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The British Trade Unions and the Labour Law. The Case of the Industrial Relations Act 1971
Les syndicats et les lois du travail en Grande-Bretagne. Le cas de l'Industrial Relations Act 1971

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Résumé de l'article

Au cours des dernières années, les syndicats britanniques ont dû faire face à un feu de plus en plus nourri. Leur répugnance à accepter les réformes envisagées par l'Industrial Relations Act de 1971 est citée comme un exemple significatif de leur intransigeance et du fait qu'ils se considèrent au-dessus de la loi. Ainsi, la façon dont ils ont combattu cette loi aurait été, dit-on, contraire à la règle de droit et au système parlementaire. Mais tel n'est pas le cas.

L'Industrial Relations Act était l'aboutissement de l'opinion conservatrice qui croyait à la nécessité d'imposer d'une façon radicale un nouvel aménagement des rapports de force dans les relations professionnelles. La loi visait à placer les syndicats sous la surveillance du gouvernement, principalement en les amenant à s'enregistrer de telle manière que ceux qui ne le feraient pas se trouveraient placés dans une situation désavantageuse notable, comme, par exemple, le retrait de la protection contre la responsabilité à ceux qui inciteraient à la rupture de contrat en vue de faire progresser le règlement d'un différend. La loi confinait la grève aux différends relatifs aux conditions de travail; elle interdisait les grèves politiques, les grèves de sympathie et les grèves intersyndicales; elle protégeait les travailleurs pris individuellement contre les pressions et l'intimidation des syndicats. Outre la protection clairement assurée par les statuts syndicaux en matière de conditions d'admissibilité et d'expulsion, etc., la loi établissait le droit d'appartenir ou non à un syndicat; elle interdisait la clause d'atelier fermé avant l'embauchage.

Les syndicats sentirent leur existence même mise en danger par la loi. Ce n'était pas, déclara un dirigeant syndical, « une loi qui traitait des relations de travail, mais une loi qui portait sur les rapports de force ».

Les syndicats tentèrent d'abord d'influencer la décision du gouvernement par des représentations. Mais le gouvernement refusa de s'engager dans un débat valable sur le principe du projet. Ce refus de discuter quoique ce soit, si ce n'est de questions de détail, constituait une dérogation à la pratique de la consultation qui était devenue courante depuis la deuxième guerre mondiale, et tous les dirigeants syndicaux le ressentirent comme un grave affront. Et ce à quoi ils trouvaient le plus à redire, ce n'était pas seulement au principe de la loi, mais à la façon de la décréter.

Ils essayèrent ensuite sans succès d'influencer la décision du gouvernement par des campagnes d'opinion: démonstrations, assemblées publiques, requêtes, etc. Ils s'en tenaient ainsi aux usages des groupes de pression en Grande-Bretagne (et dans les autres démocraties occidentales). Des coalitions d'employeurs s'étaient permis de pareilles campagnes dans le passé. Cependant, ce qui apparemment dépassait les convenances, c'était leur refus de coopérer à l'application de la loi.

Compte tenu du système des institutions existantes qui ne consacre que la représentation des partis, un groupe de pression qui ne trouve pas audience auprès du gouvernement n'a guère d'autres ressources que de faire agir l'opinion publique, de protester et, en dernier ressort, de refuser de coopérer. La théorie démocratique traditionnelle nous empêche de considérer avec réalisme les formes d'opposition à l'oeuvre dans les démocraties occidentales, si ce n'est celle de l'opposition institutionnelle du Parlement. On peut soutenir que le refus sans violence de se soumettre à une loi spécifique est une extension du principe à la base de l'« objection de conscience ». Toutefois, l'opposition syndicale n'allait pas jusqu'au défi de la loi. Puisque l'enregistrement était volontaire, le refus de s'enregistrer ne constituait pas un défi à l'autorité légale des cours ou du gouvernement.

Les syndicats étaient profondément divisés au sujet de la décision de ne pas coopérer à l'application de la loi mais ils prirent leur décision d'une façon démocratique. Elle ne fut imposée ni par une oligarchie de grands syndicats ni par une minorité déterminée d'activités de la base. Les dissidents, une minorité de vingt syndicats, eurent tous la possibilité de soumettre leur point de vue et les règlements et les actes de procédure furent méticuleusement suivis lors de leur suspension et de leur expulsion. Et une fois la controverse terminée, ils purent réintégrer les rangs.

C'est par des moyens pacifiques que les syndicats n'ont pas collaboré à l'application de la loi et des mécanismes qu'elle instituait. Il n'y eut pas de violence. On n'utilisa pas non plus systématiquement l'arme de la grève pour faire obstacle à la législation. Il y eut quelques grèves occasionnelles surtout en vue d'exprimer le ressentiment des syndiqués contre la loi et le gouvernement conservateur. Ils ne poussèrent pas non plus leur refus de coopérer jusqu'au boycottage du gouvernement; ils continuèrent à négocier avec lui sur d'autres questions. Ils tentèrent de s'assurer l'aide des employeurs et de la*Confédération of British Industries* pour contourner la loi dont ils obtinrent le rappel d'un gouvernement travailliste dûment constitué.

The British Trade Unions and the Labour Law

The Case of the Industrial Relations Act 1971

S.C. Ghosh

The trade unions' reluctance to accept the reforms envisaged in the Industrial Relations Act 1971 is cited as an important example of trade unions' intransigence and arrogance and of the fact that they consider themselves to be above law. But the way the trade unions fought the Act appears to be quite in keeping with the democratic procedure and the rule of law.

In recent years the trade unions in Britain have come under increasing fire.[1] It has been suggested that the trade unions were no longer the underdog; given the interlocking industrial process, the acceptance of full-employment as a major economic goal, and the recognition of the union as 'a realm of the state' and its especial relationship with the Labour Party, the unions have acquired 'A Giant's Strength' disturbing the power relationships among the various elements in the body politic and using it to advance their sectional interests at the expense of the well-being of the nation as a whole. The trade unions have had their share of blame for the recent decline in British economic position. They have been criticized particularly for the pursuit of collective bargaining in a situation of full employment and for their reluctance to accept an income and wages policy in a inflationary situation. The leaders of the trade unions have also been denounced for their inability to prevent frequent unofficial strikes initiated by shop stewards[2] and rank and file, as well as inter-union disputes which take place from time to time because of the multiplicity of unions. It has also been claimed that the trade unions are unable to reform their complex outmoded structure themselves, but they are also opposed to the government interventions to bring about necessary changes. For example, the Harold Wilson Labour Government of 1964-1970 had to abandon its efforts to introduce reforms because of their opposition.[3] The trade unions' reluctance to accept the reforms envisaged in the Industrial Relations Act 1971 is also cited as an important example of trade unions' intransigence and arrogance and of the fact that they consider themselves to be above law and that the way they

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defeated the Act was contrary to the rule of law and the parliamentary system of government.

The trade unions' successful struggle against the Act certainly raises several important questions. But the way the trade unions fought the Act appears to be quite in keeping with the democratic procedure and the rule of law.

OPPOSITION AND DEMOCRACY

Traditionally the theories of political opposition in the west have been inferred from the development of the concepts of democracy and representation.[4] For example, in Great Britain, political opposition has, for a long time, been merged in the public mind with a concept of party competition in an institutionalized two-party system.[5] Thus discussion on opposition has been concerned very largely with 'the opposition-in-parliament'.[6] But such a restricted use of the notion of opposition, as Ellis Katz has argued, betrays "ideological bias that values stability over change, consensus over cleavage and the elite over the mass".[7] Secondly, the term, 'opposition' is far from being precise. As Barbare N. McLennan points out: "When discussing 'political opposition' one can be referring to total systematic opposition, as that of revolutionary groups; to moderate differences in policy among institutionalized groups such as courts, legislatures, and political parties; or to more informal opposition of interest groups or generalized social groupings."[8] In fact, the terms, disobedience, resistance, protest etc. are often used in the same sense as opposition.[9]

Much more relevantly for the purpose of the present discussion, no discussion of opposition is today complete without account being taken of interest groups. In 'the collectivist politics' of Modern Britain involving the assumption of responsibility by the government of the management of the economy, the consultation between the government and representatives of, for instance, trade unions and industry, have become institutionalized in various mixed organs.[10]And pressure by producers and other groups on the government have "to some extent bypassed the vertical political representation of the political parties".[11] Indeed, as G.C. Moodie and G. Studdert-Kennedy observe: "...pressure groups derive much of their influence and status from their capacity successfully to oppose governement..."[12]

It is open to debate whether the institutions of government which enshrine the principle of party representation and party opposition are adequate to tackle the problem of group representation and opposition.[13] But given the present institutions, the effectiveness of a group depends on

whether a government wishes to heed a group, whether it requires groups' advice, information, support and other kinds of assistance. Moodie and Studdert-Kennedy point out: "Essentially, various forms of actual or potential, active or passive, non-cooperation may be, or seen to be, the only course open to a group which does not receive the hearing to which it feels entitled."[14]

Apart from the institutionalized opposition, that is, 'opposition-in-parliament', the traditional liberal democratic theory permits only conscientious objection. As Carl Friederich points out: "..., it has been very generally conceded that 'conscience', especially when religiously motivated, entitled a man to non-participation at least from a moral point of view, provided he was willing to 'take the consequences'."[15] However, the traditional democratic theory has been concerned more with the normative right to resistance rather than with the empirical analysis of resistance or opposition.[16]

Several empirical studies show that all forms of extra-parliamentary opposition are not subversive of the political system. For example, 'protest' as practised by elements of the civil rights movement in the United States has been defined as 'a mode of political action oriented toward objection to one or more policies or conditions, characterised by showmanship or display of an unconventional nature and undertaken to obtain rewards from political or economic systems while working within the system."[17]

However, it seems that revolution or internal war, political violence or collective violence have received more attention from the scholars rather than different forms of peaceful protest, demonstration and resistance.[18] Much more importantly, no systematic attempt has been made to classify the various forms of opposition and to indicate their consistency or otherwise with the democratic procedure. Clearly terrorism,[19] direct action involving violence and deliberate confrontation with authority and police are not in keeping with the democratic procedure.[20] One could also argue that non-violent civil disobedience, as practised by Gandhi in the thirties in India against the British colonial administration, whose object is a challenge to the whole system of government, is not consistent with democracy.[21] But it could perhaps be argued that the non-violent non-cooperation with a specific law, provided the persons or groups practising it are willing to 'take the consequences', is an extension of the principle of 'conscientious objection' and is in keeping with the democratic procedure.[22]

The paper argues that the union actions against the Industrial Relations Act 1971 did not amount to a violation of 'the rule of law' nor did they constitute a breakdown in democratic procedure. The TUC first tried to influence the Government's decision by representation; then they fought the

Act on what might be described a three-pronged strategy — non-cooperation with the Act, an understanding with the Confederation of British Industry with a view to isolating the government and making the Act simply irrelevant and redundant, and an agreement with the Labour Party with a view to securing the repeal of the Act.

THE INDUSTRIAL RELATIONS ACT 1971 — AN OUTLINE

The Industrial Relations Act 1971 was the outcome of the Conservatives' belief in the need to radically restructure power in industrial relations.[23] It was, in the words of the *Guardian*, "an attempt to tip the scales of the industrial bargains quite sharply against the unions."[24] It is not possible to give here a detailed account of the Act.[25] Broadly, the Act sought to bring about an alteration in the power relationship in four ways. Firstly, the Act sought to bring the unions under government surveillance. Secondly, it tried to strengthen the power of the employers. Thirdly, it provided the individual worker protection against trade union pressure and intimidation. Finally, it sought to strike at the power of the shop stewards.

To bring about the necessary changes, the Conservative Government decided that the principle of voluntarism on which the British industrial relations rested should give way to detailed and complex regulation; that the British system should be reshaped 'in ways that would make it very similar to the United States model'.[26]

The main device by which the Act tried to bring the unions under the regulation and supervision of Government was by the registration of unions. Registration under the Trade Union Act 1871 was voluntary. The fact that a union was not registered in no way affected its right to engage in collective bargaining or to take strike action. The main advantage that a registered union enjoyed was exemption from income tax in respect of interests and dividends for provident funds. Of the TUC's affiliated unions, twenty-one (with a total membership of 1,110,600) were not at the time registered. However, the Act did not make it obligatory for the Unions to register, but it put the unregistered unions at a disadvantage.

To be eligible for registration, a union's rules and structure must conform to the principles embodied in the Act. One of the main objectives of the Conservative Government was to transform the internal structure of unions in accordance with their belief that the imposition of central authority by unions and the exercise of discipline over members would bring about a major improvement in industrial relations. Thus the registered unions were required to indicate in their rules to the satisfaction of the Registrar (a)

both the extent and manner in which the union had power to control the activities of its branches; (b) the powers and duties of the governing body and of each officer and officials, and (c) 'the description of persons eligible for membership' and no exclusion from membership by way of 'arbitrary or unreasonable discrimination'.

In order to bring all unions within the ambit of the law and the surveillance by the Registrar, and to undermine the power of the shop stewards, the Act placed unregistered unions at considerable disadvantages. For example, no unregistered union could apply to the National Industrial Relations Court (NIRC) for the establishment of a bargaining unit. Much more importantly, an unregistered union and its officials would no longer have the protection from liability for inducing breach of contract in furtherance of a trade dispute.

Apart from putting the shop stewards on the defensive, the Act banned political strikes, sympathetic strikes, inter-union strikes etc. It confined strike action to the furtherance of 'an industrial dispute', that is, disputes mainly relating to terms and conditions of employment.

Besides restricting the scope of strike, the Act provided for 'a cooling off period', that is, when negotiations had failed, the Government could apply to the NIRC for an order for deferment of industrial action for up to 60 days, or for a secret ballot where there was doubt as to the amount of support for strike action, in cases of disputes which threatened the national economy, health and security, or created risk of serious public disorder or danger to life.

The Act sought to strengthen the hands of employers. It placed the responsibility for carrying out collective bargaining and ensuring the observance of collective agreements on the unions and employers. It imposed obligations on the union to ensure observance of agreements which were legally enforceable. However, wittingly or unwittingly, the Government provided the unions and employers with a route to escape the rigour of the provisions relating to collective bargaining by inserting a clause in their agreement that they were not meant to be legally binding.

The Act sought to provide individual workers with greater security of employment, and protection against coercive action by the union.[27] Apart from the protection afforded by the clarity of the union rules in regard to conditions of membership, of expulsion etc., the Act established the right to belong or not to belong to a trade union. It banned pre-entry closed shop agreement. ('Closed shop' refers to a situation in which employees come to realise that a particular job is only to be obtained and retained if they become and remain members of one of a specified number of trade

unions.[28]) However, the Act allowed the employees to set up an 'agency shop', that is, one in which all employees were expected to join the union *after* getting their jobs provided a majority of employees wanted them and provided they provided for adequate safeguards against misuse of trade union authority and did not bar employment to genuine 'non-conformists'. However, those who still did not want to joint the union would be required to pay a sum equal to the subscription either to the union funds or to an appropriate charity.

Besides incorporating the industrial Tribunals, the Commission on Industrial Relations and the Industrial Arbitration Board into the scheme of the Act, it set up the Industrial Relations Court (NIRC) with status similar to a High Court to adjudicate on major issues.

REPRESENTATION AND PRESSURE

There could be differences of opinion on whether the reforms envisaged by the Act were desirable or not. The Conservatives could well argue that reform of the industrial relations were an integral part of their attempt to put Britain back on her feet; and that they had the public opinion behind their reforms and that they had a 'mandate' to put it into practice.[29] But there could hardly be any disagreement on whether the trade unions felt imperilled by the Act. Victor Feather, the General Secretary of the TUC, declared that the Bill was "an attempt to weaken the trade union movement."[30] It was, claimed another trade union leader, "not an Act to deal with industrial relations but an act to deal with power."[31] Hugh Scanlon, President of the Amalgamated Engineering Workers' Union (AEWU), observed: "...it is a class attack, aimed at transforming our Movement into a tame sub-department of the State."[32] Referring to the effect that the Act would have on the structure of the Unions, Jack Jones, the leader of the Transport and General Workers' Union (TGWU), characterised the Act as "a bulwark of bureaucracy": "It seeks to give the unions the alternative of taking all decisions at the centre by bureaucratic, authoritative methods or forcing massive penalties if things go wrong locally."[33]

Realising that the Conservatives might give effect to their industrial relations policy, the TUC had affirmed in its annual conference in September, 1970 "The need to preserve the voluntary basis of industrial relations system" and to oppose "the imposition of any legislation restricting the freedom of the trade union movement, in particular proposals for the legal enforcement of collective agreements and compulsory cooling-off periods."[34]

The TUC made an effort to influence the government's decision before the publication of the Consultative Document. (As distinguished from the White Paper, which lays down government policy, a consultative document puts forward a set of tentative proposals for public discussion and comment.) But the Secretary of State for Employment, Robert Carr, informed them that he would only be prepared to meet them after the publication of the Consultative Document.[35]

The TUC received a copy of the Consultative Document on October 5 and was asked to submit their comments within six weeks. The TUC immediately urged that in view of the wide and complex issues raised in the Document, the time for comments should be extended beyond November 13. But at the meeting between the TUC and Mr. Carr, the latter made it clear that the Government was not willing to extend the deadline for consultation as the Government was not prepared to delay the publication of the Bill. Mr. Carr also told the TUC delegation that the main principles of the Government's proposal were non-negotiable.[36]

The Bill was published on December 3. It followed the Consultative Document fairly closely and such changes as it contained were not helpful to the trade unions. The TUC leaders concluded that the Government was not prepared to enter into meaningful discussions with them on the merit of its proposals, and decided to initiate a public campaign against the Bill.

As a first step the TUC held in November 1970 at the Congress House a conference of the principal officers of all affiliated unions to devise ways and means of organising the campaign of opposition. In the next place, they held a series of weekend sessions to equip the fulltime officers of the unions with teaching materials and some training in using them to conduct day schools and other training sessions to brief workplace representatives, local officials and active members about the implications of the Bill for the trade union movement. In order to organise these training sessions, two tutors' conferences, each for about 35 tutors, were held in late November. The 24-hour training conference took place in December and January. In all 28 conferences were held. 1700 union full-time officers and regional representatives attended them.[37]

In order to mobilise the rank and file opposition, the TUC held nine regional conferences in the major cities of England and Wales. It also organised with Trades Councils and trade union branches 118 meetings in 1971.

The TUC published a number of pamphlets and leaflets such as *Reason* in order to educate its own rank and file in, and to inform the general public of, the TUC's case against the legislation. Three advertisements were in-

serted in January, February and March 1971 in major national dailies and the 21 provincial newspapers with 30 million readers at a total cost of £51,000. Six million copies of a leaflet, *Shut Up and Keep Working*, were delivered to households in 102 towns in Britain by local trade unionists. The TUC also organised a mass petition and presented it to the House of Commons on March 24, 1971, the day before the Industrial Relations Bill was given its Third Reading. Because of a postal dispute at the time the distribution and the collection of petition forms were severely impeded and it obtained only 549,391 signatures.[38]

The highlights of this public campaign were two national demonstrations on January 12 and February 21. On January 12, affiliated unions organised local meetings at workshops during meal breaks and after hours and then they held a national rally at the Albert Hall in London in the evening. The Albert Hall meeting was addressed by Harold Wilson, the Leader of the Opposition and Professor Weddenburn of the London University and Victor Feather.[39] On February 21, an estimated 140,000 trade unionists marched through London from Hyde Park Corner to Trafalgar Square and the Embankment.[40]

While the campaign succeeded in drawing public attention to the unions' opposition to the Bill, it failed to make an impact on the government.

NON-COOPERATION WITH THE ACT

Having failed to change the Government's policy by representation and public campaign, the trade unions decided to boycott the legislation. However, not all the trade unionists were agreed about either the practicality of opposing the legislation or how best to do it.

There were those who wanted to collaborate with the Act not so much because they liked the Act but because they felt that they required the advantage of an 'agency shop' as their work force was very unstable, engagements often of very short duration and unemployment high. At the other end of the spectrum of opinion were the extremists who constituted a small minority. Beyond expressing the belief that the trade unions should fight the Government on as wide a front as possible by strike action, they were vague and hesitant on specific action.

However, the policies that the TUC pursued were a compromise between the cautious opposition led by Victor Feather and the other moderate leaders, and the radical opposition represented by Jack Jones and Hugh

Scanlon. Both the sections were agreed about the need to come to an understanding with the Labour Party for the eventual repeal of the Act and to avoid confrontation with the employers and seek their co-operation to bypass the Act. They, however, differed on the question of the use of limited strike action. While the moderates were on principle opposed to all forms of strike action, the radical elements were in favour of limited strike action. There was another important difference. Unlike the radicals, the moderates were not in favour of mandatory non-registration; while recommending non-registration they wanted to leave the decision to individual unions.

There were, however, important differences within what we have described somewhat arbitrarily as the radical camp. Jack Jones' attitude to strike action was somewhat ambivalent. But Hugh Scanlon had no qualms about it. Secondly, unlike Scanlon, Jack Jones was not prepared to encourage action not authorised by the TUC. Thirdly, faced by the threat of massive fines for failure to comply with the orders of the Industrial Relations Court, Jack Jones was in favour of appearing in defence before the Court. But Hugh Scanlon remained uncompromising.[41]

The main initiative for an extreme militant line came from the paper workers, SOGAT (Society of Graphical and Allied Trades — Division I) and from the Liaison Committee for the Defence of Free Trade Unionism.

The Liaison Committee for the Defence of Free Trade Unionism has been characterized as one of the 'front' bodies of the Communist Party.[42] It was undoubtedly under communist influence, but it attracted the support of all sorts of people from the old fashioned Labour Party left wingers, Trotskyists, to many rank and file workers dissatisfied with the moderation of the trade union leadership. It was set up early in 1966 to fight the Harold Wilson Government's Prices and Incomes Policy. It was responsible for the 1969 May Day strike in protest at the Labour Government's attempt to reform industrial relations. Though it severely disrupted the docks and newspaper production, the strike call went largely unheeded in industry.[43]

The Liaison Committee for the Defence of Free Trade Unionism organised a conference of shop stewards in the middle of November, 1970 in order to rally them against the legislation. About 2,000 shop stewards from all sectors of industry were present. It was, indeed, 'the biggest gathering of trade union militants in recent years'.[44]

There were calls for a general strike from the floor, but the delegates proceeded cautiously and called for a one day strike on December 8, 1970 — which was officially supported by three unions, other than the SOGAT, Constructional Engineers, Draughtsmen and Allied Technicians,

Lightermen.[45] The strike was not very successful; between 350,000 and 600,000 workers struck.[46]

The Liaison Committee called another conference on April 24, 1971. But only half of the delegates who had attended the first meeting turned up. For lack of support and enthusiasm, they decided not to adopt a proposal for further strike action. Instead they decided to strengthen the hands of the radicals and the other extremist elements in the TUC.[47]

The SOGAT made attempts to persuade the Trades Union Congress to adopt an extreme militant line. But all that they could muster was 234,000 votes of which it itself commanded 192,000. 9,789,000 votes were cast against their line.[48]

The Congress not only rejected the industrial action as a major strategy but it also refused, by a narrow majority, roughly five to four, to endorse and use a limited strike action.[49]

The issue was raised at the Special Trades Union Congress in Croydon on March 18, 1971.[50] Both Scanlon and Jack Jones had called an official strike on the 1st March, which had a limited success.[51] On the very day the TUC was meeting in Croydon, there was a strike organized by Scanlon's Amalgamated Union of Engineering Union and supported at the last moment by Jack Jones' Transport Workers.[52] In the next place, in its Report to the Congress, the General Council's rejection of the industrial action was hedged in with qualifications; it rejected it not on grounds of principle, but on practical grounds.[53]

But in his speech to the Congress, Victor Feather, rejected the use of the industrial action in no uncertain terms. He made it clear that the TUC did not consider itself above law and was only thinking of non-cooperation with the Act and the machineries it had set up:

> "The fact that a law is offensive to a particular grouping of people does not entitle that grouping, no matter now vast and how important it is, deliberately to break the law. Trade Unionists are not either individually or collectively above the law or outside the law and have never wished to be so...
>
> Instead, they are proposing that the movement should adopt a policy of non-cooperation. By that they mean that unions should refrain from availing themselves of any of the so-called advantages conferred by the Act; that they should avoid in every legitimate way the limitations that the Act seeks to impose."[54]

Although no systematic attempt to use the strike action in order to defeat the legislation was made, there were still occasional strikes or threat of strike.

For example, the TUC itself threatened to call a strike when five dockers were put into jail. Following picketing by dockers, the Midland Cold Storage Ltd., Hackney, complained on July 7, 1972 to the NIRC which issued an interim order, to seven dockers to refrain from threatening to black company. ('Blacking' takes place when a union puts a ban to working for, and servicing, a company.) On 21 July the Court found that five of the seven dockers had disobeyed the order and ruled that they be imprisoned, which they were.

The trade unionists were outraged. The TUC leaders met on 24 July the Prime Minister, Edward Heath, and pressed him for their release. They emphasized that the longer they were imprisoned, the worse the situation would become and that widespread industrial action would ensue. Heath told them that the government was also deeply concerned about the possible economic consequences, but the government could not interfere with the operation of the Courts.

However, the TUC leaders were disappointed at the outcome of their conversation with the Prime Minister. The General Council decided on 26 July to call on affiliated unions to organise a one-day stoppage of work and demonstrations on Monday, 31 July for the release of the five dockers. However, the Government had second thoughts and later on the same day the men were released, and the threatened strike was called off.[55]

Following the compulsory collection of the fine of £55,000 by the NIRC for defiance of its orders, the AEUW called on its members to "defend the policy of the union". On 11 December, 1972 about 1,000 of 13,000 workers of Sudbury factory of CAV Ltd. struck and next day decisions to call out engineering workers in London, Manchester, Oxford and Dagenham and elsewhere were taken. The day fixed for this strike, 18 December, saw 100,000 engineering workers out, with the total rising to an estimate of 165,000 on 20 December. After that the protest died away.[56]

Although Jack Jones and Hugh Scanlon were unsuccessful in securing the support of the TUC to the use of the limited strike action, they were successful in persuading the Congress to accept eventually their policy on non-registration. It has been seen that it was through the device or registration that the Government sought to bring the unions under its surveillance, although the unions were not obliged to register. 'Collaborators' were all in favour of registration. While agreed on a policy of non-registration, the moderates and radicals differed on the question whether the TUC should merely recommend to its affiliated unions non-registration or should require them to pursue a policy of non-registration.

At the Special Congress held in March, 1971 in Croydon, the TUC upheld the voluntary non-registration by 5,055,000 to 4,284,000, i.e., a majority of 771,000.[57] But at the Congress held in September in the same year, it reversed its decision by a majority of 1,125,000, despite the pleadings by Victor Feather and the other moderate leaders to stand by the Croydon decision.[58] What made the majority of trade unionists change their mind was the fear that short of a binding policy, a great number of unions would opt for collaboration with the Act. As *The Times* reported at the time: "A change of policy by the woodworkers and public employees' union largely accounted for the reversal of this today..."[59]

Encouraged by their success at the TUC Annual Conference of 1971 and exasperated by several legal proceedings brought against their unions before the NIRC, Hugh Scanlon, backed by Jack Jones, went all out in the next Annual Conference to secure the support of the rank and file to commit the TUC to a tougher line of action, "to build a campaign of industrial action designed to defeat the government and its policies of legal restrictions on the trade union movement."[60] But the rank and file rejected their motion by a majority of 2,198,000.[61] (The original motion tabled by the Engineering Union did not mention that the campaign of defiance should be directed by the TUC leadership, but at the insistence of the Transport Workers' Union, the resolution was amended to include this.)

Thus the policy that the TUC pursued was a compromise between the position adopted by the moderates led by Victor Feather and the radicals led by Jack Jones. The compromise was possible as a number of unions including the National Union of Public Employees, Association of Cinematograph Television and Allied Technicians, the National Union of Mineworkers (NUM) switched their position.[62] However, in supporting the mandatory non-registration they did not, as the NUM made it clear, go over to the stronger line of the AUEW and TGWU.[63]

Two other points should be noted. First: the division of opinion cut across various types of union. The six big unions took different lines. While National Union of Municipal Workers Union and Union of Shop, Distributive and Allied Workers Union backed the moderate line, the radical line was spearheaded by the Engineering and Transport Workers' Unions. While the NUM cast its vote on specific issue, the National Union of Railwaymen remained non-committal. The white collar unions were also divided among themselves. For example, Clive Jenkins' Association of Scientific, Technical and Managerial Staff backed the radical line, but the National and Local Government Officers Association supported the moderate line. The manual workers were also ranged in opposite camps. Thus the Union of Post Office Workers backed the radical line, but the Na-

tional Union of Agricultural and Allied workers voted for the moderate line. Second: except for a hardcore of collaborators and the occasional defiance of the strike decision, the minorities accepted and adhered to, the decisions of the majority.

Faced with the grave implications of expulsion several unions such as the United Society of Engineers, Electrical Power Engineers' Association, Society of Shuttlemakers, Scottish Union of Power and Loom Overlookers, Scottish Union of Bakers deregistered themselves. However, the National Graphical Association, which had been suspended, withdrew from affiliation to the TUC in October, 1972. Another 20 Unions with a total membership of 370,000 refused to deregister themselves and to fall in line. Most of them were very small unions with the exception of the National Union of Seamen. These 20 unions were eventually expelled.[64] However, every effort was made to persuade them to fall in line.[65] They were also given opportunities to represent their case both to the General Council and the TUC and were heard in both forums with dignity and propriety.[66] It appears that the TUC eventually expelled them only with great reluctance. Nor did the TUC show any vindictiveness. Once the Act was repealed and the controversy was over, the TUC received all of them back into its fold with the exception of a very small union — the National Union of Basket Cane Workers and Fibre Furniture Makers with a recorded membership of 48 which disbanded itself after its suspension.[67]

Non-cooperation with the Court

The TUC's boycott of the Act and its institutions led to mass resignations from the panel representing the employee side of industry for service on the Industrial Tribunal. By April 1972, 162 of a total of 201 trade union nominees on Tribunals had resigned. Of the remaining 39 nominees, 17 refused to resign. Maurice Macmillan, Secretary of State for Employment acknowledged on November 19, 1973: "There are no official trade union nominees".[68] The Government had to alter the representation so that members could be drawn from one panel with knowledge and experience of industry.

In addition there were several notable resignations. In March 1971 George Woodcock, the former TUC General Secretary, resigned his £11,000 a year job as the Chairman of the Commission on Industrial Relations.[69] Two other members, Will Paynter and Alfred Allen, had already resigned in December 1970 in protest at the role assigned to the Industrial Relations Commission by the Bill.[70]

But complete non-cooperation with the National Industrial Relations Court proved difficult. Several actions were brought against some unions by a few employers, and individuals for alleged 'unfair industrial actions'. In particular the Transport and General Workers' Union and the Engineering Union found themselves in an invidious position. Both the Unions were faced with massive fines for breach of the penal provision of the Act and for contempt of the Court for failure to carry out the Court's orders. For example, the Transport and General Workers Unions was faced on April 21, 1972 with a fine of £55,000 for continuing contempt of the Court, for its failure to stop the dock workers from 'blacking' the vehicles of Heaton's Transport (St Helens) Ltd. (The case arose out of a dispute between two groups of workers belonging to two different sections of the Transport and General Workers' Union as a result of the spread of containerization. Dockworkers wanted to ensure that containers were 'stuffed and stripped' by themselves and not by road transport workers at inland container depots. To achieve this, during the early months of 1972 they 'blacked' the lorries of a number of transport companies engaged in this work and picketed transport depots.)[71]

The President of the NIRC, Sir John Donaldson, made it clear on 20 April 1972 that the TCWU's funds would be sequestered if the fines of £55,000 were not paid by 4 May.[72] On 24 April, the TUC General Purposes Committee decided to allow unions to defend themselves before Court.[73] The TGWU allowed itself to be represented for the first time on 3 May. Since then several unions were represented before the Court, where their interests had been threatened, or where they stood to gain from the resolution of a recognition dispute.

However, Scanlon's AUEW persisted in a complete boycott and defiance of the Court, which cost it fines of £55,000 over the Goad case, and £75,000 over the Con-Mich case in November 1973.[74]

The trade unions, however, received a shot in the arm when the Government invoked the emergency provisions of the Act on the occasion of the railway dispute. After negotiations on a pay claim had broken down, the three railway unions ASLEF (Associated Society of Locomotive Engineers and Firemen), NUR (National Union of Railwaymen) and TSSA (Transport Salaried Staffs' Association) instructed their members to work to rule from midnight on 16 April, 1972, with the result that existing disruption of rail services arising from unofficial action was sharply increased.

Maurice Macmillan, then Secretary of State for Employment, applied to the Court for 'a cooling-off' period under section 138 and on 19 April was granted one of 14 days during which the work to rule ceased.

The TUC leaders had warned the Secretary of State for Employment that the Government appeared to be acting hastily and to be ruling out any possibility of further negotiations. They told the government that the difference between the Railway Board and the railway unions appeared to be marginal and could be settled by negotiations. And they advised that a compulsory ballot was unnecessary.

The cooling-off period expired on 8 May and industrial action resumed the following day. The Government applied on 11 May to the NIRC for a ballot of railwaymen. The unions opposed this in the NIRC hearing (held on 11, 12 and 13 May). The NIRC ordered the ballot on May 13. The Unions appealed immediately to the Court of Appeal, which, however, upheld on 19 May the NIRC's judgement.

Meanwhile, since 13 May the CIR had been arranging for the ballot to take place and the industrial action suspended in accordance with an order by the NIRC. The ballot results were declared on 31 May and showed overwhelming support for the unions' leadership. 129,441 railway workers effectively voted in support of the three unions, 23,181 voted against, and 1,567 abstained.[75] The results were a set back for the government, for one of its assumptions had been that the rank and file trade unionists were moderate and given opportunity to determine strike decisions were likely to oppose them.

UNDERSTANDING WITH THE CBI

The Confederation of British Industries (CBI) and the employers occupied a strategic position in the Unions' campaign of non-cooperation with the Act and its machineries. As *The Guardian* put it in a leading article on the publication of the Consultative Document: "...the onus for taking action under all its principal provisions still lies with employers. Will they use the new opportunities for litigation? Those who are experienced in labour relations probably will not. They know that in the unhappy circumstances when a stand up fight with a union becomes inevitable the law will offer them little help."[76]

Since 1965 the Confederation of British Industries had been in favour of changes in the law which would improve industrial relations. British employers had been, the CBI told the Donovan Royal Commission, "extremely reluctant in the past to go to law on industrial relations matters (e.g. to sue for damages for breach of contract), but they were willing to consider changes in the law which would on balance improve industrial relations."[77] The CBI specifically asked, among others, for legal enforcement of collective agreements, restriction of legal immunity in tort to registered trade

unions and to acts in furtherance of a trade dispute between workers and their employers, and strikes and other industrial action in accordance with agreed procedures or strikes after appropriate notice to terminate employment had been given, new powers for Registrar of Trade Unions.[78]

The CBI welcomed the Industrial Relations Bill. They, however, had reservations on two points. They thought that the pre-entry closed shop should not be outlawed if both the parties agreed that such an arrangement should exist. Secondly, and perhaps much more importantly, the CBI felt that the proposed new Registrar of Trade Unions should be provided with wider and stronger powers; that the Registrar should police labour agreements rather than leaving the onus on employers to deal with recalcitrant workers and unions. The CBI made it clear to the Government that few employers would take their industrial problems to the NIRC because of the consequent damages that might be done to a company's labour relations.[79]

But the Government resisted the CBI's two demands. Finding that the TUC and most of the Unions were determined to resist the Act, the CBI decided to sit on the fence. They adopted the attitude that it was a matter between the government and the unions, and they advised their members not to provoke the Unions. Thus faced with the prospect of a strike on January 12, 1971 the CBI merely recorded: "We strongly deplore any industrial action for political reasons that disrups production in this critical inflationary period. We are only concerned with what happens inside working hours, so we cannot criticise the official TUC line, nor can we criticize individual trade unions. We have to wait and see what happens."[80]

Far from taking legal action against the individual unions and insisting on legally binding collective agreements, the employers helped practically the Unions to bypass the Act. Most employers did not support attempt by the non-TUC unions and staff associations to secure recognition; no union had any difficulty in incorporating a not-legally enforceable clause in collective agreements; a few employers had made allegations of unfair industrial practices to the NIRC which had in a very few cases created difficulties including heavy fines on TGUW and AUEW, but employers in general had understood that the threat of legal action against the unions and their members were more likely to cause a deterioration in an industrial situation than to assist in promoting settlement.[81]

Pressed by the TUC, the CBI had declared its agreement with the TUC that "collective bargaining is best brought to a satisfactory conclusion by voluntary means", and had advised the employers not to use the Act without carefully considering all the possible implications.[82]

The CBI further agreed with the TUC that "the conflict between Government's role as manager of the economy on the one hand, and as agent for the promotion of industrial peace on the other has undoubtedly weakened the confidence of unions in the impartiality of government-produced conciliation and arbitration, particularly in pay disputes."[83] And the CBI fully cooperated with the TUC to set up a new non-governmental Conciliation and Arbitration Service first to deal with disputes of major importance in which a stoppage of work had occurred or was apprehended.[84]

Finally, the CBI came to the conclusion before the end of September, 1973 that far from improving the industrial relations, the Act had worsened them. A working party of eight leading CBI members produced a confidential report suggesting changes including abandonment of the proposed registration requirements, and end to legal enforceability of collective agreements, and possible repeal of the emergency powers for secret ballots and 'cooling-off periods', which might be introduced.[85]

UNDERSTANDING WITH THE LABOUR PARTY

The relations between the political and industrial wing had become very strained following the Wilson Government's attempt to introduce reforms in the industrial relations.[86] But the trade unions' intense opposition to the Industrial Relations Act, 1971 brought the two sides together and helped heal the breach between them and laid the foundations for Wilson-Callaghan Labour Governments which first took office in February 1974.

What the TUC wanted was an unequivocal declaration from 'the political movement' that the next Labour Government would repeal the heinous Act. The Left-wing Tribune Group was first to suggest that a Labour Government should do so.[87]

But aware of the fact that the Labour Government of 1964-70 had tried to reform industrial relations and mindful of the consequence such an understanding would have on the public opinion, the leadership of the Parliamentary Labour Party (PLP) held out and made the pledge to repeal the Act conditional on a constructive alternative to legislative reforms. Thus the PLP called upon in December 9, 1970 "the National Executive Committee of the Labour Party (NEC), in conjunction with the Parliamentary Labour Party and the Trades Union Congress to develop a constructive alternative to the Tory Bill which will ensure workable accord between the future Labour Government and the Unions and members to be put to the electorate as a firm basis for the repeal of the Industrial Relations Bill now

before Parliament."[88] Harold Wilson, speaking to the Albert Hall rally on January 12, 1971 reiterated the call.[89]

This failure on the part of the PLP to give a prompt unconditional pledge rankled many trade unionists, who were still smouldering under resentments against the PLP for having supported the Wilson Government's attempt to introduce reforms embodied in the White Paper, *In Place of Strife*.[90]

While giving vent to the trade unionists' sense of frustration and disappointments at the Wilson Government's responsibility in opening the pandora's box of the industrial relations reforms and at the PLP leadership's hesitation in giving an immediate undertaking, T. Jackson of the Union of Post Office Workers moved successfully a resolution the terms of which were not very different from those laid down by the PLP on December 9.[91]

Having agreed on the immediate repeal of the Industrial Relations Act and on the principle of voluntary as distinguished from statutory reforms, the TUC, NEC and the PLP established in January, 1972 a Liaison Committee comprising six representatives from each body to work out 'a constructive alternative to the Act.'[92] The TUC were represented by Victor Feather, Jack Jones, Hugh Scanlon, Lord Cooper and Sir Sidney Greene. The NEC representatives were Anthony Wedgwood Benn, M.P., Mrs. Barbara Castle, M.P., Ian Mikardo, M.P., J. Chalmers, A. Kitson and Sir Harry Nicholas. The PLP was represented by Harold Wilson, James Callaghan, Dennis Healey, Douglas Houghton, R. Mellish and Reg Prentice.[93]

It was this high powered body which drew up the so-called 'social contract' which helped the Labour Party to form a minority government in February 1974 and a majority government in October, 1974. It is not possible to describe here in details the terms of this understanding. Broadly speaking the Trade Union leaders undertook to cooperate with a Labour government to restrain wage demands and help in fighting against the inflation while the Labour Party undertook to repeal the Industrial Relations Act and to hold down prices of essential commodities by control and subsidies and to protect the low income group by increase in pensions.[94]

The Act was repealed by the Wilson-Callaghan Labour Government that came into office in 1974. However, the call for the repeal had come not only from such quarters as the Liberal Party,[95] but also from Campbell Adamson, the Director-General of the CBI.[96] The Conservative Government had let be known that it was prepared to review the working of the Act and consider constructive amendments to it.[97]

However, the legislation which replaced the Act went beyond the repeal and aroused intense controversies for making the closed shop legal.

CONCLUSION

The way the trade unions fought the Industrial Relations Act 1971 was not contrary to the rule of law or the parliamentary system of government. They first attempted to influence the government decision by representation. But the Government refused to enter into meaningful discussions on the principles of the Bill. The doctrine of mandate could be invoked to justify such a refusal. But it is, as A.H. Birch points out, inaccurate to portray the British system of government as one in which the electors, by preferring one set of policies to another, give the successful party a mandate to translate its policies into practice during the ensuing five years. The parties do not usually present coherent programmes of action in their election manifestos; they merely outline their general objectives. Second: these policy statements influence the voting behaviour of only a very small proportion of electors; people are influenced by traditional loyalties, by the general image that each party presents and by the record of the government of the day, but not to any great extent by election promises. Third: election promises are a poor guide to the actions of the successful party after it has taken over the government: circumstances change, and plans usually have to be modified accordingly.[98] Much more importantly, this refusal to negotiate with the trade union on the fundamentals of the Bill constituted a departure from the practice and convention of consultation which have developed since the second World War. This refusal to discuss anything but the details of the Bill was taken as a grave affront by all trade union leaders. And what they found objectionable was not only the substance of the Bill but also the manner of enacting it.

The trade unions then tried unsuccessfully to influence the government decision by public campaign — by demonstrations, public meetings, petition etc. This was quite in keeping with the conventions of pressure group activities in Britain (and other western democracies). Sections of employers have in the past indulged in such campaigns.[99] What apparently, however, went beyond conventional activities was the non-cooperation with the Act.

Two broad points should be noted. First: given the present system of institutions which enshrine only representation of parties, a pressure group which does not find a hearing from the government has very little room to manoeuvre other than public campaign, protest and, as a last resort, non-cooperation. Second: the traditional democratic theory precludes us from considering realistically forms of opposition which are operative in the

western democracies other than the institutionalized 'opposition-in-parliament'. It has been argued that peaceful non-violent non-cooperation with a specific law or policy is an extension of the principle underlying 'conscientious objection'.

However, strictly speaking the trade union opposition even fell short of defiance of law. Since registration was voluntary, opposition to it did not constitute a challenge to the legal authority of either courts or the government.

Several other points should be noted about this decision to non-cooperate with the Act and its machineries. First: the trade unions were deeply divided over this course of action. But they took their decision in a democratic way; it was imposed neither by an oligarchy of big unions nor by a determined minority of rank and file activists. The dissidents, a minority of 20 unions, were given every opportunity to represent their case, and rules and procedures were meticulously observed in their suspension and expulsion. And once the controversy was over, they were accepted back.

The trade union peacefully non-cooperated with the Act and the machineries it set up. There was no violence. Nor was the strike weapon used systematically to defeat the legislation; there were occasional strikes more to express the trade unionists' resentments against the Act and the Heath Government. Nor did the trade unions extend their non-cooperation with the Act to the total boycott of the Government; they continued to negotiate with the Government on other matters. They managed to secure the assistance of employers and the Confederation of British Industries to bypass the Act. Finally, they secured the repeal of the Act through a duly constituted Labour Government.

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1 See, for example, E. WIGHAM, *What's Wrong with the Unions?*, Penguin, London, 1961; Paul JOHNSON, 'A Brotherhood of National Misery', *New Statesman*, 16 May, 1975, pp. 652-656; cf. Allan FLANDERS, *Management and Union*, London, Faber & Faber, 1970.

2 'Shop-stewards', who are the representatives of the workers at a plant level, have been blamed particularly for 'unofficial strikes', which represented the overwhelming majority of stoppages — some 95 per cent between 1964-1966. An official strike in one which has been sanctioned or ratified by the union or unions, whose members are on strike, all others being unofficial.

The shop stewards movement in Britain emerged in the First World War when workers, dissatisfied with their wages and conditions, elected their own representatives to deal with the employers on their behalf. Shop stewards led unofficial strikes and were sometimes imprisoned for their actions. By the end of the war they had become an accepted part of the industrial scene. In 1968 there were about 175,000 shop stewards in Britain, compared with about 3,000 full-time trade union officers. The multiplicity of unions, the growth in union membership, the development of workplace bargaining and the managers' preference for informality and their tolerance of custom and practice have tended to increase the power of the shop stewards.

The Donovan Commission stated that it was usually inaccurate to describe shop-stewards as 'trouble-makers', that there was evidence that trouble was thrust upon them and that 95 per cent of managers found them either very reasonable or fairly reasonable.

See W.E. MCCARTHY, *The Role of Shop Stewards in Industrial Relations:* Research Paper No. 1, Royal Commission on Trade Unions and Employers' Association 1965-1968, HMSO, London, 1968; see also *Royal Commission on Trade Unions and Employers' Associations 1965-1968, The Donovan Commission: Report: Cmnd. 3623* June 1968, London, Her Majesty's Stationery Office, 1975, paragraphs 96-110.

3 The Labour Government of 1964-1970 appointed in 1965 a Royal Commission under the chairmanship of Lord Donovan to consider, among others, the role of trade unions. The Donovan Commission's report was published in June 1968. Following broadly the recommendations of the Commission, the Government outlined in a White Paper, *In Place of Strife*, in January 1969 a series of proposals for reform such as the setting of a Commission on Industrial Relations to examine and make recommendations on questions of Industrial Relations referred to it by the Secretary for Employment, the registration of collective agreements, the right to belong to a trade union, protection against unfair dismissal, the disclosure of information by employers to trade union officials for negotiating purposes, unilateral binding arbitration and the registration of trade unions whose rules complied with specified requirements. The White Paper also contained a number of other proposals such as powers enabling the Secretary of State to require those involved to desist for up to 28 days from a strike or lock-out which was unconstitutional or in which adequate joint discussions had not taken place, and to require a strike ballot in certain circumstances. These provisions became commonly known as the penal clause.

A substantial number of the measures proposed in the White Paper, including the so-called 'penal clauses', were incorporated into an Industrial Relations Bill announced in April, 1969. The trade union movement opposed the Bill, and it was dropped in return for a 'solemn and binding undertaking' by the TUC to intervene in unauthorised stoppages and inter-union disputes. A further Industrial Relations Bill (excluding the 'penal clauses'), published in April 1970, was overtaken by the General Election in June 1970, which was won by the Conservative Party with Edward Heath as the leader. See *In Place of Strife: A Policy for Industrial Relations* Cmnd, 3888, London: Her Majesty's Stationery Office, 1969; Peter JENKINS, *The Battle of Downing Street*, London, Knight, 1978; Harold WILSON, *The Labour Government 1964-1970*, London, Weidenfeld & Nicholson and Michael Joseph, 1971; *Royal Commission on Trade Unions and Employers' Associations 1965-1968: Report* Cmnd 3623, London, Her Majesty's Stationery Office, 1968.

4 MCLENNAN, N., "Approaches to the Concept of Political Opposition: An Historical Overview", in Barbara N. McLennan (ed.), *Political Opposition and Dissent*, New York, Dunellen Publishing Company, 1973, p. 2.

5 MCLENNAN, Barbara N., "Political Opposition in Great Britain", in Barbara N. McLennan (ed.), *Political Opposition and Dissent, ibid.*, p. 305; see also A. POTTER, "Great Britain: Opposition with a Capital 'O' in R.A. Dahl (ed.). *Political Opposition in Western Democracies*, New Haven, Yale University Press, 1966, Ch. 1.

6 See, for example, R.A. DAHL (ed.), *Political Opposition in Western Democracies, op. cit.*, and Ghita IONESCU and Isabel DE MADARIAGA, *Opposition: Past and Present of a Political Institution*, London, C.A. Watts & Co. Ltd., 1968.

7 KATZ, Ellis, "Political Opposition in the United States", in Barbara N. McLennan (ed.), *Political Opposition and Dissent*, New York, Dunellen Publishing Company, 1973, p. 230.

8 MCLENNAN, Barbara N., "Approaches to the Concept of Political Opposition: An Historical Overview", in Barbara N. McLennan (ed.), *Political Opposition and Dissent, op. cit.*, p. 2.

9 See MACFARLANE, Leslie J., *Political Disobedience*, London, The Macmillan Press Ltd., 1971; William A. GAMSON, *The Strategy of Social Protest*, Homewood, Illinois, The Dorsey Press, 1975.

10 See Samuel H. BEER, *Modern British Politics: A Study of Parties and Pressure Groups*, London, Faber and Faber, 1965, Chs. III & XII.

11 IONESCU, Ghita, and Isabel DE MADARIAGA, *Opposition*, *op. cit.*, p. 112; see also S.E. FINER, *Anonymous Empire: A Study of the Lobby in Great Britain*, London, Pall Mall Press Ltd., 1958, PP. 108-109.

12 MOODIE, G.C., and G. STUDDERT-KENNEDY, *Opinions, Publics and Pressure Groups*, London, George Allen & Unwin Ltd., 1970, p. 60.

13 For debates over functional representation, see, for example, S.T. GLASS, *The Responsible Society: The Ideas of Guild Socialism*, London, Longmans, Green & Co. Ltd., 1966; Trevor RUSSELL, *The Tory Party: Its Policies, Divisions and Future*, Harmondsworth, England, Penguin Books Ltd., 1978, pp. 71-75.

14 MOODIE, G.C., and G. STUDDERT-KENNEDY, *Opinions, Publics and Pressure Groups*, *op. cit.*, p. 65.

15 FRIEDRICH, Carl J., *Man and His Government: An Empirical Theory of Politics*, New York, McGraw-Hill Book Company, Inc., 1963, p. 641.

16 FRIEDRICH, Carl J., *Ibid.*, p. 637.

17 LIPSKY, Michael, "Protest as a political ressource", *American Political Science Review*, Vol. 62, December, 1968, pp. 1144-1158. The reference is to page 1145. See also James Q. WILSON, "The Strategy of Protest: Problem of Negro Civic Action", *Journal of Conflict Resolution*, Vol. 3, September 1961, pp. 291-303; Peter BOCKMAN, *The Limits of Protest*, Panther paperback, 1970, in which Bockman contrasts protest movements in support of immediate objectives and single causes with radical protest aiming at the destruction of the central power structure of modern society; D. VON ESCHEN, J. KIRK and M. PINARD, "The Contribution of Direct Action in a Demand Society", *Western Political Quarterly*, Vol. 22, No. 2, June, 1969, pp. 309-325 in which the authors argue that since the negroes were in effect outside the political system, the threat of direct action was necessary to force the political authorities to introduce civil rights legislation.

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19 See Lester A. SOBEL (ed.), *Political Terrorism*, New York, Facts on File, Inc., 1975, Introduction, pp. 1-7.

20 See April CARTER, *Direct Action and Liberal Democracy*, London, Routledge and Kegan Paul, 1973.

21 BONDURANT, Joan V., however, takes the view that all forms of *Satyagraha* are consistent with democracy. See *Conquest of Violence: The Gandhian Philosophy of Conflict*, Berkeley and Los Angeles, University of California Press, 1967, Chs. III & VI.

22 SPITZ, D., "Democracy and the Problem of Civil Disobedience", *American Political Science Review*, Vol. 48, No. 2, June 1954, pp. 386-403.

Cf. H.E. DEAN, "Democracy, Loyalty, Disobedience: A Query", *Western Political Quarterly*, Vol. 8, No. 3, December, 1955, pp. 601-611. See also Stuart M. BROWN, "On Civil Disobedience", *Journal of Philosophy*, Vol. 58, No. 21, 12 October, 1961, pp. 653-665.

23 See Committee of Members of the Inns of Court Conservative and Unionist Society, *A Giant's Strength*, Christopher Johnson, London, 1958; Conservative Political Centre, *Fair Deal at Work: The Conservative approach to modern Industrial Relations*, London, 1968.

24 *The Guardian*, October 6, 1970, p. 1. See also "First Smack of Firm Government",

The Economist, London, October 10, 1970, pp. 13-15. While considering the proposals 'fair and moderate', *The Times* thought: "They will probably become the accepted basis for industrial relations, but they will certainly be rejected by the Unions." See the leading article, "Fair and Moderate Reform", *The Times*, October 6, 1970, p. 11. Labour columnist of *The Director*, London, the journal of the Management observed that Heath and Robert Carr deliberately opted for a policy of confrontation with the union; they appeared to have based their policy on the belief that "it would be futile for the government to try to do business with a TUC in which the militant twins, Jack Jones and Hugh Scanlon, hold such sway and influence." Prospero, Labour, *The Director*, March, 1971, p. 326.

25 Department of Employment and the Central Office of Information, *Industrial Relations Bill — Consultative Document*, DEP, 1970; *Industrial Relations Act 1971, Registration*, Department of Employment, 1971, Industrial Relations, *A Guide to the Industrial Relations Act 1971*, Department of Employment, 1971; see also *TUC Handbook on the Industrial Relations Act*, Trade Union Congress, London, 1972.

26 See ROBERTS, B.C., "Fair Deal at Work", *British Journal of Industrial Relations*, Vol. 6, 1968, pp. 360-363.

27 The Donovan Commission did not find the abuse of power as widespread. Less than 1 per cent of 494 trade unionists surveyed by the Government social survey for the Commission knew of cases where trade union members had been unfairly treated by the union or members of their union and even in these cases there was little evidence that actual unfair treatment occurred. However, the Commission thought that this did take place on occasions. A number of alleged instances was drawn to their attention by the individuals affected, by Members of Parliament, and others. See *Royal Commission on Trade Unions and Employers' Associations 1965-1968: Report June, 1968, op. cit.*, paragraphs 619-623.

28 See MCCARTHY, W.E.J., *The Closed Shop in Britain*, Blackwell, London, 1964; see also *Royal Commission on Trade Unions and Employers' Associations 1965-1968: Report, op. cit.*, paragraphs 587-618.

29 See National Unionist and Conservative Association, *Putting Britain Right Ahead* (1965), *Action Not Words* (1966), *Fair Deal At Work* (1968), *A Better Tomorrow* (1970); D.E. BUTLER and Donald STOKES, *Political Change in Britain: Forces Shaping Electoral Choice*, Pelican, London, 1971, p. 210; cf. the results of the Conrad Jameson Associates' survey, *The Observer*, London, 9 February, 1969, p. 11; see also The Times' Survey, *The Times*, September 8, 1972, p. 2.

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33 In his speech to the 1972 Annual Conference at Blackpool as cited in *Report of the Proceedings of the 71st Annual Conference of the Labour Party 1972*, p. 123, Col. 2.

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35 See the T.U.C. General Council's Report to the Special Trades Union Congress, Croydon, 18 March, 1971 as cited in T.U.C., *Report of 103rd Annual Trades Union Congress*, Blackpool, 6-10 September, 1971, p. 345.

36 *Ibid.*, pp. 339-349.

37 *Ibid.*, pp. 96-97, pp. 146-147.

38 *Ibid.*, pp. 96-97; see also *The Times*, March 25, 1971, p. 10, Col. 6.

39 *The Times*, January 13, 1971.

40 *The Times*, February 22, 1971.

41 See for the differences in approach between the TGUW and AUEW, C.H. URWIN and T.L. JONES of TGUW in the *Proceedings of the 105th Annual Trades Union Congress*, 1973, p. 442, Col. 1 and p. 511, Col. 1, p. 512, Col. 2, and K. Gill of AUEW, *ibid.*, p. 512, Col. 2, p. 514, Col. 2.

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44 *The Times*, November 16, 1970, p. 17, Cols. 4 & 5.

45 *The Times*, November 16, 1970, p. 17, Col. 4; *Ibid.*, December 1, 1970, p. 3, Col. 3; *Ibid.*, December 2, 1970, p. 1, Col. 2.

46 *The Times*, December 9, 1970, p. 21, Col. 6.

47 *The Times*, April 26, 1971, p. 2, Col. 4.

48 See T.U.C., *Report of the Proceedings at the 103rd Annual Trades Union Congress*, 1971, p. 448; see also *Ibid.*, pp. 429-430; see also the speech of V. FLYNN and W.H. KEYS of the Society of Graphical and Allied Trades — Division A, *ibid.*, p. 429, Col. 2 — p. 432, Col. 2.

49 See the proceedings of the Special Trades Union Congress held in Croydon on March 18, 1971 as reported in *The Times*, March 19, 1971, p. 4, Col. 8.

50 *The Times*, March 19, 1971, p. 4.

51 *The Times*, March 2, 1971, p. 1, Cols. 1-3; see also *The Economist*, March 6, 1971, p. 25.

52 *The Times*, March 4, 1971, p. 1, Col. 2, and March 12, 1971, p. 3, Col. 1; and *The Times*, March 19, 1971, p. 1, Col. 4.

53 See Annex to the General Council's Report to the Special Trades Union Congress held in Croydon, March 18, 1971 in T.U.C. *Report of 103rd Annual Trades Union Congress, Blackpool, 6-10 September, 1971*, pp. 347-348.

54 See the proceedings of the Special Trades Union Congress in Croydon, March 18, 1971 as reported in *The Times*, March 19, 1971, p. 4, Col. 3.

55 See *The Times*, 22 July to 1 May, 1972.

56 See *The Times*, 12-21 December, 1972; for facts of the case see below f.n. 74.

57 See *The Report of the General Council to the 103rd Annual Trades Union Congress, Blackpool*, 6-10 September, 1971, p. 99.

58 *Ibid.*, p. 448; see Victor FEATHER's speech, *ibid.*, p. 446, Col. 2 to p. 448, Col. 1.

59 See "TUC plays it hard and soft on strike laws", *The Times*, September 8, 1971, p. 1, Col. 7; see also John TORODE, "The Road from Blackpool Pier", *New Statesman*, 10 September, 1971, p. 319 and David HAWWORTH, "TUC split down middle on Industrial Relations Act", *Observer*, 5 September, 1971, p. 3.

60 See for the full text of the resolution, *Report of the Proceedings of the 105th Annual Trades Union Congress, 1973*, p. 440, Col. 2.

61 See *ibid.*, p. 446, Col. 2.

62 See *Proceedings of the 103rd Annual Trades Union Congress, 1971*, p. 443, p. 437.

63 See the speech of L. DALY, National Union of Mineworkers, *ibid.*, 1971, p. 437, Col. 1.

64 See *Proceedings of 105th Annual Congress, September 3-7, 1973*, p. 432, Col. 2 — p. 440, Col. 1; *Proceedings of 106th TUC Annual Congress, September 2-6, 1974*, p. 65.

65 See the case of National Union of Seamen, 'Supplementary Report A: Annex B: General Council's Report to the 1972 Congress' in TUC *Report of 104th Annual Trades Union Congress, Brighton, September 4-8, 1972*, pp. 327-335.

66 See the *Proceedings of 105th TUC Annual Congress, September 3-7, 1973*, p. 432, Col. 2 — p. 440, Col. 1.

67 See *The General Council's Report to the 106th Annual Trades Union Congress, September 2-6, 1974*, pp. 65-67; *The General Council's Report to the 107th Annual Congress*, Blackpool, 1975, pp. 87-88.

68 *Hansard, House of Commons*, vol. 844, November 19, 1973, p. 331, Col. 1.

69 *The Times*, March 26, 1971, p. 1, Cols. 4 & 5: In his letter of resignation George WOODCOCK said that he resigned not only because of the functions assigned to the CIR by the Bill but also because of the TUC's policy of non-cooperation with the Act.

70 *The Times*, March 26, 1971.

71 Heaton's Transport (St Helens) Ltd., TGWU, 1972, *The Times*, April 21, 1972, p. 1, Col. 3 and p. 16, Col. 2; *The Times*, May 2, 1972, p. 1, Col. 6 and p. 2, Col. 2.

72 See *The Times*, 21 April, 1972; see also for cost of defiance of the Industrial Relations Act, *ibid.*, May 29, 1973, p. 4, Col. 8.

73 See the *General Council's Report to the 104th Trades Union Congress, September, 1972*, p. 87.

74 See, for example, GOAD v. AUEW, 1972: Mr. Goad had worked at Sudbury factory of CAV Ltd. since 1961. He was a member of the Amalgamated Union of Engineering Workers, but in 1967 he refused to take part in an unofficial strike, was tried by a 'court' of shop stewards, and instructed by them to pay his earnings during the strike to charity. He refused and decided to resign from the union, but on being told that there was no provision for resignation, let his contribution lapse.

When, in 1971, he wanted to rejoin the union, the local branch refused him admission. In July 1972, he took his case to an industrial tribunal which ruled that he was a member of the union. The branch ban continued and he applied to the Court which on 3rd October 1972, issued an order that he should not be arbitrarily or unreasonably excluded from branch meetings. (The Union did not appeal against the Tribunal's decision, and did not attend the Court hearing.)

On 30th October Mr. Goad told the Court that, despite the court order, two shop stewards had refused him admittance to a branch meeting. The Court then issued a further order requiring the union to appear before it on 8th November. The union did not appear but wrote to the Court explaining that its policy did not permit its representatives to attend. The Court fined the union £5,000 for disregarding an order to attend the court, and also ordered it to pay £1,000 costs.

A second breach of the order on 1st December 1972, when Mr. Goad was again refused admittance to a branch meeting, resulted in a further fine of £50,000 plus £5,000 costs. The Union refused to pay any of the money which had to be compulsorily collected under writs of sequestration.

See *The Times*, October 9, 1972, p. 1, Col. 5, and November 9, 1972, p. 1, Col. 1; for Con-Mich dispute, see *The Times*, October 22, 1973, p. 2, Col. 4.

75 See *The Times*, April 17 — 1 June, 1972.

76 See the leading article, "Not much in place of strife", *The Guardian*, October 6, 1970, p. 12.

77 See the Confederation of British Industries' evidence before the *Royal Commission on Trade Unions and Employer's Association: Selected Written Evidence*, 1968, p. 244, paragraph 170.

78 *Ibid.*, pp. 244-246, paragraphs 170-189.

79 *The Times*, October 23, 1970, p. 21, Cols. 103.

80 *The Times*, January 11, 1971, p. 1, Col. 2.

81 See *General Council's Report to the 105th Annual Trades Union Congress*, September, 1973, p. 105, p. 106.

82 See *General Council's Report to the 104th Annual Trades Union Congress*, 1972, p. 108.

83 *Ibid.*, p. 108.

84 See *General Council's Report to the 105th Annual Trades Union Congress, 1973*, p. 107.

85 See "Union Act a failure CBI report says", *The Times*, September 7, 1973, p. 1, Col. 5.

86 See Peter JENKINS, *The Battle of Downing Street*, Knight, 1970, Harold WILSON, *The Labour Government 1964-70*, Weidenfeld & Nicolson and Michael Joseph, 1971.

87 See Eric HEFFER's statement, *The Times*, March 22, 1971, p. 3, Col. 4.

88 *The Times*, December 10, 1972, p. 2, Cols. 7 & 8; as cited by Douglas HOUGHTON, *Hansard: House of Commons*, Vol. 808, 16 December, 1970, p. 1152.

89 *The Times*, January 13, 1973, p. 1, Col. 2.

90 *In Place of Strife: A Policy for Industrial Relations*, Cmnd. 3888, January, 1969.

91 See T. JACKSON's speech in *Proceedings of the Annual Trades Union Congress, 1971*, pp. 448-449. The first part of the resolution called upon 'the next Labour Government to introduce legislation immediately to repeal completely the Act and to declare that "it will not introduce legislation that will interfere with the trade union Movement's activities". But the second part of the resolution recognised that "sound legislation would be necessary to replace the Act and offers immediate discussions between the General Council and the NEC of the Labour Party to work out proposals to form the basis of such legislation".

92 See the TUC — Labour Party Liaison Committee statement on Industrial Relations: Appendix 1 in *Report of the 71st Annual Conference of the Labour Party, Blackpool, 1972*, pp. 351-353.

93 *Ibid.*, p. 44.

94 See the statement issued by the General Council of the Trades Union Congress and the National Executive of the Labour Party on 25 July 1973; see Harold Wilson's speech in *Report of the 72nd Annual Conference of the Labour Party, Blackpool, 1973*, pp. 191-198.

95 See Jeremy THORPE's statement, *The Times*, August 10, 1973, p. 4, Col. 4.

96 Campbell ADAMSON in a speech to a Conference of senior managers organised by the Industrial Society, *The Times*, February 27, 1974, p. 1, Col. 4. Adamson's call for repeal on the eve of a general election aroused severe criticism form employers and even from the CBI President, Sir Michael Clapham, who observed that Adamson's remarks went much further than the previous CBI policy on the Act that it should be amended but not repealed. *The Times*, February 28, 1974, p. 2, Cols. 2-4. However, *The Times* reported that a large number of industrialists privately agreed with Adamson and that "There are very few major companies of employers' organisations that would contemplate invoking the Act to deal with shopfloor problems. Some would argue that the existence of the Act is a stumbling block to sensible discussions with the unions about company or industry based agreements on procedures for dealing with disputes." *The Times*, March 5, 1972, p. 17, Col. 2.

97 See Maurice MACMILLAN's answer to questions *Hansard: House of Commons*, Vol. 855, May 1, 1973, pp. 962-966.

98 BIRCH, A.H., *Representation*, London, Macmillan, 1971, pp. 97-100; see also D. BUTLER and D. STOKES, *Political Change in Britain: Forces Shaping Electoral Choice*, Penguin, London, 1971, Ch. 2.

99 See, for example, H.H. WILSON, "Techniques of Pressure — Anti-Nationalization Propaganda in Britain", *Public Opinion Quarterly*, Vol. 15, No. 2, Summer, 1951, pp. 225-242.

Les syndicats et la législation du travail en Grande-Bretagne Le cas de L'*Industrial Relations Act* de 1971

Au cours des dernières années, les syndicats britanniques ont dû faire face à un feu de plus en plus nourri. Leur répugnance à accepter les réformes envisagées par l'Industrial Relations Act de 1971 est citée comme un exemple significatif de leur intransigeance et du fait qu'ils se considèrent au-dessus de la loi. Ainsi, la façon dont ils ont combattu cette loi aurait été, dit-on, contraire à la règle de droit et au système parlementaire. Mais tel n'est pas le cas.

L'*Industrial Relations Act* était l'aboutissement de l'opinion conservatrice qui croyait à la nécessité d'imposer d'une façon radicale un nouvel aménagement des rapports de force dans les relations professionnelles. La loi visait à placer les syndicats sous la surveillance du gouvernement, principalement en les amenant à s'enregistrer de telle manière que ceux qui ne le feraient pas se trouveraient placés dans une situation désavantageuse notable, comme, par exemple, le retrait de la protection contre la responsabilité à ceux qui inciteraient à la rupture de contrat en vue de faire progresser le règlement d'un différend. La loi confinait la grève aux différends relatifs aux conditions de travail; elle interdisait les grèves politiques, les grèves de sympathie et les grèves intersyndicales; elle protégeait les travailleurs pris individuellement contre les pressions et l'intimidation des syndicats. Outre la protection clairement assurée par les statuts syndicaux en matière de conditions d'admissibilité et d'expulsion, etc., la loi établissait le droit d'appartenir ou non à un syndicat; elle interdisait la clause d'atelier fermé avant l'embauchage.

Les syndicats sentirent leur existence même mise en danger par la loi. Ce n'était pas, déclara un dirigeant syndical, «une loi qui traitait des relations de travail, mais une loi qui portait sur les rapports de force».

Les syndicats tentèrent d'abord d'influencer la décision du gouvernement par des représentations. Mais le gouvernement refusa de s'engager dans un débat valable sur le principe du projet. Ce refus de discuter quoique ce soit, si ce n'est de questions de détail, constituait une dérogation à la pratique de la consultation qui était devenue courante depuis la deuxième guerre mondiale, et tous les dirigeants syndicaux le ressentirent comme un grave affront. Et ce à quoi ils trouvaient le plus à redire, ce n'était pas seulement au principe de la loi, mais à la façon de la décréter.

Ils essayèrent ensuite sans succès d'influencer la décision du gouvernement par des campagnes d'opinion: démonstrations, assemblées publiques, requêtes, etc. Ils s'en tenaient ainsi aux usages des groupes de pression en Grande-Bretagne (et dans les autres démocraties occidentales). Des coalitions d'employeurs s'étaient permis de pareilles campagnes dans le passé. Cependant, ce qui apparemment dépassait les convenances, c'était leur refus de coopérer à l'application de la loi.

Compte tenu du système des institutions existantes qui ne consacre que la représentation des partis, un groupe de pression qui ne trouve pas audience auprès du gouvernement n'a guère d'autres ressources que de faire agir l'opinion publique, de protester et, en dernier ressort, de refuser de coopérer. La théorie démocratique traditionnelle nous empêche de considérer avec réalisme les formes d'opposition à l'oeuvre dans les démocraties occidentales, si ce n'est celle de l'opposition institutionnelle du Parlement. On peut soutenir que le refus sans violence de se soumettre à une loi spécifique est une extension du principe à la base de l'«objection de conscien-

ce». Toutefois, l'opposition syndicale n'allait pas jusqu'au défi de la loi. Puisque l'enregistrement était volontaire, le refus de s'enregistrer ne constituait pas un défi à l'autorité légale des cours ou du gouvernement.

Les syndicats étaient profondément divisés au sujet de la décision de ne pas coopérer à l'application de la loi mais ils prirent leur décision d'une façon démocratique. Elle ne fut imposée ni par une oligarchie de grands syndicats ni par une minorité déterminée d'activités de la base. Les dissidents, une minorité de vingt syndicats, eurent tous la possibilité de soumettre leur point de vue et les règlements et les actes de procédure furent méticuleusement suivis lors de leur suspension et de leur expulsion. Et une fois la controverse terminée, ils purent réintégrer les rangs.

C'est par des moyens pacifiques que les syndicats n'ont pas collaboré à l'application de la loi et des mécanismes qu'elle instituait. Il n'y eut pas de violence. On n'utilisa pas non plus systématiquement l'arme de la grève pour faire obstacle à la législation. Il y eut quelques grèves occasionnelles surtout en vue d'exprimer le ressentiment des syndiqués contre la loi et le gouvernement conservateur. Ils ne poussèrent pas non plus leur refus de coopérer jusqu'au boycottage du gouvernement; ils continuèrent à négocier avec lui sur d'autres questions. Ils tentèrent de s'assurer l'aide des employeurs et de la *Confédération of British Industries* pour contourner la loi dont ils obtinrent le rappel d'un gouvernement travailliste dûment constitué.