

IEA

TRADE UNIONS

Public Goods or Public 'Bads'?

Economists and trade union monopoly
Bargaining advantage
Closed shops and 'free riders'
Private versus corporate rights
Can unions write union law?
Can unions raise real wages?
Inflation or confrontation
Buying out union privileges
Will liberal measures remove illiberal powers?

LORD ROBBINS • CHARLES G. HANSON
JOHN BURTON • CYRIL GRUNFELD
BRIAN GRIFFITHS • ALAN PEACOCK

With an Address by
LORD SCARMAN

Peter Mathias • Norman McCord • P.J. Sloane
J.T. Addison • Martin Ricketts • George Yarrow
Charles K. Rowley • Dennis Lees • Harry Ferns
Keith Hartley • Reg Prentice • Jo Grimond

IEA Readings 17

INSTITUTE OF ECONOMIC AFFAIRS

The Institute was formed in 1957 as a research and educational trust that specialises in the study of markets and pricing systems as technical devices for registering preferences and apportioning resources. Micro-economic analysis forms the kernel of economics and is relevant and illuminating in both public and private sectors and in collectivist and individualist societies. Where the macro-economic method is used its results are verified and interpreted in the light of micro-economic significance.

The Institute's work is assisted by an advisory council which includes:

Professor Armen A. Alchian	Professor Ivor F. Pearce
Professor J.M. Buchanan	G.J. Ponsonby
Colin Clark	Professor A.R. Prest
Professor R.H. Coase	Professor H.B. Rose
Professor Malcolm R. Fisher	George Schwartz
Professor T.W. Hutchison	Henry Smith
Graham Hutton	Professor Roland Vaubel
Professor Dennis Lees	Professor E.G. West
Professor E. Victor Morgan	Professor Jack Wiseman
Professor Alan T. Peacock	Professor B.S. Yamey

The Institute is a company limited by guarantee, controlled by Managing Trustees. It is independent of any political party or group and financed by sales of its publications and by voluntary contributions from individuals, organisations and companies.

<i>General Director</i>	Lord Harris of High Cross
<i>Editorial Director</i>	Arthur Seldon
<i>Deputy Director</i>	John B. Wood

<i>Assistant to Directors</i>	<i>Publications Manager</i>
Joan Culverwell	Michael Solly

Librarian
Kenneth Smith

Inquiries and orders for publications should be addressed to:

THE INSTITUTE OF ECONOMIC AFFAIRS

2 Lord North Street, Westminster, London SW1P 3LB

Telephone 01-799 3745

IEA READINGS in Print: Recent Issues

16. The State of Taxation

A. R. Prest, Colin Clark, Walter Elkan, Charles K. Rowley, Barry Bracewell-Milnes, Ivor F. Pearce; and *eleven commentators with an Address by Lord Houghton* 1977 (xvi+116pp., £2.00)

18. The Economics of Politics

James M. Buchanan, Charles K. Rowley, Albert Breton, Jack Wiseman, Bruno Frey, A. T. Peacock; and *seven other contributors. Introduction by Jo Grimond* 1978 (xiii+194pp., £3.00)

19. City Lights

Essays on financial institutions and markets in the City of London
E. Victor Morgan, R. A. Brealey, B. S. Yamey, Paul Barea
1979 (x+70pp., £1.50)

20. Job 'Creation'—or Destruction?

Essays on the effects of government intervention in the labour market
John Addison, Christian Watrin, Malcolm R. Fisher, Albert Rees, Yukihide Okano and Mitsuke Okabe, Walter Eltis; with an *Introductory Essay by Ralph Harris* 1979 (xiii+146pp., £3.00)

21. The Taming of Government

Micro/macro disciplines on Whitehall and Town Hall
Stephen C. Littlechild, Gordon Tullock, A. P. L. Minford, Arthur Seldon, Alan Budd, Charles K. Rowley; with an *Introduction by Lord Robbins*
1979 (xxiii+136pp., £3.00)

22. Tax Avoidance

The economic, legal and moral inter-relationships between avoidance and evasion

A. R. Ilesic, Anthony Christopher, D. R. Myddelton, Christie Davies, Lord Houghton; with a Prologue by Arthur Seldon and an Epilogue by Barry Bracewell-Milnes 1979 (x+134pp., £2.50)

23. The Prime Mover of Progress

The Entrepreneur in Capitalism and Socialism
Israel Kirzner, Leslie Hannah, Neil McKendrick, Nigel Vinson, Keith Wickenden, Sir Arthur Knight, Sir Frank McFadzean, P. D. Henderson, D. G. MacRae, Ivor F. Pearce
1980 (xiv+154pp., £3.50)

24. Is Monetarism Enough?

Essays in refining and reinforcing the monetary cure for inflation
Patrick Minford, Harold Rose, Walter Eltis, Morris Perlman, John Burton; and *ten other contributors.*
1980 (x+118pp., £3.00)

25. Town Hall Power or Whitehall Pawn?

David King, Digby Anderson, W. W. Sharrock, June Lait, David Marsland, Keith Hartley, George W. Jones, Sir John Grugeon
1980 (xiii+154pp., £3.00)

TRADE UNIONS: Public Goods or Public 'Bads'?

Lord Robbins

'... I refuse to believe that it is impossible, in this country and with our political traditions, gradually to introduce, as is at least attempted elsewhere in Western countries, a state of affairs in which more legal order prevails in this part of the economy.'

Dr Hanson

'... the balance of market advantage has moved in favour of the trade unions over the past few decades. But no trend is irreversible. ... public opinion can be altered by a combination of unpleasant events and bold advocacy of the right policies.'

John Burton

'... although trade unions may be a public (club) good to their members who reap the monopoly returns ... they are a public bad judged from the viewpoint of society as a whole'

Lord Scarman

'Is it really to be expected that institutions designed to safeguard us against the perils that threatened in the 17th century are necessarily adequate to deal with the perils that beset us in the latter days of the 20th century? The problem in both periods is abuse of power ...'

Professor Grunfeld

'The TUC has the legislative bit now firmly between its teeth. Its change in attitude towards law dates from the realisation in 1969 that the Cabinet Room itself could be penetrated ...'

Professor Griffiths

'Trade unions which control entry ... are able to raise their real wages but only at the expense of *either* trade union members who are unemployed *or* other workers who receive lower wages.'

Professor Peacock

'Policy measures can be designed only after a close examination of a whole range of proposals which may confer benefits on the worker and which might form the basis of an exchange for abandoning the major provisions of the Employment Protection Act and associated legislation.'

Reg Prentice, MP

'... I do not see how a government determined to challenge the worst abuses of union power can do so without risking confrontation. ... a government which confronted the unions on the right issue at the right time would be supported by trade unionists and non-unionists alike. ... the choice may well be between the risks involved in a policy of confrontation and the certainty of disaster due to a series of retreats, based on the fear of confrontation.'

Jo Grimond, MP

'... even liberal governments are not bound actively to help and support those who wish to destroy everything they stand for. ... liberalism depends upon a general climate of tolerance and a free market. If these are not forthcoming then liberalism in government will disappear.'

ISBN 0-255 36107-6

Second Impression

£2.50



THE INSTITUTE OF ECONOMIC AFFAIRS

2 Lord North Street, Westminster, London SW1P 3LB

TRADE UNIONS: Public Goods or Public 'Bads'?

Lord Robbins

'... I refuse to believe that it is impossible, in this country and with our political traditions, gradually to introduce, as is at least attempted elsewhere in Western countries, a state of affairs in which more legal order prevails in this part of the economy.'

Dr Hanson

'... the balance of market advantage has moved in favour of the trade unions over the past few decades. But no trend is irreversible. ... public opinion can be altered by a combination of unpleasant events and bold advocacy of the right policies.'

John Burton

'... although trade unions may be a public (club) good to their members who reap the monopoly returns ... they are a public bad judged from the viewpoint of society as a whole'

Lord Scarman

'Is it really to be expected that institutions designed to safeguard us against the perils that threatened in the 17th century are necessarily adequate to deal with the perils that beset us in the latter days of the 20th century? The problem in both periods is abuse of power ...'

Professor Grunfeld

'The TUC has the legislative bit now firmly between its teeth. Its change in attitude towards law dates from the realisation in 1969 that the Cabinet Room itself could be penetrated ...'

Professor Griffiths

'Trade unions which control entry ... are able to raise their real wages but only at the expense of *either* trade union members who are unemployed *or* other workers who receive lower wages.'

Professor Peacock

'Policy measures can be designed only after a close examination of a whole range of proposals which may confer benefits on the worker and which might form the basis of an exchange for abandoning the major provisions of the Employment Protection Act and associated legislation.'

Reg Prentice, MP

'... I do not see how a government determined to challenge the worst abuses of union power can do so without risking confrontation. ... a government which confronted the unions on the right issue at the right time would be supported by trade unionists and non-unionists alike. ... the choice may well be between the risks involved in a policy of confrontation and the certainty of disaster due to a series of retreats, based on the fear of confrontation.'

Jo Grimond, MP

'... even liberal governments are not bound actively to help and support those who wish to destroy everything they stand for. ... liberalism depends upon a general climate of tolerance and a free market. If these are not forthcoming then liberalism in government will disappear.'

Readings 17 published [price £2.50] by



THE INSTITUTE OF ECONOMIC AFFAIRS

2 Lord North Street, Westminster, London SW1P 3LB

IEA PUBLICATIONS

Subscription Service

An annual subscription is the most convenient way to obtain our publications. Every title we produce in all our regular series will be sent to you immediately on publication and without further charge, representing a substantial saving.

*Subscription rates**

Britain: £15.00 p.a. including postage.

£14.00 p.a. if paid by Banker's Order.

£10.00 p.a. teachers and students who pay *personally*.

Europe and South America: £20 or equivalent.

Other countries: Rates on application. In most countries subscriptions are handled by local agents.

*These rates are *not* available to companies or to institutions.

To: The Treasurer, Institute of Economic Affairs,
2 Lord North Street,
Westminster, London SW1P 3LB.

I should like to subscribe beginning

I enclose a cheque/postal order for:

☐ £15.00

☐ Please send me a Banker's Order form

☐ Please send me an Invoice

☐ £10.00 [I am a teacher/student at.....]

Name.....

Address.....

.....

Signed..... Date.....

TRADE UNIONS:

Public Goods or Public 'Bads'?

TRADE UNIONS: Public Goods or Public 'Bads'?

Economists and trade union monopoly: Bargaining advantage:
Closed shops and 'free riders': Private *versus* corporate rights:
Can unions write union law?: Can unions raise real wages?:
Inflation or confrontation: Buying out union privileges:
Will liberal measures remove illiberal powers?

LORD ROBBINS ☐ **CHARLES G. HANSON**

JOHN BURTON ☐ **CYRIL GRUNFELD**

BRIAN GRIFFITHS ☐ **ALAN PEACOCK**

With an Address by
LORD SCARMAN

Comments by

Peter Mathias · Norman McCord · P. J. Sloane · J. T. Addison
Martin Ricketts · George Yarrow · Charles K. Rowley · Dennis Lees
Harry Ferns · Keith Hartley · Reg Prentice · Jo Grimond

Published by

The Institute of Economic Affairs
1978; Second Impression 1981

First published in January 1978 by
THE INSTITUTE OF ECONOMIC AFFAIRS

© The Institute of Economic Affairs 1978

Second Impression March 1981

All rights reserved

ISSN 0305-814X

ISBN 0-255 36107-6

Printed in England by

Goron Pro-Print Co. Ltd., Lancing, Sussex

Set in Monotype Times Roman 11 on 12 point

Contents

	<i>Page</i>
PREFACE	<i>Arthur Seldon</i> xi
Part I	
Chairman: <i>Lord Shawcross</i> —Introductory Remarks	3
1. ECONOMISTS AND TRADE UNIONS, 1776-1977	5
<i>Lord Robbins</i>	
Classical economists and trade unions (combinations)	5
The repeal of the Combination Acts: Place and McCulloch	6
Voluntary unions approved	7
The exception of J. S. Mill	8
Unanimous opposition to restrictive practices	9
20th-century thought and developments	9
1. Growth of trade union power	9
2. External influences	10
3. The move towards a 'full employment' policy	10
The responsibility for inflation	11
The unions and the law	12
Comments	
ECONOMISTS, TRADE UNIONS AND WAGES	13
<i>Peter Mathias</i>	
General theories of wages unconvincing	14
Short-run/sectoral effects: nothing new since Marshall?	15
The perspective of dynamic analysis	16
THE ROLE OF HISTORY	17
<i>Norman McCord</i>	
History and understanding	17
Cohesion of British society	18
Discussion	19
2. COLLECTIVE BARGAINING: THE BALANCE OF MARKET ADVANTAGE	23
<i>Charles G. Hanson</i>	
<i>Volte face</i> in market advantage	25
Markets, collective bargaining, and the legal framework	26
Changing role of law, economics and government	26
(i) Trade union law and privilege	26
(ii) The structure of the economy	27
(iii) The role of government	28
Strength of economic forces	29

Trade Unions: Public Goods or Public 'Bads'?

Comments

COLLECTIVE BARGAINING: ANALYSIS OF CONFLICT AND PROPOSED REFORMS 30

P. J. Sloane

Conditions maximising conflict 31

Collective bargaining: areas for reform 33

THE BALANCE OF MARKET ADVANTAGE 34

John T. Addison

The market and polity routes to union power 34

Private sector 'grants economy' 35

The polity route to strengthened union power 36

Conclusion 36

Discussion 37

3. ARE TRADE UNIONS A PUBLIC GOOD/'BAD'? : THE ECONOMICS OF THE CLOSED SHOP 41

John Burton

Public and private goods (and 'bads'): and club goods 44

The public/collective goods argument 45

Assessment of the argument 46

The trade union as a club 48

The collective 'bads' of labour cartels: five kinds 49

Removing the collective 'bads' 51

A look to the future: the 'awful dilemma' 52

Comments

IS 'EFFICIENCY' MORE IMPORTANT THAN 'JUSTICE' AND 'EQUITY'? 53

Martin Ricketts

Importance of the 'odd qualifications' 53

Public choice criteria 54

The closed shop: 'equity' more important than 'efficiency'? 55

TRADE UNIONS AND ECONOMIC WELFARE 55

George Yarrow

Exclusion of non-members from benefits of union activity 56

Critique of estimated cost of union closed shops 56

Discussion 57

Part II

Chairman: <i>Ralph Harris</i> —Introduction	65
INDIVIDUAL v. CORPORATE FREEDOM BEFORE THE LAW	67
Address by <i>Lord Scarman</i>	
Abuse of power—an endemic disease	67
Unlimited power of majority in legislation	68
Rule of majority in Northern Ireland	70
The case of <i>Grunwick</i>	71
Need for democratic safeguards	71
Let the judges decide?	72
Questions and Answers	74

Part III

Chairman: <i>Lord Wigoder</i>	
4. UNION LAW AND POWER: Current Issues	79
<i>Cyril Grunfeld</i>	
1. Organisation	81
Police and legal right to strike	82
Armed forces and union membership	82
2. Recognition disputes	83
ACAS and staff associations	84
ACAS 'punishment' of <i>Grunwick</i> ?	84
3. Stratagems of industrial conflict	85
(i) Sit-ins	86
(ii) Dismissed strikers, employers and ACAS	87
(iii) PO workers' right to withdraw service: police? armed forces?	87
(iv) <i>Daily Express</i> / <i>Daily Mirror</i> and SOGAT	87
4. The objectives and methods of picketing	88
Unlawful picketing at <i>Grunwick</i> ?	88
5. Industrial power and the political process	89

Comments

THE ECONOMICS AND POLITICS OF EXTORTION	90
<i>Charles K. Rowley</i>	
Disproportionate political influence of unions	91
The politics of extortion	91
Withdrawal of special union privileges?	92

Trade Unions: Public Goods or Public 'Bads'?

ECONOMIC LOGIC AND LEGAL RULES	94
<i>Dennis Lees</i>	
Legal reform to stop subsidising disputes	94
Effect of changes in legal rules	95
Discussion	96
5. THE ECONOMICS OF LABOUR POWER: CAN TRADE UNIONS RAISE REAL WAGES?	101
<i>Brian Griffiths</i>	
I. What is a Trade Union?	103
Traditional assumption unsatisfactory	103
Trade union services	104
What do union officials/bureaucrats maximise?	106
II. Trade Unions and Real Wages	106
(i) Can a trade union raise real wages?	106
(ii) Can the trade union movement raise real wages?	108
(iii) Can trade unions lower real wages?	109
III. Conclusions	110
References	111
Comments	
CONDITIONS FOR THE FUTURE OF COLLECTIVE BARGAINING	112
<i>Harry Ferns</i>	
Raising real incomes at expense of saving/investment	113
Four conditions for stable collective bargaining	113
CAN TRADE UNIONS RAISE REAL WAGES?	114
<i>Keith Hartley</i>	
Unions as monopolies and the sources of monopoly power	115
What is the UK evidence on union wages and productivity?	115
Policy: what can we do?	116
6. TRADE UNIONS AND ECONOMIC POLICY	117
<i>Alan Peacock</i>	
(a) Consequences	119
(i) Efficiency	119
(ii) Distribution of income	120
(iii) Stabilisation	122
(b) Policy	123
(i) Acceptance of union power constraint	123
(ii) Direct confrontation	124
(iii) 'Ends-means' examination	124

Comments

THE ISSUES IN PUBLIC POLICY 126

Reg Prentice

Conclusions from experience in government	126
Choice between risk of confrontation and certainty of disaster	126
Three policy changes	127
Political power without responsibility	127
TUC powers not based on statute or constitutional authority	128
Economic case against the closed shop	128

TRADE UNIONS HARM THE POOR 129

Jo Grimond

Mediaeval barons	129
No free collective bargaining with large government sector	130
Illiberal measures?—tolerance, a free market	131

Preface

The *IEA Readings* have been devised to refine the market in economic thinking by presenting varying approaches to a single theme in one volume. They are intended primarily for teachers and students of economics but they are edited to help non-economists in industry and government who want to know what light economics can shed on the activities with which they are concerned.

Readings 17 is based on a Seminar held in London on 2 December, 1977, on what is proving perhaps the most perplexing subject of public policy in Britain: the power and effects of the trade unions. As with previous Seminars the proceedings were based on six Papers each followed by two comments to amplify the main themes and to encourage questions and discussion from the audience. The 'platform' of main speakers and commentators was mainly academic, but the audience was designed to contain people in industry and government who would add day-to-day practice to analysis of principles, and a selection of their questions and observations is added. Here a notable contribution came from Mr Martin Brannan, fresh from wage negotiations with local authority firemen, with a sobering revelation about the politicisation, all the way to the Cabinet Room, of wage-bargaining: a topical development in the economics of politics. The platform comprised 12 economists, two economic historians, two lawyers, a political scientist and two public men, a recent Labour Cabinet Minister and a former leader of the Liberal Party. The lawyers were reinforced by the two chairmen, Lord Shawcross, a former Attorney-General, and Lord Wigoder, a Recorder of the Crown Court. In the absence of Mr Grimond, his comment was read by Lord Wigoder. (Owing to over-running in some Papers there was no time for the discussion sessions towards the end of the afternoon, and Lord Wigoder generously sacrificed his opening remarks in the effort to restore the timetable.)

The result is a *Readings* that should provide stimulus to thought not only among teachers and students of economics and among policy-makers in government, people in industry and opinion-formers in the media, but should also inform—and perhaps disturb—the citizen. The economists span 50 years of scholarship from the doyen of British economists, Professor Lord Robbins, to several highly promising young university and polytechnic lecturers. The

papers range over two centuries from the attitude of the early classical economists in the 18th and 19th centuries to public policy in the 20th. The content is indicated in the extracts on the back cover, but all the contributions were highly succinct statements that should be read as *entrées* to a wider and deeper analysis.

In the first session of the Seminar, the historical review by Lord Robbins concluded with a theme that recurred in the subsequent discussion. He opened up the central question whether it was inevitable that British trade unions should be given powers by Parliament, and enforced by the Courts, that are denied to other corporate bodies:

'... to argue ... that there are no controls which can be legitimately imposed on these powerful bodies—that it must be taken as an axiom that trade unions, *unlike any other kind of monopoly*, should be permanently above the law in matters relevant to the contract of labour—seems to me a counsel of despair'. (pp. 12-13)

Dr Charles Hanson also bridged the past and the present by discussing the grounds for concluding that the power of trade unions had grown between the 19th and 20th centuries. And John Burton's dissection of the common argument that membership of trade unions should be compulsory (on the ground that they are a 'public good' for whose benefits non-members do not pay and so have a 'free ride' at the expense of members) confronted the central issue in current public debate on the legal power that Parliament should give the unions. The title of the *Readings* is drawn from this subject.

The address by Lord Scarman was a crystal-clear legal statement of the conflict between private and corporate freedoms. And Lord Scarman echoed the elemental dilemma Mr Burton had quoted from the American economist Henry C. Simons: that, in removing the undesirably strong powers that trade unions had been allowed to amass, society might also destroy itself.

The second session opened with a statement by Professor Cyril Grunfeld of the main legal issues in the status and power of trade unions that remained unresolved. In their comments Professors Charles Rowley and Dennis Lees were not reticent in demonstrating the radical legal and constitutional reforms to which the discussion seemed to point. (There is here a glimpse of the fruitful exchange that could emerge from discussion between economists and lawyers, illustrated in the University of Chicago *Journal of Law and Economics*.) The power of trade unions to raise real wages was then examined

by Professor Brian Griffiths, who pertinently inquired into the nature of trade unions, an obvious but neglected subject.

The proceedings ended with a consideration of three courses of possible action by Professor Alan Peacock, an economist whose recent experience as adviser to Mr Peter Walker and Mr Anthony Wedgwood Benn at the Department of Trade and Industry and as a member of the Kilbrandon Commission on the Constitution creates exceptional expectations for his course of lectures in the economics of politics at the independent University College at Buckingham. Informed, outspoken and far-reaching comments on his discussion were made by the Rt Hon Reginald Prentice, a Cabinet Minister until April 1977, and by the Rt Hon Jo Grimond, perhaps the most able post-war parliamentarian whom the British party-political system has kept out of office.

The thread that ran through the contributions by Lord Robbins, Mr Burton, Lord Scarman, Professor Peacock, Mr Prentice and Mr Grimond was whether it was possible to re-shape the powers of the trade unions as institutions in a free economy and an open society. The question was whether it could be done by the peaceful processes of persuasion in a liberal order, or whether it was too late to achieve this reform without straining social cohesion and risking civil commotion. Henry Simons, who foresaw the looming dilemma in 1948, used chilling language:

‘... democracy cannot live with tight occupational monopolies; and it cannot destroy them, once they attain great power, without destroying itself in the process.’

It must be hoped that it is not too late. Yet it must also be seen that if change does not take place by degrees, it must force itself by convulsion; and the longer it is resisted, the more convulsive it will be. Lord Robbins said that the British trade unions could not be allowed to remain permanently above the law. Mr Prentice said that the closed shop should be banned by law. Mr Grimond came nearest to the anxiety expressed by them when he declared that illiberal institutions such as monopoly trade unions might provoke illiberal measures to prevent them destroying the liberal order. If Henry Simons’s dilemma is to be faced in 1978, economists, at least, cannot be blamed for taking their analysis where its logic leads them. And the hope must remain that the lessons will be learned: that the earlier the trade unions are deprived of man-made monopoly, the less the disturbance and damage to British society.

Trade Unions: Public Goods or Public 'Bads'?

Two or three proposals from the economists seemed to be regarded sceptically as 'politically impossible'. The economists, notably Professor Lees, replied sturdily that economists should stick to their lasts. Economists would be inviting impotence if they make political judgements in the advice they offer practical men in government. The objection of 'politically impossible' can indeed cripple economic inquiry. Men with knowledge of prevailing opinion in government or the civil service may think they can judge that some policies are more likely to be adopted than others. Yet the objection is a variant of circular reasoning. What is 'politically impossible' is itself subject to the influence of economic analysis and insight on politicians and bureaucrats, whether they know (or acknowledge) it or not. To exclude a new idea, or a new solution to an old problem, could thus be to pre-judge it. Here as elsewhere Professor F. A. Hayek has phrased a precept that should guide economists:

'... the chief task of the economic theorist or political philosopher should be to operate on public opinion to make politically possible what today may be politically impossible.'

And he added:

'... the objection that my proposals are at present impracticable does not in the least deter me from developing them.'¹

(Practical men will find their doubts analysed by Professor W. H. Hutt in *Politically Impossible* . . .?.)²

The Institute is grateful to the 19 contributors and to the members of the audience for the care and thought they gave to their contributions, and to Lords Shawcross and Wigoder for the firmness and restraint with which they conducted the proceedings.

December 1977

ARTHUR SELDON

¹ *Denationalisation of Money*, Hobart Paper 70, Author's Note to the Second Edition, IEA, 1978, p. 18.

² Hobart Paperback 1, IEA, 1971.

PART I

Introductory Remarks

LORD SHAWCROSS

Chairman

1. Economists and Trade Unions, 1776-1977

LORD ROBBINS

The Authors

The Chairman:

LORD SHAWCROSS: Patron, IEA. Chancellor of the University of Sussex. Chairman of the City Panel on Take-overs and Mergers; of London and Continental Bankers; and of the Press Council. Former Attorney General and President of the Board of Trade.

LORD ROBBINS: Sometime Professor of Economics and Political Science, University of London (LSE). Director of Economics Section, War Cabinet, 1941-45. Chancellor of Stirling University. Chairman of the *Financial Times*, 1961-71. Chairman of Committee on Higher Education, 1961-63. Author of numerous books including *The Nature and Significance of Economic Science* (1932); *The Economic Problem in Peace and War* (1947); *Politics and Economics* (1963); and *The Evolution of Modern Economic Theory* (1970). The IEA published his Wincott Memorial Lecture, *Aspects of Post-war Economic Policy* (Occasional Paper 42, 1974).

PETER MATHIAS: Chichele Professor of Economic History, University of Oxford, and Fellow of All Souls College, Oxford. President, International Economic History Association. Chairman, Economic and Social History Committee, Social Science Research Council, since 1975. Author of *The Brewing Industry in England 1700-1830*, 1959; *English Trade Tokens*, 1962; *Retailing Revolution*, 1967; *The First Industrial Nation*, 1963.

NORMAN McCORD: Professor of Economic and Social History, University of Newcastle upon Tyne. Author of *Anti-Corn Law League*, 1958, 2nd edn., 1968; *Free Trade*, 1970; with D. J. Rowe, *Northumberland and Durham: Industry in the 19th Century*, 1971; Co-author, *The 1871 Engineers' Strikes in North East England*, 1971; 'Aspects of the Relief of Poverty in Early 19th-Century Britain', in *The Long Debate on Poverty*, IEA Readings No. 9, 1972 (2nd edn. 1974).

LORD SHAWCROSS:

This is one of the occasional seminars the IEA hold once, sometimes twice, a year. They are well attended and always extremely well informed, and that is certainly true of this one, as you can see from the names and credentials of the 19 speakers.

The subject is of immense importance and highly topical. Everybody, whether academic, lawyer, business man or ordinary private citizen, must have a very considerable interest in it. It is a subject we are going to discuss today in an objective and informed way, but it is one which has very great political implications. This seminar is not, however, intended to produce any kind of political tract. The proceedings will be published as a scholarly analysis of the fundamentals of the problems affecting the trade unions. To that end we shall have papers by economists, economic historians and lawyers. The focus of the beginning is inevitably perhaps on the economic aspect, but economic activity takes place within a legal framework. So the economists will be concerned, as the lawyers will, with the effects of the law in influencing economic activity by trade unions, as we saw happen only the other day in the *Daily Express* case.

The most pleasant part of my task is to introduce the speakers. Some will be well known to us. I begin with, if I may say that of him, the most eminent and respected of all of the economists in this country, Lionel Robbins. He will be followed by very distinguished people both in the academic and the legal world, some who have practised in their profession for a very long time, some who are comparatively young.

Central to the whole theme is the special interest that lawyers have in the liberty of the individual and how it is to be reconciled as we move, I think steadily and inevitably, towards the totalitarian and corporate state. On that subject we are going to listen particularly to Leslie Scarman after lunch.

LORD ROBBINS:

When Arthur Seldon asked me to undertake this opening paper, he used the words 'authoritative and scholarly' to indicate his *desiderata*. I am afraid that, however ample the time allotted to me, I should be incapable of living up to that. But, even with the extra 10 minutes he has allowed me, I am sure that neither quality could be attained even by someone much better qualified than I am: both the width and complexity of the subject are too great. All that I can hope to do is to give a highly impressionistic view of the evolution of analysis among representative economists during the period under discussion concerning the powers of trade unions and the problems of policy to which their existence give rise.

Classical economists and trade unions (combinations)

Let me begin with a statement about whose accuracy I am reasonably confident, namely that the concern of Political Economy during this period has never been hostile to the condition of the wage earner. It is perfectly true that at an earlier age it is easy to find writers on economic subjects who positively welcomed low wages and held that the workers should be kept in their place.¹ But from Adam Smith onwards the reverse attitude has been true:

'Servants, labourers and workmen of different kinds', said the author of *The Wealth of Nations*, 'make up the far greater part of every great political society. But what improves the circumstances of the greater part can never be regarded as an inconvenience to the whole. No society can be flourishing and happy of which the far greater part of its members are poor and miserable.'²

The main aspirations of the Classical economists in this respect were threefold: (i) population restraint, whereby James Mill actually thought that earnings might be raised to 'any heights deemed desirable'; (ii) technological invention in which, although Ricardo had some reservation about the short-term impact, they all saw the

¹ Examples are quoted by E. S. Furniss in *The Position of the Labourer in a System of Nationalism*, Boston and New York, 1920, Chapter VII; also Mandeville on Charity and Charity Schools, *The Fable of the Bees*, edited by Kaye, Oxford, 1924, pp. 253-323.

² Adam Smith, *The Wealth of Nations*, ed. Campbell, Skinner and Todd, Oxford, 1976, p. 96.

means of ultimate advancement; and (iii) capital accumulation which, by promoting competition, broke down any tendency to solidarity among the masters and thus, so long as it exceeded the increase of population, promoted the 'cheerful' progressive state. They were also favourable to various governmental measures, not necessarily in harmony with current ideology, designed to lessen ignorance and relieve distress.³

The question, however, to which I have to address myself this morning, is the highly complex question of their attitude to workers' combinations and the extent to which, as time has gone on, this attitude has been modified or changed by the evolution of relevant events.

The repeal of the Combination Acts: Place and McCulloch

Let me first remind you—what I am sure that most of you know—that the repeal of the Combination Acts which made associations of workers to bargain about wages a punishable offence, was materially helped by the activities of Francis Place and McCulloch, both intimates of the second generation of Classical economists. I commend to anyone who is at all taken in by the current rubbish talked in this respect a short perusal of McCulloch's *Essay on Wages* which first appeared in 1826. He will find there a most emphatic emphasis on the right to enter into voluntary associations. He will find also the argument that, despite the fact that the competition of the masters is likely eventually to raise wages to what he called a 'just level'—i.e. the competitive level—the absence of initiative on the part of the workers may delay this achievement. Thus, he says:

'On every ground both of justice and expediency, it still appears to us that the repeal of the combination laws was a wise and salutary measure. Until they were repealed the terms of the contract between masters and workmen could not be said to be adjusted, as they always ought to be, on the fair principle of free and unrestrained competition.'⁴

It is quite true that McCulloch also argued that attempts to raise wages above this level were likely to fail: it is further true that this

³ Robbins, *Political Economy Past and Present*, Macmillan, London, 1976, pp. 103-7 and 119-134.

⁴ Professor Denis O'Brien's most distinguished study, *J. R. McCulloch: A Study in Classical Economics*, Allen & Unwin, 1970, should be consulted in this connection, especially pp. 366-9.

attitude was shared by other contemporary writers in the Classical Tradition, e.g. by Torrens in his *Wages and Combinations*.⁵ It is not true, however, as is often supposed, that this scepticism was based upon the assumption of a rigid Wage Fund—the repudiation of which, in John Stuart Mill's famous review of Thornton's *On Labour*, caused such a stir at the time. McCulloch argues that the staying power of the employers is probably longer than that of the workers. Torrens, while conceding that a rise absorbing the capitalist's share is possible for a time in a closed community, argues that, in the long run, the potential diversion of capital abroad sets obvious limits to such consequences. This judgement of the failure to use the Wage Fund as a stick with which to beat the unions is not my opinion only: it is explicitly stated by the greatest authority on the history of the concept. The late F. W. Taussig, in his *Wages and Capital*,⁶ says explicitly that

'there is no evidence that fixity or rigidity of the Wages Fund was prominent in the minds of the writers of the period considered [i.e. from Ricardo to John Stuart Mill]. Such evidence as we get on this point, derived mainly from their discussion of combinations and strikes, is in the negative. The Wages Fund is there certainly not described as rigid and by inference is treated as elastic.'

Voluntary unions approved

The comparative benevolence of (and support for) trade unions to which I have drawn attention related, however, entirely to non-monopolistic spontaneous associations. Again let me refer to McCulloch who perhaps was most active and articulate in this connection:

'It will be observed that the observations we have now made apply exclusively to the justice and policy of attempting to prevent *voluntary* combinations among workmen; and we must trust they will not be understood as being intended to countenance in the slightest degree the attempts that have frequently been made by combined workmen to prevent others working except on the conditions they have fixed for the guidance of their own conduct. Every such attempt is an obvious breach of the peace; and if not repressed by prompt and suitable

⁵ London, 1834, pp. 57-89.

⁶ D. Appleton & Co., New York, 1897: LSE Reprint No. 13 in series of *Scarce Tracts in Economics and Political Science* (1932), p. 215.

punishment would be subversive not only of the freedom of industry but of the national welfare.'⁷

The exception of J. S. Mill

There can be little doubt, given the strong anti-monopolistic tradition of Classical Political Economy from the *Wealth of Nations* onwards, that this view was generally shared. The one exception was J. S. Mill whose otherwise admirable determination to see all points of view, in this case certainly leaves a residue of ambiguity concerning his ultimate attitude. Needless to say, with all others, he is against violence and intimidation. Furthermore he is quite clear both that limitation of competition is necessary for the achievement of exceptional gains and that it

'inflicts distinct evil upon those whom it excludes—upon that great mass of the labouring population which is outside the unions—an evil not trifling.'⁸

But he goes on to assert two possible arguments in favour of combination, namely, first, that the individual monopolies are an education for universal unionism at some future time and, secondly, a Malthusian argument, that

'the ignorant and untrained part of the poorer classes will people up to the point which will keep their wages at that miserable rate which the low scale of their ideas and habits make endurable to them';

hence that the more enlightened

'do no wrong by entrenching themselves behind a barrier to exclude those whose competition would bring down the wages thus sheltered while only adding to the numbers in existence'.

Universal unionism he himself admits to be visionary and is certainly, to put it mildly, controversial. Individual unionism he obviously takes more seriously. But it is difficult to regard it as anything but an aberration for Mill of all people to lend justification to practices which certainly in his own day were seriously affecting the relative position of women in many parts and in our own day are seriously depressing the position of black labour in certain parts.

⁷ *Op. cit.*, p. 88.

⁸ In his review of Thornton's *On Labour Essays in Economics and Society*, Toronto, 1967, p. 662.

Unanimous opposition to restrictive practices

As regards restrictive practices, restrictions on the employment of machinery, factitious demarcations, limitations on individual exertion and so on, I do not believe that among Classical or Neo-Classical economists there was less than unanimity in opposition. Certainly in the same famous review, Mill comes down heavily against such practices; and Marshall's chapter on trade unions in his *Economics of Industry*,⁹ which is the most authoritative statement in the literature of that tradition of the pros and cons of union aspirations and practices, the condemnation, although expressed with the almost superogatory tact which was characteristic of Marshall's public pronouncements, is unequivocal. In private he was less reserved. In a letter apropos of the engineers' strike of 1897, he said:

'unless the A.S.E. *bona fide* concedes to the employers the right to put a single man to work on an easy machine, or even two or more of them, the progress of the English working classes from the position of hewers of wood and drawers of water to masters of nature's forces, will, I believe, receive a lasting check. If the men should win, and I were an engineering employer, I would sell my works for anything I could get and emigrate to America.'¹⁰

20th-century thought and developments

Thus far I have been discussing the opinions of economists of the English Classical and Neo-Classical tradition as exhibited in 19th-century pronouncements; and I imagine that this was Mr Seldon's intention when he invited me to make these opening remarks. But I hope it will not be thought to be treading too much on the field of other speakers if I devote a few minutes to the evolution of thought since that time and the developments which have influenced it.

1. Growth of trade union power

The first development in this century to which I think we should pay attention is the very considerable spread of the width and degree of trade union power. It is, of course, not true to speak as if the entire labour force in this country were thus monopolised. But it is true

⁹ Macmillan, 3rd Edition, 1899, pp. 362-403.

¹⁰ *Memorials of Alfred Marshall*, ed. A. C. Pigou, Macmillan, 1925, p. 398.

that the unions have become larger and that their power has been greatly reinforced by changes in the law—the *Trade Disputes Act* of 1906 by the Liberal Government is conspicuous¹¹—and by technological changes in the organisation of production—the vastly increased dependence on the comparatively small number of technicians who control electricity supplies is a good example. In recent years there is the further circumstance that wide areas of industry have been nationalised; and the state as employer is sometimes thought to have a bottomless purse. I suspect that many economists view these circumstances with considerable apprehension, although general benevolence and the fear to be attacked as ‘union-bashers’ impose a certain restraint upon some.

2. External influences

Secondly, at the same time there have been external influences on employment and the wage level which, rightly in my judgement, have aroused strong defensive reactions among trade union leaders and elsewhere. The return to gold in 1925, at a parity which was decidedly over-valued, at once affected employment in the export industries, and in particular provoked pressure on wages in the coal mines which led to one of the most disastrous strikes in our history. Then came the Great Depression of the 'thirties when forces, about whose origin perhaps reasonable people may still differ, yet in the end unambiguously resulted in strong deflationary pressures severely affecting the labour market. The idea that the unemployment of that period, either here or in the United States, could for instance be attributed to trade union pressure to raise money wages, or even to sustain them, rests, I am now convinced, upon wrong conceptions of causation. When aggregate demand is shrinking catastrophically because of positive monetary deflation, it is a false sense of proportion to blame the resulting unemployment predominantly on lack of flexibility of wages—as at one time, I am sorry to say, I was personally disposed to do.

3. The move towards a 'full employment' policy

The effect of the depression of the 'thirties was certainly to impose upon many thoughtful people the conviction that in some way or

¹¹See Dicey's *Law and Opinion in England*, 2nd Edition, 1914, for a succinct explanation of the implications of this Act.

other it was the duty of governments to take measures, whether monetary or fiscal, to offset deflationary influences of that order of magnitude. The upshot of this, in a moderate way, was the Coalition White Paper on Employment Policy of 1944 which, avoiding the question-begging term of 'full employment', set as an objective of policy the avoidance of pressures of this sort and the maintenance of high levels of employment of resources.

Now whether, with all its explicit limitations, that was a wise commitment or not is a matter on which opinions will differ. Where I think there should be less difference of opinion concerns the exaggerated expectations which were fostered by other versions of employment policy. Sir William Beveridge, for example, attacked the Coalition White Paper as timid,¹² and in his *Full Employment in a Free Society*¹³ defined his objective as a state of the labour market in which there were always 'more vacant jobs than there were unemployed men' and that 'the labour market should always be a seller's market rather than a buyer's market'—a state of affairs which I confess seems to me to be a prescription for non-stop inflation—a *promise of continuous employment irrespective of the price of labour and its relation to productivity*. It is true that, later in his book, Beveridge recognised the need for moderation in wage claims. But he seems to have had no inkling of the probability that his guarantee would seriously endanger the equilibrium of the system. It was left to more consistently-minded persons to argue that the maintenance of full employment, *as he had defined it*, required permanent control of wages and incomes generally.

The responsibility for inflation

Since that time we have had pretty continuous inflation, slowish at first but recently such as to endanger the stability of the whole economy. I personally am not disposed, as are some of my friends, to put all the blame on the unions.¹⁴ Lax financial and fiscal policy on the part of governments of both parties, the so-called dashes

¹²'The Government's Employment Policy', *Economic Journal*, Vol. LIV, pp. 161-176.

¹³Allen & Unwin, London, 1944, p. 18. My critique of Beveridge, 'Full Employment as an Objective', first written in 1949, was reprinted in my *Money, Trade and International Relations*, Macmillan, 1971.

¹⁴My Wincott Lecture, 1974, *Aspects of Post-War Economic Policy* (published by the Institute of Economic Affairs as Occasional Paper 42).

for freedom and growth, and excessive public borrowing, bear a high degree of responsibility for this humiliating episode in our history. But a public opinion in which the least upward deviation from an unemployment percentage far lower than even Beveridge had promised,¹⁵ doubtless contributed to the political sensitivity of successive Chancellors in this respect; and certainly there have been episodes in which trade union claims have been such as, given the elasticity of the money supply, might well have been described as cost inflation. I personally think that the distinction between demand inflation and cost inflation, although intelligible, is apt to be misleading. What I am quite sure of is that, while governments should seek to avoid positive deflation of the type of the 'thirties, their responsibility stops there. Beyond the maintenance of reasonable stability in the value of money, in a free society the choice must be with the sellers of labour, whether to choose claims which, by exceeding what the gross national product will bear at constant or very slowly rising prices, must lead eventually to inflation and unemployment, or so to moderate their claims as to harmonise with the growth per head of productivity. It is obvious to anyone who follows public discussion on such matters that this view is not shared by all professional economists. There are some who hold that, in modern conditions, nothing less than permanent control of incomes will prevent cost inflation: I personally, while not ruling out such controls as limiting the increase of unemployment in a period of emergency, find this alternative unacceptable on grounds of both administration and political philosophy.

The unions and the law

One further point and I have done. In so many recent discussions of policy in regard to combinations, I have heard the point made that there can be no legal discipline in the labour market. If this means, as I have just indicated, that, save as an emergency measure designed to avoid unemployment, wage controls are unlikely to persist, I agree. But to argue from that that there are no controls which can be legitimately imposed on these powerful bodies—that it must be taken as an axiom that trade unions, *unlike any other kind of monopoly*,

¹⁵It is worth noting that even Beveridge promised an average of 3 per cent, i.e. a state of affairs in which the actual percentage was sometimes higher, sometimes lower, than that figure.

should be permanently above the law in matters relevant to the contract of labour—seems to me a counsel of despair. I can quite see that attempts at all-round assaults on positions which have grown up through history are doomed to disappointment—like other attempts to take the Kingdom of Heaven by force. But I refuse to believe that it is impossible, in this country and with our political traditions, gradually to introduce, as is at least attempted elsewhere in Western countries, a state of affairs in which more legal order prevails in this part of the economy. At any rate I am sure that the Classical Economists would have been of this opinion. I am sure that, to a man, they would have endorsed Adam Smith's opinion that 'justice', i.e. the law, 'is the main pillar that upholds the whole edifice. If it is removed the great, the immense fabric of human society, that fabric which to raise and support, seems in this world, if I may say so, to have been the peculiar and darling care of nature, must in a moment crumble into atoms.'^{16, 17}

COMMENTS

Economists, Trade Unions and Wages

PETER MATHIAS

All Souls College, Oxford

Lord Robbins's paper ranges widely over both time and topics. I shall confine my comments to one of his themes only.

The main reason for the existence of trade unions, and their continuing principal objective, is to defend the position of their members—in particular by increasing wages. This being so, and with the trade unions having grown to be one of the great estates of the realm in the 20th century, it seems to me remarkable that economists down the years have offered so little theoretical analysis to test what effects trade unions have had in practice upon the level of wages. In a perverse way, this seems almost to operate in inverse ratio with

¹⁶Adam Smith, *Theory of Moral Sentiments*, ed. Mackie and Raphael, Oxford, 1976, p. 86.

¹⁷On the matters dealt with in this paper, I would recommend the monograph by Dr Gustavo R. Velasco, *Labour Legislation from an Economic Point of View*, published (1972) by the Liberty Fund Inc., Indianapolis, Indiana.

the extent of the popular public belief in the power of trade unions in this respect.

Historians of trade unions (a well-represented branch of historiography) are, if anything, even more prone to ignore this central issue than economists: the books on trade-union history are dominated by institutional narrative, dramatised by industrial and political conflicts, but with scarcely an attempt to make an assessment of the central issue about how effective the union concerned has been over the years in influencing the wages received by its members.

General theories of wages unconvincing

All propositions by economists for a general theory of wages seem to offer no convincing explanation of reality—whether theories of subsistence-level wages (whether determined according to the minimum physical level of consumption or building in conventional requirements and levels of expectation into the concept of a ‘minimum’); iron laws about a ‘wages fund’ linking wage levels inescapably to ratios between the growth of capital and population; or even those theories determining wage levels according to differential productivity. Classical economists in the 19th century and neo-classical economists in the 20th have made basic assumptions about the economy and the labour market being in a state of competitive equilibrium, nationally or internationally. Prices, including the price of labour, tend towards marginal costs; profits are ‘normal’; monopoly payments and quasi-rents are distortions—and such interferences in the market can only be temporary distortions—explained by external factors which, by definition, lie outside the variables encompassed by economic theory. One of the attributes of a competitive market is that prices become equalised.

On the other hand, socialist theorising, particularly by Marxist writers in the 19th century, also made basic assumptions which denied much leverage to unions on wage levels. Marx, indeed, incorporated conventional levels of expectation into his views about what subsistence standards included (which offers scope for the collective expression of such expectations) but, at the same time, powerful forces for *minimising* wages were also built into his assumptions about the dynamics of capitalism—the reserve army of labour, a falling rate of profit, the flight of capital, labour-economising innovation, crises and depressions, etc. The voice of Keynes on all this was also silent in the *General Theory*.

Short-run/sectoral effects: nothing new since Marshall?

Of course, the short-run and/or sectoral redistribution effects of unions on wages have been acknowledged as long as their long-run macro-economic (aggregate) effects have been denied or ignored—at least since Adam Smith. Even here, however, has anything much been said which is new since Marshall spelled out in 1890 and 1892 the nature of the elasticities, substitutabilities, possibilities of technical change, competition in product markets and the like which governed—in the abstract—the degree of leverage which a union could exert? Public-sector analysis seems even less responsive to economic theory, being without the parameters of unemployment, bankruptcy, the flight of capital and enterprise which set overall limits for redistribution within a competitive (but how competitive?) commercial context. And how rigidly are ‘cash-limits’ in practice going to impose a ‘trade-off’ between wage rates and unemployment in the public sector? (The classical economists spoke very clearly of the advantages a union could bring to its efforts to improve wage rates for its members by reducing the amount of labour competing in the market.)

In short, are the variables too many, the ‘frictions’ too great, the elasticities so indeterminate, the competitive forces so lax, the public sector and public influence so powerful, reasons of equity so persuasive, exogenous factors so numerous and heterogeneous that economic theory can *never* say anything useful or operational about the influence of trade unions on the general level of wages? Or at least anything beyond the vital tautology that pushing ‘significantly’ beyond the limit set by the market will soon bring its own retribution by inflation, unemployment or both?

I am aware that there is some recent econometric analysis which seeks to measure the differential in wage rates produced by unionisation—based on a comparison between wage levels in unionised and non-unionised sectors. In large measure this sort of analysis assumes (and has to assume) that *correlation* implies *causation*—which begs many vital questions. Why should we always assume that unionisation brings higher wages and never that higher wages induce unionisation? Of course, this analysis concerns only redistributive effects and implies the paradox that, with unionisation universal throughout the economy, its effects on wages would be zero. In fact, the important issue is the *difference* in leverage effects between different unions. The analysis also tends to ignore the implications of competitive

forces within different sectors of the market, product competition and substitutability, countervailing powers by organised consumers of the products or services in question, and a host of other issues which affect the real dynamics of the market.

The perspective of dynamic analysis

A prime weakness of this sort of analysis is that it is based on static, short-run analysis. Longer-term dynamic analysis can give a sharply different perspective. For example, it can also be argued that a high degree of unionisation is associated with a fall in productivity and output. By reducing the potential efficiency of the economy, this effect of unionisation would reduce the potential level of real earnings (which would not be eliminated by 100 per cent unionisation). The alternative thesis is that, if unionisation affects wage-levels significantly, this will induce greater technical change to economise on labour and offset the other leverage effects of unions. Thus econometric analysis which seeks to 'put the numbers into the equations' contains difficulties in operational utility as great in their own way as those of pure theory.

This whole tradition of economic analysis has wider consequences, of which I mention only two. It may be tempting to conclude from the general agnosticism of economists that unions cannot do much to influence the general level of wages in the long run; that we need not worry—the going rate is still set by the market. Such a signal for inaction would be truly disastrous: the going rate will indeed be re-established, but only after a terrible retribution by inflation and unemployment, with political if not economic crisis.

An even greater liability of this mode of analysis, in my view, is that it encourages concentration almost exclusively upon the *division* of the national income rather than its creation. It needs to be said—loudly and clearly—that the greatest and only significant long-run gains for the mass of the nation have come from *enlarging* the national cake rather than redistributing it. Indeed, concentration upon redistribution may be seen as the consequence of economic stagnation—the economics of a siege economy. We all stand to prosper much more from the economics of expanding the national income than from the politics of envy—wholly concerned with its distribution.

The Role of History

NORMAN McCORD

University of Newcastle upon Tyne

My comments are based not on the contents of Lord Robbins's paper but on its general tone. To a considerable extent we have here an *apologia* for past economists, a deliberate attempt to rebut charges that they were generally hostile to trade unions. This raises the general issue as to how far our discussions on 'Trade Unions, The Economy and Society' should properly be concerned with past events and how far we should try instead to confine our attention to the situation obtaining in our own time.

If it be the case, as in my view it is, that current attitudes, as far as many people are concerned, lean heavily in practice on beliefs as to how workers have been treated over the past couple of centuries or so, then we can scarcely avoid some consideration of a historical element.

History and understanding

There are complications here, and in offering my opinions I am well aware of their limited currency. For instance, if in the Britain of Peterloo and Tolpuddle economists were uniformly hostile to trade unions, I would not regard that as important for understanding the position of economists and trade unions in our own very different society, except in so far as a misunderstanding of the past may affect contemporary beliefs and attitudes. Inveighing against the past strikes me as a pretty useless approach to understanding. No doubt this kind of error is obvious enough when we regret Edward the Confessor's failure to create a national health service, or deplore the absence of trade unions from neolithic society, but milder versions are very common in discussions about the recent history of our own society.¹ To believe that a great deal of the past ought not to have

¹ As an illustration, in *Poverty and the Industrial Revolution* (Panther Books, 1972, p. 466), Mr Brian Inglis regrets that more thought was not given in the early 19th century to compelling industrialists 'either to restore the environment to the condition in which they found it, where that was possible; or to pay compensation sufficient, say, to provide for the cleaning of public buildings and the provision of compensatory amenities'. The argument that the past ought to have been different is not the most fruitful approach to historical understanding.

been allowed to happen is a common form of futile romancing. It is more sensible to accept that what did happen represented the sum of the factors operating in the context concerned, and that the most sensible form of history is that which seeks to understand and explain what they were. To many people this will seem an unduly arid approach.

In using the phrase 'the Britain of Peterloo and Tolpuddle' I was disingenuous. It is commonplace for early 19th-century Britain to be seen in some such terms, but in reality both Peterloo and Tolpuddle are poor indicators of this area of past reality. A great deal has been said and could be said on this topic. Let me say something which requires no very specialised knowledge of this aspect of history. Peterloo and Tolpuddle were both distinctly unusual and abnormal events, and the quite extraordinary notoriety which they aroused and retained should induce us to be wary about accepting such incidents as indicators of the normal working of the society in which they occurred. If, for example, workers were commonly transported for trade union activities in the early 1830s it is very difficult to understand how Tolpuddle came to enjoy such extraordinary fame. If Peterloo represented prevailing social relationships of 1819, we would expect this one tragic incident to be largely submerged in a flood of similar events. In reality both Peterloo and Tolpuddle were exceptionally prominent not because they were reasonably typical events of their day but because they were exceptional incidents which aroused very strong political feelings over a very long time-span. When therefore we try to incorporate some historical dimension into our discussions we have to remember how difficult it is in this field to disentangle history from polemic of various kinds.

Cohesion of British society

There may, however, be some broad generalisations which can be legitimately inferred about the history of modern British society and which may help our discussions. Let me offer two. First, since British society has held together without major catastrophes such as civil war or revolution over the past two hundred years or so, it seems reasonable to suggest that the elements of cohesion, co-operation and sympathy have been in practice markedly stronger than the elements of conflict, hatred and disruption. Second, anyone prepared to compare the condition of the people in the later 20th century, not with theoretical ideals of perfection, but with the reality of any

earlier period of British history, must surely conclude that the evolution of modern British society should be seen as primarily a story of progress and achievement rather than primarily a story of exploitation and conflict.

Discussion

EDGAR VINCENT (ICI): Lord Robbins pointed to Beveridge's argument about labour being in a sellers' market and then went on to state that there had been general inflation since that time although coming along rather slowly at first and more rapidly later on. That has to do with economic theory. My problem is that I can't find an instant connection between the macro-economic judgement of what has happened and, say, my own industry where, by processes of technological change, by improvements in productivity, and by competitiveness we are bringing a net return back to the United Kingdom out of our efforts and surviving reasonably well. There must be many examples of that happening. So the problem does not seem to be macro-general, but micro-detailed, of how people are working, what they are doing at work, and how successful they are in running their businesses and ensuring ordered, decent employee relationships within them.

LORD ROBBINS: I would have thought there were two distinct problems here. First, the ups and downs of particular industries—and one is very glad indeed to hear of an industry which is regaining markets and increasing its productivity. Secondly, the general position of the economy as regards real income and financial disturbances of one kind or another. I will not comment on the particular problems; this would require an encyclopaedic discourse. But, on the economy as a whole, while it is true that, since the war, until these disturbances of the 'seventies, productivity has been increasing and at a rate comparable to the rate of increase in earlier periods, it certainly was not nearly as good as in other industrial countries such as Germany or Japan. Both started at the beginning of the post-war period far, far down the league table compared with ourselves and are now substantially above us. The question therefore arises whether there are not, operating in this country, quite apart from general pressures of cost inflation, influences which have prevented us from benefiting as considerably as other Western countries have benefited

during the post-war boom. I myself have some intimate experience of an industry, London newspapers, where the comparison between what is achieved and what demonstrably could be achieved, and is being achieved in the United States of America outside the unfortunate New York, is something of a national scandal.

PROFESSOR MATHIAS: Where the level of wages, grade for grade, and skill for skill, is in large measure now determined nationally, and great pressures for equalisation exist in bidding up wages to the going rate within a particular occupation, then where that going rate is determined by the possibility resulting from the highest levels of productivity in an industry, where we know that there are very great differences in productivity between the most efficient and the least efficient firms in an industry, where the most efficient firms can obviously, within the level of cost prices, offer higher wages, where that becomes the going rate and determines the wage levels for the less efficient firms, if not totally then in large measure, that is a formula for inflation, and it seems to me a very important pressure for inflation within wide tolerances of the present day.

CHRISTOPHER JOHNSON (*Economic Adviser, Lloyds Bank*): I would like to ask Professor Mathias, and perhaps some of the labour economists here, whether there has not been research on the effects of unionisation on wages and economic growth. I would suggest that a paradox seems to emerge. One can show that in certain industries and at certain times workers have achieved higher wages by belonging to a union than they would have got by not belonging. The London printers are an obvious example. Yet there seems to be an inverse correlation between the rate of unionisation of a work-force as a whole and the rate of economic growth.

Workers are not motivated only by purely material gain. But this of course is true of workers in general and not only of those belonging to unions. One needs to use other disciplines to analyse the conduct of trade union officials, shop stewards, the trade union movement. I remember a senior official in the Treasury once saying to me that what we needed on our staff of advisers was not economists but social anthropologists. He was of course referring to the unions. There are many disciplines which can be called in aid both to explain the past and to make proposals for the future. Among them are social psychology and the law. Perhaps a lot of our seminar will be in terms appropriate to the law rather than to those of economics.

PROFESSOR MATHIAS: I agree. I spoke deliberately in caricature terms. I do think, however, more judiciously, that it is not really possible to measure the differential between the gain produced from effective unionisation and what the going rate would have been without it and what the going rate is in comparable trades, where skills are comparable and unionised in a different way or not unionised at all. That is precisely what econometricians try to quantify. I think one is quantifying subjective opinions in large measure, simply because the variables are so indeterminate.

I agree exactly with your latter comments. The business of understanding society is certainly not captured by any single discipline in any single social science or other kinds of science. I think in large measure that the views of economists about the level of wages and imperfections and interruptions in the market have been determined largely according to a static analysis. Looking at a single point of time, they argue that you cannot shift the going rate. If you try, it will pay off either in unemployment or inflation. If you examine the dynamics of the effects of high wages in the longer term, of course it opens up all kinds of different relationships which you, I take it, were referring to. High wages can of course have an important effect upon innovation. There is in my own trade—university teaching—a considerable mileage in the argument that the United States had such an impressive record of innovation in the 19th century in large measure because it was a higher wage economy than Britain or Europe, which gave employers a higher incentive for substituting skilled labour with innovation. In the dynamic side of the analysis, I agree things are much more complicated.

2. Collective Bargaining: The Balance of Market Advantage

CHARLES G. HANSON

University of Newcastle upon Tyne

The Authors

CHARLES G. HANSON: Lecturer in Economics, University of Newcastle upon Tyne. Specialises in industrial relations and development of trade unions and trade union law. Author of 'Welfare before the Welfare State', in *The Long Debate on Poverty*, IEA Readings No. 9, 1972 (2nd edn. 1974); *Trade Unions: A Century of Privilege?*, Occasional Paper 38, IEA, 1973; and contributor to *Economic History Review*, *Journal of Management Studies*, and bank reviews.

PETER J. SLOANE: Professor of Economics and Management, Paisley College of Technology. Senior Lecturer, Department of Industrial Economics, University of Nottingham, 1969-75. Economic Adviser, Department of Employment, 1973-74. Author of *Sex Discrimination in the Labour Market*, 1977. For the IEA: *Sport in the Market?*, Hobart Paper 85, 1980.

JOHN T. ADDISON: Professor of Economics at South Carolina. He was formerly Lecturer in Political Economy, University of Aberdeen. Consultant on incomes policies in small, open economies to the OECD. Economics Adviser, Office of Manpower Economics, 1971-72; Visiting Professor of Economics, Temple University, 1975-76. Co-author of *Market for Labour: An Analytical Treatment*, 1979.

CHARLES G. HANSON:

There are today economists who think that collective bargaining has outlived its usefulness. Mr Peter Jay, for example, until recently Economics Editor of *The Times*, and a contributor to the publications of the Institute of Economic Affairs, feels that collective bargaining as we know it will inevitably lead to an increase in both unemployment and the rate of inflation and that the best remedy is to convert all enterprises above a minimum size into workers' co-operatives.

One would need to be an ostrich not to be anxious about the way in which collective bargaining is working (or not working). But I would myself be reluctant to advocate, like Mr Jay, the jettisoning of the whole system. It may come to that. We may eventually reach a situation in which the electorate becomes so outraged at the way in which trade unions are abusing their power that it calls for their suppression. But I think one important consideration needs to be borne in mind. There is no better evidence of the existence of a free society than the freedom of workers to associate—or not—in independent trade unions. Responsibly conducted collective bargaining is a hallmark of a free society. That is why, in my view, instead of advocating a revolution in our economic system as a whole, we would do better to consider ways in which collective bargaining may be reformed and improved.

Volte face in market advantage

I shall argue here that the balance of market advantage in collective bargaining has moved in favour of the trade unions. The best single indication of the power of the unions was their destruction of Mr Heath's Government in 1974, but there is strong evidence, which I shall discuss, to support the view that in many industries and services labour is now the dominant partner. It was not always so. In 1926, when the economy was much more dependent on coal than it is now, the miners were on strike for seven months before they surrendered unconditionally. Until 1974 it was widely argued that the lesson of the 1926 strike was that the unions could not take on the government and win. That thesis has now been turned upside down. In the UK it now seems unlikely that government can take on the unions and win. The theory of 'labour's disadvantage', held by some distinguished 19th-century economists, has a hollow ring at a time when the miners

are trying to dictate the size of their next pay increase; and Professor W. H. Hutt's description of our system of collective bargaining as a 'strike-threat' system seems increasingly realistic.¹

If the balance of market advantage in collective bargaining lies generally with labour in the short run, it is necessary to ask one simple question: Why has the balance swung in labour's favour? In other words, in what respects has the framework of collective bargaining altered to tip the balance?

Markets, collective bargaining, and the legal framework

Markets in a free society do not operate in a vacuum. They operate in a legal and institutional framework, and this may have profound implications for a particular market. The framework may distort, or indeed destroy, a market or drive it underground. This has happened to a significant extent in the market for privately rented homes in Britain. Before 1914 a large majority of homes were privately rented. From the exceptional conditions of the First World War a tradition of legislation culminating in the 1974 Rent Act, controlling rents and penalising private landlords, has gradually driven them out of business. One unexpected side-effect of this legislation has been to create a nation—or rather more than half a nation—of owner-occupiers. Another has been that some of the poorer sections of the community have been harmed: for example, students have been deprived of their digs. For the housing market, legislation has done the damage. Legislation has also undermined collective bargaining.

But two more changes have also been no less important here. They are changes in the structure of the economy and an increase in the role of government.

Changing role of law, economics and government

Let us consider how these three factors have changed over time.

(i) Trade union law and privilege

The basic principle of unconditional trade-union privilege has altered little since 1875. It is hardly an exaggeration to say that for the past 102 years (with the exception of the period 1971-74) the

¹ Hutt, *The Theory of Collective Bargaining 1930-1975*, Hobart Paperback 8, Institute of Economic Affairs, 1975, Part III. While agreeing with much of Professor Hutt's analysis, I cannot myself accept his recommendation that strikes should be made illegal.

trade unions in Britain have been writing their own laws. If the judges have decided against the unions in a particular case the tactics of the unions have been to lean directly on parliament to reverse that decision by statute. Thus the unions have become accustomed to a completely watertight umbrella of statutory privilege. Sidney and Beatrice Webb, lifelong socialists and supporters of trade unionism as they were, wrote of the 1906 Trade Disputes Act that it gave trade unions

‘an extraordinary and unlimited immunity, however great may be the damage caused, and however unwarranted the act, which most lawyers, as well as all employers, regard as nothing less than monstrous.’²

There is little doubt that the Webbs shared this view, although they were too discreet to say so.

There is, then, nothing new about trade-union privilege. The question is: Is this privilege justifiable in 1977? Various changes have made it more significant now than it was in 1906 or 1875. First, total trade union membership has grown from 2 million at the turn of the century to 12 million today. Second, the development of a state social security system, with ‘free’ health and education among other benefits, has meant that a strike is less costly to strikers and unions than it used to be. Also it could be argued that it takes time to learn how to use privilege to the best advantage. By 1969 even a Labour prime minister was convinced that trade-union privilege had become excessive. Of course, *In Place of Strife* failed to reduce it. But that such a policy should have been seriously canvassed inside a Labour government financed largely by the unions would have been unthinkable at an earlier date.

(ii) *The structure of the economy*

In economic change over the past century there have been two outstanding features: an increase in the size of firms, sometimes deliberately encouraged by government, and the increasing interdependence of households and firms. Both have increased the power of particular groups of workers, although it could be argued that the former—the increase in the size of firms—has increased the power of the employer as well. As firms or public enterprises grow larger, disruption in a single firm or industry has an increasingly severe effect upon consumers.

² S. and B. Webb, *History of Trade Unionism*, 1920 edn., p. 606.

The nature of technical developments and the character of modern urban and industrial life have meant that we are all increasingly dependent for the very necessities of life—for example, water, heat and light—on those whom we never see. Small groups of men working in power stations or water treatment plants are able to make life extremely unpleasant, if not impossibly difficult, for the mass of the population, including their trade union 'brothers'.

Where a monopoly industry is supplying a vital service, the power of labour may be almost irresistible. That is presumably why the 1875 Conspiracy and Protection of Property Act, while extending trade union privilege, made illegal breach of contract of service in the gas and water industries; and this was extended to electricity supply in 1919. However, these key industries, like the fire service, in which an unprecedented dispute is (December 1977) taking place, are now all publicly owned. There is no question of a battle between *private* capital and labour. There were those Utopians who expected that nationalisation *per se* would resolve all wage disputes in the industries taken over. But recent experience has shown that the most difficult wage issues and confrontations are in the state sector, where the argument is not between labour and capital but between one section of the labour force and the rest of the community.

(iii) The role of government

One of the useful observations (perhaps the only one!) made by the majority of the Bullock Committee was that today 7 million people work directly or indirectly for the state. I am one of them. We normally think of collective bargaining as taking place between trade unions and employers; it needs to be remembered in 1977 that the state is much the largest single employer. The level of pay settlements in the state sector is clearly critical for the economy as a whole. In many, if not most, areas of economic life the state is competing directly with private employers for labour. Many, if not most, unions have members in both public and private employment.

What effect has the spread of government employment had on the balance of market advantage in collective bargaining? Like the other changes, this development, in my view, has tilted the short-run balance of advantage in labour's favour.³ In matters of this kind a

³ In the long run labour can be replaced by capital, and consumers and capital will avoid strike-prone industries.

government is generally less likely to stand its ground than a private employer whose business depends on covering its costs from sales in a competitive market. The private employer knows that, if wage costs exceed the value of labour's product, his livelihood will be destroyed. But governments can print money to pay their employees. Also they come and go; and an irresponsible opposition may undermine a government's resistance.

I have been arguing that structural development and legal, or perhaps one should say political, factors have tilted the balance in labour's favour. Professor B. C. Roberts has pointed out that

'a trade union might be described as a political institution operating in an economic environment or as an economic institution operating in a political environment.'⁴

The crucial question is: Are economic or political factors the more important? Professor Roberts had no doubt about the answer. He concluded that

'The contention . . . that wages are primarily determined by economic factors and not by internal political pressures is amply demonstrated by British experience.'⁵

I wholeheartedly agree. Trade unions, generally speaking, are interested in the level of wages *and* the level of employment. In a competitive market they are conscious that the two are inter-related and sometimes reluctant to push wages too high for fear of pushing their members out of work. That helps to explain why the National Union of Mineworkers was so docile in the 1960s. But despite this docility the labour force in mining fell from 703,000 in 1960 to 382,000 in 1970. Thus in relation to most other industries the total wage bill in mining was falling rapidly in this period. What was the main cause of the decline? Competition from cheap oil which captured a large share of the market for primary fuel.

Strength of economic forces

The reasons I gave earlier for the increase in trade union bargaining power were largely political. Political factors may distort or destroy a market but they do not destroy the underlying economic forces

⁴ Roberts, 'Trade Union Behaviour and Wage Determination in Great Britain', in J. T. Dunlop (ed.), *The Theory of Wage Determination*, Macmillan, London, 1957, p. 108.

⁵ *Ibid.*, p. 122.

which encourage prices (including the price of labour) to move towards an equilibrium level. The nature of those forces is such that the more strongly they are suppressed the more quickly they break out when pressure is released. This helps to explain why, despite the imbalance in our trade union law for over a hundred years, monopoly trade unions in essential industries have not achieved absurdly high wages in relation to other workers. For example, in April 1977 the average weekly wage for manual workers in the gas and electricity industries was £78·2 and £76·5 respectively, compared with a national average for adult manual workers of £71·5.

It seems incontestable that the balance of market advantage has moved in favour of the trade unions over the past few decades. But no trend is irreversible. Perhaps even those militants who prefer to operate a strike-threat system rather than using established channels of negotiation will eventually see that instead of bringing them benefits it merely leads to personal and national impoverishment. Some may feel this is plain wishful thinking. But it is surprising how public opinion can be altered by a combination of unpleasant events and bold advocacy of the right policies to deal with difficult problems. Who would have thought 10 years ago that today government would be setting firm targets for the money supply and attempting to keep within them?

COMMENTS

Collective Bargaining: Analysis of Conflict and Proposed Reforms

P. J. SLOANE

Paisley College of Technology

It is paradoxical that, at a time when opinion polls suggest that the unions are most unpopular with the public as a whole, trade union membership should never have been so high. Perhaps in the terminology of the following seminar paper unions are both a 'public bad' and a 'private good'. Certainly, in asserting that the balance of market advantage has swung too far in favour of the unions Dr Hanson is reflecting a widespread view.

Yet it still seems necessary to ask precisely what is meant by the term market advantage or bargaining power and, having defined it, to seek to establish its extent empirically. The bargaining power of one party may be defined in terms of the relative costs imposed on the other party by a failure to agree. Thus, N. W. Chamberlain¹ defines the bargaining power of a trade union as the ratio of the cost to the employer of failing to meet the union's demands to the costs of agreeing to them. Similarly, the bargaining power of the employer is the cost to the union of rejecting the employer's offer relative to the costs of accepting it.

On the employer's side, the costs of disagreement are the probable loss of profits during a strike following rejection of the union's demand; the cost of agreement is the reduction in profit flow consequent upon the offer of better terms (or payment of a higher wage). Likewise, on the union side the cost of disagreement is the loss of income incurred through a strike (i.e. erosion of union funds or savings of union members); the cost of agreement is the perceived reduction in, say, wage income as a consequence of accepting the employer's wage offer. These costs in turn will themselves be determined by such factors as the degree of monopoly in the product market, the ease with which labour can be substituted, labour's share in total cost, the extent of unionisation, the level of profits, the level of product demand and the general level of unemployment. Clearly, then, the degree of bargaining power is likely to vary considerably over the economy as a whole.² We would, for instance, expect the recent rise in unemployment in particular to have weakened to some extent the bargaining power of labour.

Conditions maximising conflict

The implication of this sort of analysis would seem to be that conflict (e.g. strikes) will be maximised when the bargaining power of the two parties is roughly equal and the perceived costs of disagreement are not sufficiently high to deter a strike or lock-out. This,

¹ *Collective Bargaining*, McGraw-Hill, New York, 1951.

² Protective and other legislation is likely to have the most impact where unions are weak and unorganised as opposed to industries or occupations where strong unions have already obtained major advances for their members. Consequently, the largest shift in bargaining power towards the unions may have occurred in small firms.

of course, is contrary to the widely held view that high strike activity is a consequence of 'excessive' union power. It leads one to ask whether inequality of bargaining power might not benefit the economy in some respects. For, if employers are stronger than the unions, and *provided there is sufficient competition in the product market*, wage cost per unit of output may be kept low in the short run and improved performance lead to higher real wages in the long run. Conversely, if unions are stronger than the employers, and in particular there is lack of competition in the product market, it is conceivable that a high-wage policy *might* drive out inefficient firms with a minimal level of strike or lock-out activity. On the other hand, it is possible, of course, in all such cases for the two parties to collude at the expense of the consumer.

In order to investigate these possibilities we must, however, be able to measure bargaining power. The two proxies most frequently used by economists are the degree of unionisation and the degree of strike activity. Unfortunately, both these proxies involve difficulties: in the degree of unionisation because it is difficult to detect whether increased trade union membership is a cause or effect of rising wage incomes, and in the degree of strike activity because the threat of a strike rather than its occurrence may be the relevant variable. Certainly labour's share in national income has increased in post-war Britain. Studies of the union/non-union wage differential suggest a possible wage advantage to union membership in the order of 25 per cent. And unions have almost certainly accelerated the rate of change of *money* wages. The effect of unions on *real* wages is more doubtful and could be negative.³

Nearly all such studies point to the need for micro-economic investigation, possibly even for each plant. Indeed, the trade union is often a coalition of divergent interests rather than a homogeneous unit. In the UK much of the pressure for large wage increases and most stoppages of work are a consequence of unofficial action by the rank-and-file member, sometimes in defiance of the union leadership. (The recent dispute in the electricity supply industry was only one example of a large number of such stoppages.) For

³ John H. Pencavel, 'The Distributional and Efficiency Effects of Trade Unions in Britain', *British Journal of Industrial Relations*, July 1977: his multiple regression model of productivity in the British coal industry 1900-1913 suggests that a totally unionised coalfield would produce 22 per cent *less* output than a totally unorganised one.

the leadership the survival of the union and the reconciliation of divergent claims on wage differentials may have priority over the maximisation of the wage bill of the membership. If it is true that union leaders are less 'militant' than their members, any restriction of union activities by legal or other means that had the effect of weakening even further the control of the leadership over the rank and file could conceivably add to the difficulties of employers in facing up to 'excessive' wage demands.

Collective bargaining: areas for reform

It is probably correct to say that over a substantial part of the British economy collective bargaining works reasonably well. But there are areas where reforms seem essential. Possible suggestions include

- the avoidance of multi-employer bargaining, making it less easy to pass on wage increases to the consumer (though any extension of plant bargaining to the detriment of national bargaining would give more scope for shop steward militancy);
- the closer linking of pay to financial performance, particularly in the public sector;
- synchronisation of the timing of wage claims and settlements;
- protective legislation for the employer and/or the removal of legal protection from unofficial/unconstitutional strikers (despite problems of enforcement);
- third-party representation in collective bargaining or final-offer arbitration;⁴ and
- the extension of worker co-operatives (though they may be less efficient in larger capital-intensive enterprises where industrial relations problems are generally more severe).

⁴ Final-offer arbitration, used to a growing extent in the USA, means that an arbitrator has, in making an award, to select either the employer's or the union's last offer or compromise and cannot split the difference. This forces the parties to negotiate in a manner more conducive to settlement.

The Balance of Market Advantage

JOHN T. ADDISON

University of South Carolina

In considering shifts in the balance of advantage in trade union bargaining with employers, we may consider two sets of evidence. We can examine, first, the market *effects* of trade union power and, secondly, the *means* by which unions seek to exercise it in association with the constraints on union action.

On the first, the best indicator currently available is that of the union/non-union differential. Unfortunately, our estimates of the differential relate in the main to cross-section or moment-in-time observations, and are plagued by measurement and simultaneity problems.¹ Although subject to the latter, a recent study by Layard, Metcalf and Nickell, using GHS data on the fraction of workers in each occupation and industry who are 'covered' by collective agreements, suggests that, as of 1973, the wage of a worker of given 'quality' is some 25 per cent higher if he is paid the covered wage than if he is not, and that the effects of coverage rose sharply by about a half between 1968 and 1972.² This change was accompanied by a rise in the share of wages in manufacturing, a fall in relative employment in covered industries, and a rise in unemployment.

The market and polity routes to union power

Second, on the means of trade union power, we may distinguish between the market route and the polity route. The market route concerns the bargaining process and the use of the strike-threat weapon to impose expected costs on employers and society. The polity route relates to the exercise of political and bureaucratic power. Those who argue that the balance of advantage has in recent decades been swinging in favour of the unions concentrate on the market route. The trends alleged to have secularly increased the means of trade union market power are:

¹ These issues are analysed in J. T. Addison and W. S. Siebert, *The Labor Market and Collective Bargaining: An Analytical Treatment*, Goodyear/Prentice-Hall, Santa Monica, California, 1978, Ch. 8.

² R. Layard, D. Metcalf and S. Nickell, *The Effect of Collective Bargaining on Wages*, Centre for the Economics of Education, London School of Economics, 1977.

the increasing division of labour,
the trend towards capital deepening,
the increasing concentration of production, and
the increasing divorce between ownership and control.

These trends are seen to have reduced the elasticity of demand for labour and/or to have reduced the costs of organisation (thus implying higher union density and altering demand conditions in a manner favourable to the union).³

Yet the trends in question, even if firmly established, do not point unequivocally to a growth in union power within the private sector as an inescapable consequence of the process of economic development. Explicit account must be taken of the constraints on union pushfulness and managerial proneness to make concessions in the private sector, the array of substitutes available in an advanced economy, and the role of strike anticipations in promoting short- and long-run adjustments that reduce vulnerability to strike-threat power.

The increasing vulnerability thesis would, however, seem to apply in some of the nationalised industries, where the necessary conditions for what one might term a 'ransom scenario' exist in terms of union density and product market concentration. Here, too, the divorce of ownership by taxpayers and control by politicians is widest. This divorce has been exploited in ways that have led either to loosening of the constraints on union monopoly power by, for example, subsidisation to hold down the costs of output which has encouraged more aggressive wage bargaining, or, through the attempts to hold down labour costs, to the growth of national emergency wage confrontations, followed by the 'corrective' of a Wilberforce-type arrangement.⁴

Private sector 'grants economy'

Furthermore, the private sector of the economy has become permeated by a state-financed 'grants economy', with industrial/regional/employment cash subsidies and a variety of implicit sub-

³ Addison and Siebert, *op. cit.*, Ch. 7.

⁴ A more extensive treatment of these factors is in John Burton, *Strike-Threat Power and the Economy: An Examination of the Increasing Vulnerability Hypothesis*, Human Resources Workshop Discussion Paper No. 16, Kingston Polytechnic, 1978.

sidies. Once such grant arrangements have become widespread and expected, the probable cost to a union in terms of membership loss for any given wage demand is reduced, and larger wage claims will be submitted. Thus the expected costs of miscalculation in wage-bargaining about the trade-off between jobs and higher relative wages have been reduced. Similarly, the increases in unemployment benefits and social security payments have reduced the expected costs of strike activity. And the changes in the law relating to trade unions have lowered the costs of erecting union monopolies throughout the economy in general.

The polity route to strengthened union power

So much for the market route to increasing union power. When we come to consider the polity route there are further indications of a growth in union influence. Through statutory or voluntary prices and incomes policies, union leaders have increasingly been drawn into the bureaucratic/political process. Incomes policies are urged by those who are apprehensive of union power (the tensions of the strike-threat system). Yet such policies can only strengthen the role of unions, individually and collectively, in our affairs. In the extreme case, namely the Social Contract situation, this influence has extended even further. The very concept of the Social Contract called for a trade between the unions and the government. In return for incomes control, the unions were to be given a direct say in government policy, together with legislation to deepen the degree of union monopoly power (witness the Dock Work Bill and closed-shop legislation).

Conclusion

The balance of the evidence would seem to indicate a growth in trade union power since the war. While there is more than a degree of controversy surrounding the contribution of economic development to this outcome, there can surely be little doubt that acts of government policy have been a direct causal factor.

Discussion

M. B. FORMAN (*Tube Investments*): Professor Sloane said he thought small firms had suffered more in bargaining power than big firms from legislation. Could he tell us how he reached that conclusion?

PROFESSOR SLOANE: There are two points here. Small firms on average will be less unionised. If you introduce legislation which makes union recognition easier, obviously small firms are going to be affected more by it. But also one might think simply of the multitude of legislation that we have had since the 1960s which has been unprecedented for the labour market. Sex discrimination legislation, health and safety at work, Industrial Relations legislation, the Employment Protection Act, etc. Small firms probably do not have specialists to deal with all these matters.

It is possible, therefore, that managements have been diverted from more directly productive uses. We should recognise that there are costs in implementing legislation which may be desirable from the public interest point of view. People tend to say other countries are introducing similar legislation, but many of them have attained higher standards of living than we have and are therefore more able to afford it than we are. It is the introduction of legislation in a piecemeal fashion by governments without an awareness of the inter-action of the different elements which is an important feature of them.

DAVID PETERS (*BOC*): Can I span the two sessions so far this morning? Professor Mathias gave up his historical review in the middle of the last century. I started my industrial studies in the middle of this one. But I felt there was a good deal of common ground with him on the distinction between what one might call the wealth-distribution and the wealth-creation argument. We have leaned too much on the wealth-distribution argument. Dr Hanson followed some of that theme through, leaving us the conclusion that while we have the political problems we are bound to have this continuing emphasis on the distribution argument. It is only when there is an understanding of the economic facts of life that we are likely to shift over to an economic basis. If I read Dr Hanson aright, what worries me is when are we going to have this shift and how? The when for the economists is inclined to be the long run which we

Trade Unions: Public Goods or Public 'Bads'?

all know about. If I might put two questions: one to Dr Hanson—*when?* and the other to our friends from the media—*how?*

DR HANSON: With that question we are starting to break into the ground which Professor Griffiths will be covering later: whether trade unions can raise real wages. I had to limit myself in my paper, but in direct response to the question of *when?*, I would hope fairly soon. The IEA is growing and developing quite rapidly. Twenty years ago hardly anybody took any notice of it. Now more and more people are. So I hope the answer will be: sooner rather than later.

MARTIN BRANNAN (*Employers' Chairman, National Joint Council for Local Authorities' Fire Brigades*): I just want to add a sense of realism to some of our debate this morning. Collective bargaining in the public sector, if present trends continue, is at an end. I have been leading over the last few months the employers in the dispute with the Fire Brigades Union. We have now been given a clear understanding that our role is going to be completely different in the future. We look like having a more limited scope than we have had in the past. We did negotiate an award with one group of employers and the Fire Brigades, which we thought was within the 10 per cent limits, and which met all the criteria set out in the White Paper. We also did something laid down in paragraph 14 to correct a long-standing anomaly. But we were told that, because of a new formula invented by the Government known as 'end-loading', that this was now out.

We are now given clear instructions that all offers we propose as employers to put—and this applies not only to my own National Joint Council but to all the others—must be submitted a fortnight in advance to the Department of the Environment. It must do the rounds of Whitehall and go through the Cabinet and the Treasury. It must then be vetted and amended as thought fit and brought back to the negotiating bodies to submit to the unions. That, sir, in my opinion, is the end of free collective bargaining in the public sector. It may well be, some people think it is, a good thing, but I thought it only right to tell this body this morning how trends are going in this country today. It may be another move towards what you, sir, in your opening remarks, included as the corporate state.

LORD SHAWCROSS: The reason for that is, clearly, that in the public sector you are not the employer. The state, the Government, is the employer.

PROFESSOR SLOANE: We have talked about the effects of unions on wages. Another interesting feature is the effect of unions on productivity. If one believes that the problems of the British economy are largely of low productivity, perhaps that is an area which we should focus on. There is one study that has been undertaken in the coal industry over the period 1900-13, in which there was rapid growth of unionisation. It suggested that if an average coal field was fully unionised, it would produce an output 22 per cent lower than if it were totally unorganised. That is only one example. Perhaps we need more studies of this nature. It suggests that unions can have a depressing effect on a real wage as well as a positive effect.

PROFESSOR ROWLEY: When one is considering the future role of unionisation and its powers, I think it is dangerous to see the union movement as some kind of cohesive organisation. There is very clear evidence within the union movement itself that certain unions fear the increased union power because they know that they are not able to inflict third party harm on other people in order to drive up their own wage claims. They fear the exaggerated power that legislation has given to powerful unions. I well remember a few months ago talking to a leading trade union official. He was saying that it was all very well for people like Clive Jenkins to talk about the return to free collective bargaining and a free-for-all, but we all knew it meant a free-for-*some*.

In this situation it may well be in the interest of certain unions themselves to *weaken* the strength of union power in Britain, not because they feel this would improve their own position in the non-unionised sector, but because they fear that the very powerful unions will divert resources which otherwise might go to their own membership. So in examining unionisation and its effect on wage levels, it is relevant to consider the aggregated level, but it is also very relevant to consider the dis-aggregated level and to see that the 'brothers' themselves are not always entirely happy with increasing the powers of unions as a whole.

3. Are Trade Unions a Public Good/ 'Bad'? The Economics of the Closed Shop

JOHN BURTON

University of Birmingham

The Authors

JOHN BURTON: Lecturer in Industrial Economics, University of Birmingham. Formerly Principal Lecturer in Economics, Kingston Polytechnic, and Economic Consultant to the National Board for Prices and Incomes, Office of Manpower Economics, and the OECD. Author of *Wage Inflation*, 1972; (with J. T. Addison) 'The Institutional Analysis of Wage Inflation: A Critical Appraisal', in *Research in Labour Economics*, 1977. For the IEA: joint author (with J. M. Buchanan and R. E. Wagner) of *The Consequences of Mr Keynes* (Hobart Paper 78, 1978).

MARTIN RICKETTS: Lecturer in Economics, University College at Buckingham. Research Fellow, Institute of Social and Economic Research, University of York, 1974-77; Economist, Industrial Policy Group, 1970-72. Winner of the Adam Smith Essay Competition (Junior Section) sponsored by IEA, 1976. Contributed articles to *Scottish Journal of Political Economy*, *Scandinavian Journal of Economics*.

GEORGE YARROW: Research Fellow, Hertford College, University of Oxford. Formerly Reader in Economics and Director of the Centre for Research in Public and Industrial Economics, University of Newcastle upon Tyne. Research Fellow in Economics, University of Warwick, 1969-71. Associate Editor, *Journal of Industrial Economics*. Has contributed articles to the *Economic Journal*, *Economica*, *Journal of Finance*, *Journal of Industrial Economics*, etc.

JOHN BURTON:

The 'closed shop'—i.e. compulsory trade union membership—has been spreading very rapidly in the British labour market over recent years because the Trade Union and Labour Relations Acts of 1974 and 1976 removed the qualified statutory right of an employee *not* to belong to a union and the statutory provisions relating to the making of closed/agency shop agreements contained in the 1971 Industrial Relations Act. The costs of enforcing and policing closed shops were thus lowered by legislation.

The results were fully in accordance with the predictions of economic analysis. In 1964 some 3½ million employees were subject to the closed shop.¹ In the following decade, this figure probably rose by a further 250,000 as a result of the general growth of the labour force in the closed-shop sector. But in 1975, after the 1974 Act, the closed shop was in the process of being claimed by trade unions for an extra 3 million workers.² Most of these extensions have now gone through—and more are in the pipeline. Thus, for a very large portion of the British labour force, the employee is, or will be, compelled by law to join the (or a) designated trade union if he is to obtain or retain work.³

This development has provoked much public controversy but little or no analysis of its economic issues. This paper goes a little way towards remedying the deficiency.

The most commonly-encountered justification for the closed shop, as espoused by both union spokesmen and academic economists, is that the services provided by trade unions are of a 'public goods' or 'collective goods' character, i.e. they cannot be refused to employees who refuse to contribute to their costs. As with the provision of public goods by the state (in the form of defence, etc.), a system of coercive payments is therefore necessary to overcome the 'free-rider problem' of those who refuse to pay. First, a word on the meanings of the terms used by economists.

¹ W. E. J. McCarthy, *The Closed Shop in Britain*, Blackwell, Oxford, 1964.

² J. Elliott, 'Ringing in the Year of the Closed Shop', *Financial Times*, 18 December, 1975.

³ Most of the new closed shop areas now being introduced are of the post-entry or 'union shop' type, whereby the employee must join the (or a) designated union subsequent to, and as a condition of, starting work.

Public and private goods (and 'bads'): and club goods

Professor Paul A. Samuelson of MIT has defined a pure 'public good' as a commodity or service that has the twin characteristics of

- (a) *non-excludability*—it is technically impossible for the supplier of the good to exclude people from its consumption, whether or not they have contributed to the costs of providing it; and
- (b) *non-rivalness in consumption*—the benefit obtained by any one individual is in no way reduced by the consumption of others (i.e. there is 'jointness of supply').⁴

Subsequently Professor Mancur Olson of Maryland University coined the term 'collective goods' to describe commodities or services with the characteristic of non-excludability only.⁵ A further difference is that exclusion from Samuelson's public good is assumed to be technically impossible, whereas exclusion from Olson's collective good may be technically feasible but uneconomic because the revenue would be less than the costs of collection.

A purely *private* good has characteristics completely opposite to those of a public good. Exclusion is both feasible and economic, and there is no jointness of supply.

In between these polar cases of the purely public/collective and private goods there is a wide spectrum of goods with varying degrees of excludability and non-rivalness. One important type is that of a 'club (sharing) good'. Exclusion is feasible, but the optimal size of the 'club' is in general larger than one individual. Examples are cinema shows and power stations.⁶

In contrast to 'goods', a spectrum of 'bads' may be defined in analogous terms—'bads' are negative goods that yield disutilities or costs to the hapless consumer. Thus a 'private bad' is a commodity that yields disutility to a single individual but is not imposed on any other member of society: there is no jointness of supply. Examples are an attack of rising damp that affects one person's house, but no

⁴ Samuelson, 'The Pure Theory of Public Expenditure', *Review of Economics and Statistics*, November 1954, pp. 387-90; also his 'Diagrammatic Exposition of a Theory of Public Expenditure', *Review of Economics and Statistics*, November 1955, pp. 350-55.

⁵ Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Harvard University Press, Cambridge, Mass., 1965.

⁶ J. M. Buchanan, 'A General Theory of Clubs', *Economica*, February 1965, pp. 1-14.

one else's. A 'collective bad' occurs when a group are the unfortunate consumers of the disagreeable commodity, and find it technically impossible or uneconomic to exclude themselves from it by privately-organised collective action. Examples are aircraft noise or the smell from a gasometer before the arrival of natural gas.

A good can also be a bad, and a private good can simultaneously be a public bad. Cigarette smoke is a private good to the smoker but a public bad to a non-smoker in a crowded non-stop train who cannot move to another carriage.

We may now state precisely and assess the case for the closed shop.

The public/collective goods argument

The justification of the closed shop advanced by its advocates is that the services provided by trade unions are public or collective goods. As no individual can be excluded from a public or collective good even though he has not contributed to its costs, the rational individual will seek to avoid contributing and to 'free ride' on the services provided and financed by others. To prevent free riders in unionised jobs, coercion of contributions towards union costs is therefore supposedly justified.

This argument has been stated most eloquently and forcefully by Mr G. A. Bonner, a recent president of the (then) Association of Teachers in Technical Institutions (now the National Association of Teachers in Further and Higher Education):

'Membership of a trade union is a social obligation—part of the package deal of rights and obligations without which our living together would be impossible. I do not enjoy paying my income tax and I certainly did not want to join the British army in 1940, but I accepted both obligations cheerfully as part of the debt I owe the state of which I have the honour to be a member. In the same spirit a man who wishes to become a technical teacher must accept the obligation to join the Association which has been formed specifically for his benefit . . .

The man I do not like is the free rider, the man who accepts the collective benefits which trade unionism brings but does not pay his share towards the cost—the man who drinks your beer and then slips out of the pub when it is his turn to pay. For people such as these I have nothing but contempt.'

Similar arguments have been espoused not only by other union spokesmen but also by academic economists. The British classical

⁷ Bonner, 'Presidential Address 1973', *The Technical Journal*, May 1973, p. 10.

economist John Stuart Mill and the neo-classical Henry Sidgwick both argued that an element of compulsion was necessary in trade union membership.⁸ But their arguments were hazy, and it was not until Samuelson's refinement of the theory of public goods in 1955 that an academic economic case for compulsory union membership was formulated precisely.

Then 10 years later Professor Olson in 1965 argued that, if we allow the individual a 'right to work', i.e., the right to abstain from union membership, we must consistently claim that individuals have the 'right not to fight' (to avoid military service) and the 'right to spend' (to avoid tax payments for government services not desired by the individual). Thus, Olson persisted, to be consistent in his arguments the critic of the closed shop must 'go all the way down the liberal road with Wicksell and Keynes . . .',⁹ who respectively argued for a 'unanimous consent' approach to taxation, and the right of an individual not to be conscripted. The implication of Olson's argument is that, if we support the coercive levying of both money taxes to pay for state-provided goods and services and taxes (in effort and time) for war (conscription), we must accept that, on the same public/collective goods grounds, union membership should similarly be compulsory.¹⁰ This argument has been taken furthest by Professor A. G. Pulsipher, of Texas University, who has claimed that the services provided by trade unions precisely fulfil the criteria of a public good as defined by Professor Samuelson. From this he concludes that compulsory union membership constitutes a justifiable form of coercion in an otherwise free-market economy.¹¹

Assessment of the argument

To examine this case we must identify the services provided by trade

⁸ J. S. Mill, *Principles of Political Economy*, Book V, Ch. XI, Section 12, 1848; and H. Sidgwick, *The Principles of Political Economy*, Macmillan, London, 1883, pp. 355-60.

⁹ Olson, *op. cit.*, pp. 88-91.

¹⁰ One deficiency of Olson's argument on pecuniary taxes is his failure to realise that genuine public/collective goods account for only the minor proportion of contemporary public expenditures, at least in the UK. (Arthur Seldon, *Charge*, Temple Smith, London, 1977, especially Ch. 3.)

¹¹ Pulsipher, 'The Union Shop: A Legitimate Form of Coercion in a Free-Market Economy', *Industrial and Labor Relations Review*, July 1966, pp. 529-32.

unions and ask whether they are public or collective goods. There are essentially four:

(i) *Market bargaining services*: trade unions negotiate with employers for their members on conditions of employment.

(ii) *The policing and enforcement of labour market contracts*: trade unions seek to monitor and enforce explicit and implicit labour market contracts.

(iii) *Political activities*: trade unions lobby the government on government policy, they subsidise political parties and sponsor MPs, they publish political propaganda, they propagate political ideologies.

(iv) *Selective benefits to their members*: trade unions pay strike benefits, provide welfare facilities such as retirement homes, for their members.

Are any of these types of services public or collective goods? It is clear that type (iv) does not constitute a public/collective good. Such services are provided to union members *only*. Neither can (iii) be argued unequivocally to be a collective or public good. An individual compelled to contribute to sectarian political activities or the propagandisation of ideologies or arguments regarding government policy with which he or she does not agree would view them not as a public good but as a public *bad*.

There remain types (i) and (ii). And it is here that a simple and fundamental error of economic analysis has been made by the trade union and economist advocates of the closed shop. Neither the market bargaining activities of unions, nor their policing or enforcement of labour market contracts constitute a public or a collective good. *First*, exclusion is both technically and economically feasible. All trade unions have to do is to bargain and enforce contracts on behalf of their own members, leaving non-members to negotiate and enforce their own bargains. *Second*, there is no technical jointness of supply. Clearly this is so in the conditions of employment such as wages, holidays, pensions. Common facilities provided by employers may seem arguable: perhaps better toilet facilities. If they are zero-priced ('free') to all employees, then non-members as well as union members benefit jointly from the results of union negotiation. But even in this case there is no *technical* jointness of supply. If the price system is used, exclusion becomes feasible and economic, as we see from coin-operated 'public' toilets in e.g. the streets and the British Rail toilet on Victoria Station.

A more serious qualification to this rejection of the public goods justification of the closed shop may seem to arise from the legal situation in the USA. There Section 9(a) of the Wagner Act requires that

'representatives designated by . . . the majority of employees in a unit . . . shall be the exclusive representatives of all employees in such unit for the purpose of collective bargaining.'

Thus, although exclusion is technically and economically feasible in trade union services in the US (as in the UK), the law there has *artificially* created a collective goods element in these services.

Professor Pulsipher argues that this situation justifies the institution of compulsory union membership in the USA.¹² I would argue to the contrary that it does not necessitate compulsory union membership but rather calls for the repeal of Section 9(a) of the Wagner Act. American unions would then be free, as they are in Britain, to confine their market-bargaining and contract-policing and -enforcement activities to their own members.

In Britain there is no case on public goods grounds for the closed shop. In the terms of Mr Bonner's analogy: 'If you don't like drinking with a man who doesn't stand his round, there is a very simple solution. Don't include him in your round!' There is no jointness in the supply of either drinks or union services; and exclusion is quite feasible in both. It is not possible to justify forced membership of either drinking 'unions' or trade unions: neither supplies public goods.

The trade union as a club

Is there, then, a case for the closed shop if we view the union as an optimal sharing group or club?

The optimal size for any coalition of market suppliers is that which maximises their joint net returns. That is, the optimal size of a trade union club, for the club members, is that which maximises the joint monopoly returns of a cartel in labour supply. This 'rent', as economists call it, may be extracted either in higher wages or in reduced work-effort (by restrictive practices that reduce work-loads). There is clear evidence to support the hypothesis that trade unions do have such market power in the UK and US. For the US, Professor H. G. Lewis of the University of Chicago has calculated

¹²A. G. Pulsipher, *ibid.*

that the effect of trade unions on *relative* union/non-union wages (in their favour) is of the general order of 10-15 per cent.¹³ Recent studies in Britain suggest that here the order of magnitude of this relative wage effect is in general much higher: some estimates are of 19 per cent, others 60 per cent (or more). The median figure would be around 40 per cent.¹⁴

Clubs of suppliers operating in a product market always face obstruction from the 'recalcitrant firm' which refuses to join the cartel and from 'interlopers' who come into the industry and sell at or below the cartel-established price.¹⁵ In exactly the same way, trade unions acting as a labour supply club-cartel face obstruction from employees who refuse to join the cartel (and thus avoid contributing to the costs of policing, maintaining, and administering it), and from 'blacklegs' prepared to work at or below the union rate.

The collective 'bads' of labour cartels: five kinds

Clearly, such labour cartels are of monetary benefit to the members. Does this club nature of trade unions operating as cartels in labour supply constitute a case for compulsory union membership? The implications of economic analysis are the opposite. Any cartel is a club 'good' to its members but a *bad* to the public. Clubs of market suppliers (cartels) impose costs on society, from which (except by emigration) members of society find it very difficult to exclude themselves. These collective 'bads' of trade union cartels are of mainly five kinds:

(a) The allocative inefficiencies resulting from distortions of the relative wage structure: output is less-than-optimal in the unionised sector of the economy and more-than-optimal in the non-unionised sector.

(b) Labour cartel power may be (and commonly is) used not only to extract monetary monopoly returns, but an 'easier working life' that involves the use of technically and economically inefficient production methods. The classic case is the Fleet Street 'print', an

¹³Lewis, *Unionism and Relative Wages in the United States*, University of Chicago Press, Chicago, 1963.

¹⁴The evidence of a number of British studies is surveyed and extended by D. Metcalf, 'Unions, Incomes Policy and Relative Wages in Britain', *British Journal of Industrial Relations*, July 1977, pp. 157-75.

¹⁵A brief discussion of cartel behaviour is in G. J. Stigler, *The Theory of Price*, Macmillan, London, 1966, Ch. 13.

example of what the economist, following Harvey Leibenstein in 1966,¹⁶ calls x-inefficiency, which describes the less than optimal efficiency resulting from monopoly power reflected in the preference for 'a quiet life' that weakens the impetus to minimise costs.

(c) Monopoly returns in some sectors of the labour market act as an incentive to cartelisation in other sectors. The resources of society thus become increasingly devoted to the socially-unproductive task of cartelisation. This involves a net loss of productive potential to society as a whole.¹⁷

(d) The social costs of strike activity. To protect themselves from the risk of shortages caused by strikes, individuals and firms have to carry larger stocks of goods, the flow of which is often interrupted by strike activity, and/or utilise more 'flexible' (and thus more costly) methods of consumption or production that are less open to such risks.

(e) A reduction of the growth potential of the economy. Items (a) to (d) inclusive constitute social costs of labour cartels in terms of their present-day effects on the allocation of resources. It is quite possible, however, that (b) also reduces the future growth of the economy by impeding the introduction of more efficient methods of production.

It is impossible to quantify fully the size of these collective 'bads' of labour supply cartels. For the US, Professor Albert Rees of Princeton University has calculated that item (a) accounts for a loss of a mere 0.14 per cent of US GNP, assuming a 10-15 per cent relative wage effect of unionism, and an elasticity of demand for labour in the union and non-union sectors of -1.¹⁸ In the UK, the relative wage effect of unionism is apparently much larger. And trade unions account for a much larger percentage of the work-force (approximately 50 per cent as against 25 per cent in the US). If we take the median result of a relative wage effect as 40 per cent in the UK, and apply Rees's estimation technique, the comparative figure

¹⁶Leibenstein, 'Allocative Efficiency vs. X-Efficiency', *American Economic Review*, vol. LVI, 1966, pp. 392-415.

¹⁷G. Tullock, 'The Welfare Costs of Tariffs, Monopolies, and Theft', *Western Economic Journal*, June 1967, pp. 224-32.

¹⁸Rees, 'The Effects of Unions on Resource Allocation', *Journal of Law and Economics*, October 1963, pp. 69-78. Adding in the loss attributable to intra-industry relative wage effects of unionism, Rees doubles the quoted figure to approximately 0.3 per cent of US national product.

for (a) in the UK is of the order of a loss of over £3 billion of potential output in 1976 prices, or approximately 3 per cent of British GDP at factor cost.¹⁹ If we then also make Rees's assumption (which seems quite plausible from the available evidence) that (b) is at least equal in size (if not much larger) than (a) quantitatively, our crude estimate of the loss of output attributable to British labour supply cartels in 1976 would be approximately equal to 6 per cent of national output in that year, from two of the five sources alone. If we were able to quantify the output loss attributable to (c), (d) and (e), the final total would obviously be much larger. Indeed, the figures for (c), (d) and (e) would plausibly dwarf the size of the loss of potential output attributable to (a) and (b).

These calculations are very crude, but they give at least some idea of the possibly very large orders of magnitude. Clearly, although trade unions may be a club good to their members who reap the monopoly returns from such cartel-like institutions, they are a collective or public bad judged from the viewpoint of society as a whole.

Removing the collective 'bads'

The problem of removing the distortions generated by monopolies and cartels, whether in product, labour or asset markets, poses classic 'free-rider' problems, but this time in a genuine sense. If there were no costs of organising collective activity amongst consumers or of policing the arrangement, we would all club together to provide a lump-sum compensation to trade unionists equal to their monopoly returns now enjoyed in exchange for abandoning all monopolistic distortions. There would be gains from this trade: trade unionists would not lose, but society would be better off to the extent of avoiding the 'bads'—the costs under the five heads.

But the costs of organising this collective activity and of policing such a 'contract' with the unions are not zero. Furthermore, the

¹⁹Given the difficulties that surround any calculation of the relative wage effect of unionism, it is preferable ideally to estimate an array of potential output losses, corresponding to the array of available estimates of the relative wage effect, rather than to work on the basis of a single point estimate (as here). These and other problems of calculating the allocative effects of union monopoly power are examined in J. Burton, 'On the Estimation of the Effect of Unions on Resource Allocation in the UK', *Human Resources Workshop Paper 14* (mimeo), Kingston Polytechnic, School of Economics and Politics, Kingston-upon-Thames.

removal of a collective or public 'bad' itself constitutes a public good from which the free riders who did not pay would nevertheless benefit. Thus private collective action would be unable to achieve an optimal removal of monopoly distortions. The removal of the distortions created by labour supply cartels thus provides a classic case on public goods grounds for state intervention to restore competitive pricing in the labour market.²⁰ One way of doing this might be a once-and-for-all buying out by the state of union monopolistic distortions financed by the issue of public debt.²¹

A look to the future: the 'awful dilemma'

The very considerable extension of closed shops in Britain today as a result of the 1974 and 1976 Acts will, other things equal, increase the degree and extent of trade union monopoly power. The consequences, as predicted by standard economic theory, will be a further rise in the relative union/non-union wage effect, and other associated distortions, leading to an even larger loss of potential output.

Furthermore, the predicted rise in the union/non-union wage relativity will raise the incentive to cartelise other areas of the labour market. The long-run consequence is thus likely to be a further large extension of unionisation and the closed shop in the remaining open areas of the British labour market. It is thus possible to envisage a situation, at some indefinite future date, of the British labour market as comprising a sequence of tightly-organised cartels. The consequences were forewarned by Henry C. Simons some decades ago.

'Here, possibly, is an awful dilemma: democracy cannot live with tight occupational monopolies; and it cannot destroy them, once they attain great power, without destroying itself in the process.'²²

Let us hope that some preventive democratic action will be taken before that 'awful dilemma' dawns upon us.

²⁰The general case for state intervention to remove monopolistic distortions, in terms of public goods theory, is provided by K. G. Elzinga and W. Breit, *The Anti-Trust Penalties: A Study in Law and Economics*, Yale University Press, New Haven, Conn., 1976, especially Ch. 1.

²¹The case for this approach to the elimination of monopoly is examined by J. M. Buchanan and G. Tullock, 'The Dead Hand of Monopoly', *Antitrust Law and Economics Review*, Summer 1968.

²²H. C. Simons, 'Reflections on Syndicalism', in his *Economic Policy in a Free Society*, University of Chicago Press, Chicago, 1948, pp. 121-59.

COMMENTS

Is 'Efficiency' More Important than 'Justice' and 'Equity'?

MARTIN RICKETTS

University College at Buckingham

In recent years the concept of a 'public good' has been subjected to some searching criticism. Kenneth Goldin (1977) has suggested that, such is the stringency of the non-rivalness and non-excludability conditions, pure public goods do not exist at all. The production and financing implications of static welfare theory have been criticised on the grounds that they ignore the problem of 'x-efficiency' and take no account of the possibilities of technical change (Rowley and Peacock, 1975). And attention has recently been drawn to the ingenuity often exhibited by entrepreneurs in overcoming the problem of non-excludability (Coase, 1974; Peacock, 1977). Entrepreneurs, they point out, had been able to make fortunes building and operating lighthouses several centuries before Professor Samuelson assured us this would be impossible!

If the credentials of such a celebrated public good as the lighthouse are questioned, it comes as little surprise to find that Mr Burton has no difficulty in establishing that trade unions do not provide public goods. Most of the services they render, he argues, are clearly excludable, in the major cases rival; hence are not public goods. Indeed he goes further to argue that the activities of trade unions, when correctly analysed, turn out to be more akin to a form of pollution.

Importance of the 'odd qualifications'

With much of this analysis I am in broad agreement, although I would reserve judgement on the empirical evidence on the efficiency losses imposed by trade unions. However, while it seems clear that their major activity (wage bargaining) does not represent a public good, Mr Burton seems to underestimate the importance of the 'odd qualifications', as he terms them. These do not stop at the installation of air fresheners in the factory toilets. More seriously, a trade union might provide information to the work-force, police the fire regulations, and make suggestions for improving the safety of general

operations. Further, even with other services, such as restaurant and recreation facilities, it might plausibly be argued that exclusion costs could justify a compulsory levy combined with 'equal access'.

These possibilities suggest that an important issue of principle remains to be explored. How 'odd' do the qualifications have to be before the justification for compulsory trade union membership no longer holds? The assumption behind Mr Burton's paper is that if trade unions could be shown to produce services of a public good variety, compulsory membership would be justifiable (Olson, 1965). If the overriding social goal is efficient resource allocation, and decision-making processes within trade unions, or other groups, are good enough to result in efficient outputs of the relevant public benefits, compulsory membership of trade unions follows. But so also does compulsory membership of the noise abatement society or even the local horticultural society. Indeed, wherever individuals produce services or disservices they cannot charge for, or be charged for, some form of compulsion could be justifiable.

Public choice criteria

Three observations are relevant.

(1) The first and obvious is that the implied social objectives of efficiency are not commonly those of governments. Society may value freedom of choice and the absence of coercion as well as efficiency.

(2) The proposition that fairly large groups, once their membership is assured, will be able by democratic means to achieve efficient output of joint benefits cannot be inferred from any models of public choice, except for trivial cases in which the leaders of the group know the preferences of individual members, or in which the preferences of individual members are assumed identical.

(3) Even where we might plausibly assume that group choices maximise joint net benefits, efficiency in resource allocation would follow only if the members of the group were themselves supplying these benefits. But in trade-union bargaining, the members are often not purchasing a public good as such: they are purchasing the organisation necessary to coerce non-members (shareholders and managers) to produce the public good for them. In these circumstances an 'over-supply' of public goods would be predicted. Again, the argument for compulsory membership of trade unions based on efficiency considerations fails.

The closed shop: 'equity' more important than 'efficiency'?

Ultimately the economist's notion of 'efficiency' cannot tell us much about the desirability or otherwise of the closed shop. It is less easy to make out a case for compulsory membership on efficiency grounds than is sometimes supposed—even where the group does supply joint benefits. Moreover, the issue is in any event much more one of justice and equity. The dislike of a past president of NATFHE for 'free riders' is more likely an outcome of 'equity' than 'efficiency' considerations. It is not the possibility that free riders may result in inefficient output of collective goods that offends, but the apparent injustice that they receive benefits others have paid for. In this debate the theory of public goods cannot take us very far.

REFERENCES

- R. H. Coase, 'The Lighthouse in Economics', *Journal of Law and Economics*, October 1974.
K. D. Goldin, 'Equal Access v's Selective Access: A Critique of Public Goods Theory', *Public Choice*, Spring 1977.
C. K. Rowley and A. T. Peacock, *Welfare Economics: A Liberal Restatement*, Martin Robertson, London, 1975.
A. T. Peacock, 'The Elusive Search for Public Goods: Further Light on the Lighthouse Case' (forthcoming).
M. Olson, *The Logic of Collective Action*, Harvard University Press, 1965.

Trade Unions and Economic Welfare

GEORGE YARROW

University of Oxford

The principal arguments of Mr Burton's paper are (a) that trade union activity ought not to be regarded as a collective good because the exclusion of non-members from the effects of such activity can be achieved at a relatively low cost, and (b) that the existence of trade unions imposes substantial costs on the community by distorting the relative prices of goods and services. I believe both arguments are substantially overstated and the estimates of the costs of the relative price effect are virtually meaningless.

Exclusion of non-members from benefits of union activity

Consider first the exclusion of non-members from the effects of trade union activity. The range of situations where exclusion can be a fairly costly exercise is far broader than Mr Burton's toilet example would seem to imply. Imagine, for example, a case of team production (such as an assembly line) where costs would rise steeply if employees did not start and finish work together. Would it then be straightforward to exclude non-members from the impact of union-negotiated hours of work, holidays, etc.? Perhaps more importantly, a wide variety of organisations in the economy, including many where trade union influence has been negligible, have, over time, developed systems of internal labour markets, characterised by the substitution of institutional restraints for individualistic, sequential contracts. In the USA, where most of the research on this problem has been carried out, it appears that internal labour markets are extremely common in industries such as steel, petroleum and chemicals.¹

Such internal markets economise on transactions costs in a world characterised by pervasive uncertainty, job-specific skills and non-zero contracting costs. Now an important feature of collective bargaining is that it is concerned with this whole complex of arrangements governing the behaviour of people at work, including those relating to the wages and salary structures of internal labour markets. In such circumstances, although the exclusion of non-unionists from a wage agreement is technically possible, it is in many cases likely to be costly, leading to multiple wage structures in the same organisation. Recent experience suggests that for a number of industries there are gains in efficiency to be had from further simplification of wages structures, rather than from movements in the reverse direction. Vehicle manufacturing is a case in point.

Critique of estimated cost of union closed shops

In the second part of Mr Burton's paper, I find it hard to take seriously the estimated £6 billion cost of trade unions arising from price distortions. There are several objections to these estimates. Two of the more important are relevant here.

First, a relatively technical point, the analysis appears to be based

¹ P. B. Doeringer and M. J. Piore, *Internal Labor Markets and Manpower Analysis*, D. C. Heath, Lexington, Mass., 1971.

upon a partial, rather than general, equilibrium approach to the problem. General equilibrium considerations indicate that as the coverage of union agreements increases, the costs of price distortions will at some point start to decline. In particular it should be stressed that, contrary to the view taken by Mr Burton, there is nothing in standard economic theory which would lead us to suppose that further extensions of trade unionism from the present position will necessarily produce a loss of output through the relative price effect.

Second, the estimates are made on the assumption that, apart from union activity, the economy is perfectly competitive. In particular, it is assumed that there is no market power on the buyers' side of labour markets. Since employers' market power has played an extremely important role in the growth of trade unionism, it is difficult to accept estimates of the effects of unions which simply assume it away.²

Discussion

R. G. OWEN (*Unilever*): I found the last 20 minutes fascinating, enjoyable and interesting. But I have not heard any suggestions as to how we cope with the problem of the growth of the closed shop, with all the clear horrors of the monopoly power that would then be created.

Legislation is clearly very doubtful. The 1971 Act in effect banned the closed shop, although it provided the unions with a very viable alternative, the agency shop, which would have led to a very large growth in union membership, because if you are going to pay anyway you might as well join. Fortunately the unions did not play that game. They would not play according to those rules and did not register. So they could not have agency shops.

The 1971 Act thus banned the closed shop for the period of its life. But what effect did that have on the closed-shop situation? In my experience, and I suspect in the experience of a lot of people here, the closed shop did not end. It continued; and it continued by employer decision because of the consequences to those employers of it not continuing. That is the practical situation. Have our speakers any ideas about *how* we can prevent the growth of the closed shop?

² Once monopsony is admitted, however, even the partial equilibrium approach fails to establish a necessary linkage between unionisation and welfare loss.

JOHN BURTON: I would suggest that instead of trying to beat down the closed shop we buy out trade union monopoly power by the state offering compensation in a lump capital sum and financing it by the issue of long-term debt. It seems to me a very clear case where there would be net gains to society. If we bought out these monopolies they could be fully compensated and society would get the social gains of doing away with the distortions in the economy that they have created. Since there would be a net gain to society my answer is simple: buy them out!

LORD SHAWCROSS: How do you propose to do that?

JOHN BURTON: There is a case for the state to issue debt where there are very long-term benefits to society, such as where we wish to finance a war or undersea channel tunnels or projects of that kind. If we move from a monopolised economy and labour market to a free-market economy, the benefits will be very long term as well, and the cost should be borne by the tax-payer over the long term. The way to do that is by issuing debt.

MARTIN RICKETTS: I wonder whether an obvious objection, assuming you can get union agreement, is that you would have to police it. Are there not very substantial practical difficulties?

JOHN BURTON: You are quite right about the difficulties. But it seems to me that even more problems arise where we try to batten down on trade unions and give *nothing* in return. It is very difficult to enforce anti-union laws or anti-monopoly union laws when you are giving nothing in return.

I am proposing we make an exchange and say: 'We are going to buy you out and give you a lump sum compensation for the cessation of monopolistic practices. Thereafter we are going to enforce laws against monopoly'. Whatever the difficulties, I think it is much easier to get that over to the unions. It would still probably be difficult, but not nearly so difficult as giving no compensation at all.

LORD SHAWCROSS: Having bought them out and having paid compensation to the unions and their members, you would pass laws to prevent unionisation, at any rate to the extent of the closed shop?

JOHN BURTON: What I would personally suggest is an approach that Professor Gregg Lewis suggested in 1950. It is what he called the 'limitist approach' to trade union power. It says: 'You can have

company-wide bargaining but you cannot have collective or industry-wide bargaining'. That would very considerably reduce the monopoly power of trade unions because the individual firm's elasticity of demand for labour is higher than the industry's as a whole. The only difficulty with that proposal that would still exist is, of course, where you have statutory monopoly in the nationalised industries. And here there is a very good case for either breaking up the nationalised industries and allowing them to remain public so that you have completely competitive 'quangoes', or breaking them up and returning them to the private sector. But you have to reduce concentration in the product market to undermine trade-union power that rests on monopoly in the product market.

JOHN WOOD (IEA): To follow on the point which I think John Burton is making: ever since the earliest days of monopoly and restrictive practices legislation the unions have been specifically excluded. Would there not be a case for removing that exclusion so that, where the union had more than X per cent of the market bargaining services and the supply of any particular form of labour, it would have to undergo the rigours of that type of legislation?

JOHN BURTON: I personally would agree with that.

PROFESSOR GRIFFITHS (City University): . . . The estimates of the welfare cost of unionisation are, by the standards of welfare cost analysis, remarkably high, even if you include, for example, the costs of being excluded from Europe or the benefits of going into Europe—they were really rather small. I did a study on the welfare gains of removing the cartel in banking and, like most similar analyses, it came out rather small. To what extent do the figures depend critically on the assumption of 40 per cent? If, say, you reduce the 40 per cent to something like 15 per cent, then what happens to Mr Burton's estimate of £6 billion?

JOHN BURTON: First, Professor Griffiths has said that it seems my analysis is premised on the decline of trade unions. I am quite sure everyone must agree that, on the definition of a public or collective good, the services provided by trade unions are not public or collective goods. They can be a club good, as is any cartel, and a cartel always faces problems with recalcitrants and interlopers; that is the weakness that tends to crumble all cartels in the long run. But I am arguing that cartels are a public *bad* to society. If we are going

to talk about public goods and public bads, it is pertinent to point out that cartels, whether in labour markets, asset markets or product markets, are a public bad to society. And it does not really worry me that there are recalcitrants and interlopers who undermine them.

On the estimates and their validity: I could perhaps take up some points made by George Yarrow. This is not a partial equilibrium analysis, it is a general equilibrium analysis on the Rees model. So it just does not take into account what is happening on the union side. You have to compute the numbers of people who have been shifted out of the union sector by higher relative wages, and the resulting depression in relative wages in the non-union sector.

Second, Mr Yarrow made a point that I understood to be the second-best theorem of economics: if you get distortions elsewhere in the economy, trade union distortions may just offset them, so that you are back to the old situation. Now I think it is incumbent upon anyone who uses second-best theorem to tell us *where* the other distortions are. I cannot really think of any degree of monopoly power in product markets, in this country, in the private sector at least, that are of the same order of magnitude as the monopoly power of trade unions in labour markets. Trade union monopoly has immunity from anti-monopoly laws, whereas product-market monopoly has not.

Third, the size of the estimate. If you reduced it to, say, 20 per cent the estimate would be halved. So, if you assumed a 15 per cent effect, it would be 15/40ths of the estimate I made.

STANLEY SIEBERT (*University of Stirling*): Firstly, I would like to endorse John Burton's claim that to get rid of a closed shop you must compensate. People who join a closed shop join in the expectation of higher pay. To get higher pay you have to be better qualified, better educated, more experienced, and so on. If suddenly the closed shop is taken away, you suffer a windfall capital loss, and you will object very strongly. So there is no question of getting rid of the closed shop without compensation. That is a recipe for failure.

Secondly, I would like to ask any member of the audience here, who has experience of employing people, if they really think that they pay 40 per cent more for union men rather than non-union men. My idea is that they probably do not. My argument would be that you can probably adjust pay to quality of labour. So if you think about it in terms of efficiency units, the union/non-union differential might well be zero.

PROFESSOR GRUNFELD: I am not certain about the economics of the closed shop. But I think there are two political arguments that are important. I notice that Mr Burton in a sense came in his conclusion to what is really a long-term political argument against the closed shop.

The first political argument is not one that might cut a great deal of ice with strictly practical men of action and power. It is this. I belong to a trade union which is affiliated to the TUC. I belong to it because I think that, except in the odd, exceptional case, individuals are pretty helpless in any organisation of any size. This union, the Association of University Teachers, represents the things I am interested in, and I feel a little more secure in it. On the other hand, I know that about 30 per cent of my colleagues do not belong. I tolerate this, and I think the toleration of my colleagues is extremely important politically as it is, in a sense, part of the guarantee of my own freedom in society. This political argument is not going to cut a great deal of ice with practical men of action. It is philosophical. Nevertheless, it is of fundamental importance.

The second political argument I think is much stronger. It is this. You may recall the late Lord Feather, during the conflicts with, I think, the Heath administration, saying on television that the TUC represented 40 million people in this country. 10 million affiliated; then each apparently had a wife and two children. Anyhow, 40 million gave the right sort of idea. Of course nobody believed him. But what I found interesting was that he made the claim. The second political argument derives from the fact that trade unions are no longer just a major factor in the production of goods and services. They have become one of the major factors in the political process itself. One need only think of the numbers that vote in General Elections and so forth to be clear that, if you take into account the Conservative Party, the Liberal Party, the Scottish and Welsh Nationalists and others, and those who did not vote at all, at least half of the members of the TUC-affiliated unions did not support the Labour Party at all. Nevertheless, the unions, particularly the unions which insist on closed shops, are very strong supporters of the Labour Party.

The whole subject has been disguised in this country because the development of unions and the Labour Party has taken a different course from the courses taken elsewhere. In France, the unions were created by the political parties. It is perfectly clear in France that if

you had Communists in the CGT demanding a closed shop, there would be quite an uproar, since those being dragooned into the CGT would probably, most of them, not wish to support the political party of the CGT itself. But in this country the political party, the Labour Party, was created by the *unions*, and this was quite unique in the world.

One has talked about the industrial wing and the political wing of the Labour movement. Today the industrial wing is as much part of the political wing as the political wing itself of the Labour movement. So I think it is a very important political argument against the closed shop that one is being dragooned into an organisation which is now going to say and do things in the political sphere about which one has never been consulted and with which one may totally disagree. In other words, political rights are being taken from one by the closed shop in a very important sense.

One can develop this theme. Discussion of the matter is much more important than to attempt a legislative stroke-of-the-pen kind of solution. I think one has to begin quite plainly by discussing every aspect of this matter in order to see ultimately whether there is sufficient agreement in society to take any legislative steps against the closed shop. Indeed, the arguments might prove so strong that no legislative step is needed.

CHARLES HANSON: My comment may appear to contradict Professor Grunfeld, but in fact I agree very largely with the point he has been making. All I would like to say is that a few minutes ago a speaker asked what an employer could do now about the extension of the closed shop, if the unions were pressing for it. My answer would be that, given the present state of the law, there is very little he can do, because the advantage is so overwhelmingly with the unions; given the two recent Acts of 1974 supplemented by 1976, he is in an extremely weak position.

LORD SHAWCROSS: A long time ago, I was engaged in the negotiations of something called the Universal Declaration of Human Rights, and later on there was a statement on a scrap of paper called the European Convention of Human Rights. In those days it seemed to be regarded as a fundamental human right that one could not be forced but must remain free to join any association, trade or otherwise. But that is not the position today.

PART II

Individual *versus* Corporate Freedom before the Law

Address by

LORD SCARMAN

Introduction by

RALPH HARRIS

General Director, IEA

The Authors

RALPH HARRIS: General Director, Institute of Economic Affairs. Formerly Lecturer in Political Economy, University of St. Andrews. Hon. Secretary, Political Economy Club. Member, Council of Management, University College at Buckingham. Created a Life Peer as Lord Harris of High Cross in 1979.

LORD SCARMAN: Lord of Appeal in Ordinary since 1977. Judge, High Court of Justice, Probate, Divorce and Admiralty Division/Family Division, 1961-73. Lord Justice of Appeal, 1973-77. Chairman, Law Commission, 1965-73. Chairman, Court of Inquiry into a Dispute between Grunwick Processing Laboratories Ltd. and Members of APEX, 1977. Author of *Pattern of Law Reform*, 1967; *English Law—The New Dimension*, 1975.

Introduction by

RALPH HARRIS

General Director, IEA

The presence among us of a number of distinguished lawyers shows that IEA economists at least are not operating a closed shop. Indeed, market economists should be the first to acknowledge the indispensable connection between law and economics. This link is often misunderstood because the classical economists built on the insight of a *spontaneous* order that emerges from the interplay of competitive supply and consumer choice, a free market order which F. A. Hayek has described as the outcome of human action but not of human design. On the other hand, as the young Lionel Robbins taught us 40 years ago in his seminal essay on 'The Economic Basis of Class Conflict':¹

'If there be any "invisible hand" in a non-collectivist order, it operates only in a framework of deliberately contrived law and order.'

More emphatically, he went on:

'I certainly do not think that, in the absence of suitable institutional restraints and remedies, there is any inherent tendency to harmony which will prevent conflicts emerging.'

More recently, Professor Hayek has increasingly turned his attention to distinguishing and defining the kinds of law and restraints that are consistent with a 'spontaneous' and harmonious economic order. This central problem is the focus of his crowning trilogy entitled *Law, Legislation and Liberty*. In the first volume on *Rules and Order*²—which I am presenting to Lord Scarman after his lecture—Hayek opens Chapter 2 with a famous quotation from Adam Smith's *Theory of Moral Sentiments*. It is the passage comparing the legislator as 'the man of system' with a chessplayer who seeks to impose his will on society as though individuals had no principle of motion of their own. Smith concluded that so long as the principles animating the legislature and those animating individuals

¹ Published in *The Economic Basis of Class Conflict and other Essays*, Macmillan, 1939.

² Routledge & Kegan Paul, 1973.

Trade Unions: Public Goods or Public 'Bads'?

'coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably and the society must be at all times in the highest degree of disorder.'

It was the reference to misery and disorder that seemed to chime in with much of the contemporary scene, and explains why Arthur Seldon invited one of the most distinguished legal practitioners and law reformers to address us on the relationship between law and individual liberty. Many who rely on daily newspapers may chiefly associate Lord Scarman with a little local difficulty between trade unions and a photographic processor. In truth, his claim to fame is far wider and goes back at least to his outstanding chairmanship of the Law Commission from 1965 to 1973. In his Hamlyn Lectures, delivered in 1974, he expressed anxieties that rights and liberties would come to depend on administrative and political control beyond the reach of law and proposed a new constitutional settlement to replace that of 1689.

So I have special pleasure in calling upon Lord Scarman to talk to us on the central issue for the free society of the relationship between individual and corporate freedom before the law.

**Address by
LORD SCARMAN**

I had the privilege this morning of listening to the papers and discussion. I thought that Professor Grunfeld introduced an element of realism into our discussions when he made two points, briefly but I think incontrovertibly. The first was that the individual in our society, unless he organises with others, is helpless; and the second was that trade unions in our society are a political factor. If I may say so, those two propositions are at the basis of my thinking and I shall assume them to be correct in what I have to say.

Let me say at once that I thought John Burton at the end of a most interesting paper—full of analysis and full of ideas—put the essential dilemma which faces our society. He said that a cartelisation of occupations on the basis of 100 per cent closed shop throughout the country, if allowed to go on expanding, will depress society to such an extent that, unless early action is taken to devise democratic safeguards, remedial action will be like the ultimate operation for terminal cancer in that it will destroy the society it is intended to preserve. The dilemma is genuine, although its terminal effects may not affect our society for a decade or so. It is so serious that we must start now, not merely within the confines of an academic economic doctrine, but as practical men living in the world and seeking a solution.

Abuse of power—an endemic disease

What we are discussing basically is abuse of power, and there is nothing new about abuse of power in human society. It is an endemic disease. It has always been with man since he has been able to organise himself, and it will always remain. Do not think that by some legal recipe we can with a wave of the wand abolish abuse of power as a human disease. The safeguards that one generation erects to correct prevailing abuse of power become the source of abuses in the next generation. So let us not think that there is any one panacea, any one Utopian principle, any one answer to this problem.

The dangers we have to face from abuse of power arise inevitably. They imply no criticism of the institutions concerned; they arise from the institutions we and our forefathers have created to safe-

guard freedom and to ensure fair, efficient government. Today the danger can be put in emotive terms, but I think fairly. Today the danger of the abuse of power happens to come from a tyrannical majority. In the past it was not the majority of men that constituted the danger and the repression; it might be one man. But today we must deal with the power of the majority, and we have to ask of a majority in our society the question that has been asked of others in the past who have succeeded to, or seized, power. The fact that I put the question in the Latin language emphasises my point that there is nothing new about our difficulty: *Quis custodiet ipsos custodes?*

What is the current manifestation of this disease in the society of the United Kingdom? I would put it provocatively, but perhaps there is no harm in doing that, by saying we have inherited a magnificent constitution well designed to meet the problems of the past. The question is whether it is adequate to meet the problems of the present or the immediate future. Let me describe, necessarily in over-generalised terms, the character of the British Constitution today.

Unlimited power of majority in legislation

Basically it is a case of the unlimited legislative sovereignty of Parliament. In the very strange *de facto* situation that exists today, an electoral majority, however narrow, has an unlimited power in matters of legislation. Further, the government which represents the power of the electoral majority has, not an unlimited, but a very wide, power over the business of government in its executive capacity. The executive arm of government has very great power, though not I emphasise as unlimited as its power through its control of a parliamentary majority in matters of legislation.

How is it that there is this difference between the legislative power of the elected majority exercised through Parliament and the executive power? The answer is that under our constitution the Courts are obedient to the will of Parliament, but the Courts have power, albeit limited, to review the acts of the executive. The only influence the Courts can exercise over the legislative sovereignty of Parliament is an indirect one by the exercise of their undoubted power of interpreting legislation. They do, however, have very real powers over the executive arm. And instead of giving the theoretical reason I will simply quote four instances in the last two or three years which speak more loudly than theory.

There was the Padfield case¹ in which a Minister was unable to prevent the setting up of an inquiry into a particular marketing operation. There was the Tameside case² in which the Minister was unable to impose his will upon the local authority in matters of education policy. There was the Laker 'Sky-train' case³ in which the Courts prevented a change of government policy against 'Sky-train' by executive (not legislative) action. And there was of course the entertaining television licence case⁴ in which that most humane and liberal minister, Mr Roy Jenkins, was prevented from being led by his civil servants into imposing a tax that would have made Hampden turn in his grave.

These are four illustrations of how the Courts are able to exercise a measure of control over executive action. But the Courts are helpless, save for their real but limited ingenuity exercised through statutory interpretation, when faced with the legislative power of Parliament, itself controlled by the Government.

We have, therefore, a world in which the majority can exercise tyrannical legislative power, that is to say, can disregard the minority, whatever the rights or wrongs of the minority. And we also have a position in which very great but not unlimited executive power is entrusted to the executive.

Now this situation is not, of course, wholly bad. When we discuss the endemic disease of abuse of power, there are no black and white distinctions. Corporate power and institutional power are both necessary if government is to be efficient. Indeed, if industry and commerce are to be efficient, decisions, even unpopular decisions, have to be taken and executed. The trade unions themselves are an illustration of the blessing to ordinary working men of corporate power: working men found they were completely at the mercy of the existing power structure of their day in the late 19th and early 20th centuries unless they united. They united through trade unions and, as Professor Grunfeld reminded us, the unions set up their own political party.

None of this need be wrong. It shows corporate power as an essential feature, I would say an essential weapon, in society.

¹ [1968] A.C. 997.

² *The Times* Law Report, 22 October, 1976, p. 13.

³ *Laker Airways v. Dept. of Trade* [1977] Q.B.643.

⁴ *The Times* Law Report, 5 December, 1975, p. 7.

Similarly, parliamentary sovereignty, which is the best illustration in the United Kingdom context of institutional power, came about as a result of the determination of the British people to set a limit to royal power. And undoubtedly it worked. Do not let us run away with the belief that because, as I shall suggest, we must now do something to safeguard minorities and individuals against the exercise of corporate and institutional power, I am thereby condemning or inviting you to condemn the existence of corporate or institutional power in our society. All that is necessary is that an acceptable restraint should be put upon exercise of those powers so that they may not develop into an abuse of power.

Rule of majority in Northern Ireland

It so happens that in my career I have seen at first hand the exercise of institutional and corporate power, in circumstances which lead me at any rate to think that it is a matter of urgency that we take steps to deal with it beyond those provided by our *de facto* constitution.

In 1969 I presided over a Court of Inquiry into the disturbances in Northern Ireland, certainly one of the heaviest undertakings which I have ever assumed. We did not publish our report until April 1972: it was in two volumes and of course nobody read it. But that does not matter. Inevitably, it was overtaken by events. But that does not matter either. What did I, as an English lawyer, learn from sitting in Londonderry, Belfast and Armagh for two-and-a-half troubled years? I learnt that an institutional arrangement whereby a permanent majority was able to exercise permanent power over a substantial minority could not work. I acquit all who exercised that power during 50 years at Stormont of any mischievous or wicked intent. They were public-spirited people doing the best they could for the province of Ulster. But they had to act, and did act, through 50 years in the interests of the majority. In such an institutional or constitutional arrangement, the abuse of power is inevitable.

The Northern Irish situation, even run by men of goodwill, could not guarantee the rights of the minority because politicians had to comply with the requirements of the majority. Therefore, something more is needed than merely one man one vote and government by majority.

The case of Grunwick

Now, as an exercise of corporate power, let us briefly review Grunwick. A substantial minority of the workers there struck because they wanted to be represented by a union. The majority of the workers did not wish to be so represented. Under our law and under the European Convention—which is steadily encroaching upon our law and will have to be accepted into our law in due course—people have a right to join a trade union as they also have a right not to join a trade union. The strikers of Grunwick went on strike because they were seeking to exercise their right to be represented by a trade union; just as those who stayed on were exercising their undoubted right not to join, or to be represented by, a trade union. The positions of both those groups are entitled to respect: they are both of them lawful positions.

What happened? Our affairs are so ordered by law that inevitably the minority group lost out. They lost their jobs. The employer was perfectly entitled to terminate their contracts of employment because they went on strike. But they went on strike because they wanted to exercise a fundamental right, which was to be represented by a union. Thus we have a situation in which those who sought to exercise a basic right lost their jobs, and did so through no unlawful act on the part of anyone.

Here was an exercise of power by the employer under the law which led to a substantial minority—91 out of a total work-force of less than 500—losing their jobs. Is this acceptable? Our system at the moment provides no clear answer to the Grunwick dispute. It was a fundamental clash between three sets of people—strikers, workers, employers—all exercising, or seeking to exercise, fundamental rights. The minority lost out.

Need for democratic safeguards

When I combine these two lessons of my own personal experience—in Northern Ireland and Grunwick—I ask this question: Are our institutions too simple to take care of the modern complexities of latter-day 20th century society? We have the trade union picture which has been described. We also have the devolution problem heaving over the horizon, and we have the Common Market. Is it really to be expected that institutions designed to safeguard us against the perils that threatened in the 17th century are necessarily

adequate to deal with the perils that beset us in the latter days of the 20th century? The problem in both periods is abuse of power, but what matters for each generation is the way in which it manifests itself.

At the end of his talk, John Burton issued a challenge, and it is a challenge to both politicians and lawyers: what democratic safeguards have we in mind to handle the current manifestation of abuse of power? Parliament, of course, must remain as an invaluable safeguard of our liberties. But the attitude of politicians, civil servants, lawyers, businessmen, trade unions, is also all terribly important. It may be that the solution is to review education to make sure people continue to get a genuine liberal education. Yet, it would be possible to say that, unlike America, Germany and some other countries, we have not made in Britain sufficient use of the legal system. And that means, let us face it, we have not the assurance that our judges could step into this very dangerous area without losing the confidence they undoubtedly enjoy in their present restricted area. Having thought for many years about this problem, I have come to the conclusion that ultimately the answer to the Roman question *Quis custodiet ipsos custodes?* lies in the further question: Can we trust the judiciary? It is a very big question indeed.

If we can, it should be possible to introduce at the ultimate stage some measure of judicial review not only of executive action but of legislative action. But it is no good doing that unless we set the limits very carefully; unless we make sure that judges are given guidelines that will enable them so to deal with the problems as justiciable issues and not as issues of political controversy. And of course we have to be quite sure that we have an acceptable system of selecting the judiciary.

Let the judges decide?

This is, I believe, the basic question. Are we prepared to trust the Courts as a last resort, not bringing them forward into the immediate area of every dispute, but having at the back some law controlling the exercise of power—both legislative and executive—and giving definite and clear guidelines so as to keep the judges out of conflicts and enabling them to exercise their ultimate and residual responsibility in the rare case in which it will have to be exercised? If so, it may be that we can offer an answer to John Burton's profoundly important question.

Take the two instances I have given: there was no legal solution to Northern Ireland or to Grunwick. The Northern Ireland conflict has been fought out and is still being fought out. Grunwick is not so serious, but presents the same sort of problem. Is it really acceptable that we have a constitutional background to our affairs in which certain problems can arise which cannot be solved peaceably, cannot be solved by ultimate resort to the rule of law?

The Americans have solved the problem effectively. They faced it after 1789; they introduced their Bill of Rights in 1791. And their Supreme Court over a period of 150 years has evolved a solution which on the whole is acceptable to the American people. The Germans are also doing extremely well, and I would commend to those interested in this sort of study the development since the war of German constitutional legal thinking.

These things can be done—although we cannot, this afternoon, produce a blueprint. What we can do is to analyse the problem and to realise that we have to use all the weapons available in the constitutional armoury—not merely Parliament, not merely the executive, but, whether you like it or not, the Courts as well. That has to be done without requiring the Courts to make political decisions. It has to be done without restricting or undermining the efficiency of the executive government. And it has to be done without destroying the sovereignty of Parliament. That is the nature of the problem.

It is obvious to me that, whether we like it or not, we are going to have to face this problem. As a start, I commend a study of Clauses 19 and 20 of the Scotland Bill which introduces for the first time into our constitutional picture a measure of judicial review by the Judicial Committee of the Privy Council of legislation affecting a substantial proportion of the citizens of the United Kingdom. As ever, we do these things through the back door. We approach solutions pragmatically. We do not work them out. Now all I am suggesting is that we start to think the problem out and see whether we can get it right. There is no one panacea. You do not immediately secure human rights in this country by pasting-up a Bill of Rights on the outside of Parliament and calling it an Act. You do not get them by slashing the powers of Parliament, because Parliament is an essential part of the true safeguard of our rights. What you do—what you must do—is to analyse fearlessly, come to conclusions which perhaps you may not like, and then set them against the chaos that will arrive if you do *not* accept the conclusions.

So long as we stick firmly to the rule of the law, to democratic institutions, and to the principle that the Courts—although operating from time to time in the political arena—nevertheless exercise legal powers and make decisions on justiciable issues, then I would assure Mr Burton and the rest of you that you need not worry too much about what the closed shop or the cartelisation of occupations might do to you by the year 2000. Though I shall not be with you then, I am confident that, if you have solved in the meantime the constitutional issue, things will not be too bad.

Questions to Lord Scarman

PROFESSOR ALAN PEACOCK: I rise not as a professor of Economics but as a member of the Commission on the Constitution¹ from 1970 to 1973 when we examined very closely some of the issues discussed by Lord Scarman. My first observation is that he is long on analysis and short on remedies. The idea of democracy being represented by Parliament in which we have a first-past-the-post system of election to a central legislature with unlimited power is nonsense. The result is not the abuse of majority power against minorities but often the abuse of *minority* power. In the context of this seminar, it means that government acts tyrannically by yielding to the sectional group-interests of those upon whose support they depend: in this case the trade unions.

If we examine the history of judicial discussion of these matters, it is true there are distinguished members of the judiciary who have made important pronouncements on the erosion of liberties, including particularly Lord Justice Hewart and C. K. Allen. But I must express some scepticism on the idea of relying on the Courts, by interpreting the laws, to protect our liberties.

The question I want to ask Lord Scarman is whether he will lift the curtain and describe precisely the constitutional changes he has in mind. It is not sufficient to hint at the necessity of the separation of powers. Hayek's *Law, Legislation and Liberty* includes some valuable

¹ *Royal Commission on the Constitution 1969-1973: Vol. I, Report* (the Kilbrandon Report), Cmnd. 5460, HMSO, 1973.

ideas about the kind of constitutional changes that are necessary—as I believe did the Memorandum of Dissent to the Kilbrandon Commission which I was happy to sign.²

EDGAR PALAMOUNTAIN (*M & G Securities*): Lord Scarman said the minority at Grunwick lost their jobs because they pursued their right to join a trade union. Was not the reason that in pursuit of their claim they went on strike?

REGINALD PRENTICE: I speak as an MP who shares much of Lord Scarman's criticism of the way Parliament now operates. But, like Professor Peacock, I am worried about what follows from his diagnosis, because I think the prescriptions he offers are necessarily incomplete. He said he did not want to involve the judiciary in political controversy, but the very matters that might have to be determined by some process of judicial review would be highly controversial.

Is not the US Supreme Court involved from time to time in highly controversial political issues, for example on civil rights? The Privy Council Judicial Committee would under the present Scotland Bill have to determine disputes between the Scottish Assembly and the Westminster parliament. Does not Lord Scarman have to face the criticism that politicians—whatever their faults—have at least been elected and have to face the discipline of re-election sooner or later? To put political power into the hands of judges who do not face that discipline may lead to a different abuse of power, perhaps of a more dangerous kind.

SIR JAMES DUNNETT (*International Maritime Industry Forum*): We frequently read of some legal luminary saying how important it is to have a Bill of Rights. I find it very difficult to make up my mind until somebody produces a draft of what such a Bill would look like. Can somebody produce a draft of the kind of thing they have in mind?

BOYD BLACK (*Queen's University, Belfast*): I would like to question Lord Scarman's comparison between Grunwick and Northern Ireland. At Grunwick a minority were wanting the right to join a

² *Royal Commission on the Constitution 1969-1973: Vol II, Memorandum of Dissent*, by Lord Crowther-Hunt and Professor A. T. Peacock, Cmnd. 5460—I, HMSO, 1973.

union and that is a right I would support. In Ulster we have had a minority who want to pull the whole constitution down. That is a minority 'right' I could not support. So I do not think his two examples stand together.

OLIVER STUTCHBURY (*Financial Consultant*): There are some problems that are insoluble and Lord Scarman has dwelt on two of them. What we have heard was a naked bid for power by the judiciary to take over the power of Parliament.

Lord Scarman replies:

'Naked bid for power' is a wonderful phrase; but in this case I would say it is not naked!

First, let me take the opportunity of congratulating Professor Peacock and his colleague on the dissenting note to the Kilbrandon Report. It was a superb piece of work. In reply to his (and Sir James Dunnett's) question I would direct attention to Lord Wade's Bill³ now before Parliament. The first Schedule sets out the European Convention of Human Rights and Fundamental Freedoms which his Bill would introduce into our law as a declaration of inalienable rights and liberties. Although you may not subscribe to everything in the European Convention, it would make an excellent beginning.

More generally, to those who say nobody has taken the trouble to draft a Bill of Rights: my answer is that it was done in 1950 and we ratified it as an effective international obligation of the United Kingdom since 1953. It could be introduced now with all the essential rights and it covers aspects where English law is terribly deficient, including the problems of freedom of the press, contempt of court and the right of privacy. It may not be perfect, but it is a complete Bill of Rights.

Turning to Mr Black's question about Northern Ireland, I should explain I happen to belong to the Voltairian school of moral philosophers; so I think people have the right to preach revolution so long as they do not break the law in so doing. The mere fact that a minority in Ulster wish to sever the constitutional link with the United Kingdom and go along with the people in the South—however much one may deplore it—is no reason for oppressing them: it is one of their rights. So the comparison between Northern Ireland

³ *Bill of Rights (H.L.)*, Session 1976-77, HMSO, December 1976.

and Grunwick is a real one. On Grunwick let me confirm that the minority were sacked because they went on strike in breach of their contract. The law is such that the employer had the choice of sacking the lot or paying compensation for unfair dismissal to those he did not re-engage. This created a real problem for the employer, and I am not criticising him. I was simply indicating the failure of our legal system to take care of the conflict between genuine rights on both sides.

Finally, I come to what I agree with Mr Prentice is the 64,000 dollar question: that of political controversy and the judges. Of course you cannot keep the Courts out of the political arena. They have always been in it. Tameside and Laker are recent examples. You can take other examples from any century of the common law. Of course, judges are from time to time called upon to make decisions that are politically controversial, which have political overtones, and which arouse political passions. Accepting that the judges must sometimes operate in the arena of political controversy, the problem is how to arrange our affairs so that the issues which reach them in their Courts are genuinely justiciable issues on which the law enables them to formulate a legal or judicial decision and not a political view. Even when the subject matter may be political, it is perfectly possible so to organise the law that, from time to time and as a last resort, political questions have to receive a legal or judicial answer.

To those who have said I am short on proposals, I would commend my Hamlyn lectures⁴ which are strong on proposals for the future. Using rather trendy language I would sum my thinking up as follows: 'OK devolution equals federation, equals a written constitution, necessitates judicial review, and necessitates a Bill of Rights; —full stop.'

⁴ Published as *English Law—The New Dimension*, Stevens, London, 1975.

PART III

Chairman: LORD WIGODER

4. Union Law and Power: current issues

CYRIL GRUNFELD

London School of Economics

The Authors

The Chairman:

LORD WIGODER: A Recorder of the Crown Court. Master of the Bench, 1972; Member, General Council of the Bar; Member, Crown Court Rules Committee. Chairman, Liberal Party Executive, 1963-65; Chairman, Liberal Party Organising Committee, 1965-66.

CYRIL GRUNFELD: Professor of Law since 1966, and Pro-Director, London School of Economics, 1973-76. Legal Adviser, Commission on Industrial Relations, 1971-74. Co-editor, *Modern Law Review*, *British Journal of Industrial Relations*, and *Industrial Law Journal*. Author, *Modern Trade Union Law*, 1966; *The Law of Redundancy*, 1971.

CHARLES K. ROWLEY: Professor of Economics, and Director of the Centre for Research in Public and Industrial Economics, University of Newcastle upon Tyne. Author of *The British Monopolies Commission*, 1966; *Steel and Public Policy*, 1971; *Antitrust and Economic Efficiency*, 1972. Co-author, *Welfare Economics: A Liberal Restatement*, 1975. For the IEA: 'Taxing in an International Labour Market', in *The State of Taxation*, IEA Readings No. 16, 1977.

DENNIS LEES: Professor of Industrial Economics, University of Nottingham. Chairman, National Insurance Advisory Committee, 1972-78 and Industrial Injuries Advisory Council, 1973-78. Member, IEA Advisory Council. Author of *Economics of Advertising*, 1967; *Financial Facilities for Small Firms*, 1971; *Impairment, Disability and Handicap*, 1974; *Economics of Personal Injury*, 1976; *Solicitors' Remuneration in Ireland*, 1977. For the IEA: *Health through Choice*, Hobart Paper 14, 1961; *Economic Consequences of the Professions*, Research Monograph 2, 1966.

CYRIL GRUNFELD:

I shall confine myself to some of the principal legal issues raised by the new law relating to collective labour relations: first, the organisation of labour; second, the recognition of labour organisations; third, the stratagems of industrial conflict; and, fourth, the use of industrial power for political ends.

Given the limitations of time and space, I shall not consider some of the important legal issues dogging the application of the law relating to individual labour relations, notably the central issue of striking a constructive balance between the protection of individual employees and the maintenance and improvement of the efficiency of employing organisations. Since concrete legal proposals have not yet been vouchsafed to the public gaze, I shall not comment on the various suggested roads to 'industrial democracy', whether the avenue Bullock or the avenue CBI or TUC, etc. And since the implications of the closed shop system have been the subject-matter of talks, commentary and discussion in the morning session, I shall not discuss the serious transformation of the closed shop issue which the Social Contract has effected.

1. Organisation

Every employee in Britain today has a legally supported right to join an 'independent trade union'. Indeed, in the Grunwick dispute, one of the problems was the atypical behaviour of the employees who withdrew their labour and organised a strike before even making inquiries about a trade union they might join. Had they joined a trade union while remaining at work with a view to building up its organisation, there would have been no doubt about their entitlement to legal protection.

Be that as it may, the principal current legal issue in the organisation of labour has been (with the exception of the closed shop) whether staff associations are entitled to a certificate of independence and so to pursue the benefits which the new labour legislation confers upon independent trade unions. On appeal from one or two decisions against a staff association by the Certification Officer, the Employment Appeal Tribunal has been insistent that the independence of the staff associations involved must be judged strictly against the definition in the Trade Union and Labour Relations Act of 1974. As the statutory definition does not require proof of an association's

probable effectiveness in negotiations with an employer, facts which suggest that it may not, for example, be able to sustain a strike for any period of time do not nullify its independence.

The TUC has recently been debating whether a new definition of an independent trade union ought not to be pressed upon the Government involving some such additional criterion as that of negotiating effectiveness; and the Appeal Tribunal itself¹ said:

'In view of the many important advantages which accrue under the modern industrial relations legislation to an independent trade union it might, perhaps, have been expected that one of the more important criteria in deciding independence would be effectiveness in representing the interests of its members. An independent trade union might well be thought to be one which was capable of standing on its own feet in the sense that it was not only independent of an employer but able, if need be, to adopt as uncompromising an attitude towards an employer as might be necessary in any given circumstances. If that were so then its ability to dispose of sufficient funds to support its members in, for instance, the taking of industrial action or in litigation of one kind or another might well be decisive.'

The unspoken acceptance in this dictum of a conflict philosophy of industrial relations may be noted. Certainly, if a definition of independence could be contrived to exclude staff associations from that status, the TUC would come to enjoy an absolute monopoly of representation of all the workers in this country.

Police and the legal right to strike

Two potential legal issues in the organisation of labour have recently emerged. One relates to the police, who at present are legally prohibited from joining a trade union or engaging in industrial action. Amid their recently expressed feelings of resentment at the depression of their pay were the rumblings of a movement towards a demand for legal freedom to organise and, indeed, to engage in industrial action. The Government gave no encouragement to these rumblings, which may not have died away for ever.

Armed forces and union membership

The other potential legal issue relates to the armed forces and the recent statement by the Minister of Defence that he could see no objection in principle to unionisation. Joining a civilian trade union

¹ In *Squibb UK Staff Association v. CO* (1977).

is not legally prohibited in the armed forces, and many in the Army, Navy and Air Force have been known either to retain their civilian union membership or to join a trade union towards the end of their military career with a view to securing civilian employment. In both circumstances, however, their union membership has been dormant. On the other hand, industrial action by the armed forces remains legally prohibited, not expressly but impliedly by the many regulations governing their conduct. Whether the Government would be prepared to alter the law in order to enable unionised members of the armed forces to engage in industrial relations as it is understood in civilian life remains a matter for bemused speculation.

2. Recognition disputes

There are two kinds of recognition dispute: between unions and managements (or employers) and between unions. The new law relating to the stratagems of industrial conflict permits independent trade unions to engage in virtually any kind of industrial disruption in the pursuit of recognition. Without in any way detracting from the use of direct action, provision has also been made for an independent trade union to refer its claim for recognition to the Advisory Conciliation and Arbitration Service (ACAS). The union may do this whether its recognition dispute is union-management or inter-union. On the other hand, management (or employer) has no legal right to refer a dispute, even an inter-union recognition dispute, to ACAS.

The statutory objects of ACAS include

‘... promoting the improvement of industrial relations, and in particular ... encouraging the extension of collective bargaining and the development and, where necessary, reform of collective bargaining’.

In a recognition reference, the duties of the Service are to

‘examine the issue’,

‘make such inquiries as it thinks fit’,

‘consult all parties who it considers will be affected by the outcome of the reference’

and

‘ascertain the opinions of workers to whom the issue relates by any means it thinks fit’.

ACAS, unlike its predecessor, the Commission on Industrial Relations, has at present no legal powers of compulsory inquiry.

ACAS and staff associations

Two important legal issues have so far been raised about the performance by ACAS of its statutory duties. At the Legal and General Assurance Society both ASTMS and the Legal and General Staff Association were recognised as having representational rights. The membership of each appears to have been substantial and broadly similar. Both organised and represented the same grades of employees. The questionnaire designed by ACAS for submission to the grades of employees covered by the reference was in a form which was ultimately held to be one-sided,² particularly in its omission of any explicit reference to the staff association, naming only ASTMS. It is hazardous to speculate on whether the form of the questionnaire derived from a view within ACAS about staff associations; but some nutriment is provided for such a speculation by the contrasting ways in which ACAS dealt respectively with the staff association and with ASTMS in two subsequent references.³

ACAS 'punishment' of Grunwick?

The second legal issue concerning the way in which ACAS has performed its statutory duties arose in the industrial dispute at Grunwick Processing Laboratories Limited. Leaving out of account the summer casual student workers, some 91 employees at Grunwick finally left their employment by way of strike action. A few days later they joined APEX. About a week later all the strikers were dismissed by the company. After unavailing conciliation attempts, APEX some six weeks after the strikers had been dismissed referred to ACAS the union's claim to be accorded full recognition at Grunwick for the grades of employees to which the strikers had belonged and of which there remained about 250 at work in the company's plants. Grunwick's view was that ACAS should not ascertain the opinions of the dismissed strikers since they were never again going to be employed by Grunwick. When ACAS made clear its intention to do so, the company withdrew co-operation in ascertaining the opinions of those who had continued in its employment. Unlike previous cases of non-co-operation by small firms employing about 25 or 30 people whose opinions could easily be ascertained by

² *Powley v. ACAS* (1977).

³ *W H Allen & UKAPE* (Report No. 68) and *Selfridges and ASTMS and USDAW* (Report No. 67).

ACAS outside their place of employment, the Grunwick labour force was about 10 times bigger and therefore confronted ACAS with an insuperable problem of communication without co-operation.

In these circumstances, ACAS ascertained that the dismissed strikers wished to be represented by APEX at Grunwick and accordingly recommended full recognition rights to APEX. The validity of this method was challenged in the courts, originally unsuccessfully in the High Court, but later successfully in the Court of Appeal. How the House of Lords decides remains to be seen.⁴ It is difficult to regard the ACAS recommendation as wholly satisfactory, appearing almost to be a form of 'punishment' for an unco-operative employer. The whole dispute was subsequently bedevilled by this original root ambiguity concerning the facts. One hopes that Parliament will correct its original error and confer upon ACAS the power of compulsory inquiry which its predecessor enjoyed. On the other hand, the rumoured proposals for simple direct enforcement of ACAS recommendations are most disturbing, since they apparently make no provision to ensure that all the facts are known before a recommendation is made, nor do they aim to rectify the one-sided nature of the present provisions.

3. Stratagems of industrial conflict

The new labour legislation has conferred upon trade unions and their members in Britain a freedom from legal regulation which in its near-comprehensiveness is unique among all the countries of the world. In this Britain may justifiably be described as a leader, though possibly not a trend-setter.

The Master of the Rolls, Lord Denning, has described the non-regulatory effect of the new legislation on industrial conflict in the following words:⁵

'Parliament has conferred more freedom from restraint on trade unions than has ever been known to the law before. All legal restraints have been lifted so that they can now do as they will. Trade unions and their officers—and, indeed, groups of workmen, official or unofficial—are entitled to induce others to break their contracts—not only contracts of employment but other contracts as well—they are entitled to inter-

⁴ The House of Lords upheld the Court of Appeal while holding also that ACAS had acted correctly in sounding the views of the strikers.

⁵ In *BBC v. Hearn & Others* (1977).

fere and prevent the performance of contracts by others—all with impunity. Any such inducement or interference is not only not actionable at law. It is specifically declared to be “not unlawful”. It is therefore proclaimed to be lawful, provided always this (and this is the one limit to the exemption which is conferred): it must be “in contemplation or furtherance of a trade dispute”.’

To this catalogue Lord Denning might have added that industrial action may also be constitutional or unconstitutional and, also, that it will nevertheless be lawful if in contemplation or furtherance of a trade dispute ‘even though [the trade dispute] relates to matters occurring outside Great Britain’. In addition, the trade union itself and its funds and other assets are entirely immune from civil action in tort whether its agents act in contemplation or furtherance of a trade dispute or in contemplation or furtherance of a political dispute.

Notwithstanding the comprehensive intention of the new law governing the stratagems of industrial conflict, one or two additional possibilities of illegality appear to have been overlooked.

(i) *Sit-ins*

First, nothing was said in the new labour legislation about sit-ins, a stratagem of industrial conflict which has become more frequently employed in recent years. At common law, a sit-in is of course normally a trespass to the property. The most appropriate remedy is an action for an injunction or, more recently, a possession order. The courts have the power to exercise their discretion in awarding the remedy sought. However, injunctions have been awarded in sit-ins by relatively small labour forces. Applications for an injunction or possession order have not been made in the bigger sit-ins. Whether an application is made is left entirely in the hands of the occupier, like an employing company, of the premises. Nevertheless, at its 1977 Congress, the TUC reported that the Employment Secretary had been asked to ensure that ‘there is immunity for unions and workers engaged in occupations’.⁶ Since a trade union is totally immune from any action in tort whatever, this passage must have been intended to refer to immunity for union officials and workers engaged in occupations. However, there was no reference to a legal reform of this kind in the Queen’s Speech in November 1977.

⁶ Reported in Incomes Data Services Brief No. 118, p. 4.

(ii) Dismissed strikers, employers and ACAS

Second, attention has been directed by the Grunwick dispute to the Employment Protection Act 1975 which empowers an employer to dismiss strikers without fear of a complaint of unfair dismissal provided only that he dismisses all the strikers and either re-engages all of them or none. The 1975 provisions, in other words, provide a remedy only in the case of discrimination among strikers but, otherwise, implicitly recognise the possibility that an employer, having dismissed all the strikers, may indeed not re-engage them. This is what happened at Grunwick. But, as we also saw, ACAS may be said to have proceeded on the different assumption that dismissed strikers would be expected to be re-engaged. Clearly, there is a substantial conflict here between the assumption underlying the 1975 statutory provisions and the assumption implicit in the method of investigation adopted by ACAS.

(iii) PO workers' right to withdraw service: police? armed forces?

Third, the move by the Union of Post Office Workers to stifle the Grunwick company's trade by blockading postal deliveries and collections threw into high relief the well-known criminal constraint on postal workers under the Post Office Act 1953. In the Queen's Speech, however, the Government indicated its intention to introduce law to free the postal workers from criminal constraint on their right to take industrial action, whether direct action against the Post Office itself or secondary action in the form of boycott or blockade to assist the quarrel which another trade union might have with another employer. The removal of this essential service from special legal regulation in respect of the interruption of the service, following on the removal of lesser restraints in the gas and electricity industries by the Industrial Relations Act 1971, may make it particularly difficult to deny to the police the freedom of action and trade union organisation they enjoyed before 1919. One can only wonder about what might then occur on the armed forces.

(iv) Daily Express/Daily Mirror and SOGAT

Fourth, one awaits with considerable interest the precise reasoning in the judgement of the Court of Appeal in *Beaverbrook Newspapers v. Keys* (1977), in which the Court prevented the General Secretary of the Society of Graphical and Allied Trades from directing his mem-

bers employed at the *Daily Express* not to print some hundreds of thousands of additional copies to fill the gap in the market created by the stoppage of work at the *Daily Mirror* on the ground that that official had not acted in contemplation or furtherance of a trade dispute.

4. The objectives and methods of picketing

On the whole, the *objectives* of picketing, whether the disruption of a firm's (or other organisation's) business or activities by blockade or by inducing people to stop working, are no longer subject to legal regulation. On the other hand, the *methods* of picketing continue to raise serious problems of public order and to attract the application of the law relating to it.

Unlawful picketing at Grunwick?

In Britain, pickets may 'peacefully' obtain or communicate information or 'peacefully' persuade any person to work or abstain from working. By 'peacefully' is meant lawfully. In effect, pickets have no legal right to *stop* workers, whether on foot or in vehicles, but have the right only to try to *persuade* them to stop and to listen to what they have to say; and the workers may either not stop at all, or may move on after listening whenever they see fit. In Britain, literally anyone may join a picket line and be subject to the same legal regulation of the methods used and the same lack of legal regulation of the objectives of the picketing. In the Grunwick dispute, the plea made by the General Secretary of APEX for a picket line of only 500 was plainly moderate in relation to the thousands who had previously attended, whether as pickets or as members of a 'demonstration', but, on the strength of past cases, the plea for 500 pickets represented a call for unlawful picketing, whether as obstruction to the highway, public nuisance, intimidation or, conceivably, conduct likely to cause a breach of the peace.

It may be noted that the TUC have long since suggested to the Government that means should be found to confer upon pickets the legal right to stop workers, whether on foot or in vehicles, for the purpose of obtaining or communicating information or persuading them. No reform of the law of this kind was mentioned in the Queen's Speech. But early on in the course of the mass picketing at Grunwick, the police on one occasion stopped the bus carrying the

workers to their place of work and allowed some of the picket's legitimate leaders to board the bus to speak with the workers. It is not known what conclusions the police drew from this brief experiment.

The National Union of Journalists has attempted to pay out of trade union funds the fines imposed upon their members engaged in unlawful picketing. Such expenditure is normally *ultra vires* a trade union's rule book. If a special rule were included in the constitution of a trade union to empower the officials to pay such fines, it would be strongly arguable that it was void for illegality as tending to corrode the administration of criminal justice.

5. Industrial power and the political process

The use of industrial action in contemplation or furtherance of a *political* dispute will not be protected by the immunities conferred under the 1974-76 legislation, with the exception of the blanket immunity granted to trade unions and their funds as such. The officials of the union leading such action are theoretically exposed to the law of tort. But it should be emphasised that, in the case of industrial power used for political purposes, it is still left to the management (or employer) whose organisation has been disrupted to take the union officials to the courts. This has been rarely done. But the British Broadcasting Corporation did it recently and secured an injunction against the officials of the Association of Broadcasting Staff.⁷

The trade union officials had directed the technicians operating the telecommunications centre in Cornwall, which is used to relay BBC programmes to the rest of the world *via* the American space satellite, to refuse to do so in televising the FA Cup Final this year in order that viewers in South Africa might not enjoy this outstanding spectacle of sport. Other countries, like Australia, New Zealand, Hong Kong, Singapore, the United Arab Emirates, etc., would of course also have missed the spectacle, but this consequence was not regarded as important as the expression of displeasure at the policy of apartheid of the South African government. Mr Justice Paine at first instance held that this was a *trade* dispute, but the Court of Appeal very properly, in my respectful opinion, reversed this decision. The Master of the Rolls and his colleagues were quite

⁷ In *BBC v. Hearn & Others* (1977).

clear that this was a *political* dispute. However, Lord Denning indicated the way in which the union might proceed lawfully on some future occasion, saying that it would have to enter into a dispute with the BBC on the basis that, 'We would like you to consider putting a clause in the contract by which our members are not bound to take part in any broadcast which may be viewed in South Africa because we feel that is obnoxious to their views and to the views of a great multitude of people'. Then, if the BBC refused to put in such a clause or condition or to negotiate about it, taking industrial action in the face of such refusal might be argued to be action in furtherance of a trade dispute.

These recent events and developments yield an important conclusion. It might reasonably have been thought that the extensive legal immunity and rights which the TUC had received from the Labour Government as part of their special political arrangement would for the time being have satisfied the leaders of the TUC. It will be seen, however, that this is apparently not so. When a *lacuna* has emerged, or it has been seen that some small point has been overlooked, the TUC has responded by making fresh legislative demands. It would appear as if, having discovered that it could directly influence the law-making process itself, the TUC has dramatically reversed its attitude of only five or ten years ago towards the presence of law in industrial relations.

COMMENTS

The Economics and Politics of Extortion

CHARLES K. ROWLEY

University of Newcastle upon Tyne

Until 1965, most political scientists laboured under a dangerous misapprehension, following Bentley (1949) and Truman (1958), to the effect that political equilibrium in democracies was reinforced by the behaviour of interest-groups which favoured equally all groups of the population.

This viewpoint was destroyed in 1965 by an American economist, Mancur Olson, in his book *The Logic of Collective Action*. Olson emphasised the very considerable difficulties encountered in organis-

ing and maintaining interest-groups even where groups of individuals exist with similar interests. In particular, such difficulties were seen to arise from the fact that the political benefits provided by interest-groups to their members tend to take the form of public goods (i.e. the consumption of the benefits by some do not diminish their availability to others whilst members who do not actively participate cannot be excluded from the benefits).

In such circumstances, individuals will refrain from interest-group participation where there are associated costs, and effective interest-groups will emerge largely where they either provide private benefits in addition to indivisible public goods and/or are able to enforce membership contributions from the individuals concerned. To the extent that such opportunities are available more readily to some groups than to others, the political process will be distorted in favour of the organised sections of the population, especially where the pressure groups are able to make agreements as to the voting behaviour of their members and to influence the voting behaviour of non-members.

Disproportionate political influence of unions

It is my thesis that unionised labour exercises just such disproportionate political influence in contemporary Britain, and indeed that such influence has been attained and defended *via* practices that are most effectively defined as extortion.

Economists have written a great deal about situations characterised as externalities in which one person as a by-product of his own profitable production or consumption activities imposes a cost or a benefit upon another person who is not a party to his activities. Since Coase's seminal article (1960), discussions have emphasised the possibility of negotiated solutions in which the parties concerned capture the gains available from optimising the rate of activity which gives rise to the external effect: they bargain with each other. Only in 1975, however, has attention been directed to the possibility that people may threaten to undertake externally harmful activities which are costly to themselves unless profitable side-payments are made by those who might expect to be harmed (Daly and Gierz).

The politics of extortion

The term 'extortion' refers to such an act of obtaining payments in return for not imposing harmful effects on other citizens. In my view,

it is by the use of such extortion that unionised labour in Britain has since 1973 subverted the political process from a minority position within the voting spectrum. Successful extortion results, of course, in a bargained solution with a zero level of the harmful activity. Such, arguably, was the situation in Britain between February 1974 and August 1977 in which a weak Labour Government, elected in large measure because non-unionised voters feared strikes and disruption from unionised labour in the event of a Conservative victory, negotiated a Social Contract designed to bolster union powers in return for zero levels of union disruption of the British economy. In consequence, with their powers largely augmented, the unions are now better placed to extort yet larger side-payments for their members. At least, the Government which has worked so hard to advance union hegemony is still in office to face the extortions that will inevitably ensue.

Withdrawal of special union privileges?

For those who do not like the economic, political and social consequences of privileged interest-groups—at this time the unions—it is no use relying upon the altruism of their leadership: asking them to exercise restraint. For the most part, 'mean sensual man' is here to stay, and union leaders would not be doing their jobs if they failed fully to press their advantage. Only by the withdrawal of the special legal privileges which provide the basis of union hegemony—the right to conspire, the right to the closed shop, the right to impose union-negotiated contracts upon all employees, the right to coerce their own membership *via* secondary strikes and boycotts, the right to employment protection, the right to picket, the right to state-financed strikes and the right of exemption from general rules applying to corporate bodies—would a determined government restore balance in the political process and offer the rest of society an equal opportunity to make their impact.

Given the entrenched powers that the unions now enjoy, it will be a brave (foolhardy?) democratic government that takes on that task. At the present time, there is no prospect that such a government would gain election, particularly under the present system of election in this country—the first-past-the-post system. In my view no government would get elected on anything like that kind of platform for the very reasons that I have argued.

Does it mean there is no hope of any sort of solution? I do not

think so. There are two phases of development by which there is some prospect of retrieving the situation if one accepts, as I do, that there is a majority of the population who would welcome the transition if the costs were not likely to be imposed on them. A year ago I would have thought only one phase was necessary. I have changed my mind.

The first phase is a shift from first-past-the-post voting to proportional representation. The reason for this shift is that it weakens the position of the extremists in the political spectrum. It is no accident that they are strongly opposed to proportional representation, and that those in the middle ground of politics are more favourably inclined. Proportional representation would allow coalition-type governments to emerge. There is a very important distinction between coalition governments *after* a first-past-the-post election, where they have no manifesto for the policies they are carrying out (the present situation), and coalitions of political parties that come together *before* an election, log-roll on an agreed implicit policy, and present it to the public for its votes. And it seems to me, for a starter, that this phase would eliminate the power of the extremists to take the decisive action from a minority position.

The second phase is a move very much more towards an American-type election system, with a separation of power based on a written constitution and, perhaps more important, with primaries in the election process. One of the problems, certainly with the British legislature, is that it is very much a self-selecting mechanism. Politicians come in, they serve their time, they adopt a debating technique, and they come through to high office. If there is no leadership in either party in tune with the majority of the electorate, it is very difficult for somebody to break in from outside and capture the popular vote in the way that Carter captured it in America. It seems to me that primaries are one way of driving through this party political obstruction. So I see a federal Britain with a constitution, separation of powers, and a genuine two-chamber government. We would then have a lot more protection against any interest-group, whether of capital or labour, seizing political control in the future.

Economic Logic and Legal Rules

DENNIS LEES

University of Nottingham

Professor Grunfeld's paper covers a broad field of law as it affects trade unions. I shall briefly examine a small number of legal rules and how changes in them might affect trade union behaviour.

Despite magisterial discouragement from Lord Scarman, I shall do this as an academic economist, though one who did for some time work for a living and who, even now, occasionally steels himself for tangential contact with practical reality.

Having been educated by Lord Robbins some 30 years ago as an external student at the LSE, I can state the following axiom with confidence:

'If some economic commodity, X, is subsidised and its competitors taxed, the supply of X will increase.'

That axiom applies equally to strikes (or, more generally, industrial disputes) as to other economic phenomena. There are, of course, exceptions. A present-day one is British Leyland, where an increase in public subsidies seems to be associated with a fall in output by the company. But normally the opposite will happen. Industrial disputes are like butter, beef and corn, where 'mountains' are produced by public subsidies and associated measures.

Legal reform to stop subsidising disputes

If it is agreed that industrial disputes are lawful but, generally speaking, undesirable, then legal rules that operate to subsidise disputes and to tax relief from them should be revised.

It should therefore be a legal rule, and perhaps a social obligation, that trade unions should pay the marginal cost of strikes to *their members and families*. This would not be a step back beyond Taff Vale but simply a requirement that no public money should be available to finance day-to-day bills. There would therefore be:

- (a) no payments from social security or any other public source to strikers and their families;
- (b) no special arrangements for tax refunds to strikers or, perhaps, no refunds at all until normal working was resumed.

Both are *unintended* effects of the fiscal system. Parliament never declared, nor intended, that social security and PAYE should be used to subsidise industrial disputes.

The present legal rules relating to picketing and 'sympathetic' action operate to 'tax' the supply of labour, goods and services other than those involved in the relevant dispute. They must be revised if disputes are not to be given artificial encouragement.

It is not striking as such, with the result of stopping the *production* of, say, coal, that is important in the short term. Rather it is picketing that prevents the *movement* of coal and other supplies. Freedom to import in these circumstances is crucial, though 'sympathetic' action in the docks and other transport areas can make it ineffective.

Effect of changes in legal rules

The effect of these changes in legal rules would be broadly as follows:

- (a) the legal right of a trade union to strike would remain;
- (b) the financial responsibility of providing subsistence during a strike would rest with the relevant trade union: the higher union dues that would be required might have the effect of stimulating membership interest in union affairs;
- (c) the effects of strikes, however serious, would be limited to the relationship between the strikers and their employers.

Whether these changes are 'politically possible' is not for me to say.¹ An economist, like any other craftsman, must stick to his last. To mix up economic logic and political speculation is to produce confusion and a mess.

Even if the changes were made, they may make no more than a marginal contribution to equity and efficiency. But they would help to lay bare the more fundamental forces at work which could then be tackled in the interests of the whole community.

¹ [See comment in Preface—ED.]

Discussion

SIR JAMES DUNNETT: I agree very much with what was said about proportional representation, leading on to something like boundaries. I am bound to say, however, that the general impression I get is that the political feeling in favour of it has substantially declined. Both parties are strongly against it and I regret to say if one is being realistic the chance of getting it is very small indeed for a substantial time to come. And on the point made by the last speaker, I agree very much with what he said. But these ideas have been bandied about at Westminster and Whitehall for a long time and I see absolutely no prospect that any political party in my lifetime is going to have the courage to touch it.

PROFESSOR LEES: These changes may or may not be politically possible, but an economist has to stick to his last. They may, even if carried out, make no more than a marginal shift in the direction of equity and efficiency. But it seems to me that these changes would help to lay bare the more fundamental forces that are at work. And at the very least they debate the use of legal rules to maraud and pillage in the name of justice.

PROFESSOR ROWLEY: Established politicians will always tend to resist change which might jeopardise their own position within the system. That is what needs fighting, and particularly where a party sees any chance at all of getting an absolute majority. The best hope for proportional representation, and I am not sure I want it at this price, is a 'hung' parliament in the next election, where perhaps the Liberals might be in a better position to bargain for it. But I think I would agree with the speaker: the probabilities are *low*. Yet without this sort of change I think the probabilities of getting a written constitution and the other changes are *zero*. So I think there is a slightly higher probability of getting it through pushing for proportional representation than perhaps by driving directly against the first-past-the-post system.

PROFESSOR G. C. ALLEN: Professor Grunfeld referred to the conflict theory of British industrial relations. I was impressed by that phrase because this concept does seem to lie at the very root of our discussion. What is most alarming is that this conflict theory is becoming more widely accepted and its area of application is being extended, by law and by parliament. Yet it is not the only possible

way in which industrial relations can be carried on. Some of you may have read the very interesting book by Professor Ronald Dore in which he compares industrial relations in particular firms in Japan with industrial relations in the same kind of firms in Britain. He gives one very good illustration of this difference. If, he says, you ask an English workman what he does, he tells you that he is an electrician or a fitter or whatnot. If you ask a Japanese workman what he does, he says 'Oh I work for Matsushita or Honda or Hitachi'. I do not want to discuss which from a political or social point of view is the more desirable attitude, but I think there is no doubt whatever which attitude is more conducive to industrial efficiency and to the increase in the standard of living of the mass of the people.

PROFESSOR GRUNFELD: All I have done has been to mention a number of current legal issues, and carefully to refrain from suggesting changes in the law. At the moment, I believe we are going to be fortunate if the legal line can be held where it is. I believe that there are three drives now in the TUC and these, I think, relate both to the conflict philosophy of industrial relations in this country and to what Professor Allen said about comparison with Japanese workers' attitudes.

The first drive is towards securing a monopoly in the representation of the labour force. If you take the closed shop in conjunction with the recruitment of members, it is not impossible to envisage before the end of the century 90 per cent of the labour force unionised and affiliated to the TUC.

The second drive is towards the extension of collective bargaining and the enlargement of collective bargaining powers. People might have thought that the Trade Union and Labour Relations Acts plus the Employment Protection Act were a pretty good chunk of legislation for the TUC-cum-Labour Government to get under their belts. Not a bit of it. The TUC has the legislative bit now firmly between its teeth. Its change in attitude towards law dates from the realisation in 1969 that the Cabinet room itself could be penetrated, in that *fraças* with Harold Wilson about *In Place of Strife*. Once the TUC realised it could control the law-making process itself, its attitude towards labour law made a U-turn. And you can see this perfectly clearly in the Queen's Speech: the Post Office workers have found that they are constrained by this 'regrettable' Post Office Act about the mail getting through, and so forth. So, it is time to be rid of it

—the postal workers should be as free as everyone else—the electricity workers, the fire brigades, coal miners, university teachers—to withdraw their labour and to engage in any other industrial action. The same applies to sit-ins: they should all be made lawful provided they are in contemplation or furtherance of a trade dispute. Any legal constraint that pops up should be knocked down by new legislation. One should not imagine, therefore, that we have seen the end of legislation in collective labour relations.

The third drive of the TUC is to secure direct entry into and substantial representation on the bodies that determine corporate policy, whether in the public or in the private sectors. One needs little strain of one's imagination to appreciate that the time could come when the TUC is sitting on the boards of all major companies through union full-time officials and shop stewards, who might then feed the TUC's computer with all the information they receive so that the TUC comes to know perhaps more than anyone else the complete detailed state of all the country's major companies. At the same time, TUC membership of the many 'quango' organisations is steadily expanding. With control of the labour force and their work environment, with command of comprehensive information relating to the principal industrial, commercial and financial organisations in the country, with a decisive voice in all tri-partite public agencies, at least when supported by the 'independent' members, with an inter-penetration between the TUC and the Labour Party in opposition and Labour Government in power, a veritable national engine of control may be emerging. In the hands of the present TUC leadership, it may well be safe. But, with a new generation of leaders, would the national engine of control become transformed into an engine of national control?

As for the workers' attitude in Britain and Japan, the attitude of Japanese workers can never be transplanted into the minds of British workers and, I might add, *vice versa*. The attitude of British workers is entirely constructed out of a peculiar historical and contemporary experience. There is of course no such being as 'the British worker'—there are simply millions of individual human beings who work in Britain. Their attitude to work is for the most part as level-headed and responsible as it has always been. But, in certain major industrial sectors, British industrial relations are deeply flawed by a hair-trigger tendency to disrupt production and services, whether officially or unofficially, constitutionally or unconstitutionally, and practically at

the first stage of a dispute. This whole attitude is in a sense terribly 'British'. The British love to do their own thing. But, in those special industrial sectors, no thought appears to be given to the irrationality of expecting a high and, indeed, improving standard of living while behaving in a way destructive of that possibility.

However, I am not looking to great changes in the law at all. I hope we may be able to maintain the present legal position while the British people have a chance to ponder the implications of the recent rapid legal changes, the manifest shift in industrial power, and the political ambition of the TUC.

5. The Economics of Labour Power: Can Trade Unions Raise Real Wages?

BRIAN GRIFFITHS

The City University

The Authors

BRIAN GRIFFITHS: Professor of Banking and International Finance, City University, and Director of the Centre for Banking and International Finance since 1976. Visiting Economist, Mexican Ministry of Finance and Banco de Mexico, 1969. Author of *Mexican Monetary Policy and Economic Development*, 1972; *Invisible Barriers to Invisible Trade*, 1975; *Inflation: The Price of Prosperity*, 1976. For the IEA: *Competition in Banking*, 1971; *Money and Economic Policy*, 1972; 'Stricter Monetary and Fiscal Controls', in *Catch '76 . . .?*, 1976; and 'Causes, Consequences, Policies', in *Inflation: Economy and Society*, IEA Readings No. 8, 1972.

HARRY FERNS: Professor of Political Science, University of Birmingham. Author of *The Age of Mackenzie King*, 1955; *Britain and Argentina in the Nineteenth Century*, 1960; *Argentina*, 1969; *National Economic Histories: The Argentine Republic, 1516-1971*, 1973. For the IEA he has written *Towards an Independent University*, Occasional Paper 25, 1969 (2nd edn. 1970).

KEITH HARTLEY: Reader in Economics, University of York. Lecturer, University of York, 1964-72. Visiting Associate Professor, University of Illinois, 1974. He wrote *Problems of Economic Policy*, 1977, and was co-author of *Export Performance and the Pressure of Demand*, 1970. For the IEA: *A Market for Aircraft*, Hobart Paper 57, 1974; 'The Economics of Bureaucracy and Local Government', in *Town Hall Power or Whitehall Pawn?*, IEA Readings No. 25, 1980.

BRIAN GRIFFITHS:

The economic impact of trade unions has become a highly emotive subject. Many in the trade union movement are convinced that trade unions have been directly responsible both for the growth in real wages over the past century and the protection of working people from exploitation in the market-place. Others are equally convinced that, through the use of restrictive practices, trade unions have become a primary factor in the relative decline of the UK and, through the spread of the closed shop, a threat to the traditional freedoms enjoyed in the labour markets in this country.

Like most of you, I have my own views on the role of trade unions in British society. I have been asked to speak here today, however, because I am, by profession, an academic economist. In consequence, I would like to make my remarks as objective as possible. The central question I wish to examine is: Can trade unions raise real wages? Before we try to answer this question, however, we must look a little more closely at trade unions themselves.

I. WHAT IS A TRADE UNION?

At one level, the answer to the question 'What is a trade union?' is very obvious. Over 50 years ago, in their classic history of trade unions, Sidney and Beatrice Webb defined a trade union as 'a continuous association of wage earners for the purpose of maintaining or improving the condition of their working lives'. This must surely remain the central purpose of any trade union. But if we are to try to explain the behaviour of trade unions in the same way that economics, as a science, attempts to explain the behaviour of such diverse institutions as households, business firms, bureaucracies, central banks, political parties and governments, the traditional approach leaves many questions unanswered. What exactly are trade unions trying to maximise? Are the interests of trade union officials and members always the same? What happens if they differ? How do we explain the growth in trade union bureaucracy? Why do shop stewards and members occasionally 'revolt' against the official leadership? Do trade unions compete with each other for members?

Traditional assumption unsatisfactory

The traditional assumption in British analysis of the behaviour of trade unions is that they are voluntary non-profit making institutions

as much concerned with acting in the public interest as in their own. If we adopt this approach, however, most of the above questions can only be answered in a rather unsatisfactory manner. I believe that trade union behaviour can be better understood in the light of developments in the theory of property rights, the theory of agency costs and the economic approach to bureaucracy.

A basic assumption of neo-classical economics is that people behave in a resourceful, evaluative and maximising manner. Of course, individuals have emotions, passions and strongly held political and religious views: many support charities and undertake charitable activities. But if we impound their preferences and values, economic analysis suggests that economic life can be best understood by assuming *homo oeconomicus*. This assumption has two implications. *First*, that individuals are interested in getting the 'best value for money' not only in the supermarket but in their choice of job, the way they save, the home they purchase and the party for which they vote. Over the past 15 years or so, significant progress has been made in economic analysis by applying the standard model of maximising behaviour to explain the activities of bureaucrats and politicians, in much the same way that economics has traditionally explained the choices of households and firms. *Second*, that for any given set of values, people will respond to economic incentives. If the price of a commodity is raised, less will be bought; if salaries in a particular profession fall, fewer people will enter that profession; if a political party promises to lower taxes it will receive more votes. Within this framework, the significance of different kinds of institutions—business firms, partnerships, nationalised industries, universities, charities, political parties, local governments, bureaucracies—is that they provide a different set of *incentives* within which people choose. What kind of institution, therefore, is a trade union? What is it attempting to maximise? What kind of incentives does it provide?

Trade union services

Within such a framework, trade unions can be viewed as organisations which supply certain services on a non-market basis. More precisely, the leaders (full-time paid officials plus the bureaucracy) charge the members a fee (union dues) in return for supplying the following kinds of services:

Economics of Labour Power: Can Unions Raise Real Wages?

(i) Collective bargaining for wages (including wage rates, hours of work, fringe benefits, working conditions, paid holidays, rest periods, etc.).

(ii) Provision of selective welfare benefits (insurance against various contingencies, representation in the event of disputes).

(iii) Supply of information (regarding pay, job opportunities, training, the monitoring of employer performance in providing fringe benefits, prompt payment of wages, etc., and the legal position relating to employment, disclosure of information for collective bargaining, and prior consultation over redundancies).

Some of the services provided by unions are collective, while others are private. If unions successfully negotiate higher wages they apply to non-union members as well. Therefore collective bargaining is a collective service. Certain welfare services, on the other hand, such as the provision of certain benefit and insurance schemes, are provided only to union members. To the extent that unions provide collective services (for example, successfully raise wages) they have an incentive to prevent 'free riders' and so (the gains being equally given to non-union members) will campaign for the introduction of a 'closed' shop which in turn enables trade union officials to increase union dues.

If information and transacting were costless, we would observe that union leadership always acted in the interests of their members, namely to undertake those activities which maximised their members' real income, otherwise they would be voted out of office. Even if information and transacting were not costless but there were a competitive number of unions in an industry, so that members could choose to which union to belong, no union could act contrary to the interests of its members for any length of time. If it did, members would simply join another union which provided more highly valued services. In supplying their services, however, many unions are in the position of monopolists—the only choice facing their members is whether or not to join the union for that particular occupation. In this situation, union officials have considerable opportunities for 'exploiting' their members, i.e., they can engage in various activities which result in their being able to raise their personal real income at the expense of their members. In this respect, union bureaucrats behave no differently from other bureaucrats. A typical case is the involvement of union leaders in prices and incomes policies which

lead to their being offered 'quango' appointments while members' wages are held down. Because there is no market-place in which members can readily express their preferences, the conflict of interest results in shop floor revolts and grass-roots opposition to official union policy.

What do union officials/bureaucrats maximise?

This approach raises one important issue: What do trade union officials maximise? A number of answers suggest themselves:

- (a) their own real income;
- (b) the real income of all their members;
- (c) the real income of their members who are employed.

To the extent that trade union officials are able to increase their own real income without provoking a revolt by members, and to the extent that their behaviour at work is consistent with their behaviour in the supermarket, they will clearly have an incentive to do so. If certain forms of prices and incomes policy, economic planning, industrial democracy (*à la* Bullock) and directed investment raise the permanent income of trade union officials by increasing the demand for their services, they will have an incentive to lobby for such proposals—regardless of any ideological arguments which may also be advanced and of whether or not the implementation of such policies is in the interests of their members. This approach to trade-union behaviour suggests, therefore, that we cannot answer the question of whose real income trade unions try to maximise without some such approach to the behaviour of trade unions.

II. TRADE UNIONS AND REAL WAGES

(i) Can a trade union raise real wages?

At a time of inflation, all trade unions are able to raise nominal (money) wages. But if prices rise proportionately as both the growth of wages and prices respond to monetary factors, the increased purchasing power of the wage increase will be zero, i.e., even though money wages will have risen real wages remain constant. The real wages (money wages adjusted by changes in the value of money) which labour receive will depend on their productivity, which in turn is dependent on product demand. The higher the marginal productivity of labour the higher the real wage.

Let us assume a competitive labour market in which there are no trade unions. A particular wage will be determined which will clear

the market. In terms of the existing price level, this will imply a certain real wage and, in term of wages determined in other labour markets, a relative wage or differential. Let me further assume that certain workers in this market form a trade union which provides various services for them. The formation of a trade union *per se* will not change the wage level because nothing has happened to change either the productivity of labour, or the existing or potential supply. If, however, the trade union is able to control the supply of labour in this market, it will be able to affect the real wage. In particular, much as any monopolist can raise price by restricting output, so a trade union can raise the real wage of its members by restricting the supply of labour in a particular market. In other words, to the extent that unions control the supply of labour to a particular market they will increase their real wage and change the wage differential in their favour. In a recent television programme¹ Arthur Scargill put it that

‘whilst we exist in a capitalist society we have to extract from that society the highest reward possible for the labour power that we sell whilst at the same time trying to change the society’.

Such an increase in real wages is a once-for-all increase as a result of labour exploiting its monopoly power. Once its power has been fully exploited it will be unable to increase real wages in this way.

But other consequences follow. In unionised industries the prices of products rise relative to the prices of non-union goods, output in these industries is reduced and capital will be substituted for labour. Those potential workers who are excluded by trade-union power from entering a particular labour market will either be unemployed or find work elsewhere in a competitive market, i.e., one in which there are no restrictions on entry. But the wage at which they will find employment will be lower as a result of a larger number of people looking for work in that market. Trade unions which control entry, therefore, are able to raise their real wages but only at the expense of *either* trade union members who are unemployed *or* other workers who receive lower wages.

The seminal work in estimating the impact of how much more union members receive than comparable non-union labour was undertaken by H. F. Lewis at the University of Chicago [7, 8]. He found that the effects of unions on the average wage of union labour

¹ *Personal Report*, 22 August, 1977.

compared to the average non-union wage ranged from 25 per cent or more in the 1930s to less than 8 per cent immediately after the Second World War, and rose to around 15 per cent by the second half of the 1950s. Studies in the US since then using other evidence have all shown a significant effect. Using 1960 census data, Weiss found that wages of male operatives and craftsmen were about 20 per cent higher than comparable non-union rates [13]; Stafford, using Survey of Consumer Finance data, found it varied between 18 and 52 per cent [11]; Throop, using aggregate industry data, found it 25 per cent in 1950 and 30 per cent in 1960 [12]; using disaggregated data, it was found that in highly unionised industries it was 38 per cent while in highly non-unionised industries only 10 per cent; and others have found that the differential decline with education is greater for younger- and older-age categories than for middle-age categories and greater for black than white workers [2, 3, 4].

In addition, the wider the union/non-union differential the less employment there will be in unionised relative to non-union industries. Lewis found for the US that an increase in the differential by 5 percentage points would decrease employment in the unionised sector by 3.8 per cent and increase non-union employment by 1.3 per cent. In a recent study of the UK by Layard, Metcalf and Nickell the wages of workers covered by collective agreements were found to be close on 25 per cent higher than those not covered by such agreements, but of comparable skill. H. G. Johnson and P. Mieszkowski in an important work conclude that

'although our empirical estimates are subject to a number of qualifications and limitations they strongly suggest that most, if not all, of the gains of labour are made at the expense of non-unionised workers and not at the expense of the earnings of capital.'[5]

The major reason for this conclusion was that a reduction of employment in the union sector depressed wages in the non-union sector. To the extent that the whole economy becomes unionised the distribution of income will depend on the bargaining power of various unions and their power to obtain any monopoly rents or profits which may exist.

(ii) Can the trade union movement raise real wages?

The simplicity of such a proposition can be seen from the reflection that if only trade unions could raise real wages the problem of the Third World could be solved immediately. If the workers of the less

developed countries were to be unionised and went on strike for higher wages, then, according to this argument, their real standard of living would rise!

To the extent that individual trade unions can raise real wages, the trade union movement is also able to raise real wages. But the increase in real wages only occurs because trade unions in the aggregate have been able to restrict the operation of the labour market. In this event, while the real wages of unionised workers will rise, those of non-unionised workers and unemployed union members will fall. In other words, the trade union movement has done nothing to change the share of wages in GNP; it can only affect the distribution of wages between union and non-union members.

If we examine the behaviour of the economy in aggregate we have to look elsewhere to find the cause of increases in real wages—an abundance of natural resources, the amount and quality of capital equipment, the quality of education, the number and skills of the labour force and an efficient system for organising productive activity. The fact that trade unions do not in the aggregate raise the real wages of the labour force does not mean that they have no role to play in an efficiently functioning market economy. They perform a critical service in helping to organise the work-force, develop procedures for dealing with grievances, provide information regarding pay and job opportunities, and act as a monitor on the performance of corporate management in its wages and industrial relations policy.

If the ability of trade unions to raise real wages therefore is restricted to the exploitation of their monopoly power, it may seem as if one is saying that trade unions performed little if any useful function in the 19th century. That, however, does not follow. Before the advent of the Welfare State, trade unions and friendly societies were of considerable importance in providing a variety of welfare services to workers. In addition, they were also important in fighting against various forms of injustices, such as the use of child labour, long hours, job insecurity, inadequate safety precautions. Even though trade unions have not raised the real standard of living of the labour force, they have nevertheless performed a valuable function in curbing the excesses of a free-market economy.

(iii) Can trade unions lower real wages?

While the existence of trade unions *per se* neither raises nor lowers real wages, to the extent that trade unions demand or support

restrictive practices which lower productivity, the answer to this question must be an unqualified 'yes'. If trade unions succeed in producing over-manning, maintaining rigid demarcations for jobs, demanding unnecessarily long apprenticeship schemes and preventing the introduction of new technology, they directly reduce the productivity of labour and capital in that industry and the real wages it is enabled to pay the labour force. In the long run, a reduced real rate of return on capital employed will reduce new capital investment in that industry and in turn its size relative to others.

The UK economy has many examples of industries in which trade union practices are reducing productivity and real wages—steel, railways, newspapers. The Central Policy Review Staff Report [14] on the car industry showed that productivity in British car assembly plants is considerably lower than in continental plants.

'It takes almost twice as many man-hours to assemble similar cars using the same or comparable plant and equipment in Britain as it does on the continent.' (para. 37)

After a careful statistical investigation, the report concludes that one major cause of low labour productivity is over-manning.

'For example, if a multi-weld machine used to weld body panels breaks down in Britain, six maintenance men would be involved in repairing it, an electrician, jig fitter, pipe fitter, mechanical fitter, tool man and repair man. On the continent only two men, one mechanical and the other electrical, would accomplish the same job.' (para. 41)

Another is that even after correction for over-manning, output in British plants is below that which the men and equipment should be able to achieve. This allegedly results from slow work pace, shortage of materials due to strikes and poor management, a high incidence of quality faults, and poor maintenance. The conclusion of this study is that while management must take its share of the blame, trade unions play a significant part in reducing productivity in the car industry.

III. CONCLUSIONS

1. An individual trade union can raise the real wages of its members by restricting entry into a particular skill or profession but only at the cost of reducing the real wages of other workers.
2. The trade union movement is able to raise the real income of its members only to the extent that it restricts the supply of labour in

various markets. It cannot raise the real income of the labour force as a whole.

3. The present institutional structure of trade unions presents trade union officials with opportunities to raise their real income at the expense of the welfare of their members.
4. Through the support of various kinds of restrictive practices trade unions are able to reduce the productivity of labour and therefore the real income of the economy.

REFERENCES

- [1] A. A. Alchian and H. Demsetz, 'Production, Information Costs and Economic Organisation', *Amer. Econ. Rev.*, December 1972.
- [2] O. Ashenfelter, 'Racial Discrimination and Trade Unionism', *J. Polit. Econ.*, May/June 1972.
and J. H. Pencavel, 'Trade Unions and the Rate of Change of Money Wages in United States Manufacturing Industry', *Rev. Econ. Stud.*, January 1972, pp. 27-54.
- [3] M. J. Boskin, 'Unions and Relative Real Wages', *Amer. Econ. Rev.*, June 1972.
- [4] G. E. Johnson and K. Youmans, 'Union Relative Wage Effects by Age and Education', *Indus. and Lab. Rel. Rev.*, January 1971.
- [5] H. G. Johnson and P. Mieszkowski, 'The Effects of Unionisation on the Distribution of Income: A General Equilibrium Approach', *Quart. J. Econ.*, November 1970.
- [6] H. M. Levinson, 'Unionism, Concentration, and Wage Changes: Toward a Unified Theory', *Indus. and Lab. Rel. Rev.*, January 1967.
- [7] H. F. Lewis, 'Relative Employment Effects of Unionism', *Ind. Rel. Res. Assoc. Proc.*, 1963.
- [8] H. F. Lewis, *Unionism and Relative Wages in the United States*, Chicago, 1963.
- [9] E. H. Phelps Brown, 'The Influence of Trade Unions and Collective Bargaining on Pay Levels and Pay Structure', Minutes of Evidence 38, Royal Commission on Trade Unions and Employers' Associations, HMSO, 1967.
- [10] S. Rosen, 'Trade Union Power, Threat Effects and the Extent of Organisation', *Rev. Econ. Stud.*, 1969.

- [11] F. P. Stafford, 'Concentration and Labor Earnings: Comment', *Amer. Econ. Rev.*, March 1968.
- [12] A. Throop, 'The Union-Nonunion Wage Differential and Cost-Push Inflation', *Amer. Econ. Rev.*, March 1968.
- [13] L. W. Weiss, 'Concentration and Labor Earnings', *Amer. Econ. Rev.*, March 1966.
- [14] *The Future of the Car Industry*, Report of the Central Policy Review Staff, HMSO, 1975.

COMMENTS

Conditions for the Future of Collective Bargaining

HARRY FERNS

University of Birmingham

To ask the question 'Can unions raise real wages?' is like asking whether churches can bring salvation. The intention is there. The effort is made. But the results are, to say the least, debatable.

At one time priests and bishops endeavoured to persuade the people that outside the church there could be no salvation, and they employed every device imaginable, political, administrative and psychological, to enforce this belief. Today trade union officials and socialist preachers seek to persuade us that without trade unions there can be no economic well-being and they proceed by interdict, excommunication and the use of political muscle to enforce this belief.

And yet there is no observable relationship between trade union activity, real wage levels and economic well-being. It can scarcely be argued that British trade unions are not numerous, well organised, militant, politically important and powerful. Equally, it can scarcely be argued that British real wages are the highest in the world, or even that they are in the 'top ten' of the real wages league.

In an able economist's argument re-inforced by the examination of evidence, Professor Griffiths has demonstrated that collective bargaining by trade unions cannot increase real wages overall but that it can

produce shifts in real incomes among the working force to the advantage of some at the expense of others. There are, however, two observations I would like to make based on historical evidence.

Raising real incomes at expense of saving/investment

First, trade unions actively re-inforced by the action of sympathetic governments can increase real incomes of wage workers at the expense of savings and investment to the point that investment and eventually productivity are either seriously checked or diminished. This happened on a massive scale in Argentina between 1946 and 1952, and that country has never really recovered from the effects. The same thing is beginning to happen in Canada and particularly in the province of Quebec. These are only two cases of which I have personal knowledge.

Secondly, obstacles placed in the way of free collective bargaining in a free market economy can reduce the capacity to consume on the part of society as a whole, can generate loose financial practices, and can produce depression. This happened on a massive scale in the USA in the 1920s and was a major factor in the great depression of 1929-34.

Honest trade unions in a free market economy are a good means of preventing the growth of administrative fat and loose financing in business organisations.

In Britain, auction politics, 'job creation' by public spending and bureaucratic empire-building are much more responsible for economic malaise than anything trade unions have done or can do.

In the British case what needs to be examined is not trade union behaviour in isolation, nor collective bargaining in particular, but the conditions under which all business contracts are made.

Four conditions for stable collective bargaining

Let me make four brief points:

First, wage contracts, like all contracts, must be freely made by the parties to them.

Second, wage contracts, like all contracts, must be enforceable by law so that a party injured by a breach of contract can plead before an independent tribunal and recover damages for loss occasioned by such breach.

Third, the medium of exchange in which contracts are expressed, in so far as they relate to payments of money, must be sufficiently

constant that contracts mean what they say, not just in money terms but in terms of goods and services.

Fourth, as a means of insuring the stability of the purchasing power of money, public spending must be limited to the sums of money which can be raised by taxation. All public spending financed by inflation must be absolutely prohibited.

If these conditions are rigidly adhered to collective bargaining will operate to the advantage of all. Otherwise it will not, nor will any other kind of bargaining. Chaos is not freedom, and money like words must have a real, stable meaning.

Can Trade Unions Raise Real Wages?

KEITH HARTLEY

University of York

My first remark is a criticism of British economists. Professor Griffiths's paper brings out quite clearly the questions which we cannot yet answer; and these are questions of both theory and evidence.

First, we have a body of micro-economic theory which can be applied to unions; but we have not yet sufficiently well-developed theories which yield a set of *testable* predictions about union behaviour. There are theories of the firm with firms as maximisers of profit, sales, growth and utility. What, for example, are the implications for wages and employment of making different assumptions about comparable aims or objectives of trade unions? Are they trying to maximise wages, membership fees, employment, or the preferences of their officials? Do these aims result in different behaviour?

Second, we have little *British* evidence on such issues as:

(a) What is the extent of monopoly unions in the British labour market? We have no UK data on union concentration, on union mergers or the benefits of union mergers.

(b) What are the sources of a union's monopoly power?

(c) What are the internal organisational constraints facing British union officials? How frequently, for example, do they have to be re-elected? What are the promotion ladders and payments systems within the union?

(d) If, as the paper suggests, unions are information agencies which *might* improve the operation of the labour market, do we have any evidence on the type and quality of information they provide? And if we regard unions as clubs, do we have any information on the type of individual benefits as well as collective benefits which result from union membership?

So much for general issues; but they are important especially since the supporters of cost-push inflation completely ignore the micro-economic foundations of union behaviour: the detailed day-to-day incentives, penalties and sanctions in the activity of individual officials and rank-and-file members.

Unions as monopolies and the sources of monopoly power

A monopoly union is a single seller of labour with no close substitutes. Let us examine the possibilities of substitution which face unions. Non-union labour might be substituted for union labour; machinery can replace men; technical progress can lead to unskilled labour replacing skilled labour (which might result in the extinction of a single-skill craft union); firms can substitute foreign locations for UK locations; and consumers can buy substitute products, either from the UK or from abroad.

To maintain their monopoly power, individual unions respond to these possibilities for substitution. They can support tariff protection and subsidies for domestic industries (e.g. coal, British Leyland). They can introduce restrictions on factor substitution (e.g. use of firemen in diesel locomotives). And the union movement as a *whole* might form a major interest-group to influence vote-conscious governments. The union movement as a collective body can, for example, support legislation which establishes and protects a worker's property rights in his job (i.e. the Employment Protection Act; Industrial Relations legislation). In other words, by raising the wages of their members, unions can impose costs on the rest of the community which are not reflected directly in a short-run increase in unemployment, or in lower wages for non-union workers.

What is the UK evidence on union wages and productivity?

British evidence shows that unions influence relative wages: one estimate suggests a 20 per cent wage differential.¹ But there are

¹ D. Metcalf, 'Unions, Incomes Policy and Relative Wages in Britain', *British Journal of Industrial Relations*, Vol. XV, No. 2, July 1977.

difficulties with these estimates. Variables other than unions can result in higher wages: there might be differences in skills and training costs and in the non-monetary aspects of different jobs. (And let us not forget that a union raises wage rates only by creating entry costs for new recruits.)

One study estimated that unionisation *adversely* affected productivity in the UK coal industry. A totally unionised coalfield produces some 22 per cent *less* output than a completely non-unionised field.²

Policy: what can we do?

After the experience of the early 1970s, it would seem both main political parties are unlikely, at least for a time, to attempt major changes in the institutional and legal arrangements relating to unions. If so, policy might develop in two directions. First, governments could pursue a more vigorous anti-monopoly policy designed to introduce more competition in both private and public sector *product* markets (including the withdrawal of subsidies to 'lame ducks'). Second, unions and professional associations could be treated in the same way as monopoly capitalists and subjected to the 1973 Fair Trading Act. In this way we would at least obtain some information on the extent of union monopoly power and restrictive practices in the UK and their effects on the 'public interest'.³

² J. Pencavel, 'The Distributional and Efficiency Effects of Trade Unions in Britain', *British Journal of Industrial Relations*, Vol. XV, No. 2, July 1977.

³ Keith Hartley, *Problems of Economic Policy*, Allen and Unwin, London, 1977, Chs. 10 and 13.

6. Trade Unions and Economic Policy*

ALAN PEACOCK

University College at Buckingham

•

* I am much indebted to Dr Keith Hartley, Reader in Economics, University of York, for most helpful comments and criticism, though our professional solidarity does not require him to accept the final product.

The Authors

ALAN PEACOCK: Principal and Professor of Economics, University College at Buckingham. Formerly Professor of Economics and Head of Department of Economics, University of York. Chief Economic Adviser, Departments of Industry, Trade and Prices and Consumer Protection, 1973-76. Member, IEA Advisory Council. Author of *The Growth of Public Expenditure in the U.K.*, 1961 (with Jack Wiseman); *Income Redistribution and Social Policy*, 1954; *Fiscal Policy and the Employment Problem*, 1971 (with G. K. Shaw); co-author of *Welfare Economics: A Liberal Restatement*, 1975. For the IEA he has written: *Education for Democrats*, Hobart Paper 25, 1964 (with Jack Wiseman); *Economic Aspects of Student Unrest*, Occasional Paper 26, 1969 (with A. J. Culyer); *The Credibility of Liberal Economics* (Seventh Wincott Memorial Lecture), Occasional Paper 50, 1977.

REGINALD PRENTICE: Member of Parliament for Daventry. Formerly Minister of State for Health and Social Security and Minister for Social Security, 1979-81. Minister of Overseas Development, in Cabinet, 1975-76. Secretary of State for Education and Science, 1974-75. Minister of State, Department of Education and Science, 1964-66, Minister of Public Buildings and Works, 1966-67, Minister of Overseas Development 1967-69. Co-author of *Social Welfare and the Citizen*, 1957.

JO GRIMOND: Member of Parliament for Orkney and Shetland. Leader, Parliamentary Liberal Party, 1956-67. Chancellor, University of Kent at Canterbury. Author of *The Liberal Future*, 1959; *The Liberal Challenge*, 1963; *The Common Welfare*, 1978; (with B. Neve) *The Referendum*, 1975.

ALAN PEACOCK:

I take it for granted in this short paper that the objectives of policy of most interest to us are those of promoting economic efficiency, an equitable distribution of income and wealth, and reduction in economic fluctuations in income, employment and prices. These are of course proximate rather than ultimate aims of government and, as well as having to be 'traded off' against one another, we may wish to, and frequently have to, place 'boundary conditions' on their achievement, e.g. if their pursuit conflicted with a desire to preserve individual freedom. The difficult questions I now have to answer are: (a) To what extent, if any, do trade unions promote these proximate aims? and (b) If not, what policy changes are desirable and practicable?

(a) Consequences

(i) Efficiency

Take efficiency first. Trade unions, like all monopolists, seek to control both the price and supply of labour. The techniques used are the strike threat and restriction of entry to employment through closed shops and apprenticeship rules. At the same time, trade unions and management are aware of the ultimate deterrent, at the firm level, i.e. the risk of complete and permanent shutdown. There are therefore mutual interests in the survival of the firm. How these interests are made to coincide will depend on the actual or potential market situation of the firm. Trade unions, sometimes aided and abetted by management, frequently promote the survival of the firm through action to reduce the incidence of competitive forces. Obvious examples are attempts to reduce foreign competition by import control lobbying and to extend nationalisation, so creating state monopolies less subject to the rigours of competition. 'Co-operant monopoly' between labour and management simultaneously exploits the consumer and reduces the incentive to be and to remain efficient.

Where it is not possible for unions and management to subvert competitive forces, either by market power or political action, there is a presumption that unions will have an incentive to support management in monitoring the output of the work-force, because the survival of the firm, and therefore jobs and pay, will depend on taking advantage of productivity gains. If this argument were sound,

we should expect firms actively to encourage unionisation of its labour force and unionised firms to out-compete non-unionised firms. I know of no evidence to support this conclusion. But in any case it is not clear that trade unions do have adequate incentives to act as policing agents for management. Evidence for this lies in the attitudes of unions to productivity deals. The deep suspicion that such deals lead to unemployment and increase the dispersion of earnings between members of the same union makes union leaders leery of trying to convince their brothers by the argument that more efficient work could improve the total wage bill. One can probably safely argue, if only on the basis of international comparisons of productivity, that British trade union practices are rarely if ever designed to improve efficiency, though hard evidence is difficult to obtain.

(ii) Distribution of income

Union leaders typically present themselves as the champions of the poor against the rich, but insofar as they imagine that their cause can be promoted by increasing the power of the unions in negotiation with firms, one doubts whether these pronouncements have any content. If we consider union action in the aggregate, it is difficult to improve on the argument of Sir Henry Phelps Brown:

'If the whole of the dividends and interest paid out by British companies in 1971 had been sequestered and applied to raise pay without any provision for the maintenance of those who lost retirement incomes or trust and insurance funds, average earnings would have been raised by less than 14 per cent; and this would be once for all. The outcome is that collective bargaining today is not between labour and capital, or employees and management . . . but between different groups of employees, for the distribution of the national product between them with one another, and between them as a whole and the inactive population.'¹

With the fall in the proportion of GDP generated in the form of profits, the argument is reinforced by recent experience.

Likewise there is no reason to doubt the sincerity of those trade union leaders who claim that their interest lies in obtaining a 'better' *personal* income distribution for individual workers rather than *factor* income distribution for labour as a whole. Yet there is no

¹ E. H. Phelps Brown, 'New Wine in Old Bottles: Reflections on the Changed Working of Collective Bargaining in Great Britain', *British Journal of Industrial Relations*, No. 3, 1973.

evidence to suggest that this view has any operational significance within the union movement, otherwise it would be difficult to explain the emphasis placed in bargaining on maintaining differentials between the skilled and unskilled. The 'Jack Jones' incomes policy which favoured the lower-paid union and non-union members may have temporarily promoted more labour income equalisation *among the employed*, but the massive support for a return to free collective bargaining offers a clear indication that labour income distribution is to be the outcome of individual union negotiation with employers, and therefore unconstrained by distributional considerations.

There is some evidence that unions influence *relative* wages. Thus D. Metcalf concludes, after a detailed examination of the evidence, that

'the absolute magnitude of the wage differential they achieve for those covered by collective agreements is uncertain, but a figure of 20 per cent may not be dreadfully in error'.²

But it would be fallacious to conclude from this that complete unionisation of the non-unionised sector would automatically promote a more equal personal income distribution. At best, if unions pressed for higher wage rates than previously obtained by non-unionised labour, the rise in the price of labour may once again only promote labour income equalisation among the employed, but leaving a discontented 'reserve army of unemployed' worse off than before.

Of course, trade unions may collectively, through the TUC, support income redistribution policies operated through the government budget or by price control. If their members were content to regard the 'social wage' as a substitute for real disposable income, *and* their willingness to work were not affected by redistributory taxation, it is conceivable that the TUC could claim that their demand for increasing social services and transfer incomes in real terms (and at a faster rate than economic growth) was both desirable and feasible, in the sense that efficiency would not be affected. This is manifestly a tall order, and is hardly a tenable position when their own members pay close attention in bargaining to real take-home pay and not to the rather intangible concept of the 'social wage'.

² Metcalf, 'Unions, Incomes Policy and Relative Wages in Britain', *British Journal of Industrial Relations*, Vol. XV, No. 2, July 1977, p. 169.

The only escape route is to argue that government expenditure can be re-allocated rather than increased by the reduction of expenditure on defence. An expansionary fiscal policy can then be used to offset any distributional effects resulting from unemployment in the defence-producing industries. Whether the workers in such industries are willing to bear the costs of transfer to other occupations in the name of 'improving' the income distribution is another matter.

(iii) *Stabilisation*

With limited space, I can be brief about trade unions and stabilisation policy. For a given level of aggregate demand, and limited possibilities of redistribution of income from profits to wages, there is a strong presumption that increases in *real* wage rates will increase unemployment. Governments conditioned to think in terms of maximising voter support have limited time horizons; the almost automatic reaction to the prospect of growing unemployment is to give way to demands for expansionary policies, and sooner rather than later. This may not necessarily be a recipe for disaster, provided the resultant rate of inflation is modified by increases in productivity and is not far out of line with that found among competitors, so that balance-of-payments problems are avoided.

But when these conditions do not obtain and inflation reaches the dimensions which make business men chary of undertaking new investment projects, not only is stabilisation policy undermined, but so is the promotion of full employment itself. The lure of 'Bennery' then becomes completely understandable, though the idea that we should solve our economic problems by a centralist planned economy operating under conditions of siege presupposes wage controls which would divest unions of their traditional functions, though it may provide key jobs for *soi-disant* union leaders. Not even the breathing space provided by the balance-of-payments effects of North Sea oil is likely to reduce this kind of argument to an unpleasant memory—not if some Cambridge economists have anything to do with it.

The conclusions are obvious. Trade union activities buttressed by the law do nothing directly to promote efficiency, to secure the distributional changes which their leaders claim to be desirable, and make it very difficult if not impossible to achieve a reasonable degree of stability in income and employment—at least using the conventional tools of the fiscal and monetary authorities.

The alternative 'policy scenario' supported by some of their

influential leaders presupposes control of the economy in a way which would hardly command support among its members once its implications are realised and a form of economic autarky which will justifiably provoke our trading partners into vigorous retaliation. (One of the more depressing things about the TUC is its dogged determination to extend confrontation tactics even to the presentation of its analysis of the performance of the economy.)

(b) Policy

Following the strict logic of the theory of economic policy one can produce a long list of instrumental changes mostly associated with improving competition in the labour market, such as curbing the right to strike, removing the closed shop provisions from the Employment Protection Act, and so on. A supplementary list would include competition policy in the product market and 'simulated' competitive pricing in nationalised industries in order to force management and labour to co-operate on improvements in efficiency, without pointing an accusing finger at specific union practices. However, this is a model which 'maximises the social welfare function' without reference to 'feedback'. Why should a dominant interest-group such as trade unions countenance changes which attempt to erode their power, any more than any other group? Faced with this kind of question economists are apt to bow out of the discussion, distressed that their constructs have to be sullied by the facts of a hard and grubby world.

There appear to be three policy options facing governments who do not simply wish to abandon hope of being able to fulfil our stated objectives of policy:

(i) *Acceptance of union power constraint*

The first approach is to accept trade union power, and with it the existing law applied to trade unions, as a constraint on the range of policy instruments. An alarmist view of this approach is that it effectively means turning the government of this country, or at least its economic policy, over to a cabal of trade union leaders, representing a minority of the population, not answerable to the electorate, and above the law. I do not believe that this is what rank-and-file union men, or their leaders, with some exceptions, really want. Nevertheless, a government which accepts the *de facto* position of

the trade unions has then to find ways of improving the efficiency of the economy other than a vigorous competition policy in either the product or factor market. This is what has driven successive governments into 'consensus economics' in which trade unions as well as employers and management are brought into 'jaw-boning' and fact-gathering exercises which, even if they produce a respectable diagnosis of our economic ills, are unlikely to generate acceptable solutions. Thus the New Industrial Strategy is in reality the reflection of an economic policy which denies the possibility of curbing trade union power, whatever lip service it pays to maintaining our competitiveness in overseas markets.³

(ii) *Direct confrontation*

The second approach is direct confrontation. Union power must be curbed—as the political philosopher and Minister of Charles II, the first Lord Halifax, put it: 'Precepts, like fomentations, must be rubbed into us—and with a rough hand too.' Supporters of this approach seem to believe that if a stand were made, there would be widespread support within the trade union movement itself. They might point towards recent surveys which have indicated that union members do not support the policies—notably on the closed shop, contracting-out and picketing—which their own leaders have demanded and have succeeded in obtaining. This is rather optimistic and fails to take account of the 'isolation paradox' which often bedevils policy changes. Faced with the radical changes which would be necessary in trade union law and in the pursuit of competition policy, individual workers, while agreeing with such measures in general, would be perfectly rational to resist them. The problem is that they would be individually uncertain about the burdens and benefits of change (which would be very unevenly distributed) and may not be prepared to face the risks, even if given assurance that those who lost out would somehow be compensated. For them the path is as important as the ultimate destination.

(iii) *'Ends-means' examination*

This last point suggests a third approach: it requires an examination of the 'ends-means' relationship *from the individual worker's point of*

³ A full analysis of this problem would require us to investigate flexible exchange rate policy as the 'answer' to the problem of retaining competitiveness subject to a 'union power' constraint—but this is beyond the scope of this contribution.

view so as to indicate to him how his aims can be realised without feeling obliged to support restrictive and disruptive practices that jeopardise our economic future. Policy measures can be designed only after a close examination of a whole range of proposals which may confer benefits on the worker and which might form the basis of an exchange for abandoning the major provisions of the Employment Protection Act and associated legislation. Such proposals would include (a) worker participation schemes, including encouragement to labour-managed enterprises, which reduce 'worker alienation' but without destroying the flexibility of operation in firms upon which successful commercial management must depend; (b) review of guaranteed employment schemes which redress the balance in favour of employees in the private sector who are in this respect much less well-treated than their counterparts in public service;⁴ and (c) the treatment of access to education, training and re-training as a matter of equity as well as of efficiency. At present rights of access are not based on any recognisable general principle and certainly favour those who have already reached a relatively high standard of secondary education.

The obvious problem facing such an approach is that it assumes (a) an intellectual and political climate in which rational discussion is possible, (b) time has a low opportunity cost to the interested parties, and (c) the political decision-making process can truly reflect considered opinions. These are strong assumptions and I would not blame any politician who, faced with the exigencies of the moment, thought it difficult if not impossible to act on them. However, I see no other way of re-establishing the credibility of a liberal market economy not solely among the patricians of our society but among those who would be most affected by the changes necessary to make it do its proper job.

⁴ Cf. Samuel Brittan, 'The Political Economy of British Union Monopoly', *Three Banks Review*, September 1976.

COMMENTS

The Issues in Public Policy

REG PRENTICE, MP

I was invited to speak today as 'a student of government', or politician, but I also approach this subject as a trade unionist. Since I left school 38 years ago, I have held a trade union card. My experience includes six years as a trade union official and many more as a union-sponsored MP. Next January I shall renew my subscription to the TGWU—the only difference being that I shall contract out of the political levy for the first time in my life.

Nothing I have heard today has altered my view that trade unionism has helped to raise not merely the material standards but the status and dignity of working people and their families. It should remain powerful, and in some sectors—such as the distributive trades, agriculture, and some white-collar employment—it should be more powerful than hitherto.

Conclusions from experience in government

But in some directions its powers should be reduced. I take the conclusion of Professor Peacock and previous speakers to be that powerful unions, especially those buttressed by closed-shop arrangements, have been *one* of the causes of inflation, *one* of the causes of over-manning and *one* of the factors inhibiting economic growth. This is certainly my own view, based on experience in government. The British economy would have had a more successful track record in recent years if the unions had had less power; or if they had used it more wisely; or if the Labour Government had stood up to them from time to time.

Professor Peacock posed three policy options. The first was to accept trade union power and learn to live with it. The second was direct confrontation. The third was a middle way, e.g. seeking to satisfy the workers' aims without recourse to restrictive practices.

Choice between risk of confrontation and certainty of disaster

My choice would be a mixture of the second and third options. Wherever possible the middle road must be used, but I do not see how a government determined to challenge the worst abuses of

union power can do so without risking confrontation. I am inclined to what Professor Peacock calls the optimistic view that a large proportion of trade unionists dislike the excessive power—or pretensions to power—of some of their leaders. I believe that a government which confronted the unions on the right issue at the right time would be supported by trade unionists and non-unionists alike. Of course there are risks arising from the so-called 'isolation paradox' but these may have to be faced. Basically, the choice may well be between the risks involved in a policy of confrontation and the certainty of disaster due to a series of retreats, based on the fear of confrontation.

Three policy changes

Let me indicate three ways in which I would like to see policy differ from the pattern set since February 1974.

First, the Government must learn to say 'no'. The series of so-called social contracts has induced a habit of mind among Ministers which amounts to saying: 'Find out what the TUC want and tell them they can have it'.

Thus the early months of the Labour Government saw a vast increase in public spending on social insurance benefits, food subsidies, housing subsidies and the like. These were all government commitments under the Social Contract Mark I, all continued well beyond the point at which it was clear the unions could not or would not deliver their side of the bargain.

Political power without responsibility

Legislation has tended to be tailor-made to trade union requirements. The Employment Protection Act was practically based on a draft by the TUC staff and its academic advisers. Ministers would have liked to introduce an independent appeal tribunal for members in dispute with their unions; they would have liked to have tackled the dangers of the closed-shop situation in journalism. But on these and so many other matters, their first concern was to placate the TUC. These examples could be multiplied many times over. For almost four years now, the TUC has exercised political power without responsibility.

Second, we need a clear definition of incomes policy and the respective roles of the Government and the TUC within it.

My personal view is that we shall need to return to some form of statutory incomes policy, as we have done so often in the last 15 years. I accept that this view is rejected by both Government and Opposition, by both the TUC and the CBI, and by most of the participants in this seminar.

Failing this policy, there is a need for clarity. Government policy is now variously described as free collective bargaining; as a requirement to keep within the 10 per cent rises, including drift, i.e. settlements of 6 per cent; as a requirement to keep within settlements of 10 per cent; as a policy which is satisfied by a 12 per cent Ford settlement, but cannot envisage more than 10 per cent for the firemen, etc., etc.

TUC powers not based on statute or constitutional authority

The TUC have declined to have any policy, except the 12-month rule, but the Government lean on the TUC heavily to enforce this aspect. Thus the TUC are relied upon to veto the new agreement at British Leyland, exercising powers which are based neither on statute, nor on any other form of constitutional authority—except that Albert Booth has dignified them with the title of 'custodians of the social contract'.

Surely the Government must either rely entirely on market forces, backed up by cash limits in the public sector, or define clearly just what they are trying to do. Above all, they must not delegate excessive authority to the TUC.

Third, the closed shop, in my view, should be banned by law. Of course it will be difficult. Of course the Labour Party will never do it and the Conservative Party are deterred by memories of the 1971 Industrial Relations Act. In my view the climate of opinion now is much more favourable than it was in 1972-74 for that part of the Industrial Relations Act, though probably not for other parts.

The case against the closed shop rests primarily on the fact that it is an intolerable invasion of human rights. It is wrong that a man who prefers not to join a union, or who resigns from it, or is expelled from it, should lose his livelihood as a result.

Economic case against the closed shop

But there is also a strong economic case. In some sectors of the economy excessive union power is founded on closed shops. In these cases the union need make no efforts to recruit members, nor to

retain their loyalty by good service, and officials have strong disciplinary weapons to keep their members in line. It is a situation tailor-made for militancy. The recent rejection of the productivity agreement by the NUM shows how a minority within a minority (i.e. the Scargill factor within the union activists) can use this power.

My general conclusion is that the power balance has swung too far in the direction of the unions and ought to be redressed. The reasons for doing this are partly, but not only, concerned with the need to promote economic efficiency. The answer must lie primarily with the Government, which should treat the unions as an important group to be consulted, but refuse to bargain with them as equals. In other words, the Government should cut them down to size. If and when we have a Government prepared to do this, they will deserve the active support of managers in industry and commerce and of the media and other leaders of opinion. I believe they will have the tacit support of most people, including trade union members.

Trade Unions Harm the Poor

JO GRIMOND, MP

The activities of the trade unions—and with them I include professional bodies and bureaucracies of all kinds—are at present on balance harmful to the country and particularly harmful to the poor.

The greatest dangers we face are the disregard of the common good or the general interest, the use of force rather than argument, inflation and its companion evil: our failure to use our great resources to the full, manifested by unemployment, public waste and private dissatisfaction.

To all these the trade unions make a large contribution. Again I must emphasise that I couple with the numerous professional bodies and the whole bureaucratic apparatus in the civil service, local government, the innumerable corporations and big business. Those of us who criticise restrictive practices, say, by the dockers, can hardly turn a blind eye to the restrictive practices of the English Bar.

Mediaeval barons

The trade union leaders have largely reverted to the role of mediaeval barons, ganging up against the common people on the one side and

against any government which tries effectively to control them on the other. I do not take a limitation of wage claims to 10 per cent, when production is stagnant, as a sign of virtue—nor do I consider it generous of those who contribute largely to the plight of old-age pensioners to clamour that the tax-payer should contribute more to pensioners.

The violence at Grunwick should surely shock any liberal. Strikes are now aimed not by down-trodden workers against wicked employers but by reasonably well-off interest-groups against the public. The mentality behind them is the same as that behind kidnappings.

No free collective bargaining with large government sector

As for inflation, there may well be a difference of opinion about the various methods which might be used to check it. It could be done by monetary discipline plus a free market: or for a time perhaps by a rigid pay and prices policy. But what there can be no doubt about is that to stop inflation you must have the will to do so. It is a *political* problem. And the unions have fought against every attempt to generate that will, and are to resist every means to make it effective. For the unions to talk of free collective bargaining in today's world and with our vast public sector, is to import the sort of cynical misuse of words for propaganda reasons which results in East Germany being called 'Free'.

Real wages as opposed to money wages would be higher today were there no unions.

Union power has had three further effects.

1. The Labour Party has become almost entirely dependent upon the trade unions. Without them the party would be bankrupt. Something like 100 Labour members are helped financially by the unions. Though this is of long standing and perfectly legal within our system, to many people it must seem a corrupt practice. It is, at any rate in my view, highly harmful to Parliament.

2. The closed shop is a direct infringement of freedom. That it is not more bitterly resented shows how far down the road to corporate Fascism we have gone under the leadership of the bureaucrats from the trade unions and other vested interests.

3. Loyalty to an institution, e.g. hospital, firm, local community, has been supplanted by loyalty to an interest.

I agree very much with Professor Alan Peacock's paper. What he describes as a third approach is a very valuable contribution to the discussion on how we can get out of our present straitjacket and to my mind an essential part of any policy for improving the outlook in Britain.

The essential thing is that it should be shown to the workers that there is a better way of safeguarding their legitimate rights than trade union corporatism.

I have long felt that governments have more weapons at their disposal than is generally supposed. One is to make strikes unprofitable and to reward those who show some interest in the common good.

But any such policy would have to be buttressed by considerably more skill all round in our methods of government. At present, while the sort of people who attend this seminar and indeed the ruling establishment of Britain are still thinking in terms of John Stuart Mill and liberals (with a small 'l'), the powerful interests in the country are simply exploiting these attitudes for their own ends. This faces liberals with a horrible dilemma. If we are faced with a political situation more akin to that described by Hobbes than that hoped for by the liberal philosophers and economists of the Enlightenment, do we have to resort to the methods of the Middle Ages or do we soldier on trying to fight the disruptive and authoritarian elements in the country with our hands tied behind our backs because of our devotion to tolerance and argument, neither of which they accept?

Illiberal measures?—tolerance, a free market

I regard this as the most pressing decision facing liberals—and again I stress I mean liberals with a small 'l'. But, however it is resolved, one thing I think is plain—that even liberal governments are not bound actively to help and support those who wish to destroy everything they stand for. There can, for instance, be no reason to make striking profitable when it is aimed not at the employers but at the general public. There can be no reason for supporting at the public expense students who wish to break up universities. When the central government was weak—and it is a fairly normal position for governments to be weak *vis-à-vis* the mediaeval barons, etc.—it had to resort to various rather illiberal measures, and we may have

Trade Unions: Public Goods or Public 'Bads'?

to do that again. I would certainly not advocate it so long as I thought there were other options. I consider it the most valuable aspect of this seminar that it discusses these other options, but do not let us delude ourselves: at the end of the day liberalism depends upon a general climate of tolerance and a free market. If these are not forthcoming then liberalism in government will disappear.

SOME IEA PAPERS on TRADE UNIONS

Hobart Paper 87

1980s Unemployment and the Unions

The Distortion of Relative Prices by Monopoly in the Labour Market

F. A. Hayek

1980 £1.50

'The legalised powers of the trade unions are the prime source of unemployment and the main reason for the decline of the British economy.'

Financial Times

Occasional Paper 38

Trade Unions: A Century of Privilege?

An historical explanation of the 1971 Industrial Relations Act and the perennial issues of trade union power and law

C. G. Hanson

1973 40p

'The nettle to be grasped was . . . the question of trade union privilege under the law. The system of privilege was, as is argued in a brilliant new pamphlet on the subject by Dr C. G. Hanson, deliberately created . . .'

Spectator

Readings in Political Economy 14

Inflation: Causes, Consequences, Cures

Discourses on the debate between the monetary and trade union interpretations

Lord Robbins, Samuel Brittan, A. W. Coats, Milton Friedman, Peter Jay, David Laidler

With an Addendum by F. A. Hayek

1974 3rd Impression 1976 £2.00

'It would be unfair to end this review of a fascinating report without mention of Professor Friedman's lucid exposition of the advantages of voluntary and official indexing as a means of redressing the inequities of inflation, without a tribute to the brief historical introduction by Professor Coats that is wise and witty and nicely sceptical, and without also acknowledging the high qualities of Lord Robbins as chairman of the conference.'

E. J. Mishan, *The Times Literary Supplement*

Hobart Paperback 8

The Theory of Collective Bargaining 1930-1975

A critique of the argument that trade unions neutralise labour's 'dis-advantage' in bargaining and enhance wage-rates by the use, or threat, of strikes

W. H. Hutt

With commentaries by Lord Feather and Sir Leonard Neal

1975 2nd Impression 1977 £2.00

' . . . stimulating and, to me, irritating . . .'

Lord Feather

'W. H. Hutt . . . thinks about the unthinkable . . .'

Sir Leonard Neal

' . . . a powerfully-argued economic case . . .'

Liverpool Daily Post

Readings 17

Trade Unions: Public Goods or Public 'Bads'?

Lord Robbins, Charles G. Hanson, John Burton, Cyril Grunfeld, Brian Griffiths, Alan Peacock

Commentaries by Peter Mathias, Norman McCord, P. J. Sloane, J. T. Addison, Martin Ricketts, George Yarrow, Charles K. Rowley, Dennis Lees, Harry Ferns, Keith Hartley, Reg Prentice, Jo Grimond

With an Address by Lord Scarman

1978 2nd Impression 1981 £2.50

'Debate about trades unions is often more heated than illuminating. That is why we should be grateful to the Institute of Economic Affairs for a cool appraisal . . . What emerges, especially in an address by Lord Scarman, is the need for more safeguards against the abuse of power.'

Daily Express

Readings in Political Economy 6

Inflation and the Unions

Three studies in the effects of labour monopoly power on inflation in Britain and the USA

Gottfried Haberler, Michael Parkin, Henry Smith

1972 Microfiche only £3.50

'I commend to local authority treasurers the latest Institute of Economic Affairs booklet, entitled 'Inflation and the Unions' . . . What emerges from this collection of diverse but, in aggregate, well balanced studies is the conclusion, regrettable but inexorable, that inflation will continue and that the only issue open to discussion is the rate at which it will proceed.'

Paul Bareau, *Municipal Journal*

Journey to Coercion

From Tolpuddle to Rookes v. Barnard

John A. Lincoln

With a foreword by Sir Lincoln Evans

1964 30p

'To Mr Lincoln the importance of the judgement of Rookes v. Barnard is that it was a pointer to the need both to clarify legislation to ensure the trade unions are safeguarded in their right to strike, but also for a thorough-going reappraisal of the so-called "right" to intimidate in order to secure membership.'

Statist