

September 24, 1979

THE GROWTH OF UNION POLITICAL POWER IN BRITAIN

INTRODUCTION

The most dramatic change in British politics during the last twenty years has undoubtedly been the remarkable expansion in the power of the trade union movement. The enormous industrial power of the unions has been a fact of economic life in Britain for decades, and is responsible for much of the country's current stagnation. But the ability of the unions to exert considerable influence on Parliament and the operation of government - and in recent years virtually to write their own laws - is a new development. The degree of political leverage now enjoyed by British trade unions exceeds that of organized labor in any other democratic country; and according to Sam Brittan, the distinguished London Financial Times columnist, the nation's whole political system consists, in effect, of "government by trade union veto."¹

The people of Britain are fully aware of the dominant influence of the unions, and opinion polls demonstrate repeatedly that the overwhelming majority condemn what they feel to be the excessive power of organized labor. The same view is even held by most trade unionists themselves.² Those who control the major

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1. S. Brittan, "The Political Economy of British Trade Union Monopoly," Three Banks Review, No. 111, September 1976.
 2. A poll published in the London Economist (10 January 1976), for example, found that 74 percent of the adult population felt that "Trade unions have too much power in Britain today." 66 percent of trade unionists expressed the same view.

unions are important people in the land, who affect the lives of every Briton. Indeed, one poll conducted in 1977 showed that a majority of the population considered Jack Jones, the (then) leader of Britain's largest union, to be the most powerful man in the country - he beat the Prime Minister by a 2 to 1 margin.³

It may seem paradoxical that while union power is so resented by the British electorate, successive governments have found neither the means nor the will to dilute it. An analysis of the causes of this failure, and its implications for America, forms the basis of this Briefing.

There are many important differences between the British and American systems of government which would make it more difficult for unions to acquire the same position of dominance in America as they enjoy in Britain. In particular, the separate centers of power which exist in the United States political system present an obstacle to any interest group seeking undue influence. In Britain, the centralized decision-making process lends itself to outside control, and has allowed organized labor to play the leading role in creating or blocking labor legislation.

Trade unions in America are far from acquiring the level of power exercised by organized labor in Britain. Nevertheless, the American labor movement has long sought to bring political pressure to bear on the legislature and executive - with great success in many instances. What is disturbing about the American situation is not the degree of influence of the unions, but the trend of its development. Increasingly, unions are using their electoral strength to organize support for pieces of legislation aimed at enhancing their power. When they are successful in doing this, it enables them to exert more pressure with a view to winning more legislative changes. Each success makes a greater possible. The strategy is essentially the same as that used during this century by the British trade unions - a strategy which has gained them a near stranglehold on the democratic process.

THE NATURE OF BRITISH TRADE UNIONS

Comparisons with American Unions

In certain respects, British trade unions often appear to the foreign observer to be less violent and disruptive than those in America. The statistics do tend to suggest this, and apologists for the unions emphasize the raw figures in an effort to convince outsiders that union power in Britain has been exaggerated. Yet the statistics cloud the true position.

3. The Times (of London), 4 January 1977.

a) StoppagesTABLE I

Comparison of Days Lost through Industrial Disputes (per 1,000 employees)
in the United Kingdom and the United States, 1960-1969
(annual averages)

	<u>1960-64</u>	<u>1965-69</u>
UK	242	294
US	722	1,232

Source: T. G. Whittingham and B. Towers, "Strikes and the Economy"
National Westminster Bank Quarterly Review, November 1971.

As Table I indicates, the United States economy seems to have suffered more from working time lost through industrial stoppages than has that of the United Kingdom. Yet, as any visitor to Britain would testify, strikes still seem to be more widespread and more damaging in their effects than is the case in America.

There are several reasons why British strikes tend to be more disruptive, even though fewer days are lost. In the first place, a very high proportion of stoppages are the result of unofficial action, rather than strikes at the end of a contract period (which is normally the case in the United States). Often these stoppages occur as a result of a local, often petty, grievance directly involving only a few workers, and invariably only a few hours warning -if any - is given to the employer. Since, under British law, a worker's contract is not enforceable, the employer has no legal sanction against such unofficial action. No union, union official, or member can be sued for breach of contract if a worker withdraws his labor (on the other hand, there are severe restrictions on the right of an employer to dismiss a worker in such a situation).

Strikes in Britain are thus very often unexpected, and the result of overzealous, or consciously disruptive, action by local officials. Business finds it difficult to make alternative arrangements and so avoid many of the costs associated with a strike, and the consumer has little chance to seek alternative products or services.

A simple comparison of days lost also masks the fact that strike action tends to be much more effective in Britain. As will be shown later, the British workforce is more heavily unionized than that in the United States, and so a union-backed strike will usually involve all the workers in a factory with a particular skill. Furthermore, British unions coordinate their activities to a degree that would be abnormal (and in several respects illegal) in America. Secondary boycotts and picketing are legal and quite common, and it would be extremely rare for a

union to allow its members to step up production to fill a supply shortfall due to a strike by a brother union in another company.

b) Violence

A comparison of raw data on union violence in Britain and America would also tend to give a misleading impression. Killings, shootings and other open violence is almost unknown in Britain. Other forms of coercion, however, are far more widespread. The physical obstruction of factory gates is a favorite tactic of British unions - made easier by liberal picketing laws which allow unions not involved in a dispute to picket a company.

In one notorious case in north London involving a small photo-processing company (Grunwick), the union seeking recognition in the non-union factory called on the assistance of the miners and other trade unions to mount a daily "mass picket," in an effort to prevent workers entering the factory. Non-striking employees were faced every morning by a solid wall of pickets several hundred strong - only a handful of whom have ever worked for the company. On certain days, reinforcements were brought in by the union to give a clear impression to the company of the power it was challenging: on one occasion 18,000 pickets blocked the gates, and it required over 10,000 police to force an entry for the work force. The company employed less than 300 people.

Obstruction of this type rarely leads to bloodshed, and yet it can be a more successful form of intimidation than open violence. The same may be said of the ability of a union to withdraw membership rights. In Britain there is no "right to work" law, and closed shops are common. In companies where a closed shop operates, the loss of a union card means the loss of a worker's livelihood. Thus a union can exert great pressure on its members to comply with a strike call.

c) Membership

TABLE II

Total Trade Union Membership and Density in the United States and the United Kingdom (selected years 1900-1976)

<u>YEAR</u>	<u>UK</u>		<u>US</u>	
	<u>Total Union Membership (millions)</u>	<u>% of workforce</u>	<u>Total Union Membership (millions)</u>	<u>% of workforce</u>
1900	----	----	0.9	3.0
1901	2.0	12.6	----	----
1920	8.3	45.2	4.9	11.8
1933	4.4	22.6	2.8	5.4
1938	6.1	30.5	5.8	10.7
1945	7.9	38.6	12.1	22.4
1950	9.3	44.1	14.3	23.0

1955	9.7	44.5	16.8	25.8
1960	9.8	43.1	17.0	24.4
1965	10.3	43.2	17.3	23.3
1970	11.2	47.7	19.4	23.5
1976	12.4	52.3	19.4	20.5

Sources: UK

R. Price and G. Bain, "Union Growth Revisited, 1948-1978 in Perspective". British Journal of Industrial Relations, November 1976, p. 340.

Annual Census of Employment, Department of Employment Gazette (H.M.S.O., London), August 1975, August 1976, September 1976, November 1977, December 1977.

US⁴

L. Troy, Trade Union Membership, 1897-1962 (Occasional Paper 92, National Bureau of Economic Research, 1965), p. 2.

Handbook of Labor Statistics, 1975 (US Dept. of Labor, Washington D.C.), pp. 26, 389.

Bulletin B-14 (No. 172), Economic Section (Bureau of National Affairs, Washington, D.C.).

As Table II indicates, there is a marked difference in union density between Britain and the United States. Other than during the years of the depression, British unions have maintained a fairly steady growth in their proportion of the workforce, and currently over half the labor force is unionized. In the United States, on the other hand, union density reached a peak of one-fourth of the workforce in the mid-fifties, and has declined ever since.

To a significant extent, the growth of union membership in Britain was made possible by various changes in the law (to be examined later), which made it easier to organize the labor force. The growth was aided, in addition, by the tendency of successive governments to bring union leaders into the decision-making process: this gave the clear impression to workers that by joining a union they would have a voice at the top.

Not only is unionization more widespread in Britain, but also different types of unions have tended to develop. "Industrial" unions are more prevalent in America: these are unions in which

4. Figures for the US labor force include employers and the self-employed, while the UK figures do not. This does lead to a slight exaggeration of the difference in union density between the two countries.

the membership is drawn from throughout a particular industry, irrespective of craft or grade. This form of union is less common in Britain, although there are some examples (such as the powerful National Union of Mineworkers). More typical in Britain is the "general" union - a conglomerate organization representing skilled and unskilled workers in many industries. The largest of these is the Transport and General Workers' Union, with over two million members.

The general union poses many headaches for an employer. In a large company, the manager may have to deal with several general unions, together with various specialist craft unions, and will be limited in his ability to negotiate by the broad policies of the general unions. To obtain an agreement, he must satisfy the often conflicting demands of the labor spokesmen, and he is susceptible to strike action by any one of the unions involved in the bargaining process.

British unions have been particularly successful in penetrating the white collar workforce. As Table III shows, union organizers have more than kept pace with the growth in white collar employment since the war. Public employees (e.g., teachers and civil servants) have a long tradition of unionism, but this did not tend to be the case in the private sector. It is in that area that unionization has been most intense.

TABLE III

The Growth of White Collar and Manual Unionization in the United Kingdom 1948-1974

<u>(i) Union Membership (thousands)</u>				
	<u>1948</u>	<u>1964</u>	<u>1974</u>	<u>% Increase 1948-74</u>
White Collar	1,964	2,684	4,263	117
Manual	7,398	7,534	7,491	1
<u>(ii) Union Density (%)</u>				
	<u>1948</u>	<u>1964</u>	<u>1974</u>	<u>% Increase 1948-74</u>
White Collar	30.2	29.6	39.4	9.2
Manual	50.7	52.9	57.9	7.2

Source: R. Price and G. Bain, "Union Growth Revisited, 1948-1974 in Perspective", British Journal of Industrial Relations, November 1976, p. 347.

The unions have been even more successful in organizing public employees. Membership of the Confederation of Health Service Employees (representing non-medical staff), for example, has more than tripled between 1964 and 1974. This has led to industrial action becoming a regular feature of the National Health Service.

d) Concentration

There has been a distinct trend in recent years towards the concentration of the unionized workforce in Britain into fewer and larger unions. Between 1960 and 1974, the number of unions in the United Kingdom fell from 664 to 488. Unions representing fewer than 1,000 workers fell in number from 362 to 258, and the proportion of the labor force they controlled fell from 0.9 percent to a meager 0.6 percent. On the other hand, the largest unions expanded greatly during the same period. 17 unions with over 100,000 members existed in 1960, accounting for 67 percent of the unionized workforce. But by 1974 there were 25 unions of this size, and together they represented over 77 percent of union members.

TRADE UNION ORGANIZATION

a) Finance

British unions are very poor compared with their American counterparts. It has been estimated that the total income of American unions in 1975 was only slightly short of \$5.5 billion.⁵ A study of 20 unions in Britain, covering two-thirds of all union members, found that their income for the same year amounted to only \$120 million.⁶ The salaries of British union officials are necessarily lower than those of American union leaders. In 1975, according to one survey, the annual salaries of top union officers in Britain ranged from \$23,000 to just \$9,000.

b) Local Organization

The union branch is the British equivalent of the American local. Normally a branch covers a geographic area, however, and so workers in several companies may be members of the same branch. Most branch officials are unpaid part-timers.

The second tier in the union structure is the district, or region. Districts and regions have full-time paid officials responsible to committees elected by the branches. Unlike most American unions, the district committees do have the power to call a national strike - even when the national committee opposes such action.

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5. John Burton, The Trojan Horse (Leesburg, Virginia: Adam Smith Institute, 1979), p. 22.
 6. Dan Heldman, American Labor Unions: Political Values and Financial Structure (Washington, D.C.: Council on American Affairs, 1977).
 7. C. Story, "Trade Union Finances: British Trade Union Finances in 1975," International Currency Review, vol. 8, no. 4 (1976), pp. 16-20.

Since union branches are organized on a geographical basis, there tends to be a degree of remoteness between the union and its members in a particular factory. This situation has given rise to the development of what has often been described as an "informal" system of industrial relations, centered on union officials known as shop stewards. The shop stewards are elected at the workplace, and their official purpose is to represent members in day-to-day matters with the management.

There is often a good deal of tension between the shop stewards and the more formal union hierarchy. In many companies the shop stewards have formed joint committees, and have sought to extend their role as negotiators - frequently taking a different line to official union policy. There is also a tendency for shop stewards to be more militant than other union officials, and for them to press for unofficial industrial action. The powerful position occupied by the shop stewards is peculiar to the British system of industrial relations, and is a major cause of the state of anarchy in the bargaining process.

c) Inter-Union Activity - The National Level

The Trades Union Congress (TUC) is the British equivalent of the AFL-CIO. The TUC was founded in 1868, and its first congress represented 118,000 union members. At the 1975 TUC Congress, 111 unions sent delegates representing over 10 million trade unionists. As with the AFL-CIO, not all unions are affiliated to the TUC. Nevertheless, all the major unions are members and TUC-affiliated unions represented 93 percent of all trade unionists by 1975.

The annual congress determines broad TUC policy, and elects an executive committee - the general council. Elections and policy-making at the congress are decided by block votes cast by each union on the basis of membership levels, a procedure which gives the larger unions a dominant influence. Between the annual meetings, the general council carries out the work of the TUC and executes decisions made at the previous congress.

The TUC has few formal disciplinary powers over its affiliated unions, and so it must normally rely on persuasion. In some cases, such as the ill-fated agreement with the last Labor government to limit wage demands, the general council has been unable to achieve a unified stand within the TUC. On other occasions, it has been very successful in achieving unified action - such as in the case of the very effective campaign to frustrate the trade union reforms enacted by the Conservative government of 1970-1974.

d) Inter-Union Activity - The Local Level

Formal inter-union cooperation on the local level usually takes place through the system of trades councils. Unlike their American namesakes, the councils are not industry-based, but are geographically-defined federations of various trade union branches, similar to the "local control bodies" of the AFL-CIO.

Trades councils are of increasing importance in British unionism. They enable different unions to take flexible, coordinated action at branch level - often in the form of boycotts, sympathy strikes and secondary picketing (which are allowed under present British law). As with the shop steward system, there has been a marked trend for trades councils to fall into the hands of ultra-left union members who see them as a vehicle for mobilizing the power of working people for essentially political purposes.

TRADE UNIONS AND THE BRITISH LABOR PARTY

History

The interlocking structure of the British trade union movement is only one determinant of union power. Even in the purely economic sense, the power of organized labor depends to a crucial extent on the body of labor law. The unions have been able to win significant legislative changes through this century which have freed them from the legal restraints applying to other groups in society. Central to the ability of the union movement to obtain pro-labor legislation is its close relationship with the Labor Party.

The Labor Party was once described by Lord Hailsham, the present head of the judiciary, as a "wholly-owned subsidiary" of the unions. This is no exaggeration. As one leading marxist union leader put it recently, "We (the unions) created the Labor Party; we maintain it; it is ours!"⁹

The Labor Party grew out of the TUC's policy of trying to influence labor legislation by securing the election to Parliament of pro-union MPs. Initially, this did not involve the creation of a new party; instead the union worked through the existing Liberal Party. By 1885, the TUC could boast 11 trade union MPs sitting for that party. A special conference in 1900, however, decided to establish a distinct labor group in Parliament

to cooperate with any party which for the time being may be engaged in promoting legislation in the direct interest of labor, and be equally ready to associate itself with any party in opposing measures having the opposite tendency.¹⁰

This led to the formation of the Labor Representation Committee, renamed the Labor Party in 1906.

8. Time, 7 October 1974, p. 63.

9. Arthur Scargill, leader of the Yorkshire Miners, March 1979.

10. B. Simpson, Labour: the Unions and the Party (London: Allen and Unwin, 1973), p. 39.

The Labor Party achieved results very quickly. In the 1906 general election, 29 members of the party were elected to Parliament, together with 25 other MPs committed to pro-union legislation. The group was such a powerful force within the House of Commons that it was able to pressure the Liberal government into passing the 1906 Trade Disputes Act, which was the first of a series of political concessions to the growing influence of trade union politicians.

The parliamentary Labor Party grew so rapidly that it was able to form a minority government in 1924 and in 1929. In 1945, it was swept to power, defeating Winston Churchill's Conservatives, with an overwhelming 61 percent of the seats in Parliament; whereupon the Labor government embarked on the creation of the comprehensive Welfare State, the cornerstone of British socialism. Although it lost office in 1951, the party formed the government again in 1964-1969 and 1974-1979.

Union Control Of The Labor Party

The unions are the paymasters of the Labor Party. Approximately 75 percent of the party's national finances is contributed by the unions, and about 95 percent of election funding comes from the same source. In addition, the unions control five-sixths of the votes at the policy-making annual conference of the party; and they fill, by right, 12 of the 29 seats on the Labor Party National Executive Committee (they normally have a decisive influence in the choice of 6 more).

The unions also directly sponsor about 40 percent of Labor MPs: in return for financial support the MP represents the sponsoring union's interests. In the 1975 Parliament, 128 of a total of 635 MPs (of all parties) were sponsored by various trade unions. The rules of the House of Commons prevent an MP becoming a mere delegate of an outside group, and sponsored MPs have been known to vote against their union's interests. The sponsored MPs are, however, a highly influential special interest block within the Labor Party which ensures that a Labor government will always advance the union cause.

UNION INFLUENCE OVER LEGISLATION

Through their control of the Labor Party, and their earlier influence over the Liberals, the unions have obtained the passage of many measures which increased their economic and political power. Under the British system of government, pressure groups like the unions can exert enormous influence for two broad reasons:

- a) Britain has a highly centralized, non-federal form of government. If the House of Commons passes a bill, it cannot be permanently obstructed, or heavily amended, by either the House of Lords (the second chamber) or the monarch. Local government does not have the power to pass laws on labor

matters, and the absence of a written, unchangeable constitution denies the courts the right to strike down acts of Parliament as unconstitutional. Hence a majority in the House of Commons is all that is required to pass even the most controversial legislation.

- b) In the British Parliament, party loyalty is very strong, and so the governing party can usually count on complete control of the House of Commons. Once a policy is decided within the party, even its fiercest opponents come under the overwhelming pressure of party loyalty to vote for the measure. Thus any group with enough influence to persuade a slim majority of the party's MPs that a certain law would be justified can expect the measure to be enacted. It is therefore quite possible for a minority in the country, such as the unions, to reach a position where they possess political power out of all proportion to their numerical strength.

In the early part of this century, as mentioned before, the unions were able to use these features of the British system of government to extract favorable legislation from the Liberals - particularly after the unions' success in the 1906 election. They were able to force the Liberal government to support a bill "as drafted on behalf of the TUC Parliamentary Committee,"¹¹ which finally became law as the 1906 Trade Disputes Act. The act gave trade unions complete immunity from all tort actions (i.e., civil actions arising from loss of output, interference, libel, slander or other damages) when injury resulted from deeds "alleged to have been committed by or on behalf of a trade union." The act went on to legalize "peaceful" picketing, and to lay down that trade union contracts with employers would not be enforceable in the courts. Unions, in other words, were henceforth allowed to use picketing to force employers to agree to a contract, but the union would not be legally bound to that contract. This act was a decisive breakthrough for organized labor in Britain. According to one distinguished legal historian, it made a union

a privileged body exempted from the ordinary law of the land. No such privileged body has ever before been deliberately created by an English Parliament.¹²

The 1906 act was followed by the Trade Union Act of 1913 - again as a result of union influence with Parliament. This act legalized the spending of union membership dues for purely political purposes, and thus allowed the unions to contribute directly to the election expenses of the Labor Party, their own political vehicle. The act also allowed unions to deduct automatically

11. D. F. MacDonald, The State and the Trade Unions (London: Macmillan, 1976, 2nd edition), p. 60.

12. A. V. Dicey, Law and Public Opinion in England (London: Macmillan, 1973, 2nd edition).

this political element from the dues: the onus was placed on the member to "contract out" of this payment if he had objections.¹³

These changes in the law, and others which followed, made organizing easier by freeing unions from many of the legal limitations applying to other sections of society. This resulted in a dramatic increase in membership. Between 1906 and 1920, for example, membership of trade unions rose four-fold, from 2 million to over 8 million.

UNIONS AND THE POST-WAR LABOR GOVERNMENTS

1945-1951

The Labor Party won a substantial victory in the 1945 election, and implemented a radical program of social legislation. Not only was the Welfare State created, providing social security and free medical treatment for all, but also key segments of British industry were nationalized. This gave the unions, through their influence on government, direct access to policy-making at the heart of the economy.

1964-1969

If proof were needed of who controls the Labor Party, the history of the Wilson government of 1964-1969 shows clearly that the unions are firmly in the driving seat. Faced with mounting inflation, and a desire to turn Labor into the "natural governing party" by showing it was not the creature of the unions, the cabinet announced the introduction of a bill to reform labor law. The aim was to reduce the number of petty, but damaging, disputes that were plaguing industry at the time. By international standards the proposals were very modest, and posed no threat to the labor movement.

- (i) The Secretary of State for Employment would be given a "discretionary reserve power" to order a 28 day conciliation period in cases of "serious" unconstitutional strike action.

13. Needless to say, unions do not encourage contracting out, and usually take no pains to inform members of this right. A 1975 survey of members' attitudes in the Post Office workers' union demonstrates the implications of such "inertia selling." Some 95 percent of the members paid the political levy, yet only 51 percent realized that they were doing so. Furthermore, only 21 percent of the members thought that the union should even be affiliated to the Labor Party. As with other unions, many members pay the levy grudgingly, preferring to do so rather than face the hostility of their fellow workers (Economist, 29 November 1975).

- (ii) The Secretary would be empowered to call a strike ballot of all union members when such serious unofficial strikes occurred.
- (iii) Financial penalties could be applied - including attachment of earnings - if the workers refused to comply with the Secretary's directives.

The TUC lost no time in making it clear that it viewed the proposals as tantamount to a direct attack on the trade union movement, and that it would not tolerate such measures from a Labor (or any other) government. A May Day demonstration of nearly 100,000 was held in protest, and a national strike was only narrowly averted. It was soon obvious to the cabinet that it ran the risk of a major revolt by the union-sponsored MPs, threatening the government and risking grave damage to the party. Opposition quickly reached such a crescendo that:

On 7th May (1969) the Labour Party chairman, Douglas Houghton, warned the government...that it risked disintegration of the party if it persisted with the legislation.¹⁴

The Prime Minister, Harold Wilson, attempted to salvage some dignity from the fiasco by assuring the public that the measures were being withdrawn in response to a "solemn and binding" undertaking by the TUC to take "firm and effective action" against unconstitutional strikes. Yet the TUC had no power to enforce such an undertaking and so it had little effect.

The Labor government's humiliation in its first dispute with its creators demonstrated the stark reality of union control over the Labor Party: no labor legislation could ever be passed by a Labor government without the advice and consent of the TUC.

1974-1979

Having blocked attempts at union reform by Labor Party moderates in 1969, the unions felt able to demand sweeping changes in the law when the party returned to office in 1974. As its price for what was heralded as a new era of union restraint, embodied in the so-called "Social Contract," the TUC required the government to pass legislation which had the effect of changing the face of labor law in Britain, giving the unions legal rights and privileges unmatched in any democratic society.

London's renowned Economist magazine, commenting in late 1975, observed that legislation passed since Labor took office "is conclusive proof that, as part of the Social Contract, ...the

14. R. Clutterback, Britain in Agony: The Growth of Political Violence (London: Faber and Faber, 1978).

unions have been allowed to write their own labor law."¹⁵ Even one Labor cabinet minister at the time later characterized the measures passed as

tailor-made to union requirements.... The series of so-called Social Contracts has induced a habit of mind among Ministers which amounts to saying "Find out what the TUC wants and tell them they can have it."¹⁶

The judiciary echoed the growing concern expressed by most moderates at the time. As Lord Denning, a leading appeal judge, declared from the bench in 1977:

Parliament has conferred more freedom from restraint on trade unions than ever has been known to the law before. All legal restraints have been lifted so that they can do as they will.¹⁷

The legislation which gave rise to such anxiety and indignation covered virtually every aspect of industrial relations and collective bargaining. The main features are summarized below.

a) The Closed Shop

There is no "right to work" law in Britain, and in modern times there has been little protection against the operation of closed shops. Under the 1974 and 1976 Trade Union and Labor Relations Acts, however, the right not to belong to a trade union was expressly denied, and the creation of closed shops was made much easier. The only exception to this denial of individual rights covered objections on religious grounds - and that applies only if the worker can prove that he would be dismissed from his church if he refused to join a union. In any other case, the employer is free to dismiss the employee for refusing to accept the closed shop (and, of course, the company will be under enormous union pressure to do so).

Even religious grounds are no real safeguard. One auto worker, for instance, joined an obscure sect which forbade "yoking with unbelievers." As a result he left the union, and a court ruled that the company could not fire him. The union responded to the ruling by simply refusing to allow its members to handle the man's work, or to deal with him in any way. He thus became

15. Economist, 22 November 1975, p. 89.

16. Reginald Prentice MP, "The Issues in Public Policy," in L. Robbins, Trade Unions: Public Goods or Public Bads? (London: Institute of Economic Affairs, 1978), pp. 126-129.

17. BBC v. Hearn and Others (1977), quoted in Burton, Trojan Horse, p. 63.

an employee who could not work, could not be dismissed, and as far as the union was concerned he did not exist - like an "unperson" in Orwell's 1984.

There were determined attempts by the opposition in Parliament to exempt journalists from closed shop agreements, on the grounds that otherwise there would be serious threat to the freedom of the press. The amendments were defeated.

Closed shop agreements have become more common since the law was changed. They have enabled unions to exert tighter control over their members, and have made industrial action even more effective. In many industries, closed shops cover almost all workers with a particular skill, and so the individual is faced with the choice of either accepting all union decisions and strike calls or leaving the industry.

b) Union Recognition

The labor movement's industrial muscle depends heavily on the proportion of the workforce within its ranks. Closed shops help the process of recruitment, but the key to increasing membership is success in recognition disputes.

The balance of power in recognition cases was shifted dramatically to the union side with the 1975 Employment Protection Act. The act set up two new bodies, the Advisory, Conciliation and Arbitration Service (ACAS), and the Central Arbitration Committee (CAC). These bodies have been loosely described as "independent" recognition machinery, roughly similar to the NLRB. They are not. Their purpose is to advance the trade union cause. The role of ACAS was laid down clearly in the act as that of

promoting the improvement of industrial relations, and in particular... encouraging the extension of collective bargaining.

James Mortimer, the chairman of the ACAS council, has no doubt of the purpose of the body:

My understanding is that Parliament intends ACAS to promote collective bargaining, based on trade union recognition¹⁸ as the best method of conducting industrial relations.

When a union feels that an employer is resisting recognition it notifies ACAS, which then attempts to "conciliate" (i.e., it tries to persuade the employer to accept unionization in some form). If this fails ACAS makes a recommendation based on a study of the union's case: ACAS is not required to hold a ballot,

18. The (Manchester) Guardian, 30 September 1977.

but if it chooses to it may (and often does) recommend recognition when only a minority of the workforce desire it.

The employer is not bound to accept ACAS's determination, but if he does not do so he is invariably subjected to picketing and secondary boycotts. If he still fails to comply, the case can be taken to the powerful CAC, which can specify legally enforceable terms and conditions of employment on a company, and can even make a wage award on behalf of a union, despite the refusal of the company to recognize that union. As the Economist noted after the passage of the act:

CAC will be able to order an employer to comply with whatever wages and conditions the unions have been demanding - they will obviously ask for the moon. If the employer tries to defy the CAC, any union member will be able to sue for breach of contract.... A similar procedure is followed for employers¹⁹ who refuse to disclose certain information to unions.

Employers do not have the right to refer unions to ACAS or CAC.

The unions have made good use of ACAS since its formation: it has become a useful vehicle for breaking down employer opposition to collective bargaining. In particular, ACAS has enabled trade unions to gain a foothold in the small business sector, where it has traditionally been difficult for unions to organize the workforce. A large proportion of cases before ACAS involve small companies, and in many cases a union is recommended when ballots indicate a majority of the employees in opposition.

c) Secondary Boycotts and Picketing

Even before the Labor government took office in 1974, British unions enjoyed wide picketing rights, and the "blacking" (i.e., refusal to handle) of goods from a company struck by a fellow union was a normal and accepted practice. The 1974 and 1976 acts extended these privileges by giving unions immunity from tort actions when they induced other workers to break a commercial contract in furtherance of their own trade dispute. As the director of the CBI, Britain's employers' confederation, commented as the measures were being debated in Parliament:

Unions, their officials, and their shop stewards will be free in law to strike, or indulge in other industrial action, or to "black," blockade, or boycott, or threaten to do so, whenever they like, officially or unofficially, constitutionally or in breach of procedure, in respect to a trade dispute anywhere in Great Britain.... Secondly, it will be lawful to use the picket line for the purpose of establishing boycotts or blockades

19. Economist, 22 November 1975, p. 90.

whether against an employer in dispute or against employers, companies, public corporations or bodies which have nothing to do with the dispute in question.²⁰

d) "Jobs for the Boys"

Legislation was not the only concession the unions extracted from their client government. Government departments have at their disposal over 4,000 positions on various public boards, councils and commissions - with over \$8 million available in salaries at 1975 levels. Naturally enough, trade union leaders saw to it that they received a healthy share of this largesse, courtesy of the taxpayer. Within one year of Labor coming to power, 14 of the 38 members of the general council of the TUC had been given positions by the government.²¹

UNIONS AND THE CONSERVATIVE GOVERNMENT, 1970-1974

Disturbing as it is that the unions in Britain can expect a Labor government to pass whatever legislation they desire, there is some cause for hope if one could rely on the democratic system to balance this process of channeling public indignation into the election of other governments able to remove from the law the most selfish privileges. It appeared that this had occurred in 1970, when the Wilson government was roundly defeated by Edward Heath's Conservatives - who were pledged to enact comprehensive trade union reforms. Yet the Heath government soon discovered the truth of a later remark by Labor Prime Minister James Callaghan that "no modern government (in Britain) can govern against the trade unions."²² Their attempts at reform were totally frustrated by the unions.

The Conservatives possessed a healthy majority in Parliament, and so their reforms quickly passed into law as the Industrial Relations Act of 1971. Its provisions were broadly as follows:

- (i) The statutory right to belong, or not to belong, to a union.
- (ii) The establishment of an official register of trade unions and employers' associations. Registration was a condition for unions to enjoy their formerly unconditional privileges and immunities. In return, registered unions were required

20. Letter from Campbell Adamson, Times, 11 June 1974.

21. Economist, 31 May 1975, p. 65.

22. 1976 television interview, quoted in Burton, Trojan Horse, p. 15.

to obey the various provisions of the act. If a trade union chose not to register, it lost many safeguards under law.

- (iii) The legal enforceability (if both sides agreed in advance) of collective bargaining agreements.
- (iv) A slight redefinition of picketing, but no major changes.
- (v) Clear recognition rights and procedures for trade unions.
- (vi) The creation of an Industrial Relations Court to hear cases involving industrial disputes.
- (vii) Powers for the government to require a "cooling-off" period of 60 days, or a compulsory strike ballot, under emergency conditions.
- (viii) As a "sweetener" for the unions, the removal of previous legal prohibitions on strikes in the basic utilities - gas, water and electricity.
- (xi) A strengthening of the rights of employees regarding dismissal.

Although the act was not anti-union by international standards, and was supported by the great majority of the British public, union opposition was total. The TUC launched a campaign designed to make the measure unworkable. The first stage of this strategy was a directive to member unions not to register - or be expelled from the TUC. Most unions obeyed the call: only 22 unions registered under the act, representing only 4 percent of total union membership.

The second stage of the campaign involved the refusal of the TUC to recognize the existence of the Industrial Relations Court. The unions denied that this was contrary to the Rule of Law and the sovereignty of Parliament, putting forward some curious arguments to justify their position. As one TUC general council member asserted:

Let us...make it perfectly clear that generally speaking the trade union movement accepts, operates (within) and conforms with the law of the land. Our opposition and determination is quite specific. It is to this law and to this act and to the courts set up thereunder.²³

The TUC found that its refusal to recognize the courts could be costly. Several unions were cited for contempt and heavy fines were exacted. Nevertheless, the unions persisted in their position.

23. Hugh Scanlon, in the TUC Annual Report, 1972 (London), p. 428.

A more damaging and effective strategy adopted by the unions was the use of the conventional strike weapon as a means of dissuading the government from applying the provisions of the act. One typical case shows the tactic in operation. The longshoremen's union in London refused to handle containers owned by a company involved in a dispute. The Industrial Relations Court ordered a number of shop stewards to appear before it to explain their actions, but the men refused, "some of them expressed delight at the prospect of going to prison in the hope of making the legislation look as oppressive as possible."²⁴ Later:

some of the men, including a charismatic Communist Party member, Bernie Steer, refused to obey a further court order...and five of them -all shop stewards - were committed to Pentonville Prison.... The results confirmed the government's worst fears. By that evening the ports of London, Liverpool and Hull were at a standstill.... The strikes spread. For five days there were no newspapers, and the TUC general council voted to call a one day national strike unless the men were released.²⁵

This outright refusal to obey the law rendered the act unworkable: there were not enough jails in Britain to imprison the entire trade union movement, and the country was moving rapidly towards industrial chaos. Increasingly, the government avoided confrontations involving the act, and it ceased to be an effective piece of legislation.

Not only did the unions learn from this experience that they could frustrate the application of laws they did not accept, but also they began to realize that by making life intolerable for the country, they could undermine the support of a government they opposed. The unions saw to it that every winter under the Conservatives became synonymous with coal strikes, power cuts, rail strikes and other dislocations. Finally, amid a major miners' strike which had forced the whole of industry to adopt a three-day working week, the government called a general election on the issue "Who runs the country - the unions or Parliament?" Unfortunately for the Heath government, the public concluded that fighting union power could only bring misery, more strikes and little else, and the government was defeated.

THE RULE OF MUSCLE

The unions in Britain have demonstrated that by the related use of industrial and political power it is possible for organized

24. Clutterback, Britain in Agony.

25. Ibid. The men were later released on technical grounds, much to the government's relief.

labor to obtain a stranglehold on a democratic society - a grip which the system may be unable to deal with. As the history of the labor movement in Britain clearly shows, the expansion of union power can become a self-feeding process. Political influence is used to win legislative changes, making it easier to recruit members and strengthening the strike weapon. This, in turn, gives the unions even more political power, allowing them to obtain more legislative changes. And so the process continues. The final stage is reached when the unions acquire so much political and industrial strength that they can prevent a hostile government from acting against them and then bludgeon the electorate by the threat of strike action into voting for a pro-union administration.

By 1974, Britain appeared to have reached the final stage. Hugh Scanlon, then the leader of one of Britain's largest unions, was unapologetic when he warned the public before the second 1974 election that they should think twice before voting Conservative or Liberal, since:

a vote for either of these two anti-working class parties will be a vote for the enemies of the trade union movement and a vote for industrial chaos this winter.²⁶

As the London Economist commented at the time:

Mr. Scanlon is a man who says what he thinks....Now he is saying, unmistakably, that however many votes the Conservatives and Liberals get at the next election they will be invalid - unless, of course, the country wants industrial chaos. Might is to be right in the unions' Britain, whatever the majority wants. Muscle will rule.²⁷

THE NEW CONSERVATIVE POLICY

Ironically for the unions, the very success they enjoyed in getting their own way under various governments was a major cause of the Labor Party's defeat in the general election of May 1979. Throughout the winter of 1978-1979 the unions did not hesitate to threaten or use strike action to win concessions both from private industry and their own Labor government. During that "Winter of Discontent," as it was widely called, the British public evidently concluded that if the country was going to be subjected to industrial dislocation under Labor, it might as well have it instead under a Conservative government pledged to reducing taxes.

26. Economist, 17 August 1974, p. 13.

27. Ibid.

The new Conservative government of Margaret Thatcher is fully aware of the causes of the downfall of the previous Conservative administration in 1974, and has no intention of repeating past mistakes. The Cabinet is clearly determined to bring the unions back within the rule of law and reduce their enormous political and economic power. But the government is moving very cautiously on the issue, and will prepare the ground very carefully before it risks a head-on clash.

The Conservatives' trade union legislation has not yet been introduced into Parliament, and is not expected until the end of November. So far only the broad outlines of the measures have been announced, and they suggest the following changes in the law:

a) Postal Ballots

The government intends to provide public money to enable unions to hold secret, postal ballots for the election of officers, changes in union rules, and strike calls. At the moment, many of the more militant unions elect their officials at thinly-attended branch meetings, and it is quite common for strike action to be decided by a show of hands at mass meetings. These open proceedings inevitably result in the intimidation of less vociferous moderate opinion: in contrast, unions which have introduced postal ballots in recent years have experienced a marked swing to moderation. Mrs. Thatcher hopes that by encouraging postal ballots - a move favored both by the general public and by rank and file unionists - the government may bring about an improvement in the complexion of Britain's union leadership and avoid much potential opposition to other changes in the law.

b) The Closed Shop

The government fully recognizes the fact that many employers prefer dealing with a single union under a closed shop agreement, and that it is virtually impossible to force unionized workers to cooperate with non-union employees if they are determined not to do so. Thus, the Conservative proposals do not aim to outlaw the closed shop, but instead to make it more difficult to introduce and sustain such agreements. Existing non-union employees, and those with deeply-held convictions, could not be made to join a union under the legislation promised. If a worker were to be forced out of his job for refusing to join, he would be able to claim compensation from his employers and the union.

c) Secondary Boycotts and Picketing

Under the present law both secondary boycotts and secondary picketing are permitted, and unions have made devastating use of this privilege on a number of occasions. And while it is true that the law has been redefined to a certain extent by recent court decisions declaring that trade union immunity does not

cover the picketing or boycotting of "remote" third parties,²⁸ it remains the case that for the most part employers and third parties still have no protection or recourse.

The government is aware that ending secondary action is easier said than done - it could be necessary to jail the entire unionized workforce if opposition became total. At best, there is likely to be widespread industrial disruption whatever measures are introduced. It is most probable that the legislation to deal with the problem will involve ending the unions' immunity from damages when they interfere with commercial contracts. This would lay unions open to civil suits resulting from secondary action, rather than to any form of criminal action (which could lead to confrontations with the government and the police). It was evident during the period of the unsuccessful Industrial Relations Act in the early 1970s that financial sanctions are the only penalties that really hurt the unions: clearly the Conservatives feel that this may be the most effective form of sanction they have to enforce the new law.

NEW RESTRAINTS ON THE UNIONS

In addition to parliamentary legislation, there have been three other important developments which could serve to weaken the economic and political power of British unions and ease the implementation of legal reforms.

a) The European Court

There is currently a case pending before the European Court of Human Rights concerning the legality of the closed shop. Britain signed the European Declaration of Human Rights several years ago, and its provisions do seem to imply that government acceptance of the closed shop would be a violation. The Declaration does not have the force of law, but governments are under a great deal of moral pressure to abide by decisions of the court set up by the signatories to hear complaints. If the present case results in a judgment which is critical of Britain, Mrs. Thatcher will have been given a strong argument for changing the law.

b) Employer Insurance

The CBI, Britain's major employers' association, is currently drawing up plans to create a reserve fund for its members to

28. During a national trucking strike early in 1979, drivers picketed the docks to prevent the flow of food and other goods in an attempt to force the government to intervene and pressure employers to accede to the union's wage demand. The Court of Appeal granted an injunction, citing the "remoteness" principle, arguing that the docks were not in any way involved in the dispute.

help them withstand long strikes. In 1971-1972 the Engineering Employers Federation successfully used a £2 million fund to support some of its members when unions tried to pick off individual employers during a national dispute. Employer solidarity held in that case, and so the CBI aims to extend the idea to cover most of Britain's major companies. The details of the plan are still secret, but it may become a powerful balance to nationally-coordinated union action.

c) The Tax and Price Index

In most countries, the inflation rate is published as some form of Consumer Price Index (CPI), which provides a measure of changes in the cost of a broad range of goods and services. One problem of this type of index is that although it is used by unions as a basis for wage negotiations, it does not take account of tax reductions, and these have an important effect on a worker's standard of living.

The present Conservative government's policy involves shifting the burden of taxation from income to sales taxes - which has the effect of improving living standards while not immediately reducing inflation. In order to head off some union wage pressures resulting from this effect, the government has introduced a new index, the Tax and Price Index (TPI), which takes account of income tax reductions and so gives a more accurate picture of changes in the country's standard of living. Given the present tax policy, the TPI is several percentage points below the CPI. It remains to be seen whether the unions will adopt the new index as a basis for bargaining, but it should, at the very least, give some support to employers as they draw up arguments to counter wage claims.

CONCLUSION

As the history of union power in Britain clearly demonstrates, it is quite possible within a democratic society for an interest group to acquire political influence to such a degree that it can virtually write its own laws. The political institutions of the United States make such an occurrence less likely in America, but it would be dangerous to be complacent. Changes in the laws governing election campaigns, for example, greatly increase the political power of interest groups. A national, and well coordinated, interest group such as the union movement could acquire the necessary political support to obtain legislation which would increase its membership and influence. This new influence could then be used to win new legislative changes, and soon the process would develop its own momentum and become irreversible.

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