union reform. However, the perceived need to take a stronger approach to controlling what it saw as the destructive '*giant's strength*' of the union movement was to lead to proposals for measures that went beyond Donovan in many key areas.

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<sup>731</sup> P. Dorey, *British Conservatism and Trade Unionism, 1945 – 1964*, (Farnham, 2009), p. 117.

<sup>732</sup> Dorey, *The Conservative Party and the Trade Unions*, pp. 56-62.

<sup>733</sup> Mainly carried out by the Conservative Research Department's Policy Group on Industrial Relations.

The Conservative Research Department's (CRD) Policy Group reported in 1967.<sup>734</sup> This report was written with a view to modernizing industrial relations in Britain. Its key concerns were to promote cooperation between management, employees and trade unions, while removing barriers to efficiency and higher productivity. The report stressed that the success or failure of industrial relations depended on human behaviour *and not on the law*, and that communication between all the parties was essential. Nevertheless, despite this acknowledgement, and against the recommendations in the Donovan Report, it proposed to modernize the law by drawing together relevant existing legislation into one new, consolidating Industrial Relations Act.<sup>735</sup> This attitude seems in retrospect to be going against not only established convention, but also ignoring extensive research and its related recommendations.

The alleged aims of the CRD report were to 'divorce trade-unionism from permanent alignment with any political party', and to show that the Conservatives offered a viable alternative to the Labour Party.<sup>736</sup> The policy was aimed at strengthening responsible leadership and providing incentives to unions to become more professional and efficient, while restricting the opportunities for abuse.

The CRD report claimed that the British system was one of the least regulated in the world, and that existing 'Trade Union Acts give positive encouragement to practices which society would never tolerate in any other sphere of human relationships'.<sup>737</sup> In other countries collective agreements were enforceable in the courts, while trade unions and employers' associations were corporate bodies, answerable in the courts

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<sup>734</sup> Bodleian, PG/20/66/58; Conservative Research Department, *Report of the Policy Group on Industrial Relations*, CRD 3.17.2., 17 November 1967.

<sup>735</sup> *Report of the Policy Group*, p. 2.

<sup>736</sup> *Ibid.*, p. 5.

<sup>737</sup> *Ibid.*, p. 14.

for their actions. These factors were presented as *negative* aspects of the current British system which, the report claimed, could only be addressed through new legislation. Attention was also drawn to certain long-standing statutory provisions<sup>738</sup> which the report's authors believed were no longer justifiable, since they were written at a time when employers were 'masters' and unions were economically weak. The report suggested that the idea that unions should be unaccountable for activities which could be damaging to others, and treated in law as if they were private clubs, was no longer sustainable.<sup>739</sup> What was proposed<sup>740</sup> was to have properly constituted bodies with rules approved by a new Registrar, and for unions to have corporate legal status, subject only to immunities when acting in furtherance of a trade dispute, the definition of which would also be amended. There would be a new Industrial Court which could both adjudicate on breaches of collective agreements and issue injunctions.<sup>741</sup> This last proposal proved to be the most controversial since injunctions, if ignored, result in the imprisonable offence of a contempt of court. Labour had stressed that its own Industrial Relations Bill did not intend to create criminal liability.<sup>742</sup> To imprison trade unionists as a direct result of taking industrial action would take the whole trade union movement back to the dark days of the very early trade unionism and pull the criminal law in a new and wholly unwelcome direction.

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<sup>738</sup> Contained within the *Trade Union Act 1871* and the *Trade Union Disputes Act 1906*.

<sup>739</sup> *Report of the Policy Group*, 17.

<sup>740</sup> Also put forward in the Conservatives' 1966 election manifesto, *Action Not Words: The New Conservative Programme*, <<http://www.politicsresources.net/area/uk/man/con66.htm>> Accessed 14 April 2014.

<sup>741</sup> *Report of the Policy Group*, 40.

<sup>742</sup> HC Deb. Vol. 781, cc. 1182-1189, 16 April 1969.

#### 5.4 *Fair Deal at Work – the Conservative Solution to Industrial Relations*

The Conservative Party was able to present a fully prepared *Industrial Relations Bill* within a few months of winning the General Election. This was due to its earlier substantial preparation proposals, carried out in the years while the Donovan Commission had been preparing its own Report. Shortly before the Donovan Report was presented to Parliament, the Conservative Party published *Fair Deal at Work* - its own policy document on industrial relations, based on the recommendations in the 1967 Conservative Policy Group Report. The timing of its publication was blatantly designed to undermine the impact of the Donovan Report. It had also been developed from evidence presented to the Donovan Commission by the Society of Conservative Lawyers, which itself was based on the 1958 pamphlet, '*A Giant's Strength*'.<sup>743</sup> Its main proposals included an Industrial Relations Act with extended legislation; giving corporate status to trade unions and employers' associations; and the withdrawal of legal protection from workers involved in either sympathetic, inter-union, or closed-shop strikes. There were to be new Ministerial powers to order a secret ballot before strike action, while collective agreements would be given legally binding status. In addition to a new Industrial Relations Court there would also be a system of regional industrial courts.

In comparing the Conservative proposals with those in the Royal Commission Report, there were some similarities, but also a large number of points on which they disagreed, particularly on the subject of immunity from legal action for taking industrial action.<sup>744</sup> There were also points of difference on the issue of collective bargaining, the Conservatives demonstrating their strongly-held belief in the

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<sup>743</sup>*A Giant's Strength*, Inns of Court Conservative and Unionist Society.

<sup>744</sup> Bodleian, CRD 3/17/2, PLC 68(3), *Fair Deal at Work and the Donovan Report: Comparisons of Recommendations*, p. 3.

necessity for legislative control. While Donovan rejected making agreements legally enforceable, the Conservatives recommended providing 'legal support' as a strong incentive to management and unions to reform the system. However, with regard to industrial disputes there were *no* points of agreement at all. While Donovan recommended no change to the legal definition of a dispute, the Conservatives thought that certain types of dispute should be *excluded* from the legal definition. The report disagreed with Donovan's opinion that the Government had adequate powers, and recommended a 'cooling off' period' to delay or stop a strike in times of national emergencies. There was also a recommendation for a return to the *Taff Vale* position, with the curtailing of immunities where either side acted in breach of agreements, or where third parties were suffering loss as a result of a dispute.<sup>745</sup>

In respect of changes to the law generally, the document pointed to a fundamental difference of opinion on the scale of legislation and the timescale for implementing it. While Donovan recommended codification of existing law and a standing committee to keep it under review, *Fair Deal at Work* adopted a more urgent timescale, with an 'early introduction of a comprehensive Industrial Relations Act which would draw all the strands together, repeal irrelevant or undesirable provisions, and include the proposed new measures.'<sup>746</sup> In short, *Fair Deal at Work* went considerably beyond Donovan, with tighter controls over the activities of trade unions, machinery to enforce those controls and penalties for those unions which acted in opposition to those controls.

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<sup>745</sup> *Ibid.*, 7.

<sup>746</sup> *Ibid.*, 7.

*The Times* editorial agreed in principle that there was a case for new laws, but cautioned that:

The Conservatives have been insufficiently selective. A number of their legislative proposals are sensible, but it would not be useful to bind people, as they suggest, to observe a collective bargaining system which has ceased to function. The first need is to reform the system.<sup>747</sup>

This opinion chimed with the conclusion of the Donovan Report, which deemed collective bargaining to be 'the most effective means of giving workers the right to representation in decisions affecting their working lives.'<sup>748</sup> The warning in *The Times* that the legislature should be more selective was a sensible approach to the implementation of new legislation, dealing with problems as they stood, rather than attempting to pre-empt issues which had not yet become problematic.

Nevertheless, pressure to reform trade unions was increasing within the Conservative party, and the 'reformers were gaining ascendancy'.<sup>749</sup> *Fair Deal at Work* can therefore be viewed as the culmination of a decade of clamour for increased state involvement in the relationship between unions and employers.

### 5.5 *The Traditionalist Critique v the Donovan Critique*

This Conservative attitude was arguably still a minority one, founded on the traditionalist critique that legislation held the answer to all problems. It was not, however, grounded either in lessons learned from historical events or from international experience. Kahn-Freund considered that: 'There exists something like

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<sup>747</sup> *The Times*, 9 April 1968.

<sup>748</sup> *Royal Commission Report*, 1968, Cmnd. 3623, para. 212.

<sup>749</sup> *Ibid.*



an inverse correlation between the practical significance of legal sanctions and the degree to which industrial relations have reached a state of maturity.<sup>750</sup> Nevertheless, his viewpoint had lost ground during the 1950s and early 1960s, as it became clear that the system of self-regulation and industrial autonomy was failing to function as well as it should. The strikes, both official and unofficial or unconstitutional, were growing in number and having a greater impact on industry generally. Incidents within unions also seemed to show that unions were abusing their power in relation to individual members or former members. *Rookes v Barnard*<sup>751</sup>, *Bonsor v Musicians Union*<sup>752</sup> and *Huntley v Thornton*<sup>753</sup> were all legal cases in which union members refused to work with non-members, each of whom was subsequently dismissed. There was also much publicity and criticism in the case of the ETU at its alleged ballot-rigging, and of inter-union conflicts in the docks.<sup>754</sup>

The views being publicly expressed about irresponsible trade unionism echoed those made a century before in the Majority Report of the Erle Commission on Trade Unions of 1869.<sup>755</sup> The critique of this Report was that, while combination for trade union purposes should be allowed by law, it should not be allowed to lead to union irresponsibility that could harm society. The Majority Report had recommended legal incentives, and penalties for promoting restrictive or harmful objectives such as picketing. This traditional critique was now enjoying a revival and would come to be reflected in the *Industrial Relations Act 1971*, although it first made a re-appearance

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<sup>750</sup> O. Kahn-Freund, Legal Framework, in A. Flanders and H.A. Clegg (eds), *The System of Industrial Relations*, (Oxford, 1953), p. 43.

<sup>751</sup> 1964 UKHL 1.

<sup>752</sup> 1956 AC 104.

<sup>753</sup> 1957 1 W.L.R. 321.

<sup>754</sup> W. E. J. McCarthy, N. D. Ellis, *Management by Agreement: An Alternative to the Industrial Relations Act*, (London, 1973).

<sup>755</sup> Royal Commission on Trade Unions, 11<sup>th</sup> and Final Report, HMSO, 1869. (Ultimately, the Minority Report, recommending less legislative control and greater support for collective bargaining, was accepted.)

within the Conservative party in three influential documents. These were *A Giant's Strength* in 1958, *Trade Unions for Tomorrow* in 1966<sup>756</sup> and *Fair Deal at Work*<sup>757</sup> in 1968. Each was concerned with reducing strike action and restrictive labour practices, based on an assumption that, while existing rules were sound, it was necessary to ensure that they were observed by trade unions and their members. The answer, according to these publications, lay in legislation. Despite frequent reminders that the law is ill-suited to the regulation of industrial relations, the Conservative Party continued to express policy proposals almost entirely in terms of new laws and regulations, while the Donovan Report had cut across the traditionalist critique with non-legal proposals.

This traditionalist critique in Conservative thinking considered that the central defect of British industrial relations was the way that trade unions had misused past legal immunities. Particular attention was therefore focused on the special legal protection provided by the *Trade Disputes Act 1906*.<sup>758</sup> The traditionalist view was that these immunities, coupled with the fact that collective agreements were generally accepted to be non-legal documents, resulted in an excessive concentration of power within unions, without sufficient accountability.

*Fair Deal at Work* focused on this view, claiming that:

Britain's industrial relations system is the least legally regulated in the world,<sup>759</sup> yet no other country has granted so much legal protection to the participants. Indeed, our

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<sup>756</sup> Memorandum of Evidence presented to the Royal Commission on Trade Unions and Employers Associations by the Inns of Court Conservative and Unionist Society, Volume 14, Issue 6.

<sup>757</sup> *Fair Deal at Work*, Conservative Central Office, 1968.

<sup>758</sup> The Act removed the risk of civil conspiracy for workers engaged in disputes, and set aside the decision in *Taff Vale Railway Co. v Amalgamated Society of Railway Servants*, UKHL, 1901 which made trade unions financially responsible for the wrongful acts of its officials.

<sup>759</sup> [although the paper gave no firm evidence of this].

Trade Union Acts give positive encouragement to practices which society would never tolerate in any other spheres of human relationships.<sup>760</sup>

This view saw the answer in a comprehensive body of legislation that would contain union power and ensure that it was not exploited. The aims of the legislation would be threefold. The first would be to narrow the existing legislation to prevent strikes which were 'neither necessary to support legitimate claims, nor desirable in the national interest'.<sup>761</sup> Secondly, legal protection should be restricted to registered unions only. Finally, union leaders should be encouraged to control irresponsible or subversive groups within the organization, with union funds placed at risk where action was taken by the union which involved a breach of the immunities.

When *Fair Deal at Work* was published, *The Times* warned:

The temptation to turn to the law to repress the symptoms of a disease is difficult to resist. But ... hasty actions and hasty commitments may do more harm than good. It is not easy to see that such careful analysis and observation have been undertaken by either the [Labour] Government or the Opposition.<sup>762</sup>

There was an alternative view which had found favour with the Donovan Commission and at least one of its forerunners, the 1917 Whitley Committee.<sup>763</sup> On each of these bodies, the majority view was that the most effective solution was to be found *outside* legislation. They argued in favour of improved agreements and arrangements between employers and unions for tackling shop-floor grievances and claims - rule reform rather than rule enforcement. 'It would not be useful to bind

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<sup>760</sup> *Fair Deal at Work*, p. 16.

<sup>761</sup> *Ibid.*, p. 30.

<sup>762</sup> *The Times*, 9 April 1968.

<sup>763</sup> Founded under the chairmanship of Liberal M.P., J.H. Whitley in 1917 during the First World War to report on the 'Relations of Employers and Employees', when maintaining good industrial relations was vital to the war effort.

people ... to observe a collective bargaining system which has ceased to function. The first need is to reform the system.<sup>764</sup>

This was a common theme in the Donovan Report. McCarthy and Ellis considered that the Report:

Established the most comprehensive case yet made for a *practical approach* to rule reform, which still represents the best short statement of the contemporary alternative to the traditionalist approach. For this reason we term this alternative view “the Donovan critique”.<sup>765</sup>

The problems, as the Commission saw them, arose out of the interaction between rising shop-floor expectations and inadequate procedures and arrangements for dealing with it. The Commission would not accept that most strike action was a result of irresponsible and subversive elements within the trade union movement, which could be controlled if placed within the right legal framework. Therefore it rejected almost all of the common traditional proposals for a new legal framework. ‘The desire on the part of a minority to make trouble and the irresponsibility and weakness of others are factors which contribute to the frequency of unofficial strikes. But this is not the root of the evil.’<sup>766</sup>

### *5.6 The Meeting at Selsdon Park and the Consultative document on an Industrial Relations Bill*<sup>767</sup>

In January 1970, Edward Heath held a secret brainstorming session of the Shadow Cabinet at The Selsdon Park Hotel near Croydon, Surrey. The aim of the meeting

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<sup>764</sup> *The Times*, 9 April 1968.

<sup>765</sup> McCarthy, Ellis, *Management by Agreement*, p. 21.

<sup>766</sup> *Royal Commission Report*, Cmnd. 3623, para. 127.

<sup>767</sup> Industrial Relations Bill, Consultative Document, Department of Employment and Productivity, Modern Records Office, University of Warwick, (MSS.126/TG/1405/1/1).

was to formulate policies for the 1970 General Election manifesto. The result was a radical, free-market agenda which included a proposal to see the 'monopoly power of the trade unions smashed'.<sup>768</sup> Continuing large-scale industrial disputes and a rise in the number of working days lost through strikes would have undoubtedly hardened the Conservatives' resolve to carry out this proposal.

This view was not merely a Conservative one. Barbara Castle herself had admitted that there was a state of near-anarchy on the shop-floor, referring to the Standard-Triumph strike in the Liverpool factory.<sup>769</sup> Early in 1970, a small local issue at the St Helen's Pilkington factory escalated into a national strike affecting more than 10,000 workers.<sup>770</sup> The number of working days lost through strikes was rising dramatically, with 6,846,000 days lost in 1969, compared with only 2,787,000 two years earlier.<sup>771</sup> It was becoming painfully obvious that the TUC undertaking, no matter how 'solemn and binding', was unable to achieve industrial peace when so much industrial unrest was down to individual workers. The argument for restrictive legislation was gathering pace, and the workers were inadvertently fuelling that debate.

The economy was facing severe difficulties at this time. The welfare state and the loss-making nationalized industries were taking up large amounts of tax-payer's money, while the cost of running the National Health Service was proving much higher than anticipated. Damaging labour relations were having a deleterious effect on the economy, the pound remained under pressure and tax rates were very

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<sup>768</sup> Castle, *Fighting all the Way*, p. 433. (Heath soon abandoned the Selsdon manifesto, but the free-trade policies of the Selsdon group, formally founded in 1973, of individual enterprise and economic freedom, were later taken up by the Conservative Prime Ministers, Margaret Thatcher and John Major. These policies would result in an attack on union autonomy and immunity and would achieve these objectives far more successfully than the *Industrial Relations Act 1971* would do.)

<sup>769</sup> *Ibid.*

<sup>770</sup> D. Sandbrook, *State of Emergency: The Way We Were: Britain 1970-74*, (London, 2011), Chapter 3.

<sup>771</sup> < <http://www.unionancestors.co.uk/Images/Strikes%201901-2000.pdf> > Accessed 28 April 2015.

high.<sup>772</sup> Edward Heath had promised to turn this state of affairs around, and one of his first targets was industrial relations.

As early as 22 June 1970, Robert Carr, the new Minister for Employment and Productivity, signalled that he was hoping to enter into detailed consultations with the unions on an Industrial Relations Bill, to be presented in the autumn.<sup>773</sup> A *Consultative Document on the Industrial Relations Bill*<sup>774</sup> was published on 5 October 1970, and was intended to form the basis of consultation between the Government, the TUC and the CBI.<sup>775</sup> There was little difference between the aims of this document and those of the earlier CRD Policy Group report, although there was substantially more detail. In light of the fact that the *Industrial Relations Bill* had been published less than two months later, it is suggested that consultation was at best perfunctory and at worst meaningless. The unions were used to being consulted and this lack of consultation led to bitter resentment among union leaders.

Controversially, the proposals contained an extensive list of 'unfair' actions deemed to be unlawful, but which nevertheless included a great deal of normal union behaviour.<sup>776</sup> These restrictions still allowed for the possibility of certain strikes being regarded as 'fair', but only those that were officially called by registered unions, limited to the employers with whom the dispute existed, not in breach of a legally binding agreement and not within the other prohibited categories. Even in this category, the right to strike would not be unfettered. There would have to be a secret

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<sup>772</sup> Before income tax reforms in 1973, the basic rate of tax was 38.75%, with income relief of two ninths, reducing the tax rate to 30.14%, but this was still exceptionally high. T. Clark, A. Dilnot, *Long-term Trends in British Taxation and Spending*, IFS briefing document, <http://www.ifs.org.uk/bns/bn25.pdf>. Accessed 10 April 2015.

<sup>773</sup> *The Times*, 22 June 1970.

<sup>774</sup> *Industrial Relations Bill: Consultative Document*, Department of Employment and Productivity, Modern Records Office, University of Warwick, (MSS.126/TG/1405/1/1).

<sup>775</sup> *The Times*, 6 October 1970.

<sup>776</sup> *Industrial Relations Bill, Consultative Document*, Department of Employment and Productivity, para. 22.

ballot if there was a threat to the community in order to ensure the agreement of all members of the union, and this was by no means inevitable.<sup>777</sup>

Such severe restrictions would inhibit the rights and the ability of unions to take strike action, and would do little to prevent unofficial strikes taking place should unionists prove to be too impatient to await the outcome of a ballot. These proposals were a serious threat to the fundamental right to strike, a move that would severely hinder future negotiations between unions and employers, since it would mean the loss of the unions' most effective bargaining tool.

#### *5.6.1 Criticism of the Consultative Document*

Bill Wedderburn<sup>778</sup> wrote an immediate scathing attack on the Consultative Document in *The Times*.<sup>779</sup> He condemned it for ignoring the vital research work of recent years, and warned that 'consultation must extend far beyond "details" if this Bill is itself not to be the cause of the very explosion of wrath by workpeople which its authors say they wish to avoid.'<sup>780</sup> When the Document was debated in the House of Commons on 26 November 1970, it provoked fierce responses from the Labour benches. Castle accused Robert Carr, (somewhat hypocritically, as she had also failed to take proper notice of the Donovan Report), of 'ignoring the Donovan Report, what industrialists say, what some of his own friends in industry say and, not least, what people on his own side used to say about industrial relations not being a proper field for law.'<sup>781</sup>

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<sup>777</sup> *Ibid.*, paras. 172-176.

<sup>778</sup> Bill Wedderburn was an industrial relations expert who advised the TUC during its campaign against the *Industrial Relations Bill*.

<sup>779</sup> *The Times*, 6 October 1970.

<sup>780</sup> *Ibid.*

<sup>781</sup> *HC Deb 26 November 1970 vol. 807 cc. 632-748, c. 652.*

Owen Parsons also criticized the Document:

At every point, provision is made for interference in the union's unfettered democratic right to protect the interests of its members, and there is constant provision from the very drafting of the rules onwards, for outside intervention and meddling.<sup>782</sup>

He was of the opinion that the lawyer's approach was the worst possible one, since there is no flexibility in the legal approach to disagreements. He summarized the proposals as a wholesale attack on the trade union movement:

The Movement is under attack not in the interests of industrial peace or increased production or the national economy, but purely and simply because it represents the workers of this country and the Tory Government is acting for the employers who want to cut down the power of their class enemies. It is as crude as that.<sup>783</sup>

Further comment and criticism came in the form of a document prepared by teachers and research students of labour law at Cambridge University, whose views could be expected to be less partial than those involved directly in the debate, but who nevertheless also questioned the wisdom of the Government proposals.<sup>784</sup> What they found to be of particular concern was that '...the present Government document departs so far from many of the proposals in the Donovan Report (and even to some extent from those in the Conservative Party's *Fair Deal at Work 1968*) that it is essential that a much longer period should be allowed for public consultation and for intensive research.'<sup>785</sup> They could see that the legislation was too far-reaching, too

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<sup>782</sup> O.H. Parsons, *The Tory Threat to the Unions*, (Labour Research Department), pp. 23-24.

<sup>783</sup> *Ibid.*, p. 28.

<sup>784</sup> Labour Party Archive, Eric Heffer Papers, *Consultative Document: Comments by teachers and research students of Labour law at University of Cambridge*, ESH 3/5/11, Labour History Archive and Study Centre [LHASC].

<sup>785</sup> *Ibid.*, p. 2.



radical, and had no basis in past experience, while the approach of the Conservative Government was both arrogant and patriarchal.

There was deepening concern that the Consultative Document took no account of the international legal framework, including ILO conventions, the European Social Charter and the European Convention on Human Rights, all of which contained standards relevant to the proposed Bill. Some proposals were thought to be in actual violation of international labour standards which could in time give rise to complaints to the ILO or the European Court of Human Rights. The general principles in the Consultative Document also appeared to depart from 'what has hitherto been regarded as the basis of legislation in the field of industrial relations.'<sup>786</sup> These were that collective bargaining was the *best* method of regulating relations between workers and employers, and not just something that workers could opt into if they so wished (as the Consultative Document suggested); and that employers, not just workers, were equally desirous of encouraging industry-wide bargaining.

Trade unions and professional associations also expressed concerns. In a letter from the President of UKAPE,<sup>787</sup> the general philosophy of the Consultative Document was welcomed, since it represented 'a long overdue attempt to introduce into the present chaos an element of reason, fair play and justice.'<sup>788</sup> Nevertheless, there was concern over the lack of consideration given to professional employees, and although UKAPE welcomed the proposed right not to join a union, it objected to the proposal for individuals to justify their decision to an Industrial Tribunal and to contribute instead to a charity.

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<sup>786</sup> *Ibid.*, p. 2.

<sup>787</sup> UK Association of Professional Engineers.

<sup>788</sup> Labour Party Archives, Eric Heffer papers, *UKAPE to D.A. Bayliss at the DEP, 22 October 1970*, ESH/3/5-11, Labour History Archive and Study Centre [LHASC].

Many trade unions looked at the implication of the document in their own terms. The NUT,<sup>789</sup> for example, was concerned that the proposals in the Consultative Document applied to teachers, 'notwithstanding the fact that the terminology and thinking of the document is limited to the industrial and commercial fields'.<sup>790</sup> On specific proposals, the NUT – as a public servant - was emphatic that the teachers' legal right to strike should be maintained, and that the scope of the phrase 'without damaging the public interest' (paragraph 13c) was open to varied interpretation. On the issue of the proposed NIRC, the union made a very insightful comment on the extensive powers which it would have:

The Executive cannot accept that any one body is the repository of truth and wisdom in the field of industrial relations. The issues involved are human ones and are rarely best dealt with by the precise judgment of the law.<sup>791</sup>

The body of criticism and advice was quickly building against the proposals in the Consultative Document, many of which failed to take into account the breadth of types of organization, including professional associations and public sector bodies. By trying to use the law to regulate industrial relations in all types of employment, the many and often nuanced differences between the different forms of employment and association could not possibly be taken into account. The law was far too blunt an instrument for such a role, without the inherent flexibility of collective bargaining. Recognizing this fact, the Donovan Commission had reasoned that improved collective bargaining was the best means of achieving agreements between workers and employers. Nevertheless, the Government continued to press forward with its

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<sup>789</sup> National Union of Teachers

<sup>790</sup> Labour Party Archives, Eric Heffer papers, *The Consultative Document on Industrial Relations: A Commentary by the National Union of Teachers*, ESH/3/5-11, Labour History Archive and Study Centre [LHASC].

<sup>791</sup> *Ibid.*, 2.

draconian proposals which threatened to overturn the fundamental rights of trade unions and trade unionists.

### *5.7 The Industrial Relations Bill - politically-motivated?*

Despite the extensive and wide-ranging opposition to the Government's proposals, the Bill was published on 3 December 1970, replicating the Consultative Document almost in its entirety, demonstrating how little notice the Government had taken of the opposition to the proposals.<sup>792</sup>

Owen Parsons' detailed response to the Consultative document, *The Tory Threat to the Unions*,<sup>793</sup> was quickly followed by a written response to the Bill, entitled *The Tory War on the Unions*.<sup>794</sup> He quoted Vic Feather, the TUC General Secretary, who summed up the proposals as 'unfair, unreasonable, impracticable and unworkable' and as a 'fundamental and retrogressive change in the whole basis of industrial relations in Britain'.<sup>795</sup> Parsons was adamant that the proposals had nothing whatever to do with industrial peace or preventing strikes.

The trade union immunity from prosecution or suit in tort provided by the *Trade Disputes Act 1906* was now under threat, despite the whole system of collective bargaining having grown up within this framework.<sup>796</sup> The motives of the Industrial Relations Bill could only be properly understood in the context of the Government's general social and economic policy, according to Parsons. Elected on a promise to reduce prices, they were nevertheless deliberately encouraging inflationary price rises through the imposition of taxes on imported food, cuts in farm subsidies and

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<sup>792</sup> *The Guardian*, 4 December 1970.

<sup>793</sup> Parsons, *The Tory Threat to the Unions*.

<sup>794</sup> O.H. Parsons, *The Tory War on the Unions*, (Labour Research Department), 1970.

<sup>795</sup> Cited in Parsons, *The Tory War on Unions*, p. 6.

<sup>796</sup> Parsons, *The Tory Threat to the Unions*, p. 13.

their mini-budget. They were attacking the social services, imposing new charges on the sick, cutting free school milk and raising the cost of school dinners,<sup>797</sup> cutting unemployment benefit and paving the way for large increases in council rents.<sup>798</sup> Only a strong trade union movement could effectively fight these social class policies and help to defend the interests of all sections of workers, and so, by cutting at the roots of the trade unions, the Government's intention to curb their ability to fight back was alarmingly obvious.

The Bill immediately provoked a renewed fierce and united reaction from the leaders of many trade unions, and from the Labour Party. Vic Feather called it a 'straitjacket' on the unions; Jack Jones said it was 'a vicious class-war attack on the trade union movement'; Lawrence Daly (NUM) described it as 'a Bill for scabs and non-unionists'; and Hugh Scanlon described it as 'the most iniquitous piece of legislation to be placed on the Statute Book'.<sup>799</sup> The Labour Party considered that the proposals were politically motivated. It described the Bill as 'a crude political weapon by which the Tories aim to strip the trade unions of rights won through years of struggle – and restore to the employers the privileges and prerogatives they have had to concede at the bargaining table over the past century'.<sup>800</sup>

Opposition to such restrictive legislation from trade unions and the Labour party was to be expected, but the *Tribune* reported on a much more unusual story which revealed that the very architect of the Bill, Stephen Abbot, had himself previously admitted that union legislation was wrong, underlining the apparent about-turn being

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<sup>797</sup> *The Times*, 14 December 1970.

<sup>798</sup> Parsons, *The Tory War on Unions*, p. 3.

<sup>799</sup> Labour Party Archive, Eric Heffer Papers, *Talking Points*, 31 Dec 1970, No.23, Published by the Labour Party, ESH 3/5/11, Labour History Archive and Study Centre [LHASC].

<sup>800</sup> *Ibid.*

executed by the Conservatives in their approach to industrial relations.<sup>801</sup>

Furthermore, in 1962 John Hare had told the Tory Party conference:

The legislative answers are not really as easy as they are made out to be. Ultimately they can well lead to the sanction of sending thousands of men to gaol if they refuse to obey the law.<sup>802</sup>

The claim that legislation would reduce strikes was also based on dubious evidence. Strike figures suggested that countries with similar legislation to that set out in the Bill had been unsuccessful in reducing the number of working days lost.<sup>803</sup> Despite the stark reality of these statistics, the Tories had relied on American legislation (*Taft-Hartley, Wagner and Landrum-Griffin Acts*) for many of the clauses in the Bill. Theodore Kheel, a leading US arbitrator, expressed puzzlement over the emphasis put upon emulating America in this regard, especially given the industrial problems that the USA was experiencing, with no sign that legislation had had any ameliorating effect.<sup>804</sup>

The Labour pamphlet, *Talking Points*, considered that the Industrial Relations Bill 'treats the spirit and the substance of the recommendations made by the [Donovan Commission] with contempt'. Donovan had argued that what was essential to good industrial relations was to retain the freedom to negotiate voluntary agreements. This

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<sup>801</sup>Labour Party Archive, Eric Heffer Papers, ESH 3/5-11, David Turner, 'Why union legislation is wrong – by the man who is preparing the new Tory Bill!', *Tribune*, 23 October 1970, 1, Labour History Archive and Study Centre [LHASC].

<sup>802</sup> *Tribune*, 23 October 1970, 2.

<sup>803</sup> *Ibid.*, 3.

<sup>804</sup> *The Times*, 2 November 1970.

is one thing the law cannot do; it cannot make people cooperate if they do not want to do so.<sup>805</sup>

Nevertheless, the Tory Government was attempting to destroy that very democratic bargaining process, and aiming to force binding agreements on both sides of industry through its proposed legislation. Although *In Place of Strife* did not accept all of the Donovan proposals unreservedly, this Bill went much further in rejecting outright much of the carefully considered advice of the Royal Commission. Donovan proposed that better bargaining at shop-floor level would channel militancy at this level into constructive bargaining, benefitting both workers and management, but the Industrial Relations Bill failed to acknowledge the solutions proposed by the Donovan Commission.

Vic Feather also underlined the futility of the legislative proposals, predicting that legislation such as this could only exacerbate the situation.<sup>806</sup> The TUC continued to make its objections to registration and other proposals in the Bill well known at rallies, at TUC Congress meetings, including a Special Congress, and in many other ways. It was objecting to the fundamental alteration of the basic pattern of trade union law, which was 'the product of the struggles of the labour movement over the past one hundred years or more'.<sup>807</sup> Although the law had intervened greatly in trade unions matters between 1901 and 1906, and again from 1927 to 1946 – periods in which Conservative governments had attempted to restrict trade union activity through legislation – twentieth century law had mainly kept a respectful distance from industrial relations. This was a position which had been largely satisfactory from the

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<sup>805</sup> Labour Party Archive, Eric Heffer Papers, *Talking Points*, 31 Dec 1970, No.23, Published by the Labour Party, ESH 3/5/11, Labour History Archive and Study Centre [LHASC], p. 4

<sup>806</sup> *The Times*, 24 November 1970.

<sup>807</sup> Labour Party Archive, Eric Heffer Papers, Labour Research, 'Tory Plan for the Unions', November 1970, ESH 3/5-11, Labour History Archive and Study Centre [LHASC].

trade union perspective, and trade unionists wanted to maintain the status quo. Nevertheless, the Government forged ahead with the legislation in a move that seemed to suggest that the Conservatives were finally reverting to form after the post-war consensus which had prevailed from 1945 to the 1960s.

### *5.8 The TUC fights back - the campaign*

The TUC's response to the lack of consultation and to the threat of the proposed legislation formed a major part of its work in 1970 and 1971. The 1971 Annual Congress Report detailed that campaign.<sup>808</sup> It had taken precedence over all the other work of the TUC that year, so serious were the implications for trade union autonomy. The campaign was also used to gain public support for the TUC proposals, and a costly newspaper campaign was launched.<sup>809</sup> All Trades Councils were advised of the purpose of the campaign and encouraged to organize events.<sup>810</sup>

There were two national days of protests. The first was on 12 January 1971 when all unions were asked to organize local meetings. Wilson, as leader of the Opposition, attended a meeting in the Albert Hall that day, and millions of trade unionists took part in the day's events. On 21 February there was a national demonstration in London attended by an estimated 140,000 people, said by Vic Feather to be the largest organized demonstration ever held in Britain.<sup>811</sup> He claimed that the marchers had 'given the answer to members of the Conservative Government who said that trade unionists supported the Bill.' It had never been more resolute in its resistance to attack, he said, and the unions refused to be shackled.<sup>812</sup> In a further show of the

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<sup>808</sup> *TUC Congress Report, 1971*, Modern Records Office, University of Warwick, (MSS.292/PUB/4/1/71).

<sup>809</sup> In the first two months of 1971, advertisements were placed in several national and local newspapers, including *The Guardian*, *The Times* and the *Morning Star* at a cost of £51,000.

<sup>810</sup> *TUC Congress Report, 1971*.

<sup>811</sup> *The Times*, 22 February 1971.

<sup>812</sup> *Ibid.*

strength and spread of opposition to the Bill, a petition was addressed to the House of Commons, asking for it to be withdrawn. The petition, with more than 549,000 signatures was presented to the House on 24 March 1971, the day before the third reading of the Bill.

A Special TUC Congress was held on 18 March 1971 in response to the Government's persistence in pressing ahead with the legislation. This was only the third time in the history of the TUC that such an event had been held, although it was less than two years since the Special Congress of June 1969 when the White Paper provisions had also come under scrutiny.<sup>813</sup> The purpose of this Congress was to formulate a plan of action should the Bill become law, and the TUC now had every expectation that it would, despite its petition of over half a million signatures. Following the Special Congress, the TUC made recommendations to all affiliated unions which would effectively ensure that no unions would register, and that all unions currently registered should de-register before the date of the commencement of the new Register, or change their rules to ensure that they were not required to register. This policy proved very successful and, 'as the numbers taking this action increased, so the pressure on the more reluctant unions grew.'<sup>814</sup>

Unions were also advised to insert a clause into existing and new collective agreements to the effect that the agreement was not intended to be legally binding, and by June 1971 unions reported that over 100 employers had agreed to such a clause, known by the acronym TINA LEA ('this is not a legally effective agreement'). Evidently, the employers themselves did not welcome, or could see no useful

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<sup>813</sup> TUC Special Congress Report, 1971, Modern Records Office, University of Warwick, (MSS.127/NU/5/5/5/53).

<sup>814</sup> J. Jones, *Union Man: An Autobiography*, (London, 1986), p. 231.



purpose to having agreements made into legally binding contracts.<sup>815</sup> They would also have been acutely aware of the outcome of the 1969 Ford litigation against the AEF.<sup>816</sup> Ford had attempted to insert penalty clauses into the collective agreement; these were agreed by the smaller unions whose vote carried the same weight as the much larger unions - who did not agree. Ford attempted to enforce the agreement in court and lost.<sup>817</sup> The judge, Justice Lane, confirmed that there was no intention to create legal relations in collective agreements, neither were union-negotiators acting as agents with authority to bind their members.<sup>818</sup> This was an aspect of the common law on contract that could not easily be overcome by legislation, providing an inconvenient truth for the Government, but the notion that union members could be agents of the union would arise again in one of the first cases to be decided in the newly-established statutory body, the National Industrial Relations Court (NIRC).<sup>819</sup>

The TUC was determined to put obstacles in the way of the successful implementation of the Bill. In a further move towards non-cooperation, affiliated unions were advised to inform their members to withdraw from the employed persons' panel on Industrial Tribunals, and not to serve on either the Commission for Industrial Relations (CIR) or the NIRC. Trade Union members on the CIR, including George Woodcock, its first chairman, resigned because of their opposition to the Bill. The Government would later complain that the unions had refused to take up an opportunity to become involved in these 'democratic' organizations, and this was one of the reasons why the new agencies would be unbalanced, but it was never a likely

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<sup>815</sup> Jones, *Union Man*, p. 230.

<sup>816</sup> Amalgamated Union of Engineering and Foundry Workers.

<sup>817</sup> *Ford Motor Co. v A.E.F. and Others* [1969] 2 QB 303.

<sup>818</sup> Lane J. referred to evidence given to the Donovan Commission by the TUC, the CBI and the Ministry of Labour, and the chapter on labour by Kahn-Freund in A. Flanders and H. Clegg (eds.), *The System of Industrial Relations in Great Britain*, (Oxford, 1954) in support of this conclusion.

<sup>819</sup> *Heatons Transport (St Helens) v TGWU*, [1973] AC 15, [1972] IRLR 25, [1972] 3 All ER 101. The NIRC was established under the *Industrial Relations Act 1971*.

scenario that union members would wish to become involved with agencies that could penalize trade unions and their members.

### *5.9 The Industrial Relations Bill – an analysis*

The Government's fundamental error was its failure to consider how deeply the whole trade union movement was entrenched in tradition. The proposals represented a radical departure from the unique ways in which trade unions went about their business, traditions that were rooted in far-reaching immunities, largely untouched by the rules of commercial contract, criminal law or economic torts.

Robert Carr had outlined the philosophy which underpinned the Bill:

The Bill is essentially about regulating the eternal tension between, on the one hand, the desire of the individual person and individual group for complete freedom of action and, on the other, the need of the community for a proper degree of order and discipline. Unfettered freedom destroys itself. Liberty cannot exist without order, or rights be long sustained without corresponding duties.<sup>820</sup>

Nevertheless, Carr seems to be overlooking the fact that unions already operated within a system of self-regulation and did not have 'complete freedom of action' – a phrase which suggests that unions were totally unregulated and anarchical.

In the preface to *Fair Deal at Work*, there had been an earlier indication of Conservative philosophy.<sup>821</sup>

This Report shows how ... within properly defined rules, individuals and organisations can be free to get on with the job without interference by the Government. It will form

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<sup>820</sup> *HC Deb. 14 December 1970, vol. 808 cc. 961-1076, c. 962.*

<sup>821</sup> *Fair Deal at Work: The Conservative Approach to Modern Industrial Relations*, Conservative Political Centre 1968.

the basis of Conservative policies to provide Britain's industrial life with a new framework of rights and obligations.

This philosophy, which deemed a framework of rules for industrial relations to be a necessity, represented a radical departure from accepted traditions. Those traditions within the law were of non-intervention and certain well-defined immunities provided by law. The Government's overriding objective was economic, while the specific objectives were to set national standards for good industrial relations; to safeguard those who conform to them; to protect individual rights in employment; and to provide new methods of resolving disputes over the conduct of industrial relations.<sup>822</sup> On the other hand, the unions claimed that the real motives were in fact to weaken the trade union movement as a whole and to undermine the collective bargaining system. Individual rights, such as the right not to join a union, were viewed as a means of undermining strong trade unionism, while the right not to be unfairly dismissed was considered to be underpinned by such weak remedies that the employer would be undeterred from dismissing an employee.

Davies and Freedland noted that the Heath Government took a crucially different approach to that of the previous Labour Government, 'with even more momentous consequences for the development of labour law'.<sup>823</sup> The justification for this, in their view, was the economic crisis, forcing the government 'to address questions which had been much less sharply posed in the easier conditions of ... the 1950s', and that governments were now forced to take much harder decisions in finding a compromise while trying to maintain the post-war commitments to full employment, free collective bargaining and to the welfare state. Since not all priorities could be

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<sup>822</sup> Industrial Relations Bill, *Consultative Document*, para. 10.

<sup>823</sup> P. Davies, M. Freedland, *Labour Legislation and Public Policy*, (Oxford, 1993), p. 276.

fully maintained, the Government had to decide on its priorities, and consider where the greatest risks lay, necessitating a high risk strategy. While Wilson had planned for the retention of a voluntarist system, Heath's intention was diametrically opposed to this, aiming to secure 'legally regulated collective industrial relations in the framework of a self-regulating industrial economy and a free labour market', as he worked towards taking the UK into the European Economic Community (EEC).<sup>824</sup> Nevertheless, this high risk strategy would lead to disastrous consequences for industrial relations and the economy.

John Wood had a more optimistic view of the Bill. He considered that the law would in future play a more central part in British industrial relations, and that clearer statements of rules and objectives would be a great gain, although the gain would not be in the courts, but through greater self-discipline. He thought that any legislation should balance the desirable with the attainable, although he warned that any new legal code would come under attack, resulting from a desire to protect interests.<sup>825</sup> *The Times* also cautioned that 'good legislation in a disturbed and sensitive area is best based on what people in general accept as reasonable ... otherwise the propounders will risk defiance and bring the law into disrepute'.<sup>826</sup> These warnings went unheeded, however, as the Conservative Government pressed ahead with its comprehensive legislative reform proposals.

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<sup>824</sup> *Ibid.*, p. 277.

<sup>825</sup> J. Wood, 'Whither Labour Law Now?' *BJIR*, 1 November 1970, 305-312.

<sup>826</sup> *The Times*, 3 June 1970.

### 5.10 *The Industrial Relations Act 1971*

The *Industrial Relations Act* came into force in August 1971. This event represented a watershed in the history of industrial relations when ‘the whole post-war voluntarist structure, indeed the whole post-1871 peacetime legal structure, was both formally and substantively replaced by the Industrial Relations Act, and was not subsequently reconstituted in its previous form.’<sup>827</sup> It was a legislative revolution which failed to make a positive impact at the time, but which has nevertheless brought about permanent changes to the way in which industrial relations are perceived and regulated.

Davies and Freedland argued that changes in the economy and in society in the post-war period meant that the union movement’s traditional goals necessitated legislative support.<sup>828</sup> While Kahn-Freund’s analysis was highly relevant and insightful in 1953 when first expounded, political and economic changes, combined with increased union growth and strength, led inevitably to the governments of the 1960s and 1970s to seek greater legislative intervention. Nevertheless, the provisions of the *Industrial Relations Act* opened up deep divisions both within the Conservative Party and the trade union movement.<sup>829</sup> Some Conservatives maintained that what was needed was ‘a conciliatory approach, not recourse to authoritarian measures’.<sup>830</sup> Nevertheless, Robert Taylor considered that the Conservative Government of 1970-1974 had more than enough justification for taking a firm line with ‘the seemingly intractable problem of trade union power.’<sup>831</sup>

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<sup>827</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 275.

<sup>828</sup> *Ibid.*, p. 58.

<sup>829</sup> Dorey, *The Conservative Party and the Trade Unions*, pp. 83-85.

<sup>830</sup> *Ibid.*, 85.

<sup>831</sup> Taylor, ‘The Heath Government and industrial relations: myth and reality’, in Ball, Seldon (eds), *The Heath Government*.

Indeed, Heath was forced to declare a State of Emergency in response to highly damaging strikes on no less than five occasions, and the annual number of working days lost never fell below 10 million between 1970 and 1973.

Although strikes were proliferating across the Western world by the end of the 1960s, in Britain the chief problem at the heart of the industrial strife was undoubtedly the *Industrial Relations Act*. Ever since the *Trade Disputes Act 1906*, British trade unions had been largely free from excessive political intervention, so that they had been able to develop their own relations with employers, negotiating directly over terms and conditions and dispute resolution.<sup>832</sup> Kahn-Freund argued that this method of 'collective bargaining' had led British unions to see it as preferable to all other forms of job regulation – legislation in particular.<sup>833</sup> It had certain benefits such as flexibility, and led to mutually satisfactory agreements between the employer and the workforce. It was, moreover, less externally reversible: 'What the State has not given the State cannot take away.'<sup>834</sup>

The *Industrial Relations Act 1971* effectively swept aside the method of collective bargaining that had worked more-or-less to the satisfaction of both sides of industry for decades. The long-running battle by the trade unions, first against the Bill and then against the Act, was not simply a bid to retain their own socialist ideals in direct opposition to the Conservatives' central concerns of supporting business and maintaining capitalist principles. What the unions feared most was their loss of

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<sup>832</sup> The English constitutional theorist A. V. Dicey argued that the Act conferred upon a trade union 'a freedom from civil liability for the commission of even the most heinous wrong by the union or its servant, and ... upon every trade union a privilege and protection not possessed by any other person or body of persons, whether corporate or incorporate... [this Act] makes a trade union a privileged body exempted from the ordinary law of the land.' A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century: Second Edition* (London, 1919), pp. xlv-xlvi.

<sup>833</sup> O. Kahn-Freund, 'The Rise and Fall of Collective Laissez-Faire' in W. McCarthy (ed.), *Legal Intervention in Industrial Relations*, (Oxford, 1992), pp. 5-6.

<sup>834</sup> O. Kahn-Freund, 'Labour Law' in M. Ginsberg (ed.), *Law and Opinion in England in the 20<sup>th</sup> century*, (London, 1959), p. 244.

autonomy and their liberty to organize and act within existing legal boundaries that gave them certain freedoms from suit in tort and allowed them to operate in a way that best protected the interests of their members without undue control from government. Put at its most extreme, the trade union movement was fighting *for* freedom and *against* totalitarianism, a fight which would over the next few years divide Parliament, drive a wedge between the TUC and the very trade unions it represented, and create a widening gulf between the unions and their members.

#### 5.11 Legislation - the way forward?

To take such a contrary position raises the inevitable question of why the Conservatives deemed it necessary to involve such radical tactics to resolve the trade union 'problem'. One suggestion is that both Donovan and *In Place of Strife* failed to offer a workable solution, leaving only one possible option to the Government. Hawkins advanced another theory for the change in direction.<sup>835</sup> He argued that the Donovan analysis represented a far more realistic basis for change in industrial relations than the Conservative Government's Consultative Document which preceded the *Industrial Relations Act*, but acknowledged that the contemporary debate confused two distinct problems. These were the need to devise an effective *incentive* to encourage employers and trade unions to accept reform in industrial relations, and the need to devise a system of *sanctions* to discourage the abuse of industrial bargaining power. While Donovan's strategy was to increase the economic efficiency of collective bargaining through reform of its institutions, the 'implied aim of the Conservative strategy is the achievement of a

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<sup>835</sup> K. Hawkins, 'Industrial Relations Reform: some neglected issues', *Management Decision*, Vol. 4, Issue 4, 1970, 5-7.

greater degree of industrial discipline by the threat and use of legal sanctions,<sup>836</sup> thus pushing the trade unions into a position where they would *have* to regulate their members' behaviour. Keith Hawkins described this objective as 'misconceived and unrealistic', but recognized the reasons for the strategy, which he attributed to the preoccupation of all governments with inflation, strikes and economic growth.<sup>837</sup> Maguire likewise conceded that economic changes such as the 'developing government incomes policy and the impact of the oil crisis after 1972' heightened the already inevitable move towards major politicized disputes and direct government-union confrontation.<sup>838</sup>

Dorey, meanwhile, attributed this change of direction within the Party to the inclusion of newer, younger members, bent on 'shaking up' the Party leadership which was seen to be merely drifting with the tide.<sup>839</sup> As evidence of this search for justification to move away from 'paternal socialism', Dorey cited an editorial in an in-house newsletter, *Industrial Outlook*, which declared: 'the hard times endured by millions in the twenties and thirties is a poor and inadequate basis for a system of industrial relations relevant to the needs of today and tomorrow. But memories die hard.'<sup>840</sup>

The view that collective *laissez-faire* was an outdated concept, also reflected in Shonfield's Note of Reservation, began to take on a wider appeal within the Conservative Party, particularly following its 1964 General Election defeat, and more radical policies were called for. The shift to the right was beginning to gather

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<sup>836</sup> *Ibid.*

<sup>837</sup> *Ibid.*

<sup>838</sup> P. Maguire, 'Labour and the Law: the politics of British Industrial Relations, 1945-79, in C. Wrigley (ed.), *A History of British Industrial Relations 1939-1979: Industrial Relations in a Declining Economy*, (Cheltenham, 1996), p. 58.

<sup>839</sup> Dorey, *The Conservative Party and the Trade Unions*, p. 63.

<sup>840</sup> *Ibid.*, p. 64.



momentum, although to the evident dismay of many older, diehard Conservatives.<sup>841</sup> The Policy Group on Trade Union Law and Practice had among its members both Geoffrey Howe<sup>842</sup> and Sir John Hobson, both barristers, so it was no coincidence that the proposals in their subsequent report had committed the Party to a policy of legalism.<sup>843</sup> Nevertheless, ‘they had accepted that any legislative changes had to be enforceable in practice, otherwise both the law and a (future) Conservative government would be brought into disrepute.’<sup>844</sup>

*Fair Deal at Work* had embodied the conviction that it was necessary to take control over industrial society in order to maintain political credibility, and that this was best achieved by a substantial increase in legal intervention. In it, the authors stated: ‘We have seen our main task as being to concentrate on those problems which we believe can be alleviated by direct government action through legislation and other means.’<sup>845</sup> When Robert Carr introduced the Consultative Document on the *Industrial Relations Act*, he spoke of his conviction that comprehensive legislation was the only way forward, saying, ‘every other industrial country but Britain has already found, both in theory and in practice, that a comprehensive system of industrial law is useful and, indeed, necessary.’<sup>846</sup> The Donovan Report had been criticized for failing to give serious consideration to economic policy, but this factor was now being used to justify the major attack on trade union freedom in the *Industrial Relations Act*, despite there being little credible evidence to support such measures.

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<sup>841</sup> *Ibid.*, p. 65.

<sup>842</sup> Geoffrey Howe, as Solicitor General, was responsible for drafting the *Industrial Relations Act*.

<sup>843</sup> Bodleian, *Report of the Policy Group on Industrial Relations*, PG/20/66/58; (CRD 3.17.2).

<sup>844</sup> Dorey, *The Conservative Party and the Trade Unions*, p. 68.

<sup>845</sup> *Fair Deal at Work*, p. 11.

<sup>846</sup> HC Deb., 26 November 1970, Vol. 807, c. 633.

## 5.12 Registration and Strikes

The requirement for unions to register was one of the central planks of the Act, but the TUC advice was to refuse to register.<sup>847</sup> Engleman and Thomson, both economists, offered some reasons for the TUC's choice of non-registration as a key strategy.<sup>848</sup> One was the threat of a pyramidal structure with power at the top, rather than the developing theory of power vested in the rank-and-file members; another was a dislike of the concept of a 'state licence' as a basis for union rights. There was also a perception that registration would be tantamount to accepting the principles of the Act.

Despite the very powerful reasons underpinning non-registration, the concomitant risks led to a situation where even the TUC leaders failed to unite over the issue of registration of the unions.<sup>849</sup> Jack Cooper, the TUC President and leader of Britain's third largest union, the GMW,<sup>850</sup> said he would advise his union to register under the Act, in defiance of TUC policy.<sup>851</sup> There was also a difference in attitude between large and small unions, with the smaller ones being reluctant to risk non-registration, even though the TUC had referred to this as 'an easy but deceptive solution'.<sup>852</sup> Nevertheless, Congress decided to *instruct* unions not to register, on pain of suspension, indicating a hardening of attitudes since the earlier Special Congress

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<sup>847</sup> *Industrial Relations Act*, Part IV, ss. 61-95.

<sup>848</sup> S.R. Engleman, A.W.J. Thomson, 'Experience under the British Industrial Relations Act', *Industrial Relations*, Vol. 13, Issue 2, May 1974, 134.

<sup>849</sup> *The Observer*, 5 September 1971.

<sup>850</sup> General and Municipal Workers Union.

<sup>851</sup> *The Observer*, 5 September 1971.

<sup>852</sup> *Ibid.*

when the TUC had decided to simply *recommend* that affiliated unions should not register.<sup>853</sup>

There were severe financial risks for those unions which did not register. The effects of registration were that the union would become a body corporate, capable of suing and being sued;<sup>854</sup> its rules would be scrutinized by the Registrar to ensure compliance with s.65 of the Act on the principles as to conduct,<sup>855</sup> and failure to perform duties imposed on it under Part IV would render the union guilty of an offence, punishable by a fine.<sup>856</sup> Any non-registered unions would lose both protection against certain legal actions and the tax-exempt status which would have been a benefit of registration in the past. Both official and unofficial strikes by unregistered unions would be an unfair industrial practice. Yet, despite the potential benefits of registration, many unions followed TUC advice and refused to register.

The President of the NIRC himself, with the benefit of hindsight, later criticized the assumptions on which the registration requirement was based, despite having been instrumental in the drafting of the Act:

The basic assumption seems to have been that the advantages of registration were such that all major unions would register ... In fact the registration provisions have been largely counter-productive.<sup>857</sup>

Although the overall intention of the Act was to ensure that strikes were reduced, 1972 began with a seven-week miners' strike, the first official one since 1926,

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<sup>853</sup> TUC Annual Congress Report, 1971, Modern Records Centre, University of Warwick, (MSS.292/PUB/4/1/71).

<sup>854</sup> *Industrial Relations Act*, Part IV, s. 74.

<sup>855</sup> *Ibid.*, s. 75.

<sup>856</sup> *Ibid.*, s. 91.

<sup>857</sup> NA PREM 15/1678, 'Industrial Relations Act 1971. National Industrial Relations Court', Memorandum written by Sir John Donaldson in 1973, included in the Prime Minister's Private Office papers.

leading to the declaration of a State of Emergency.<sup>858</sup> Car-workers, train drivers, steel workers and dockers all took part in strike action, and 1972 saw the highest number of strike days since 1926. A further State of Emergency was called in August 1972 during the dockers' strike. The strategy of the Act had been to make all unofficial strikes subject to legal action by the employer, but, 'as of July 1972, the most generous assessment that can be made of this strategy for strike control is that its success is doubtful.'<sup>859</sup> Although the strikes were not a reaction to the Act, neither had the Act worked effectively to prevent serious industrial action.

Dorey noted that the response of the Government to these events was to instigate a major policy U-turn, even though this course of action caused a split within the Conservative Party, with the neo-liberals prompted to form the breakaway Selston Group.<sup>860</sup> The actions of the Tory leadership caused consternation within the Party, and led to 'rumblings of discontent in the Tory ranks, especially among the young.'<sup>861</sup>

Nonetheless, in the face of a lengthy miners' strike over pay in early 1972, Heath was already preparing to engage in talks with the trade union leaders and employers to find a better solution. Indeed, Peter Walker, a Cabinet Minister, 'was talking of a partnership between the government, the trade unions, and the employers' representatives, which would therefore establish a "trialogue".'<sup>862</sup> Nevertheless, Robert Taylor questioned how such a supposedly well-meaning and sympathetic conciliator as Edward Heath could preside over a government that had become a

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<sup>858</sup> *The Times*, 10 February 1972.

<sup>859</sup> J.W. Garbarino, 'The British Experiment with Industrial Relations Reform', *ILR Review*, Vol. 26, No. 2, Jan. 1973, 793-803 at 797.

<sup>860</sup> Dorey, *The Conservative Party and the Trade Unions*, p. 100.

<sup>861</sup> *The Times*, 8 October 1973.

<sup>862</sup> Dorey, *The Conservative Party and the Trade Unions*, p. 100.

byword for industrial confrontation.<sup>863</sup> His answer was that union leaders had come to see Heath's attitude, not as far-sighted and magnanimous, but as a sign of weakness. In addition, 'once they had forged a "social contract" with the opposition Labour Party in 1972, an agreement to work in partnership and cooperation with a Labour government, there was no obvious reason why the TUC should want to sign a comprehensive agreement with Heath, especially if such an achievement helped to secure him a second consecutive term in office.'<sup>864</sup> It is further suggested that Heath's comparative lack of knowledge of the law<sup>865</sup> and relative inexperience as Party leader in 1965 when the proposals were first formulated by the Policy Group<sup>866</sup> may have contributed to the position in which he now found himself. He was being held responsible for legislation, the consequences of which he could not fully appreciate. Davies and Freedland further suggest that while Wilson's government sought modernization through planning and intervention, Heath proposed 'progressive disengagement of the state from the management of the industrial economy', of which legislative regulation of collective bargaining and of industrial relations was an essential part.<sup>867</sup> Whatever the motivations and reasons for the intransigence of the Heath Government, however, it was quickly becoming clear that its legislative strategy was not working to reduce strikes.

Whilst numerous strikes were happening in all areas of industry, and the number of strike days was rising exponentially, trade unions continued to boycott membership of the various agencies set up to administer the law, thereby showing their contempt for the new regime. This led to the unfortunate collapse of the traditional tripartite

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<sup>863</sup> Taylor, 'The Heath Government and Industrial Relations: myth and reality', pp. 163-64.

<sup>864</sup> *Ibid.*, 163.

<sup>865</sup> Heath studied politics, philosophy and economics at Oxford, and gave up the opportunity to go to the Bar in favour of joining the Civil Service.

<sup>866</sup> Heath was elected Party leader in 1965 at the age of 49.

<sup>867</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 277.

nature of the new institutions, including the NIRC which should have included nine lay members.<sup>868</sup> Such methods of working in partnership had been attempted before and would be again, and the arguments for and against such methods are discussed below in Chapter 6. Nevertheless, to be successful, the government would have to regain the trust of the unions. Meanwhile, employers were also reluctant to use the new provisions, afraid that to do so might lead to a deterioration of their relations with unions and workers. It seemed that no-one on either side of industry viewed this new legislation as the solution to industrial problems, while cooperative mechanisms which had the potential to regulate relations between the parties were being sidelined.

### *5.13 The National Industrial Relations Court, Case Law and Martyrdom*

The National Industrial Relations Court (NIRC) was just one of several agencies which were set up for the first time or given new roles under the Act, since extensive new machinery was needed to administer the legislation. In this way the Act contributed towards a more comprehensive legal framework than had existed hitherto. However, the simultaneous introduction of so many new regulatory and judicial authorities was again a departure from previous established practice, and the failure to build on past experience appears to be an unwise and ill-informed manoeuvre.

The Registrar of Trade Unions and Employer Associations was to grant registration once the rules of the collective bodies were approved. The former Industrial Court became the Industrial Arbitration Board with much the same jurisdiction as previously, having an arbitral function. The NIRC was to act as a branch of the High

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<sup>868</sup> This also necessitated amending legislation relating to composition of tribunals, namely the Industrial Tribunals Act (England and Wales) (Amendment) Regulations 1971 S.I. 1971 No. 1660 (No. 1661 for Scotland).

Court, under the presidency of Sir John Donaldson. It was to act as a court of first instance for collective decisions, and as a court of appeal from industrial tribunals, and the Commission on Industrial Relations (CIR) was to act as an investigative agency for the NIRC. This court was to prove controversial and short-lived, presiding over some of the most memorable cases involving trade unionists ever heard, creating martyrs out of striking workers.

Indeed, Keith Joseph had written a paper in 1966 for the Policy Group on Trade Union Law and Practice,<sup>869</sup> responding to the 'virtually exclusive focus by the group on the problem of trade union power'.<sup>870</sup> In it, he showed considerable foresight when he warned of the danger of allowing the unions to pose as political victims or martyrs in a class war. In early 1972 a series of legal cases began, brought by employers and individuals against dock workers in Britain, when the President's commitment to making his NIRC as effective as possible was demonstrated to devastating effect. The NIRC eventually ordered five dock workers to be imprisoned for contempt, thereby creating just the position of martyrdom among trade unions which Joseph had warned against.<sup>871</sup>

The case began on 23 March 1972, when the haulage company, Heaton's Transport Ltd, brought an action under section 96 of the Act in respect of the 'blacking' of its container lorries by TGWU shop stewards at Mersey Docks. Section 96 made it an 'unfair industrial practice' for an unregistered union to induce a breach of contract in furtherance of an industrial dispute. The NIRC granted an injunction against the

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<sup>869</sup> Bodleian, 'Industrial Relations Policy: Matters for Further Consideration', memo by Sir Keith Joseph, for Policy Group on Trade Union Law and Practices, 1 January 1966, CRD/3/17/20, (PG/20/65/60).

<sup>870</sup> Taylor, 'The Heath Government and industrial relations: myth and reality', in Ball, Seldon (eds), *The Heath Government*, p. 165.

<sup>871</sup> For analysis of the events leading up to and including the imprisonment of the 'Pentonville Five', see: F. Lindop, 'The Dockers and the 1971 Industrial Relations Act, Part 1: Shop Stewards and Containerization', *Historical Studies in Industrial Relations*, 5 Spring 1998, 33-72.

TGWU on the ground that shop stewards were in fact *agents* of the union, and therefore acting on the implicit authority of the union.<sup>872</sup>

The NIRC ordered the union to refrain from blacking and, although for reasons of policy the union did not appear before the Court,<sup>873</sup> it did order its local officers to advise the shop stewards to comply with the order. The advice was rejected, however, and just six days after the order had been issued by the NIRC, it found the union to be in wilful contempt of court. In the face of continued blacking, the NIRC imposed fines and a costs order on the TGWU for non-compliance with the orders. It also found the union liable to the firms for unfair industrial practices.

There followed an appeal to the Court of Appeal against the findings of wilful contempt and of liability. This Court allowed the appeals, deciding that the requisite 'directing mind' was absent. Lord Denning MR found that the shop stewards had been acting as representatives of their work group, and not as agents of the union as the NIRC had found. He was unhappy with the approach of the NIRC, which appeared to subordinate the common law to statutory policies about union registration.<sup>874</sup> Registration was, after all, not compulsory, and Denning seems to have taken a common sense, purposive approach to the situation, while the NIRC's view was based on a narrow, restrictive interpretation of the law. Had the NIRC taken a wider view of the law, and a narrower view of its own significance, a less inflammatory approach may have ensued.

However, on 12 June, a further dispute arose between TGWU members and men who were employed at the Chobham Farm container depot in East London. Messrs.

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<sup>872</sup> *Heaton's Transport (St. Helens) Ltd. v Transport and General Workers Union*, NIRC [1972], ICR, 285.

<sup>873</sup> It was TUC and TGWU policy to operate a total boycott of the Court and all other institutions created by the Act.

<sup>874</sup> *Heaton's Transport (St. Helens) Ltd. v Transport and General Workers Union*, CA [1972] ICR at 344 D-E.



Churchman and Cartwright of the London (East) ICD Ltd. Manual Staff Association applied for and obtained an injunction against three members of the TGWU, to prevent further picketing of the depot. The men did not comply with the injunction, thereby placing themselves in contempt of court, and the NIRC did not hesitate to sign warrants for their arrest and detention. An appeal was made to the Court of Appeal.<sup>875</sup> Since the individuals, Bernard Steer, Vic Turner and Alan Williams would not appear before the court, their case was taken up by the Official Solicitor, represented by Peter Pain QC. His argument - that there was insufficient evidence to prove violation of the injunction by the three men - was accepted by the Court, and they were denied the opportunity to become martyrs in the cause of resistance to the Act and the NIRC.<sup>876</sup> The order of the NIRC was reversed, the Court of Appeal having been called upon once again to ameliorate the harshness demonstrated by the Industrial Court. The Court of Appeal delivered a stern reminder to the NIRC that the grounds for depriving contemnors of their liberty must be as strictly proved there as in the High Court. Although Donaldson was an experienced judge, his determination to make the new court work, and to command respect from those it was dealing with, may have led him to be unduly harsh in applying the letter of the law with little regard for achieving industrial peace.

A further complainant, the Midland Cold Storage Company, had also been 'blacked' by members of the TGWU. In the period between the Heaton's case being heard in the Court of Appeal, but before a further appeal to the House of Lords, the Midland case was heard by the NIRC.<sup>877</sup> Orders against five of the respondents, including the unrepentant Steer and Turner, were granted on the grounds that they had taken part

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<sup>875</sup> Churchman and Others v Joint Shop Stewards' Committee of the Workers of the Port of London and Others, *Times Law Report*, 12 June 1972.

<sup>876</sup> *The Times*, 20 June 1972.

<sup>877</sup> Midland Cold Storage Ltd. v Turner [1972] ICR 230.

in the picket line. The picketing continued, however, and Midland sought an injunction from the High Court, which was refused.<sup>878</sup> Midland then applied to the NIRC for enforcement of its order and the Official Solicitor attended on the respondents' behalf as *amicus curiae* [friend of the court]. This time, five of the respondents were committed to Pentonville prison, including both Steer and Turner. The outcry from the TUC, trade unions and the public was deafening, with a huge proliferation of strikes and the striking workers marching on Pentonville prison.

After six days the Official Solicitor applied for their release, which was granted because, that very morning, the House of Lords had held in the *Heatons'* case that it was the *union* which was liable and accountable rather than individual members, and the primary method of enforcement should be against the funds of the union and not against individuals.<sup>879</sup> Although this may have been good news for the men being held in prison, it was devastating news for the unions who, despite Denning's pragmatic approach, decided that the unions should be liable for the acts of their members, thereby shifting liability to those who could be punished through financial means rather than imprisonment.

The men, who had become known popularly as 'The Pentonville Five', were released on 26 July 1972, when the combined appeal was made to the House of Lords by the complainants, Heatons, together with Craddock Brothers and Panalpina Services; the decisions made by the Court of Appeal in favour of the union were reversed and this time went against the TGWU.<sup>880</sup> The House of Lords held, in a rare unanimous and much expedited judgment, that the shop stewards had implied authority (from

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<sup>878</sup> *Midland Cold Storage Ltd. v Steer and Others*, 17 July 1972, *Managerial Law*, Vol. 13, Issue 5, 286-307.

<sup>879</sup> J. M. Evans, 'Notes of Cases: When is a Rule not a Rule', *Modern Law Review*, Vol. 36, Issue 1, 73-99.

<sup>880</sup> *Heaton's Transport (St. Helens) Ltd. v Transport and General Workers Union; Craddock Brothers v Same, Panalpina Services Ltd. Panalpina (Northern) Ltd. v Same*, [1972] 3 All ER 101, [1972] ICR 308, HL.

the union) to take industrial action, thereby rendering the union directly liable. The imprisonment of the Pentonville Five effectively turned them into martyrs for the cause of fighting the *Industrial Relations Act*, a situation previously feared by Keith Joseph.<sup>881</sup>

The affair of the *Pentonville Five* was a notable episode in the history of British industrial relations, epitomising the long-running tensions between trade union rights and the law and between union leaderships and their rank and file.<sup>882</sup>

'The Government's determination to confront the labour movement with an unpopular Industrial Relations Act had been matched by a determination to resist the kind of law and order that the Act entailed.'<sup>883</sup>

The resolution of the dispute in the House of Lords was described by Kahn-Freund as 'the most important case decided under the Act'.<sup>884</sup> Engleman and Thomson summed up the situation by observing that, 'Whether or not the House of Lords had the better of the argument in law, the Court of Appeal surely had the better argument in fact.'<sup>885</sup> 'There can be little doubt that the Midland Cold Storage case was the Armageddon of the Act as far as the extensive use of penal sanctions against individuals was concerned.'<sup>886</sup>

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<sup>881</sup> Bodleian, 'Relations Policy: Matters for Further Consideration', memo by Sir Keith Joseph, for Policy Group on Trade Union Law and Practices, 1 January 1966, CRD/3/17/20, PG/20/65/60, cited in Ball, Seldon, *The Heath Government*, p. 166.

<sup>882</sup> <<http://www2.warwick.ac.uk/services/library/mrc/explorefurther/speakingarchives/pentonville/>> Accessed 20 April 2015.

<sup>883</sup> *The Observer*, 30 July 1972.

<sup>884</sup> O. Kahn-Freund, 'The Industrial Relations Act 1971 – Some retrospective reflections', *Industrial Law Journal*, Vol. 3, Issue 1, 186-7.

<sup>885</sup> S.R. Engleman, A.W.J. Thomson, 'Experience under the British Industrial Relations Act', *Industrial Relations*, Vol. 13, Issue 2, 141.

<sup>886</sup> *Ibid.*, 139.

Lord Devlin argued that such matters should not be for the courts at all, that it was an administrative, political issue.<sup>887</sup> He had concerns about the use of contempt of court, saying that he wished that it had never been introduced at all, and went on to say that:

There is a distinction ... between making a law which judges have to interpret and apply, and between putting the court in the position as if it were identifying itself with the law ... it's a political matter and it should be kept as a political matter.

Devlin seemed to suggest that the Government was hiding behind the courts, leaving them to administer what it knew was going to be an unpopular law with trade unions by appearing to make it a judicial rather than a political matter.

There was little doubt that the divisions within the court system may not have come about if the NIRC had not approached its role with such misguided enthusiasm. 'The establishment of a new court, the delimiting of its jurisdiction and the definition of its structures constitute a difficult task,' thought Peter Pain, the barrister who had represented *Steer et al* in the Chobham Farm case.<sup>888</sup> He had concerns that the complexity of this particular task, which would have been best suited to careful consideration in the committee stage of the Bill, was, like the rest of the provisions, debated before the whole House. 'Criticism by informed minds who are by no means all friendly to a Bill serves an excellent purpose in helping Parliament to avoid pitfalls.'<sup>889</sup>

The concept of an Industrial Relations Court was badly managed. The outcome of the Heaton's and Craddock cases was not so much a failure to apply the law

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<sup>887</sup> Transcript of BBC Panorama Programme, interview with Lord Devlin, 24 July 1972, Bodleian, Castle Papers, MS. Castle 284.

<sup>888</sup> P. Pain, 'The Industrial Court – a missed Opportunity', *Industrial Law Journal*, Vol. 1, Issue 1, 1972, 5.

<sup>889</sup> *Ibid.*

correctly, but rather an over-enthusiasm by the NIRC for the letter of the law and an absence of good sense – pitfalls that may have been avoided if the potential difficulties involved in forming a new court had been more carefully considered. Such detailed analysis had failed to materialize, however, since the debate of the Bill in the House of Commons had been heated and angry, and in the end was cut short by the guillotine procedure,<sup>890</sup> so that any careful consideration of the purpose, the role and the powers of the new NIRC, had simply not taken place.

The Conservative Government should also have kept in mind that unions also had an innate distrust of courts, for they had been the unfortunate victims of a number of judicial decisions. *Rookes v Barnard*<sup>891</sup> and the *Taff Vale Railway*<sup>892</sup> cases are just two examples of such cases which suggested that the courts held a long-standing opinion of trade unions as bodies to be carefully controlled. Nevertheless, a less gung-ho attitude on the part of the Government, with the gradual introduction of legislative measures and a court with fewer punitive measures at its disposal (or at least a greater reluctance to use them) could have led to a very different outcome. Peter Pain thought it a 'great pity' that the establishment of the court was linked with so many other measures that were the cause of bitter resentment by the trade union movement. 'There is a serious risk that the National Industrial Relations Court will be destroyed not by any defects of its own, but by the unpopularity of the law which it has to apply.'<sup>893</sup> Pain also pointed out that any new court should have the boundary lines of its jurisdiction firmly drawn, but this was not done. He concluded that, 'so far

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<sup>890</sup> This is a House of Commons procedure, also known as an Allocation of Time Motion, which restricts the amount of time set aside for a debate.

<sup>891</sup> [1964] UKHL 1.

<sup>892</sup> *Taff Vale Railway Co. v Amalgamated Society of Railway Servants* [1901] UKHL 1.

<sup>893</sup> Pain, 'The Industrial Court – a missed Opportunity', 6.

as the Court is concerned, the Act is hasty, ill-considered legislation' and 'the transfer of jurisdiction to the new court has been ill-conceived.'<sup>894</sup>

Wedderburn also expressed concern over the extent of the NIRC's jurisdiction. He noted that, by making the NIRC the keystone of its structure, the *Industrial Relations Act* put the courts and judges at the centre of industrial conflicts, which he considered to be a 'reflection of the legislature responding to the middle-class demand for more "Law and Order" in industrial life'.<sup>895</sup> Nevertheless, the move towards greater judicial interference in the affairs of trade unions had already taken a serious step forward in the House of Lords' decision in *Rookes v Barnard*, and the creation of the NIRC both reflected and gave added impetus to that trend. Yet, the Government should have been aware of the outcry from the unions caused by the *Rookes* decision, and the subsequent legislation passed by the Labour Government to restore trade union immunity.<sup>896</sup> This fact alone should have served as a warning that trade unions would not readily accept interference with their long-established rights.

The role that the NIRC was forced to play, while coming into existence alongside a raft of unpopular legislative measures, denied the court the opportunity of becoming a genuine arbiter of collective disputes, and served only to drive a wedge between unions and their shop stewards and between the unions themselves. In the later case of *Con Mech Engineers v AUEW 1973*,<sup>897</sup> a dispute arose between the company and the defendant union following a refusal by the company of a request by some of its employees to recognize the AUEW for bargaining purposes. The

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<sup>894</sup> *Ibid.*, 11.

<sup>895</sup> K.W. Wedderburn, 'Labour Law and Labour Relations in Britain', *BJIR*, 281.

<sup>896</sup> *Trade Disputes Act 1965*.

<sup>897</sup> [1973] ICR 620.

NIRC decided that the unregistered union was in contempt for failing to cease strike action when ordered to, and directed sequestrators to seize the union's funds, fining the union £75,000 out of those [political] funds. This action effectively treated the matter as one of 'criminal contempt', the NIRC becoming the prime mover in the matter, while that role would normally be taken by the complainant in a civil procedure.

The NIRC, with all its anomalies and difficulties associated with being a new court with poorly constructed procedures and principles, was finally disbanded through the Labour Government's *Trade Union and Labour Relations Act 1974* as hastily as it had been established,. The adverse influence which the experience of the *Industrial Relations Act* and its principal organ of enforcement had each exerted on the opinion of the law in industrial relations required immediate and decisive action. Nevertheless, it would also act as a valuable lesson to a future government on how to bring about more effective control of the unions through legislation.

#### *5.14 The Beginning of the End*

On 28 June 1972 the TUC General Council decided to request a meeting with the Prime Minister to discuss either repeal or suspension of the Act. They met on 4 July at Downing Street, the same day that questions were being asked in the House of Commons about the operation of the Act. 'The General Council stated that, in their view, the Government was not appreciating the gravity of the present situation. Industrial relations in the UK were at a very low ebb, and the Act had significantly contributed to the deterioration of the situation.'<sup>898</sup> Heath said that the Act would work more effectively if the unions would play an effective role in its procedures, for

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<sup>898</sup> *TUC Annual Congress Report, 1972*, 102, Modern Records Office, University of Warwick, (MSS.292/PUB/4/1/72).

example by serving on the NIRC and the Industrial tribunals.<sup>899</sup> He was, in effect, blaming the TUC's policy of non-compliance for the problems. He also thought that the main problem behind the major strikes was the demand for higher wages rather than the Act, again putting the blame firmly on workers and the unions, and accepting no responsibility for the industrial turmoil in the country. Heath would not consider the TUC's request to repeal or suspend the Act.

No progress was made in the talks, and on 26 July the TUC called for a one-day stoppage to take place on 31 July, with a demonstration by all affiliated unions, action that was narrowly averted by the House of Lords judgment which resulted in the immediate release of the 'Pentonville Five'. Although the judgment confirmed that individuals were not the main target of the Act, it was nevertheless a pyrrhic victory, since restraints on trade unions were tightened and the Act remained intact.

In 1972 the TUC Annual Congress focused on the events that had followed on from the implementation of the *Industrial Relations Act*. Nevertheless, the tone of the Congress Report was far less militant than the previous year when there had been a massive campaign to 'Kill the Bill' and prevent it becoming law. The major concern now was that unions had been fined and, worse, their assets sequestrated which threatened their very existence.

A Joint Statement was prepared by the liaison committee of the TUC, the National Executive Committee of the Labour Party and the Parliamentary Labour Party.<sup>900</sup> It reiterated its continuing opposition to the Act and blamed the country's many ills on it – the highest unemployment since the war, prices at an all-time high and still rising. The committee called for the immediate repeal of the Act, to be replaced with

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<sup>899</sup> *Ibid.*, 103.

<sup>900</sup> *Ibid.*, 105.



voluntary reform; in the alternative, the next Labour government would repeal the Act in its first session. It also recommended the setting up of CAS – a Conciliation and Arbitration Service, recognizing the valuable contribution such a service could make to resolving disputes before they had a chance to escalate. The CBI was also agreed on this proposal for a non-governmental arbitration body.<sup>901</sup> The levels of agreement between politicians, trade unions and even employers, although tentative, were the first green shoots of recovery in a country reeling from the scars brought on by the intransigence of these parties in the last two years.

Richard Taylor argued that the dramatic events of July 1972 had in fact ‘fatally discredited the Industrial Relations Act’, becoming a ‘lingering embarrassment for the government which only a few months earlier had regarded the measure as vital to the modernization of the economy.’<sup>902</sup> It is hard to disagree with this view in the light of the failure of the Act to bring about industrial peace and tackle union power, as Edward Heath had pledged to do. The debates, the strikes and the unrest in the country all rumbled on throughout 1973. *The Times* leader noted:

It has been evident for some time that the Industrial Relations Act was not working in the way it was intended. This is not to accept the argument of the TUC that the Act should be repealed in its entirety, or “put on ice”: rather, it is to recognize the difficulty in legislating for relations between management and men.<sup>903</sup>

The Labour Party won a narrow majority of seats in the 1974 General Election and stood by its pre-election promise to the unions, repealing the *Industrial Relations Act* and scrapping the NIRC. The Bill containing these proposals was introduced on Labour Day – 1 May 1974 – and only those aspects of the Act which protected

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<sup>901</sup> *Ibid.*, 108.

<sup>902</sup> R. Taylor, *The Trade Union Question in Politics, Government and Unions since 1945*, (Oxford, 1993), p. 202.

<sup>903</sup> *The Times*, 6 June 1973.

employees against unfair dismissal were to be carried forward to the new legislation.<sup>904</sup> No doubt in a bid to address the previously ‘unfair industrial practice’ of pickets trying to stop vehicles and attempting to persuade the drivers not to enter strike-bound premises, such as was seen in the Heaton’s, Craddock’s and Panalpina cases, there was a provision in the new Bill to make this a legal *right*. The need for unions to register was also to be abolished and replaced with a system of certification with friendly societies.

Michael Foot, the new Employment Secretary, was unapologetic about the speed at which the new legislation was to be introduced to Parliament, saying that it was designed to restore the pre-1971 position rather than make a new radical departure.<sup>905</sup> Mr David Atkinson MP [Conservative] openly admitted that ‘virtually every trade unionist in the country will celebrate today as a great landmark in our history.’<sup>906</sup> Mr Pardoe MP [Liberal] assured Mr Foot that he would have the support of the Liberal benches ‘in the repeal of this divisive Act’.<sup>907</sup> After years of deep division within the country and within the trade union movement, the move to repeal the divisive *Industrial Relations Act* was to be the first step along the road to healing some of the rifts that had threatened the very unity of the country.

Nevertheless, the TGWU, as a major player in the disputes surrounding the *Industrial Relations Act*, had benefited greatly from the controversy surrounding the Act, with many joining this and other unions. A quarter of a million new members joined the TGWU in 1972, taking its total membership to precisely 1,746,234.<sup>908</sup> Jack Jones wrote of a ‘sense of crusade [which] prevailed throughout the union, and non-

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<sup>904</sup> *The Guardian*, 23 March 1974.

<sup>905</sup> *HC Deb.*, 22 March 1974, vol. 870, cc. 1479-85.

<sup>906</sup> *Ibid.*, c.1481.

<sup>907</sup> *Ibid.*, c.1482.

<sup>908</sup> Jones, *Union Man*, p. 242.

unionists were responding to our recruiting appeals in large numbers.’ Overall, membership of trade unions reached a record high in 1972 with 11.5 million, an increase of over one million members since 1968.<sup>909</sup> Far from weakening the union movement as the legislators had hoped, the Act had served to unite the workers and strengthen the union movement.

### *5.15 Why did the Industrial Relations Act fail, and did it provide lessons for future legislators?*

It was not legislation *per se* that was anathema to the unions, but rather the objectionable nature of the *Industrial Relations Act* in particular. There had been many instances of unions understandably being amenable to new laws (for example the *Trade Disputes Act 1906* and the *Health and Safety at Work Act 1974*) which supported collective bargaining or ensured workers’ rights where the unions lacked the capacity to act alone. This particular Act, however, had proved unpopular with both employers and trade unions. In response to the operation of the Act, *The Times* noted:

It is common sense that there ought to be a law which regulates industrial relations, but for such a law to be successful it has to acquire the confidence of the trade union movement. If the operations of such a law become in themselves a source of conflict, or at the worst produce a highly emotional national confrontation between the system of law and the whole trade union movement, then the damage must greatly outweigh the benefit to society.<sup>910</sup>

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<sup>909</sup> *Labour Force Survey*, Office for National Statistics, Department for Employment.

<sup>910</sup> *The Times*, 22 July 1972.

Some considered that the problems with the Act were that it was politically motivated, class-ridden or outdated. Eric Heffer had lambasted the Industrial Relations Bill for being 'a lawyer's paradise',<sup>911</sup> and that it was 'based upon political dogma built up since 1958 [year *A Giant's Strength* was published] and not upon a real understanding of industrial relations.'<sup>912</sup> Patrick Bell also agreed that, for Heffer, the legislation was an 'act of class war'.<sup>913</sup> However, it could also be argued quite strongly that this was not an overt piece of class legislation, since its introduction affected, financially and otherwise, both employers and employees. Indeed, although the CBI initially supported the Act, the employers rarely used its provisions, taking a more pragmatic approach to industrial conflict and reverting to collective bargaining wherever possible in order to maintain continuance of their business and avoid the creation of union martyrs. As Michael Moran argued:

Of those who had initially favoured a legislative solution to the problem of industrial relations, none were more disillusioned by the experience of the Act in its twilight years than the large employers who dominate the economy and their chief spokesman, the CBI.<sup>914</sup>

Paul Smith neatly summarised the deficiencies of the Act which led to its downfall: 'Its very comprehensiveness, employers' reticence, and effective trade union opposition combined to make the Act a failure.'<sup>915</sup> The Act itself was an ambitious, monolithic piece of legislation which set out to bring within the law a whole raft of collective bargaining procedures, hitherto left to private agreements. Its aim was to

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<sup>911</sup> *Ibid.*

<sup>912</sup> HC Deb. 5<sup>th</sup> Series, Vol. 807, c. 1064, 14 December 1970.

<sup>913</sup> Bell, *The Labour Party in Opposition 1970-1974*, p. 57.

<sup>914</sup> M. Moran, *Politics of Industrial Relations: The Origins, Life and Death of the Industrial Relations Act 1971*, (London, 1977), p. 145.

<sup>915</sup> P. Smith, 'Order in British Industrial Relations: From Donovan to Neoliberalism', *Historical Studies in Industrial Relations*, April 2011, Issue 31-32, 115-154, at 133.

revolutionize the basis of industrial relations and to address some of the problems with tort law where they impinged on industrial relations. Moran concluded: 'Many Acts do not have the precise effect intended by their authors; few can have gone so disastrously awry.'<sup>916</sup> Jim Prior<sup>917</sup> later admitted that his Government had 'tried to do far too much at once, putting our faith in the idea that sweeping changes in the law would rapidly change behaviour on the shop-floor'.<sup>918</sup> Lord Wedderburn also agreed that the Act failed because '[it] attempted to wrench the law at a stroke into a new pattern, to change its organic historical relationship with industrial relations.'<sup>919</sup>

Nevertheless, views on the wisdom and utility of the Act encountered some changes in later years. It was evident that even Kahn-Freund's views on the role of legislation in industrial relations had softened some years later when he offered some retrospective reflections on the Act in 1974.<sup>920</sup> He admitted that it was too soon 'to form a considered judgment on the place of the Industrial Relations Act in the history of law or of industrial relations'.<sup>921</sup> Nevertheless, he made particular reference to the growing problem of picketing, and to what extent activities surrounding picketing should be legal. Despite his general antipathy towards the role of law in industrial relations, he admitted that changes in technology required some adjustments to the legal limits of picketing:

Perhaps those who have with so much justification always argued against legal intervention beyond the point of absolute necessity should now consider the need for

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<sup>916</sup> Moran, *Politics of Industrial Relations* p. 1.

<sup>917</sup> Prior served as Shadow Secretary of State for Employment, 1974-1979.

<sup>918</sup> J. Prior, *A Balance of Power*, (London, 1986), p. 72.

<sup>919</sup> Lord Wedderburn, 'Industrial Relations and the Courts', *Industrial Law Journal*, Vol. 9, Issue 1, 1980, 65-94, at 80.

<sup>920</sup> O. Kahn-Freund, 'The Industrial Relations Act: Some Retrospective Reflections', *Industrial Law Journal*, Vol. 3, Issue 1, 1974, 186-200.

<sup>921</sup> *Ibid.*, 199.

emphasising the role which the law still has, and will always have to play in industrial relations.<sup>922</sup>

Engleman and Thomson chronicled the failure of the Act and offered some explanations for its lack of success, but they nevertheless acknowledged that the Act was not without its achievements.<sup>923</sup> They recorded that many cases did proceed smoothly, the rights of dismissed employees were strengthened, and the NIRC's record of dealing with appeals in areas like redundancy was an improvement on that of the High Court. In addition, there was a change in trade union behaviour, as several unions, including the TGWU, did restructure their rules, and shop stewards were no longer rushing to the kind of martyrdom that the dockers' cases had precipitated.

Nonetheless, the Act had failed to meet many of its key objectives, with most of its legal issues remaining untested. Collective bargaining had not been restructured and few collective agreements became legally binding. 'In short, the industrial relations patterns highlighted by the Donovan Commission, and which the Act was designed to remedy, still remain and the doubts expressed by the Commission about the effectiveness of law as a solution have been only too well borne out.'<sup>924</sup>

### 5.16 Conclusion

The *Industrial Relations Act* stands out as a prime example of the need to consider the potential impact of using legislation as a tool to regulate human relationships. As *The Times* article pointed out, it is important to recognize the difficulties of legislating

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<sup>922</sup> *Ibid.*

<sup>923</sup> S.R. Engleman, A.W.J. Thomson, 'Experience under the British Industrial Relations Act', *Industrial Relations*, Vol. 13, Issue 2, May 1974, 134 – 155.

<sup>924</sup> *Ibid.*, 151.

between management and men.<sup>925</sup> In view of the findings in the Donovan Report which had, after careful analysis of the industrial relations landscape, concluded that legislation had only a minor part to play in its reform, it seems foolhardy and irrational for the Government to have ploughed ahead with such comprehensive legislation. The Government was instead relying on its own Policy Group's evidence, published in *Fair Deal at Work*. Moreover, *In Place of Strife* had met with such fierce opposition to proposals for legislative changes to unions' immunities and their rights to self-regulation, that the Government had been forced into an embarrassing climb-down. Yet, despite these very recent events, the Heath Government had considered that a bolder attack on the unions was not only necessary, but workable. Nevertheless, the attempt to legislate for the pattern of industrial relations in Britain, imposing a straitjacket of legal obligations to be met, was fundamentally flawed. Importantly, it failed to draw on the understanding of industrial relations in Britain or, indeed, on the experiences of the USA and other countries. The Act was a major political miscalculation that failed to take into account the strength of the unions.

The hopeful, but unsubstantiated, doctrine of the Act 'proclaimed that if only the legal structuring of industrial society was sufficiently extensive and systematic, it would bring about orderly and responsible conduct'.<sup>926</sup> There was little evidence for this, however, and the motivations behind the policies also demonstrated an inward-looking Government, bent on economic improvements but with little consideration for pragmatism. Davies and Freedland considered that those policy-makers responsible for the Act were motivated by 'the legitimization of the government in times of

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<sup>925</sup> *The Times*, 6 June 1973.

<sup>926</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 279.

economic crisis,' but less pragmatic about 'the considerations which shaped employers' ideas about labour law reform.'

While the failure of the Act could be blamed on a number of factors, vital lessons on the implementation of new industrial relations legislation could also be taken from the event. These lessons may have helped to prepare for the incremental legislative approach of the Thatcher and Major Governments of the 1980s and 1990s. First, when legislating it is important to take a two-pronged approach, providing incentives for the unions to reform alongside appropriate deterrents. Second, the role of the judiciary should be carefully considered and controlled to ensure that judges do not create problems where none existed before. Third, when a government decides to engage in a bold experiment designed to change the fundamental nature of an operation, it would be wiser to take a step-by-step approach to avoid grave and serious errors. Fourth, it is unwise to pre-empt potential problems instead of concentrating on the most important issues initially, and waiting for those changes to be accepted and fully integrated before making further alterations. Finally, the maxim, 'Know thine enemy', should serve as a reminder to the legislature not to set itself against a movement that is so strong and so determined to win. The time was simply not right for the introduction of legislative controls, when the subject was still very much a 'might giant'.

The Act had been introduced without meaningful consultation with those most closely affected by it, and was unpopular with both unions and employers. It was administered by a court that was not impartial, with a chairman who had close links to the Government, and who had also been instrumental in the drafting of the Act. The principle of separation of powers was seriously undermined and the failure of



the Act is testament to the wisdom of following accepted procedures when legislating. These include consulting with those likely to be affected, and keeping a firm dividing line between the role of legislature, executive and judiciary to ensure that the latter maintains its constitutional independence. The 1971 Act had led to a battle with the unions, but in terms of strategy and planning it was little better than the charge of the Light Brigade, and equally destructive in terms of the relationship between government and unions.

The Conservative Government's defeat in the February 1974 General Election brought an opportunity to begin fresh negotiations with the new Labour Government. Unions now had the opportunity to work together with the Government to try to repair the damage done by this most controversial and divisive of Acts. The Labour Government maintained a far more cautious approach to the use of legislation, and pursued alternative strategies to improve industrial relations which were more consensual, by appealing to the employers, workers and the public. A new experiment in the form of an agreement between unions and the Labour Party - a social contract - would also evolve in a bid to find a viable alternative both to restrictive legislation and the chaotic nature of industrial relations.

## Chapter 6. The Rise of the Social Contract and other Alternatives to Legislation

### 6.1 Introduction

The furore over *In Place of Strife* had proved very traumatic for the previous Labour Government and a new approach to industrial relations had to be sought if a workable agreement was to be reached between unions and government. In February 1973, the Labour Party reached a joint statement with the TUC, called *Economic Policy and the Cost of Living*. This came to be known as the Social Contract. The introduction of this and other mechanisms, all designed to provide a viable alternative to legislation, appeared to recognize and respond to some of the problems associated with new laws. The two previous chapters reveal the dangers of using the law to regulate and control industrial relations without the express agreement of the trade union movement. The evidence lends considerable weight to the hypothesis that restrictive legislation was not the most appropriate means of regulating industrial relations in the 1960s and 1970s. However, there was an emerging consensus that, in certain areas of employment and industrial relations, there were alternative mechanisms that could potentially offer greater benefits to both workers and employers than collective bargaining alone.

The period from 1974 to 1979 became a time of experimentation with tripartism, examining alternative means of achieving agreements between government, trade unions and employers which could be supported by legislation. They were, principally: the Social Contract; employee participation or industrial democracy; and the Conciliation and Arbitration Service. Although these new forms of working towards improved working standards could only be achieved through new legislation,

this was a price that the unions were prepared to at least consider paying in exchange for improved social conditions, increased participation in management decisions and greater industrial peace. In view of the brief life of two of these experiments, compared with the longevity of ACAS, the evidence appears to suggest that legislation could act effectively to organize, provide resources for and generally support ACAS, which has been extremely successful. In contrast, the Social Contract and industrial democracy, which both depended to a large extent on a strong economy and on harnessing the goodwill of the trade unions and employers, were edifices built on shifting sands, and therefore failed to take root and thrive. They lasted only a short time, and it is suggested that a more formal, legislative approach could have led to a more successful outcome for these experiments. ACAS was set up and regulated to some extent by legislation, but otherwise operated more or less autonomously, thereby providing it with the freedom and flexibility to bend itself to the requirements of its users – employers and unions. This could suggest that legislation can be an extremely useful tool when it is used to provide the mechanisms, support and freedom to an organization to operate within a flexible framework, offering a more workable alternative to the straitjacket of restrictive legislation.

### *6.2 A change in the role of legislation in industrial relations*

Harold Wilson led the Labour Party to his third General Election victory in 1974, on the basis of a manifesto commitment that had its roots firmly in the Social Contract, an agreement that came out of the meetings of the TUC/Labour Party Liaison Committee which had been set up on the initiative of Jack Jones. Robert Taylor put this down to Wilson's motivation to rebuild the relationship between the TUC and the Labour Party after it had been badly damaged through the disagreements over *In*

*Place of Strife*, and Castle's attempt to reform the structure of British industrial relations.<sup>927</sup> This year also marked the beginning of a 'profound change in the structure of our labour law'.<sup>928</sup> This, as Bell argued, placed unions at the heart of future decisions on labour law:

The circumstances of opposition in 1970-74 ... conspired to make the trade unions more central to Labour's policy processes. This was partly because the Heath government's failed efforts to reform industrial relations placed the unions at centre stage.<sup>929</sup>

Not only were unions now at the heart of the industrial relations reform agenda, but their attitude to legislation appeared also to have undergone something of a transformation since the early 1960s. The General Council of the TUC considered that, although 'statute law can only play a subordinate part in the conduct of industrial relations', nevertheless 'legislation should ensure that all workers have certain minimum rights and should encourage the development of voluntary collective bargaining and supplement it where necessary'.<sup>930</sup> The type of law for which the unions were now calling was of a fundamentally different kind to that which has been discussed above, since it did not involve placing restrictions on their activities. However, by agreeing to legislation which guaranteed employment rights for all workers, unions ran the risk of giving the impression - perhaps inadvertently - that legislative control over collective bargaining could also be acceptable to them.

The evidence presented in the previous chapters appears to suggest that, despite the trade unions' opposition to restrictive legislation, there was at least a degree of

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<sup>927</sup> R. Taylor, *The TUC: From the General Strike to New Unionism* (Basingstoke, 2000), p. 209.

<sup>928</sup> P. Davies, M. Freedland, *Labour Legislation and Public Policy*, (Oxford, 2006), p. 351.

<sup>929</sup> P. Bell, *The Labour Party in Opposition, 1970-1974*, (London, 2004), p. xii.

<sup>930</sup> TUC *Annual Congress Report 1974*, 74, Modern Records Centre, University of Warwick, (MSS.292/PUB/4/1/74).

consensus that industrial relations should be subject to some measure of legal regulation, and that it could be a benefit in reducing industrial anarchy, supporting collective bargaining and ensuring a minimum floor of rights. Unions had already demonstrated a willingness to accept legislative interferences with employment rights in certain areas such as notice of dismissal,<sup>931</sup> redundancy,<sup>932</sup> race and sex discrimination,<sup>933</sup> and equal pay for women.<sup>934</sup> This new type of industrial legislation, which was supportive of employment rights, was described by Richard Whiting as about human relations, rather than the regulation of union affairs, but regretted that it had been overshadowed by 'the drama of bitter conflicts between government and trade unions over the organization of collective labour relations'.<sup>935</sup> Kahn-Freund, although a firm advocate of voluntarism, nevertheless also recognized the importance of this new wave of legislation, noting that, 'What has happened since 1963 by way of legislative regulation of labour conditions exceeds in volume and significance what in previous years happened in decades.'<sup>936</sup>

Whiting described the significance of such legislation as two-fold. First, that it began the politicization of work, becoming the subject of intervention and political debate over what constituted fair treatment at work. Secondly, that the reforms 'marked a shift from informal, collective bargaining over employment to a more legally regulated, individually orientated relationship.'<sup>937</sup> The legislation often involved changes which took the primary responsibility away from the unions for upholding fairness at work. Unions could not effectively organize to ensure that all employees

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<sup>931</sup> Contracts of Employment Act 1963.

<sup>932</sup> Redundancy Payments Act 1965.

<sup>933</sup> Race Relations Act 1976, Sex Discrimination Act 1975.

<sup>934</sup> Equal Pay Act 1970.

<sup>935</sup> R. Whiting, 'The Reform of Working Life in Britain, 1963-1971', *The Historical Journal*, 50, 2 (2007), 423-448.

<sup>936</sup> O. Kahn-Freund, *Labour law: old traditions and new developments*, (the W.M. Martin lectures) (Toronto, 1968), p. 52.

<sup>937</sup> Whiting, 'The Reform of Working Life in Britain, 1963-1971', 424.

were treated fairly in relation to redundancy, or to ensure that employers treated workers equally in terms of gender or race. Unions could only collectively bargain for their own workplaces, whereas governments could operate to bring about fairer work conditions for all employees. It was the trade unions' inherent inability to bargain for such global protections that enabled governments to fill those gaps through a programme of legislation in the 1960s and 1970s. Unfortunately for the unions, this gradual expansion of 'the thin edge of the legal wedge' that Lewis claimed had begun with the Donovan Report arguably opened the door to more restrictive legislation such as the *Industrial Relations Act*.<sup>938</sup>

This revised union approach to legislation began to take on a more defined shape at the 1973 TUC Congress. A three-stage approach to future legislation was outlined, beginning with a repeal bill (to repeal the *Industrial Relations Act*), then an *Employment Protection Bill* which would extend the rights of workers and unions, followed by industrial democracy legislation. Nevertheless, the Labour Government had to be very careful that the ensuing *Trade Union and Labour Relations Act 1974* and the *Employment Protection Act 1975* not only appeased the trade union movement, but ensured that the economy did not suffer as a result. The 1975 Act included individual protections such as maternity rights, guaranteed pay in the event of a fall-off in work, and redundancy rights. In addition, in order to support collective bargaining as Donovan had recommended, trade union members and representatives were given the right to time off for trade union activities and duties. Collective bargaining rights were also improved or introduced, employers would be obliged to consult with unions in certain circumstances, and there was to be a modified statutory recognition procedure. Importantly, the relevant provisions of the

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<sup>938</sup> R. Lewis, 'The Historical Development of Labour Law', *BJIR*, Vol. XIV, Issue 1, 1976, 1.

*Trade Union Acts 1871-6* and the *Trade Disputes Acts 1906* and *1965* were updated, improved and restored by the *1974 Act* and the *Trade Union and Labour Relations (Amendment) Act 1976*.

These were all provisions that the trade union movement could not have hoped to gain for itself through collective bargaining, and many of the rights extended to non-union members, giving greater equality to workers in industries where it was difficult to organize collectively. Nonetheless, it was a stark departure from the *laissez-faire* voluntarism which had characterized the nature of industrial relations in the 1960s, and indicated a growing acceptance by the trade union movement of laws which gave positive rights to unions and to workers. The TUC General Council, while reiterating that the main method of conducting industrial relations was collective bargaining, nevertheless recognized that 'legislation should ensure that all workers have certain minimum rights and should encourage the development of voluntary bargaining and *supplement* it where necessary.'<sup>939</sup> The change in the role of legislation in industrial relations was dramatic and profound, but the obvious danger inherent in the unions' fervent of acceptance of such new laws was that it arguably paved the way for the more restrictive legislation that would be introduced by the Conservative governments from 1979 onwards.

### *6.3. The Social Contract, tripartism and social policy legislation*

This move towards legislation which provided universal rights for workers and greater social benefits began strongly with the passing of the *Trade Union and Labour Relations Act 1974*. The Act 'contained an essentially coherent overall plan, namely, the restoration of legal abstentionism in the field of industrial conflict and

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<sup>939</sup> TUC *Annual Congress Report 1974*, p. 74.

trade union law.<sup>940</sup> This policy, that the law would not be used to interfere with free collective bargaining and traditional union rights, was underpinned by a Government pledge 'to end the Conservatives' pay restrictions and to enter a social contract with the trade unions.'<sup>941</sup> This radical proposal involved a much closer partnership between unions and government than had been contemplated before, with a restriction on pay restraints, and an emphasis on cooperation and overarching legislation to provide economic benefits beyond any which could be achieved through collective bargaining alone. It was very much a political arrangement, designed to draw support for the Labour Party from the unions in the next General Election.

The Labour Party Manifesto of February 1974 spelled out the new spirit of cooperation with the TUC:

We believe that the action we propose on prices, together with an understanding with the TUC on the lines which we have already agreed, will create the right economic climate for money incomes to grow in line with production.<sup>942</sup>

Britain was entering a new phase of legislating in a spirit of cooperation and agreement between workers and government. This new approach offered greater appeal to the unions than the tactics of coercion and regulation which had failed to achieve the required objectives when they formed the philosophy behind the *Industrial Relations Act*. While legislation was an important component of the Social Contract, the TUC had a great deal of influence over its overall content.

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<sup>940</sup> Davies, Freedland, *Labour Legislation and Public Policy*, pp. 376-377.

<sup>941</sup> B.C. Roberts (ed.), *Towards Industrial Democracy, Europe, Japan and the United States*, (London, 1979), p. 173.

<sup>942</sup> Labour Party Manifesto, February 1974 <<http://www.labour-party.org.uk/manifestos/1974/Feb/1974-feb-labour-manifesto.shtml>> accessed 10 October 2014.



The TUC/ Labour Party Liaison Committee, established in 1972, gave birth to this Social Contract, as a more acceptable alternative to the *Industrial Relations Act*. It was a middle way between complete autonomy and legislation, but involved a greater degree of agreement with the unions than *In Place of Strife* had been designed for. The Committee 'brought together senior figures on the TUC General Council, in the Shadow Cabinet and on the NEC in what was hoped to be a close and effective unity over future policy making.'<sup>943</sup> Jack Jones 'got some satisfaction from knowing that trade unionists with shop-floor experience would be engaged in regular discussion with the political leaders of the Labour Party.'<sup>944</sup> Jones wanted 'to secure a joint programme, to which the Labour Party would be tied when it was next elected and on which both Labour Party and TUC could campaign.'<sup>945</sup> Wilson owed a significant debt to the trade unions for their continued support, but they would not be content with mere repeal of the 1971 Act. They had suffered financially at the hands of the NIRC and were now demanding positive rights rather than mere immunities. The Liaison Committee was also very involved in securing such rights in the *Employment Protection Bill*, and the Government continued to consult with the TUC as the Bill progressed through Parliament. Jones recalled that:

The relationship with Harold Wilson and other Government leaders was very different to the days of *In Place of Strife*. He was clearly looking upon the trade unions as partners and anxious to make progress together.<sup>946</sup>

TUC involvement with the Department of Employment was possibly at its closest at this point, and the General Council was enjoying an unprecedented influence over

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<sup>943</sup> R. Taylor, 'The Trade Union Problem Since 1960,' in B. Pimlott, C. Cook (eds), *Trade Unions in British Politics*, (London, 1982), p. 203.

<sup>944</sup> J. Jones, *Union Man, An Autobiography*, (London, 1986), pp. 279-280.

<sup>945</sup> Jones, *Union Man*, pp. 279-280.

<sup>946</sup> Jones, *Union Man*, p. 283.

the course of British politics. James Callaghan, who would become the next Prime Minister following Wilson's resignation in 1976, was initially enthusiastic about the Social Contract, suggesting that it was 'a means of achieving nothing less than the social and economic reconstruction'<sup>947</sup> of the country.

Jim Tomlinson described the Social Contract as 'the most systematic attempt ever in Britain to make an agreement between the governing parties and the trade unions'.<sup>948</sup> Yet, despite the term 'contract' suggesting an equal bargain, it has been suggested that it was little more than a shopping list of TUC demands,<sup>949</sup> to which the Labour Party had committed itself, while little was given in return for the considerable concessions made by the Government. Nevertheless, the return to unfettered, free collective bargaining when Labour abolished the Pay Board, resulting in excessive pay demands, was met with stern warnings from the TUC in a statement to Congress for pay claims to be limited to annual rises of no more than £25. The advice, unsupported by sanctions, went unheeded by the unions, and inflation, fuelled by excessive pay awards, rose to a worryingly high rate of 25 per cent in 1975. 'The Government claimed that it had carried out its side of the "Social Contract" on the assumption that wages would increase by only 2-3 per cent above the TUC's own guidelines when the overshoot was more like 8-9 per cent.'<sup>950</sup> Even Jack Jones was persuaded of the necessity of controlled pay awards, but failed to win the support of his own TGWU shop stewards at their 1977 conference for a further year of ordered pay bargaining.<sup>951</sup>

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<sup>947</sup> *TUC Annual Congress Report*, 1974, p. 396.

<sup>948</sup> J. Tomlinson, *Public Policy and the Economy since 1900* (Oxford: 1990), cited in C. Rogers, 'From Social Contract to Social Contrick', *British Journal of Politics and International Relations*, Vol. 11, Iss. 4, 634-651.

<sup>949</sup> Taylor, *The TUC: From the General Strike to New Unionism*, p. 211.

<sup>950</sup> *Ibid.*, p. 204.

<sup>951</sup> *Ibid.*, p. 206.

A further manifesto, prepared in late 1974 as Wilson called a snap election to try and increase the number of seats held by Labour in Parliament, reaffirmed the aims of the Social Contract:

It is not simply, or narrowly, an understanding about wages. It is about justice, equality, about concern for and protection of the lower paid, the needy, the pensioner and the handicapped in our society. It is about fairness between one man and another, and between men and women. It is about economic justice between individuals and between regions. It is about co-operation and conciliation, not conflict and confrontation.<sup>952</sup>

Reforms to pensions, family allowance, and other areas of social security were thereafter updated to give more realistic financial support to those most in need. Food subsidies and rent freezes were promised along with an undertaking to repeal the *Industrial Relations Act* in order to persuade the TUC to accept voluntary wage restraint, even though there was no commitment to do so in the Liaison Committee's programme of reform.<sup>953</sup> Women were to pay the same contributions towards their state pensions as men, and would no longer be left to be financially dependent on their husbands in old age.<sup>954</sup>

Castle confirmed that the Social Contract was concerned with maintaining living standards – 'not merely for wage-earners, but for all those who we are were in politics to protect.'<sup>955</sup> The Social Contract thereby operated outside the realm of work and collective bargaining, functioning as an agreement between the Government, the trade unions and the TUC. It nonetheless demonstrated that legislation was a

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<sup>952</sup> Labour Party Manifesto, October 1974, <<http://www.labour-party.org.uk/manifestos/1974/Oct/1974-oct-labour-manifesto.shtml>> accessed 10 October 2014.

<sup>953</sup> *Economic Policy and the Cost of Living*, set out in the TUC Annual Congress Report 1973, 312-15.

<sup>954</sup> *Social Security (Widows' Benefit and Retirement Pensions) Regulations 1974*, S.I. 2059.

<sup>955</sup> Castle, *The Castle Diaries*, entry for 20 January 1975.

necessary adjunct to widespread social reform, ensuring that it was not only workers who benefited from protection from the State. This social policy legislation was essential to supplement, rather than replace, the agreements brought about through collective bargaining and aimed to bring about greater economic justice and equality which could not be achieved through collective bargaining alone. By 1974, the promises for an increase in pensions and food subsidies, tax reform, and a rent freeze had all been put in place.<sup>956</sup> The proposals were to be funded by increased national insurance contributions, and the adoption of this radical programme of social and economic policies by the Labour Party ensured the continued support of the trade union movement.

Not only did the 1974 Act repeal the 1971 legislation, but the unfair dismissal provisions were retained and strengthened in the 1975 *Employment Protection Act*. In addition, the *Health and Safety at Work Act 1974* was passed, having been prepared by the Robens Committee. It was the first Act to provide greater security from risks at *all* workplaces. It was later amended to make the qualification for workplace safety representatives that they should be representatives of the recognized trade unions. Further legal rights for lay representatives and officials followed, including paid time off for training. Nevertheless, despite this raft of positive rights for trade unionists and workers, there was no corresponding agreement from the unions to maintain orderly collective bargaining and deal with demarcation disputes, the trade union leaders continuing to maintain that they could manage this through voluntary means. Strikes continued unabated in the 1970s, particularly in the

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<sup>956</sup> TUC *Annual Congress Report 1974*, 287-8.

engineering sector, inflation was rampant, and unemployment rose as businesses began to fail, no longer able to compete in the global markets.<sup>957</sup>

A government, regardless of its promises, is constrained by economic necessity, and although the Chancellor, Denis Healey, 'repeated his belief in the Social Contract' and said that it was 'the reason for our success so far', his economic report to the Liaison Committee in January 1975 confirmed that the world was in recession and that employment was the main consideration.<sup>958</sup> Global oil prices put a stop to the programme of economic and social reforms as Britain was hit hard by the world recession, which pushed inflation up still further to 27 per cent by 1976 and led to increased unemployment. After a year of massive price rises, the Government was forced to broker an agreement with the unions to accept a limit on pay increases in order to reduce wage push inflation. In return there would be an adjustment on the level of taxes and some governmental influence on the level of prices.<sup>959</sup> The Social Contract was clearly no longer sustainable under these conditions, and many parts of the agreement were not implemented.

Economic circumstances had conspired to ensure that the Social Contract was short-lived. Nevertheless, Keith Laybourn attributed the demise of the Social Contract to 'the failure of both the trade unions and the Labour government to realize the extent to which their fates were inextricably linked up with the need to achieve an understanding which would stimulate economic growth.'<sup>960</sup> He considered that the breakdown was therefore avoidable rather than inevitable, and both sides could be accused of not keeping their side of the bargain.

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<sup>957</sup> <<http://www.unionhistory.info/britainatwork/timeline/1974-1979.php>> per N. Fishman. Accessed 20 April 2017.

<sup>958</sup> Castle, *The Castle Diaries*, entry for 20 January 1975.

<sup>959</sup> Roberts (ed.), *Towards Industrial Democracy, Europe, Japan and the United States*, p. 173.

<sup>960</sup> K. Laybourn, *A History of Trade Unionism, c. 1770-1990*, (Stroud, 1992), p. 201.

This outcome underlines one essential drawback of legislation when compared with collective agreements. It is that legislation is no more than a temporary promise by the government of the day; it has no contractual basis and cannot be enforced, and therefore has to give way to the economic necessities which are the main concern of government. In other words, a government is free to renege on its promises. On the other hand, even though collective agreements are not enforceable in themselves as contracts, once the terms have been incorporated into individual contracts of employment, it is much harder for employers to go back on those promises. This demonstrates one of the greatest advantages of collective agreements over legislation.

Nevertheless, permitting free collective bargaining, which had been proven to have such disastrous economic consequences, also demonstrates the value of legislation to a government as an instrument of control over wages. It is perhaps one of the most important and effective weapons in a government's armoury for controlling inflation. Even the TUC, as influential as it was, proved to have little control over unions' pay demands, so it is doubtful whether individual trade unions, and still less the employers, would have been able to limit wage claims from the workers. The Social Contract, a tripartite agreement that had been embraced with great enthusiasm in the early 1970s, promising greater social equality, now lay in tatters.

Indeed, Roberts warned against an over-reliance on tripartite working. He wrote that, 'The problem of securing a rate of economic growth that will in the years ahead prevent the unemployment rate from soaring to dangerous heights is likely to provide a critical test for the philosophy of tripartism.'<sup>961</sup> Tripartism had been an instrument of industrial planning for many years, with trade union and employers'-organization

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<sup>961</sup> Roberts (ed.), *Towards Industrial Democracy, Europe, Japan and the United States*, p. 180.

representatives playing a prominent role in the NEDC and its many industry-level offshoots. Economic concerns and the need to keep full employment in mind were nevertheless proving to be a threat to this philosophy. The NEDC was designed to promote closer relations between government, industry and unions, but the TUC's desire was for a more direct influence on the investment decisions of boards of directors through employee participation.<sup>962</sup> That is why one important element of the Social Contract was a proposal for greater employee participation in workplace decisions.

#### *6.4 Employee Participation and Industrial Democracy*

Although the TUC had initially been firmly committed to collective bargaining as the principal function of trade unions, in evidence submitted to the Donovan Commission it showed a softening of this attitude towards worker participation as a means of influencing decisions taken in the workplace, admitting that 'the conflict of interest which might face trade unionists on a board was more theoretical than a real concern.'<sup>963</sup>

Industrial democracy traditionally operated through the collective bargaining process, but the idea that industrial relations might be further improved through a system of employee participation was given serious consideration in the 1970s. Trade union power traditionally consisted of an ability to veto management proposals, and was therefore negative in effect. On the other hand, 'proposals for the extension of industrial democracy seek to make the role of employees more positive, and more akin to the role of participants in other forms of institutional government'.<sup>964</sup> Such a

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<sup>962</sup> *Ibid.*

<sup>963</sup> *Ibid.*, p. 181.

<sup>964</sup> A.J. Eccles, 'Industrial Democracy and Organizational Change', *Personnel Review*, Vol. 6, Issue 1, 43-49.

system would have to be implemented through legislation to ensure a level of uniformity and compliance.

While the unions were in favour of some form of industrial democracy, Bill McCarthy, who had acted as researcher for the Donovan Commission, was opposed to the idea. He insisted that there were 'very real differences on interest and function that exist between management and workers', and that rival systems of representation 'would cut across or undermine the development of strong and representative trade unionism.'<sup>965</sup> He did admit, however, that in several countries, including Germany, the Netherlands and Norway, there were worker representatives on management boards and that this had resulted in benefits to both sides of industry. The advantage of worker representation on boards is that it brings the workers' experience and commitment to the company into the decision-making process.

The requirement for such a system to be formally considered became an imperative when the EEC, which Britain had joined in 1973, proposed extending such arrangements throughout the Community. However, it was not something that could be achieved without a major extension to company law, to which many unions were reluctant to agree, despite the enthusiasm of the TUC for the notion. The unions had an historical mistrust of the law and its judges, something which has been examined above and extensively documented by Wedderburn.<sup>966</sup> Indeed, Neal sums up the traditional approach of British trade unions as being one of 'self-help, in the sense of strength won through the efforts of the unions themselves, rather than rights,

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<sup>965</sup> W.E.J. McCarthy, N.D. Ellis, *Management by Agreement*, (London, 1973), p. 154,

<sup>966</sup> K. Wedderburn, *The Worker and the Law*, (Harmondsworth, 1971).



privileges and institutions established by the State through, for example, the legislator.<sup>967</sup>

In 1973 the TUC produced a report on industrial democracy which did, however, favour some kind of participation in management, and proposed its introduction at three levels:<sup>968</sup> at plant level (for example a shop steward); at intermediate level, (for example at regional level); and at the level of the boards of directors. The TUC went so far as to propose legislation to allow companies to make provision for trade union representation, and suggested that the CBI should encourage their members to implement these measures.<sup>969</sup>

Although the TUC was demonstrating a willingness to accept legislation if it resulted in closer consultation with management on essential matters, some individual unions were less enthusiastic about this move, no doubt sensing a potential loss of the autonomy which they had fiercely guarded for so long. 'These proposals for the widespread extension of industrial democracy brought a sudden awareness to the trade unions, which had largely failed to grasp the significance of the change ... in TUC policy.'<sup>970</sup> Andrew Thomson noted a distinct lack of unanimity within the trade union movement to the TUC proposals for legislation and government interference.<sup>971</sup> The Engineering Workers' Union argued that supervisory boards could act in opposition to the development of collective bargaining, which should instead be *extended* into new areas such as pricing, location, planning and sales.<sup>972</sup>

The Electricians' Union also argued that unions should maintain their

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<sup>967</sup> A. Neal, 'Co-Determination in the Federal Republic of Germany: An External Perspective from the United Kingdom', *BJIR*, 25:2 July 1987, 228.

<sup>968</sup> TUC, *Industrial Democracy*, (London, 1973).

<sup>969</sup> *Royal Commission Report*, Cmnd. 3623, para. 998.

<sup>970</sup> Roberts (ed.), *Towards Industrial Democracy, Europe, Japan and the United States*, p. 182.

<sup>971</sup> A. Thomson, 'New Focus on Industrial Democracy in Britain', *The Annals of the American Academy of Political and Social Science*, Vol. 431, May 1977, 32-43.

<sup>972</sup> *Ibid.*, 37

independence.<sup>973</sup> The TUC admitted that the unions had traditionally opposed such schemes in private industry, but it was now beginning to see the need for something more than traditional workplace bargaining. It recognized that there existed 'a wide range of fundamental managerial decisions affecting workpeople that are beyond the control ... of workpeople and their trade unions' and that 'major decisions ... are taken at levels where collective bargaining does not take place.'<sup>974</sup> At the 1974 TUC Congress a resolution was moved, and supported by the most powerful unions, that 'any extension of trade union participation in industrial management shall be ... an extension of collective bargaining and shall in no sense compromise the unions' role.'<sup>975</sup> In its policy statement, endorsed by the 1974 Congress, the TUC made clear its position: 'It is essential that all ways of extending industrial democracy are based on trade union machinery, and that this should be parallel to a growing degree of participation in trade union democracy.'<sup>976</sup> The resolution did, however, reject any legal imposition of supervisory boards, and called for alternative legislation.

The Donovan Commission had also expressed reservations about industrial democracy, and agreed that reform of collective bargaining was a preferable method of allowing workers to exercise a positive influence on the running of businesses. The Commission considered that representation on management bodies might even be harmful, putting the worker-representative in a difficult position. Members of the Commission were also unable to agree on the changes that would have to be made to bring about the desired effect.<sup>977</sup> Roberts considered that, 'In the minds of the Commission, participation was largely a red herring which distracted attention from

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<sup>973</sup> *Ibid.*

<sup>974</sup> TUC, *Industrial Democracy*, 34.

<sup>975</sup> TUC *Annual Congress Report*, 1974.

<sup>976</sup> TUC, *Industrial Democracy*, 1974, 26.

<sup>977</sup> *Royal Commission Report*, Cmnd. 3623, Chapter XV, paras. 997-1006.

the main issue, which they saw as the need to strengthen the process of collective bargaining.<sup>978</sup>

Some members of the Commission had observed such arrangements in German companies,<sup>979</sup> but most supervisory boards in German industries comprised of two thirds of shareholder-representatives, and one third worker-representatives, thus making it difficult to make any meaningful comparisons between the British and German situations. Indeed, Neal argued that the British system of what Kahn-Freund described as 'dynamic' collective bargaining and Germany's co-determination model were so far apart as to represent 'opposite ends of a spectrum'.<sup>980</sup> The majority of Commission members were unable to recommend the appointment of "workers' directors", although Wigham and Shonfield did consider that change was necessary and proposed having directors who would act as guardians of the workers' interest at the stage when company policy was formulated.<sup>981</sup>

The CBI, whose members were innately hesitant to consider employee participation in a positive light, entered the discussion in 1974, producing its own paper, entitled, '*Employee Participation: CBI's contribution to the debate*'.<sup>982</sup> This was in response to the European Commission proposals for a Fifth Company Law Directive in October 1972 for the harmonization of company law, but had also been advocated by some employers and trade unions, and also by many politicians. The foreword stated:

All [members of the CBI] are convinced that different plants require different solutions. It therefore follows that a statutory solution imposing a rigid pattern would

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<sup>978</sup> Roberts (ed.), *Towards Industrial Democracy, Europe, Japan and the United States*, p. 182.

<sup>979</sup> Known as *Mittbestimmung*, (co-determination).

<sup>980</sup> A. Neal, 'Co-Determination in the Federal Republic of Germany: An External Perspective from the United Kingdom', *BJIR*, 25:2 July 1987, 227.

<sup>981</sup> *Royal Commission Report*, Cmnd. 3623, para. 1005.

<sup>982</sup> CBI papers, *Employee Participation: The CBI's contribution to the Debate*, Modern Records Office, University of Warwick, (MSS 200/C/4/1974/13).

be inappropriate ... The CBI Council ... urges managements to take the desire for more employee participation seriously and to consider how best they might take action to suit their own circumstances.

This short statement encapsulates one of the most detrimental aspects of legislation in industrial relations terms – that of its rigidity and inability to deal adequately with the multifarious types of business organization and trade union or employee group. Any legislation in this area would, therefore, have to be more akin to European Union laws, that is, setting out a framework only which could operate flexibly according to individual needs. Nevertheless, this would not accord with the usual pattern in English legislation which depends on detailing every possible eventuality.

The term 'employee participation' itself lacked clear definition, and meant different things to different people, with a wide variety of schemes already in existence, including democratic leadership, autonomous work groups, worker cooperatives, worker directors and suggestion schemes, as well as collective bargaining.<sup>983</sup> Most of these had evolved through the will of the workers and directors, and it is arguable that these were more successful simply because they were voluntary schemes which could be adapted to suit the participants, rather than a statutory scheme which could not have offered the same inherent flexibility. It was the 'one important issue on the agenda of the Social Contract which divided the trade unions, and there was no consensus among them over the meaning of industrial democracy.'<sup>984</sup>

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<sup>983</sup> J. Purcell, 'Industrial Democracy: the latest panacea?' *Personnel Review*, Vol. 4, No. 2, Spring 1975, 43-49.

<sup>984</sup> R. Taylor, *The Trade Union Question in British Politics: Government and Unions since 1945*, (Oxford, 1993), p. 240.

#### 6.4.1 *The Bullock Report*

The Labour Government set up an inquiry in 1975 under the chairmanship of Alan Bullock<sup>985</sup> to examine the issue of employee participation, and to consider whether law could be introduced to make this a mandatory requirement. Members included Lord Wedderburn, Jack Jones, Clive Jenkins of the ASTMS, David Lea, the head of the TUC Economic Department, and three employers' representatives. The 1977 *Report of the Committee of Inquiry on Industrial Democracy (Bullock Report)*<sup>986</sup> was seen as a means of solving the ongoing problem of industrial disputes and as a way of giving employees a greater say in workplace management. The Report gave careful consideration to the system of co-determination in Germany, although Neal argued that 'the difference in the respective attitudes towards the role of law as a regulatory instrument in industrial relations' makes it difficult to make meaningful comparisons of the two systems due to this basic incompatibility.<sup>987</sup> Although the committee was divided, 'the majority report clearly favoured an equal number of trade union and shareholders' representatives on the boards of private companies with over 2,000 employees, with a few independents to hold the balance.'<sup>988</sup> This would be structured through legislation.

While the Bullock committee was itself divided on the viability of employee participation, Taylor noted that the unions also remained divided on the issue, and many of the larger unions were opposed to the majority proposals in the Report.<sup>989</sup> Nevertheless, Eccles found it ironic that some of the larger unions were opposed to

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<sup>985</sup> Lord Bullock was a historian and academic. He had previously chaired a Committee of Inquiry into reading standards, set up by Margaret Thatcher in 1972.

<sup>986</sup> Bullock Report, Cmnd. 6706, 1977.

<sup>987</sup> Neal, 'Co-Determination in the Federal Republic of Germany', 234-5.

<sup>988</sup> K.O. Morgan, *Callaghan: A Life*, (Oxford, 1997), p. 560.

<sup>989</sup> Taylor, *The Trade Union Question in British Politics*, p. 240.

the proposals, even though this was something they had asked for when pressing the Government for industrial democracy.<sup>990</sup> The unions' inherent fear of finding themselves restrained within a tight legislative straitjacket made them reluctant to trust the Government on this issue, and Eccles conceded that 'the introduction of worker directors poses more problems for unions than for management'.<sup>991</sup>

#### 6.4.2 *The White Paper on Industrial Democracy*

The Prime Minister, James Callaghan, 'had gone along strongly with Jack Jones's view of workers' participation on the management board'.<sup>992</sup> He had also been strongly influenced by Helmut Schmidt, the German Chancellor, and his 'passionate endorsement of German co-determination, deeply rooted in German industrial history over many decades'.<sup>993</sup> Schmidt had argued that the British confrontational system was harmful to industrial performance in the UK, and was scornful of the suggestion that 'worker directors would harm the flow of private investment'.<sup>994</sup> The TUC General Secretary, Len Murray, was also a supporter of German co-determination.<sup>995</sup> Nevertheless, there are inherent problems involved in comparing one system of industrial relations with another, and there was widespread agreement that the system was so different in Germany as to be impossible to transplant into another jurisdiction.

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<sup>990</sup> A.J. Eccles, 'Industrial Democracy and Organizational Change', *Personnel Review*, Vol. 6, Issue 1, 43-49.

<sup>991</sup> *Ibid.*, 43.

<sup>992</sup> K.O. Morgan, *Callaghan: A Life*, p. 560.

<sup>993</sup> *Ibid.*, p. 561.

<sup>994</sup> *Ibid.*

<sup>995</sup> *Ibid.*

The Government published a White Paper on Industrial Democracy in 1978, which was largely a diluted form of the Bullock Report.<sup>996</sup> Callaghan introduced the Paper in the House of Commons, setting out its key objectives:<sup>997</sup>

The basis of the White Paper is that employees at every level in companies and nationalised industries ... should have a real share in the decisions within their enterprise which affect their working lives. The objective is positive partnership rather than defensive coexistence ... The Government's intention is that this objective should be secured, wherever possible, by voluntary agreement between employers and representatives of employees. It is not the purpose to impose a standard pattern of participation on industry by law.

Clearly, a rigid legislative framework was not part of the plan, with the Government wary of using legislation other than to support voluntary agreements. This reflected the Donovan ethos of using the law to support voluntary collective bargaining rather than imposing legal strictures on the process. Nevertheless, opposition to the proposals continued, with 'divisions within the Cabinet', 'virtually unanimous opposition of employers and managers' and 'the announcement by a number of unions that under no circumstances would they would agree to participate in making the Committee's proposals effective'.<sup>998</sup> In light of this widespread opposition, the Government reluctantly decided not to proceed with its legislative proposals, only allowing schemes to be introduced where these were desired, as in the Post Office.

This particular scheme was the subject of an examination by Batsone, who highlighted the antagonism which existed on both sides of the industrial divide in his analysis of the industrial democracy experiment that took place in the Post Office

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<sup>996</sup> Cmnd. 6706, 1977.

<sup>997</sup> HC Deb, col. 1335-1355, 23 May 1978.

<sup>998</sup> Roberts (ed.), *Towards Industrial Democracy, Europe, Japan and the United States*, p. 184.

between early 1978 and late 1979. He concluded that 'both the strong advocates and the equally diehard opponents of such schemes may have overestimated their practical impact'.<sup>999</sup> This was all the more remarkable as the experiment 'represented arguably the "strongest" form of industrial democracy short of full workers' control.'<sup>1000</sup> The overall finding was that the experiment had a barely noticeable impact. The management nominees on the Board were reluctant to discuss strategic matters in front of the union members, but the latter did little to prevent these tactics and 'were not geared to make more positive use of the experiment.'<sup>1001</sup> Batstone nevertheless conceded that it is difficult to draw general conclusions from this isolated experiment and suggested that if a 'critical mass of schemes was in operation, industrial democracy would acquire a dynamic of its own ... leading to a significant increase in the power and influence of unions and workers.'<sup>1002</sup>

The Bullock Report and subsequent White Paper made far-reaching proposals for "workers' control", with seats on company boards for workers, equal to those of the shareholders' representatives. Furthermore, these worker-directors were to be chosen through recognized trades unions. Nevertheless, although this move was in accord with the *zeitgeist* of the latter half of the 1970s, attitudes towards cooperation between trade unions, politicians and industrial leaders were already showing signs of change. For example, *The Telegraph* called the Bullock Report 'a period piece almost before it appeared', suggesting that it 'had come at the end of a period in British history; the age of corporatism and collectivism, of the "national co-operation"

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<sup>999</sup> E. Batsone, A. Ferner, M. Terry, 'Unions on the Board', *Employee Relations*, 1983, Vol. 5, Iss. 5, 2-4.

<sup>1000</sup> *Ibid.*

<sup>1001</sup> *Ibid.*, 4.

<sup>1002</sup> *Ibid.*



supposedly personified by Ernie Bevin as the wartime Minister of Labour.<sup>1003</sup> Indeed, when, the Conservative Prime Minister called for workers' representation on company boards in 2016, it is doubtful whether she would have done so if she had obtained a clearer picture of previous attempts to legislate for such a move. It is certainly doubtful whether such an idea has any chance of taking root in the twenty-first century.

### *6.5 The Conciliation and Arbitration Service*

The Conciliation and Arbitration Service enjoyed a far greater degree of acceptance, and therefore success, than industrial democracy did. Conciliation is a process whereby a third party assists the parties in dispute to find a mutually acceptable agreement, thereby avoiding the need for the adversarial procedures of the court room. Conciliation and arbitration have a long history and had been used by governments, employers and employees since the late nineteenth century. Indeed, there was a *Conciliation Act* in 1896 which was aimed at encouraging conciliation through local conciliation committees. The Whitley Councils (also known as Joint Industrial Councils) had also undertaken a conciliation role during the First World War. These had been made up of representatives of labour and management for the promotion of improved industrial relations and remedying industrial unrest, although they later developed into wage negotiating organizations.<sup>1004</sup> Therefore, it was not a new concept in the 1970s, but rather the revival of a well-established idea in a semi-autonomous form.

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<sup>1003</sup> Obituary of Alan Bullock, *The Telegraph*, 3 February 2004.

<sup>1004</sup> <<https://www.britannica.com/topic/Whitley-Council>> Accessed 20 July 2016.

In 1972 a joint, *non-statutory* TUC-CBI conciliation service had initially been established, with the full support of, and representatives from both the TUC and the CBI. It dealt with its first case on 31 January 1973 following a joint request from the two unions concerned – the TGWU and UCATT.<sup>1005</sup> Traditionally, the Department of Employment had played the major conciliation role in industrial disputes,<sup>1006</sup> but complaints had been voiced over its lack of independence from government policies. In 1970-72, for instance, the Government refused to conciliate in disputes involving claims over a certain financial amount, since there was little room for manoeuvre during periods of incomes policies.<sup>1007</sup> This highlights the inevitable rigidity of using statutory procedures in industrial relations, and the TUC and CBI had demonstrated their impatience with the futility of a conciliation service whose hands were tied by government policy, by forming their own organization.<sup>1008</sup>

Nevertheless, in 1974 the new Labour Government announced that it was to establish a statutory Conciliation and Arbitration Service - CAS - which was independent of Ministerial control, removing the role altogether from the Department of Employment. Based on the non-statutory TUC-CBI model, it was now to be publicly financed and run by an independent ten-member council appointed by the Secretary of State, some of whom would be suggested by the TUC and the CBI. This tripartite body was formally established on an administrative basis in 1974, but put on a statutory footing by the *Employment Protection Act 1975*, when it was re-named the Advisory, Conciliation and Arbitration Service, or ACAS.<sup>1009</sup>

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<sup>1005</sup> TUC *Annual Congress Report 1973*, Modern Records Office, University of Warwick, (MSS.292/PUB/4/1/73).

<sup>1006</sup> *Conciliation Act 1896*, following recommendations from the Royal Commission on Labour 1894.

<sup>1007</sup> J.F.B. Goodman, J. Krislov, 'Conciliation in industrial disputes in Great Britain: A Survey of the Attitudes of the Parties', *BJIR*, Vol. 12, Issue 3, November 1974, 327-351 at 331.

<sup>1008</sup> TUC *Annual Congress Report, 1973*.

<sup>1009</sup> 'Industrial Relations in the United Kingdom May- August 1974', *BJIR*, Vol. 12, Issue 3, November 1974, 449-450.

It was set up at a time when there was 'disenchantment with the role of government in overseeing wage disputes, and recognition of the need for an impartial body to oversee disputes'.<sup>1010</sup> In its first year of operation, it successfully arbitrated in over 2,500 industrial disputes, which strongly suggested that this was the best way forward for dealing with them.<sup>1011</sup> As an impartial and independent agency, ACAS retains an important role in supporting the parties in an employment relationship, but has no enforcement powers even today. Dickens has questioned whether the organization should have wider powers, such as the right to offer advice to employers in individual claims to avoid future problems, and a greater role in compliance.<sup>1012</sup> Nowadays it does provide a Model Workplace, offering a blueprint template for employers to measure and self-assess their performance in specific areas such as pay and grievance procedures, although take-up for this has been slow so far. Nonetheless, the success of ACAS, which no government has yet dared to challenge, is testimony to the ability of an organization which has no influence from government, unions or employers, to offer an unbiased service which is to the benefit of all three.

Conciliation can be on a purely informal basis, but to have an enduring, reliable and independent service, legislation was found to be necessary to establish such a facility. This is an outstanding example of legislation working at arms' length, rather than acting either restrictively or prescriptively, for the good of healthy industrial relations. The system retains the flexibility of independent arbitrators to deal with difficult industrial disagreements, whilst ensuring financial support and the

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<sup>1010</sup> G. Dix, B. Barber, 'The changing face of work: insights from ACAS', *Employee Relations*, Vol. 37, Issue 6, 670-682, at 670.

<sup>1011</sup> <<http://www.nationalarchives.gov.uk/cabinetpapers/alevelstudies/1960-radicalisation.htm>> Accessed 20 July 2016.

<sup>1012</sup> L. Dickens, *Making Employment Rights Effective*, (London, 2012).

involvement of both sides of industry. While the previous TUC-CBI model undoubtedly provided the blueprint for the CAS, statutory backing has ensured the longevity and success of this important body which continues to deal with individual worker complaints and seeks to encourage good labour practices.

#### *6.6 Legislation undergoes a change of emphasis and the Social Contract ends.*

The period of 1974 to 1979 witnessed a clear drive towards voluntarism, with plans for a return to free collective bargaining, although underpinned by alternative supportive structures. The Government was unable to dispense entirely with legislation, but was now inviting the unions to participate in its policy making and legislative proposals. Nevertheless, there was a noticeable shift in emphasis away from supporting the unions and towards supporting the individual. Wedderburn had earlier analyzed labour legislation as being binary in nature, with individual legislation providing a floor of rights, and collective labour law governing trade union affairs. Davies and Freedland noted that this binary system creates something of a paradox, however, since it is unclear which type should take precedence.<sup>1013</sup> The authors highlighted that the former type of legislation had continued apace since 1974, with developments such as improvements to unfair dismissal law, the *Sex Discrimination Act 1975* and the associated provisions of the *Employment Protection Act 1975*, and the *Race Relations Act 1976*. In addition, the first comprehensive reform to health and safety law was passed, protecting all workers regardless of workplace.<sup>1014</sup> These all added to the body of rules which was aimed at promoting industrial justice in the individual employment relationship.<sup>1015</sup> Indeed, there was a noticeable shift of

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<sup>1013</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 422.

<sup>1014</sup> *Health and Safety at Work Act 1974*.

<sup>1015</sup> Davies, Freedland, *Labour Legislation and Public Policy*, pp. 422-3.

emphasis towards protecting the individual, even at the expense of traditional union rights, indicating a new direction for labour law.

For trade unions, however, there were more modest gains, despite the reduction in legislative regulation of the structures of industrial relations which was brought about through the repeal of the *Industrial Relations Act*. Even though there was a restoration of the tort immunities in the *Trade Unions and Labour Relations Act 1974*, Davies and Freedland argued that this ‘appears to be not so much a reaffirmation of the liberal model of collective *laissez-faire*, in which the conduct of industrial relations is delegated by government to the parties, as an attempt to construct a corporatist relationship.’<sup>1016</sup> Unions were understandably wary of such a move, and gave the new legislation only a cautious welcome. Indeed, Taylor denounced the legislative gains for unions as ‘limited and flimsy’, arguing that ‘the rhetoric belied the modest realities.’<sup>1017</sup>

Unions had been encouraged not to exercise their industrial powers to the full in return for access to the government’s legislative and executive policy-making through the Social Contract. This was not an entirely new direction for the relationship between unions and government, and since the end of the war Labour governments had tried to incorporate trade unions and employers more closely into the enterprise of government through political rather than legal means, thereby leaving the formal legal structure of collective autonomy intact. The NEDC was one such example. ‘What was erected in the second half of the 1970s was, however, clearly the most elaborate and explicit of these corporatist arrangements, and yet it

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<sup>1016</sup> *Ibid.*

<sup>1017</sup> Taylor, *The Trade Union Question in British Politics*, p. 241.

proved no more capable of even medium-term success than its predecessors.<sup>1018</sup> Despite TUC acceptance of greater legislative involvement in what had been traditionally the preserve of collective bargaining, events such as a weakened economy and rising inflation, continued industrial action and a failure of individual unions to agree with some of the TUC strategy, contributed to the failure of much of the Social Contract.

In July 1978 the Government issued a White Paper which set a limit of five per cent on pay rises for the next twelve months. This was an unofficial phase IV of the Social Contract. It was described by Denis Healey as 'provocative as well as unattainable'.<sup>1019</sup> Barbara Castle noted that, 'The breach with the unions was widening. They had kept their side of the social contract by acquiescing, however reluctantly, in the Government's pay and anti-inflation policies, but their patience was wearing thin.'<sup>1020</sup> The unions, thinking that there would be an election soon, did not react too badly to the news, but following an announcement by Callaghan in September that there would be no election, the TUC refused to agree to the five per cent limit at a meeting in November. This therefore ruled out TUC support for Phase IV. The first of four major strikes began with a strike in the private sector, namely the Ford car works, where the employers were forced into giving a 17 per cent pay rise. This marked the beginning of the so-called Winter of Discontent. The Government was forced to retreat from its planned sanctions on employers which exceeded the five per cent limit.

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<sup>1018</sup> *Ibid.*, p. 424.

<sup>1019</sup> D. Healey, *The Time of My Life*, (London, 1989), p. 462.

<sup>1020</sup> B. Castle, *The Castle Diaries 1964-1976*, (London, 1990), p. 774.

The pay strategy was therefore dealt a severe, and possibly fatal, blow by the events of the winter of 1978-79,<sup>1021</sup> when industrial relations between the Government and the unions broke down altogether. The Government had tried to enforce a pay increase limit of 5 per cent when inflation was still in double figures. By February 1979, over one and a half million workers were on strike, including road hauliers, grave-diggers, refuse collectors and health workers.

### *6.7 Conclusion*

The Social Contract, particularly the notion of free collective bargaining, had proved to be politically unfeasible and impossible to uphold in the face of economic factors. This left the way clear for the very different, legislative-heavy and restrictive approach of the Thatcher Government from 1979. One way of reducing inflation would be first to weaken the unions, and that is precisely what the Conservative Government set out to do. The Social Contract had been a bold and novel experiment in bringing the trade unions into closer cooperation with government, but proved to be short-lived, and no similar experiment has been attempted since. Nevertheless, in trying to avoid the imposition of legislation, the TUC had perhaps found itself unwittingly agreeing to something even less palatable, which was severe self-restraint over pay claims. Spiros Simitis argues that legislation is just one form of state intervention, and the 'indirect steering based on a carefully delegated decision-making power'<sup>1022</sup> seems to be an apt description of the TUC's production of its own

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<sup>1021</sup> See J. Shepherd, *Crisis? What Crisis? The Callaghan Government and the British Winter of Discontent*, (Manchester, 2013), for an in-depth analysis of this event.

<sup>1022</sup> S. Simitis, 'Juridification of Labor Relations', in G. Teubner (ed.), *Juridification of Social Spheres*, (European University Institute, 1987), p. 122, cited in Davies, Freedland, *Labour Legislation and Public Policy*, p. 415.

incomes policies in the mid-1970s.,<sup>1023</sup> although even that particular form of state intervention became unsustainable in the face of rising inflation and unemployment.

Employee participation was an interesting idea which was thoroughly examined by the Bullock Committee. It was an idea which worked well in German systems of organization, but met with opposition from all sides in the UK as it did not accord with the British system of unitary boards or with the essentially conflictual context of British industrial relations. There was no single defect in the Bullock proposals which caused the experiment to fail, but rather it owed its lack of success to the recession and rising unemployment, 'a context in which neither trade unions nor management saw much point in it as an immediate issue.'<sup>1024</sup>

Neither the Social Contract, nor the concept of worker participation were therefore able to offer either a viable alternative to restrictive legislation, an improvement in industrial relations, or lasting benefits. Both were victims of the financial climate at that particular time and therefore no firm conclusion can be drawn as to whether they would prove unworkable at any other period. Of the three forms of alternatives to restrictive legislation put forward in the 1970s as a means of regulating trade unions, ACAS has been the most enduring and the most successful. Even though ACAS was established by legislation, and funded by government, its activities have remained largely untouched by any further legislation in the last forty years. ACAS remains as the great success story in the drive to control and regulate industrial relations, while supporting a non-confrontational approach to breakdowns in industrial harmony.

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<sup>1023</sup> Davies, Freedland, *Labour Legislation and Public Policy*, p. 415.

<sup>1024</sup> Lord Wedderburn, *The Worker and the Law*, p. 838.



Nevertheless, by the end of the 1970s the floodgates had been opened wide to the imposition of legislation to improve the working rights of individuals, beginning with the Donovan Report. This process had begun to proliferate and take root in this decade, taking over much of the role of the trade unions in protecting workers. Had the unions followed the wishes of the TUC to introduce worker participation, a more democratic form of company decision-making may have ensued. Workers may then have gained a greater say in identifying the rights that were most important to them, instead of having them imposed by the government through legislation. It seemed that, despite strong arguments for alternative mechanisms for industrial peace, the failure of the employers and trade unions to positively engage with worker participation, and the financial constraints on a fully-functioning Social Contract, contributed to their ultimate failure, leaving the door wide open for the restrictive legislation to be introduced by the Thatcher Government after 1979.

## Chapter 7. Conclusion

This research has focused on industrial relations in the 1960s and 1970s as they related to the *Royal Commission Report, In Place of Strife* and the *Industrial Relations Act 1971*. These documents and the events surrounding them have been examined by many other writers, although the focus of this study has been on the value of legislation in the context of industrial relations at this particular period, thereby lending a hitherto largely unexplored perspective on these important documents.

Four major findings have emerged from a study of these documents. First, although the Donovan Commission saw the answer to much industrial unrest in greater support for collective bargaining rather than new laws, legislation was viewed increasingly by politicians as a more viable alternative to the voluntarism that had characterized industrial relations for decades, and which could bring about quicker results. Secondly, there were many disparate views on the value of legislation and even the unions were willing to accept such legislation that brought benefits to the workers and to the unions themselves; in particular it was the *only* remedy for overturning unwelcome judicial decisions which undermined the autonomy and power of the unions. Thirdly, *In Place of Strife* was the first major attempt since the Second World War to use legislation to strike at union power. Although unpalatable both to unions and employers, its legislative proposals could have represented a preferable alternative to the *Industrial Relations Act* which presented a vivid demonstration of the folly of trying to make too many fundamental changes, too quickly, to a well-established system of industrial relations. Finally, the Social Contract and other experimentation with alternatives to legislative control came

about as a result of the adverse reaction to strict regulatory legislation, although it too proved to be largely unsuccessful, mainly due to the economic circumstances of the time. However, it was perhaps the unions' gradual acceptance of legislation as an alternative means of securing workers' rights that left the door open to more restrictive legislation in the 1980s. This would rob the unions of much of their ability to regulate themselves, but the subsequent reduction in strikes demonstrated that it could act as a very effective means of controlling industrial action.

This gradual process of politicization of industrial relations began with the Donovan Report. This report was pivotal in the gradual shift in focus on unions from essentially autonomous organizations to bodies which needed to be managed and controlled through centralized mechanisms. Lewis was right to claim that the Report represented the thin edge of the legal wedge, as more legislation would eventually follow than had been envisaged by the Commission, although some members, including Kahn-Freund, Flanders and Shonfield, were all in favour of legislation in certain areas. However, criticism of the Donovan Report revealed a general disappointment that it failed to offer more legislative solutions, that it was overly complacent, and that it relied too much on an historical perspective.

This in turn led to a robust response from the Labour Government in the form of the White Paper, *In Place of Strife*. An analysis of some of its key provisions relating to reform of, and support for, collective bargaining suggested a practical way forward which could advance the ideological stance of the Donovan Report. An examination of the contents of the White Paper, the diaries of key protagonists, the minutes of their meetings, government records, newspaper reports, parliamentary debates, biographies and historical analysis has revealed a deepening politicization of

industrial relations. Indeed, both Wrigley and Maguire noted this trend towards politicization in the White Paper.

However, this research throws doubt on Simpson's view that legislative action was justified due to the weakness of the Donovan proposals, although opinions on why successive governments were able to justify increased juridification of industrial relations vary. Dorey, for instance, blamed the push for legislation on the unions' reactions of increased apathy towards incomes policies and a greater tendency to engage in unofficial strikes. Indeed, it is clear from the evidence that workers were reluctant to accept policies which imposed restraint on wage rises, while many of them saw little harm in taking unofficial strike action.

An examination of the individual elements of the White Paper revealed that some MPs, including Callaghan, Orme and Foot were totally opposed to the legislative proposals in the White Paper, as was the TUC, while the CBI opposed them for not going far enough. Other MPs, including Heffer and Peart considered that some parts of the White Paper were acceptable, while journalist John Torode also saw merit in certain elements. However, in trying to find a middle way between full legislative control and the labour movement's preference for a voluntarist system, Castle failed to satisfy anyone entirely and it was perhaps no surprise that the White Paper proposals failed to find their way into legislation. The final outcome was nothing more than an agreement from the TUC to adopt a more robust approach to tackling industrial action.

The failure of both the Donovan Report and the White Paper to translate into practical, binding solutions enshrined in legislation revealed a weakness in an industrial relations system which relied on policies, recommendations, non-binding

agreements and undertakings, and highlights the potential value of legislation as a mechanism for ensuring consistency, certainty and control over the people who make up and govern the trade unions. Nevertheless, subsequent events showed that the impact of industrial relations legislation also needed to be carefully considered before implementation.

The Conservative Party began taking a more robust, legalistic approach to the trade union problems in the 1960s, particularly towards unofficial strikes and the difficulty of imposing pay restraint through incomes policies. It finally abandoned any previous reluctance to reform industrial relations through a legislative framework, giving a high priority to a revised strategy to deal with the trade union 'problem'.<sup>1025</sup> The Trade Union Law and Practice Group recommended a decisive break with the voluntarist approach, as set out in the 1965 policy document *Putting Britain Right Ahead*,<sup>1026</sup> while proposals for legislation appeared in the 1966 manifesto, *Action Not Words*,<sup>1027</sup> and in *Fair Deal at Work* in 1968. These documents revealed an inclination for more stringent legislative measures to control industrial action at a time of economic and social conflict, many of which were eventually enacted in the *Industrial Relations Act 1971*.

Further examination of Conservative Party documents, as well as historical analysis and contemporaneous debate surrounding the *Industrial Relations Act* itself, revealed many reasons for the hostile reaction to its provisions from both the union movement and from employers. In a way, the use of legislation to this extent was probably ahead of its time. Legislation would come to play a greater role in industrial

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<sup>1025</sup> R. Taylor, *The Trade Union Question in Politics: Governments and Unions Since 1945*, (Oxford, 1993), p. 177.

<sup>1026</sup> *Putting Britain Right Ahead: A Statement of Conservative Aims*, Westminster: Conservative and Unionist Central Office, 1965.

<sup>1027</sup> <<http://www.conservative-party.net/manifestos/1966/1966-conservative-manifesto.shtml>> Accessed 17 July 2014.

relations within the next decade, but the early 1970s, rife with militant and powerful unions, still flushed with success over their resistance to *In Place of Strife*, was evidently not the optimum moment for bringing in far-reaching legislative reform.

Not only was the legislation far-reaching, but some writers, including Heffer, Bell and Joseph, identified class bias in the legislation, and there is little doubt that it would have had a greater impact on the working classes than the middle classes and the reaction to it was most extreme among the unions in the heavy industries such as docking. However, economic factors were claimed to provide sufficient justification for this legislation, according to Taylor and Lewis, although Barnes disagreed with this analysis. Economic considerations are, however, the main concern of government, and therefore it was unsurprising that the unions became a target for major reform at a time of rising wages and inflation.

The 1971 Act was short-lived, and alternatives to such restrictive legislation were hurriedly discussed between the Labour Party and the unions in a bid to find a third way between complete autonomy and legislative control. An examination of the alternatives to legislation which were mooted or attempted in the 1970s demonstrated that, although legislation was not without its drawbacks, the long-term will to experiment with new methods of maintaining industrial peace must be present on all sides of the industrial spectrum. The Social Contract, industrial democracy and ACAS were contrasted with law as a means of maintaining harmony within the workplace. Robert Taylor, Bell and Tomlinson viewed the Social Contract as putting unions at the heart of future labour law, although Laybourn attributed its eventual failure to unions' and governments' lack of joint commitment to an understanding on how to achieve economic growth. Indeed, the lack of commitment by government, unions and employers, as well as high unemployment and soaring inflation, were

significant contributors to the lack of success and durability of the measures, with ACAS remaining as the one outstanding exception. Nevertheless, this particular period is notable for its multiple lost opportunities to implement measures which could support and complement industrial relations in ways that legislation could not possibly do.

The historiography revealed that much had been written about industrial relations and about the three documents examined in this thesis. Much has also been written about the role of the law in industrial relations. Nevertheless, despite an extensive literature in industrial relations related to the three main documents that have been examined here, there has been no previous in-depth consideration of the specific role and suitability of legislation which might be determined from a focus on these important papers. Indeed, those who have written on them have been historians, politicians, industrial relations experts, journalists, business analysts, trade unionists and employers' organizations, but very few lawyers. This exposes something of a lacuna in the examination of the role of legislation in the field of industrial relations, particularly in this period, a gap which this research has attempted to address. The reasons for the failure of the three documents have been explained in terms of multiple factors, but with scant reference to the purpose and value of legislation as a tool for managing industrial relations. It is interesting to note that, despite the number of lawyers on the Donovan Commission who argued against the use of legislation to regulate industrial relations, these were largely ignored by politicians.

Of those experts who have offered opinions on the role of law in industrial relations in the 1960s and 1970s, Wedderburn was one who was very clear that law can play a useful role in providing a floor of rights, focusing on individual employment and safety laws. He nevertheless maintained that there were problems with laws which

provided for compulsory conciliation of disputes, as the *Industrial Relations Act* and *In Place of Strife* had both advocated. Undy, Fosh and others were wary of legislation that stunted the development of unions and was likely to generate hostility among members. Flanders and Shonfield, on the other hand, thought that there was an important role for legislation and that pure voluntarism was an outdated concept. Wrigley also approved of Flanders's view of the role of law, finding that it had a role to play in industrial relations. Dunn even considered that the *Industrial Relations Act* could have been of benefit to the unions in time, putting them on a more solid legal footing. Nevertheless, writers such as Andrew Thorpe and Andrew Taylor were both sceptical about the idea of top-down solutions, with no consideration of the political objectives of reform. These and other writers whose work is examined here have contributed to a substantial corpus of divergent opinion as to the suitability of legislation in the regulation of industrial relations, although it could be argued that the emphasis on the impact of legislation in this area and how it would affect the people it attempted to control was sadly neglected.

The findings that have emerged from this research have nevertheless revealed that an examination of such suitability can only be done within the context of the prevailing political and economic climate. This has been the focus of this pilot study, using only the key documents produced in the decade from 1965. Donovan focused on the historical nature of industrial relations, using past experience to inform future policy. *In Place of Strife* attempted to legislate to control inflation through incomes policies at a time of full employment and trade union strength. The *Industrial Relations Act* also legislated at a time of union strength; the Government failed to consult those unions, legislating for potential future problems that had not yet arisen. All were guilty of the error of overlooking the key prevailing conditions, demonstrating



that relying on settled opinion which is based on historical analysis, or making predictions of future problems, were not the most effective approaches towards current requirements.

The Donovan prescription of formalizing establishment-level collective bargaining machinery was never viewed as sufficient by governments whose key concern was to control inflation - which necessitated immediate solutions; this could only be brought about through legislation. Successive governments have found sufficient justification in the failure of the Donovan prescription for industrial relations reform to turn to the law to exercise greater control over the collective bargaining process because of its potential for inflationary consequences. This has taken the law in a new, revolutionary direction and away from its previously social functions such as redressing inequality of bargaining power and the resolution of conflicts of interest between employer and trade union.<sup>1028</sup>

Politicians saw a greater role for the law than Donovan was prepared to admit, although the failure of the White Paper and the *Industrial Relations Act* seems to have retrospectively given ample justification for the Commission's tentative recommendations for legislation. Castle's proposals indicated a determination to move away from the largely passive, *laissez-faire* role that the State had adopted in the post-war period of consensus. In proposing legislative solutions to the problems of unofficial strikes, she was placing an over-reliance on the ability of new laws to fundamentally change the nature of organizations which were made up of people. People who had become accustomed to having a voice in the workplace; the opportunity to negotiate wage rises and working conditions; the freedom to take industrial action to hold employers to ransom over their wage demands. It was

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<sup>1028</sup> P. Davies, M. Freedland, *Kahn-Freund's Labour and the Law*, (London, 1983), p. 5.

people who won the battle as the unions won the right to maintain their autonomy and control over their own activities, from which we can infer that the unions were in many ways stronger than the government. To dictate how unions should be run, therefore, they would first have to be weakened. While Heath's legislation failed to do this, Thatcher's Government from 1979 appeared to learn from this mistake and embarked on a programme of incremental steps which would result in a severe reduction in union strength.

The *Industrial Relations Act 1971* was reviled by the unions during its brief life, and defied by many in the trade union movement precisely because it tried to introduce too many controls, too quickly, over union activity and procedures. Had Heath's administration taken a stepped approach to industrial relations problems, the legislation may have met with less resistance and greater success, since the incremental approach of the legislature in the 1980s suggests that it was not legislation *per se* that was the wrong strategy for controlling industrial relations, but rather the way in which it was implemented. This may imply that there is a middle way, and that there are sound reasons for introducing legislation slowly and to have long-term goals. The measures taken by Wilson and Heath had short-term economic aims, and appeasing the unions was not a top priority for either of them.

Both the Wilson and Heath governments were shown to cling to a patriarchal ideology which was underpinned by the idea that those who lead the country know best. The failure of a decade of discussion and experimentation in industrial relations between the mid-1960s and the mid-1970s was the harbinger of the incremental legislative approach which Thatcher's administration adopted in reducing trade union powers. Nevertheless, the trade union movement was at least partly to blame for the failure of the Donovan Report, *In Place of Strife* and the *Industrial Relations Act* to

result in workable solutions, and it is undeniable that they each contained certain aspects which could have proved beneficial to all stakeholders.

The Social Contract, with its agreement to accept pay restraint in return for an increase in social welfare provisions, was welcomed to some extent by the unions, but soaring inflation demonstrated the unsuitability of the experiment as a form of economic policy. Industrial democracy was also found to be unsuitable for the way in which British companies and trade unions are organized, and could not be successfully imposed without a complete reorganization of both, which was impractical. As alternatives to legislation, they undoubtedly had their merits, but were unsuitable because of the nature of trade unionism and company organization in this country, and because of the economic climate of the 1970s.

In addition to a consideration of the reasons for the failure of each of the three documents to *individually* provide lasting solutions, this research has also given some insight into the reasons why they failed *collectively* to provide workable solutions to the chaotic nature of collective bargaining and union organization. First, their commissioners underestimated the strength of the trade unions and their traditions. Secondly, they failed to consider the economic situation sufficiently. Finally, while Donovan placed very little reliance on legislation as an appropriate means of controlling industrial relations, *In Place of Strife* and the 1971 Act went too far in the opposite direction, thereby failing to convince the unions of the correctness of their approach. In addition, this trio of failed attempts to control and regulate industrial relations has been blamed on 'the attitude of the British trade union movement to government interference in its affairs [which] has been influenced by its

structure, by its affiliation to the Labour Party and by tradition.<sup>1029</sup> Within that structure lay a firm belief in free trade unionism, unfettered by statutory control. However, given the chaotic nature of industrial relations in the late 1960s and early 1970s, calls for some central control were almost inevitable.

Whilst very few of the recommendations or legislative provisions survived beyond the 1970s, the three documents represent a significant attempt to regulate trade union activity, which has left an important legacy for legislators and unions alike. The transition from treating unions as private clubs which were outside the law was an inevitable response by the country's leaders, who viewed them as a threat to law and order. Although unions were averse to restrictive legislation, by agreeing to legislation which did provide tangible benefits, they inadvertently left the door open to the introduction of less welcome legislation. They wanted it all, but in the end lost a great deal.

The examination of this period revealed, in summary, that the 1960s 'limited legislation' Donovan solution was not fit for purpose; that the 1970s solution of comprehensive legislation was also ineffectual, but which paved the way for consideration of alternatives to legislation; and that such alternatives require commitment from all sides to be effective. The ideological stance of a government which holds fast to the notion that legislation is indeed the most effective means of reducing strikes and managing the economy can take lessons from history. First, that legislation needs to be introduced incrementally if it is to be effective; secondly, that if unions are not consulted over the content of legislation, they may rebel and strikes may in fact increase; thirdly, that legislation can be useful to workers in providing a

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<sup>1029</sup> R. Tarling, F. Wilkinson, 'The Social Contract: post-war incomes policies and their inflationary impact', *Cambridge Journal of Economics* 1977, 1, 395-414 at 408.

floor of rights; and finally that collective bargaining and alternatives to legislation should be seen as part of a package of measures to ensure industrial harmony. If the purpose of legislation was the improvement of industrial relations, a responsible government would consider the need to balance any further restrictions on trade union freedom with improved working conditions and greater strengthening of trade unions. Governments also have to balance the interests of the State against those of trade unions. Striking the right balance between various sectional interests is essential in maintaining the correct division of bargaining power. That failure to find the correct balance was fatal to the success of the Donovan Report, *In Place of Strife* and the *Industrial Relations Act*, but provided the perfect springboard for the tranche of legislation that was to come. This unwelcome outcome, as far as the unions were concerned, provided perhaps the perfect reminder of the importance of compromise in achieving harmonious industrial relations, something which had been in short supply from unions, politicians and employers' organizations during this most eventful watershed decade in industrial relations history. The evidence of this research around the Donovan Report, *In Place of Strife* and the *Industrial Relations Act* strongly suggests that legislation which aims to control the rights and the behaviour of trade unions is unlikely to achieve true industrial harmony, and should be used with the utmost caution.

## **Chapter 8: A Final Word: Implications and suggestions for further research**

The implications drawn from this pilot study give rise to a number of issues surrounding the appropriateness and efficacy of legislation in industrial relations, and also to certain recommendations and suggestions for further research. This research suggests that, for legislation to be effective it must be acceptable to those affected by it, and it must command their respect. Consideration of the Government's motivation alongside an examination of how it strayed from tried and trusted methods of introducing new laws lead to a valuable insight and understanding of important principles which need to be followed when legislating for people.

Further valuable lessons can be learned from this study which can be taken forward by future legislators. Legislation can be an effective tool in helping to set up organizations such as the CIR and ACAS, which offer an alternative to industrial action, and are still more effective when legal sanctions exist to put pressure on employers to comply with their recommendations. As Wedderburn suggested, law can also be effective in providing a floor of rights for all employees as opposed to just those in unionized industries. Although those rights are often inferior to the gains made through collective bargaining, it is suggested that this could and should be addressed, since it is within the gift of politicians to protect the working population from exploitation.

Indeed, there is much scope for research into the extension of individual rights, and a consideration of whether this could lead to a reduction in strikes. For example, if health and safety rights were to be given a higher priority instead of being treated as so much 'red tape', this could cut down on strikes, as workers would be less likely to

have to resort to industrial action in order to improve working conditions. Likewise, there could be further research into the effects of the imposition of non-negotiated contracts on public sector staff, and the likelihood of this resulting in strike action as the only means of legitimate protest; this could lead to fully negotiated agreements in the future. This would be more likely to be more acceptable to workers and would be in accordance with the Donovan proposal to support collective bargaining.

There is also scope for further research into the value of the unfair dismissal provisions, first proposed by the Donovan Commission and enacted by the *Industrial Relations Act*. A number of inferences can be drawn from their enduring nature. While legislation can act as a deterrent, reinforcing the position of those inclined to obey anyway, the complexity of the legislation and the fact that it has been barely revised since 1971, means that unfair dismissals are still a common occurrence, even though numbers are declining. Research into alternative means of preventing unlawful dismissals, as opposed to legislation which merely labels certain dismissals as unfair in retrospect, could have a positive effect on the employment relationship. Such research into proactive means of preventing unlawful dismissals could cut down on both costly litigation and industrial action in support of sacked workers.

The inferences that can be drawn from this study could inform further research into the overall value and purpose of industrial relations legislation. It is reasonable to conclude that the Donovan Commission erred in seeking historical justification for not committing procedures to legislative control, since subsequent legislation has demonstrated how unions can continue to use the strike as the ultimate weapon, but only after following democratic procedures and giving sufficient notice, which is of benefit to both workers and employers. There is a strong argument for research into the viability and suitability of legislation in the realm of industrial relations.

Nevertheless, any legislation to curb the power of the unions without accompanying social legislation to improve the lives of working people is unlikely to result in an immediate reduction in the number of strike days, since unions would resort to the ultimate strike weapon to fight to keep their rights. Such use of industrial relations legislation, for no discernible purpose other than to emasculate the unions, is unlikely to be embraced or welcomed by those most affected by it.

### *Epilogue*

It is clear from the evidence presented in this thesis that legislation to regulate relationships in the workplace can be an appropriate response in many circumstances, but without the agreement of the trade unions it is likely to encounter opposition if its aims are purely political and it provides little or no benefit to workers and unions. Restrictive laws, aimed at regulating the economy with little regard for the rights and needs of workers, are bound to raise objections from trade unions. Nevertheless, trade unions have gradually been displaced as powerful associations in public life by agency employment and other precarious work forms. Times have changed and trade unions are no longer as central to the procurement of minimum standards of pay and protection as they once were. The European Union has taken much of that role now for all workers within the Union, and Brexit, when it comes, may herald a new and more central role for British trade unions if, as seems likely, workers are stripped of the rights and protections that have been gained as a direct result of EU membership. Nevertheless, today's unions no longer possess a 'giant's strength', since the big industrial unions which were at the centre of large scale unofficial strikes have all but disappeared. Fifty five per cent of trade unionists are now women and often part-time. Jobs are generally much less secure, with many



workers now unwilling to risk their livelihoods by taking industrial action. If any UK government decided to legislate to destroy workers' and trade unions' remaining rights in the future, unions would be all but powerless to object. The *Trade Union Act 2016* represents just such a move, and the failure of the TUC and the trade unions to prevent its implementation is a clear demonstration of just how far the union movement has been weakened, while governments now have no hesitation in legislating both to remove much of the floor of workers' rights and to disempower the trade unions. The lengthy period of transition all began with the Donovan Commission, but it is unlikely that the Commission could have predicted that its own general rejection of legislation could have been the catalyst which has led to an almost complete dismantling of trade union rights and the central role played by collective bargaining. Nevertheless, legislators and policy makers should in future pay careful attention to the mistakes made by past governments if further legislation is to be not only acceptable to trade unions and workers, but both effective and workable.

## **BIBLIOGRAPHY**

### **PRIMARY SOURCES**

#### **UK ACTS OF PARLIAMENT (CHRONOLOGICAL) – [www.legislation.gov.uk](http://www.legislation.gov.uk)**

*Combination Acts of 1799 and 1800*

*Friendly Societies Act 1855*

*Trade Union Act 1871*

*Criminal Law Amendment Act 1871*

*Conspiracy and Protection of Property Act 1875*

*Employers and Workmen Act 1875*

*Protection of Property Act 1875*

*Employers and Workmen Act 1875*

*Trade Union Amendment Act 1876*

*Trade Disputes Act 1906*

*Trade Union Act 1913*

*Munitions of War Act 1915*

*Trade Boards Act 1918*

*Representation of the People Act 1918*

*Employment of Women, Young Persons and Children Act 1920*

*Trade Disputes and Trade Unions Act 1927*

*Children and Young Persons Act 1933*

*Hours of Employment (Conventions) Act 1936*

*Employment of Women and Young Persons Act 1936*

*Factories Act 1937*

*Young Persons' Employment Act 1938*

*Baking Industry (Hours of Work) Act 1938*

*Emergency Powers (Defence) Act 1939*

*Restoration of Pre-War Trade Practices Act 1942*

*Reinstatement in Civil Employment Act 1944*

*Disabled Persons (Employment) Act 1944*

*Wages Councils Acts of 1945 and 1948*

*Trade Disputes and Trade Union Act 1946*

*Shops Act 1950*

*Mines and Quarries Act 1954*

*Baking Industry Act 1954*

*Agriculture (Safety, Health and Welfare Provisions) Act 1956*

*Factories Act 1959*

*Offices Act 1960*

*Factories Act 1961*

*Contracts of Employment Act 1963*

*Offices, Shops and Railway Premises Act 1963*

*Redundancy Payments Act 1965*

*Equal Pay Act 1970*

*Industrial Relations Act 1971*

*Health and Safety at Work Act 1974*

*Trade Union and Labour Relations Act 1974*

*Sex Discrimination Act 1975*

*Race Relations Act 1976*

*Employment Act 1980*

*Employment Act 1982*

*Trade Union Act 1984*

*Employment Act 1988*

*Employment Act 1989*

*Employment Act 1990*

*Trade Union and Labour Relations (Consolidation) Act 1992*

*Employment Relations Act 1992*

*Trade Union Reform and Employment Rights Act 1993*

*Minimum Wage Act 1998*

*Employment Relations Act 2004*

*Trade Union Act 2016*

**STATUTORY INSTRUMENTS – [www.legislation.gov.uk](http://www.legislation.gov.uk)**

S.I. 1971, Nos. 1522, 1660, 1661, 1682, 1761, 1777, 2059.

**NON-UK LEGISLATION - <https://www.law.cornell.edu>**

*Labor Management Relations Act 1947.*

**EU LEGISLATION - <http://eur-lex.europa.eu/>**

*Works Council Directive 94/45/EC.*

**CASE LAW (ALPHABETICAL) - <https://www.lexisnexis.com>**

*Amalgamated Society of Railway Servants v Osborne [1910] AC 87.*

*Bonsor v Musicians Union 1956, AC 104.*

*Churchman and Others v Joint Shop Stewards' Committee of the Workers of the Port of London and Others, The Times Law Report, 12 June 1972.*

Craddock Brothers v Same, Panalpina Services Ltd. Panalpina (Northern) Ltd. v Same, [1972] 3 All ER 101, [1972] ICR 308, HL.

Curran v Treleaven [1891] 2 QB 545

Ford Motor Co. v A.E.F. and Others [1969] 2 QB 303.

Heaton's Transport (St. Helens) Ltd. v Transport and General Workers Union, NIRC [1972], ICR, 285.

Hornby v Close 1867 LR 2 QB.

Huntley v Thornton 1957, 1 WLR 321.

Lyons v Wilkins [1899] 1 ch. 255, 267.

Midland Cold Storage Ltd. v Turner [1972] ICR 230.

Quinn v Leathem [1901] AC 495.

Read v Friendly Society of Stonemasons [1902] 2 KB 732

Rookes v Barnard [1964] UKHL 1.

Stratford v Lindley [1965] AC 269.

South Wales Miners' Federation v Glamorgan Coal [1905] AC 239

Taff Vale Railway Company v Amalgamated Society of Railway Servants, UKHL 1 1901.

Temperton v Russell [1893] 1 QB 715

Trollope and Sons v London Building Trades Federation, *The Times*, 28 April, 1, 2, and 5 May 1896.

## **GOVERNMENT PUBLICATIONS (CHRONOLOGICAL)**

*The Eleventh and Final Report of the Royal Commissioners Appointed to Inquire into the Organization and Rules of Trades Unions and other Associations 1868-69*, London, HMSO. Parliamentary papers, Vol. Xxi.

*The Royal Commission on Labour Laws, 1874-5*, London, HMSO, Command Paper C.1094 (First Report, 1874) and C. 1157 (Second Report, 1875).

*The Royal Commission on Labour, 1891-4*, Command Papers C. 6708, C. 6708-I-VI, C.6795, C. 6795 I-XII, C.6894. C.6894 I-XXV, C. 7063, C.7063 I-XIV, C.7421, C. 74421-I.

*The Royal Commission on Trade Disputes and Trade Combinations, 1903-6*, Command Paper, Cd. 2825.

*Ministry of Labour, Industrial Relations Handbook, 1944.*

*Report of the Royal Commission on Trade Unions and Employers' Associations, 1965-68*, Cmnd. 3623.

*Royal Commission on Trade Unions and Employers' Associations (1965)*, Cmnd. 3623. *Written Evidence of the Ministry of Labour*, (London, HMSO).

NA/T/248/596, Statutory compensation for redundancy (Crombie code): compilation of a general code of regulations.

NA T171/605, Budget Papers, Michael Fraser to Chancellor of the Exchequer, 18 December 1962.

*Trade Unions for Tomorrow*, Memorandum of Evidence presented to the Royal Commission on Trade Unions and Employers Associations by the Inns of Court Conservative and Unionist Society, Volume 14, Issue 6, 1966.

NA LAB 10/2822, *Committee of Inquiry under Lord Devlin into Dock Workers' Pay: correspondence and papers, 1966-67.*

NBPI, Report No. 65, *Payment by Results Systems*, Cmnd. 3627, HMSO, 1968.

*In Place of Strife, 1969*, Cmnd. 3888.

*Code of Practice Consultative Document, (Industrial Relations Bill)*, Modern Records Office, University of Warwick (MSS.126/TG/1405/1).

### **CABINET PAPERS – National Archive**

NA CAB 129/111, *Modernisation of Britain*, 3 December 1962.

NA CAB 21/5779, Butler to Douglas-Home, 11 April 1963.

NA CAB 129/117/1, *Report of the Official Committee on Trade Unions and the Law*, January 1964.

NA CAB 129/136/33, *A Policy for Industrial Relations*, 30 April 1968.

NA CAB 6(69) 62, 6 June 1969, Note by the Secretary of the Cabinet.

NA CAB 128/44, Cabinet Conclusion, 23 October 1969.

NA CAB, C(70) 48, *Industrial Relations Bill, Memorandum by the First Secretary of State for Employment and Productivity*, 7 April 1970.

### **PRIME MINISTER'S OFFICE PAPERS – National Archives**

NA PREM 13/2727, W.E.J. McCarthy, *Strike Statistics and the White Paper: A Note on the Current Controversy*.

NA PREM 13 2724, *Summary of In Place of Strife*.

NA PREM, 13 2724, 3 January 1969, Phone call from Castle to Prime Minister.

NA PREM, 13 2724, 7 January 1969, Memorandum Fred Peart to Prime Minister.

NA PREM 13/2724, *The White Paper on Industrial Relations: a bargain with the unions?* 14 January 1969.

NA PREM 13 2724, Note from Gerald Kaufman to the Prime Minister, undated.

NA PREM 13/2727, Minutes of the Management Committee meeting, 9 June 1969.

NA PREM 13/2727, Minutes of a meeting held between the TUC and the Management Committee, 10 June 1969.

NA PREM 13/2727, Minutes of Management Committee meeting, 10 June 1969.

NA PREM 13/2727, Meeting of Negotiating Committee, 11 June 1969.

NA PREM 13/2727, Minutes of the Management Committee, 12 June 1969.

NA PREM 13/2727, Minutes of a meeting between Wilson and other Cabinet members, 13 June 1969.

NA PREM 15/975, Record of a meeting between the Prime Minister and the TUC General Purposes Committee 24 July 1972.

NA PREM 15/977, Victor Feather to the Lord Chancellor, 24 August 1972.

NA PREM 15/977, Lord Chancellor to Victor Feather, 17 September 1972.

NA PREM 15/1678, 'Industrial Relations Act 1971. National Industrial Relations Court', Memorandum written by Sir John Donaldson in 1973, included in the Prime minister's Private Office papers.

NA PREM, 15/1678, Memorandum from John Donaldson to the Home Secretary.

NA PREM, 15/1678, Letter from the Home Secretary to the Prime Minister, 1 October 1973.

## **HOUSE OF COMMONS DEBATES (CHRONOLOGICAL) - Hansard**

Volumes: 207, 410, 709, 761, 779, 781, 784, 785, 807, 808, 822, 840, 870, 898.

HC Deb., 23 June 1927, vol. 207, c. 2164

HC Deb., 2 May 1945, vol. 410, c. 1405.



HC Deb., 29 March 1965, vol. 709 c.188.

HC Deb., 20 March 1968, vol. 761 cc.430-552.

HC Deb., 16 July 1968, c. 1350

HC Deb., 3 March 1969, vol. 779 cc. 36-166.

HC Deb., 16 April 1969, vol. 781 cc.1180-1189.

HC Deb., 22 May 1969, vol. 784 cc. 630-8.

HC Deb., 17 June 1969, vol. 785 cc. 248-55, c.249.

HC Deb., 26 November 1970, vol. 807 cc. 632-748 at c. 652.

HC Deb., 14 December 1970, vol. 808 cc. 961-1076.

HC Deb., 14 December 1970, vol. 807.

HC Deb., 15 December 1970, vol. 808 cc. 1126-247.

HC Deb., 05 August 1971, vol. 822 cc.1900-1.

HC Deb., 04 July 1972, vol. 840 cc. 223-8.

HC Deb., 22 November 1973, vol. 807, c.1559.

HC Deb., 22 March 1974, vol. 870, cc. 1479-85.

HC Deb, col. 1335-1355, 23 May 1978.

## **HOUSE OF LORDS DEBATES**

HL Deb., 19 June 1969, vol. 302 cc. 1107-14, c. 1107.

## **LABOUR PARTY PUBLICATIONS (CHRONOLOGICAL)**

Labour Party Archive, Eric Heffer Collection, *Industrial Relations – A Programme for Action*, Report of a Special Trades Union Congress Held at Fairfield Hall Croydon 5 June 1969, ESH/3/5 – 11, Labour History Archive and Study Centre [LHASC].

Labour Party Archive, Eric Heffer Papers, *Talking Points*, 31 Dec 1970, No.23, Published by the Labour Party, ESH 3/5/11, Labour History Archive and Study Centre [LHASC].

Labour Party Archive, Eric Heffer Papers, Labour Research, '*Tory Plan for the Unions*', November 1970, ESH 3/5-11, Labour History Archive and Study Centre [LHASC].

Parsons, O.H. *The Tory Threat to the Unions*, Labour Research Department, 1970.

Parsons, O.H. *The Tory War on the Unions*, Labour Research Department, 1970.

Parsons, O.H., *Strikes and Trade Unions: Government White Paper Explained*, Labour Research Department, 1973.

Labour Party Manifesto, October 1974, '*Britain will win with Labour*'.

## **CONSERVATIVE PARTY PUBLICATIONS AND CORRESPONDENCE (CHRONOLOGICAL) – Bodleian, Modern Records Office.**

*The Industrial Charter*, Conservative and Unionist Central Office, London, 1947.

Bodleian, I. Macleod, '*Trade Union Legislation*', 24 September 1959, CRD 2/53/31.

Bodleian, CRD 2/7/17 IRC, *Industrial Change, The Human Aspect*, 1962.

Bodleian, CPA/ACP3/10(63)103, J. Hare, *Industrial Relations, Unofficial Strikes*.

*Putting Britain Right Ahead: A Statement of Conservative Aims*, Westminster: Conservative and Unionist Central Office, 1965.

*Conservative Manifesto 1966*

<<http://www.conservative-party.net/manifestos/1966/1966-conservative-manifesto.shtml>>.

Action not Words: the New Conservative Programme

<<http://www.politicsresources.net/area/uk/man/con66.htm>>.

Bodleian, 'Industrial Relations Policy: Matters for Further Consideration', memo by Sir Keith Joseph, for Policy Group on Trade Union Law and Practices, 1 January 1966, CRD/3/17/20, (PG/20/65/60).

Bodleian, PG/20/66/58; Conservative Research Department, *Report of the Policy Group on Industrial Relations*, CRD 3.17.2., 17 November 1967.

Bodleian, CRD 3/17/2, PLC 68(3), *Fair Deal at Work and the Donovan Report: Comparisons of Recommendations*.

*Fair Deal at Work: The Conservative Approach to Modern Industrial Relations*, Conservative Political Centre 1968.

Bodleian, MS 274-5, Note of a meeting with Representatives of the TUC on Thursday 2 January 1969.

Bodleian, MS 274-5, TUC White Paper on Industrial Relations – comments by General Council (undated, but preceded publication of the White Paper on 9 January 1969).

Industrial Relations Bill, Consultative Document, Department of Employment and Productivity, Modern Records Office, University of Warwick, (MSS.126/TG/1405/1/1).

A Better Tomorrow, Conservative Party,

<<http://www.politicsresources.net/area/uk/man/con70.htm>>

### **TUC PAPERS (Chronological) – Modern Records Office, Bodleian, LHASC.**

*TUC Annual Congress Report 1894, 1946, 1959, 1964, 1968, 1971, 1972, 1973, 1974.*

*TUC Special Congress Report, 1971.*

*Industrial Relations – A Programme for Action*, Report of a Special Trades Union Congress Held at Fairfield Hall Croydon 5 June 1969, ESH/3/5 – 11.

*Action on Donovan, An Interim Statement by the TUC*, 1.11.1968.

Bodleian, MS 274-5, Note of a meeting with Representatives of the TUC on Thursday 2 January 1969.

Bodleian, MS 274-5, TUC White Paper on Industrial Relations – comments by General Council (undated).

TUC Finance and General Purposes Committee, Minutes of the 10<sup>th</sup> (special) meeting 9 April 1969, Modern Records Office, University of Warwick (MSS 292B/24.1/8).

Joint CBI/TUC statement, appended to *Action on Donovan*, Labour Party Archive, Eric Heffer Collection, ESH/3/5 – 11, Labour History Archive and Study Centre [LHASC].

*Industrial Democracy*, TUC (London, 1973).

*Your Voice at Work*, TUC, (London, 1995).

### **CBI PAPERS – Modern Records Office, Bodleian**

*Employee Participation: The CBI's contribution to the Debate*, Modern Records Office, University of Warwick, (MSS 200/C/4/1974/13).

Bodleian, MS 274-5, Note of a meeting with representatives of the CBI and nationalised industries.

**TRADE UNION CORRESPONDENCE AND PUBLICATIONS – Modern Records Office, LHASC.**

Labour Party Archives, Eric Heffer papers, UKAPE to D.A. Bayliss at the DEP, 22 October 1970, ESH/3/5-11, Labour History Archive and Study Centre [LHASC].

Labour Party Archive, Eric Heffer Papers, National Union of Seamen: The Industrial Relations Bill 1970-1, 1, ESH 3/5/11, Labour History Archive and Study Centre [LHASC].

Labour Party Archive, Eric Heffer Papers, Letter from the National Union of Dyers, Bleachers and Textile Workers to Vic Feather, 4 January 1971, ESH 3/5/11, Labour History Archive and Study Centre [LHASC].

Labour Party Archive, Eric Heffer Papers, Letter from the National Union of Boot and Shoe Operatives to Vic Feather, 5 January 1971, ESH 3/5/11, Labour History Archive and Study Centre [LHASC].

Labour Party Archive, Eric Heffer Papers, DATA: *Royal Commission, Donovan Exposed: The sugar-coated pill with the bitter centre*, ESH/3/5, Labour History Archive and Study Centre [LHASC].

The GMWU and De-Registration, A Report to be presented to the Special Congress, 3 November 1971, Modern Records Office, University of Warwick, (MSS. 126/TG/1405/12).

Labour Party Archives, Eric Heffer papers, *The Consultative Document on Industrial Relations: A Commentary by the National Union of Teachers*, ESH/3/5-11, Labour History Archive and Study Centre [LHASC].

**MISCELLANEOUS – LHASC, Bodleian, British Library, House of Commons Library.**

*A Giant's Strength, 1958* (A study produced by the Inns of Court Conservative and Unionists Society, subtitled *Some Thoughts on the Constitutional and Legal Position of Trade Unions in England*).

H/C Research Paper 99/20 *Inflation: the Value of the Pound 1750-1998*, Price Index, Table 1.

T. Clark, A. Dilnot, *Long-term Trends in British Taxation and Spending*, IFS briefing document <<http://www.ifs.org.uk/bns/bn25.pdf>>

Labour Party Archive, Eric Heffer Papers, Consultative Document: Comments by teachers and research students of Labour law at University of Cambridge, ESH 3/5/11, Labour History Archive and Study Centre [LHASC].

Labour Party Archives, Eric Heffer papers, *UKAPE to D.A. Bayliss at the DEP, 22 October 1970*, ESH/3/5-11, Labour History Archive and Study Centre [LHASC].

Labour Party Archive, Eric Heffer Papers, Letter to Vic Feather from Mr Meany, American Federation of Labor and Congress of Industrial Relations, 30 October 1970, ESH 3/5/11, Labour History Archive and Study Centre [LHASC].

Labour Party Archive, Eric Heffer Papers, Labour Research, '*Tory Plan for the Unions*', November 1970, ESH 3/5-11, Labour History Archive and Study Centre [LHASC].

BBC Panorama transcript of interview with Lord Devlin, 24 July 1972, Bodleian, Castle Papers, MS. Castle 284.

*Labour Force Survey*, Office for National Statistics, Department for Employment.

Benwell, R., Gay, O., Standard Note SN/PC/06053, House of Commons Library.

Keter, V., 'Trade Union Legislation: Labour's Changes to the Conservative's Reforms', Standard Note SN/BT/596, House of Commons Library, 7 October 2010.

## SECONDARY SOURCES

### BOOKS

Allen, V.L., *Trade Unions and the Government* (London, Longman, 1960).

Artis, M., Cobham, D. (eds), *Labour's Economic Policies, 1974-79*, (Manchester University Press, Manchester, 1991.)

Atiyah, P.S., *Law and Modern Society*, (Oxford University Press, Oxford, 1995).

Bain, G.S., Woolven, G.B., *Bibliography of British Industrial Relations*, (Cambridge University Press, Cambridge, 1979).

Ball, S., Seldon, A., (eds), *The Heath Government 1970-74: A Reappraisal* (Routledge, London, 1996).

Barnes, D., Reid, E., *Governments and Trade Unions; The British Experience 1964-79*, (Heinemann, London, 1980).

Bealey, F., Pelling, H., *Labour Politics 1900-1906: A History of the Labour Representation Committee*, (Macmillan, London, 1958).

Bell, P., *The Labour Party in Opposition 1970-74*, (Routledge, London, 2004).

Bentham, J., *An Introduction to the Principles of Morals and Legislation*, (Kitchener, 2000).

Lord Birkenhead, *Walter Monckton*, (Weidenfeld and Nicolson, London, 1969).

Briggs, A., Saville, J., (eds), *Essays in Labour History*, (Macmillan, London, 1967).

Callaghan, J., *Time and Change*, (Harper Collins, London, 1987).



Castle, B., *Fighting all the Way*, (Macmillan, London, 1993).

Castle, B., *The Castle Diaries, 1964-1976*, (Macmillan, London, 1990).

Chapman, R.A., (ed.), *The Role of Commissions in Policy Making*, (Allen & Unwin, London, 1973).

Clegg, H., *The Changing System of Industrial Relations in Great Britain*, (Oxford University Press, Oxford, 1979).

Clegg, H., Fox, A., Thompson, A.F., *A History of British Trade Unions since 1889*, Vol. 3, (Oxford University Press, Oxford, 1964).

Clegg, H., *The System of Industrial Relations in Britain*, (Oxford University Press, Oxford, 1970).

Clegg, H., Fox, A., Thompson, A.F., *A History of British Trade Unions Since 1889*, (Oxford University Press, Oxford, 1964).

Crafts, N., Gazeley, I., Newell, A., (eds) *Work and Pay in 20<sup>th</sup> Century Britain*, (Oxford University Press, Oxford, 2007).

Crines, A.S., Hickson, K., (eds), *Harold Wilson: The Unprincipled Prime Minister?*, (Biteback, London, 2016).

Crosland, C.A.R., *The Future of Socialism*, (Jonathan Cape, London, 1956).

Crossman, R., *The Diaries of a Cabinet Minister, Volume Three, Secretary of State for Social Services, 1968-70*, (Hamish Hamilton, London 1977).

Crouch, C., *The Politics of Industrial Relations*, (Fontana, Manchester, 1979).

Davies, P., Freedland, M., *Labour Legislation and Public Policy*, (Oxford University Press, Oxford, 1993).

Davies, P., Freedland, M., *Kahn-Freund's Labour and the Law*, (Stevens, London, 1983).

Deakin, S., Morris, G., *Labour Law*, (Oxford University Press, Oxford, 2012).

Dewar, K. C., *Frank Underhill and the Politics of Ideas*, (Montreal, 2015).

Dickens, L., *Making Employment Rights Effective*, (Hart, London, 2012).

Dicey, A.V., *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century: Second Edition* (Liberty Fund, London, 1919).

Dorey, P., *British Politics since 1945*, (Oxford University Press, Oxford, 1995).

Dorey, P., *The Conservative Party and the Trade Unions*, (Routledge, London, 1995).

Dorey, P., *Developments in British Public Policy*, (Sage, London, 2005).

Dorey, P., *The Labour Governments 1964-1970*, (Routledge, London, 2006).

Dorey, P., *British Conservatism and Trade Unionism, 1945 – 1964*, (Routledge, Farnham, 2009).

Dow, J.C.R., *The Management of the British Economy, 1945-60*, (Cambridge University Press, Cambridge, 1964).

Dunlop, J.T., *Industrial Relations Systems*, (Harvard Business School Press, New York, 1958).

Flanders, A., Clegg, H. (eds), *The System of Industrial Relations in Great Britain*, (Oxford University Press, Oxford, 1954).

Flanders, A., *Collective Bargaining: Prescription for Change*, (Faber and Faber, London, 1967).

Flanders, A., *The Fawley Productivity Agreements*, (Faber & Faber, London, 1964).

Flanders, A., *Industrial Relations: What is Wrong with the System?* (Faber and Faber, London, 1965).

Flanders, A., *Management and Unions*, (Faber and Faber, London, 1975).

Ginsberg, M. (ed.), *Law and Opinion in England in the 20<sup>th</sup> century*, (Stevens and Sons, London, 1959).

Goodman, G., *The Awkward Warrior, Frank Cousins His Life and Times*, (Davis Poynter, London, 1979).

Green, E.H.H., *Ideologies of Conservatism*, (Oxford University Press, Oxford, 2002).

Griffiths, J.A.G., *The Politics of the Judiciary*, (Fontana, London, 1995).

Hayek, F.A., *Law, Legislation and Liberty: A new statement of the liberal principles of justice and political economy*, (Routledge, London, 1982).

Healey, D., *The Time of my Life*, (Penguin, London, 1989).

Heffer, E. S., *The Class Struggle in Parliament: A Socialist View of Industrial Relations*, (Victor Gollancz, London, 1973).

Heffer, E., *Never a Yes Man: the Life and Politics of an adopted Liverpudlian*, (Verso, London, 1993).

Hepple, B.A., 'Great Britain' in *International Encyclopaedia of Labour Law & Industrial Relations*, (Kluwer Law, Dordrecht, 1977).

Howard, A., (ed.), *The Crossman Diaries*, (Mandarin, London, 1991).

Jenkins, P., *The Battle of Downing Street*, (C. Knight, London, 1970).

Jones, J., *Union Man: An Autobiography*, (Collins, London, 1986).

Kahn-Freund, O., *Das Soziale Ideal des Reichsarbeitsgericht (The Social Idea of the Supreme Labour Court)*, Vol. 7, *Abhandlungen zum Arbeitsrecht*, J. Bensheimer, 1931.

Kahn-Freund, O., *Labour law: old traditions and new developments*, (the W.M. Martin lectures) (Clarke, Irwin, Toronto, 1968).

Kahn-Freund, O., *Labour and the Law*, (Stevens, London, 1977).

Kahn-Freund, O., *Selected Writings*, (Stevens, London, 1978).

Kahn-Freund, O., *Labour Relations: Heritage and Adjustment*, (Oxford University Press, Oxford, 1979).

Laybourn, K., *A History of British Trade Unionism, c.1770-1990*, (Sutton Publishing, Stroud, 1992).

Lewis, R., Clark, J., (eds), *Labour Law and Politics in the Weimar Republic: Selected German Writings of Otto Kahn-Freund*, (Oxford University Press, Oxford, 1981).

McCarthy, W., *The Future of the Unions*, (The Fabian Society, 1962).

McCarthy, W.E.J., *The Closed Shop in Britain*, (Oxford University Press, Oxford, 1964).

McCarthy, W. E. J., Ellis, N. D., *Management By Agreement: an Alternative to the Industrial Relations Act*, (Hutchinson, London, 1973).

McCarthy, W., (ed.), *Legal Intervention in Industrial Relations, Gains and Losses*, (Oxford University Press, Oxford, 1992).

McIlroy, J., Fishman, N., Campbell, A., (eds), *The High Tide of British Trade Unions: Trade Unions and Industrial Politics, 1964-79*, (Merlin Press, Monmouth, 2007).

Middlemas, K., *Politics in Industrial Society: The Experience of the British System since 1911*, (Andre Deutsch, London, 1979).

Mill, J.S., *On Representative Government*, (Everyman, London, 1962).

Minkin, L., *The Contentious Alliance: Trade Unions and the Labour Party*, (Edinburgh University Press, Edinburgh, 1991).

Moran, M., *Politics of Industrial Relations: The Origins, Life and Death of the Industrial Relations Act 1971*, (Macmillan, London, 1977).

Morgan, K. O., *Callaghan: A Life*, (Oxford University Press, Oxford, 1997).

Palmer, G., *British Industrial Relations*, (George Allen & Unwin, London, 1985).

Pennant, D. F., *Trade Unions and the Law* (Stevens, London, 1905).

Perkins, A., *Red Queen, The Authorized Biography of Barbara Castle* (Macmillan, London, 2003).

Perry, P.J.C., *The Evolution of British Manpower Policy*, (P.J.C. Perry, London, 1976).

Phelps Brown, E. H., *The Growth of British Industrial Relations*, (Macmillan, London, 1959).

Pimlott, B., Cook, C., (eds), *Trade Unions in British Politics*, (Longman, London, 1982).

Pimlott, B., Cook, C., (eds), *Trade Unions in British Politics: The First 250 Years*, (Longman, London, 1991).

Prior, J., *A Balance of Power*, (Hamish Hamilton, London, 1986).

Pritt, D. N., Freeman, R., *The Law Versus the Trade Unions*, (Lawrence & Wishart, London, 1958).

Popper, K., *The Poverty of Historicism*, (Routledge, London, 1960).

Lord Robens, *The Ten Year Stint*, (Cassell, London, 1972).

Roberts, B.C. (ed.), *Industrial Relations: Contemporary Problems and Perspectives*, (Methuen, London, 1962).

Roberts, B.C., (ed.), *Towards Industrial Democracy, Europe, Japan and the United States*, (Croom Helm, London, 1979).

Sabine, G., Thorsen, T., *A History of Political Theory*, (H. Holt & Co., Illinois, 1973).

Sandbrook, D., *State of Emergency: The Way We Were: Britain 1970-74*, (Penguin, London, 2011).

Seldon, A., *Churchill's Indian Summer: the Conservative government, 1951-55*, (Hodder & Stoughton, London, 1981).

Sheldrake, J., *Industrial Relations & Politics in Britain, 1880-1989*, (Continuum International Publishing Group, London, 1991).

Shepherd, J., *Crisis? What Crisis? The Callaghan Government and the British Winter of Discontent*, (Manchester University Press, Manchester, 2013).

Shonfield, A., *Modern Capitalism: The Changing Balance of Public and Private Power*, (Oxford University Press, Oxford, 1965).

Silverstein, G., *Law's Allure: How Law Shapes, Constrains, Saves and Kills Politics*, (Cambridge University Press, 2009).

Summerfield, P., *Women Workers in the Second World War: Production and Patriarchy in Conflict*, (Routledge, Oxford, 2012).

Tanner, D., Thane, P., Tiratsoo, N., (eds), *Labour's First Century*, (Cambridge University Press, Cambridge, 2000).

Taylor, R., *The TUC From the General Strike to New Unionism*, (Palgrave Macmillan, Basingstoke, 2000).

Taylor, R., *The Trade Union Question in British Politics: Government and Unions since 1945*, (Wiley Blackwell, Oxford, 1993).

Teubner, G. (ed.), *Juridification of Social Spheres*, (European University Institute, 1987).

Tomlinson, J., *The Labour Governments, 1964-1970, Economic Policy*, (Manchester University Press, Manchester, 2004).

Tomlinson, J., *Public Policy and the Economy since 1900*, (OUP, Oxford, 1990).

Towers, B., *British Incomes Policy*, Occasional Paper, (University of Leeds, 1978).

Turner, H.A., Clark, G., Roberts, G., *Labour Relations in the Motor Industry: A Study of Industrial Unrest and International Comparison*, (Allen & Unwin, London, 1967).

Turner, H.A., *Is Britain Really Strike Prone?* (Cambridge University Press, Cambridge, 1969).

Undy, R., Fosh, P., Morris, H., Smith, O., Martin, R., *Managing the Unions: The Impact of Legislation on Trade Unions' Behaviour*, (Oxford University Press, Oxford, 1996).

Webb, S., Webb, B., *Industrial Democracy*, (Longmans, London, 1897).

Wedderburn, K.W., Lewis, R., Clark, J., (eds), *Labour Law and Industrial Relations: Building on Kahn-Freund*, (Oxford University Press, Oxford, 1983).

Wedderburn, Lord, *The Worker and the Law*, (Penguin, Harmondsworth, 1986).

Wedderburn, K.W., *Labour Law and Freedom: Further Essays in Labour Law*, (Lawrence & Wishart, London, 1995).

Wigham, E., *What's Wrong with the Unions?* (Penguin, London, 1961).

Wigham, E., *Strikes and the Government 1893-1981*, (Palgrave Macmillan, London, 1982).

Wilson, H., *The Labour Government, 1964-1970: A Personal Record*, (Wiedenfeld & Nicolson, London, 1971).

Wrigley, C., (ed.), *A History of British Industrial Relations 1939-1979: Industrial Relations in a Declining Economy*, (Elgar, Cheltenham, 1996).

Wrigley, C., *British Trade Unions 1945-1995*, (Manchester University Press, Manchester, 1997).

Wrigley, C., *British Trade Unions since 1933*, (Cambridge University Press, Cambridge, 2002).



## BOOK CHAPTER

Taylor, R., 'What if Harold Wilson and the unions had agreed *In Place of Strife?*' in *Prime Minister Portillo and other things that never happened*, D. Brack and I. Dale (eds) (Politicos Publishing, London, 2003).

## JOURNAL ARTICLES

Ackers, P., 'The Changing Systems of British Industrial Relations, 1954-1979: Hugh Clegg and the Warwick Sociological Turn', *British Journal of Industrial Relations*, June 2011, 306-330.

Anderman, S.D., 'The Status quo issue in industrial disputes procedures: some implications for labour law,' (1975) 4 *Industrial Law Journal*, 131.

Batsone, E., Ferner, A., Terry, M., 'Unions on the Board', *Employee Relations*, Vol. 5, Issue 5, 2-4.

Beveridge, W.H., 'The reform of trade union law', *Economic Review*, xv, 2, April 1905, 129-49.

Blain, A.N.J., Gennard, J., 'Industrial Relations - A Critical Review', *British Journal of Industrial Relations*, November 1970, Vol. 8, Issue 3, 389-407.

Blumer, J.G., Ewbank, A., 'Trade Unions, the Mass Media and Unofficial Strikes', *British Journal of Industrial Relations*, Vol. 8, Issue 1, March 1970, 32-54.

Buglar, J, 'The New Oxford Group', *New Society*, 14 February 1968.

Cohen, S., 'The 1968–1974 labour upsurge in Britain and America: a critical history, and a look at what might have been,' *Labor History*, Vol. 49, No. 4, November 2008, 395–416.

Crossley, J.R., 'The Donovan Report: A Case study in Historicism', *BJIR*, November 1968, 296-302.

Davies, P., Wedderburn, K.W., 'The Land of Industrial Democracy', *Industrial Law Journal*, Vol. 6(1), (1977), 197-211.

Dix, G., Barber, B., 'The changing face of work: insights from ACAS', *Employee Relations*, Vol. 37, Issue 6, 670-682.

Drucker, H.N., 'The influence of the trade unions on the ethos of the Labour Party', in Dunn, S., 'From Donovan to ... Wherever,' *British Journal of Industrial Relations*, Vol. 31, Issue 2, (1993), 169-187.

Eccles, A.J., 'Industrial Democracy and Organizational Change', *Personnel Review*, Vol. 6, Issue 1, 43-49.

Engleman, S.R., Thomson, A.W.J., 'Experience under the British Industrial Relations Act', *British Journal of Industrial Relations*, Vol. 13, Issue 2, May 1974, 130-155.

Evans, J. M., 'Notes of Cases: When is a Rule not a Rule', *Modern Law Review*, Vol. 36, Issue 1, 73-99.

Flanders, A., 'The Tradition of Voluntarism', *British Journal of Industrial Relations*, Vol. 12, Issue 1, 1974, 352-370.

Garbarino, J.W., 'Managing Conflict in Industrial Relations: U.S. Experience and Current Issue in Britain', *British Journal of Industrial Relations*, November 1969, Vol. 7, Issue 3, 793-804.

Garbarino, J.W., 'The British Experiment with Industrial Relations', *Industrial and Labor Relations Review*, January 1973, Vol. 26, Issue 2, 793-804.

Gosnell, H., 'British Royal Commissions of Inquiry', 49 *Political Science Quarterly*, 84, 1934, 84-118.

Goodman, J.F.B., Krislov, J., 'Conciliation in industrial disputes in Great Britain: A Survey of the Attitudes of the Parties', *BJIR*, Vol. 12, Issue 3, November 1974, 327-351.

Grunfeld, C., 'Donovan - The Legal Aspects', *British Journal of Industrial Relations*, November 1968, Vol. 6, Issue 3, 316-329.

Hawkins, K., 'Industrial Relations Reform: some neglected issues', *Management Decision*, Vol. 4, Issue 4, 1970, 5-7.

Hepple, B., 'The Future of Labour Law', *Industrial Law Journal*, Vol. 24, Issue 4, 1995, 303-322.

Ingram, P., 'Changes in working practices in British manufacturing industry in the 1980s: a study of employee concessions made during wage negotiations', *British Journal of Industrial Relations*, 29(1), 1991, 1-13.

Jones, A., 'Prices and Incomes Policy', *The Economic Journal*, Vol. 78, No. 312, (December 1968), 799-806.

Kahn-Freund, O., 'Industrial Relations and the Law – Retrospect and Prospect', *British Journal of Industrial Relations*, Vol. 7, Issue 3, 301-316.

Kahn-Freund, O., 'Intergroup Conflicts and their Settlement', Vol. 5, No. 3, *British Journal of Sociology*, 1954, 193-227.

Kahn-Freund, O., 'The Industrial Relations Act 1971 – Some retrospective reflections', *Industrial Law Journal*, Vol. 3, Issue 1, 1974, 186-200.

Kilroy-Silk, R., 'Trade Unions and Society: The Donovan Report', *Political Studies*, Vol. 17, Issue 1, 95-101.

Lawrence, S., 'Professor Hugh Clegg', *Personnel Management*, May 1979.

Lewis, R., 'The Historical Development of Labour Law', *British Journal of Industrial Relations*, Vol. XIV, Issue 1, (1976), 1-17.

Lindop, F., 'The Dockers and the 1971 Industrial Relations Act, Part 1: Shop Stewards and Containerization', *Historical Studies in Industrial Relations*, 5 Spring 1998, 33-72.

Lund, R., *International Studies and Management and Organisation*, Vol. 7, No. 2.

Maxwell, H., 'Why lift trade unions above the law?' *Nineteenth Century*, LIX, 351, May 1906, 871-84.

McCarthy, W.E.J., 'The Nature of the Strike Problem', *British Journal of Industrial Relations*, July 1970, Vol.8, Issue 2, 224-236.

McIlroy, J., 'Trade Unions at the Turn of the Century', *Historical Studies in Industrial Relations* 3, March 1997, 99-100.

Midland Cold Storage Ltd. v Steer and Others, 17 July 1972, *Managerial Law*, Vol. 13, Issue 5, 286-307.

Mills, H.A., 'The British Trade Disputes and Trade Union Act', *The Journal of Political Economy*, Vol. 36 No.3, 1928, 305-329.

Neal, A., 'Co-Determination in the Federal Republic of Germany: An External Perspective from the United Kingdom', *British Journal of Industrial Relations*, 25:2 July 1987, 227-245.

Pain, P., 'The Industrial Court – a missed Opportunity', *Industrial Law Journal*, Vol. 1, Issue 1, 1972, 5-11.

Palmer, G., 'Donovan, The Commission on Industrial Relations and Post-Liberal Rationalisation', *British Journal of Industrial Relations*, Vol. 24, Issue 2 (1986), 267-296.

Purcell, J., 'Industrial Democracy: the latest panacea?' *Personnel Review*, Vol. 4, No. 2, Spring 1975, 43-49.

Rogers, C., 'From Social Contract to Social Contrick', *British Journal of Politics and International Relations*, Vol. 11, Iss. 4, 634-651.

Simpson, R. C., 'In Place of Strife: A Policy for Industrial Relations,' *The Modern Law Review*, Vol. 32, No. 4, (July 1969), 420-426.

Smith, P., 'Order in British Industrial Relations: From Donovan to Neoliberalism', *Historical Studies in Industrial Relations*, Issue 31/32, 2011, 115-154.

Sorrell, G.H., 'The Role of the Law in an Industrial Relations System', *The Journal of Industrial Relations*, March 1969, 7-16.

Spencer, M., Spencer, J., 'The Judge as "Political Adviser": Behind the Scenes at the National Industrial Court', *Journal of Law and Society*, Vol. 33, No. 2, June 2006, 199-220.

Tarling, R., Wilkinson, F., 'The Social Contract: post-war incomes policies and their inflationary impact', *Cambridge Journal of Economics* 1977, 1, 395-414.

Thomson, A., 'New Focus on Industrial Democracy in Britain', *The Annals of the American Academy of Political and Social Science*, Vol. 431, May 1977, 32-43.

Tomlinson, J., 'Conservative Modernisation, 1960-64: Too little, too late?', *Contemporary British History*, 11:3, (1997), 18-38.

Turner, H.A., 'The Royal Commission's Research Papers', *British Journal of Industrial Relations*, November 1968, Vol. 6, Issue 3, 346-359.

Turner, H.A., 'The Donovan Report', *The Economic Journal*, Vol. 79, No. 313, March 1969, 1-10.

Wedderburn, K.W., 'Labour Law and Labour Relations in Britain', *British Journal of Industrial Relations*, Vol. X, Issue 2, (1972), 270-290.

Wedderburn, K.W., 'Contempt of the NIRC', *Modern Law Review*, Vol. 37, No. 2, March 1974, 187-192.

Wedderburn, W., Labour Law and Labour Relations in Britain, *British Journal of Industrial Relations*, Vol. X, Issue 2, 270-290.

Lord Wedderburn, 'Industrial Relations and the Courts', *Industrial Law Journal*, Vol. 9, Issue 1, 1980, 65-94.

Weekes, B., 'Industrial Relations and Economic Performance', *British Journal of Industrial Relations*, 31, 2 June 1993, 255-283.

Whiting, R., 'The Reform of Working Life in Britain, 1963-1971', *The Historical Journal*, 50, 2 (2007), 423-448.

Wilpert, B., 'Research on Industrial Democracy: the German case', *Industrial Relations Journal*, Vol. 6(1), (1975), 53-64.

Wood, J., 'Whither Labour Law Now?' *British Journal of Industrial Relations*, 1 November 1970, 305-312.

(Unattributed author) 'Industrial Relations in the United Kingdom May- August 1974', *BJIR*, Vol. 12, Issue 3, November 1974, 449-450.

## **NEWSPAPERS AND PERIODICALS**

*The Daily Express*

*The Daily Telegraph*

*The Daily Herald*

*The Financial Times*

*The Guardian*

*The Observer*

*The Socialist Worker*

*The Spectator*

*The Sunday Times*

*The Times*

*The Tribune*

## **WEBSITES**

Parliament, <<http://www.parliament.uk/site-information/glossary/white-paper/>>.

London Metropolitan <<mms://streamwm.londonmet.ac.uk/tucdial.asf>>.

BBC <<http://www.bbc.co.uk/news/uk-politics-11149803>>.

Socialist History Society, Labour Representation Committee,

<<http://www.socialisthistorysociety.co.uk/MORTIMER.HTM#sec1>>.

Employment Tribunals and EAT Statistics 2011-12, Ministry of Justice,

<<http://www.justice.gov.uk/downloads/statistics/tribs-stats/employment-trib-stats-april-march-2011-12.pdf>>.

History and Policy, Oxford School of Industrial Relations.

<<http://www.historyandpolicy.org/docs/uploads/george-bain-reading-on-oxford-school-of-industrial-relations.pdf>>

History and Policy, The Osborne Case.

<<http://www.historyandpolicy.org/papers/policy-paper-96.html>>.

History and Policy, The Oxford School.

<[www.historyandpolicy.org/docs/uploads/peter-ackers-introducing-the-oxford-school-of-industrial-relations](http://www.historyandpolicy.org/docs/uploads/peter-ackers-introducing-the-oxford-school-of-industrial-relations)>

London School of Economics, Deakin, S., Green, F., *A Century of Minimum Wages in Britain*, <<http://cep.lse.ac.uk/pubs/download/cp291.pdf>>.

National Archives, National Incomes Commission,

<<http://filestore.nationalarchives.gov.uk/pdfs/small/cab-129-109-c-99.pdf>>.

Nation Archives, Cabinet Papers

<<http://www.nationalarchives.gov.uk/cabinetpapers/themes/industrial-unrest.htm>>.

Blackwell Reference

<[http://www.blackwellreference.com/public/tocnode?id=g9780631209379\\_chunk\\_g97806312093793\\_ss1-42](http://www.blackwellreference.com/public/tocnode?id=g9780631209379_chunk_g97806312093793_ss1-42)>.

*Oxford Dictionary of National Biography*, Ernest Bevin.

<<http://www.oxforddnb.com.libaccess.hud.ac.uk/view/article/31872?docPos=1>>.

Oxfordshire government website <[www.apps.oxfordshire.gov.uk/cgi](http://www.apps.oxfordshire.gov.uk/cgi)>.

*London Metropolitan* <<mms://streamwm.londonmet.ac.uk/tucdial.asf>>.

The Socialist Worker

<[http://www.socialistworker.co.uk/art/568/Hugh+Scanlon%3A+from+awkward+to+er  
mine](http://www.socialistworker.co.uk/art/568/Hugh+Scanlon%3A+from+awkward+to+er<br/>mine)>

Selsdon Group <<http://www.selsdongroup.co.uk/manifesto.pdf>>.



Union Ancestors < <http://www.unionancestors.co.uk/Images/Strikes%201901-2000.pdf>> .

IFS briefing document <<http://www.ifs.org.uk/bns/bn25.pdf>>

Politics resources, '*Action Not Words: The New Conservative Programme*',

<<http://www.politicsresources.net/area/uk/man/con66.htm>> .

Politics Resources, *A Better Tomorrow*, Conservative Party,

<<http://www.politicsresources.net/area/uk/man/con70.htm>>.

Warwick University,

<<http://www2.warwick.ac.uk/services/library/mrc/explorefurther/speakingarchives/pen-tonville/>>.

Warwick University,

<<http://www2.warwick.ac.uk/services/library/mrc/explorefurther/speakingarchives/pen-tonville/parliament/>>.

## UNPUBLISHED THESES

Derbyshire, J.D., *The Royal Commission on Trade Unions and Employers' Associations, 1965-1968; An Analysis of a Royal Commission as an Instrument for Public Policy Making*, Ph.D. University of London, 1976.

Tyler, R., *Victims of our History, The Labour Party and In Place of Strife, 1968-1969*, Ph.D., Queen Mary College, University of London, October 2004.