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Article — Digitized Version

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Intereconomics

Suggested Citation: Marsh, Arthur (1969) : Legislation and the british trade unions, Intereconomics, ISSN 0020-5346, Verlag Weltarchiv, Hamburg, Vol. 04, Iss. 9, pp. 289-290,
<https://doi.org/10.1007/BF02926271>

This Version is available at:

<https://hdl.handle.net/10419/138255>

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Legislation and the British Trade Unions

by Arthur Marsh, Oxford

After long and severe wrangling, Britain's Labour Government reached an important agreement with the Trades Union Congress (TUC). The Government accepted a change in rules and a solemn undertaking from the TUC on its responsibilities for handling unofficial strikes. This replaced a Parliamentary Bill which, among other things, would have placed legal penalties on people who stopped work in defiance of their disputes procedures and agreements.

So ended a controversy between the Prime Minister and his Labour Minister, Mrs Castle, on the one side, and the British Trade Union movement on the other, which had been going on ever since the Government published its industrial relations reform proposals, "In Place of Strife", last January.

Labour MP's, alarmed at the threat of war within their own party, are now breathing more easily; the Opposition, itself committed to a wholesale "legislation" of the British industrial relations system, is proclaiming a Government sell-out to its closest ally — the unions. And the Bill has gone. The TUC is to have its chance. No doubt a new bill on industrial relations reform will follow in due course; but for the time being, at any rate, the penal clauses have been dropped.

Doubts in the 1950's

To understand what all this implies, it is necessary to go back to the 1950's, when the British began to lose faith in their traditional "voluntary" industrial relations system. There were doubts whether it was entirely doing justice to individuals, to national productivity, to incomes policy or to industrial peace. There was a revival of injunctions against particular action of unions; and in a number of leading cases, the judiciary began to intervene in matters not formerly thought to be their province.

Long before the (Donovan) Royal Commission on Trade Unions and Employers' Associations reported on the situation in 1968, the Conservative

Party had made up its mind that the only way of putting the British system to rights was to make collective agreements enforceable at law, and to make the whole industrial relations situation subject to legal regulation. The Donovan Commission was not convinced. Other countries had legally regulated systems, but the origins of their arrangements were different, and the Commission doubted whether, in the last resort, legal penalties, particularly against strikers, could be enforced in practice. Much better, the Commission thought, to improve the operation of the voluntary system, and to make some minor changes in the law which might help.

Disagreement over Fines

In its White Paper "In Place of Strife", the Government broadly agreed with the Commission, and proposed a short bill to implement the more urgent changes. But it also proposed that the bill should contain provision for financial penalties against employers, unions or individual workers, especially, where the latter were concerned, in certain situations involving unofficial strikes. The Opposition considered that this did not go far enough; the TUC, on the other hand, reflected the common feeling of the trade union movement in opposing such a policy, whatever countervailing advantages, such as reinforcement of recognition and collective bargaining, a proposed bill might bring.

At a special conference on 5th June the Unions were substantially unanimous in proposing that the TUC itself should devise machinery for dealing with unofficial strikes, and that the "penal clauses" should go. After a succession of meetings between the Prime Minister and the TUC General Council, they went — and the TUC proposals were in.

Politics, it has been said, is the art of the possible. The Opposition and the Confederation of British Industry think more was possible. The Government do not. Posterity will know who was right, and another Government in office may show

whether an attempt to legalise our industrial relations can succeed. For the time being, the TUC is left with the burden of making effective the policy which it has striven for so vigorously.

Real Progress

How should this be looked at outside Britain? There seem to be three general points which it is important to make. The first is that the evil effects of British industrial relations have been much exaggerated; the second is that there is no proof whatever that a thoroughly legalistic system in Britain would prove to be practical; and the third is that real progress has been made in causing the TUC to accept its involvement in the situation.

On the first of these points, it must be rapidly becoming clear that the British art of self-denigration is now being practised to an extraordinary degree, and that criticisms of our industrial relations arrangements have been subject to the same derogatory treatment as other institutions.

That there are faults no-one can deny. Nor can anyone deny that we are prone to have short stoppages of work. But most of these have no noticeable effect on the economy. Even the engineering industry, which some consider to be strike-prone, is usually 95 p.c. strike-free, and seldom loses more time through strikes than an average of two hours per man per year. We need a marginal improvement, not a revolution. Nor is it good enough, as the British press often suggests it is, to blame such troubles as arise solely on the unions. The Donovan suggestion was that the system—its procedures and agreements—were at fault, and it is these which it set out to reform.

Reform is one thing; reforming by law is another.

Few Enforceable Agreements

At this stage in our history, it is questionable what is meant by such phrases as "making agreements enforceable at law" and "outlawing strikes". At the present time we have very few collective agreements that would lend themselves to serious legal enforcement at all; it has been the practice for management and workers to get along without such agreements, and there is no prospect of getting them to change their habits at all quickly. Nor, as other democratic countries can avow, is it practicable to operate sanctions in the absence of a climate in industry which makes these acceptable. And if penalties are to be imposed, on workers or managements who fail to play the game, it is as well to see that these are not often necessary.

This is, of course, the issue on which the Government was chancing its arm in its proposals "In Place of Strife". It came to the conclusion, after

six months of bitter wrangling, that the climate in which its proposed penalties might operate did not exist at the present time, but that an alternative was at hand — the intervention of the TUC as a mediator in at least the most important of stoppages of an unofficial nature.

The TUC as Mediator

For some time the TUC has been advancing cautiously into the function of intervening in conflicts between its member-unions and into stoppages of work of a more serious character. Many years ago, under the celebrated Bridlington Agreement, it devised machinery for dealing with the worst instances of "poaching" of members; more recently it took upon itself rights of intervention as a mediator in strikes likely to affect the interests of trade union members generally. Now it has agreed to move in more often, to make judgments about whether the situation demands a return to work or not, and to strengthen its mediating role.

The present strength of the TUC's position rests on the broad basis of agreement which exists among unions for what it has agreed to do. Unions have had enough of legal penalties in the Prices and Incomes Act; they have not liked what they have seen, nor have they thought it effective. Self-discipline has seemed to them preferable to an imposed discipline in which they have no confidence and for which they have the utmost distaste. There is no reason to suppose that this is the result the Government wanted; but there is every reason to suggest that this is a great step forward. Only in the minds of those who believe in quick legal action has anything been lost.

The Unions' Own Medicine

The weakness of the doctrine of trade union self-discipline rests, like that of the law itself, on the viability of sanctions. The TUC can expel member-unions which refuse to tow the line, and that is all. But it is reassuring that major unions have led the way to the new situation, for it is they who, from time to time, will be required to take their own medicine.

Will they do so? No-one can yet say. The moral force of the TUC is still, on this question, an unknown quantity. But it is unquestionable that the unions which made their point when taken to court by the Ford Motor Company a few months ago, and found support for their view that collective agreements are not enforceable at law unless both sides specify that this is so, are both apprehensive about more legal intervention and determined to avoid it if they can. The best safeguard to the TUC's authority is that unions think it to be in their own interests; and that, at the moment, they assuredly do.