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**THE LAW
versus
THE UNIONS**

Institute for Workers' Control

Pamphlet Series No. 15

1/6d.

The Law versus the Unions

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THE DONOVAN REPORT

There is a general assumption, encouraged by the Press and by orthodox writers on Industrial Relations, that the Donovan Commission on Trade Unions* has, in its recommendations, followed the "traditional" British attitude by opting for the reform of industrial relations through voluntary methods, rather than through the strengthening of legal sanctions against trade unions. In fact the abstention of the law in dealing with trade unions is more apparent than real. A mass of labour legislation exists already, and the case law of Courts and judges has often in the past, imposed restrictions on trade union action. The legal profession in this country, quite simply, behaves as the guardian of bourgeois values and interests, in its interpretation of Statute and Common Law.

Yet the Donovan Report has succeeded in throwing a certain amount of dust into trade union eyes by apparently concentrating upon the non-legal aspects of structural change in the field of collective bargaining. Its well-known thesis is that the trend of collective bargaining, — away from industry-wide national agreements, towards plant and company level bargaining, — should be encouraged and formalised. Donovan finds a conflict between the formal machinery of national agreements, and the post-war evolution of local bargains. He hopes that this conflict may be resolved by formalising the local bargain and raising its relative significance as against the national agreement. This recommendation can be given a "liberal" appearance; the status and role of the local trade union and its representatives, the shop stewards, would apparently be raised by such a development. In fact, the Report is primarily concerned with the disorderly nature of the present situation. Some acute critics have suggested that a count of the number of times the words "order", "disorder", "orderly", "disorderly", appear in the report would show that this concern amounts to an obsession.

For example;

"The central defect in British industrial relations is the disorder in factory and workshop relations

* Royal Commission on Trade Unions and Employers' Associations, 1965 - 68: (Chairman: Rt. Hon. Lord Donovan). Report. H.M.S.O. June 1968. Cmnd. 3623. Price: £1.

and pay structures promoted by the conflict between the formal and the informal systems. To remedy this, effective and orderly collective bargaining is required over such issues as the control of incentive schemes, the regulation of hours actually worked, the use of job evaluation, work practices and the linking of changes in pay to changes in performance, facilities for shop stewards and disciplinary rules and appeals. In most industries such matters cannot be dealt with effectively by means of industry-wide agreements. Factory agreements can however provide the remedy".

(Donovan: page 262, paras. 1019 - 1020)

The purpose of Donovan's search for Order is quite clearly not the raising of the power of local shop stewards; but their integration into the system, through a combination of consensus and status-appeal, supported by greater legal and managerial discipline. The Donovan formula, worked out in detail within its pages, is in essence: 'decentralise the bargaining machinery, concentrate employers' authority at the level of the firm, support this authority with a new national "order" in legal and institutional machinery, and in these ways, deflate the power of the working-class and the shop stewards.' This concern for order and the consequences of dis-order is apparent in Donovan's treatment also of trade union structure and internal government. "... certain features of trade union structure and government have helped to inflate the power of work-groups and shop stewards." (Para. 1016)

The Donovan Commission is, naturally obsessed above all by the problem of strikes, and particularly of unofficial strikes. The growth of strike action in post-war years is, predictably, ascribed to the lack of order in the institutions of industrial relations, and orderliness will, we are assured, go far towards reducing its incidence. But what kind of order should be established? Should it be achieved through the reform of machinery and institutions, or through greater legal sanctions? The Commission's choice is apparently directed towards the former: much emphasis is placed upon the passing of an Industrial Relations Act, and the establishment of an Industrial Relations Commission whose role would be to prod, probe, suggest, and register the new-style collective agreements con-

cluded at factory level. This sounds permissive, but an agency of this kind would greatly strengthen the policing of the incomes policy; the restrictive arm of the state acting in defence of wage restraint and in favour of greater work-intensity (productivity bargaining) would be made vastly more efficient and intrusive. The resources of the old Ministry of Labour, renamed under Barbara Castle the Ministry of Employment and Productivity, are greatly strained at present. In addition to their traditional roles, the Ministry's full-time Conciliation Officers must now attempt to police the incomes policy, and ensure the application of the stringent criteria for "approved" productivity bargains. There are clearly too few of these Ministry men. The proposed Commission would be a welcome addition to the state's armoury against "wage-drift".

At the same time, as we shall see, the Commission does not neglect the possibilities of extending legal controls over the trade unions, and over the "temporary combinations of workers" which emerge in unofficial strikes. Before dealing with this section of the Report in detail however, let us first summarise some of the peripheral recommendations.

The Commission proposes that workers should be given the right of appeal to a Labour Tribunal (the present tri-partite Industrial Tribunals, renamed, and with the powers of a Court of Law), in cases of unjust dismissal. (There should be exemption however, from this procedure, for firms with 'sound' private schemes of appeal). The burden of proof would be on the employer in such cases. But an employer can, be reason of his status qua employer, always find reasons for dismissal which a bourgeois court will accept as reasonable. (The tripartite constitution of the Tribunals should not mislead the unions into supposing that they are not bourgeois-dominated. The trade union panels of the Industrial Tribunals are very weak at present, and in any case their verdict, and that of the employer, can be relied on to cancel each other out, leaving effective power of decision to the chairman — invariably, a lawyer!) Furthermore, the Commission does not propose that these Tribunals should have the power to re-instate a dismissed worker, against the wishes of the employer. (In cases where Labour Courts exist in other capitalist countries, there is a similar limitation on their powers). We may conclude that in crucial cases, where legal protection may be needed by victimised workers, the Tribunals

would prove quite inadequate. Would the seventeen sacked shop stewards at Fords, in the infamous 1963 case, have received protection from these Tribunals, had they existed? One has only to ask the question to realize that the Commission certainly did not intend that employers' powers to hire and fire should be restricted in that kind of situation.

The Commission rejects the idea that unwilling employers should be compelled to recognize trade unions. The proposed Industrial Relations Commission should confine itself to persuasion in this field. The Commission believes that Courts of Inquiry should be given extended powers to compel witnesses, to enforce attendance, and to commission evidence. All arbitration bodies should be placed under statutory compulsion to observe the government's Prices and Incomes Policy. The majority of the Commission do not recommend that the law should be changed to compel "worker directors" to be included on Boards of Directors.

Concerning trade union law, the Commission recommends that the definition of a trade union should be altered to exclude "temporary combinations" of workers. Only registered trade unions, in other words, would come under the scope of laws which protect combinations, including strike law. The rules of trade unions should contain certain unspecified requirements relating to discipline, expulsions, "arbitrary" refusal of admission, the role of the shop stewards, etc. A dispute between a union and the Registrar of Trade Unions on these matters should be resolved by an "independent" Review Body. Many of the customary rules which are here challenged by the Commission relate, significantly, to the job control which workers have established through their trade unionism. On strike law, the majority of the Commission recommend that Section III of the 1906 Trades Disputes Act, which protects strikers against civil action for damages, should apply in future only to registered trade unions. The effect of this would be to place all unofficial strikers at the mercy of the litigating employer. The Commission is involved in an interesting contradiction here. For they also record their belief that no new legal sanctions should be introduced against unofficial strikes as such, expressing their faith that the institutional reforms which they propose will effectively reduce the incidence of strike action. They argue at length against the wisdom of penal sanctions. (They print as an

Appendix the splendid evidence of an ex-Ministry of Labour official, who had to prosecute several thousand striking Kent miners during the 2nd World War. The story of that incident, and the Schweik-like conflict between the law and the strikers which developed, is worth all the rest of the Report put together!). Yet the Commission betrays the expediency, which lies behind its fine words, not only in the recommendation on Section III of 1906, but in its conclusion that, if the institutional reforms should fail to reduce significantly the number of strikes, then the position would have to be reviewed again!

Reviewed again it almost certainly will be. The press reception of the Donovan Report showed clearly the disappointment of the leader writers and the labour columnists (who merely reflect the heightening tension of the contemporary class struggle) that the Commission failed to "grasp the nettle" of legal sanctions against strikes. The Conservative Party's own policy, contained in their slyly-titled pamphlet, "A Fair Deal at Work", is crystal-clear in all those areas where Donovan is evasive and ambiguous. The Tories promise the most stringent legal restraints upon the independent formation of trade union rules, and working practices. They will make collective agreements enforceable at law, and; they will outlaw unofficial strikes. They will introduce Americal-style legislation to order strikers back to work for a, "cooling-off" period. They will do all this in the name of those "orderly" industrial relations for which Donovan searches with such assiduity through the dreary lengths of its pedestrian pages. For although we are likely to see a major political conflict between the impending government and the working-class movement, on the issues of the right to strike and independent trade unions, we should recognize very clearly that it was the Donovan Commission, appointed by Wilson and Gunter, despite the declarations made by Labour Leaders at the time of the 1964 election, and operating in the climate of anti-unionism generated by Gunter and Wilson himself (remember the seamen's strike?) which lifted the curtain on that conflict. The hopes of the Donovan Commission that formalised, "orderly" factory agreements can accomplish the incorporation of the working class and its representatives are doomed to disappointment. The move towards factory agreements is already advanced; it is explicit in the drive for productivity bargains. There is little evidence

that this is leading towards peace and harmony. In the bus industry, the failure of trade union leadership (and it should be said, the confusion sown by some rank-and-file delegates at their hastily summoned conferences in recent months) may have avoided a head-on clash. But there is no shadow of doubt that the divisive tactics employed by the Government in the bus men's case, the attempt to drive them back onto a productivity bargain which is weighted against them from the beginning, has produced an unprecedented level of frustration, bitterness, and militancy. The abominable productivity bargain which the Rootes workers accepted, earlier this year, is already leading directly to intensified conflict in the Midlands car industry, and much more is to come in that region. The I.C.I. Manpower Utilisation and Payments Scheme, an elaborate company level agreement which seems to meet all the ideals of the Donovan Commission, has been held up for nearly three years by important sections of that company's workers, and has generated a new level of consciousness amongst them. From all corners, for those who listen, comes the angry note of disillusion from shop stewards who have already concluded apparently successful factory-level productivity bargains

Really, the Donovan Commission's proposed "structural" changes, its suggested reforms of the "institutions" of collective bargaining, are not innovations at all. They are simply the formalisation of a development which is already far advanced. In the 1950's, this development probably benefited the fragmented and a-political tactics of the shop steward bargainers. In the straitened economic and political circumstances of the 1960's, the trend has been seized by employers and governments in an attempt to turn it against the working class. (The reduction of unit labour-costs is the criterion above all by which the employers and Barbara Castle test a productivity bargain. Such a reduction means of course, a shift towards property income, away from income from work). The Donovan Commission aims to strengthen this trend. It does so with relative diffidence, when compared with the forthright declarations of the Tory Party. But it does so without any conciliating offer to the trade unions. Its failure to offer anything substantial — however ambiguous in form or content — reveals the serious weakness (indeed the complete bankruptcy) of the reformist stream in British political life today. When the Whitley Commission was established to

solve a parallel crisis of "disorder in industrial relations" towards the end of the 1st World War, it came up with a variety of proposals, some of which were of concrete though limited value to the unions.

The extension of minimum wage machinery in unorganized trades, the provision of a permanent arbitration Court, and the encouragement given to collective bargaining through Joint Industrial Councils, coincided at least in part to genuine reform aspirations within the trade unions. And the endorsement of the "advance" practice of Joint Consultation by Whitley offered an ambiguous snare in which the trade unions became entangled for two generations. The Whitley pattern survives today as that formal machinery which the Donovan Commission believes is preventing the formalisation of the factory bargain. There is of course no reason for socialists to hope or expect that trade unions will defend Whitley against Donovan. But Donovan fails entirely to discover a formula of structural change which offers any inducement to the unions to move on into the new corporate design. The key blunder of the Commission (on its own terms of course) is clearly the failure to take the question of "participation" more seriously. Wilson, learning from Whitley, (and from de Gaulle?), appears to be shaping up to remedy that omission. Participation is the last shot in the locker for this Government, and for any foreseeable successor. The trade union movement has the potential to withstand that shot; if it does, we may look forward to the argument turning to the real issue — that of authority and control, in industry and the state.

The Royal Commission and Worker Directors

The Royal Commission limited its consideration of possible overall reforms of the patterns of industrial authority to one basic type of proposal, for what it terms "workers' participation in management". Even this type of proposal is treated very cursorily, occupying only three and a half pages of a Report of more than 350 pages. And within those three and a half pages, members of the Commission found themselves in disagreement, so that two possible views are sketched out in the Report.

The T.U.C. had given evidence to the Commission, recommending three different, but linked, levels of workers participation in management.

1. At plant level they thought a workers' representative (e.g. a shop steward) should sit on a whatever body ... takes decisions on the running of that plant."
2. Trade unions should, they submitted, also be represented at "intermediate" levels, either at regional level or wherever authority over a particular product was centralised within a particular concern.
3. Legislation should, they felt, be enacted, to enable companies to allow for union representation on Boards of Directors.

These proposals should be promoted by voluntary negotiations. The T.U.C. hoped that the Confederation of British Industry would "take a strong lead in encouraging its members to follow the spirit of their proposals".

The Commission argued that the reform of collective bargaining would do more to assist workers to influence the administration of their enterprises than either of the T.U.C.'s first two proposals, for workers' representation below Board level. At the same time, they felt that such reforms might stop management from operating freely. Management "must . . . be free to discuss policy without being preoccupied with the risk that what they say may be misunderstood and lead to

confusion on the shop floor", says the Report. It also suggests that any intervention by unions at this level would be countered by the fact that management representatives would caucus before hand, so that all decisions would be cut and dried before the unions were ever involved.

As for workers on the Boards, the Commission was agnostic. The majority, although they noted that German Industries operate neither "more nor less efficiently" with worker directors than do British Industries without them, thought the T.U.C's third proposal should be rejected for the following reasons:

1. Workers' directors would be under obligation to represent the "interests of the company as a whole" and as such would have to support unpopular decisions. This would result in loss of confidence by their constituents.
2. It would be difficult to define the personal responsibility of workers' directors for the conduct of the company's affairs.
3. Appointment of worker directors might be a pretext for not reforming collective bargaining.
4. "The appointment of a small number of worker directors thought the majority, "would not change the real share in control of the majority of workpeople".

Five members of the Commission disagreed with these ideas. They did not think the Board need be, or in practice normally is, free of the pressures of special interest-groups. Indeed workers had, at present no protection against such groups. For instance, shareholders might vote to sell out to a rival who wished to close down their company. Workers could not meet such threats simply within the collective bargaining machinery.

Lord Collison, Professor Kahn-Freund, and Mr. George Woodcock thought that the snag about legal responsibility could be met by appropriate legislation, and that then progress could be made by voluntary agreement between unions and

individual companies. Messrs. Shonfield and Wigham wanted compulsory participation, which would involve new legislation, on company law. They proposed that:—

1. Worker directors should act as guardians of the workers' interests in the stage of policy formation.
2. They should participate in Board meetings on the same footing as other directors, with the status of non-executive directors.
3. They should be appointed by the relevant unions, after consultation with the T.U.C.
4. They should not engage in collective bargaining with the company while serving on the Board.
5. Although larger Boards might have more, no less than two workers' directors should serve on every Board employing more than, say, 5,000 workers.
6. They should share all the general duties of directors to ensure the overall prosperity of the concern.
7. They would report to their constituency in the same way that their colleagues reported to shareholders.
8. Workers would have access to their directors, but could not control them. They would act in their own responsibility, not upon any mandate. They could not be recalled by their workmates.
9. They would serve a fixed term, with legal responsibilities as close as possible to those of other directors.

Although the majority of the Commission reported against worker-directors, the White Paper "In Place of Strife" announces that it favours experiments with them, and the Government will consult further on how this is to be done before presenting the Industrial Relations Bill.

The Royal Commission does not examine any of the

proposals for "workers' control" or "workers' self-management" which have been canvassed in the nationalised or publicly controlled industries and by such trade union leaders as Mr. Scanlon of the A.E.F., Mr. Jackson of the U.P.W., Mr. Hill of N.U.P.E., or Mr. J. L. Jones of the T&G.W.U. The White Paper, however, does propose to "go beyond the recommendations of the Commission" by providing a measure of compulsory accountability, or disclosure of information, by companies to union representatives. Extended proposals for "opening the books" or requiring companies to furnish basic data on their financial affairs to trade unions, were included in the Labour Party's proposals on "Industrial Democracy", which were approved at the 1968 Conference of the Party.

It remains to be seen whether the Government will apply all the proposals suggested in that document. If it did, then bargaining itself could be extended into many areas which have hitherto been regarded as "managerial prerogatives". However, it would be very unlikely that the Government would approve legislation which might have this effect. All its policies on industrial relations, up to now, have had the opposite intention. Certainly, judging by the speeches at trade union conferences, workers' representatives are more concerned to extend their powers of veto over management decisions they do not like, than they are to be implicated in the responsibility for such decisions. This approach, of encroaching control from the unilateral disposition of management, has become the policy of a number of major organisations, including the T&G.W.U.

In the meantime, trade unions have a healthy tendency to regard "participation" with the kind of suspicion reflected in the wall-poster which appeared in France, after last May's General Strike, when General De Gaulle made a series of proposals to extend participation. It read:

"I Participate
 Thou Participate
 He Participates
 We Participate
 You Participate
 They Profit."

Ken Coates.

Mrs CASTLE'S PROPOSALS Tony Topham

The Government's White Paper, *In Place of Strife*,* contains its proposals for the so-called "reform" of industrial relations. It has been widely opposed by the unions because it contains the following programme:

1. a compulsory cooling-off period of 28 days, to force unofficial strikers to return to work.
2. a compulsory ballot of union members, in the case of official strikes.
3. fines for breaches of Orders issued by the government, in respect of 1. and 2.
4. the setting up of a Commission for Industrial Relations. (George Woodcock is to be its full-time chairman, on a salary of £11,500, just £8,500 more than his income as TUC General Secretary).

All these things the White Paper certainly includes. But there are many other major proposals, which have received only the most cursory attention in the press, and in political discussion. Some of these have of course been referred to in general terms, as offering concessions to the unions. They are seen as the bait by which the unions and the left wing of the Labour Party can be enticed to swallow the hook, line, and sinker of the objectionable clauses. Unfortunately they have not been analysed carefully, to discover whether, even assuming that the unions could snatch the bait without getting caught, it is not, after all, the tasty morsel it is assumed to be, but rather unpleasant, or even poisonous.

Here are the other proposals:

5. the government to set up a REGISTER of collective agreements, at first voluntarily, eventually compulsorily. This register to be kept at the Department of Employment and Productivity (i.e. the Ministry of Labour, as it was called until recently.)
6. new laws which, in some unspecified way, would give unions access to certain sorts of information needed for negotiation.
7. a requirement that, where the 28 day cooling-off period is used, employers would have to observe certain conditions, usually the *status quo* existing before the strike.
8. experiments with workers' representatives on the Boards of companies.
9. government powers to compel an employer to recognise a union, where this is recommended by the C.I.R.
10. grants and loans from government to unions, to assist mergers, research, and education.
11. inducement of a breach of commercial contract as a result of a trade dispute would be legalised.
12. legislation to safeguard trade unionists and non-trade unionists against unfair dismissal.
13. Compulsory registration of trade unions. Failure would lead to a fine. Unions would have to have certain rules, on admissions, discipline, elections, and disputes between unions and members. Registrar would have the right to refuse registration where the rules do not adequately cover these matters.
14. Unions' protection from actions in tort would be removed, except in trade disputes. i.e. They could be sued for libel or damages.

**Cmd. 3888, January 1969.*

The C.I.R. and the registration of collective agreements go hand in hand. There has been some confusion about the C.I.R. in the political organs of the labour movement. Richard Clements, in *Tribune*, (February 7th, 1969) was led into supporting the new body, arising out of his defence of Mr. Will Paynter, ex-General Secretary of the Miners' Union, and life-long Communist, who has of course accepted a post on the C.I.R. He writes:

"... the function of the CIR is not to weaken trade union power but to enhance it. Much of its job will be to put into effect demands which have been the subject of resolutions at countless TUCs. Who would find fault in that? The CIR has nothing to do with the offensive parts of the Government White Paper — the strike ballot and the "cooling-off period." I have no doubt that Will Paynter did his homework very carefully before he decided to get himself involved in the body. What a splendid thought that he can continue to help the trade union movement even after he has retired from an active part in it."

It is not true that the CIR has nothing to do with the punitive parts of the White Paper. The "cooling-off" Order, for example, is linked in the White Paper with the establishment of "good" disputes procedures. The CIR will have, as one of its primary tasks, a concern for "improving and extending procedural arrangements." This apart, the CIR is required to "promote suitable company-wide procedures," to "develop acceptable rules governing disciplinary practices and dismissals," the encouragement of "effective and fair redundancy procedures," and "how to bring shop stewards within a proper framework of agreed rules in their firm." Of course, the Government has been skillful enough to separate the legal sanctions proposed, from any *direct* link with the CIR. It explains why it has done this. "It [the CIR] will need to gain their [trade union] confidence and co-operation," and would be "handicapped if at the same time it has juridical authority", and "for this reason the Government does not propose to give the CIR itself any legal sanctions, apart from authority to obtain information."

But earlier we read, (para 34 of the White Paper) that

"The relationship between the D.E.P. and the C.I.R. will be close and continuous. The C.I.R. will however be a completely independent body and will be free to form its own views on the questions with which it deals. It will work on reference by, and report to, the Secretary of State, and its recommendations will be followed up by the D.E.P.'s Man power and Productivity Service. In these respects the C.I.R.'s relationship with the D.E.P. will be similar to that of the National Coal Board for Prices and Incomes (N.B.P.I.)" (My italics T.T.)

Of course, the Incomes Board and Aubrey Jones have no legal sanctions either. They merely "recommend", and the Government imposes, the legal restraints on wages which have been applied over the past three years. Jim Mortimer's splendid socialist presence on that Board has not altered this relationship, nor the purposes of the N.B.P.I., one jot.

The CIR's job will be to bring "order" into collective bargaining; most important in this strategy is the establishment of rules governing local shop-floor representatives, the shop stewards. Their powers have been won by long years of experienced struggle and militancy, and they are built on their absolute dependence upon the work-groups which they represent. If outside intervention from a Government appointed body succeeds in establishing "rules" governing

their conduct, then however they are interpreted, this places *limits* upon their activities. It is possible to conceive of an institution — elected by unionists, accountable to them — which might propose to extend workers' powers and controls. It is quite inconceivable that the intention or the effect of this government's institutional reforms will tend in that direction.

Moreover, the CIR is based on a recommendation of the Donovan Commission, which explained very clearly the links between such a body, the "reform" of collective agreements, and incomes policy, i.e. wage control. The registration of agreements, and the CIR's collection of "information" is intended to strengthen state control and extend it onto the shop-floor, where wage drift is still an intractable problem for the state.

The Donovan Commission, having, like the White Paper, ostensibly rejected any incomes policy function for the CIR, goes on:

"Nevertheless the result of the Industrial Relations Commission's work will assist the working of incomes policy. The registration of company and factory agreements will provide far more information about the decisions which affect pay than is at present available. It is a valid criticism of past incomes policies that they have been too closely limited to dealing with industry-wide decisions. The institution of an early warning system and the growth of productivity bargaining has started to change this stage of affairs, *but the registration of company and factory agreements would expose the whole process of pay settlement to the influence of policy.*" (Donovan Report, para 209) (My italics T.T.)

It is indeed instructive that, whilst the Government spells out the precise details of the CIR, giving it legal authority to command access to information which is vital for state control of wage drift and shop steward bargaining, and then rushes the Commission into instant existence, it offers in partial return the most meagre, vague, and ill-formulated proposal, hedged about with repeated reservations, for trade union access to company financial information. If, the White Paper says, employees' representatives are to take part in the "extension" of collective bargaining, they will need "adequate" information. Many managements, we are told, do practice disclosure, "and find no difficulty in making adequate safeguards for any information, disclosure of which might cause risk of harm to a firm's commercial interests." But since others have not learnt this art, the Government propose that their new laws shall include "a provision to enable trade unions to obtain from employers *certain sorts* * of information that are needed for negotiations." It will give "*full consideration* * to the safeguards needed to protect firms' commercial interests." (My italics T.T.)

The powers of the CIR to probe and enquire into shop steward activities are not limited; the registration of collective agreements is to be compulsory. Those who harbour illusions about the nature of the CIR and the state which sponsors it should ask themselves why it was not thought necessary or desirable, to write into these proposals similar reservations about the collective interests of the working class and its representatives, that are so carefully, tenderly, scrupulously inserted, to protect "commercial interests" against the full trade union scrutiny of *their* secrets. A concession of the kind offered to trade unions in the White Paper is worse than useless. Information doled out, selectively, by the state or employers, increases the possibility of confusion amongst workers, and the danger that some

shop stewards, invited to share *and preserve* some secrets, will become incorporated into management ethos. This fate has befallen the workers' representatives on the Boards of the Steel and Mining industries in West Germany, for example. The *only* satisfactory reform is a general, unlimited access to company accounts, — with the unions and stewards left to decide what information is "relevant", or "adequate".

The seventh point in our list, the requirement of *status quo* from the employers in certain conditions, is of course completely tainted and limited by its association with the 28-day cooling-off period. The TUC itself, some years ago, expressed the one-sidedness of "procedure" in terms which leave no doubt that what is required, from a trade union point of view, is parity. The occasional, partial enforcement by the state of "certain conditions" on employers who would actually be employing forced labour during a cooling-off period, does not recommend itself as a positive benefit to the unions. Here is the TUC's neat description of the present situation:

"... If workers want a change to which managers object they must go without until the procedure is exhausted: but if managers want a change to which the workers object the change stays while the procedure is being gone through."
(TUC *Annual Report, 1960*, page 127)

The solution to his situation lies with the unions, and the bargaining authority which they are able to deploy against employers. If they wish to pursue *legal* changes, they would be wise to emphasise that *status quo* is something they demand as a right, not as a concession associated with the direct curbing of strike action.

The White Paper (para. 49) tells us that the government favours "experiments" with workers' representatives on the boards of undertakings. So do the Institute of Directors and many other institutions not usually associated with the advancement of trade union powers. The Government fails entirely to spell out what it means by "experiments," promises "consultations on how they may best be facilitated," and suggest legislation if this is shown to be desirable. Para. 49 is a paltry affair, leaving everything to those undefined "consultations". A misleading or false gesture towards workers' "participation" will undoubtedly be designed to head-off the growing demand for genuine extensions of workers' control. We doubt whether the government will "consult" the workers in the docks, steel, motors, chemicals, mines, engineering, etc., etc., who assemble for specialist and informed discussion on this question at the workers' control conferences!

The powers which the government will take to enforce trade union recognition are of a discretionary nature. The government does not propose to enforce compulsory trade union recognition in all and every case. Where employers refuse to recognise any union, the CIR will report and recommend on the dispute, and the government may make an Order, in some cases after a secret ballot of the workers. The decision on enforceability lies with the state. Where the dispute is one between unions, as to which should be recognised, the CIR would again recommend, and the Government enforce recognition of *one* of the unions involved in the dispute. Again, the ultimate discretion lies with the state. Of course, employers *should* be compelled to recognise trade unions. The best form of enforcement is the organised strength of the unions themselves, and not the law. Where the state steps in to substitute itself for that strength, it is a sign of

weak unionism. Experience of this kind of substitution is considerable, since the Wages Council system is in many ways parallel to what is being proposed in the White Paper. Unions which have had experience in this field now generally recognise that whilst legal support provides a floor below which wages should not fall, the Wages Council rates tend to be very very low indeed, moreover, enforcement through the Government's Wages Inspectorate has not proved capable of preventing wide-spread avoidance of the legal minimum wages in several industries where they apply. The White Paper itself, (para. 63) actually concedes that Wages Councils have "impeded the growth of voluntary collective bargaining." Similarly, it can be deduced that enforced union recognition will produce only the most minimal concessions from the kind of employer, and the kind of backward situation, in which it will be applied. There is no substitute for effective trade union organisation. Even though the trade union machine has failed in its duty to organise the vast majority of workers, and may therefore be in need of legal support, it certainly ought not to regard it as some kind of generous concession from the state, in return for which it should be gratefully prepared to accept legal controls which limit the right to strike, and which in other ways undermine trade union independence. The right to organise IS a right, not a privilege, and should not be conditional on the package deal in the White Paper. Fourthly, trade union recognition will be worthless for the members, if the union is already rendered ineffective and even corporately tied to the state, by that package. The fact that enforcement of recognition is a discretionary power in the hands of the state, means that there will be the strongest temptation for Mrs. Castle and her successors to recognise the union most amenable to the employers and the state's incomes policies, where a choice has to be exercised.

The offer of grants or loans from the state to the trade unions is full of implications of corporate state relations. The White Paper says, (para. 73):

"Unions will be able to apply to the CIR for grants or loans. *By analogy with the Industrial Reorganisation Corporation* the CIR will make sure that what is asked for will help to improve union efficiency. Unions wanting assistance will therefore have to submit a scheme to show how they intend to use the money, and to satisfy the CIR that they will be able to carry through the scheme; the CIR will ensure that the grants or loans made are used in accordance with the scheme." (my italics, T.T.)

The direct comparison with the IRC is very instructive. (The fact that its initials are the same, as those of the CIR, though in different order, is a neat piece of symbolism for students of Newspeak. The IRC acts as a state-financed merchant bank to encourage and direct private industry into bigger and better mergers and takeovers.) The White Paper expresses the self-deceptive or dishonest hope that "such help will contribute to greater trade union effectiveness without compromising trade union independence."

The proposal (para. 100 of the White Paper) to extend legal immunity to strikes which induce a breach of a commercial contract follows a recommendation of the Donovan Commission. In itself it should be welcomed, for as the White Paper says, "The Law on this is complicated; sympathetic strikes and other ways of bringing indirect pressure on an employer during a dispute face legal hazards in some circumstances."

However, almost nothing in the White Paper is presented as a straight-forward

and unconditional extension of trade union rights; para. 100 is no exception. It concludes:

"It will of course be open to the Secretary of State to require a ballot before an official, or conciliation pause before an unconstitutional, sympathetic strike."

On this question, the trade unions require an uncomplicated, single-clause, Trades Disputes Act, to put sympathy strikes and breaches of commercial contract beyond the reach of the judges *and* of the Department of Employment and Productivity.

The much heralded proposal to give workers the right to appeal against unfair dismissal to the Industrial Tribunals, with the latter having power to award compensation or re-instatement is, like the rest of this package, highly ambiguous in intention and possible effect. A large and growing proportion of all strikes are caused by redundancy, dismissal and suspension. The Donovan Commission's statistics show that 15 per cent of all unofficial strikes were about these issues in the period 1964-66. The White Paper anticipates that this kind of disturbance may grow in future. "In a period when increasing and necessary change must be accepted by large numbers of people, legislation will provide some guarantee that the inevitable uncertainties which this situation creates will not be added to by an employer's high-handedness or prejudice." This is deliberately confusing. The White Paper approves of the *increasing* likelihood of dismissal, and proposes to facilitate this by posing as the enemy of the odd Blimpish employer. The real anxiety of the Government lies in those strike statistics. The most effective restraint against unjust dismissal lies in strong trade unionism, and the encroachment of workers upon the right to hire and fire. By establishing a legal procedure and a workers' right of appeal, the effect may well be to *increase* the number of dismissals and particularly the victimisation of militant workers. This could be the result, for instance, if workers were led to believe that legal processes could act as a genuine substitute for their own vigilae. Legal procedure is time-consuming; whilst it grinds through its length, the sacked worker stays sacked. He may well move on, to find another job, rather than wait for the remote possibility of re-instatement. It really will be remote, in the case of the genuine militant: the White Paper specifically says that amongst valid reasons for dismissal will be the "conduct of the employee". How many militants and shop stewards are protected at present against victimisation, by the employers' certain knowledge that such acts will cause a strike? How many strikes, called spontaneously and instantaneously, have won quick re-instatement in such cases?

If the trade unions wish to find a suitable alternative to state protection, with all its ambiguities, they should perhaps examine those strike statistics more closely. Whilst the all-industry average percentage of "dismissal strikes" is 15, it is 20 per cent in engineering and 33 per cent in the fragmented and casual construction industry. In the docks, which have the highest record of strikes for *all* causes, "dismissal, redundancy and suspension" cause only 5.8 per cent of them! The reason is of course, that, backed by great solidarity and vigilance, the workers in that industry have established permanent control over the employers' right to hire and fire, through the Dock Labour Scheme. (It is under severe threat at present; all the more reason to understand its significance in this context.) As in so much of the White Paper, the proposal for *state* discretion on dismissals, runs counter to,

and aims to head-off, the growing powers of *workers'* discretion.

Whilst the precise formula of the Dock Labour Boards, with their joint control over the hiring and firing of dock-workers, may not be appropriate for all industries, it is in this direction that the workers and their organisations should be looking, in their search for powers of veto over the employers' "right" of dismissal.

The proposal (para. 109) that unions must register their rules, which will be subject to new and tighter scrutiny where they concern "admission, discipline, disputes between the union and its members, elections, strike ballots, and the appointment and functions of shop stewards", is in some ways the most serious inroad into trade union independence which is contained in the whole package. The White Paper proposes that failure to register will lay a trade union open to a financial penalty. This is the half-way house to the ultimate goal of the corporatists. With unions compulsorily registered, their rules will be approved only if they conform to the state's conceptions of what a union ought to be. The list of required rules *includes nearly every area where unions exert job controls*, which in turn enable them to exercise bargaining power. External interference aimed at diluting the authority of those rules is a dilution of trade union bargaining power, therefore. What is more, although the present government draws back from the ultimate step, that of withdrawing legal protection for strikes other than those called by registered unions, it knows full well that the step of compulsory registration is intimately connected with that idea. The White Paper has the closest affinity with many of the Tory proposals for curbing strikes, and para. 109 prepares the way for the outlawing of unofficial strikes, or strikes in breach of agreements.

The right to strike is at present, and by all the traditions and concepts of a liberal society, a right which belongs to the citizen, and to any combination, permanent or temporary, of citizens. It ceases to be a civic right if it is confined to any particular form of institution or organisation. If, tamed and registered, teeth drawn, and functions strictly defined by statute or Commission, the Trade Unions are then by a future government given a monopoly of the citizen's right to organise and conduct a stoppage of work, then the nature of trade unionism will undergo a qualitative change. The handmaidens of neo-capitalism in the present government will carry a direct responsibility for having prepared the ground. A failure by the labour movement to oppose the White Paper root and branch, and a neglect of the need for an alternative, aggressive strategy of union and workers' encroachment upon the arbitrary prerogatives of management and state, are even now opening the way for a massive defeat of the working class, such as has not been seen since 1926.

The proposal to change the law to enable a union to be sued in tort, except in circumstances of a trade dispute, is a minor token of the direction in which the state's interpretation of trade unionism is moving. The White Paper avoids the full implication, (again leaving this to the Tories, with their unambiguous approach, to spell out) which is to make trade unions fully corporate legal entities. But it is a step along that road. Socialists have always pointed to the contradictory nature of trade unions; they are organisations both belonging to, and opposed to, capitalist society. They express both a resistance to, and accommodation within, the wage system. Working class consciousness is profoundly influenced by the institutions

within which it works. A struggle against union incorporation could mobilise large sections of the working-class around programmes which develop that consciousness to a new level.

NOTE:

The White Paper actually lists 25 proposals which the government intends to include in an Industrial Relations Bill. In addition to the items discussed above, they include:

- a) modification of section 4(4) of the Trade Union Act, 1871, to facilitate the direct legal enforcement, where the parties wish, of agreements between trade unions and employers' associations, and to provide that agreements should only be legally binding if they include an express written provision to that effect.

Comment This is again a pale reflection of a Tory Party proposal. The type of union which will avail itself of this provision is likely to be deeply infested with corporate philosophy. Some lawyers, incidentally, doubt whether trade unions *can* be legally bound in this way.

- b) to establish the principle that no employer has the right to prevent or obstruct an employee from belonging to a trade union.

Comment Lawyers from Scandinavia are appalled that this principle still does not apply in Britain. It is a basic right, which *should* be established at law, but which is now involved as part of the package. It should not require any quid pro quos from the unions.

- c) to stop Friendly Societies from having rules debarring trade unionists from membership.

Comment see comment on (b) above.

- d) to establish an Industrial Board to hear certain types of case against employers, trade unions, and individual employees.

Comment the Industrial Board has the old Industrial Court composition, and will be the legal instrument through which financial penalties will be imposed.

- e) to amend the law relating to Wages Councils and section 8 of the Terms and Conditions of Employment Act, 1959.

Comment these are tidying up provisions, which extend the scope of the 1959 Act in ways which are acceptable to unions.

- f) to amend the Contracts of Employment Act.

Comment The proposals include extending the scope of the Act, which is useful, though minimal in its effects.

- g) to extend the jurisdiction of the Industrial Tribunals.

Comment the Industrial Tribunals deal with cases arising under the Redundancy Payments Act and some other statutes. It is proposed to extend their range of legal activities, including the hearing of the Unfair Dismissal cases. Labour lawyers have frequently pointed to the very weak trade union representatives on these Tribunals, and the fact that the chairmanship is invariably in the hands of a professional lawyer, whose natural bias is towards the third party on these "courts," the employer. Only 3 of the current lawyer chairmen have any experience of industry or unions, and several of them are ex-colonial circuit lawyers!

- h) to exclude employers' associations from the legal definition of trade union.

Comment This will deprive employers' associations of legal immunity from tort which they now enjoy, and is therefore quite acceptable to the unions.

- i) to require all but the smallest unions to have professional auditors, and to make new provisions regarding superannuation funds for members.

Comment unexceptionable, provided the unions find it so.

- j) to make any necessary amendment in the definition of a trade dispute. this arises from the proposal that unions should be rendered liable for actions in tort *except in cases of trade dispute*. This opens the door for either a narrower or a wider definition of a trade dispute, and is therefore ambiguous at present. Judges *cannot* be trusted to give a wide definition to the concept of a "trade dispute".

- k) to enable the Industrial Board to hear complaints by individuals of unfair or arbitrary action by trade unions. The Board will have power to award damages or admission or re-instatement in a union.

Comment A black-leg's Charter? Trade unions should handle their own internal disciplinary problems; as with the best union rules, there should always be provision for members to use an Appeals Committee within the union.

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from 91 Goldsmith Street, Nottingham.