Adam Smith Institute
Omega Report

EMPLOYMENT POLICY

Adam Smith Institute

THE OMEGA FILE

EMPLOYMENT POLICY

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PREFACE

The Adam Smith Institute's OMEGA PROJECT was conceived to fill a significant gap in the field of policy research. Administrations entering office in democratic societies are often aware of the problems which they face, but lack a developed programme of policy options. The process by which policy innovations are brought forward and examined is often wasteful of time, and unconducive to creative thought.

The OMEGA PROJECT was designed to develop new policy initiatives, to research these new ideas, and to bring them forward for public discussion in ways which overcame the conventional difficulties.

Twenty working parties were established more than one year ago to cover each major area of government concern. Each of these groups was structured so as to include those with high academic qualification, those with business experience, those trained in economics, those with expert knowledge of policy discussion, and those with knowledge of parliamentary or legislative procedures. The project as a whole has thus involved the work of more than one hundred specialists for over a year.

Each working party had secretarial and research assistance made available to it, and each began its work with a detailed report on the area of its concern, showing the extent of government power, the statutory duties and the instruments which fell within its remit. Each group has explored in a systematic way the opportunities for developing choice and enterprise within the area of its concern.

The reports of these working parties, containing, as they do, several hundred new policy options, constitute the OMEGA FILE. All of them are to be made available for public discussion. The OMEGA PROJECT represents the most complete review of the activity of government ever undertaken in Britain. It presents the most comprehensive range of policy initiatives which has ever been researched under one programme.

The Adam Smith Institute hopes that the alternative possible solutions which emerge from this process will enhance the nation's ability to deal with many of the serious problems which face it. The addition of researched initiatives to policy debate could also serve to encourage both innovation and criticism in public policy.

Thanks are owed to all of those who participated in this venture. For this report in particular, thanks are due to John Burton, Dr Charles Hanson, Gerry Neale, Ronald Rowles, William Salomon.

1. LABOUR MARKET POLICY

A DIAGNOSIS OF THE FUNDAMENTAL PROBLEMS OF THE BRITISH LABOUR MARKET

The labour market can be seen to be functioning poorly when compared to the wage and employment outcomes that we would expect to observe under competitive conditions. The estimates, tentative as they necessarily are, suggest that the equilibrium rate of unemployment of the British labour market has been rising steadily over recent decades. Professor Nickell found that the equilibrium (otherwise known as the natural level of unemployment) had doubled over the period 1967-77, from 2.5 per cent to 5.9 per cent of the workforce[1]. Professor Minford has estimated a 7 per cent natural rate for 1979[2].

The current recorded rate of unemployment is much higher than this (currently, 13 per cent), this being the product of many factors: an environment of tighter monetary-fiscal control than hitherto; world recession; the growth of non-tariff barriers to trade in the world economy; demanning in portions of private sector British industry; low corporate profits (the lowest ever recorded by the Bank of England); technological change; changes in the age and sex composition of the labour force; the growth of the black economy, and so on. Some of these factors are temporary; others, such as the medium-term financial strategy, are hopefully not temporary, as they will generate long-run benefits to the economy; others, such as the growth of non-tariff barriers, are matters for international negotiation between governments under the aegis of GATT and the EEC.

Imperfections in the market

At base, the British labour market - in common with developments in other Western countries - has become extremely sclerotic. This is so both in terms of the variability of wages in response to changing market conditions, and the movement of employees and employers in response to market signals.

This sclerosis originates from a secular increase in government regulation of the labour market. The labour market has become hyper-regulated, to the degree that the market cannot function effectively to re-allocate resources swiftly and to mop up unemployment.

Labour restrictions. This regulation of the labour market has

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1 S Nickell, The Determinants of Equilibrium Unemployment in Britain (London: London School of Economics, 1980), mimeo.

2 P Minford, Labour Market Equilibrium in an Open Economy (University of Liverpool, 1981), mimeo.

many facets. One avenue of the advance has been through direct regulation by government, in the form of minimum wage regulation (covering some 3.5 million workers), compulsory redundancy payments, and especially, the growth of government regulation of individual employment conditions in general, of which compulsory redundancy payments are one instance.

Housing. Another aspect of the secular regulatory growth impinging on the labour market has been the long-term intensification of regulations impinging on the housing market, of which rent controls, tenant rights legislation, and the extension of public sector housing (rationed on a non-price basis) are the prime examples.

The public sector. A third major aspect of the regulatory build-up has been the growth of the public sector itself. In this sector, wages and employment are not determined, by definition, through market forces. They are determined either by agreed rules of comparison-making (which work to provide an effective wage premium to most public sector employees) or by vast bargaining tussles between bilateral monopolists - highly-unionized labour groups and the state monopoly employer. And ultimately, both wages and employment in this sector are decided by the government's willingness to subsidize.

Legal immunities. A fourth aspect of the growth of regulation of the labour market has been the extension of unique legal powers to trade unions by government, giving them the power to impose wage and employment regulations themselves. A detailed resume of this long historical process is impossible here; suffice it to say that the 1974-79 period saw an intensification of the situation. Currently, approximately 50 per cent of the workforce is unionized: union wage regulation covers some two-thirds of all blue-collar workers. Professor Minford has estimated econometrically that the growth of union density over the 1970s, combined with the effect of the wage floors embedded by government in the labour market, accounts for approximately one million lost jobs over the period[1]. The boost in union density was a reflection of the contemporary changes in trade union legislation and the considerable extension of union membership agreements in the public sector in the latter half of the 1970s.

Welfare programmes. Finally, the existence and growth of unemployment and social security benefits over the long-term has built a high 'wage floor' into the labour market: wages cannot drop below the level of the benefit floor plus the premium necessary to induce people to work.

This regulatory build-up has complex and unintended side-effects. For example, union members have a vested interest in protecting themselves against lower-priced competition. Union

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1 P Minford, Labour Market Equilibrium in an Open Society (University of Liverpool, 1981), mimeo.

members are on average older than new entrants to the labour market; and thus it is in their interest to keep the relative wages of new entrants high. As Peter Horden notes,

> 'In Germany, with the lowest ratio of youth to adult unemployment of all the OECD countries, the average pay for vocational trainees is equal to 20-40 per cent of the initial wages of a skilled worker. In Britain the minimum rate of pay in a typical four-year apprenticeship is about 70 per cent of the adult minimum rate in engineering, and nearly 75 per cent in the construction industry.'[1]

The extension of unionization, and the extension of union bargaining power, is a factor that in part accounts for the growth of youth unemployment, which is a marked aspect of the current unemployment scene. It is, of course, not the only factor; the palpably declining productivity of the secondary education industry over recent years must also here be noted; and many other factors, such as the actions of minimum wages councils,have also impinged on the youth employment situation[2].

THE EVOLUTION OF EMPLOYMENT POLICY IN BRITAIN

Since the 1944 white paper on employment policy, British governments of all colours have accepted some degree of responsibility for ameliorating or controlling the level of unemployment. Paradoxically, it has been the extension of government intervention in the labour market - in the attempt to generate employment - that has been the main cause of the long-term upward drift of the underlying rate of unemployment in Britain. But the only way to reduce the long-term equilibrium rate of unemployment is to lower the restrictions in the labour market and to make it more efficient. By pursuing the opposite, regulatory strategy, British governments have been forced to adopt further measures to disguise the harmful effects of 'employment policy'. There have been two major phases of this phenomenon.

Phase I: cover-up by 'Keynesian' policies

From the early 1940s, Britain had a Keynesian fiscal constitution, as it still has. Under the new fiscal constitution, there

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1 P Horden, Talents Buried by the Public Sector Must Be Dug Up, Daily Telegraph, July 26, 1982, p. 12.

2 'There are at least five wage councils which award young workers of school-leaving age a minimum rate of pay in excess of £40 per week.' (P Horden op cit). It is to be noted that trade unions are heavily represented on wage councils.

was no requirement upon government to balance its budget: constitutional convention explicitly allowed for the running of annual budget imbalances. The unadulterated Keynesian theory of macro-economic policy called for the running of a budget deficit whenever total unemployment rises above the equilibrium level (or 'standard rate' of unemployment, as Keynes's disciple, James Meade, was to label it), and a budget surplus whenever unemployment was below it. Annual budget balance was to be replaced by budget balance 'over the cycle'.

But under the era of 'Keynesian' policy, Britain has never experienced a pure application of Keynesian precepts regarding monetary-fiscal policy. There has been, instead of an alternation of budget deficits and surpluses, an almost unbroken regime of deficits. In Phase I of post-war employment policy, governments sought to reduce unemployment below its equilibrium level to an arbitrary, politically-determined figure, by continuous deficit-financing. The underlying rate of unemployment was covered up by 'aggregate demand management'[1].

The effects of such monetary-fiscal boosting of employment proved to be illusory and short-lived. While holding down unemployment in the short-term, the underlying trend of unemployment continued to rise, as witnessed by the ever-increasing rate of unemployment at the bottom-point of every post-war recession [2]. Moreover, the longer-term consequences of every monetary-fiscal injection proved to be that of inflation.

Phase II: cover-up by new micro-economic palliatives

By 1975, so-called Keynesianism had got out of control in Britain. In that fiscal year, the government was funding over 19 per cent of its spending (11 per cent of GDP at factor cost) by recourse to borrowing. At the same time there was double-digit inflation, the highest unemployment rate (5 per cent) since world war II, and a deficit of £1500 million on the current account of the balance of payments. The government was forced to go to the IMF, to apply for further standby credits totalling $3,900 million, to cover the current account deficit, in 1976.

The end of demand management. The year 1976 is the approximate date of the emergence of Phase II of post-war employment policy in Britain. One aspect of the new phase was the overt rejection of aggregate demand management as a cover-up device. As part of the price to be paid for the IMF loan, the government of the time

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1 For a more detailed discussion, see J M Buchanan, J Burton and R M Wagner, The Consequences of Mr Keynes (London: Institute of Economic Affairs, Hobart Paper 78, 1975).

2 See S Brittan, Second Thoughts on full Employment Policy (London: Centre for Policy Studies, 1975).

had to agree to precise annual targets for the PSBR and money supply growth over the horizon up to 1978-79. Moreover, the failure of Keynesian demand-boosting tactics, as recorded in academic economics, was becoming more known and understood by the wider intelligentsia. James Callaghan's statement to his annual party conference in September 1976 was but one indication of the new realization:

> 'We used to think that you could spend your way out of recession, and increase employment by cutting taxes and boosting government spending. I tell you, in all candour, that that option no longer exists, and that, insofar as it ever did exist, it only worked by ... injecting bigger doses of inflation into the economy, followed by higher levels of unemployment as the next step ... that is the history of the past 20 years.' [1]

Since 1976, both monetary growth and the PSBR have been under some (although varying) degree of restraint. The medium-term financial strategy (MTFS) announced by the Thatcher government in 1980 for the horizon up to 1983-84, is but a more precise commitment to a drift of policy initiated earlier.

In Phase II, British governments jettisoned reliance upon so-called Keynesianism as prime instrument of covering-up employment, **but they did not jettison the philosophy of cover-up itself.** Henceforward, while macro-economic policy was to be eschewed as the vehicle of cover-up, new micro-economic palliatives were introduced to this end. The distinguishing feature of the new palliatives was that, under this new strategy, government subsidy was to be specifically targetted to affect particular categories of the workforce (youths, the'less privileged', employees in 'sunset' and 'sunrise' industries, etc.) Such specific targetting of government spending for the purposes of stimulating employment predates 1976 in the form of regional policy. However, it was in the latter half of the 1970s that this type of unemployment cover-up was to accelerate greatly, in the form of the creation of the Manpower Services Commission and the introduction of the 'industrial strategy'. In bureaucratic terms, responsibility for covering-up the unemployment created by extensive and extending government regulation shifted from the Treasury to the Departments of Employment and Industry.

Continuing the trend. The present Thatcher government has adhered to the broad mould of what can be labelled as Phase II employment policy. Monetary and fiscal policy, under the MTFS, is assigned the task of bringing down inflation, while manpower and industrial policies are assigned the task of ameliorating the unemployment situation.

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1 Statement of the Rt Hon James Callaghan, Labour Party Conference Address, 28 September 1976.

There have of course been some changes of emphasis, compared with the previous Callaghan government, regarding the conduct and application of Phase II employment policy under the present government. On the manpower subsidy front, the emphasis has shifted to the provision of training subsidies for youth, and away from subsidies to maintain jobs. On the industrial subsidy side, under the 'constructive industrial policy' approach announced in 1980, the emphasis has been switched to supposed 'sunrise' industries (e.g., microprocessors and applications thereof). As regards regional policy, there has been some reining back of the areas eligible for government support. All of these are touches on the tiller, and do not in any way constitute a fundamental change of direction. Indeed, the allocation of taxpayer funds allotted to such 'new' palliatives has actually increased under the present government.

Flaws. There are fundamental flaws in the conception of Phase II employment policy, of whatever variety, which are to be noted. First, the entire strategy is based upon the same premise as that of Phase I: that government spending can raise employment. The fact of the matter is that government creates employment in Phase II policy only by taxing, and thus destroying chains of employment in a like manner. At least in Phase I there was some understanding that temporary employment boosts may occur as the result of hidden taxation (the inflation tax on money holdings). Phase II policy does not even hold out this prospect: it is simply a means of redistributing unemployment, not one of altering the total.

Second, Phase II employment policy, given its specific targetting nature, is very open to manipulation by interest groups in the production process. For example, public sector unions have successfully sought to constrain the sorts of jobs available to young people hired on job creation programmes.

Third, while the recent emphasis on training may seem like a good idea, since training is a form of human capital investment, the question must be posed: training for what? As with financial acquisitions, not all human capital investments are sound: many generate a negative rate of return. The presumption underlying state production of training is that the state knows the future: that it knows in advance which skills will be required; which means that it knows which production processes will be utilized, and which products will be in demand. Merely to state these implicit assumptions is to expose their absurdity.

THE POLICY OPTIONS

There are four main policy options, broad strategies, available to any government in the present situation.

(1) **A return to 'Keynesianism'**. Under this scenario, we would return to Phase I labour market policy. Deficit finance would be used to boost employment in the short-term. The side-effects

would of course depend on the form of deficit financing. Most probably, we would experience an acceleration of inflation followed by the imposition of wage-price controls, followed by the re-emergence of higher unemployment.

(2) **Protectionism**. This scenario, endorsed by the Cambridge economic policy group, represents an intensification of government regulation in the interest of domestically-located producer groups.

A protectionist strategy might well reduce unemployment in those areas of production exposed to international competition, at least before tariff retaliation sets in. But it would undoubtedly reduce the standard of living of the population at large and, moreover, retaliation would occur, leading to unemployment. Recent developments in the 'steel war' between the United States and the EEC are but a harbinger of the prospects of a generalized trade war, which is now an ever-present possibility. Britain, with a very high ratio of exports to national product, is not well placed to initiate a general trade war. Our ability to survive depends on our ability to export in order to pay for massive food and raw material imports.

The Cambridge economic policy group disagree, of course, with this diagnosis. They say that either there will be little retaliation or that Britain is well placed to stand a trade war. Moreover, recently, they have been advising the United States to adopt a protectionist strategy (i.e., they have been advising the US to retaliate). We forego further commentary on these opinions.

(3) **Continuation of Phase II**. In this scenario, government would continue to try to mitigate the unemployment consequences of its own over-regulation by micro-economic palliatives: employment, training, and industrial subsidies would continue to extensively deployed.

The cost of such an approach could be reduced, perhaps significantly, by the introduction of some degree of market discipline and competition. For example, training programmes could be contracted-out to private or public enterprises, or training 'vouchers', given to any enterprise taking on a redundant worker, may be introduced into the unemployment/social security benefits systems, and so on.

However, it warrants emphasis that even a contracted-out style of Phase II employment policy does not get to grips with the fundamental problems. It is a cover-up approach. Moreover, much will depend on the level of subsidization: it is quite easy to visualize how - even if training was contracted-out - the level and volume of subsidies would get out of hand. In this latter case we would be re-entering Phase I under the guise of Phase II.

(4) **A deregulation approach**. The only approach that will tackle the fundamental problem of the underlying 'natural' rate

of unemployment is deregulation [1]. The unemployment rate has been raised by government regulation, and the solution to the problem is to reduce regulation.

A deregulation scenario would have many facets: the reduction of government involvement in the housing market, the removal of trade union immunities, the abolition of government-imposed wage floors, and so forth.

The basic problem with a deregulation approach is that it will be vociferously opposed by the elements that are protected by specific regulations. Government regulation has extended under democracy at the behest of concentrated interests; and we may be assured that these interests will fight for their own corner. Attempts to reduce trade union immunities will be endlessly described as an attack on the working classes, for example. Nevertheless, despite the political difficulties involved in countering numerous vested interests, deregulation is the only way that the underlying 'natural' rate of unemployment will be brought down in the long term.

A practical policy

In effect, a practical policy for the immediate future will have to combine a measure of the third and fourth options - a continuation of Phase II and deregulation. Government is so heavily dependent on micro-economic palliatives to unemployment that it does not make sense to end these overnight.

The key to freeing the labour market and reducing unemployment is a very extensive programme of deregulation. If this is to succeed, it is probable that a single department, probably that of employment, must have a pivotal role in ensuring that a full programme of deregulation is carried through. Many of the unnecessary interventions and regulations are the responsibility of departments other than the Department of Employment, but power to oversee the activity of other departments would be required to ensure that a complete programme of deregulation is carried through.

Deregulation can be complemented by the government endeavouring to reduce the extent and expense of its micro-economic interventions in the market, which we have called Phase II employment policy, with the stated aim of abolishing these interventions altogether. Most of these interventions are carried out through the Manpower Services Commission.

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1 The deregulation of the labour market is a concept that has yet to be discussed in Britain. The argument, in the American case, is elaborated in detail in D C Heldman, J T Bennett and M H Johnson, Deregulating Labor Relations (Dallas, Texas: Fisher Institute, 1981).

The Manpower Services Commission

Since 1974, when it was set up, the MSC has grown into one of the largest of government agencies, employing over 24,000 people and spending 1,119 million in 1981-82. Its organizational structure is of considerable complexity and the variety of the programmes and functions that it handles is even more so.

The MSC duplicates functions which are accepted as the proper function of the Department of Education and Science. If many youngsters, having been in school for 11 years are unfit for work and have to be 'trained' by the MSC, it reflects poorly on DES functions. The skills which they need are best imparted to them at school, when it is much cheaper to do so: the cost of acquiring skills rises with age. In view of this, it is remarkable that there are still attempts to use the MSC to extend state comprehensive education from 16 to 21, and to institute a year of state 'training' as a permanent feature of life.

A thorough review of the MSC's activities reveals activities that could be immediately dispensed with:

(1) **Local office services.** These are the job centres. The function of the job centre is simply to advertise vacancies and thus assist in placing people in jobs. This function is also carried out by the many private employment agencies, who have difficulty in competing with the 'free' job centre service. There are some 800 job centres, many in prime sites in main streets, with high operating costs.

Unlike the practice in private employment agencies, customers in job centres pick the jobs themselves for which they think they are suitable. Often, they pick jobs for which they are totally unqualified and unsuited. The job centres thus send large numbers of unqualified applicants for interviews. It is argued that one advantage of the job centres is that they advertise all vacancies in an area free of charge; but many companies do not notify job centres of their vacancies in order to avoid wasting time interviewing dozens of unsuitable applicants.

Private employment agencies must get the people they put forward accepted for the jobs, or they do not get paid. They select the most suitable people for the vacancies using their judgement and experience.

The private sector would expand to fill the gap very quickly if the job centres were closed. The closure of the job centres, which could conveniently be phased over 6 months or so, would have a beneficial effect on unemployment, as more people would get the right jobs sooner. Closing the job centres would also reduce the number of MSC staff by some 10,700, with corresponding financial savings.

(2) **Professional and executive recruitment.** The PER is, as its title suggests, in the business of finding work for those at

the upper end of the job market. But PER undermines the work of private sector recruitment organizations, and has put many private sector recruitment organizations out of business.

PER charges companies a 12 per cent rate when they accept a PER suggested candidate for a job. Private recruitment organizations charge between 15 per cent and 30 per cent, on average around 20 per cent, but provide a much higher quality of service. Effectively, the low rates charged by PER mean that the taxpayer is subsidizing companies' recruitment costs.

If a private recruitment organization's candidate for a job fails to be selected, it has to bear the cost. Thus there is a strong incentive for them to get the right people for their own staff: they have to be expert in a way in which PER employees do not. There is a very high job turnover at PER, and civil servants proceed through it as part of their career, staying for one or two years. The much vaunted PER computer, which was to match candidates to vacancies, is no longer in operation. Often, PER will send along five or six people to be interviewed for a vacancy rather than try to find out the best one or two beforehand. Private recruitment organizations generally go for one or two days to the company which is trying to fill a vacancy in order to get the maximum information so they can suit the man to the job. PER on the other hand, usually works over the telephone.

PER probably could not be privatized, since few, if anyone, would want to buy it, but its abolition would enable the private sector to grow and take over its work immediately. There would be a marginal reduction in private sector prices, and more people would be found the right jobs sooner.

(3) **Geographical mobility**. The MSC attempts to improve labour mobility by circulating information about job vacancies over a wide area and offering financial assistance to unemployed people to move to new jobs in different areas.

This is a classic case of one piece of government intervention seeking to rectify the ill-effects of other pieces of government intervention. The circulation of information about jobs in different parts of the country is already carried out, and could be fully carried out, by the private sector. The relocation expenses and interview travelling expenses paid by the MSC under the Job Search Scheme and Employment Transfer Scheme apply only to the lower end of the market, as most companies pay relocation and interview expenses.

Improvements in labour mobility through deregulation of the housing market and sale of council houses, as well as reductions in travel costs through deregulation of long distance coach services, make this function increasingly redundant. In our opinion, it should be dispensed with.

(4) **Employment rehabilitation and sheltered employment**. The

MSC has twenty-seven employment rehabilitation centres which concentrate on 'improving work capacity and restoring confidence' for ill and disabled people. It also funds local authorities and voluntary bodies in order that they can employ people whose disabilities preclude ordinary employment. We suggest that the operation of the rehabilitation centres should be contracted out, and resources should be switched towards helping voluntary organizations to assist disabled people.

(5) Training services. Direct training occurs mainly under the training opportunities scheme (TOPS) which exists to train people in such areas as clerical, engineering, and technical skills, through general and assorted 'skillcentres', of which there are 68 with 24 annexes, although a small amount is contracted out to the private sector.

There is considerable evidence that the training carried out by the public sector is much more expensive than equivalent private sector training. Figures produced in a 1979 report by Sight & Sound Education Ltd, a large private clerical and commercial training organization, showed that the public sector was about twice as costly as the private sector. On 1979 figures, it cost £1,417 to train a copy typist at a college of further education, but only £743 at a Sight & Sound college. Sight & Sound could train a shorthand typist for £1,076, whereas the college of further education cost was £2,932, almost three times as much.

The same report included a survey of the average cost and length of the TOPS typing and shorthand courses in colleges of further education and private colleges in London. The average fees cost per student in the CFE's was £818 as against £444 in the private colleges. Similar figures for 1981, comparing the allowances and fees per course in Sight & Sound colleges with the allowances and fees per course in CFE's, show the private sector cost as £939 and the public sector cost as £1,840.

The MSC should cease to carry out training or decide which training its trainees should undergo because this involves impossible assumptions about what 'good training' is, including decisions about which jobs or industries will expand and contract in future. Government bodies do not have a good record in this field. Private industry has a lot of training capacity and experience and could easily absorb most of the skillcentres' work if they were sold or closed down.

Vouchers. We suggest also that the other MSC programmes, such as the unified vocational programme, apprentice support, TOPS, the community industry and community enterprise programmes, and the new training initiative, should be scrapped and replaced by two schemes of training vouchers: youth training vouchers and adult training vouchers.

The youth training vouchers would provide a set period of training as under the present youth training initiative, but would buy an extended period of training, without any secondment

to industry and commerce, which damages the youth labour market. Private sector entrepreneurs wishing to be involved in training young people eligible for vouchers would be licensed by the government to train them, and would be responsible for paying their allowance of around £25 a week, as at present. Those unemployed young people not wishing to participate in the training scheme would be ineligible for supplementary benefit.

Adult training vouchers should be available to unemployed adults, the value of the voucher being limited to the price of the cheapest available courses which provide the needed skills. As with the youth training vouchers, the trainees themselves would choose their place of training. Careful thought should be given to the size of the voucher (for example, whether it would differ between types of training) and the size of the accompanying allowance, which would have to be less than the amount of unemployment benefit the trainee could otherwise expect to receive in order to make sure the recipients' desire for training was genuine.

As the economy picks up and the quality of schooling improves, the amount and value of the training vouchers dispensed could be reduced and then phased out altogether.

Tax credits. An alternative to training vouchers, based on similar lines of reasoning, is the proposal in the United States by the 'Wednesday Group' to provide companies that teach new skills to workers with tax credits. The alternatives of retraining vouchers and retraining tax credits need to be analyzed and costed carefully.

It is not necessarily the case that the perceived need for a system of retraining vouchers or tax credits will disappear as the economy picks up. A major possibility in the long-run, as the UK economy continues to adjust and adapt to the ever-changing configuration of comparative advantage, is that employees will continue to experience redundancy in large numbers. Sectors that are industries of the future will in many cases become the industries of the past, and as mobility increases people may change their occupation four or five times in their working life. Indeed, such acceptance of change will be a precondition of continued progress.

However, a permanent system of retraining vouchers or tax credits must be carefully constructed, both in its size and the incentives embedded within it, if it is not to undermine the workings of the normal labour market processes in which people move between jobs, industries, and regions. The objective of the system must not be retraining as such, but the migration of labour to new employment opportunities. The system must encourage this mobility, and not undermine the market process that brings it about.

A pertinent example of the possibility of undermining the market by government-funded schemes is afforded, some would

suggest, by the Youth Training Scheme. As Professor David Metcalfe has argued:

> 'Because firms get teenage labour for nothing under YOP and YTS these programmes run the risk of giving the deathblow to the regular youth labour market ....'[1]

Likewise, if all costs of retraining adults are borne by the state, instead of by employees and firms, as happens in the market process, then there will be no incentive for firms to hire redundant employees for training and employment in the normal fashion.

Thus a retraining voucher or tax credit system must be so constructed that it does not lead to a collapse of normal market transactions. There is no obvious solution to this problem: all interventionist measures inevitably give rise to undesired side-effects. But the problem must be recognized in programme design.

(6) MSC support services. The MSC presently requires a considerable bureaucracy to service its various programmes. Given the winding up of most of these programmes, as outlined above, this is unnecessary. The MSC corporate services division, which deals with the MSCs personnel and costs some £25 million, should be scrapped along with the manpower intelligence and planning division, which plans the future direction of the MSC, and the regional manpower intelligence units, which assess labour trends in the various regions, these last two sections costing some £4 million.

A strong intellectual case has already been made out that the MSC itself should cease to have a separate existence as a quango - it is difficult to give any justification for its present quasi-autonomous state. It should immediately have its remaining functions merged back into the Department of Employment.

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1 D Metcalfe, 'Special Employment Measures', Midland Bank Review, Autumn/Winter 1982, p. 15.

2. LABOUR RELATIONS AND LABOUR LAW

INTRODUCTION

Britain was the first industrial nation and became, in the nineteenth century, the workshop of the world. Because of this long experience of employing people in an industrial environment, British labour relations might be expected to be the best in the world: but no-one would claim that this is so today. In fact, the opposite is nearer the truth, because probably the best indication of the state of a nation's labour relations is the measure of labour productivity, especially if that measure is compared with labour productivity in other countries at a broadly similar stage of development. Sadly, recent measures of comparative labour productivity show that the UK is at the bottom, not the top, of the international league table:

OUTPUT PER EMPLOYED WORKER-YEAR IN 1980

Country	Manufacturing	Services
	(thousand 1973 $US)	
USA	16.8[1]	14.7[2]
Netherlands	16.0	12.1[2]
Japan	14.5	10.2[2]
West Germany	13.8	12.6
France	12.8	12.8
Belgium	12.2	12.6[2]
Italy	10.4	10.9
UK	6.8	8.7

Notes: 1 Includes mining and quarrying
2 1979

Source: National Institute Economic Review, August 1982, p 29

These figures speak far louder than words and indicate the pitiful plight of the British economy and the size of the task which confronts it. To be fully competitive in international markets, productivity in manufacturing industry needs to double, and in services, to rise by nearly fifty per cent. But this will take time, and other nations will not wait patiently for the UK to catch up.

Source of the problem

Who is responsible for this sorry state of affairs? What can be done about it?

It is common to make the trade unions a scapegoat for the relatively wretched per formance of the British economy since the second world war, but a moment's thought indicates that this is an inadequate explanation. As Allan Flanders pointed out in his classic 1964 study of the Fawley productivity agreements, 'management represents the government of industry, and the unions, at their most effective, never more than a permanent opposition'[1]. He went on to examine the causes of management irresponsibility and slowness to innovate in the field of labour relations and argued that the vast majority of managers in British industry at every level 'prefer to have as little as possible to do with labour relations and are as a rule quite willing to delegate them for most of the time to a personnel manager or department'[2]. It seems that little has changed since those words were written, because in 1983 Sir Michael Edwardes could write of his experiences at British Leyland that 'in Britain we have had 30 years of management not meaning what it says; of government intervention in major strikes and so undermining the management of public sector companies; of militant stewards justifying a harsh and aggressive line by pointing to a history of last-minute concessions by weak and indecisive management'[3].

Should the accusing finger, then, be pointed at Centre Point, rather than Congress House? That would be an oversimplistic reaction to Flander's comments. Management irresponsibility over labour relations is only one symptom of the British disease, which is not just confined to industry and commerce. The addiction to obsolete restrictive practices, more in keeping with the mediaeval guild system than the late-twentieth century economy, is just as prevalent among the senior branch of the legal profession as it is among craft trade unionists. The Inns of Court are somewhat analogous to the 'chapels' of the Fleet Street unions, only a stone's throw away. Barristers and printers alike prefer to live in the past as members of compulsory societies, pretending that modern technology does not exist. And while the editors and leader writers of the national press regularly denounce low productivity among car workers or steel workers, they often conveniently ignore the mass of evidence which indicates that the national press itself is one of the worst offenders as far as low productivity or overmanning is

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1 A Flanders, The Fawley Productivity Agreements (London: Faber and Faber 1964, p. 235).

2 Ibid p. 251.

3. Sir Michael Edwardes, Back from the Brink (London: Collins 1983, p 148).

concerned. It is clear that outdated attitudes and a reluctance to live in the present are a feature of most walks of life in Britain, including industry and commerce, the media, the professions and the academic world.

What can be done? The nature of the task in front of those who hope for better labour relations and higher productivity in Britain is reasonably clear. It requires nothing less than a fundamental change in attitudes among decision-makers in every walk of life, many of whom either are deaf or affect deafness whenever the problem is discussed. Fruitful change will only come out of a vigorous debate, but a pre-requisite of fruitful change is that managers, professional people, politicians, civil servants, academics and trade unionists should stop pointing the accusing finger at the other man and instead look at their own practices, most of which are thoroughly out of date. One thing is clear. There must be change, and change on a very substantial scale. The only alternative is that Britain will quickly become an even more impoverished nation. It is against this background that our proposals should be seen.

THE REFORM OF LABOUR PRACTICES

The proposals in this section cannot cover every aspect of employment law, which is a very large subject. Instead, they focus on those particular parts of the subject which are thought to be most in need of amendment and reform: trade union law and that part of individual employment law mainly contained in the Employment Protection (Consolidation) Act 1978 as amended. This is not to suggest that other aspects of employment law, for example health and safety at work regulations, the payment of wages, or employers' liability, are unimportant. It is simply a consequence of the fact that a programme for reform has to identify priorities, and in this case trade union immunities and individual employment law have been identified as priority areas.

Trade union immunities and the 'right to strike'

In the nineteenth century, trade unions and trade unionists frequently found themselves in legal difficulties, especially during a strike. Consequently, between 1871 and 1906 Parliament gave them a very comprehensive degree of protection or 'immunity' against certain common law doctrines. The Trade Disputes Act 1906 made it impossible to sue a trade union for damages for any reason whatever. These immunities were maintained until 1971, when the Industrial Relations Act repealed much of the earlier legislation. Since 1971, trade union law has been in a state of continuous upheaval, but the fundamental question remains the same: what immunities, if any, should trade unions and their officials be granted against the common law?

The existence of these immunities has created much confusion over 'the right to strike'. In English law, there is not now,

nor has there ever been, a right to strike in the full sense of that term. If a group of workers collectively withdraw their labour, their employer is free to dismiss them, except that between 1971 and 1982 the right not to be unfairly dismissed made it illegal to pick and choose between the strikers, i.e. to sack 'trouble makers' and reinstate others. But although (in theory) strikers may be dismissed, the trade union immunities have meant that where the strikers have an indispensable skill, or alternative labour is not available, there is a de facto right to strike. Thus, the extent of the trade union immunities is crucial, and this has been a matter of acute political controversy since 1971.

The 1980 and 1982 employment measures

Following the 1979 general election, union immunities were restricted by the 1980 Employment Act in three particular ways:

(1) Picketing. The Act provided that pickets no longer have immunity except when they are picketing their own place of work.

(2) Secondary strikes. Trade union **officials** engaged in secondary strikes lost their immunity; but they could still engage in secondary strikes at customers or direct suppliers of the employer in dispute, although **all** secondary picketing was made illegal (see (1) above).

(3) Coercive trade union recruitment tactics. Immunity was removed from those who induced an employee of one employer to break his contract of employment in order to compel workers of another employer to join a particular trade union (a special case).

It needs to be emphasised that the 1980 Act left **trade union** immunities intact. It simply removed some immunities from **pickets** and trade union **officials.** The 1982 Employment Act has gone a significant stage further than the 1980 Act by removing certain immunities from **trade unions**, so that they can now be sued for damages. The term 'trade dispute' has been redefined, so that immunities are removed from unions involved in inter-union (e.g., demarcation) disputes, or political disputes, or disputes in sympathy with workers overseas, **unless** the action has been repudiated by senior union officials or taken without proper authority. Liabilities are limited from £10,000 (for a small union) up to £250,000 (for a large one). But a strike could lead to more than one action. Thus in practice, a union could be bankrupted.

Some comments could be made about the present state of trade union immunities.

Scale of immunities. The recent cutting back of these immunities needs to be seen against the unlimited and unconditional immunities which British unions enjoyed for much of the time

between 1875 and 1971. The great constitutional lawyer, A V Dicey, wrote in 1914 of the 1906 Trade Disputes Act that it 'makes a trade union a privileged body exempted from the ordinary law of the land. No such privileged body has ever before been deliberately created by an English Parliament', and Professor B C Roberts wrote in 1979 that 'in no other country do unions enjoy the freedom to breach contracts, to impose massive damages on totally uninvolved third parties and to violate laws passed by democratically elected parliaments as in Britain'. Those who have enjoyed privileges for a century will protest violently when they are cut back. But the damage that those privileges have done to labour relations and economic growth in Britain must be massive, and Parliament clearly has the authority to remove them.

The public sector. When the basis of British trade union law was laid in the 1870s, the public sector hardly existed. Nevertheless, those who drafted the 1875 Conspiracy and Protection of Property Act were aware that some groups of workers were in a special position so that breach of contract by those employed in the gas and water industries was specifically forbidden (electricity was added later). But these provisions, surprisingly, were repealed in 1971.

Clearly, there are certain fundamental differences between those who work directly or indirectly for the state and those who work in the private sector:

(1) Those who work for the state are not engaged in an argument about private profit. Frequently, they are engaged in the provision of a vital, monopoly service, e.g. health services, water, gas, electricity, telephones, etc. Any interruption of these services is bound to have disastrous effects and to raise questions of public health and safety. The monopoly power possessed by the public sector labour force has been given to them by the state, but **to be used in the public interest.** This is also true where the state grants monopoly rights to private companies. In this case, the distinction between the public and private sector becomes irrelevant.

(2) Public employees are paid by taxes and the rates, i.e. by forced levies on citizens as a whole. Citizens have to pay these taxes and rates however dissatisfied they may be. To give the unions which organize those who provide essential monopoly services the right to induce a strike is to give them power to tax without providing any service in return. This cuts across the most fundamental principle of the British constitution: the sovereignty, or the supremacy, of Parliament.

(3) Many civil servants and others are engaged in work without which the business of government cannot be carried on. It is commonly accepted (and we concur) that this kind of work should be done only by those who are willing to accept that the unions in which they are organized must forgo the right to induce a strike.

(4) Private employees are normally aware that they are operating in a competitive market. They know that a strike will damage their own interests, as well as their employer's, and that it will lead quickly to markets being lost. Thus, they will sometimes be reluctant to go on strike.

The above differences indicate that there is no reason in principle why immunities for public sector or private sector 'essential' monopoly unions should be similar to those for unions in the competitive private sector. In some other countries, including France, Germany and the United States, there is no right to strike for public servants and those who provide essential services such as power workers, teachers and air traffic controllers. It would, then, be possible in Britain either to remove immunities from all who work in the public sector, or to remove them only from those who provide 'essential' services, e.g., health, water, gas, electricity, telephone, fire-fighting, and refuse disposal. It is likely that there would be widespread support for a change in the law of this kind, as it becomes increasingly clear that public sector employees are largely immune to the impact of recession. Thus it is recommended that the right to induce a strike be withdrawn from the unions which organize all of those who provide essential monopoly services, with the ban being extended to all public sector employees in the foreseeable future. All new employees in essential services, and later all new public sector employees, would be required to sign a no-strike agreement at the time of taking up employment.

A measure which carried the above recommendation into effect would have to specify those employees from which immunities were being withdrawn, but it could operate in one of two ways. It could provide either that the immunities were to be withdrawn immediately from all of the specified groups; or that the Secretary of State for Employment should have the power to withdraw the immunities from one or more of the specified groups, subject to the approval of Parliament, as and when he saw fit. Whichever method is adopted, the withdrawal of immunities raises the question: how are disputes about wages and other matters to be resolved for these groups of employees?

The removal of trade union immunities in the public sector would **in no way prevent the formation of public sector unions.** It simply means that those unions would have to operate without the use of strike threat. Collective bargaining could continue in much the same way as now, and it is to be hoped that agreement on a reasonable wage settlement would normally be reached. But provision would have to be made for a situation of deadlock and it needs to be said that compulsory arbitration by a **government appointed** arbitrator would create great resentment among public sector employees. In fact nobody would willingly accept such an appointment, because such an arbitrator would be criticized from all sides. It is, then, essential that a public sector arbitrator should be chosen **by the parties themselves** as as person who can be trusted to make a fair decision. But to allow

such an arbitrator the power to make any award which he thinks fit is to give him the power to tax, and so arbitration of this kind should operate within stipulated cash limits. Consequently, a higher pay award would have to be offset by higher productivity, achieved by staff reductions.

The arguments for finding an alternative to the strike-threat system for settling pay in the public sector, and especially in essential public services, are so obvious that they need hardly be stated. But resistance to desirable change in Britain is strong, and bitter opposition must be expected, even to proposals which have a very wide degree of public support. In facing and overcoming this opposition, it should be remembered that the predictions that widespread social and industrial unrest would follow the passage of the Employment Acts of 1980 and 1982 have proved to be totally false. Those who seek to obstruct change will normally seek to chill the blood of those attempting to bring it about by predicting the direct consequences.

Private sector immunities

As stated above, the power of private sector unions is constrained by market forces. In a very real sense the right to induce a strike in the competitive sector is simply the right to commit social and economic suicide. As John Gennard's research shows,[1] it is very rare for strikers to make any economic gain from a strike. However, there are two particular ways in which private sector immunities could be further reduced:

(1) Trade union immunity could be removed from all secondary action. Thus immunity would remain only for those who organized action by employees who were in dispute with their employer. The 1980 Employment Act restricted picketing to the picket's own place of work. Thus there is now an anomaly between the limits of picketing and strike action. The two should be brought into line by removing immunity from all private sector secondary action.

(2) Immunity could be removed from **all** action (primary and secondary) which took place without a ballot of the employees concerned.

These two provisions could be introduced separately or together.

Option (1) is discussed in the green paper on Trade Union Immunities, where the Donovan Commission's comments to the effect that secondary action is 'a familiar aspect of trade disputes' are quoted, apparently with approval. But the argument from tradition is now irrelevant: those who argue that 'we have always done it this way' need to be reminded that traditional methods

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1 Summarized on pp. 247-256 of the British Journal of Industrial Relations, July 1982.

have failed and must be superseded.

Option (2) is discussed in some detail in chapter 3 of the green paper on Democracy in Trade Unions. A pledge to 'curb the legal immunity of unions to call strikes without the prior approval of those concerned through a fair and secret ballot' was made in the Conservative Manifesto, published in May 1983, and the proposals in the Trade Union Bill published in October show that the pledge is being kept. The government is adopting the simplest method of making pre-strike ballots obligatory, the plan being that unions which call or endorse strikes without balloting the members concerned will forfeit their immunities. In other words, the union will be at risk of being sued for an injunction and its funds will be at risk of an action for damages.

These proposals are complementary to the provisions of the 1982 Employment Act which remove trade union immunities in the case of certain disputes. They suggest that the nonsense of unconditional immunity, established in 1906, has been understood, and that there is a willingness to grasp this nettle with increasing firmness.

Ballots for trade union elections and the political activities of trade unions

As well as introducing compulsory pre-strike ballots, the government has pledged action over the election of the governing bodies of trade unions and the question of trade union political funds. Secret ballots of all the members, conducted in accordance with certain principles, will become obligatory for the governing bodies (for example, the executives) of all trade unions. Enforcement of this statutory duty will be a matter for the members of each union, acting singly or in groups, by means of the ordinary courts.

With regard to political funds, the government proposes that instead of a once and for all ballot on this issue (under the terms of the 1913 Trade Union Act) there should be a ballot of all the members every ten years to decide whether or not to continue the operation of a political fund: they are skating round the controversial issue of substituting contracting-in for contracting-out of the political fund. Certainly, there is plenty of evidence that contracting-out forms are very difficult to find in some unions. But parliament has provided the right to contract out, whereas no such right is available to the millions of employees paying into occupational pension funds which are partly invested in companies contributing to a political party. Radically to alter the system whereby unions contribute to a political party would inevitably raise questions about political contributions by companies. However, there is one additional change which we suggest.

In recent years, as the green paper makes clear[1], the check-off (the system by which union dues are deducted at source by the employer) has spread rapidly, so that today perhaps two-thirds of union members pay their dues in this way. This arrangement means that many trade union members are paying the political levy (only 1p or 2p per week) unawares. Clearly, this is a highly unsatisfactory situation and considerations of honesty and openness alone suggest that it should be stopped. It would be a simple matter to make unlawful the collection of political contributions through the check-off.

INDIVIDUAL EMPLOYMENT RIGHTS

Since the passing of the modest Contracts of Employment Act in 1963 and the establishment of the industrial tribunals in the following year, there has been an enormous build up of individual employment rights which are now administered by the ITs and contained mainly in the Employment Protection (Consolidation) Act 1978, as amended. Most of the twenty-one individual employment rights[1] come into effect within four weeks of the time of employment, but the right not to be unfairly dismissed comes into effect after one year and the right to a redundancy payment only after two years' service.

The industrial tribunals began to function fully in 1975, and no serious complaints against them have been upheld. The legally qualified chairman is assisted by one employer's representative and one trade union representative and 96 per cent of the decisions are unanimous. The main problem with the tribunals is that the law has become exceedingly complex and no legal aid is available. Applicants are supposed to make their own case, but this is a difficult thing to do. This is an argument for consolidating and simplifying the law, not for providing legal aid to everyone.

Well under one half of the cases end up at a tribunal. A majority are settled by the Advisory, Conciliation and Arbitration Service or withdrawn before they reach the tribunal, as the following figures show:

Individual Employment Rights Applications, 1981

Settled by ACAS	17,534
Settled privately	1,232
Withdrawn	12,113
To tribunal	17,492
Total	48,371

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1 Democracy in Trade Unions, (London: HMSO, Cmnd 8778, January 1983, p. 35).

Of these 48,371 cases, 43,769, or 90.5%, were concerned with a single right: the right not to be unfairly dismissed.

Small firms. The burden of these rights is particularly heavy on small firms. The law recognises that small firms have special problems in coping with the whole range of employment rights which automatically create obligations for the employer. For example, in 1980 it was provided that for firms with less than 20 employees, the right not to be unfairly dismissed should only come into effect after two years service instead of one. Naturally, the small employer, who has to be as much concerned with the selling and accounting sides of the business as with production and employment, is unable to pay a personnel specialist to deal with employment rights and to attend tribunal hearings. It is one more job which he has to do himself. Only when a firm grows to 100 or more employees can it usually think in terms of employing a specialist personnel manager. While a great deal is said in public about helping small businesses, there remains an urgent need to reduce the burden of these obligations on small firms. At the very least they should be exempted from the obligations in category (a) in the Appendix [1]. It could even be argued that small firms should be exempt from all of the obligations, apart from those made necessary by international treaties like the European Convention on Human Rights, but there is room for honest disagreement about how far the exemptions should be taken. In some cases (e.g. unfair dismissal) it might be wise to increase the qualifying period up to, say, five years' service rather than abolish the obligation altogether. There are those who would insist that a lengthy period of loyal service does indeed create a kind of property right in a job, and that to allow even a small employer to dismiss a long service employee instantly and without any reason is not acceptable today. Nevertheless, the obligation on small employers should be very substantially reduced. The aim should be to turn the whole of the small firms sector into an enterprise zone and to encourage small firms to grow by freeing them from the web of legislation in which they have become emeshed.

For large firms with a well-developed personnel function, the legislation is less of a problem, but their burden too could be significantly reduced by making one change. In 1981 about 30% of applications for unfair dismissal were from those with less than two years' service. It follows that if the right not to be unfairly dismissed were restricted to employees with two years' service instead of one, there would be a significant drop in the number of applications. It would certainly help the flexibility of the labour market at little cost in terms of personal hardship if this change were made forthwith.

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1 See Appendix, p. 29.

The closed shop

In Britain, the law on the closed shop arises out of the right not to be unfairly dismissed. The question arises: is it fair to dismiss an employee for non-membership of a union when a closed shop is being enforced? This question arouses the most intense passion and emotion on both sides. Amendment of the law on the closed shop has been a central feature of the 1980 and 1982 Employment Acts, but the law is still in a most unsatisfactory state.

The legislation of 1980 and 1982 has to be seen against the background of a rapid spread of the closed shop into many new areas, encouraged by prior legislation. Between 1974 and 1980, several hundred employees were dismissed for non-membership of a union and many more were forced to join a union under threat of dismissal. Three dismissed railwaymen who took their case to the European Court were awarded compensation and costs of £145,000 against the British government for infringing their basic rights. so the law had to be changed.

The aim of the 1980 Employment Act was to stop the spread of the closed shop. But instead of stating that dismissal for non-membership of a union would be unfair if the closed shop had come into existence after 1980, the Act provided that post-1980 closed shops were still acceptable if they had the support of 80 per cent of the workers eligible to vote in a secret ballot. Clearly, this is an unattainable condition and no closed shop has been approved in the three years since the Act was passed.

The 1980 Act has stopped the spread of the closed shop. But the 1982 Act is more ambitious. This provides that from November 1984 it will be unfair to dismiss an employee for non-membership of a union, even if the closed shop was established **before** 1980, unless the closed shop has been approved in a secret ballot **either** by 80 per cent of those eligible to vote **or** 85 per cent of those voting (both virtually unattainable conditions). And very severe financial penalties (to provide compensation for the dismissed employee) are payable by the employer and/or the union involved. These unattainable conditions mean that the government has in effect declared all closed shops illegal, even those which have existed for generations or centuries, while suggesting that it has not done so.

Reform. In reforming this complex law, it might be simpler to make clear that no expansion of the closed shop is permissible. Regarding the treatment of existing closed shops, there are two options:

(1) The closed shop could be banned outright, with dismissal for non-membership of a union becoming unfair in all circumstances. Such a policy would dismay many employers and a number of closed shops would continue to operate informally.

(2) The condition for a successful ballot to approve **existing**

closed shops could be set at a stiff but reasonable level, e.g., two-thirds of those voting. In this case it is likely that a number of long-standing closed shops would be approved while others would break down. Given the ban on all new closed shops, the number of workers covered by 'approved' closed shops would steadily diminish as those industries and services experienced falling levels of employment.

In this context it must be remembered that the judges who administer the law are, as members of the Bar, members of one of the tightest closed shops in the country. to permit the continued existence of such professional closed shops while outlawing them for the skilled or unskilled worker is not the best way to promote respect for the law.

THE INTELLIGIBILITY OF LABOUR LAW

Most legal judgements and parliamentary statutes seem to be devised by lawyers for lawyers: the convenience of those who are affected by the law is ignored. But labour law has to be interpreted by supervisors and shop stewards, and in its present format is virtually unintelligible to them. A lawyer wrote of labour law in 1976 that 'in its present state it is a hideous and ghastly state of obfuscation. Legislation is heaped upon legislation, amendment upon amendment, with apparently little regard to the contradictions and confusions. However well meaning may be the objectives and however beneficial the new laws may be to millions of employees, the fact remains that the law is a bewildering maze for all save the utter devotee. It is virtually impossible for the average employer and employee, i.e., those whose conduct the law is designed to influence, to find their way through the various statutory provisions, and thus rights will go unremedied and wrongs will be perpetuated'[1].

Since these words were written, the law has become even more complex, and the need for consolidation and simplification even greater, as Lord Donaldson, Master of the Rolls, pointed out recently when referring to the curbs on secondary action contained in the Employment Act 1980. He said on that occasion that 'It is of vital importance in industrial relations that the worker on the shop floor, the shop steward, the local union official, district officer and the equivalent levels in management should know what is and what is not 'off-side'. They must be able to do this for themselves by reading plain and simple words of guidance. Yet it has taken the judges of this court, skilled and experienced lawyers, hours to ascertain what is and what is not 'off-side', even with the assistance of most experienced Counsel. That cannot be right.'[2]

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1. Introduction to the first edition of Selwyn's Law of Employment (London: Butterworth, 1976, p. 5).

2. Quoted in Tolley's Employment Act (London: 1982, p. 2).

The present law on trade unions and individual employment rights is now contained in the following statutes (together with innumerable cases):

1. Conspiracy and Protection of Property Act 1875
2. Trade Union Act 1913
3. Industrial Courts Act 1919
4. Trade Unions (Amalgamations, etc) Act 1964
5. Trade Union and Labour Relations Act 1974
6. Employment Protection Act 1975
7. Trade Union and Labour Relations (Amendment) Act 1976
8. Employment Protection (Consolidation) Act 1978
9. Employment Act 1980
10. Employment Act 1982

All of these statutes except the last have been amended by subsequent legislation. Thus there is a most urgent need for a general tidying up of the law, **in conjuction with the changes proposed in this report.**

All of the legislation can be contained in two Acts of Parliament which would need to be considered together, as they would replace all of the above 10 statutes. They might be called the Employment (Trade Union) Act, and the Employment (Individual Rights) Act.

There would be three elements in this process, namely (a) reform of the law as indicated, (b) consolidation of the law, and (c) simplification of the law.

To achieve (c) it is essential that at least one non-lawyer should participate in the drafting process of the new legislation. This could be someone who is familiar with the field of labour relations, but his or her job would be to pull up the legal experts whenever they relapse into their unintelligible jargon, and to ensure that, as far as possible, the statutes were intelligible to those (e.g., shop stewards) who will be affected by them. In this task of simplification, the draftsmen would do well to look carefully at the West German Works Constitution Act 1972, translated into English by the International Labour Office. This complex piece of legislation is a model of clarity and intelligibility.

The work of consolidating and simplifying the law is important, but it must not be allowed to delay the more urgent reforms which require swift and decisive action if the shortcomings of the current framework of industrial relations is to be remedied. While these reforms are being framed and implemented, it would then be possible to begin the important task of simplification and consolidation that has become necessary because of the long period in which industrial relations has become a political shuttlecock. Although this task is of great scale, none is more important.

Conclusion

It was argued earlier that managers and other decision-makers must be held largely responsible for Britain's poor labour relations and abysmal levels of productivity. Whether or not a reduction in the legal immunities of trade unions is desirable, this means that such a cutback in itself will not produce the new methods of working and increased productivity which are so essential. Other measures are needed.

The implications of low productivity are profound. In 1980, the output per worker in manufacturing industry in Britain was just under half that in West Germany: in other words, the Halewood car plant, where it takes twice as long to assemble a Ford Escort motor car as at Saarlouis in West Germany is typical, not exceptional, of manufacturing industry as a whole. It follows that if proper levels of productivity are to be achieved, either the output of manufacturing industry must double without a single addition to the labour force, or existing production levels must be maintained by a labour force half its present size. This suggests that an economic policy which deliberately sets out to reduce unemployment as a first priority is likely to run into serious difficulties as British costs and prices remain far too high. Instead, the emphasis of national policy should be a substantial reduction in production costs and the encouragement of design and quality improvement which will enable British goods to take a much larger share of the home and overseas (especially European) markets.

Consultation, not coercion. The need for management to show much greater determination in the pursuit of higher productivity is obvious, but that does not necessarily mean that management has to use the threat of dismissal to introduce lower manning levels or higher work rates. Recent experience shows that it is possible to achieve very large reductions in a company's labour force by means of voluntary redundancy agreements which have sometimes been oversubscribed. And it is significant that the West German works councils, which have been obligatory in all except the smallest firms since 1952, give employees significant bargaining rights, although those rights are matched by obligations to act responsibly. The German experience shows that, if the climate is right, a reduction in managerial prerogatives is not, in itself, a barrier to high productivity. In fact, it may force management to think out its strategy more carefully and to present it more persuasively. Ultimately, it could even mean that employers and employed come to appreciate that they both have a common interest in higher productivity, which is the only basis for higher real wages. And numerous independent surveys have shown that most British workers are much more interested in getting higher pay from their jobs together with a measure of job security than in using the workplace as an ideological battleground.

To point to the German example of statutory works councils is not necessarily to advocate a similar arrangement in Britain. In

a complex system of labour relations, encouragement is preferred to compulsion, and heavy-handed compulsion of the type advocated by the 1977 Bullock Committee on Industrial Democracy is to be avoided. But time is short, and if encouragement fails the demands for compulsion will become louder.

Encouraging employee participation. However, there are signs that encouragement can be effective and that some managements prefer to initiate change by consultation and co-operation rather than coercion. Perhaps the most prominent of these signs is the recent rapid growth in profit-sharing and employee-shareholding schemes, encouraged by the tax concessions of the 1978 and subsequent Finance Acts. These schemes are spreading so fast, with all of the major banks in the lead, that it may soon be the exception rather than the rule for a progressive company not to operate such a scheme. In most of the firms operating these schemes, a number of employees, including some of the lowest paid, have become shareholders and are, therefore, entitled to attend the annual general meeting and vote on the appointment of the directors. The recent disappointing experience of ICI, which has operated a profit-sharing and employee-shareholding scheme since 1954, shows that a scheme is not a guarantee of rapid growth and high profitability. But it might be expected that employee shareholders are likely to be more concerned with the interests of their company than mere wage or salary earners, and the astonishing recent successes of the National Freight Corporation in Britain and the People Express airline in the United States show that widespread employee-shareholding can go hand in hand with a dynamic vitality. Where employee-shareholding is widespread, the management style must of necessity be co-operative rather than dictatorial.

The government can help to create a climate within which good labour relations and high productivity can be achieved, but there is no legislative programme which can, on its own, bring about those desirable ends. However, there are enough successful firms in Britain to show that even in a sluggish economy, excellent labour relations and high productivity are possible. Their example needs to be copied speedily, because only when the remainder face their own deficiencies and decide to remedy them will the British economy as a whole be capable of achieving levels of output and real wages on a par with its main competitors.

APPENDIX

Individual employment rights referred to in the text

1. Not to be dismissed because of trade union membership or activities, or for **not** being a member of a union unless a valid closed shop is in force (e).
2. Not to have action short of dismissal taken because of trade union membership or activities or for **not** being a member of a union (e).
3. Time off work with pay for trade union duties (b).
4. Time off work for trade union activities (a).
5. Time off work for public duties (a).
6. Time off work to receive ante-natal care (b).
7. Payment in insolvency (b).
8. Itemised pay statements (b).
9. Protective award over redundancy (a).
10. No dismissal on grounds of race or sex discrimination (b).
11. Guarantee payments (a).
12. Medical suspension payments (b).
13. No unfair dismissal because of medical suspension (b).
14. Minimum periods of notice (b).
15. Written statement of terms and conditions of employment (b).
16. Written reasons for dismissal (b).
17. Not to be unfairly dismissed (c).
18. Not to be dismissed because of pregnancy (a).
19. Maternity pay & right to return to work after pregnancy (a).
20. Redundancy payment (d).
21. Time off to look for work after being made redundant (a).

Suggested Procedures

(a) We envisage small firms being exempted from the obligation to observe these rights.

(b) Small firms might also be exempted from the obligation to observe these rights.

(c) This right should only come into effect after two years for large firms. For small firms it could be abolished, or at the least come into effect only after five years.

(d) This right could be abolished for small firms or come into effect only after five years.

(e) In our opinion, these rights should be maintained for all employers.

3. THE LEGAL STATUS OF TRADE UNIONS

In the vast quantity of Labour legislation that has been enacted since 1963, the structure and organization of trade unions themselves have not received much serious attention.

Trade unions have become major elements both in political life and the organization and structure of the labour market. Economically they have become one of our leading institutions: currently there are some 450 trade unions of which 112 are affiliated to the TUC, encompassing eleven million working people.

PRESENT DEFINITIONS

S28(1) of the Trade Union and Labour Relations Act 1974 defines a trade union in the following manner:-

'In this Act, except so far as the context otherwise requires, "trade union" means an organization (whether permanent or temporary) which either -
(a) consists wholly or mainly of workers of one or more description and is an organization whose principle purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations, or
(b) consists wholly or mainly of -
(i) constituent or affiliated organizations which fulfil the conditions specified in paragraph (a) above (or themselves consist wholly or mainly of constituent or affiliated organizations which fulfil those conditions), or
(ii) representatives of such constituent or affiliated organizations;
and in either case is an organization whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or include the regulation of relations between its constituent or affiliated organizations.'

The legal status of a trade union is defined currently by S2(1) of the Trade Union and Labour Relations Act 1974:-

'A trade union which is not a special register body shall not be, or be treated as if it were, a body corporate but -
(a) it shall be capable of making contracts;
(b) all property belonging to the trade union shall be vested in trustees in trust for the union;
(c) subject to section 14 below, it shall be capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action whatsoever;
(d) proceedings for any offence alleged to have been committed by it or on its behalf may be brought against it in its own name;

and
(e) any judgement, order or award made in proceedings of any description brought against the trade union on or after the commencement of this section shall be enforceable, by way of execution, diligence, punishment for contempt or otherwise, against any property held in trust for the trade union to the like extent and in the like manner as if the union were a body corporate.'

Inadequacy of the definitions

Much is left unsaid. The law in this area has not changed in principle: trade unions are voluntary associations with a structure not different from a sports or social club. The association represents the sum of the contractual rights of all the members, whose legal position towards one another is governed entirely by the law of contract. In principle, such an association has no legal personality of itself, which is why the property of a trade union is held by trustees.

As early as 1901 it was clear that this structure of voluntary association would be inadequate to cope with the increasingly important role of trade unions in economic life. The House of Lords in the now famous case of Taff Vale Railway Company v Amalgamated Society of Railway Servants (1901 AC 426) allowed a trade union to be sued in tort. In itself this was a radical departure, creating a quasi-corporate status. The Trade Union and Labour Relations Act 1974 has confirmed this juridical point. But trade unions do not have full legal personality: for example, they cannot sue for defamation: EEPTU v Times Newspapers Ltd[1].

The heart of the problem is simply defined. Voluntary associations such as trade unions are governed by contract law. There is, within certain statutory limits, broad freedom at common law for contracts to represent the wish of the parties. Unions, unlike companies or corporations, are autonomous in their own rule-creating function. The courts do not have the right to strike down a rule which they deem to be unreasonable, as in the case of a corporation. This type of control was rejected by the House of Lords in Faramus v Film Artists Association (1964 AC 925). This is the critical distinction between associations and corporations: in the case of the latter courts have power to strike out rules that are unreasonable.

However, the rules of contract are limited, though the law in this area is not entirely clear. The following may serve to illustrate. The courts will not allow any rules that operate to restrict a member's access to the courts of law. Even an express rule in the union handbook providing for the exhaustion of all internal appeals prior to recourse to law would be held invalid.

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1 The Times, 15th December 1979

Grounds for interference. There are two principles which the court can use to interfere in the contract between union and member. In the first place any such contract is open to interpretation. This will take the form of construing union rules in favour of the member, especially when some breach could involve disciplinary action: Maclelland v National Union of Journalists (1979, unreported). Any procedures for disciplinary action laid down in the rules will be strictly interpreted, so that a deviation will invalidate the proceedings: Silvester v National Union of Printing, Bookbinding and Paper Workers (1966).

The second principle is that of **natural justice.** This admirable sounding idea is founded upon administrative law and procedural rules rather than any abstract notion of justice. It provides for the principle that where a quasi-judicial function is being performed, two rules must be observed: everyone must have a proper notice of the complaint against him together with an opportunity to present his own case (audi ad alterem partem) and further, he may expect his case to be heard by an unbiased tribunal (nemo iudex in re sua). a classical instance of this second principle occurred in Roebuck v National Union of Mineworkers (Yorkshire Area) (No 2) (1978 ICR 676, CL.D). Members of the miners' union had given evidence for a newspaper that was resisting a libel action by the union's area president, Arthur Scargill. These members were charged under the union rules with conduct detrimental to the interest of the union. The president was at all times chairman of the meetings that adjudicated the case, though he did not vote. The members succeeded in obtaining an injunction on the grounds of bias.

Beyond these technicalities, the court can always (at the behest of a member) issue an injunction to prevent a union acting outside its area of competence as defined by the rule book (ultra vires).

At no point, however, does the court have any independent power to review a union rule or a decision and to establish its fairness. All control really centres around the contract that every member enters into upon joining a union and which can be altered from time to time in a manner established by the rules.

STATUTE LAW

The state of statute law was quite restricted until 1980. The three following provisions formed the basis:

(1) S.7 of the Trade Union and Labour Relations Act 1974, which contains the provision: 'Right to terminate membership of trade union. In every contract of membership of a trade union, whether made before or after the passing of this Act, there shall be implied a term conferring a right on the member, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership of the union.'

(2) S.12 Sex Discrimination Act 1975, which states: 'Trade unions etc.

(1) This section applies to an organization of workers, an organization of employers, or any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists.

(2) It is unlawful for an organization to which this section applies, in the case of a woman who is not a member of the organization, to discriminate against her -

(a) in the terms on which it is prepared to admit her membership, or

(b) by refusing, or deliberately omitting to accept, her application for membership.

(3) It is unlawful for an organization to which this section applies, in the case of a woman who is a member of the organization, to discriminate against her -

(a) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

(b) by depriving her of membership, or varying the terms on which she is a member, or

(c) by subjecting her to any other detriment.

(4) This section does not apply to provision made in relation to the death or retirement from work of a member.'

S.11 of the Race Relations Act 1976 contains an identical provision, except that subsection (4) is omitted.

Recent changes

The 1980 Employment Act was a first attempt to regulate internal union procedures. S.4(2) of the act states that:

'Every person who is, or is seeking to be, in employment to which this section applies shall have the right -

(a) not to have an application for membership of a specified trade union unreasonably refused;

(b) not to be unreasonably expelled from a specified trade union.'

This section is restricted to employment which is regulated by a closed shop agreement. It does, however, indicate a major step forward in acknowledging the importance of union rules beyond that of a mere contract, but really establishing status. As the unhappy case law history shows, no membership card, no job. This restrictive practice was subject to no legal control prior to the act, on the basis that there is no obligation to contract. Clearly such a 'voluntary' view of the actual economic relationship had become unrealistic.

Codes. S.3 Employment Act 1980 empowers the Secretary of State to issue codes of practice. Before reviewing this area the real

effect of these codes must be understood. S.3(8) states:

'A failure on the part of any person to observe any provision of a Code of Practice issued under this section shall not of itself render him liable to any proceedings; but in any proceedings before a court of industrial tribunal or the Central Arbitration Committee -

(a) any such Code shall be admissible in evidence, and
(b) any provision of the code which appears to the court, tribunal or Committee to be relevant to any question arising in the proceedings shall be taken into account in determining that question.'

So these codes have no direct legal effect, but are merely guidelines to 'reasonableness'. The code issued in April 1981 entitled Closed Shop Agreements and Arrangements relates to the question of member rights. Section D provides that the union's rules and procedures covering membership applications should be clear, detailing the necessary qualifications together with an appeals procedure. With regard to the question of membership discipline, the requirement is for clear and fair rules detailing offences and an unbiased appeals procedure together with the rules of 'natural justice'. the only particular advance is in the area of industrial action where the following is suggested:

Disciplinary action should not be taken or threatened by a union against a member on the grounds of his refusal to take part in industrial action called for by the union;

(a) where there were reasonable grounds for believing that the industrial action was unlawful* or that it involved a breach of statutory duty or the criminal law; or that it constituted a serious risk to public safety, health or property; or
(b) where the member believed that the industrial action contravened his professional or other code of ethics;
(c) where the industrial action was in breach of a procedure agreement; or
(d) where the industrial action had not been affirmed in a secret ballot.

* i.e. industrial action which does not have immunity under the Trade Union and Labour Relations Act 1974 as amended by the 1976, 1980 and 1982 Acts.'

This code only has any substantive effect if read together with S.4 of the Employment Act 1980 and therefore applies solely in the case of the closed shop. A revised code of practices on the closed shop was issued in late 1982/83.

Political activity. The last area to be covered by Statute is that of political activity, declared unlawful in Amalgamated Society of Railway Servants v Osborne (1910 AC 87, HL) as it fell outside the statutory definition of a union under the Trade Union Act 1871. Legislation was passed in 1913 to reverse the position, and this is now represented in the statutory definition

of a trade union in S.28 of the Trades Union and Labour Relations Act 1974, which is permissive in defining only what the principle objectives should be and not excluding political activities.

S.3. Trades Union Act 1913, 'Restriction on application of funds for certain political purposes', defines the legal requirement for unions' financial involvement in party political activities, though not in general political actions. In principle, every member has the right to contract out of the political fund without suffering any discrimination. The practice of the contracting in was ended by the Trade Dispute and Trade Unions Act 1946. Any member who is aggrieved or discriminated against may complain to the certification officer. At the time the political fund is created, all members must be given a form allowing them to contract out. However, there is no need for a periodic review of the political fund, nor need new members be given a form entitling them to contract out. Further, by a system of 'check off' many employees pay union dues directly through their employer (See p. 22).

FUTURE MEASURES

The government's most recent Green Paper, Democracy in Trade Unions[1] broaches the subject of reforming trade unions themselves. The green paper tackles three problems: secret ballots for the election of union officers, the requirement for a secret ballot prior to strike action being sanctioned, and the political activities of trade unions with particular emphasis on the method of levying subscriptions to their political funds. The piecemeal nature of this attempt to deal with the problem of trade union law is regretable: if the law is to be made clear and consistent, what is required is a radical review of the legal structure of trade unions, and the reforms that are desirable will follow only from such a review. Piecemeal legislation will serve to introduce yet more chaos into the confusion of the present mix of legislation and case law.

One other observation is pertinent. The reforms that are suggested do not represent political interference in the activities of free individuals, but the government's green paper does suffer rather seriously from ministerial discretion and civil servant wisdom. The objective of any legal reform of the trade union movement must be to devolve power to the members, ensuring within a practical framework a much higher level of democracy, participation and accountability, promoting among members a sense of responsibility for their unions' actions together with a sense that their opinions as individuals will count. It is entirely undesirable, therefore, that the Secretary of State for Employment should have any discretionary powers with respect to trade unions or that civil servants should in any way be able to interfere within a framework established by law.

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1 London: HMSO, Cmnd 8778

There is always considerable opposition to any circumscribing of the autonomous structure of trade unions: but trade unions have come to represent major political, social, and economic groups within society and the laws of unincorporated and voluntary associations founded on contract are no longer adequate to deal with the complex mix of rights and duties that arise. That the laws should provide a framework within which citizens conduct their affairs is essential and already quite familiar: the company law regulates companies, establishing certain safeguards and responsibilities for creditors, members and directors alike; consumer legislation now provides for certain minimum standards for contracts of sale and service. It is likewise necessary to establish a framework that will safeguard members of trade unions, who individually are often powerless against the weight of the union establishment. Furthermore, if unions are to continue to have very special legal privileges, it is only right that their behaviour should be regulated.

Basic reforms

The basic prerequisite for reform, therefore, is to change the nature of trade unions from voluntary unincorporated associations into corporate bodies with full legal personality. It has been suggested on more than one occasion that because of their general familiarity, unions should be incorporated as companies limited by guarantee. But we believe that because of some very marked differences in their manner of operation and objectives, an entirely new set of rules should be created to govern union 'corporations'.

Two results will follow quite naturally. In the first place, there will be certain rights and responsibilities which every individual union member will have and which he will be able to enforce directly in his own personal capacity in the the ordinary courts of law. Secondly, the decision in Faramus's case will effectively be reversed and the courts will have their naturally proper jurisdiction over the by-laws of these corporations.

A precise detailing of every right or responsibility to be included in the statutes of such union corporations is a matter for debate. There are, however, certain basic concepts that must be respected.

Officers All elected union officers will have in their official capacity a fiduciary responsibility towards the membership. They will all be subject to periodic elections. These elections will be both secret and independently scrutinized and will provide for all members to have a reasonable opportunity to vote. There will, or course, be no more life tenure.

Rules. The rules regulating the relationship between the member and the union, and in particular the rules on disciplinary procedures, will need to be formulated in a precise, unambiguous manner and will need to provide for a proper independent final

tribunal of appeal. While this will not preclude unions from including catch-all rules, these particularly broad disciplinary regulations will be subject to some form of external supervision, preventing the manifest absurdity that occurred in Roebuck's case. The penalties must be specific and appropriate to the offence.

Industrial action. Procedures for requiring members to take industrial action will also be subject to proper democratic control. In general, where a union intends to ask members to take industrial action, a full secret ballot will have to be held and more than half of all those who are to be asked to strike will have to approve the industrial action suggested by the union. This concept already exists when sections 3 and 4 of the Employment Act of 1980 are read together with Section D of the code of practice but are only currently of any value where an official closed shop exists.

Ballots. The green paper says much about the political involvement of trade unions. In principle, where no closed shop exists either officially or unofficially, there is no particular reason why members should have a right to contract out of the political levy. They need not join the trade union. However, within the statutory framework for union corporations, where it must be remembered that political activity is not a primary objective but an ancillary one, it would be proper to have certain procedures requiring ballots at set intervals to determine whether or not funds should be made available for political and other purposes: the narrow definition under the 1913 act would have to be expanded beyond its current party political meaning. Where, however, a closed shop exists, the current unambiguous right of a member not to pay towards a political fund should be maintained. Furthermore, some obligation should be placed upon the union to ensure that all members are made aware of their rights.

Accounting practices. Of considerable importance is the question of accounting and financial responsibility. Unions should be required to produce independently audited accounts. The present requirements under S.10 and schedule 2 of the Trades Unions and Labour Relations Act 1974 are not sufficient. A much more precise and detailed set of accounting requirements, similar to those required by the various companies acts, should be provided for (and in particular) salaries; while administrative expenses, charitable and political donations should all be detailed.

Conclusion

The above reforms are intended to counter the high level of apathy which exists among union members in the affairs of their union. They would be designed to ensure full accountability by officials to those who elected them. It will allow individual union members rights within the organization to which they belong which they as individuals will be able to enforce. There is no

question of interfering at any level in the democratic decision-making process: but it is no longer satisfactory for trade unions, many of whom have monopolistic powers far in excess of the wildest dreams of many profit-motivated enterprises, to be exempted from effective regulation within the current antiquated structure of unincorporated associations. Political and economic power carry with it responsibility and it is vital that these responsibilities are, and are seen to be, discharged democratically.

4. THE MAIN CONCLUSIONS

(1) Increasing economic regulation has had the unintended consequence of ossifying the UK labour market.

(2) Traditional policies of Keynesian expansion, protectionism, and the microeconomic disguises of employment and training subsidies, have not proved effective. The only approach likely to work involves removal of the most restrictive regulations.

(3) Many people, including politicians, are so dependent on the micro-economic palliatives that it is unlikely they could be removed overnight.

(4) The main regulatory agency is the Manpower Services Commission and many of its restrictive interventions could be dispensed with quickly.

(5) The job centres have faced perpetual criticism and the evidence on their efficiency suggests that they could be beneficially replaced by private sector agencies.

(6) Professional and executive recruitment functions are once again performed well in the private sector, and government intervention in this market seems unwarranted.

(7) Attempts to improve labour mobility through national circulation of employment information are unlikely to be effective in the light of a highly-restricted housing market, and their continuance must be questioned.

(8) Restoring the confidence of those who are presently unfit for work is a laudible aim, but is probably better carried out by private agencies under contract.

(9) Public sector training schemes are expensive and distort the (more efficient) private sector training mechanism. In our opinion, they should cease.

(10) We suggest that desirable training functions can be financed publicly by training vouchers, even though the training is provided by private sector organizations.

(11) Tax credits could also be used to promote high levels of training.

(12) MSC support services should be brought closer into public control by absorbing them into the Department of Employment.

(13) Because of the essential nature of many public services there is a strong case for removing the automatic right to strike within them, and to devise other methods of settling disputes.

(14) There is a case for suspending the monopoly power of any

public service threatened by labour disputes.

(15) In the private sector, immunities might be made conditional on ballotted decisions, and should not, in our judgement, extend to secondary action.

(16) Although political funds should be retained where desired by union members (by regular ballot), the amount contributed should be made clear and it should be simple for dissenting members to opt out.

(17) Industrial tribunals pose a severe burden to smaller firms, and it is desirable that some form of exemption should apply in this case.

(18) Closed shops may be difficult to ban outright, but the conditions for establishing and maintaining closed shops could be made strict, for example, a two-thirds majority of members voting for it.

(19) Excessive complexity of labour law causes problems for employers and employees alike, and some consolidation and simplification of the present smorgasbord of laws seems appropriate.

(20) Employee participation in decision-making should be encouraged, but not enforced.

(21) Where possible, labour issues should be subject to clear legal guidelines, and it is undesirable for politicians or their agencies to have discretionary powers to interfere with the operation of those guidelines.

(22) The anomalous position of trade unions and the problem it brings in law could be solved be reforming them into corporate bodies with full legal personality. This would imply responsibility and election of officers, clear rules, democratic control, and precise and open accounting practices.