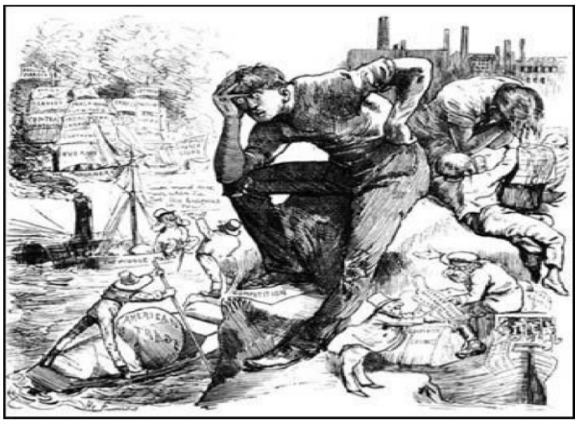
A History of "Contested Terrain"



- The Combination Acts 1799-1800
- The Whitley Report
- The Bullock Report
- The National Minimum Wage

Politics and Economics: The History of “ Contested Terrain”

The connection between economics and politics is a thread that has run through history and has been the major driver for change in British politics.
Chomsky is quoted as “To some degree it matters who's in office, but it matters more how much pressure they're under from the public”.

We look at four periods of British history and industrial legislation and four examples of capitalism's response to working class pressure .
In Labor and Monopoly Capital Braverman described this response “as in all functionings of the capitalist system, manipulation is primary and coercion held in reserve”: The Iron Fist in the Velvet Glove and in their theory of Trade Unionism the Webbs identified three methods of operation mutual benefits, collective bargaining and statutory intervention as labour's strategy.

Four periods to discuss :

- 1799-1800 The Combination Acts
- 1917-18 Whitley Report and Industrial Councils
- The Bullock Report 1976 and Industrial Democracy
- The Minimum Wage and Statutory Pay Rates

The session aims not only to look at individual periods but to display the span of time that the struggle has continued. It is an opportunity to look at major developments in workplace and social legislation and how it related to industrial and societal pressure as well as international events. We compare them to the position of the working class today and the avenues for improvement.

Politics and Economics: The History of "Contested Terrain"

Northern College 29-31st May 2015

- The Combination Acts 1799-1800
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- National Minimum Wage

CHAPTER FOUR

From Suppression to Containment: Roots of Trade Union Law to 1825

James Moher

Understanding the situation of workers' combinations in Britain and Ireland requires a grasp of the law relating to such associations. This is complex and confusing because, as often in English law, common and statute law overlap as sources for the various rulings. The application of these rulings from early times, the first statute being in 1305, spanned so many different forms of industrial organisation and relations of production as to compound the legal complexity.[1]

The Common Law, a body of judge-made rules developed over centuries, was fairly clear in its attitude towards workers' combinations:

> Combinations in law connoted conspiracy and concerted action by workmen to bring pressure to bear on their employers to secure higher wages or shorter hours was regarded as conspiracy at common law. The very ancient principle on which this construction of the law of conspiracy rested was that such action was a restraint of trade.[2]

This judicial view of combinations as criminal conspiracies punishable as felonies remained a key feature of official policy in Britain and Ireland until the statute of 1824 repealing the Combination Acts. There are two aspects: the doctrine of conspiracy itself and its application to trade combinations. The early statutes captured the sense in which both these aspects had been understood: 'Conspirators be they that do confederate or bind themselves by oath, covenant or other alliance, that every of them shall aid and bear the other falsely and maliciously to indite, or cause to indite, or falsely to move or maintain Pleas.'[3]

This definition, emphasising as it does the secretive nature and malicious intent of the parties conspiring, best illustrates the reasoning behind regarding it as a crime against the state. The

well-known journeymen's motto, 'United to protect, not combined to injure', seems a response to such an attitude. This act of 1305 was quoted in many later trials involving charges of conspiracy.[4]

The second aspect, the application of the doctrine of conspiracy to trade combination was also rooted in medieval law:

> For as much as of late days divers sellers of victuals not contented with moderate and reasonable gain, but minding to have and take for their victuals so much as list them, have conspired and covenanted together to sell their victuals at unreasonable prices: and likewise artificers, handy-craftsmen and labourers have made confederacies and promises, and have sworn mutual oaths not only that they should not meddle one with another's work, and perform and finish that another hath begun, but also to constitute and appoint how much work they should do in a day, and what hours and times they shall work, contrary to the laws and statutes of this realm, to the great hurt and impoverishment of the King's majesty's subjects.[5]

Raising food prices by sellers in concert was also viewed as a conspiracy against the public interest in times of scarcity, when it not infrequently led to riots. The statute therefore was against restraint of trade by tradesmen, craftsmen or masters as well as journeymen.

The reference to the practices being 'contrary to the laws and statutes' refers to the Statute of Labourers of 1349 which regulated wages and hours of work.[6] Combinations were thus doubly illegal as conspiracies and, in so far as they sought to change wages or hours of work, contrary to statute and punishable by Justices of the Peace. The act of 1548 quoted above established a first offence penalty of £10 or twenty days imprisonment; a second offence £10 or the pillory and for a third £40 or the loss of an ear and infamy. It also decreed that 'Corporations or dealers in victuals so conspiring shall be dissolved.' Most of the elements of government policy towards combinations for trade purposes, therefore, derived from a society accustomed to such laws.

This policy was strengthened in 1563 by the passage of the Statute of Artificers, popularly known as 'the 5th of Elizabeth', which consolidated already established regulatory practices concerning 'the hiring, keeping, departing, working, wages or order of servants, workmen, artificers, apprentices and labourers'.[7] This statute stipulated the main terms of the aptly described Master and Servant relationship. A minimum term of service of one year was prescribed during which the servant could neither be dismissed nor leave, 'unless it be for some reasonable cause' allowed before two Justices of the Peace. Even at the year end a quarter's notice was required

Table 1 **Statutes** Outlawing Workmen's Combinations (1305–1817)

(1305)	33 Edw. I, st. 2	('Who be Conspirators')
(1425)	3 Hen. VI, c. 1	('Masons shall not confederate')
(1426)	5 Parl. Jac 1, c. 78	(Fees of Craftsmen – Scotland)
	5 Parl. Jac 1, c. 79	(Fees of Workmen – Scotland)
	5 Parl. Jac 1, c. 80	(Writches and Masones – Scotland)
(1427)	7 Parl. Jac 1, c. 102	(Price of Ilk Workmanshippe – Scotland)
(1542)	33 Hen. VIII, c. 9	(Servants' wages–Ireland)
(1548)	2 & 3 Edw. VI, c. 15	(Conspiracies of Victuallers & Craftsmen)
(1551)	5 Parl. Mary, c. 23	(Price of Craftsmenne's Work–Scotland)
(1581)	7 Parl. Jac VI, c. 121	(Ordour 7 Price in all Stuff – Scotland)
(1662)	13 & 14 Car II, c. 15	(Silk Throwing combinations)
(1720)	7 Geo. I, c. 13	(London Journeymen Tailors)
(1725)	12 Geo. I, c. 34	(Woollen manufacturers)
(1729)	3 Geo. II, c. 17	(Unlawful combinations in Ireland)
(1743)	17 Geo. II, c. 8	(Continuing several Irish statutes)
(1749)	22 Geo. II, c. 27	(Dyers, Hotpressers & Others)
(1756)	29 Geo. II, c. 33	(Woollen manufacturers)
(1763)	3 Geo. III, c. 17	(City of Cork combinations – Ireland)
(1763)	3 Geo. III, c. 34	(Linen and Hemp manufacturers – Ireland)
(1766)	8 Geo. III, c. 17	(London Journeymen Tailors)
(1772)	11 & 12 Geo. III, c. 18	(City of Cork, combinations – Ireland)
(1772)	11 & 12 Geo. III, c. 33	(Dublin Tailors & Shipwrights)
(1773)	13 Geo. III, c. 68	(Silk manufacturers)
(1777)	17 Geo. III, c. 55	(Hat manufacturers)
(1780)	19 & 20 Geo. III, c. 19	(General Irish Act to prevent)
(1780)	19 & 20 Geo. III, c. 36	(Silk manufacturers – Ireland)
(1785)	25 Geo. III, c. 48	(Specific Irish manufacturers)
(1792)	32 Geo. II, c. 44	(Extending 1773 Silk Manufacturers Act)
(1796)	36 Geo. III, c. 111	(Paper Manufacturers)
(1799)	39 Geo. III, c. 56	(Colliers in Scotland)
(1799)	39 Geo. III, c. 81	(Unlawful Combinations of Workmen)
(1800)	39 & 40 Geo. III, c. 106	(Repeal and amendment of 1799 Act)
(1803)	43 Geo. III, c. 86	(Unlawful combinations in Ireland)
(1807)	47 Geo. III, c. 43	(Servants' Wages – all Ireland)
(1817)	57 Geo. III, c. 122	(Extended combination laws to Scotland and Ireland)
(1824)	5 Geo. IV, c. 95	(Combination Repeal Act)
(1825)	6 Geo. IV, c. 129	(Combination Repeal Amendment Act)

for termination by either party. A 40s. penalty was imposed on offending masters and imprisonment for servants.

For several centuries these clauses were to have an important bearing on the conduct of industrial disputes, particularly in the cloth-making outwork trades. Gravenor Henson, the noted leader of the framework-knitters' union in the early nineteenth century was to tell the Commons' committee on the Combination laws in 1824:

> If any dispute arises respecting the amount and a strike or turnout commences and the men leave their work having words, the master prosecutes them for leaving their work unfinished. Very few prosecutions have been made to effect under the Combination Acts, but hundreds have been made under this law and the labourer can never be free unless this law is modified; the combination is nothing; it is the law which regards the finishing of work, which masters employ to harrass and keep down the wages of their workpeople.[8]

The statute also stipulated the hours of work for all artificers and labourers and empowered the justices, county sheriffs and mayors and other town officials to fix wages annually at the Easter quarter sessions. Penalties were imposed on magistrates who refused this duty. Wage fixing became the practice throughout the country for a century or more afterwards. It continued spasmodically with much regional variation into the eighteenth century, but more importantly remained as a symbol of legitimation, object of restoration to effective implementation and pretext for action for combined workers, notably in the west country woollen districts.[9] The relevant clauses were not in fact repealed until 1813.

Equally important were the clauses governing apprenticeship. These stipulated a minimum of seven years' indentured service before a trade could be lawfully exercised, 'after the custom and order of the City of London'. These clauses were reproduced and strengthened in the rules of most journeymen's societies during the eighteenth century in their increasing conflicts with their masters. They were amended a number of times over the seventeenth century, but remained on the statute book until repealed in 1814 in the teeth of opposition from the organised journeymen.[10]

THE COMBINATION LAWS

It is clear that the main elements of both common and statute laws against workers' combinations were well established before the

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beginning of the eighteenth century. There was a conscious government policy which regarded the setting of wage levels and hours of work as the prerogative of the authorities. There is little evidence of either active combinations or of vigorous enforcement of these laws in the sixteenth and seventeenth centuries. The situation changed in the eighteenth with the emergence of separate and permanent journeymen's societies for trade union as well as for benefit purposes in major cities like London, Edinburgh or Dublin. Now there is increasing evidence of recourse to Parliament by employers for assistance in the form of more effective laws against combinations of workers.[11]

The best example is provided by the London tailoring trade. In 1721 the masters of London and Westminster petitioned Parliament for an Act to suppress combination among their journeymen. They had failed to overcome this combination by prosecutions under the common law and by getting sympathetic magistrates to issue warrants for the arrest of some of the journeymen as loiterers. They sought to stir Parliament by pointing to the bad example which the journeymen were setting for all other trades. Parliament went through a procedure which was to be thereafter followed in other such cases. A select committee was appointed to hear the masters' case, but also invited evidence from the journeymen, which was submitted through counsel. The masters claimed that over 7000 journeymen tailors in London and Westminster had 'lately entered into a combination to raise their wages, and leave off working an hour sooner than they used to do'. They then described the system of 'Houses of Call', public houses where they organised, collected contributions and communicated to pursue their demands for an extra 2s. a week (to 12s. 9d.) and to leave work at eight o'clock instead of nine: 'their usual hour time out of mind'. The masters sought a specific Act to outlaw any agreements reached formally or informally with their journeymen for advancing wages or lessening hours, and that the justices of the peace for London, Westminster and Middlesex be given power to commit offenders and to 'limit' the hours and wages of the journeymen. At first the masters prevailed with the select committee accepting the existence of the combination as proved and recognising the ineffectiveness of existing laws and the need for an Act to regulate the trade.[12]

It has been assumed on the basis of Galton's detailed history of the tailoring unions that the 'Act for regulating the Journeymen Tailors within the weekly bills of mortality' gave the masters the one-sided repressive law which they had sought. Closer examination

of the evidence which he has provided suggests that the Act also addressed some of the journeymen's grievances while nevertheless aiming at preventing them from combining to regulate the employment conditions of the trade. In respect of wages they secured the award of 2s. a week plus a breakfast allowance of threehalfpence a day.[13]

Just as importantly the masters were obliged to pay these rates for the full time of hire instead of their previous practice of laying off men half way through the day, which had been a main grievance of the journeyman. An enforcement procedure upon application by either side to the magistrates was provided, indicative of a serious intent that the legal rates should stick. Periodic adjustments at Quarter Sessions were allowed 'according to circumstances of plenty or scarcity'.

Unable to find evidence of further trade union activity by the journeymen tailors, Galton concluded that they were frightened into compliance by the new Act.[14] It could be as easily argued that they had been placated for the time being having obtained most of their demands, with which all masters had to comply within the jurisdiction laid down. Certainly, on the masters' own evidence, they had shown no fear of prosecution before this Act and it is not to be supposed that they simply dissolved their club because of it.

If it is the case that this Act gave the journeymen much of what they wanted, it is more plausible to argue that the outcome was conducive to tranquillity in the trade for some time after, with the journeymen's society now focused on enforcing the legal rates in an undramatic fashion. Overtime rates remained for determination by the two sides, and in times of 'hurry' in the trade (during periods of General Mourning or royal birthdays) double the normal rates were customary and it is unlikely that the Act changed these practices.

The best evidence that the Act of 1720 became the *basis* of legal wage-fixing in the London and Westminster tailoring trades surely lies in the later complaints by the masters that many businesses were moving outside the district covered by the Bills of Mortality, especially to the Marylebone area, to evade it. Accordingly an amending Act was passed in 1766 which extended and unified jurisdiction to five miles around the city under the authority of the Lord Mayor, Recorder and three other Aldermen.[15] In the intervening years the journeymen had made numerous applications and obtained improvements both in hours and in wages.[16]

Detailed examination of this first eighteenth-century Combination

Act shows a more complex pattern of relationships between masters, their journeymen and the state than has been customarily suggested by historians.[17] The next Act, that of 1725 against combinations of west country woollen weavers, was much more repressive.[18] It was aimed primarily at journeyman combinations considered to have been responsible for outrage and widespread acts of violence and intimidation. Yet it also made provision for 'better payment of wages', that is, forbade truck and other forms of payment in kind. Even as late as 1773 a major Combination Act can be found placating the Spitalfields silkweavers with machinery for settling and enforcing wage rates.[19] This Act was to become the envy and desired objective of weavers and other craftsmen in the textile trades generally. The degree to which these scattered handicraftsmen looked to legal regulation of *minimum* rates as an alternative to weak combinations has been obscured by the undue weight attached to the purely repressive features of some Acts.[20] The Spitalfields Act was extended in 1792 to include manufacturers of mixed cloths. The journeymen's attachment to wage-fixing machinery is evident from their indifference to the passage of the general Combination Acts in 1799 and in 1800[21] and their great disappointment and protest over the repeal of the Spitalfields' Act in 1824.

THE PAPERMAKERS' ACT 1796

As an aid to our understanding of the evolution of thinking by masters, journeymen and the government up to the passing of the Combination Acts in 1799 and 1800, we are fortunate in having a detailed study of the background to the Papermakers' Act of 1796, said by Pitt to have been a model for the general Act[22]: 'It is clear that it was the situation created by the steeply rising prices of the later years of the eighteenth century that first brought the papermakers and their doings into the limelight of official disapproval.'[23] The industry was mainly centred in the home counties, especially in Kent. The journeymen had used their strong organisation to compel their masters to concede high and frequent wage increases and generally to dictate the terms of their employment from 1789 onwards. The determination of the journeymen to extract the maximum advantage from their strength seems to have produced a counter-reaction from the masters, who saw the power of the organised journeymen as raising issues of control, and as justifying a stand

against the combination. During a dispute which the journeymen started in January 1796 they decided upon a lockout aimed at forestalling the journeymen's tactic of withdrawing labour from targeted papermills. Prosecutions under the common law for conspiracy were also tried. Both approaches were found to be ineffectual in the face of the journeymen's organisational and financial ability to withdraw their labour and to evade the processes of indictment.

In April 1796 the combined master papermakers sought an Act to suppress the journeymen's club and machinery to regulate wages.[24] However due to the opposition of some of the larger papermakers, the wage-fixing clauses were dropped as tending to establish uniform rates contrary to the usual practice and desire of masters to pay differential rates.[25] This omission was significant in that it carried through to the general Act of 1799 giving it an unbalanced suppressive aspect unlike that of most of the previous trade-specific Acts.

The 1796 Act on combinations of journeymen papermakers seems to have had little effect upon their society's very secretive but continuous existence in 1801 and beyond.[26] However its passage and that of a similar bill against the London journeyman millwrights' club in 1799 is indicative of a new mood by the legislators which was unambiguously hostile to the journeymen's interests and operations. The bald Act of 1799 'to prevent unlawful combinations of workmen', introduced as it was by Pitt himself,[27] seems most probably to have sprung from this general mood, inspired by the masters and manufacturers who had by now the ear of government. Wilberforce, close confident of both Pitt and the Yorkshire clothiers, who certainly wanted such legislation, made an intervention during the passage of the millwrights' Bill which probably best expressed their mood when calling for a general measure: 'These combinations he regarded as a general disease in our society; and for which he thought the remedy should be general; so as not only to cure the complaint for the present, but to preclude its return.'[28]

As a government measure these Acts represented a new departure, although how significant remains debatable. Most evidence suggests that it was aimed at an industrial rather than a political problem.[29] The privy council's 'Observations respecting the combinations of workmen', which seems to have influenced the government's decision, listed the bricklayers, carpenters, cloth dressers, weavers, shoemakers, tailors and cabinet-makers as having active combinations: 'All of the above numerated branches have at times turned out and by that means compelled the Masters to consent to the required terms. Some have thus advanced wages twice within four years and whenever advanced no reduction is allowed however unfavourable the times may be for their employers.' It advised that 'combinations among workmen as well manufacturing as others have of late years advanced step by step to a system which calls for the timely aid of the legislature'.[30]

The shape of the Act, placing as it did the onus on the masters and manufacturers to bring prosecutions rather than requiring the law enforcement agencies of the state to do so, is also significant. The government had, in any case, just passed a specific Act against political societies.[31]

Nevertheless the 1799 Act was a straightforwardly repressive one, outlawing all collective agreements concerning wages, hours, quantity of work, apprenticeship or, 'for controlling persons carrying on any manufacture, trade or business in the conduct or management thereof'.[32] Offenders could be committed to hard labour in the House of Correction for up to two months or to the Common Gaol for up to three months on conviction before a single justice on the evidence of one witness or upon confession. Other activities singled out for punishment included combining to prevent other workers hiring themselves or persuading them to quit any employment. Attendance at meetings, payment or collection of subscriptions and maintaining club funds were particularly aimed at and made punishable by fines, seizure and distribution of the funds to encourage informers and defalcators.[33] As with previous private measures, this Act was primarily intended to give masters a speedier and more effective legal remedy than could be provided by the common law. It did not replace it, but the oft heard masters' complaints about the difficulties presented by tardy and cumbersome indictment processes at the next Quarter Sessions encouraged them to think that a summary procedure before a magistrate would be more effective.[34] A right of appeal to all the justices at general sessions was allowed, but not an application to the Court of King's Bench.

On the face of it this was a pretty draconian measure and the surprising thing is that there were not more protests and petitions from the journeymen. Admittedly the parliamentary timetable was short[35], but this was not unusual and did not prevent effective lobbying on other issues. Equally on the government side, there seems to have been a lack of detailed consideration of the measure. One almost gets the impression that they just offered the masters and manufacturers the model of the Papermakers' Act straight off

the peg,[36] which in the absence of effective opposition either from the journeymen or in a Parliament in an anti-combination mood passed without scrutiny into law.

Not until the following year was there a significant reaction. This took the form of numerous petitions from journeymen all over Britain, particularly from the Liverpool area. One of the members for that town, General Tarleton, with the support of even the Tory MP Colonel Gascoyne, secured a further committee of inquiry. Its report recommended a number of significant procedural changes such as the right of seeking a judicial review of justices' decisions in King's Bench. Two justices instead of one were now needed to convict and witnesses could give evidence without incriminating themselves. The requirements for the service of summons were strengthened, and a record of convictions and committals kept by magistrates and lodged with the Quarter Sessions.[37] Most of these recommendations were agreed by the government, but Pitt expressly reaffirmed the intended principle of banning collective agreements by trade clubs.

Equally significantly, the opposition was able to exploit the omission of any alternative wage-fixing machinery, and although the government expressly confirmed their opposition to any such clauses being inserted, they eventually agreed to incorporate binding arbitration agreements, albeit in a more limited form than those currently on offer to the cotton weavers in a Bill then before Parliament. The amending Act of 1800 was the one in force until the repeal in 1824.[38]

This outline of the evolution of the laws against combination reveals a definite trend away from mercantilist philosophies which, while definitely wanting to prevent combinations for trade purposes, nevertheless also considered that the state had an obligation to ensure some machinery for regulating wages and industrial relations. The last manifestation of this policy was the Spitalfields weavers Act of 1773 which was rather conceded than willingly granted.[39]

Adam Smith's theories about market forces determining the price of labour like that of any other commodity were now in the ascendant and the Pitt government firmly resisted any moves on the part of the most numerous groups of workers, the agricultural workers and the weavers, to revive the old wage-fixing arrangements to cope with inflationary and depressed trade conditions.[40] This left a lopsided and oppressive armoury of common and statutory law which could be invoked against combinations to promote or defend the interests of workers. By the penal standards of the time, the new statutory offences were to be misdemeanours rather than felonies, as at common law. The intention seems to have been to give masters a speedier but less severe sanction, reserving the common law for more serious incidents. It is unlikely that this 'leniency' was much appreciated by the journeymen. Whether the new procedures were more effective is what we must now consider.

THE OPERATION OF THE COMBINATION LAWS, 1800–24

Assessing the working of the laws is not a straightforward task. Wider controversies among historians in generally interpreting the period have drawn in the Combination Laws to support their different positions without offering any detailed consideration of them in their own right. The traditional view is that they represented a far-reaching change of policy and the 'most unqualified surrender of the State to the discretion of a class in the history of England'.[41] In contrast to this view of the Hammonds, Dorothy George concluded in 1927 that the Combination Acts were 'in practice a very negligible instrument of oppression', and pointed to the very small number of prosecutions and still smaller one of convictions under them.[42] Although many historians since have mulled over the evidence and the conflicting views, little consensus has been reached despite a considerable amount of primary evidence.[43] A definitive study is long overdue of this formative period in the establishment of the political and legal framework of British trade unionism.

An indication of government practice in its treatment of trade unions around the time of the passage of the Act of 1799 is provided by an exchange of correspondence between the Home Office and a Bolton magistrate concerning a combination of weavers in that 'principal part of the manufacturing district'. The local authorities were concerned lest this combination 'ostensibly formed for the regulation of wages' might be a front for radical agitation of the weavers. An informer's account of the proceedings of the Weavers' Association and a copy of their *Address to the Public* were forwarded to the law officers via the Home Secretary, but they concluded that the combination was not illegal within the terms of the 1799 Act. The local magistrate was nevertheless advised to continue his surveillance. In November the weavers were reported

to have renewed their opposition to the Act 'to prevent combinations amongst workmen', and although it had nothing to do with their distress, 'yet the ill-intentioned will not fail to take advantage of it as the cause'. This magistrate saw a need for 'rescuing the weavers from the snares which have been laid for them' and 'to prevent any serious or regulated plan of operations from growing out of the temporary difficulties'. In the end the local magistrates were dissuaded from prosecuting the Weavers' Association and instead the weavers were to get a Cotton Arbitration Act. Such incidents possibly educated the government as to the counter-productive aspects of the 1799 Act, disposing them to accept its amendment so soon after its initial passage.[44]

In December 1799, faced with a request from the Lord Mayor of London on behalf of the coal merchants to intervene and enforce the Act against a seamen's combination at Shields, the Home Secretary again declined to act. He relied upon information from the Mayor of Newcastle that it was no more than a traditional wage dispute with the shipowners 'differing as to the quantum of wages'[45]. In January 1800 the master tailors of London tried to enlist help in putting pressure on magistrates to act against their journeymen's houses of call by threatening the publicans' licences. Again the Home Secretary declined to act. However this reluctance on the part of ministers did not mean that local authorities were discouraged from initiating proceedings themselves, as in October 1799 when the Home Secretary encouraged the Lord Mayor of London to prosecute a combination of journeymen bakers under the new Act.[46]

1802 provides an interesting example of the use of the Act of 1800 as an instrument of civil power rather than of masters against a wage combination. This was during the violent campaign against shearing machines and gig mills by the shearmen of the west-country woollen manufacture. The chief Bow Street magistrate, James Read, was sent to Wiltshire to deal with the disturbances and planned to arrest the shearmen's committee. On 1 September he reported that six men had been gaoled under the Combination Act, four for offences and two for refusing to testify: 'I am bringing forward as many cases as I can under the Combination Act, and by forcing some to give evidence against others, I hope to provoke some quarrels amongst them and by that means to be able to bring some of their deeds to light.'

The shearmen's union was suspected to have national headquarters at Leeds, but a much more cautious policy was preferred by the Lord Lieutenant of Yorkshire, Earl Fitzwilliam, and it took some

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... thoughts of meeting the evil sternly, but are thinking of application ... of journeymen.

time before he was convinced that nocturnal meetings of the croppers, as they were more usually known in the West Riding, were not just for innocuous trade purposes: 'I conceive it to be only the different classes of people for the purpose of raising their wages, and from which nothing is to be apprehended.' He advised the Home Secretary to resist acting on alarmist reports from manufacturers and avoid confusing the inconvenience and mischief caused by ordinary trade disputes with the activities of seditious revolutionaries and conspirators: 'we should not afford them ground of complaint against the Constitution that we should not drive them into the service of the true Jacobin'.[47]

By September 1802, however, he was beginning to have doubts due to information obtained during a dispute between the Leeds manufacturer Benjamin Gott and his shearmen, ostensibly over the issue of apprenticeship:

> For a breach of this regulation decreed by their pleasure, Mr Gott is declared by the croppers under the ban of their empire. The striking of workmen is certainly to be considered usually as a business of a private nature . . . but on this occasion I must say it appears to me . . . that the matter, the motives and the nature of the denunciation give it a very different character. It is for infringement of a law made by parties incompetent to make any law; a law . . . subversive of the general rights of all his Majesty's subjects and to be enforced by violence, not only against the party denounced, but against all other people. Single men would not dare to face the menace of so numerous and so powerful a band, without some good assurances of public protection.[48]

This distinction between purely trade disputes, though unlawful, and combinations whose objects or potential were presumed to be seditious, was a crucial one for the authorities.

But what of the employers' use of the Acts? Were the journeymen 'at the mercy of the masters'? In the old trades and manufactures the situation seems to have been the reverse. In the woollen manufacture whose weight was shifting from the west to the north, centuries of detailed legislative regulation and the existence of very strong, strategically placed groups of journeymen like the shearmen, seem to have frustrated ideas for change. Fitzwilliam, who seems to have been both well informed and reasonably unbiassed, concluded:

> I know that it has been a measure among some of the Magistrates to stop any merchant from erecting a shearing mill, for fear of the consequences. There must be some strong encouragement held out before anyone will make the attempt. It is indeed unfortunate the masters have yielded so often, that they have lost all superiority. The journeymen are now masters. The masters feel the inconvenience and repine at it, but it appears to me that they have no thoughts of meeting the evil sternly, but are thinking of application to Parliament for further restrictions against the combination of journeymen. Laws to this effect have been amended, and amended over and over again, but still they remain inefficacious. So they will for ever. The system of restriction is vicious. Parliament always feels it so, and whenever it touches upon the subject its better principles are always a check upon its worse propensities. But though masters cannot be vested with an unfitting authority over their servants, they may and ought to be protected in the full exercise of their own just rights against all violence and against the effects of terror.[49]

Without entering into the respective merits in the dispute of the shearmen and their masters, there is little doubt that the situation was far more complex than that presented by the Webbs or the Hammonds as a 'war against trade unions'.

Only very slight use was made of the Act of 1800 in the following two decades, and research has not added very much in the way of fresh evidence in recent years. No doubt an exhaustive trawl of local newspapers and Quarter Sessions records would fetch up some more cases. But it may be more pertinent to ask whether most masters, on whose initiative prosecutions rested, decided not to use the law, and what reason they may have had for this decision.

Take the case of the master millwrights in the London area who had sought an Act for their own trade in 1799. We have evidence of further disputes in 1801, 1805 and 1812, but these were all resolved without reference to the Combination Act despite the masters' earlier lobby for an effective law.[50] By 1813 the masters in that trade seem to have gained the upper hand through *industrial* means. By this time a number of them and other engineering employers such as Galloway, Donkin, Maudslay, Taylor and Martineau had established engineering works, extended the division of labour and flooded the trade with apprentices and semi-skilled engineers.[51] These employers played a leading role in the repeal in 1814 of the apprenticeship clauses of the Statute of Artificers, removing the foundation of the journeymen's cherished restrictions on apprenticeship. The shift in the balance of industrial power is clear from the evidence of both masters and journeymen to the select committee of 1812/13 which investigated apprenticeship prior to the repeal and also from the employers' evidence to the 1824 committee where they unanimously favoured repeal of the Combination Acts, claiming that they had 'broke the neck of all combinations' and had no need of the laws.[52]

Other masters like those in boot- and shoe-making clearly regarded it as a waste of time simply to prosecute some of th ringleaders should they be so unguarded as to expose themselves as targets during disputes. In 1802 the masters drew up another Act 'for the more effectual prevention' etc., in which they aimed at the house of call system by threatening the licences of landlords who allowed meetings of journeymen on their premises. Nothing, however, came of this and in 1804 the masters were still complaining about the 'tyranny' of the cordwainers' union and of the 'thralldom' to which they had been for so long forced to submit:

> It may probably be thought that the masters ought to prosecute on these occasions, but a recollection of what was the fate of Mr Newcome who, for undertaking to prosecute, was, being deserted by the masters, entirely drove out of the trade, as no man would afterwards work for him. The masters therefore, fearful of similar treatment, submit to their exactions.[53]

There are frequent references to intimidation from other trades. Trade disputes in Dublin were notoriously violent during this period. The Chief Constable of Police there gave it as his opinion that 'terror among the labouring classes, timidity among the masters' were the major reason that the Combination Laws were rarely invoked there.[54] A similar situation prevailed in the ship building and repair trades of Liverpool, especially among the sawyers and shipwrights. The town clerk reported that little recourse was had to the Combination Laws 'either from willingness or fear'.[55]

From reading the evidence for these towns from masters, journeymen and authorities, one gets the impression of a much deeper struggle over 'control' of the trade with regard to recruitment, payment systems, work practices and a range of other issues. Some masters were trying to change the established system and especially to break down apprenticeship restrictions and increasingly to employ 'non-regular men', but strong societies of journeymen were effectively resisting such changes. Violence against those whom the regular journeymen regarded as scabs, blacklegs or 'foreigners' was endemic in desperately bitter disputes over these issues, and if any law was to be used it was more likely to be the criminal law.

Of course for much of the time relationships in most trades were fairly calm. This naturally encouraged most employers to eschew any ready use of the combination laws in the inevitable but spasmodic disputes which did occur, unless they considered that only the *force* of the law would enable them to prevail when other methods had failed.[56]

Masters who invoked the law often found it ineffectual and even counter-productive, inflaming and embittering relationships for years

afterwards, especially when gaol sentences were imposed on well-regarded strike leaders, as happened when *The Times* secured conviction under common law conspiracy proceedings of several compositors during a very bitter dispute in 1810. By 1824 a spokesman for the London printers recalled this experience with regret and indicated that as a result of the following period of ill feeling, the employers had unanimously agreed never to use the laws again.[57]

Judicial hostility to the extension of magistrates' powers also seems to have made prosecution under the 1800 Act an uncertain venture, and the higher courts seem to have been strict over the procedural requirements of the Act, so that obtaining a conviction before the justices came to be viewed by some masters as of doubtful value.[58]

EVADING PROSECUTION AND THE CLOUD OF ILLEGALITY

The ability of the journeymen's clubs to evade prosecution and conviction by various means has to be considered a most significant factor in rendering the Act of 1800, like so many before it, ineffective in suppressing trade union activity. The societies in existence before 1799 were already unlawful at common law if their rules could be seen to embrace trade as well as benefit objectives. An Act of 1793 had legalised associations for the latter purpose.[59] Many journeymen's societies had registered under it, ostensibly as friendly societies, but in practice also concerning themselves in the regulation of their trades.[60] Rules governing trade matters and the highly ritualised oath-taking procedures for enrolment and binding of members were probably always kept secret. The effect of the Acts of 1799 and 1800 can only have been to have put a greater premium on secrecy.

This can be seen from the 'Articles of Agreement' drawn up by the Amicable and Brotherly Society of Journeymen Millwrights in 1801 for registration under the Act of 1793 and lodged with the Registrar.[61] All references to trade objectives are crossed out in the original with a handwritten marginal note, 'this has the appearance of an improper combination', presumably on the advice of the Registrar or of an attorney. Rule 6 provides that members of the 'lately dissolved Society of Journeymen Millwrights shall be considered as members of this society without payment of admission money'. In 1805 the journeymen publicly disavowed their member-

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ship of any trade club, while at the same time extracting a hefty increase from their masters.[62] In 1801 the journeymen paper-makers' correspondent referred to his meeting at Maidstone with 44 other journeymen who approved and signed 'the sick, and secret articles of our Trade'.[63]

There were many methods of evading prosecution. Certainly very little was committed to writing and demands were conveyed surreptitiously wherever it was thought there might be a danger of prosecution.[64] However it is clear that in most well-organised trades, the masters continued to recognise the authority of the clubs and regularly negotiated with them, usually jointly settling books of prices and other matters, as in the London printing, coopering and brushmaking trades.[65]

Despite such de facto arrangements, the cloud of illegality under which journeymen's combinations had to operate at the turn of the nineteenth century can only be thought of as highly prejudicial to them. And there seems little doubt that it was felt to be so by them. The evidence from both sides to the 1824 committee confirms a widespread sense of grievance. A Dublin master cabinet-maker expressed another aspect from the point of view of a perceptive employer:

> In our trade and other trades also there are some of the most respectable part of the Community, who do not wish to take an active part; we generally pay £100 as an apprentice fee and a young man whose friends can afford to pay that must be somewhat respectable; it is not the infliction of the punishment they care about, but these young men do not like to have their names announced in the newspapers as being confined in Newgate; therefore they will not accept any situation as stewards or President; the consequence is, that it falls into the hands of uneducated men who are perhaps of warm tempers, and do not know how to go about the matter; they see no results but in violence. If the Combination Laws are repealed, respectable men would have the upper hand in every trade and all acts of violence would cease.[66]

THE REPEAL OF THE COMBINATION LAWS

Such far-sighted views were gaining ground from 1814 when Francis Place began his campaign for the repeal of the Combination Laws. Despite the vigorous opposition of the organised journeymen, Parliament had swept away in 1813–14 most of the old legislation regulating wages and apprenticeship.[67] By renouncing all responsibility in these matters, whilst retaining laws preventing workers

combining to regulate wages and conditions, the state now appeared to be completely on the side of the masters.

The story of the parliamentary campaign to repeal the combination laws which Place master-minded is well known and the credit given to his efforts deserved. However too great a reliance on his own account of the episode has obscured the degree of consensus which by that time existed in Westminster and even among employers for the legalisation of *some* aspects of trade union activity. Huskisson, on behalf of the government, informally facilitated the efforts of those like Joseph Hume to introduce a repealing measure. It is doubtful whether the efforts of Place and Hume would otherwise have been so successful.[68]

A sympathetic Select Committee was set up in February 1824 to look into a range of old laws (such as those preventing the emigration of artisans or the export of some kinds of machinery) and its brief was later extended to include the laws on combinations. Place's boast of having stage-managed most of the evidence from both masters and journeymen seems exaggerated when one considers the full record of the committee's proceedings. Nevertheless it does seem that he succeeded in duping the government as to the precise terms of the Act which followed the committee's recommendation of repeal.[69] For as well as repealing the various statutes against combination, the Act gave immediate immunity from prosecution even at common law for objectives much wider than those considered legitimate by either of the sides in Parliament and certainly by the employers. These included the right to combine 'to regulate the mode of carrying on any manufacture, trade or business or the management thereof'.[70] Although the legitimisation of such broad objectives may seem unremarkable to the modern reader, it was certainly not so in 1824. It was one thing grudgingly to acknowledge the expediency of allowing workers to combine peacefully for wage or other limited purposes, but quite another to legitimise the activities of journeymen's societies aiming at asserting a veto on management powers over such matters as recruitment, discipline, payment systems and work practices generally. But the Act devised by Place went through so quickly that the implications of the clause removing the application of the common law of conspiracy were unnoticed.[71]

The practical implications were soon evident as a rash of turbulent industrial unrest swept the country. There was an immediate clamour from the employers for a re-enactment of the Combination Laws, both statutory and common.[72] Place and Hume much taken aback by the disturbances, remonstrated with the workmen.[73]

A new select committee set up included Hume, assisted still by Place, but was made up largely of members handpicked by the government. Having investigated the combinations most involved in the disturbances, the seamen, papermakers, shipwrights, coachmakers and cotton spinners, they resisted the pressure from employers, like the shipbuilders, to re-impose laws of the old kind. They did, however, recommend the restoration of the common law of conspiracy to trade cases although certain limited objectives were to be immune from prosecution.[74] This distinction between the legitimacy of combination for some objects but not for others was to become the basis of all future policy on the law relating to trade unions in Britain.

It was based on the assessment by the 1825 committee of the nature of the journeymen's clubs of the period:

> Their objects appear to be in most instances the regulation of wages, combined with the assumption, in certain particulars of a power of dictation in the conduct of the business of which they are engaged; the effect of which, if submitted to, would be totally to subvert the independence of the masters and deprive them of all means of resistance to the future demands of their workmen of whatever nature those demands might eventually be.

And again: 'It is stated on one side, and distinctly admitted on the other that it is not a question of wages, and is therefore described by masters to be a question of the power of, regulating the mode of conducting the business.'[75] The resulting Act embodied the distinction, legitimising trade union activities only for specific purposes such as the regulation of wages or hours of work. It also stipulated further statutory offences such as intimidation, molestation or obstruction during trade disputes which carried punishments of up to three months' imprisonment. The precise interpretation of what constituted these offences was left to the discretion of the police and judges, a feature which remains to the present day.[76]

CONCLUSIONS

The Combination Laws were a product of a highly regulated medieval society. Originally they were aimed at suppressing associations of both masters and journeymen – traders as well as producers – to prevent them raising the *prices* of their products and services. Apart from being regarded by the courts as a restraint of trade, such combinations were viewed by the legislature as conspiracies and as tending to usurp the wage-setting functions of the State.

The Combination Laws were revived and augmented significantly during the eighteenth century with Acts of Parliament aimed at preventing specific groups of journeymen like the tailors, weavers, paper-makers and millwrights from utilising their organised strength to dominate or regulate their trades in accordance with their practices and customs. However, the wage-fixing aspects of legislation on the model of the Spitalfields Acts were also sought by some like the weavers.

All these laws were largely ineffective in suppressing combinations because unenforceable. With the removal of other medieval industry-regulating legislation in 1813 and 1814 the Combination Laws stood out as anomalous, one-sided and unjustifiable. They were repealed in 1824 following a Parliamentary inquiry which heard a preponderance of opinion – masters, employers and authorities as well as journeymen – in favour of repeal. A more restrictive basis for the lawful operation of combinations was established in 1825. This was the legal framework which the forerunners of today's trade unions had to operate until the newly constituted unions became strong enough to remove many of those restrictions after 1871.

The foregoing interpretation is at odds with the traditional labour historians' view of the Combination Laws, founded on Marx's influential section in *Capital* and eminent works like those of the Webbs and the Hammonds. Yet neither does it accept the view of those like M. D. George that the effect of these acts was 'negligable'. Marx saw the Combination Laws as a continuous barrage of 'legislation against the expropriated wage-labourers', stretching over five centuries of capitalist accumulation. I have attempted to show that a more detailed analysis of those laws reveals a much more complex picture affecting mainly artisans, viz. small masters and journeymen handicraftsmen. Similarities between their associations and those of the emerging trade unions of Marx's time, together with the superficial continuity of the legal form of all combination laws since medieval times, lent plausibility to the traditional view. But we have only to consider such a statement as: 'The barbarous laws against Trades Unions fell in 1825 before the threatening bearing of the proletariat'[77] in order to realise that it is seriously flawed as a historical statement. The trade clubs had only a marginal influence in the repeal of the combination laws as is well known and it would be truer to say that those laws were nearly *re-imposed* in 1825 due to the threatening bearing of the *artisanate*. If this interpretation is sound, it would call in question some received views on the formative period of trade union law and history.

3 The English Combination Laws reconsidered

John V. Orth[1]

In 1799 Parliament passed a statute outlawing combinations, that is unions of workmen for economic improvement;[2] in 1800 it legislated again, repealing the earlier statute but maintaining the ban with only minor modifications.[3] The two statutes are commonly known as the Combination Acts or, less precisely, the Combination Laws. Looking backward a century later, Fabian historians regarded the Combination Acts as a new departure in the legal history of trade unionism (see Webb and Webb 1920: 64, 72; Hammond and Hammond 1917: 113). But in an article entitled "The Combination Laws Reconsidered," published a year after the General Strike of 1926, M. Dorothy George (who may be safely labeled a non-Fabian historian) argued that the Acts were a point on which nothing turned.[4] Although the historiographic lines have wavered in the last half-century, they have largely held. Referring to the Combination Acts, J. H. Plumb asserted, "Time and time again these Acts were invoked to suppress savagely and indiscriminately the movement towards trade unionism" (Plumb 1950: 158).[5] With more attention to the sources, E. P.Thompson admitted that they were "not as widely employed as might have been expected" (he never identified whose expectations he had in mind), although he insisted that "their general prohibitive influence was ever-present" (Thompson 1963: 505). Replying to Thompson, A. E. Musson has broadly asserted:

> "One of the most deeply-rooted myths in trade-union history is that of the cruelly oppressive Combination Laws. This belief, however, is based on historical error and misconception. It arises mainly from confusion of the Combination Laws of 1799–1800 with other, older, legal controls, which were actually more severe and more frequently enforced."
>
> (Musson 1972: 22)

George's article remains central to the debate: it is the principal source for those who deny the significance of the Acts and has not been directly challenged or refuted by their opponents. The surprising longevity of this scholarly article is perhaps attributable to labor historians' allergy to legal detail. This paper reconsiders George's historical method. It reviews the questions of law that she raised, reexamines the scanty evidence on enforcement, and reassesses the place of the Combination Acts in the longer history of labor law.

The genesis of the Combination Acts was described by John and Barbara Hammond in their valuable study of the *Town Labourer* almost seventy years ago, although the laws' specific provisions have received little attention since then. In 1799 a well-organized combination of journeymen pressed the master millwrights for higher wages. The employers responded by petitioning Parliament for a statute to provide easy, speedy, and cheap convictions for the crime of combination – similar to legislation enacted for other trades. Within months Pitt's government, following a suggestion by Wilberforce, adopted the proposal as its own, but on a much wider basis: Parliament was to supply a remedy for combinations in all trades. This was a sweeping curtailment of trial by jury, but in spite of opposition by Lord Holland and other Whigs, it was speedily passed by a parliament much inclined to fear that combinations of workmen were increasingly infected with French-inspired sedition. The bill became law in July 1799. Extensive petitioning by workmen against some of its terms, particularly its central feature of summary proceedings, led to minor revisions that nonetheless did not touch the principle of the 1799 Act. The result, the Combination Act of 1800, was the primary statute governing the legal status of trade unionism until its repeal in 1824. Its provisions, and their application, were the main concerns of M. Dorothy George and subsequent historians.[6]

The Act defined an illegal agreement, provided summary measures as an alternative to trial by jury for its prosecution, and made other minor innovations in the law. An illegal agreement was one made by workmen for obtaining increased wages for themselves or others, or for lessening or altering their hours or quantity of work, or for "wilfully and maliciously" preventing or hindering an employer or an employee from freely contracting, or for dissuading engaged men from working. More generally, an agreement for "controlling or anyway affecting" employers' conduct of their affairs was illegal. To make such an agreement was criminal, to combine to do so

was equally criminal. Meeting or encouraging others to meet for illegal purposes was criminal, and refusing to work with others, once hired, was also criminal. Provisions were made to punish those who supported combinations with money, to compel the discovery of such money in courts of equity, and to seize collected funds.

All proceedings could be heard and concluded before two Justices of the Peace (not themselves masters in the trade concerned) on confession or on the testimony of one witness. Recalcitrant witnesses could be imprisoned by the Justices, but were given immunity from prosecution if they testified against others. An appeal to the Sessions, where Justices sat together, was possible, but the Act required substantal recognizances to do so. Civil actions against anyone for anything done pursuant to the Act had to be begun within three months. Even more striking, trials of accused persons could be held in their absence.

A Justice could also license an employer's use of labor which would otherwise be illegal, thereby allowing an employer to employ men (for example) who had not served their apprenticeships when he found himself in dispute with his qualified workmen. (And disputes in the eighteenth century were very likely to be about precisely such attempts by employers.) An apparent counterweight was the creation of a new crime: combination by masters to reduce wages, add or alter hours, or increase the amount of work. The penalties reflected the existing balance of classes: for this offense masters might be fined twenty pounds, but for almost all the offenses committed by workmen the penalty was three months' imprisonment. Finally, one innovation of apparent neutrality was the provision of arbitration in disputes over an existing contract or work already done.[7] Quote

In her influential article sixty years ago, M. Dorothy George argued for a reconsideration of the historical significance of the Combination Acts. Although she referred in the course of her argument to other laws against combination,[8] she expressly called for a reappraisal only of the successive Acts of 1799 and 1800. With unconscious irony she insisted that the other laws against combination were harsh in order to prove that the Combination Acts were negligible. The laws against combination to which George referred were of two types: statute law and common law. The statutes, to the extent they were enacted ~~after the Stuart~~ period, were all limited to particular trades, and many applied to particular trades only in particular places. The common law, which had to be gathered from decisions in scattered cases, applied to all trades everywhere. Not only were the Combination Acts redundant, George argued, they were also infrequently enforced. In explanation of the latter fact she pointed to the hostile attitude of the common-law courts toward the summary procedure prescribed by the Acts.

Bolstering her argument about the insignificance of the Combination Acts, George summarized their parliamentary history in such a way as seemed to show that MPs regarded neither Act as epoch-making: "Except for the apparently casual intervention of Wilberforce, supported by Pitt, the Act of 1799 would have applied to millwrights only" (George 1927: 226). Furthermore, "the Act of 1800 (the only one which was operative) was prepared by (among others) Tarleton, the favourite of the Liverpool artisans, and by Sheridan" (George 1935–36: 177). Finally, "[n]o opposition appears to have been made to the Act of 1800 which altered the objectionable provisions in the former Act" (George 1927: 226); "(like the Act of 1799) it passed unnoticed and was not even mentioned in the Annual Register" (George 1935–36: 177). Without pointing out the obvious fact that historical figures are not necessarily the best judges of whether their actions constitute a new departure, one can fault George's summary for tendentiousness. Whether or not Wilberforce's intervention in 1799 was casual, the Prime Minister's certainly was not. Two months had elapsed since the suggestion was made, and the government had prepared an elaborate bill. In 1800 the Prime Minister took a personal interest in the arbitration clauses. The 1800 Act was, to be sure, drafted by a committee of six that included Tarleton and Sheridan, known opponents of the Combination Act. While it reflects well on the fairness of parliamentary procedure during the dark days of struggle with Revolutionary France – and may even reveal something about that awesome abstraction, the Rule of Law[9] – the inclusion of critics on the committee does not make them accountable for the Act's contents. Nor does passage without opposition through the unreformed Parliament mean that a more representative body would have passed it *nem. con.* In light of numerous petitions, it is, of course, false to say that the 1799 Act passed unnoticed.[10]

With regard to the Act of 1800, in effect until 1824, George argued that it was infrequently enforced. Although she suggested at one point (George 1927: 227) that this was due to "compromise and toleration, good sense and moderation," her principal argument was that statutes conferring summary jurisdiction tended to become inoperative. "They were defeated," she said, "by the difficulties of drafting an information, by appeals to the Sessions (often at a distance), and by the frequent quashing of convictions on technical points" (George 1935–36: 174). To support her argument that informations were so easily defeated on technicalities, George quoted comments by a London magistrate that had nothing to do with combinations.[11] With respect to the Combination Act itself George asserted:

> "many convictions which survived the Sessions perished in the King's Bench. There was a remarkably interesting case in 1805 on the Combination Act, whose importance appears from the fact that Erskine, Garrow, and three other counsel had been briefed for some cotton spinners who were appealing against a conviction. The conviction was quashed and the decision, which shows how difficult it must have been to draft an information under the Act, may well have discouraged prosecutions."[12]

The case relied on is *R. v. Nield*,[13] which *pace* George is the only conviction under the Act known to have "perished" on appeal to the common-law courts. On 28 November, 1804 the defendants had been convicted before two Lancashire Justices of the Peace of having on 1 November at Chalton Row in the county, entered into

> "a certain agreement for the purpose of then and there controlling W. Borradaile, etc. then and there carrying on the management and trade of cotton spinning, as masters and partners, in the conduct and management of their said trade and manufacture; the said agreement not being a contract made between any master and journeyman, or manufacturer, for or on account of the work or service of such journeyman or manufacturer; contrary to the form of the Stat. 39 & 40 Geo. 3, intitled, etc."[14]

For this offense the defendants were to be confined in the common jail for three months. The defendants, however, exercised their right of appeal. In the first round they were unsuccessful; the sessions affirmed the conviction. As permitted by the Act of 1800, the defendants then petitioned for a writ of *certiorari*, which was granted. Consequently, the case came before the Court of King's Bench, Lord Ellenborough CJ, presiding, on 22 May, 1805. On behalf of the defendants, Thomas Erskine attacked two alleged defects in the Form of Conviction that had been brought before the judges. First, the agreement for which the defendants had been convicted was not set out but was summarily stated as an "agreement for the purpose of . . . controlling" their master. Such conclusory language deprived the defendants of effective review. There was "a wholesome rule of law," insisted Erskine,

> "which is even more necessary to be observed on convictions before inferior magistrates than in indictments before the higher tribunals, namely, that every indictment or conviction should contain a charge of the offence with such certainty as that the Court may see that the offender is plainly brought within the law which he is alleged to have broken; so that an innocent person may not be condemned upon a misconstruction of the law by an inferior tribunal, without any means of redress."[15]

Erskine's second argument, a pleading point on which he wasted little time, drew attention to the fact that although the Act outlawed agreements entered into "for controlling" a master, the conviction was for an agreement entered into "for the purpose of . . . controlling" a master. "Though the difference may seem to be small," he said, "yet in a case of this sort even a literal variance is important."[16]

The judges, who quashed the conviction on 25 May, were persuaded. Lord Ellenborough, speaking to the first point, said:

> "In all instances where jurisdiction is given to inferior magistrates in certain cases, it is necessary that the Court should see that they do not exceed that jurisdiction. The statute in question gives the magistrates a summary jurisdiction to repress agreements by journeymen for controlling their masters in their trade, they should therefore have stated what the agreement was, in order that the Court might see whether it were an agreement for controlling the masters in their trade within the meaning of the statute."[17]

On the second point, he also agreed with Erskine, although he seemed to raise it from a mere pleading point to the level of substantive law:

> "It is necessary to shew a criminal object, as well as a criminal intent. . . . It is not enough that the agreement should be for the purpose of controlling, that is, with intent to control; but it must be entered into for controlling, that is, for effecting that object."[18]

Nield is indeed, in George's words, "a remarkably interesting case" (George 1935–36: 174), but it does not support her conclusion as stated. The case has nothing to do with the difficulty of drafting informations under the Act. The conviction, to be sure, was quashed and one of the grounds might well be described as a technicality. But the fault lay in the Form of Conviction filed by the Justices. As shown earlier, no formality was required for informations. The only record was embodied in the Form of Conviction. Frequent reversals of convictions might certainly discourage prosecutions. But the judges' ire in this case was directed not at the complainant and his information but at the Justices of the Peace and their record.

The real interest of *Nield* lies elsewhere. The larger issue in the case – and George recognized this – is the common-law courts' attitude toward summary procedure. Eighteenth-century jurists like Blackstone thought that summary proceedings were increasing and ought to be diminished (see Blackstone 1765–69: 277–78). A close watch had to be kept on "inferior magistrates." The holding cautioned the Justices of the Peace to exercise care in filling in the blanks in the statutory Form of Conviction. Of course, if *Nield* signified the emasculation of summary procedure, it would amount to the defeat of the main intention of the Combination Act. Yet there is no reason to leap to this conclusion. Nothing in the record suggests that Nield and his seven co-defendants would not have had their conviction upheld if the Justices had only been more explicit and more careful.

This conclusion is supported by another interesting case on the Combination Act, not mentioned by George: *R.* v. *Ridgway* in 1822.[19] In that case the Form of Conviction was more amply filled in.[20] On appeal to the Sessions the conviction was quashed because of objections to the Form of Conviction. The order for quashing the conviction was, however, subject to the opinion of the Court of King's Bench as to the sufficiency of the Form. That court brought the record before it for review by *certiorari*. At the hearing John Williams and Thomas Denman argued in support of the Order of Sessions. Their argument involved two contentions. First, King's Bench should never interfere after the Sessions had quashed a conviction: "This is like moving for a new trial after an acquittal for a misdemeanour, owing to a misdirection on the part of the Judge, which is never allowed."[21] Also, the Act limited actions to three months after the crime. If the court were to find the Sessions in error on a matter of form and if it were to send the case back for an appeal on the merits, then a period much longer than that contemplated by the statute – in this case more than a year – would have elapsed. But if the first argument should not prevail, there was a second argument for supporting the Order of Sessions. Put simply, it was that the Sessions were right in finding the Form of Conviction improperly filled in. It does not follow the words of the Act. The combination was alleged to be "for the purpose of obtaining an advance of wages" not "for obtaining an advance of wages." Here, of course, the oracular utterance of Lord Ellenborough in *Nield* on the differences between "criminal object" and "criminal intent" was relied upon.

The judges were not convinced. Without waiting for argument tion but at the Justices of the Peace and their record.

criminal object and criminal intent was relied upon.

The judges were not convinced. Without waiting for argument

against the Order of Sessions, they quashed that order and sent the case back with directions to hear the appeal on the merits. Ignoring the argument that the court should not interfere when the Sessions quash a conviction, the judges found the Form of Conviction unexceptionable. Lord Ellenborough's reasoning was deliberately and expressly rejected. In the words of Sir Charles Abbott, Ellenborough's successor as Chief Justice:

> "No man entertains greater respect for the opinion of Lord Ellenborough than I do, but I own that the observation quoted from *Rex v. Nield and Others* is not satisfactory to my mind. He seems to have considered the word purpose as synonymous with the word intent, and to have thought that an agreement with intent to control might not be an agreement to control."[22]

What is the law in the aftermath of *Ridgway*? First, it is clear that the Form of Conviction need not follow the exact words of the Combination Act. Second, in cases like *Ridgway* involving illegal actions it is sufficient to state the offense in general terms without including the evidence to support it. Finally, in cases like *Nield* involving illegal agreements, it remains necessary to set out the agreement and not simply to describe it as illegal. It is important not to overstress the difference between *Nield* and *Ridgway*. To be sure, the Court of King's Bench let the workmen off in the former and did not in the latter. But this only shows that the judges were not primarily concerned with the status of the defendants. Lord Ellenborough and Sir Charles Abbott were more concerned with the Justices who tried them than with the men who were tried. These "inferior magistrates" were to be supervised whenever possible. Their judgment on the illegality of an agreement, a matter of law, was not to be trusted, although their conclusions on matters of fact (such as that an agreement was entered into or that a meeting was held) could not be challenged. In both cases the court sought to enlarge its power of review. Arguments which limited its oversight were rejected. The judges in *Ridgway* did not even deign to respond to Williams and Denman's argument that they should not examine the grounds on which the Sessions quashed the conviction.

The rule in *Nield* benefited the workmen. In immediate terms it meant the freedom of eight men. For those with good advice and adequate funds (surely a small number in the first quarter of the nineteenth century) it meant greater procedural fairness. Perhaps, as George has argued, it also meant fewer prosecutions. The rule in

Ridgway, however, was detrimental to the workmen. The men charged in that case had one of their weapons, albeit a not very potent one, knocked from their hands. The Form of Conviction need not follow the words of the Act; equivalence was sufficient.[23] The point is not that hostility on the part of the common-law courts toward summary procedure was not important, but rather that the workmen were not the inevitable beneficiaries of such hostility.

George argued that the effect of such hostility was the disuse of the Combination Act of 1800. This disuse appears, she said, in the *Parliamentary Papers*:

> "The chief authority for the effects of the Combination Laws (there were some thirty or forty of them, including Scottish and Irish Acts) is the evidence given to the parliamentary Committee on Artisans and Machinery in 1824. This evidence was carefully arranged by Francis Place to show that the laws were oppressive, that they were not only ineffective in preventing combinations but did in fact encourage them, and further, that if the laws were repealed, strikes would cease. The witnesses were chosen to represent different trades and localities and instructed 'to state the evils of the Combination Laws.' The case against them was thus fully stated. . . . Four of the convictions mentioned by witnesses seem to have been under the Act of 1800, and one of these was confirmed by the Sessions on appeal. There were also three convictions quashed on appeal."
>
> (George 1927: 216)

As stated, the evidence is damning indeed. If there were only one successful prosecution (i.e. a prosecution that had not been overturned on appeal) under the Act of 1800, then a *prima facie* case would be made out for its negligibility. However, there is reason to question the reliability of the Select Committee's evidence on this point. In a celebrated parliamentary maneuver, Francis Place managed the repeal of the combination laws in 1824 (see Wallas 1918: ch. 7; Orth 1976). It is true that he arranged the evidence before the Select Committee to support his cause. But Place was not interested in showing that the combination laws were an effective instrument of oppression; instead, he arranged the evidence, as George admitted, to show that they were ineffective. Evidence of frequent use might have jeopardized the cause of repeal.

George was certainly correct to carry the historical argument beyond the mere terms of the Combination Act and to investigate practice under the Act. Yet she seems not to have carried the argument far enough when she stopped at the point of actual prosecution. The Select Committee did find evidence of the deterrent effect of the combination laws.[24] An iron master recalled

> "the case of a combination among about eighty of our own workmen, which was entirely stopped by taking them before the magistrate; but I am not prepared to say on what Act of Parliament he committed. The magistrate would have committed the men to prison, but they were sorry for what they had done, and we took them to work again; but it entirely put a stop to that and to a more extensive combination, which we were aware would have followed, if this had not been promptly stopped."[25]

This case, of course, found no place on George's short list of convictions under the Act of 1800, but it surely was as effective in altering the behavior of the men as a successful prosecution, complete with Form of Conviction. The *Annual Register* for 1804 reports another aspect of deterrence:

> "Four of 1,010 journeymen bootmakers engaged in a combination against their masters, were examined at Marlborough-street police office. Three of them were sentenced to hard labour in the house of correction for two months and one for one month; which timely severity, speedily put an end to a widely spread and dangerous conspiracy."[26]

The impact of the Combination Act on the four convicts is obvious. But the Act also had an effect on the thousand-odd other bootmakers. Although they were not tried and convicted under the Act, they gave up their common action. Presumably, when they saw four of their number summarily punished, they concluded that further resistance would only expose them to the same fate.[27]

Deterrence is certainly one aspect of the effectiveness of a law, but it is almost impossible to measure. The evidence is usually impressionistic. But prosecutions are a different matter. The Form of Conviction remains as tangible evidence in the files of the Sessions or in the files of the higher courts if removed by *certiorari*. Here, surely, rather than in the testimony to the 1824 Select Committee, lies the only reliable answer to the question of the negligibility of the Combination Act. Little evidence is presently available on the Forms of Conviction in the files of the Sessions. When John Foster a dozen years ago examined the records of the Lancaster Quarter Sessions from 1818 to 1822, he found seven successful prosecutions involving twenty-four men (Foster 1974: 29, 283 n.11). For an industrial area that was passing through difficult times this is not a large number, particularly when there can be no doubt that combinations in fact existed, but it is more than the single instance that George considered negligible. In addition, the file Foster searched is not, as he supposed, complete. The prosecution of "T. H. etc." at Great Bolton in Lancashire under the Combination Act, which formed the basis of *R. v. Ridgway*, is not mentioned, either when it was quashed by the sessions in 1821 or when it was remanded by King's Bench in 1822.

Yet even with these additions – and with the deterrent effect factored in at some value or other – it is clear that the trade unions of Lancaster did not live under a reign of terror. Why were there not more prosecutions? Foster answers this question by quoting a letter from Colonel Ralph Fletcher, Bolton's "coalowner magistrate," who wrote:

> "About Oldham the colliers are universally *out*. Mr. Chippindale writes that the masters have not courage to proceed against them either for combination or neglect, although the workmen's organised committee sits on stated days at a public house in Manchester, as if on legal business."
> (Foster 1974: 50; original emphasis)[28]

This answer is certainly correct as far as it goes. The Combination Act required someone, normally a master,[29] to set it in motion. And, given their vulnerability to economic reprisals or physical force, many masters indeed lacked the necessary fortitude. The master shipwrights of Liverpool called for "a competent military or civil aid." They thought a public prosecutor would help – if individual masters did not have to apply to him publicly for a prosecution.[30]

George argued that the Combination Acts signified very little because they were not enforced and because there were other legal restraints on combination. She placed special emphasis on the opinion of George White, whose credentials were indeed impressive. White served as clerk to the Select Committee on the laws against combination and drafted the repealing Act of 1824. He had, he asserted, made the laws relating to masters and workpeople his "particular study" for twenty years.[31] He coauthored a book on the subject in 1823 with Gravener Henson, a man with the reputation of having been a Luddite, even "General Ludd" himself.[32] In that book, the Combination Act of 1800 was described as having been "in general a dead letter upon those trades upon whom it was intended to have an effect; namely, the shoe-makers, printers, paper-makers, ship-builders, tailors, etc." (White and Henson 1823: 84). In George's words, the authors considered a clause of the Elizabethan Statute of Artificers requiring workmen to finish their work[33] to be "the chief mill-stone round the neck of the worker" (George 1927: 215). One may legitimately question whether George should have given such prominence to White and Henson's testimony that the Combination Act was "a dead letter" (George 1927: 215, 217, 227;

nplete. The prosecution of "T. H. etc." at Great Bolton ...

1935–36: 173, 175). After all, they went on to state "But if the evil has been slight in the general travelling trades, it has been extensively felt in the general local manufactural trades of the kingdom" (White and Henson 1823: 86). In fact, the authors described the Combination Act of 1800, not the Statute of Artificers, as "a tremendous millstone round the necks of the local artizan, which has depressed and debased him to the earth" (p. 86). In context it is clear that White and Henson did not consider the Combination Act to be "a dead letter" in general, but only to be ineffective with regard to certain trades. In those cases other laws were more potent.

There were, to be sure, combination laws before the Combination Acts of 1799 and 1800. Arguing that the Combination Act of 1800 was overrated by historians, George dismissingly asserted: "This Act merely added one more to the many existing Statutes" (George 1927: 226–27). According to George, there were "some thirty or forty of them, including Scottish and Irish Acts" (George 1927: 214) "of which the Act of 1800 was the last" (George 1935–36: 174). George had in mind the statutes repealed in 1824.[34] To be exact, there were thirty-four such statutes, and the Combination Act of 1800 was not the last. Three post-1800 statutes against combination were repealed in 1824: two applied to Ireland,[35] and one to Ireland and Scotland.[36] Of the remaining thirty-one Combination Acts, eleven had been passed before the Glorious Revolution. One was from the fourteenth century,[37] five were from the fifteenth,[38] four from the sixteenth,[39] one from the seventeenth.[40] Together they lent an air of antiquity to the list. To conclude from the numbers that combination was an old English crime, however, would be a mistake. Of the eleven statutes against combination dating from before 1688, only four had been passed by the Parliament at Westminster;[41] six had been passed by the Scottish Parliament,[42] and one had originated in Ireland.[43]

The eighteenth century would seem to have been the golden age of legislation against combination. Hanoverian Parliaments enacted twenty statutes.[44] Yet it would be a mistake to conclude that twenty distinct crimes were created. For one thing, there were still two simultaneous Hanoverian Parliaments: one at Dublin and one at Westminster. Ten of the twenty statutes were Irish.[45] To some extent Irish legislation paralleled English; the Irish silk-weavers, for example, were regulated by an Act that was modeled on the English Spitalfields Act of 1773.[46] In addition, the Parliament at Westminster passed one Act applying only to colliers in Scotland.[47] Even the nine truly English statutes were limited in extent: two applied to

tailors in London and Westminster;[48] four applied to the textile trade, including hatters;[49] two applied to silk-weavers in Spitalfields;[50] and one applied to papermakers.[51] George correctly observed that until 1799, "eighteenth-century English Statutes against combinations had been concerned with particular trades only, but this was the natural result of the prevalent system of legislation by private-bill procedure on petition from the parties interested" (George 1927: 226.) In other words, problems received a legislative solution if the petitioners were rich or powerful or had friends in high places. Policy was fragmented, but so was society. Procedure reflected the old society in which industry was organized by trade rather than by class. Men were silk-weavers or tailors, and the dissimilarities between the trades in which they worked still overshadowed the similarities between the workmen in the various trades.

Arguing that the legislation of 1799–1800 did not constitute a new departure, George asserted that penalties under the earlier laws against combination were more severe. "The Act for the woollen trade," she pointed out, "had made it felony to assault or threaten masters for not submitting to 'illegal by-laws and ordinances,' and felony without benefit of clergy to break into a house or shop to destroy work."[52] These harsh penalties were, she said, later extended to other textile trades.[53] So much may be conceded. To imply, however, that these were the punishments for combination is misleading. Draconian punishments were inflicted for violence to persons or property; the punishment for combination provided by these statutes was limited to imprisonment (with or without hard labor) "for any time not exceeding three months."[54] The fact is that eighteenth-century statutes imposed no harsher penalties on combination than did the Acts of 1799 and 1800.

What George failed to point out was that the particularistic legislation was limited in extent and that in consequence the general Acts of 1799 and 1800 marked a significant extension of statutory law. Rather than the "thirty or forty" laws she referred to, there were in fact twelve statutes that overlapped the Combination Acts,[55] of which nine dated from the eighteenth century.[56] Only by statute could the delays and uncertainties of common-law procedure be avoided; and it was precisely the inadequacies of common-law procedure that had motivated the master millwrights to petition Parliament in the first place. Furthermore, George overlooked a significant omission in the Acts of 1799 and 1800. The prior eighteenth-century statutes had provided for wage regulation in the trades concerned; combination was outlawed at least in part because it interfered with this arrangement (see Webb and Webb 1920: 72; Thompson 1963: 504). In keeping with this tradition, the master millwrights had petitioned for "regulating the Wages" of their workmen, as well as for "the better preventing of unlawful Combinations."[57] But the general Acts precipitated by this petition attended only to the second request. The opportunity for wage regulation provided by the arbitration clauses of the 1800 Act were deleted with the approval of William Pitt himself.

It is a cardinal point in George's argument for a reconsideration of the Combination Acts that they constituted "a far less potent instrument of oppression than a prosecution for conspiracy at common law" (George 1927: 405). Although she argued that the Acts went unenforced and that they were insignificant compared with the statutes covering particular trades, it was nonetheless the common law of conspiracy – apparently ancient and certainly harsh – that principally supported her argument that the Combination Acts were not new and not severe. Although George argued that conspiracy "in restraint of trade" was recognized early in English history, her chief reliance was on two eighteenth-century cases:[58] the *Cambridge Tailors' Case*[59] in 1721 and *R. v. Eccles*[60] in 1783.

In 1721 some journeymen tailors in Cambridge were indicted "for a *conspiracy* amongst themselves to raise their wages." After being found guilty, they petitioned for a writ of *certiorari* to remove the record to King's Bench. In that court their counsel alleged five errors. Three were pure pleading points: the county was not named; the words *domini Regis* were omitted from the caption; it was inconsistent to describe the defendants as both yeomen and journeymen tailors. The court quickly brushed aside these complaints. Two other allegations, however, raised more substantive issues. First, "no crime appears upon the face of this indictment, for it only charges them with a conspiracy and refusal to work at so much *per diem*." This was insufficient, it was alleged, because under the Statute of Artificers they were obliged to work *per annum* rather than *per diem*. Second, "this indictment ought to conclude *contra formam statuti*; for by the late statute 7 Geo. 1, c. 13 [1720], journeymen-taylors are prohibited to enter into any contract or agreement for advancing their wages, etc. and the statute of 2 & 3 Edw. 6, c. 15 [1548] makes such persons criminal." On these allegations also the court held against the defendants:

> "it is not for the refusing to work, but for conspiring, that they are indicted, and a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them, to do, if they had not conspired to do it."[61]

Therefore, the Statute of Artificers was irrelevant, as indeed were all statutes. (The 1720 statute, cited by counsel, was doubly irrelevant because it purported to regulate tailors only in London and Westminster.) "This indictment need not conclude *contra formam statuti*," the court held, "because it is for *a conspiracy*, which is an offence at common law."

Sixty years later another group of tailors were embroiled in a trade dispute which also ended in a prosecution for conspiracy, *R. v. Eccles*. The indictment, which was in two counts, charged that the defendants

> "fraudulently, maliciously and unlawfully did confederate, conspire, combine, and agree among themselves, by wrongful, and indirect means to impoverish the said H. Booth, and to deprive and hinder him from following and exercising his aforesaid business of a taylor in Liverpool."[62]

The first count alleged that they did in fact prevent him from working; the second that they conspired to that end. The defendants were convicted at the Summer Assizes for Lancaster in 1783. The record was later removed to King's Bench by *certiorari*. There their counsel moved to arrest judgment on the ground of errors in the record. The first, peremptorily rejected, was that, although seven defendants were named, only four actually were before the court. The second was that the indictment was flawed because it failed to detail the means used to prejudice Booth. All the judges agreed that the means need not be stated. Lord Mansfield, the Chief Justice, elaborated on the crime of conspiracy: "the offence does not consist in doing the acts by which the mischief is effected, for they may be perfectly indifferent, but in conspiring with a view to effect the intended mischief by any means." As applied to the present case, this doctrine meant that "every man may work at what price he pleases, but a combination not to work under certain prices is an indictable offence."[63] Since the conviction was found to be in due form, the court proceeded to sentence the defendants to six months in the Liverpool jail.

Although George relied only on the *Cambridge Tailors' Case* and *Eccles*, other evidence exists that also supports her statement of eighteenth-century conspiracy law.[64] In *R. v. Hammond*,[65] for example, journeymen shoemakers were indicted for conspiracy to raise their wages. They were tried on 18 February, 1799, before Lord Kenyon. Argument at the trial concerned the admissibility in evidence of the rules of the society of shoemakers, which had been printed in 1792. Kenyon admitted the evidence on condition that the prosecution later prove that the defendants were members of the society. The showing was subsequently made, and the defendants were found guilty. On 5 April, 1799, when the master millwrights petitioned Parliament, they took it for granted that combination was illegal at common law. They took exception only to the law's delay and expense.[66]

Whatever arguments were later made about the law of conspiracy in the eighteenth century,[67] contemporaries thought it was independent of statutes. In 1796 a barrister named Farhill was arguing for the Crown in an important case.[68] Two Justices of the Peace, their clerk, and a clergyman had been indicted for conspiring to issue a false certificate about the repair of a road. The case had nothing to do with workmen, but Farhill twice referred to them in the course of his argument, a learned disquisition on the law of conspiracy. He carefully distinguished cases involving a conspiracy to violate a statute from those in which the criminality arose wholly from the conspiracy itself. The latter included two types. In the first, the object of the conspiracy was neither illegal nor immoral. Farhill instanced "a combination amongst labourers or mechanics to raise their wages"[69] and cited the *Cambridge Tailors' Case*. The second type of conspiracy had an object not illegal but immoral. Such, for example, would be "a malicious combination against the trader to ruin him in his trade,"[70] and *Eccles* was a case in point. The advocate's economic analysis leaves much to be desired: a successful demand for higher wages could, of course, ruin the trader in his trade; the key distinction must be malice.[71] But the argument makes clear that it was widely understood that combination was conspiracy for one reason or another.

George's argument that conspiracy paralleled combination may be conceded. Contemporaries saw nothing inconsistent about the arrangement. In 1799, the year of the first Combination Act, Parliament passed the Unlawful Societies Act,[72] which suppressed various organizations, including the London Corresponding Society, thought to be seditious. Like the laws against combination, the Unlawful Societies Act permitted two avenues of attack. Offenders could be proceeded against "in a summary Way, either before One or more Justice or Justices of the Peace for the County . . . where such Person shall happen to be, or by Indictment to be preferred in the County . . . wherein such Offence shall be committed."[73] If convicted summarily, the offender could be sent to the common jail or house of correction for three months or fined twenty pounds. If convicted "upon indictment by due Course of Law," the offender could be transported for seven years or imprisoned for up to two years.

From the years between 1800 and 1824, George cited one prosecution for common-law conspiracy: the *Times Printers' Case*[74] in 1810. She emphasized that this prosecution resulted in "sentences of from nine months to two years' imprisonment" and contrasted this with the maximum sentence under the Combination Act of three months' imprisonment (George 1927: 216). There is something remarkable about this part of her argument. Earlier she had dismissed the Combination Act as negligible in practice because only once enforced. Later she argued that it paled in comparison with conspiracy, although she instanced only *one* successful prosecution for this crime. She expressly recognized that "the occasions when the masters were thrown back on the common law with its severer penalties were probably few compared with those when no prosecution was attempted" (George 1927: 217). In fact, there are reports of three other prosecutions: *R. v. Salter*[75] in 1804, *R. v. Ferguson*[76] in 1819, and *R. v. Connell*[77] also in 1819. In the first two the sentences are not reported, but in the last all the defendants but one were discharged on their own recognizances. To paraphrase George's acidulous comment on prosecutions under the Combination Act: hardly a severe penalty.

Although conspiracy was recognized in the first quarter of the nineteenth century as an independent ground for prosecution, it cannot be wholly dissevered from the statutes outlawing combination. To be punishable as a conspiracy, a combination must use unlawful means or have an unlawful end.[78] Hence, while conspiracy cannot be limited to conspiracy to violate a statute, such a conspiracy is certainly punishable. Later in the century prosecutors showed a decided preference for alleging the violation of a statute in prosecutions for conspiracy,[79] and judges tended to follow the statutory punishments in sentencing for the common-law offense.[80] In the eighteenth century, conspiracy had developed in tandem with the proliferating statutes against combination. The Montesquieuan distinction between judicial and legislative powers was not yet recognized, and judges felt free to impose their own conceptions of unlawful means and ends. None the less, Parliament was simultaneously pronouncing on the illegality of combination, and the courts were moved by the same considerations.

Why would a prosecutor choose to proceed at common law rather than on the Combination Act? The latter was certainly simpler, more expeditious,[81] and less costly. It avoided the uncertainty of trial by jury. It also obviated the danger, which the master millwrights had stressed in 1799, of the defendants' disappearing. In favor of a prosecution for conspiracy was the greater severity of sentences. In place of the three months maximum under the Act, conspiracies were punishable with up to seven years' imprisonment (George 1935–36: 173), although the two years awarded in the *Times Printers' Case* is the longest of which a record remains and the other known sentences were noticeably shorter. In addition, a prosecution for conspiracy, even if unsuccessful, certainly involved the defendant workmen in great expense.

In short, George's argument insofar as it deflates the Combination Acts by inflating common-law conspiracy is irrelevant or misstated. Conspiracy law, no less than combination law, was developing in the eighteenth century. Each, reinforced by the other, was moving toward a total ban on collective action by workmen for economic betterment.

In praise of M. Dorothy George – if I may be permitted to use such an expresssion – it may be said that she asked the hard questions that legal historians too often evade: Were the laws in the statute book enforced?[82] If so, how effectively did the legal system handle the cases? How did a new law relate to existing laws? With regard to the Combination Act of 1800 she answered that it was rarely enforced; that this was due in large measure to the hostility of higher courts to the summary jurisdiction conferred by the Act; and that, in any event, the existing statutes and common law of conspiracy rendered the Combination Act redundant. She concluded that it "represented no change of policy, and that its effect has been greatly overestimated" (George 1927: 214).

In response I have argued that the Act was enforced more often than George knew and that she used a wholly unsatisfactory means of assessing its use by her reliance on reported cases, when such cases bear no knowable relationship to the frequency of unreported ones, which she did not even try to investigate. (Of course, no one else has done so either.) I have argued that the hostility of the appellate courts

to summary procedure – which George emphasized – while real, did not emasculate it. Finally, I have argued that the Combination Act extended the statutory law and, while paralleling conspiracy to some extent, operated in a complex interaction with the common law that was mutually reinforcing.[83] In addition, I have shown that George was tendentious in her use of evidence and that by failing to define her terms she permitted later scholars to engage in classic Orwellian doublethink: first, that the Combination Acts were negligible because the laws against combination were not; and second, that as a whole the laws against combination were themselves negligible. Her argument, in fact, had a curiously forensic tone, in the worst sense of that word: in her anxiety to prove the Combination Acts nugatory, she slighted the historian's central task of explanation. In particular, she failed to examine the evidence that would have enabled her to explain how the legislation was intended to assist employers, and to what extent it did so. As a consequence, she failed to see that the Combination Acts were in fact a significant stage in the legal history of trade unionism. Wage regulation was abandoned, and the secular transition from regulation to negotiation as the legal paradigm for the remuneration of labour was confirmed.

Notes

1 For support while preparing this article the author is indebted to the Law Center Board, University of North Carolina at Chapel Hill.

2 39 Geo. 3, c. 81.

3 39 & 40 Geo. 3, c. 106.

4 George 1927: 214, 226–27. She repeated her arguments with minor amplifications in a later article (George 1935–36).

5 Ignoring the Combination Act of 1800, Professor Plumb wrote: "in 1799, with the harsh laws against Combination, the government . . . made the combination of workmen in clubs and societies, for the sake of improved working conditions and wages, conspiracy." Of course, as will be explained more fully below, common-law conspiracy was an offense distinct from the statutory offense of combination.

6 The terms of the 1799 Act, and the changes made in 1800, are discussed in Orth 1987.

7 For the origin of many of these provisions in earlier legislation see Orth, 1987.

8 Much confusion in the legal historiography of trade unionism has been caused by contradictory definitions of the words "combination laws." They may mean the Combination Acts of 1799 and 1800; all the statutes against combination; or all the laws, common law as well as statutes, governing combination. The last, and broadest, definition was that used

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- The Combination Acts 1799-1800
- The Whitley Report
- The Bullock Report
- National Minimum Wage

UK Whitley Works Committees in the Inter-War Period

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A Summary of the Argument

The Whitley works committees were developed during the First World War. In 1916 the British Government appointed a committee to examine the improvement of industrial relations against a background of wartime labour unrest. JH Whitley, a Liberal MP, presided over it. In its first report in March 1917, the committee discussed industries where labour was well organized and proposed Joint Industrial Councils (JICs) composed of employer and employee representatives. Similar committees at a local and workshop level would supplement the Industrial Council's activities. The Industrial Council could deal with or allocate to ancillary committees, questions such as methods of fixing and adjusting earnings, technical education and training, and proposed legislation affecting industry. While the workplace committees could not alter matters in the collective agreement, they could bring grievances before local management and also make suggestions concerning improvements in working conditions and production methods. Management representatives also found the Whitley works committees useful for providing information to workers about the state of industry and the firm. While the Whitley Councils rested on the full recognition of the unions at all levels, non-unionists were allowed to be nominated for positions on Whitley workplace committees and vote in workplace committee elections.

Despite the promise of the Whitley Scheme, it failed to take off to the extent hoped for, particularly at the workplace level. This paper suggests a number of reasons relating to the attitude of the parties and the economic climate.

A Summary of the Findings of the Paper

In the wake of the First World War and the economic recession of 1921-22 in the UK JICs generally fell into abeyance with the Civil Service being a notable exception. They tended to flourish in industries where unions were weak. By 1939 only 20 JICs survived. Employers feared that union militants would use the scheme for ‘class war’ rather than ‘constructive collaboration’, while unionists feared that employers would use the committees to eliminate the union presence in the workplace.

The development of works committees under the Whitley Scheme was also disappointing. Only some JIC’s showed enthusiasm at the outset and very few persisted with them. Works committees were not seen as appropriate in the building industry and did not take root where the collective bargaining machinery was weak as in the Silk and Hosiery Industry for example. In the engineering trades both labour and management preferred the existing system of union shop stewards and shop committees. There was no encouragement of engineering works committees, except in some Government workshops. Some employers were suspicious of works committees because they were viewed as encouraging employees to join trade unions.

There were union concerns about the works committees. Unions objected to non-unionists voting for works committee representatives and running for positions on works committees. The understanding developed that while non-unionists could vote for the committees, they were ineligible for election to office. Some unions saw works councils as ‘inadvisable’ if they did not have significance presence in a workplace. Similarly, the Ministry of Labour, when it was directly encouraging the formation of works committees in 1920, refused to provide assistance to employers where there was insufficient union organization.

While the Whitley workplace committees were built on a voluntary basis, there were legislative attempts to introduce them. In coal mining the Miners’ Federation opposed legislation to encourage works or colliery committees in the coal mining industry. They dropped their objections by December 1921. However, the Government abandoned the proposal due to opposition by colliery owners. In the Railways, there was legislation for Whitley works committees or Local Departmental Committees (LDCs) for occupations covered by the National Union of Railwaymen (NUR), the Associated Society of Locomotive Engineers and Firemen (ASLEF) and the Railway Clerks Association. Management largely ignored the LDCs and resisted railway union calls for the committees to play a more active role in labour relations. They did agree, however, to an extension of the scheme to railway workshops with shop committees and works committees in August 1927. The NUR, despite the rights of representation of non-unionists, were able to ensure dominance of the LDCs, through running union tickets and threatening to expel members who ran against official union candidates.

There was interest in setting up Whitley workplace committees in the confectionary trade, which had notable Quaker employers such as Cadburys and the Rowntrees. The unionised Rowntrees factory in York established works councils towards the end of World War 1, which were elected by employees in each department and given considerable powers to alter working conditions. They voted for the abolition of Saturday work in 1919 and an appeal committee was established to hear worker grievances. These works councils continued in existence through out the interwar period.

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Sixty years of Whitleyism

The final Whitley Report was signed in July 1918. To celebrate the anniversary David Farnham looks at Whitleyism's development and its impact on industrial relations practices and procedures

The fifth and final Report of the Committee on Relations between Employers and Employed, more generally known as the Whitley Committee, was signed on 1 July 1918. It would be a pity to let the occasion of the Whitley committee's diamond jubilee go by unnoticed, for Whitleyism has had a major impact on the practice and procedure of industrial relations in the wide range of industries, both in Britain and overseas, during the last 60 years.

It has to be recognised in the first place that Whitleyism was essentially a product of its own time. For the origins of Whitleyism lay in the growth of labour militancy and in the vociferous demands for workers' control of industry made by some powerful groups of rank-and-file trade unionists, both prior to and during the first world war. The workers making these demands included the coal miners, railwaymen and Clydeside engineers. It was during the war years, too, that the so-called first shop stewards' movement spread so rapidly throughout the manufacturing industry. This arose partly because of labour dilution in some trades. But it also derived out of the industrial relations changes brought about by the war which necessitated effective workshop organisation among certain trade unionists — especially in the engineering industry. The task of the Whitley committee was to advise the Ministry of Reconstruction on the ways in which industrial relations could be reconstituted in Britain.

Mr. Deputy Speaker

The committee was set up in October 1916 under the chairmanship of J. H. Whitley, at that time Deputy Speaker of the House of Commons. Its now-famous terms of reference were: "(1) To make and consider suggestions for securing a permanent improvement in the relations between employers and workmen" and "(2) To recommend means for securing that industrial conditions affecting the relations between employers and workmen shall be systematically reviewed by those concerned, with a view to improving conditions in the future."[1] As a result, the committee issued five reports to Parliament and to the Prime Minister between spring 1917 and summer 1918. These were: the 'Interim report on joint standing industrial councils'; the 'Second report on joint standing industrial councils'; the 'Supplementary report on works committees'; the 'Report on conciliation and arbitration'; and the 'Final report' which summarised the Committee's findings. In comparison with the 350 pages of the Donovan report some 50 years later, the Whitley reports totalled only 27 pages. Yet the industrial relations impact of the Whitley recommendations, especially on the development of voluntary collective bargaining in Britain, is out of all proportion to their length as historical documents.

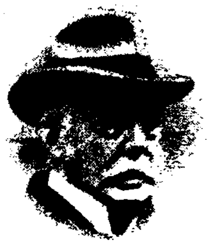
Yet if the Whitley reports were a product of their time, they were also the product of the ideas of those individuals who made up the committee's membership. Whitley, for example, was a Yorkshireman whose family ran a cotton-spinning business in Halifax. He had been a Liberal MP since 1900, and his politics had been greatly influenced by his nonconformist religious background. There is little to suggest, however, that he had a deep interest in either economic matters or IR. The evidence seems to indicate that Whitley was appointed to the committee because

ILLUSTRATION/SIÂN CARDY

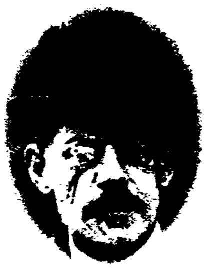
of his personal integrity and of his chairmanship skills, rather than for any particular knowledge or expertise in industrial relations.

In addition to Whitley and its two joint secretaries, the initial membership of the committee totalled 12. Only four of these appointees, however, could reasonably be claimed as representing employer interests: George Carter, chairman of the Shipbuilding Employers' Federation and managing director of Cammell Lairds; G. H. Claughton, a railway director; Thomas Ratcliffe-Ellis, a solicitor and secretary to the coal owners' association; and Allan Smith, chairman of the influential Engineering Employers' Federation

David Farnham is senior lecturer in industrial relations in the Portsmouth Polytechnic, School of



Coal owner, Sir Thomas Ratcliffe Ellis



Sir George Carter, Shipbuilding Employers' Federation

Sir Allan Smith, EEF chairman

The eight remaining members of the committee who produced the important first report either were trade unionists or were identified with the broader labour movement. Although there was no specific representation from the Trades Union Congress on the committee — this being a reflection of its comparative lack of power at that time — four trade unionists were appointed to it. They were: F. S. Button from the executive of the Amalgamated Society of Engineers; J. R. Clynes of the National Union of General Workers (NUGW) and a Labour MP since 1906; Susan Lawrence, an official of the NUGW; and Robert Smillie, a militant Scottish mineworkers' leader. The four other members of the committee — S. J. Chapman, Professor of Political Economy at the University of Manchester; J. A. Hobson, the economist; J. J. Mallon, a Fabian socialist and member of the Independent Labour Party; and Mona Wilson, a National Insurance Commissioner — were all clearly sympathetic to the labour cause. Furthermore, Arthur Greenwood, one of the committee's joint secretaries, later became a Labour MP and government minister.

Unique unanimity

In the light of its diverse membership, and compared with the findings of the Royal Commissions on industrial relations both preceding and following it, the relative unanimity of the committee's recommendations might seem somewhat surprising. It is certainly rather unique. It is true that Smillie only signed the first report because he did not attend the meetings at which the other reports were considered. Again, because of absences, Carter did not sign either the second or the third reports, while Smith failed to sign the fourth report owing to reservations about it. But even the five socialist members of the committee — Clynes, Hobson, Lawrence, Mallon and Wilson — signed all five reports, although they appended a note of dissent to the final report that in their view "a complete identity of interests between capital and labour cannot be thus affected".[2] Notwithstanding this viewpoint, however, the Whitley committee reached a broad consensus on its tasks which no doubt added authority to its findings.

The essence of Whitleyism is embodied in the Interim report and the Supplementary report. For the "most common view of Whitleyism is a system of national joint machinery consisting of joint councils made up of employers and unions and reflected at district and local level."[3] The Interim report focussed on the 'well organised' trades where representative bodies of both employers and employees were firmly established. The central purpose of this report was to advance "joint co-operation" in industry between employers and labour, through their representative organisations. The institutional means through which such co-operation was to be achieved was by the voluntary formation of industry-wide joint standing industrial councils, comprising both employer and trade union representatives.

The Interim report further recommended that such joint bodies should meet at frequent and regular intervals to enable wages, conditions of employment, efficiency and methods of settling differences between the parties to be discussed on *those aspects of their employment conditions of* most concern to them.

Thus the Whitley committee did not regard national joint industrial councils (JICs or NJCs) as being complete in themselves. What was needed, it said, was a three-tier structure of joint representation: nationally; at district level through district joint councils (DJCs); and within each workshop. It also believed that these three levels of formal machinery of employer and union representation should operate on common principles. This would enable the greatest measure of agreed action to be secured among them. In the Committee's view, these triple-level joint bodies were to be both agencies of harmony and efficiency within each industry, and the means of preventing friction and misunderstanding between employers and labour in their own enterprises.

The Supplementary report was also based on the assumption that improved relations between employers and workpeople could be best achieved by giving to the latter a greater say in the consideration of all those issues which most directly affected their working lives. The committee saw the purpose of works committees as establishing and maintaining a system of co-operation in all aspects of workshop matters, except with regard to wages and hours of work. For it considered that wages and hours could be better regulated through appropriate district or national agreements.

But the Committee thought it imperative that where JICs and DJCs were established, they should be linked up with locally-based works committees. Although this report did not lay down a definitive constitution for works committees — this was to be left to the parties themselves to determine — it did recommend that they should meet not less frequently than once a fortnight. Furthermore, the report strongly condemned the idea that works committees might be used to oppose the growth of trade unionism at the workplace by anti-union employers.

Although the reactions from the employers and the trade unions to the Interim report were mixed, "there seemed to be general acceptance of what the report was trying to do and of the way it was trying to do it."[4] However, when it came to implementing this report, the majority of the employers and trade unionists in the well organised trades paid little attention to it. Thus neither the Interim report nor the Supplementary report have had any direct impact on those industries like coalmining, cotton textiles, shipbuilding, metal manufacture and the engineering trades in which trade unionism and collective bargaining were well established by 1914. Paradoxically, both the immediate and the longer-term application of the principles of Whitleyism was mainly limited: first, to those industries where collective bargaining had not become firmly rooted by 1914; second, to those older but protected industries like building, pottery, printing, and the railways where circumstances were more favourable to the emergence of Whitley machinery in the inter-war years; and third, to those other industries which lacked any kind of formal bargaining arrangements.

It has been estimated that between January 1918 and December 1921, 73 JICs were formed. By 1929, 83 such bodies had been set up across a permanent councils, however, included cable making, cement manufacturing, chemicals, dock labour, quarrying, soap and candles, and paint and varnish manufacturing, on the one hand; and electricity supply, local authority manual workers, and tramways on the other. Yet by the early 1930s, only about 50 JICs remained and by 1938 there were only 45 of them. Thus apart from the protected trades, many JICs did not survive the long inter-war economic depression. Moreover, relatively few of those JICs which remained had really effective DJCs or corresponding works committees. Hence it was not until the economy revived during the second world war that Whitleyism began to expand again. In this period, it has been suggested, more than 50 JICs were either revived or newly established. Since then, further JICs have been formed in a number of newer industries.

Currently, there are about 200 JICs or their equivalents in the United Kingdom. Some cover comparatively small-scale trades such as the NJC for the Fencing industry, the NJC for the Flat Glass Industry, the NJC for the Slag Industry, and the JIC for the Scottish Milk Distributive Industry. Others such as the NJC for Local Authorities' Services, and the various public-sector Whitley councils determine the terms and conditions of employment for millions of employees in a variety of industries, jobs and occupations. Although some two-thirds of all JICs are in the private sector, the larger national Whitley councils — in terms of the numbers of employees covered by them — tend to be in the public services and the nationalised industries. The latter cover a wide range of staff including: administrative; clerical; managerial; manual; professional; and technical grades.

Inter-war years

For those unaware of the details, the public industries in which Whitleyism became firmly established in the inter-war years included: the civil service; electricity; gas; local government; and water supply. In the post-war period, Whitleyism has also been introduced into the National Health Service. This has a General Council which deals with certain common issues affecting most staff within the service. It also has, nominally, 10 separate national Whitley councils covering those terms and conditions of employment concerning particular groups of health service personnel.

It is interesting to note, too, that apart from a handful of private industries, DJCs or their equivalents have principally survived in the public sector. They have been notably successful in the civil service, in local authority employment, and in the electricity, gas, and water supply industries. There are relatively fewer DJCs, however, in private-sector industries with Whitley machinery. Furthermore, with only a few exceptions, locally-based works committees are more likely to be found in public-sector industries than in their private-sector counterparts.

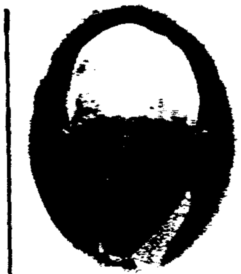
It is clear, then, that the structural principles of Whitleyism — joint councils of employer and union representatives operating at national, district and local levels — have never been applied homogeneously across all Whitley-based industries. The application of Whitleyism thus varies, amongst other factors, according to the geographical distribution of an industry, its form of ownership, its labour markets, the relative strengths and weaknesses of the employers and trade unions within it, its negotiating traditions, and so on. The building industry's NJC, for example, is linked with a series of regional, area, and local joint committees. Although substantive agreements are negotiated nationally, the building employers and the trade unions have jointly agreed that proper regard should also be accorded to the local circumstances applying in their trade. In flourmilling, on the other hand, relations between employers and trade unions are effectively centred on its JIC. Its principal function is to secure joint action on the regular consideration of wages, hours, and conditions in the industry. Although provision is made for the establishment of DJCs within flourmilling, their main task is to take executive action on industrial relations decisions made nationally. They are also empowered, like most DJCs in other trades, to consider differences referred to them by employers and trade unions which cannot be determined locally. Failing this, such matters are then passed onto the JIC for resolution at national level.

As already suggested, in addition to national-level JICs, some industries, like the various local authority groups, have well established and strongly organised DJCs — although in the case of the local authorities they are called 'provincial councils'. Other industries, like the health services, have created national Whitley councils alone. The recent McCarthy Report, which reviewed the health service Whitley council system however, has proposed "that in each English Region there should be established a Regional Whitley Council. Similar arrangements should be made in Scotland and Wales."[5] Such regional councils, intermediate between national and local levels, would have three main purposes: first, to apply the flexible elements of collective agreements determined nationally; second, to negotiate their own agreements on matters not regulated by national agreements; and third, to undertake various appeals functions.

It is apparent, too, that some Whitley industries, such as electricity supply, have traditionally preferred to keep their joint negotiating machinery separate from any consultative arrangements within them — whether nationally, at district level, or locally. Others, however, make no formal distinction between those matters subject to joint negotiation and joint consultation respectively. Whitleyism, in short, has common structural features but they are applied in practice in a multiplicity of ways.

Whitleyism also operates on common negotiating principles, although again these vary in their detailed application. Each joint council or joint committee, for example, varies in its total size of membership and it does not necessarily have equal representation from each side. Union negotiators are usually known as the 'staff side' and each negotiating team normally has its own spokesman who is known as its 'leader'. It is the leaders who are usually responsible for presenting their side's case at full JIC or full DJC meetings.

Yet at national, district and even local levels, all the detailed work of the larger Whitley bodies is normally carried out by working parties or sub-committees of the joint organisation in question. Indeed, because of the assumed identity of interests between the two sides under Whitleyism



John Clynes, NUGW and Labour MP from 1906

Robert Smillie, Scottish Mineworkers leader

Susan Lawrence, NUGW

and because of the nature of Whitley representation, the joint secretaries of Whitley bodies play a crucial part in making the actual agreements between the parties. They are usually full-time officers who service their respective sides. Full council meetings often affirm therefore what has already been previously agreed between representatives of the two sides in committee. Full councils also vary as to the frequency of their meetings. Some convene quarterly or half-yearly, for example, whilst others meet only occasionally as the business on hand requires.

Another major negotiating principle of Whitleyism is that decisions within its joint machinery are normally taken by a majority of each side voting separately. This means in practice that no final agreement can be reached between the parties unless and until it is approved by a majority both of the employer and of the union representatives concerned. Thus neither side can outvote the other and thereby compel it to adopt a policy to which it is opposed. Whilst on occasions this can make joint agreement impossible, it is especially useful for union negotiators defending a position against inflexible employers. For in effect, such a process prevents determined employers from imposing unacceptable settlements upon union representatives against their will.

What, briefly, are some of the basic strengths and weaknesses of Whitleyism? In the first place, Whitleyism fully acknowledges the legitimacy and representative nature of independent trade unionism which is a necessary condition for viable collective bargaining to take place. Indeed, although Whitleyism exists in some strongly organised industries, it is arguable that Whitley machinery has been largely responsible for the development and growth of voluntary collective bargaining and joint consultation in a number of relatively poorly organised sectors of employment. Without Whitleyism, it is likely that some industries, or parts of them, would have been unable to sustain adequate non-statutory machinery for the determination of pay and conditions within them. Moreover, Whitleyism has proved to be especially appropriate where trade union organisation at the workplace is either poor or virtually non-existent.

A further strength of Whitleyism is its comparative flexibility when applied to different industrial circumstances. Once established, too, it enables stable negotiating and consultative arrangements to be maintained between employer and recognised union representatives. Regular meetings between the two sides, moreover, ensure that each side is in continual contact with the other so that effective communication between them is facilitated. At the same time, Whitleyism is in keeping with the voluntary principle of British industrial relations. For its broad parameters enable employers and unions jointly to develop those bargaining and consultative arrangements most appropriate to their own needs.

Yet Whitleyism is not without its critics, especially in some industries where Whitley machinery is well established. Two groups which have increasingly questioned Whitleyism recently include some of the power workers in electricity supply and certain white-collar staff in the so-called 'NALGO Services'. The latter include: local governments; the health service; electricity;

towns staff. Although only a relatively small ginger group, the NALGO Action Group, for example, has proposed nothing less than the complete abolition of Whitleyism. Just as Whitleyism sought to destroy the first shop stewards' movement, it is argued, so it is only the growth of strong shop steward organisations which will destroy Whitleyism in the NALGO services. "In the short term," the group has said, "we want the direct election of National and District Service Conditions Committees by the membership in the branches. In the long term we must work towards the concept of strong local bargaining through the establishment of shop stewards committees."[6]

Thus the "opponents of Whitleyism in NALGO consider the present system to be too centralised, bureaucratic and divorced from the membership. They believe that the national negotiating committees are not sufficiently accountable and that there is too great an identity of interest and sentiment with the employers."[7] It is also contended that because of the institutional constraints of centralised Whitleyism, local managements normally refuse to negotiate on pay and conditions of service with local union representatives. At the same time, it is alleged, there have been substantial changes in the social composition of NALGO which, if properly channelled, could result in greater trade union potential were it not restricted by Whitleyism.

Whitley's supporters

The supporters of Whitleyism in the NALGO services, on the other hand, maintain that considerable opportunities already exist for local negotiations with employers — certainly in local government. "Most gradings can be determined locally and NALGO is pressing for this to be extended to all posts."[8] It is also argued that it would be dangerous to replace Whitleyism by local collective bargaining alone. For staff in prosperous areas would obtain above average increases in their salaries, while those in areas of low pay and high unemployment would fall behind.

Similarly, it is pointed out, debates about lack of control over negotiations in the NALGO services are in effect debates about democracy in NALGO: they are not necessarily debates about the efficacy of Whitleyism which is a system of joint bargaining arrangements with employers. Accordingly, while NALGO's National Executive Committee views the establishment of shop steward systems as a means of obtaining improved conditions for their members locally, it obviously wishes to retain the benefits of collective bargaining nationally.

To conclude, Whitleyism has a notable place in the practice of industrial relations over the last 60 years. It has had a major impact on the growth of voluntary collective bargaining and consultative arrangements in Britain, and it has also been used as a model for joint negotiating machinery throughout the world. It has matured in certain industries, whilst it is still developing in others. If in some cases the emergence of shop steward demands for more direct representation and greater industrial democracy in certain Whitley industries makes Whitleyism appear to have come full circle, this does not invalidate the principles of Whitleyism. It suggests, rather, that the parties to Whitleyism must continue to adapt themselves to

References
1. Ministry of Reconstruction, *Committee on Relations between Employers and Employed. Final Report*, HMSO, 1918, p.3.
2. *Ibid*, p.4.
3. National and Local Government Officers Association, *Whitleyism*, NALGO, 1978, p.1.
4. Charles, Rodger, *The Development of Industrial Relations in Britain 1911-39*, Hutchinson, 1973, p.120.
5. Lord McCarthy, *Making Whitley Work*, DHSS, 1976, p.79.
6. White, Barry, *Whitleyism or rank and file action*, NALGO Action Group, p.13.
7. NALGO, *op. cit.*, p.4.

Politics and Economics: The History of "Contested Terrain"

Northern College 29-31st May 2015

- The Combination Acts 1799-1800
- The Whitley Report
- The Bullock Report
- National Minimum Wage

chairman, the Commission included an eminent solicitor, a Q.C., and the world's most eminent labour lawyer.

INDUSTRIAL DEMOCRACY

One major item in the social contract's programme of labour legislation has not yet found its way into an Act, or even into a draft of a bill. It is the proposal that legislation should provide for the introduction of supervisory boards in British companies employing more than a given number of workers and for half of their members to be trade union nominees.

This proposal is the consequence of a remarkable reversal in the attitude of the Trades Union Congress. Until recently British trade unions had never favoured trade union representation on company boards. For a period between the wars Congress was committed to a proposal that half the members of the boards of nationalized industries should be appointed by the unions, but this demand had been abandoned by the time the postwar Labour government set about implementing its programme of nationalization. However, in their evidence to the Donovan Commission the General Council suggested that there should be experiments in trade union representation on company boards. Further changes followed in 1972, when Britain was in the process of joining the European Community and the Commission of the Community published draft proposals for a 'fifth directive' on company law. All companies with over five hundred employees were to have supervisory boards with one-third of their members representing employees; they were also to have works councils elected to represent all the workers. It therefore seemed inevitable that the General Council would soon face a proposal for legislation on these lines in Britain, and they had to consider their response. They were certainly not in favour of the proposals as they stood, but a blank rejection seemed politically unwise. Those who favoured worker representation on boards, including Jack Jones, therefore had an opportunity to persuade the council to counter the proposals with a far more radical plan of their own, rejecting workers' councils outright, demanding half the seats on the supervisory boards and insisting that the employee representatives should be chosen by the unions. It seemed certain that the Heath administration would find this plan wholly unacceptable, and, perhaps lightheartedly, Congress in September 1973 approved the General Council's report on *Industrial Democracy* which embodied these proposals. It also reverted to the interwar demand that half the members of the boards of nationalized industries should be trade union nominees; and included a number of suggestions for extending and enriching collective bargaining. A year later the debate was more serious. By now a Labour government was in office, committed to the social contract which included a proposal for legislation on Congress's scheme for industrial democracy. Two propositions were before the delegates. The General Council's report, presented as an interim document the year before, was now put forward, with a few amendments, for confirmation; but there was also a resolution, which might well have been read as a wrecking amendment, supported by the Engineers, the General and Municipal Workers, the Electricians and other unions. It proclaimed collective bargaining as the primary function of trade unions, and drew attention to the dangers of compromising trade union independence by participation in management.[53] Not wishing to test opinions by a vote which would certainly have been close-run, the council put up their general secretary to inform Congress that the two propositions were in fact complementary and to point out that the report proposed that worker representatives should be on company boards only where the unions concerned wanted it.

This compromise avoided a showdown, but it was not a good basis for legislation, and in July 1975 the government decided to set up a committee to look into the matter. Its terms of reference were carefully designed to win the assent of the General Council to the delay which was entailed in reference to a committee. They began:

> Accepting the need for a radical extension of industrial democracy in the control of companies by means of representation on boards of directors, and accepting the essential role of trade union organisations in this process, to consider how such an extension can best be achieved, taking into account in particular the proposals of the

[53] The first part of the resolution reads: 'Congress reaffirms that the overriding role of the unions is the advancement of the interests of their members. It therefore requires that any extension of trade union participation in industrial management shall be, and be seen to be, an extension of collective bargaining and shall in no sense compromise the unions' role as here defined.' (Trades Union Congress, *Annual Report*, 1974, pp. 521–30.)

Trades Union Congress report on industrial democracy as well as experience in Britain, the EEC and other countries.

The membership was announced in December. Sir Alan (now Lord) Bullock was chairman. The three representatives of Congress were all supporters of the General Council's proposals, and a fourth member was the council's legal adviser. The committee were asked to report in twelve months and did so. Majority and minority reports were completed in December 1976 and published the next month. The majority report was signed by the five members already mentioned and two others, one of whom entered substantial reservations in a note of dissent. The three employers on the committee (a fourth having resigned) signed the minority report.

The majority report moved away from the original position of the General Council in two important respects. Firstly, there were to be no supervisory boards. They thought that the importation of this continental device into Britain in order to accommodate worker representatives

> could have one of two main consequences: either it would . . . so delimit the powers of the board on which employees are represented that employee participation in decision-making would be very restricted; or it would impose strains and tensions on decision-making at top level, by requiring the adoption of an alien and rigid board structure.[54]

Secondly, while accepting the principle of parity of representation on the board for employees and shareholders, they proposed that their representatives should jointly co-opt a third group of members. They suggested that this arrangement should operate in companies with two thousand or more employees in the United Kingdom, estimating that this included 'some 738 enterprises employing in all 6 or 7 million people in the United Kingdom'[55]—provided that the employees voted in favour, and that the affirmative voters constituted at least a third of all eligible employees.

Most of their proposals formed a carefully designed plan for making such an arrangement workable in the circumstances of British industrial relations. To deal with multi-unionism, they proposed that, after an affirmative ballot, a Joint Representation Committee,

[54] *Report of the Committee of Inquiry on Industrial Democracy*, p. 77.
[55] *Ibid.*, p. 129.

of all the recognized independent unions in the company which wished to be included, should be established to negotiate with the shareholders' representatives on the size of the board, to decide how the workers' representatives were to be selected, and to form the link between the employees and the board members. They held that there was no reason for introducing works councils in Britain, since shop stewards already provided an adequate 'sub-structure' of employee representatives. They devised a complicated but essential set of expedients for applying the proposals to British companies with overseas employees, and to British subsidiaries of overseas companies. They proposed an Industrial Democracy Commission to supervise elections, and deal with deadlocks which might arise, for example in the establishment of Joint Representation Committees and appointments to the boards.

Had the majority finished their report at this stage, they would have been able to claim, with justice, that they had devised a workable arrangement for instituting a system of worker directors which met the narrow requirements imposed on them by their terms of reference. They went on, however, to argue that a system on these lines *ought* to be established. 'During our inquiry', they said, 'we found a widespread conviction, which we share, that the problem of Britain as an industrialised nation is not a lack of native capacity in its working population so much as a failure to draw out their energies and skill to anything like their full potential.' The remedy was to put 'the relationship between capital and labour on to a new basis which will involve not just management but the whole workforce in sharing responsibility for the success and profitability of the enterprise'. This new basis, they believed, could be constructed by carrying through their proposals, and the evidence for their belief was the 'success in improving industrial relations which neighbouring countries in Europe . . . have had in following this path of development'.[56] They quoted particularly West Germany and Sweden.

At this point the majority overreached themselves. The form of representation which they proposed was radically different from anything that exists anywhere in Europe, and its consequences cannot therefore be predicted from European experience. Moreover, they themselves found all the forms of worker representation in Europe which they examined, with the possible exception of that which operates in the West German coal and steel industries, to be

[56] *Ibid.*, p. 160.

unsatisfactory, and the German coal and steel system is representation on a supervisory board which the committee considered to be inappropriate in Britain. Thirdly, systems of worker representation in use in western Europe have had relatively little effect on industrial relations or economic performance, as was made clear in a report specially commissioned by the Bullock Committee.[57] The excellent postwar industrial relations records of Sweden and West Germany are due to other features of the industrial relations systems in those two countries, especially the works councils of West Germany and the centralization of power in the confederations of both unions and employers in Sweden.[58] There is little or no relevant evidence to judge the consequences of implementing the proposals of the majority of the Bullock Committee. It would be a step in the dark.

The minority preferred supervisory boards as vehicles for worker representation. Worker representatives should constitute less than half the board and should be elected by all employees. There should be no representatives on the board unless the majority of employees voted in favour of representation of this kind, and until an Employee Council had been chosen by an electorate consisting of all employees and had 'operated effectively for a specified number of years'.[59] However, their proposals were probably not as significant as their rejection of the majority report in which they expressed the opinion of the great majority of managers in Britain. The most important contribution to the debate from the employers' side was the evidence offered to the Bullock Committee from the Confederation of British Industry which argued for a flexible approach, in which 'participative arrangements must be designed to fit a company structure, and not vice versa'. Companies should therefore be obliged to reach participation agreements 'with their employees (and/or their representatives, where appropriate)'. These agreements should aim to achieve a number of objectives, concerned with improving communications on a wide range of matters and with promoting the 'involvement of the employee in the content and purpose of his job'.[60] Where a company with more than two thousand employees failed to reach an agreement on these lines over a four-year period, a system of participation should be imposed by arbitration, provided

[57] Batstone and Davies, *Industrial Democracy: European Experience*.
[58] Clegg, *Trade Unionism under Collective Bargaining*.
[59] *Report of the Committee of Inquiry on Industrial Democracy*, p. 183.
[60] Confederation of British Industry, *Evidence to the Bullock Committee*.

that the scheme received 'affirmation in a secret ballot by a majority of employees'. Worker representation on the board was an appropriate subject for a participation agreement, but was not to be imposed by arbitration. An arbitrated scheme was to be designed by an independent Participation Agency.[61] Following the report of the Bullock Committee, these proposals were reiterated in a further publication, *In Place of Bullock*. They should probably not be regarded as proposals which had the warm support of the majority of British managers, but as the least damaging alternative to the Bullock report which could command any political credibility.

The majority report of the Bullock Committee was received with a roar of condemnation in which British managers were able to express their chagrin at what they perceived as years of growing union power and increasing legislative intervention in the running of private undertakings. There was relatively little favourable comment.

In September 1977 Congress welcomed the analysis of the Bullock Committee, but asked for

> statutory backing to all unions wishing to establish joint control of strategic planning decisions via trade union machinery. This legislation would include the option of parity representation on the board, but would also link up with more flexible forms of joint regulation more clearly based on collective bargaining.

Meanwhile the government had promised to publish its legislative proposals in a White Paper which eventually appeared in May 1978. Companies employing more than five hundred workers were to be obliged 'to discuss with representatives of employees all major proposals affecting the employees of the business before decisions are made'. Representation was to be arranged through joint representation committees of recognized unions. After three or four years there was to be a further obligation on companies employing two thousand or more, if asked by their joint representation committees, to include employee representatives on their boards; but supervisory boards were to be instituted for the purpose and, initially at least, employee representation was not to exceed one-third.[62] This selection of items from the majority and minority reports of the Bullock Committee and the evidence of the Confederation of British Industry may not yet be the last word on the subject.

[61] *Ibid.* [62] *Industrial Democracy*.

Trade Union Forum

Democracy in the workplace - the Bullock Report revisited

09 June 2010

A joint meeting of the H&P Trade Union Forum and the Centre for Contemporary British History at the CCBH summer conference on 'Reassessing the Seventies', 9 July 2010, Institute of Historical Research, Senate House, University of London.

*With **Lord David Lea**, former TUC Assistant General Secretary and member of the Bullock Inquiry 1975-77, in conversation with **Peter Ackers**, Professor of Industrial Relations and Labour History, Loughborough University and member of the H&P Trade Union Forum.*

Presentation

David Lea described himself, with some humour at the apparent contradiction, as a 'trade union intellectual' and recalled the extraordinary background to the establishment of the Bullock Committee in 1975 as part of the Social Contract between the government and the powerful trade union leaders of those days. Just how radical this two year inquiry (1975-77) was, can be seen from its terms of reference, a copy of which was circulated at the meeting:

> Accepting the need for a radical extension of industrial democracy in the control of companies by means of representation on boards of directors, and accepting the essential role of trade union organizations in this process, to consider how such an extension can best be achieved, taking into account in particular the proposals of Trades Union Congress report on industrial democracy as well as experience in Britain, the EEC and other countries. Having regard to the interests of the national economy, employees, investors and consumers, to analyse the implications of such representation for the efficient management of companies and for company law. (Department of Trade Green Paper, based on the Bullock Report 1977)

Membership of the Inquiry team included senior directors of major companies and banks as well as TUC and sympathetic academic nominees. It was chaired by Lord Alan Bullock, an eminent Oxford historian.

Lea explained the significance of these TUC proposals for the worker director model of industrial democracy. For this was a fundamental change from its traditional stance of being opposed to taking any responsibility for the management of companies. This had been personified by the highly influential General Secretary from 1960 to 1969, George Woodcock (1904-1979), who was a firm believer in 'voluntarist' industrial relations, with union representatives 'accountable to members and no one else'. Many on the General Council of the TUC still clung to this approach. Some were influenced by the then industrially-important Communist Party, who were ideologically opposed to any 'abandonment of the class struggle' or any wage restraint such as the Social Contract required. Many union leaders of the 'left' took their cue from them. But, Lea explained, it was not a simple 'left'/'right' argument. Influential 'right' union leaders as in the EETPU, the late Frank Chapple, were also firmly opposed to the unions becoming embroiled in the running of companies, as well as to government income restraint policies. Thus both 'left' and 'right' were committed to the flourishing system of 'free collective bargaining' in which most unions then had a very strong bargaining position. Even those who favoured increasing union reach into the strategic direction of companies and industries (e.g. redundancy programmes), saw collective bargaining as the best method to secure joint regulation of broad company strategies for workers. They viewed with suspicion the continental works council route as a rival channel of representation, which in their eyes had a reputation for undermining union collective bargaining strength.

Lea, who as a TUC 'civil servant', was closely involved in those debates, believed that without the enormous influence of Jack Jones, the General Secretary of the T&GWU, the TUC would not have agreed to take such a positive role in Bullock Inquiry. His left-wing credentials neutralized left opposition to the worker director approach. In the wider context of the Social Contract negotiations with government leaders (Dennis Healey and the late Michael Foot), the small group of senior union leaders who led for the TUC were won over. So, Jack Jones, Clive Jenkins (ASTMS), and David Lea were able to take an active part in the Bullock Committee. Lea had long been enthusiastic, and contributed the Report's formula for equal worker participation on the main boards of large companies, '2X +Y where X is an even number greater than Y'. In his view, they were steering between the rival ideologies of the trade union 'class warriors' and the City of London. For City interests were totally opposed to any dilution of boardroom control or of the primacy of shareholder value, stressing the risks of disclosure of confidential information on share-price sensitivity. Alongside this, most employers were hostile to having any worker representation on their boards, in case it interfered with their formation of 'cosy cartels' in collusion with the financial sector.

The Committee's terms of reference also required them to study the European experience and this was quite influential in their deliberations. West Germany had had its system of Co-Determination (worker representation on second-tier, 'supervisory' boards) imposed in 1947 by the USSR and the UK, but with a booming economy, this had come to be seen as a successful model. Lea recalled that a major issue in their deliberations was over whether the workers' representatives should sit on the lower of a two-tier structure or on a unitary board, and that it was at Jones's insistence that the TUC representatives held out for the unitary option. The majority of Committee members were also persuaded that all board member representation would have to be through recognized trade union channels.

However, the CBI members of the Committee rejected both of these key points producing instead a Minority Report favouring a system of representation on lower-tier 'supervisory' boards, which today would be seen as a progressive proposal. This lack of consensus weakened the Government's resolve to legislate the Report's recommendations, but Lea recognised that if the proposals had been implemented there would have been many dilemmas still to be addressed. How would they operate in multi-national corporations? Where would other stakeholders (e.g. consumers) fit in? How could they be operated in the public sector? In fact, the 1977 Majority Report recommendations were shelved in the end because the unions themselves could not agree to back them. Indeed, there was probably not the will on either side to find a compromise as the entire Social Contract was coming unstuck with the pay element unravelling after two years of low wage settlements. The very tight third round (5% maximum at a time of rising double-digit inflation) could not be delivered by the union leaders even if they had wanted to, and so the government had no interest in pursuing such radical and controversial industrial democracy proposals. This rejection of the Social Contract approach soon led to the renewal of unrestrained free collective bargaining and militant strike action in the private and public sectors in the winter of 1978-79, forever known as 'the Winter of

Discontent'. This debacle in turn produced the Thatcher Conservative government in June 1979 and the rest is history.

Nonetheless, Lea's ardour for the Bullock proposals has not dimmed. He contrasted the atmosphere of those days, when the trade unions were regarded as an essential component of national economic strategy, with their position today. Sadly, it was within the trade union and labour movement itself that there were the greatest misgivings about the Bullock approach to co-opting union officials to the boardrooms. He still thinks that Labour governments since have been too wary of such essentially social democratic concepts. This, he believes, is because they have adopted a caricature of the 'benighted decade of the 1970s', in which nothing good happened. Also, they have been discouraged from revisiting those ideas as City interests have had too great an influence in government circles. But, he thought that, as 'the City nowadays doesn't lay golden eggs but land mines', it might be possible to re-open consideration of industrial democracy ideas. The TUC and the Labour Party should put this topic right back on the agenda as, if anything, it is even more relevant in today's corporate climate: the massive payouts to failing and disgraced managing directors and chairmen by subservient Remuneration Committees; the gross and ever widening differentials between top executives and everybody else in companies; and the comparability leapfrogging by those in the upper 10% generally. He saw a bigger political picture here, central to income distribution in what has become two societies, which greater industrial democracy would help to address.

Discussion

Peter Ackers led the discussion with some questions. He cited other voices which were then sceptical about the 'worker director' approach, such as Professor Hugh Clegg and his 'pluralist' industrial relations school epitomized by his saying that 'a trade union was an opposition which can never become a government'. The fact that Clegg's colleague at Warwick University, Professor George Bain was a signatory of the Bullock Report showed that there was a lively academic debate around these different viewpoints at the time.

However, Lea felt that this resistance to change took no account of the benefits to workers from progressive legislation since the 1960s, e.g. contractual rights, redundancy payments, health and safety rights and occupational pension benefits. He questioned the 'purity of collective bargaining' ideology of both left and right, pointing to the long tradition of unions influencing affairs by other means and methods, e.g., in social insurance, skills, health and safety and so on. He recalled that the TUC office had produced a booklet on different trade union methods to make this point.

Ackers asked whether Bullock's recommendations were a compromise between the EEC and UK models of industrial relations? He felt that British union aversion to works councils was due to their reputation for undermining collective bargaining through shop steward committees. He also asked whether some substructure for wages' and conditions' bargaining was needed to support the boardroom superstructure recommended by Bullock?

Lea felt that this would not work without leadership from the top and he did not expect workers from the shop-floor to come up with anything spontaneously for the running of companies. This reveals the gulf which existed between the TUC and shop steward movement of that time, whose fundamental criticism of the Social Contract deals was that they were too top-down and did not have the wholehearted agreement of the 'rank and file' workers.

Ackers also wondered whether, if the Bullock Report recommendations had been successfully implemented, they might have averted the collapse of the Social Contract and the breakdown in industrial relations in 1978-79.

Lea recalled that at that time nobody expected that Mrs Thatcher and her brand of conservatism would ever have come to power. He felt that it was the unbalanced nature of the economy which had prevented the Social Contract approach getting a fair chance, but its breakdown did present her with the opportunity to try her very different approach.

Michael Gold asked whether Britain's admission to the EEC in 1973 had influenced the Bullock Inquiry being set up. It is clear from their terms of reference that the very different European practices influenced policy-makers and the Bullock recommendations.

Lea referred to the more recent ICE Directive on Works Councils, but there had been little takeup in Britain. He felt that the dominance of finance capital had been a key force in restraining the development of industrial democracy in the UK.

Chris Weston, asked how Jack Jones was able to get his way with the General Council of the TUC, given that such large affiliates as AUEW (Hugh Scanlon) and GMWU (David Basnett/Larry Whitty), were against.

Lea thought they 'looked the other way' in deference to Jones, but **John Edmonds** (a subsequent leader of the GMB) disagreed that they were 'against'. They accepted the general principle but wanted a stage of getting companies used to the idea. Lea also recalled that some small but influential unions, such as the POEU, were very keen (they had worker directors on the Post Office and the separate nationalized British Telecom Boards).

John Lloyd, who wrote the EETPU submission to Bullock as a young research officer, said that their opposition to the worker director proposals was based on a belief in the inherent contradiction of worker directors taking decisions contrary to their worker colleagues as collective bargainers. They took no account of shop steward power and activity at the time. He did, however, see an educational and informational opportunity in works councils.

Robert Taylor, a leading labour correspondent in those days (*Financial Times*), criticized the narrow terms of reference of the Inquiry as having inhibited greater debate. He asked why the public sector/nationalized industries had been excluded from its remit. He referred to experiments with worker directors in iron and steel which should have been examined. He also asked why the TUC had rejected the Minority Report.

Lea put the TUC's rejection of the minority proposals down to Jack Jones's hostility to considering them. He (Lea) had to mediate between Jones and Michael Foot over arguments on each line of the Bullock Report. Jones was particularly rigid on the '2X + Y' equal representation formula.

The chair, **John Edmonds**, said the unions never expected the debate around the Bullock proposals would end so quickly and felt that with time they could have been extended to the public sector. Despite the economic crisis in the last couple of years, there has been no real movement in the UK to respond to challenge the status quo, especially evident in the current Labour Party leadership election where animal welfare seems to have featured more prominently!

Historical notes

Social Contract: After a period of militant confrontation with both Labour and Conservative governments in the late 1960s and early 1970s over the statutory restraint of incomes policies, the unions frustrated all proposals to impose such policies or to control union power within a new statutory framework. In fact, two governments, one Labour and one Conservative, fell, chiefly over their attempts to impose those policies in pursuit of Britain's continuing economic difficulties. Edward Heath, as Conservative Prime Minister, had just lost a 'who governs' election, called to overcome union actions - a successful national coalminers' strike and crippling action by the power workers which precipitated a 3-day working week. He lost that February 1974 election, but the resulting Labour Government had just a tiny majority, were eager to placate the unions and so changed their approach entirely. At the same time, many of the key union leaders in the TUC also adopted a more cooperative approach with this friendly Government and intensive negotiations took place under the auspices of a Liaison Committee of the Labour Party and the TUC.

This issued in a formal and solemn 'Social Contract' under which the Government agreed to legislate for a range of 'social wage' benefits in return for a voluntary restraint in pay, with maximum increases (£6 per week) skewed towards the lower paid and poor pensioners. An indication of this most radical deal ever in peace-time (it was modeled on war-time precedents), will be seen from the gains achieved by the unions for all workers. These included a new tripartite dispute resolution agency (ACAS), headed by a former union leader, with terms of reference based on a remit to promote collective bargaining. ACAS Codes of Practice on disciplinary and grievance procedures also set new standards for employers. They also established a tranche of radical new employment protections for workers, (e.g. unfair dismissal rights with industrial tribunal enforcement). They legislated for tough health and safety provision, enforced by safety representatives at the workplace, and a tripartite Health and Safety Executive 'with teeth'. One of the less known but far-reaching changes was the Pensions Act 1975, which set up a second tier earnings-related state pension for all workers with the potential to add 25% of earnings to the basic pension. Equally advanced was its partnership with occupational schemes, which led to a massive extension of collective bargaining to final salary occupational pensions especially to manual workers, which for the first time also gave them and their families access to significant death in service cash sums and early retirement benefits. Pension fund trustees elected from the workforce was another feature. In a sense, then, the Bullock recommendations for worker directors was a logical extension of this 'New Deal'.

Jack Jones (1913-2009): had risen to power in the T&GWU during the late 1950s and early 1960s as the official voice of militant 'shop floor' representatives. After he became General Secretary in 1969 he pursued a left-wing course which encouraged militant tactics by his negotiating committees and officers, with considerable success. This established the 'T&G' as the most powerful union in the country, in almost every industry and region of the UK, with over 2 million members by 1977. Together with the late Hugh Scanlon (1913-2004), left-wing leader of the other major manufacturing union the Amalgamated Union of Engineering Workers (with over 1 million members), they swung the entire union movement to a more assertive stance than ever before. It was Jones alone, however, who made the running on industrial democracy. Although a Communist in his early days, Jones's ideas of power-broking engagement with the state and employers were more deeply influenced by the T&G tradition of Bevin and Cousins. He was also close to one of the Marxist 'think tanks' of the period, the Institute for Workers' Control, which advocated that far more radical approach. A full biography of this outstanding post-war union leader is much needed.

Report and notes by James Moher

Appendix

The 1977 Bullock Report on Industrial Democracy: a historical view from academic industrial relations

by Peter Ackers

The 1977 Bullock Report recommended a system of worker directors on the boards of large private companies. Although the report was never translated into practical IR policy, it took place at a key moment in the history of British industrial relations (IR), during the1974-79 Labour Government's Social Contract, shortly before the election of the 'New Right' Thatcher Conservative government. Reading the report and surrounding debate today, it is clear that there was little sense then of an approaching turning point in IR history. Indeed, there was a confident feeling that strong trade unions were a permanent and growing feature of British society and that any foreseeable approach to worker participation would have to centre on them. In this respect, historical reflection on Bullock illuminates three inter-related areas of post-war British history.

First, Bullock sheds light on the history of British trade unions. Unions were at the height of their strength and influence in British society and Bullock recommended their involvement in board-level discussions about corporate strategy, as not only a means of giving employees more 'voice' in the running of business, but also a way of improving relationships at work and thus increasing efficiency and productivity in the British economy. A major influence on Bullock was the system of Co-Determination in the highly successful West German economy and a similar Swedish system. However, the 1978-79 'Winter of Discontent' saw major strikes in the public sector, followed by the election of Mrs Thatcher's Conservative Government determined to reduce 'trade union power'.

Second, Bullock was the highpoint of a twentieth century public policy approach to managing workers through trade unions that went back to the Webbs' 1897 classic Industrial Democracy. The 18 years of Conservative rule after 1979 not only witnessed a dramatic decline in general trade union membership and influence, but also the replacement of this idea of industrial democracy with the more managerial notions of 'Employee Involvement' (Marchington et al 1992, 2001). So Bullock was very much a historical 'road not taken' - as British society went off in a much more free market, individualist approach to managing people at work.

Third, and again with hindsight, Bullock was the last major gasp of 1970s 'pluralist' IR policy.

I am currently writing a biography of Professor Hugh Clegg, one of the key IR academics and policy makers of the post-war era (Ackers 2007). Clegg and his close colleague, Alan Flanders, had long argued that collective bargaining through trade unions or 'joint regulation' was the best approach to achieving industrial democracy (Clegg 1960). Moreover, a trade union was 'an opposition which can never become a government' (Clegg 1951: 22); so unions should not become directly embroiled in the corporate management of business organizations as worker directors. Clegg maintained this stance on Bullock, but one of his leading colleagues, Professor George Bain, was a signatory of the Majority Report. Much of the academic and trade union debate around Bullock was between pluralists who felt worker directors would undermine the independence of collective bargaining and pluralists who felt that Bullock was a natural and further development of collective bargaining (see Benedictus et al 1977).

History & Policy links academic historians and policy makers in general while the Trade Union Forum - sponsor of this recent seminar with Lord Lea - focuses on the links between academic work on trade unions and active trade unionists. While Bullock was never implemented, some of the ideas about partnership between trade unions and employers remain important in current academic and public policy debates. By reflecting on the Bullock experience we may better understand the past - what the real prospects were for industrial democracy in 1977 - but also learn lessons for the future of British trade unions, worker participation and academic IR.

Politics and Economics: The History of "Contested Terrain"

Northern College 29-31st May 2015

- The Combination Acts 1799-1800
- The Whitley Report
- The Bullock Report
- National Minimum Wage

Foreword

by the Chairman of the Low Pay Commission, Professor George Bain

1 The Commission has had a substantial and historic task. The idea of a National Minimum Wage has for many years been subject to fierce political debate in the UK. Our appointment by the Government in July 1997 signalled the resolution of that debate.

2 The Commission embodies the principle of social partnership: its nine members are drawn from employer, employee and academic backgrounds. The way in which we have worked and, in particular, that we have – after receiving evidence and after discussion and debate – reached unanimous agreement on the whole range of issues we have covered, is unambiguous evidence that social partnership can work. It is an approach which we firmly believe should be sustained.

3 Our job has been to recommend the level at which the National Minimum Wage should be introduced, and how it should apply to young workers. We are very conscious that our recommendations will directly affect hundreds of thousands of businesses, and many more individuals, throughout the country. Our terms of reference rightly emphasise the importance of understanding the economic and social implications of our recommendations. Our recommendations are also made against a background of emerging policy on related Government initiatives. We are determined that the National Minimum Wage should complement and underpin the Government's wider welfare-to-work policies, including its New Deal initiatives.

4 It was essential for us to understand what the National Minimum Wage will mean for individuals and businesses across the UK. In addition to undertaking research and studying written evidence, we have held over two hundred meetings throughout the country. We have met overloaded advice services, committed managers sometimes in struggling businesses, and low-paid workers and unemployed young people on bleak estates. They have brought home to us the impact which our report, and the decisions that flow from it, will have throughout Britain.

5 A National Minimum Wage must address the worst cases of exploitation. Some homeworkers we met provided vivid examples. We wanted to go further and to try to make a difference to a wider group of low-paid workers, and those out of work. There needs to be a real incentive to

make work pay, without unnecessarily jeopardising job opportunities.

6 We were equally determined to make recommendations which business could afford. No one wants a wage that cannot be paid. We were struck by the extent to which businesses welcomed the general principle of the National Minimum Wage. Their focus, understandably, was on making sure that it was workable. Businesses wanted to be clear what counted towards the National Minimum Wage and what did not. They wanted it to be enforceable, and not riddled with loopholes which could be exploited by unscrupulous competitors. We very much shared their objectives.

7 The length and, we hope, the content of this report shows the extent to which we have addressed the range of complex issues which underlie a National Minimum Wage. It would not have been possible without the exceptionally positive response that we received from a wide spectrum of interests and individuals. We are grateful to them. We are also

grateful to our Secretariat for their initiative, hard work and excellent organisation. We believe our conclusions represent a coherent package which is both prudent and straightforward. Above all, it should benefit many businesses and workers throughout the UK.

8 US legislators, on passing the Clayton Act in 1914, insisted that labour is not a commodity. We have received very much the same message this last year from employers and workers throughout the UK. We met many progressive employers who testified to the commercial advantages of training and paying an attractive rate for the job. We met workers and unemployed who responded positively to the thrust of welfare-to-work policies. Both groups want protection from unfair pay and from competition based upon unfair pay. They also want to be confident that the National Minimum Wage will be enforced.

9 The Commission has reflected these perceptions. Despite our different starting points, we have reached unanimous agreement on issues which, until recently, would have proved impossibly controversial. We feel privileged to have been asked to participate in the introduction of the National Minimum Wage, and hope that we can make a continuing contribution as it comes into effect. It is an important part of making work pay, and the National Minimum Wage must continue to prove workable and worthwhile.

The government accepts minimum wage rate recommendations

This news article was published under the 2010 to 2015 Conservative and Liberal Democrat coalition government

The Low Pay Commission today welcomed the government's acceptance of its recommendations on rates for the National Minimum Wage (NMW) for adults aged 21 and over, for young people aged 18-20 and for 16-17 year olds from October 2015.

The Chair of the Low Pay Commission, David Norgrove said:

"We carefully weighed the risk of doing too little to raise the earnings of the lowest paid against the risk of recommending more than business and the economy can afford. Our recommendation that the adult minimum wage increase by 3 per cent to £6.70 an hour is likely be the largest real-terms increase in the NMW since 2007 taking its estimated real value three-quarters of the way back to its highest ever level. It should also represent a further increase in the value of the minimum wage relative to average earnings, which is already at a record level.

We judge that the improved economic and labour market conditions mean once again that employers will be able to respond in a way that supports employment. However, our recommendation this year is predicated on a forecast which foresees lower costs for business in fuel and energy, a strong economic performance, significant recovery in earnings across the economy and rising productivity. If these expectations are not borne out over the year we will take this into account when considering next year's recommendation.

While we welcome the government's response on the headline rates we are disappointed that it has not accepted our recommendation on the level of the Apprentice Rate. We based our judgement on a careful assessment of the evidence, seeking to benefit apprentices while also protecting the supply of places".

Notes to Editors

1. The National Minimum Wage (NMW) is the UK's pay floor – designed to protect as many low-paid workers as possible without hurting jobs or the economy. The Low Pay Commission is an independent body whose role is to advise the Government on the NMW. Every February, it makes recommendations for the value of the NMW based on a careful review of evidence including economic analysis, submissions from stakeholders, research and a programme of visits.

2. The LPC submitted its recommendations to the Secretary of State for Business, Innovation and Skills, the Prime Minister and the Deputy Prime Minister accompanied by its 16th Report setting out a detailed review of the evidence on which they are based. The report as a whole will be published on 17 March 2015.
3. The LPC works on the basis of an official remit. This year the Government asked the LPC to:
   - monitor, evaluate and review the levels of each of the different NMW rates and make recommendations on the levels which should apply from October 2015;
   - consider whether any changes can be made to the Apprentice Rate to make the structure simpler and improve compliance and also consider whether the structure and level of the Apprentice Rate should continue to be applied to all levels of apprenticeship, including higher levels; and
   - consider whether, as concluded in our 2014 Report, the UK is entering a new phase where real increases in the NMW can be afforded. We should review the conditions that need to be in place to allow the value of the minimum wage to increase in real terms, including an update on our previous advice on the future path of the NMW.
4. As well as its recommendation for the adult rate, the Low Pay Commission has also recommended:
   - an increase of 3.3 per cent to £5.30 in the Youth Development Rate, which applies to 18-20 year olds;
   - an increase of 2.2 per cent to £3.87 in the 16-17 Year Old Rate;
   - an increase of 2.6 per cent to £2.80 in the Apprentice Rate, which applies to all apprentices in year one of an apprenticeship, and 16-18 year old apprentices in any year of an apprenticeship;
   - an increase of 27 pence in the accommodation offset to £5.35. The offset is the one benefit-in-kind that can count towards the minimum wage. This is the maximum daily sum employers who provide accommodation can deduct towards those costs.
5. The Accommodation Offset is the maximum daily sum employers who provide accommodation to NMW workers can deduct towards those costs. We recommend that the offset increases by 27p from £5.08 to £5.35.
6. The members of the Low Pay Commission comprise:
   - David Norgrove, Chair
   - Kay Carberry, Assistant General Secretary, TUC
   - Neil Carberry, Director of Employment and Skills, CBI
   - Peter Donaldson, Managing Director, D5 Consulting Ltd
   - Richard Dickens, Professor of Economics, Sussex University
   - Bob Elliott, Professor of Economics, Aberdeen University
   - John Hannett, General Secretary, Usdaw
   - Neil Goulden, Neil Goulden Consulting Ltd
   - Brian Strutton, National Secretary, GMB
7. In April 2014 there were 1.4 million minimum wage jobs in the UK. 5.3 per cent of the UK labour force was paid within 5p of the minimum wage. This included: 1.2 million NMW jobs held by those aged 21 and over; 139,000 NMW jobs held by 18-20 years olds; and 40,000 NMW jobs held by 16-17 year olds.
8. The LPC has commissioned around 140 research projects since 1999 on the impact of the NMW. They show that, over the period, the low paid have received higher than average wage increases, with the NMW having little adverse effect on employment or the economy.
9. Over the course of the recession the real value of the NMW fell because of high inflation -

as did wages for all other workers. But its relative value compared to other wages increased. This was the first recession going back to at least the 1970s when the lowest paid didn't fare relatively worse than everyone else.

10. The relative value of the NMW is now at its highest ever. Its bite - the value relative to median earnigns - is 53 per cent for workers aged 22 and over. It is at nearly 80 per cent for low-paying sectors. It is at 92 per cent for the lowest paid 10 per cent of the UK workforce.

11. The NMW is now beginning to recover its real value. If accepted by the Government, the 2015 recommendation could restore three-quarters of the fall in the real value since its peak in 2007 (based on CPI inflation, and the Bank of England's February 2015 inflation forecast of 0.5 per cent for Q4 2015).

12. One factor influencing this year's recommendation has been strong employment growth. Total employment has continued to grow in the economy as a whole and in the low-paying sectors with the year to September 2014 showing the highest annual (September-September) increases in employment and jobs since the introduction of the NMW, as well as strong growth in hours and vacancy levels. Indeed, although the bite has risen sharply in the low-paying sectors since 2007, the number of employee jobs in this part of the economy has grown more rapidly than those elsewhere – 4.3 per cent over the last year compared with 3.1 per cent for other sectors. Employment growth has generally been strong across all firm sizes. Furthermore, the employment performance of most groups of workers particularly affected by the minimum wage – women, older workers, disabled workers, ethnic minorities, and migrants – has been better since 2008 than that of others not so affected by the NMW.

13. In April 2014, 0.8 per cent or 208,000 employees aged 21 and over were paid less than the NMW. Some employees are legitimately paid below the hourly rate of the NMW, such as when employers deduct small sums for accommodation costs up to the maximum daily legal limit, the accommodation offset. Others are not. There is high NMW non-compliance among employers of apprentices and in sectors like social care.

14. There are four main rates of the NMW. The current and recommended value is shown in the table below.

Rate	Current level (to October 2015)	Proposed increase	Recommended rate (from 1 October 2015, subject to Government decision)
Adult Rate (workers aged 21 and over);	£6.50	3%	£6.70
Youth Development Rate (workers aged 18 - 20);	£5.13	3.3%	£5.30
16-17 Year Old Rate;	£3.79	2.2%	£3.87
Apprentice Rate (applicable to apprentices in their first year, and apprentices aged 16-18);	£2.73	2.6%	£2.80

Low Pay Commission

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23 February 2015

The Rt Hon Vince Cable MP
Secretary of State for Business, Innovation and Skills
1 Victoria Street
LONDON
SW1J 0ET

Dear Secretary of State,

THE 2015 RATE, FUTURE PATH OF THE NATIONAL MINIMUM WAGE, AND REVIEW OF THE APPRENTICE RATE

I enclose the 2015 Report of the Low Pay Commission.

Last year we were pleased to recommend the first real terms increase in the value of the minimum wage since the recession. We argued that the minimum wage had proved its worth over the course of the slowdown, increasing relative to earnings generally and protecting the low paid during the downturn in a way not seen before, albeit, as with wages for all other workers, its real value fell. The bite (the minimum wage as a proportion of median wages) is now at its highest ever: overall, in low-paying sectors, and in firms of all sizes.

We judge that, as last year, sharp increases in the minimum wage would put jobs at risk – not least bearing in mind pressure on low-paying sectors and small firms. We do believe however that the continued recovery, and in particular the impressive growth in employment of the low paid, should this year allow a further increase in the real and relative value of the minimum wage.

We recommend that the adult rate should increase by 3 per cent to £6.70. This is likely to be a larger real terms increase than last year and, on the basis of the most recent Bank of England inflation forecast, should restore three-quarters of the fall in the real value of the NMW relative to its peak in 2007.

Our recommendation may increase the number of jobs covered by the minimum wage to over 1.4 million in October 2015 compared with 900,000 at the start of the downturn in 2008, as the minimum wage has risen in relation to median earnings.

We judge that the improved economic and labour market conditions mean once again that employers will be able to respond in a way that supports employment. However, our recommendation this year is predicated on a forecast which foresees lower input costs for business in fuel and energy, a strong economic performance, significant recovery in earnings across the economy and rising productivity. If these expectations are not borne out over the year we will take this into account when considering next year's recommendation.

In recent years we have recommended smaller increases for young people than for adults because their labour market position has been worse, and the damaging consequences of unemployment even more serious. However, over the last year, wages for 18-20 year olds have significantly outperformed those of adults and their employment position has improved. The abolition of employer National Insurance contributions for workers under 21 from April 2015 should reduce their costs to firms. We recommend an increase in the minimum wage for 18-20 year olds of 3.3 per cent to £5.30. For 16-17 year olds, whose position is also improving, though more slowly, we recommend an increase in the minimum wage of 2.2 per cent to £3.87.

Finally, we recommend that the Apprentice Rate should be increased by 2.6 per cent to £2.80. This would apply unless Government decides to proceed with reform of the rate - for example, the option set out in its evidence, merging it with the 16-17 Year Old Rate.

Structure of the Apprentice Rate

You asked us to consider this option as part of a broader review to see whether the structure of the Apprentice Rate could be simplified in order to improve compliance, and also to consider whether the Apprentice Rate should continue to be applied to higher levels of apprenticeship.

We recommend that the Apprentice Rate should not apply to Higher Apprenticeships. But in terms of other possible structural changes, we believe there would be significant risks in a merger with the 16-17 Year Old Rate. It would mean an unprecedentedly large increase in the value of the rate, of between 39 and 88 per cent. It would affect over 90,000 and possibly as many as 200,000 apprentices – up to a quarter of all apprentices – with significant impact in low-paying sectors that provide many apprenticeships and are of particular value to low-skilled 16-17 year olds. The cost to employers would be at least £160 million each year and could be much more. That would be around half the total cost of the recommended increase in the adult rate, and at a time when there are other funding pressures on employers in England from possible mandatory cash contributions to training. We discuss these and other concerns in our main report. As you requested, we have considered phased introduction, but it would not remedy these issues.

On the broader question, we agree with the Government that apprentice pay non-compliance is far too high at up to 14 per cent according to the 2014 Apprentice Pay Survey. However, the argument that structural change is the solution to this has at least two limitations.

First, the key complexity – a rate that changes with both experience and age – is inherent if policy-makers wish to keep current employer incentives to provide apprenticeships and the higher pay that rewards experienced apprentices while seeking to protect the relative attractiveness to employers of offering apprenticeships to young people. The main options we have found are a zero sum game: they either lead to lower pay for apprentices or higher costs to employers with consequent risks to training quality and the supply of apprenticeships.

Secondly, non-compliance is not simply, and possibly not primarily, a problem of the structure. Though the evidence is not conclusive, it appears substantially to reflect a mixture of a lack of understanding and awareness (as well as some deliberate evasion). This is reflected in high non-compliance where the structure is simplest, namely for 16-18 year olds. It is further supported by our preliminary analysis that up to half of non-compliance is explained by non-payment of training hours or error in reporting hours rather than problems in complying with the hourly rate.

Communication and enforcement are the weapons for lack of awareness or deliberate non-compliance. Welcome efforts to strengthen publicity and guidance are recent and small relative to need. They have also not yet addressed the weak incentives for training providers to communicate the rate. We welcome the increase in resource for HMRC enforcement.

Overall, we believe the evidence available to us does not support a case for structural change. We nevertheless present a range of possibilities for structural reform with the advantages and disadvantages of each, though we make no specific recommendation. We are conscious that reform needs to fit with broader government policies that lie outside our competence and scope, for example on training subsidies, possible higher contributions by employers, and whether the intention is that apprenticeships should be re-focused away from entry to relatively low skill occupations and more towards occupations that demand higher skills.

We recommend that if the Government decides to make a change it should do so only after further consultation. Of course any change risks an increase in non-compliance unless accompanied by the major communication effort that is anyway needed, together with firm enforcement.

I am copying this letter to the Prime Minister and Deputy Prime Minister.

Yours sincerely

David Norgrove

David Norgrove
Chairman