THE POLITICS OF DEPOLITICISATION: REASSESSING THE INDUSTRIAL RELATIONS ACT 1971

by

SAMUEL J.L. WARNER

A thesis submitted to
The University of Birmingham
for the degree of
DOCTOR OF PHILOSOPHY

Department of Politics and International Studies
School of Government and Society
College of Social Sciences
University of Birmingham
September 2017

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In Memory of Max Owen Kimball
February 2017

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Abstract

This thesis investigates the British state's approach to industrial relations reform which culminated in the Industrial Relations Act 1971. It highlights the intention of state managers to reconfigure the relationship between the state, capital and labour. The Act represents an attempt to discipline the latter through a reliance on the ostensibly independent nature of the law, thus curtailing the militant tendencies associated with trade unions. While there is a large secondary literature on the Act, there is as yet no analysis based on the study of primary documents (Cabinet, Department of Employment, Prime Minister's Office and Treasury). The central argument of the thesis is that, contrary to orthodoxy, the Act was adopted as a way of 'depoliticising' the management of industrial relations in an effort to shield government from the unpopular electoral consequences of reform. Drawing on an Open Marxist perspective that sees the state as a *social form,* the thesis uses the framework offered by the depoliticisation literature to consider not only why the Act failed, but also what inferences can be drawn regarding the fragility of this approach to governing. In this way, the thesis contributes to debates surrounding the *limitations* of depoliticised governing in capitalist society.

Acknowledgments

First and foremost, I must thank my mentor, Peter Burnham, for his support and patience along the way. The depth of his knowledge, insight and expertise has been an invaluable resource throughout the research process. The most 'difficult' supervisions provided the focus this thesis required, something I am very grateful for.

I also thank Peter Kerr for his insightful comments on earlier drafts. Not only do I respect him as an academic, but I enjoy his company. He has been a kind and generous listener, something I will not quickly forget.

Like many other PhD students in POLSIS, I owe a debt of gratitude to Tricia Thomas. She has solved more problems than I care to remember and, as a result, made many a stressed individual a little calmer. It is not an overstatement to say she is a big part of what makes the PhD programme 'tick'.

Mum and Dad. I should first thank you for never pressuring me to go to university and giving me the space to take the decision myself, albeit a few years later than perhaps hoped. You have been caring, hardworking and generous parents. I appreciate the sacrifices you have made. To my sisters, Emma and Alice, I express my thanks. You have provided encouragement throughout my studies and over the years have presented me with much to admire. I dedicate this thesis to the memory of Emma and Ross's son, Max.

The PhD community is unique, and the camaraderie of this shared experience has shaped my views on so many things. A special mention has to go to Mattias Hjort for making a gruelling period an amusing one on a daily basis. We should never take ourselves too seriously. Bruno Dalponte has become a good friend and confidante, particularly as the pressure mounted for both of us in the final weeks of writing-up. Lance Davis provided advice and support, often at times when I needed reassurance. The night before his own submission was informative. I am also grateful to Darcy Luke, Elio di Muccio and John Evemy for debating, explaining and generally assisting me to sharpen my theoretical approach. I can't help but feel this is a process that has only truly just begun.

The 10th Floor is made up of the most eclectic and interesting mix of people you could hope for. A special mention must go to Ahmad Barakat, Zhiting Chen, Rhys Crilley, Melany Cruz, Abena Dadze-Arthur, Gavin Hall, Max Lempriere, Conor McKenna, Cherry Miller, Milly Morris, Timea Nochta and Maren Rohe.

To Manu. You have been a patient, understanding and caring partner, reminding me what is important in life. I couldn't be happier our paths crossed (thanks, Eva). Roll on 29th December! #beeswing

Every person mentioned here – as well as others for a variety of reasons – constantly confirm to me that loyalty and respect should be reserved for people, not titles and institutions.

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List of Names

Stephen Abbot	*Secretary of the Conservative Research Department's Policy Group on Trade Union Law and Practice, 1965-70*
Lord Amery	*Chairman, Policy Group on Trade Union Law and Practice, 1965-66*
Sir Robert Armstrong	*Principal Private Secretary to the Prime Minister, 1970-75*
Sir William Armstrong	*Head of the Civil Service, 1968-74*
Anthony Barber	*Chancellor of the Exchequer, 1970-74*
Denis Barnes	*Permanent Secretary, Department of Employment, 1968-73*
Kenneth Barnes	*Deputy Secretary (Industrial Relations), Department of Employment*
Robert Carr	*Secretary of State for Employment, 1970-72 and Home Secretary, 1972-74*
William Campbell Adamson	*Director General of the Confederation of British Industry, 1969-76*
Frank Chapple	*General Secretary of the Electrical, Electronic, Telecommunications and Plumbing Union, 1968-84*
John Davies	*Secretary of State for Trade and Industry, 1970-72*
Lord Denning	*Master of the Rolls, 1962-82*
Sir John Donaldson	*President of the National Industrial Relations Court, 1970-74*
Lord Donovan	*Chairman of the Royal Commission on Trade Unions and Employers' Associations, 1965-68*
Derek Ezra	*Chairman of the National Coal Board, 1972-82*
Vic Feather	*General Secretary of the Trades Union Congress, 1969-73*
Joe Gormley	*President of the National Union of Miners, 1972-82*
Sir Sidney Greene	*General Secretary of the National Union of Railwaymen, 1957-75*
Ray Gunter	*Minister for Labour, 1964-68*
Lord Hailsham	*Lord Chancellor, 1970-74*

Edward Heath	*Prime Minister, 1970-74*
Conrad Heron	*Deputy Chairman of the Commission on Industrial Relations, 1971-73 and Second Permanent Secretary, Department of Employment, 1973-75*
David Hills	*Member of Staff at the National Industrial Relations Court, 1971-74*
Geoffrey Howe	*Solicitor General, 1970-72 and Minister of Trade and Consumer Affairs, 1972-74*
Douglas Hurd	*Principal Private Secretary to the Prime Minister, 1970-74*
Bernard Ingham	*Press Secretary, Department of Employment*
Alex Jarrett	*Appointed Arbiter in Railways Dispute, April 1972*
Jack Jones	*General Secretary of the Transport and General Workers' Union, 1969-78*
Keith Joseph	*Chairman, Policy Group on Trade Union Law and Practice, 1966-1967*
Robert Keith	*Chief Registrar at the Register of Trade Unions and Employers' Associations, 1971-74*
Maurice Macmillan	*Secretary of State for Employment, 1972-73*
Richard Marsh	*Chairman of the British Rail Board, 1971-76*
Reginald Maudling	*Home Secretary, 1970-72*
Len Murray	*General Secretary of the TUC, 1973-84*
Leonard Neal	*Chairman of the Commission on Industrial Relations, 1971-74*
Jim Prior	*Lord President of the Council, 1972-74*
Peter Rawlinson	*Attorney General for England and Wales, 1970-74 (and Northern Ireland, 1972-74)*
Lord Robens	*Chairman of the National Coal Board, 1961-71*
Hugh Scanlon	*President of the Amalgamated Union of Engineering Workers, 1968-78*
Master Seaton	*Secretary of the National Industrial Relations Court, 1971-74*

Andrew Shonfield	*Economist and Member of the Royal Commission on Trade Unions and Employers' Associations, 1965-68*
Norman Singleton	*Secretary at the Commission of Industrial Relations, 1971-74*
Dudley Smith	*Parliamentary Under Secretary of State, Department of Employment,1970-74*
Burke Trend	*Cabinet Secretary, 1963-73*
Sir Arnold Weinstock	*Director of Rolls Royce, 1971-73*
William Whitelaw	*Lord President of the Council, 1970-72, Secretary of State for Northern Ireland, 1972-73 and Secretary of State for Employment, 1973-74*
Lord Wilberforce	*Chairman of the Court of Inquiry into the dispute between the National Coal Board and the National Union of Miners, 1972*
Harold Wilson	*Leader of the Opposition, 1970-74*
Sir Roy Wilson	*President of the Industrial Court*
George Woodcock	*Chairman of the Commission on Industrial Relations, 1969-71*

List of Abbreviations

ASLEF	*Associated Society of Locomotive Engineers and Firemen*
ASTMS	*Association of Scientific, Technical and Managerial Staff*
AUEW	*Amalgamated Union of Engineering Workers*
BRB	*British Rail Board*
CBI	*Confederation of British Industry*
CCO	*Conservative Central Office*
CIR	*Commission of Industrial Relations*
CPRS	*Central Policy Review Staff*
CPSA	*Civil and Public Services Association*
CRD	*Conservative Research Department*
CTUNAC	*Conservative Trade Unionist National Advisory Committee*
DE	*Department of Employment*
DEP	*Department of Employment and Productivity*
EEC	*European Economic Community*
EETPU	*Electrical, Electronic, Telecommunications and Plumbing Union*
F&GPC	*Finance and General Purposes Committee*
GMWU	*General Municipal Workers Union*
IRSF	*Inland Revenue Staff Federation*
NALGO	*National and Local Government Officers' Association*
NCB	*National Coal Board*
NIRC	*National Industrial Relations Court*
NUB	*National Union of Bank Employees*
NUM	*National Union of Miners*
NUR	*National Union of Railwaymen*
NUS	*National Union of Seamen*

RTUEA	*Registrar of Trade Unions and Employers' Associations*
TASS	*Technical, Administrative and Supervisory Section*
T&GWU	*Transport and General Workers Union*
The Act	*The Industrial Relations Act 1971*
TSSA	*Transport Salaried Staffs' Association*
TUC	*Trades Union Congress*
UPOW	*Union of Post Office Workers*

A Note on Referencing

This thesis uses Harvard referencing throughout. However, due to the heavy use of archival sources a word on the approach adopted is required. Archival sources are referenced from the general to the specific (archive, file, document, date) throughout. While not ordinarily the case with Harvard-style referencing, *ibid* is used where the citation is a continuation of the previously cited document. This decision was driven by the length of in-text citations which can break up the text unnecessarily. Where this approach continues over numerous pages the full citation is provided again for clarity.

Chapter 1
Introduction

The Industrial Relations Act 1971 was the culmination of more than 10 years of discussion, debate and analysis regarding the perceived trade union 'problem' in British industrial relations. Identification of this 'problem' resulted in the first Royal Commission investigating industrial relations since 1903 (HMSO, 1968). Political parties of both shades agreed that reform was overdue (Conservative Political Centre, 1968; HMSO, 1969). Throughout the 1960s the number of working days lost to unofficial strike activity increased dramatically. From 1964 to 1967, this ranged between two and three million days per year. However, in the three years leading up to the 1970 General Election, the number rose to in excess of ten million. Disputes over incomes policy and the reform of industrial relations structures created a volatile industrial context (Wigham, 1976, p.142; see also Durcan et al., 1983; Silver, 1973). Furthermore, the increasing affluence of the British working class had not broken traditional links with trade unions or the Labour Party (Goldthorpe et al., 1968). Trade union membership increased rapidly, particularly towards the end of the 1960s. In 1970 alone there was a 6.8 per cent

increase in membership across all sectors, amounting to nearly 50 per cent of the total workforce unionised (Bain and Price, 1983, p.5, 1972; Price and Bain, 1976).

Collective bargaining practices were changing. Trade union power was often decentralised to the workplace for negotiating purposes (Taylor, 1982, p.198). This has been described as 'an irreversible devolution of bargaining power to the shop floor' (McCarthy and Ellis, 1973, p.3). While the level of strike activity in Britain was not unique among industrialised countries (Taylor, 1996, p.161), it has been argued that it remained politically beneficial to seek to control trade unions rather than address existing deficiencies within industry (Greenway et al., 1992, pp.167-8). Increased trade union activity had attracted the attention of the state, a reflection of the pervasiveness of poor economic performance (Aldcroft and Oliver, 2000, p.88). Trade unions became the 'favourite political scapegoat' for British economic decline (Gamble, 1994, p.xvi; see Taylor, 1978). At the extreme they have been seen as 'objects of hatred, fear and derision' (Taylor, 1980. pp.455-6). One Tory MP described how trade unions 'had come to believe that their relationship to the executive was akin to that of the barons and King John' (Bruce-Gardyne, 1974, pp.148-9). While the question of Britain's relative economic decline is a complex one (see Clarke and Trebilcock, 1997; Coates, 1994; Gamble, 1994; Pollard, 1982), its unique historical position has been seen as the major contributory factor. Early industrialisation created a mature, organised working class, while British capital often sought investment opportunities abroad at the expense of the domestic economy (Smith, 1981). What is clear, however, is that 'governments of both left and right have consistently been concerned with preventing union influence from undermining the profitability of British capitalism' (Rogers, 2014, p.293).

A detailed historical analysis challenges the 'popular view' of the trade union 'problem', instead seeing the adversarial nature of British industrial relations as reflective of 'national political traditions' and 'the structure and priorities of employers' (Hyman, 2003, p.38; see also

Armstrong, 1973, p.175). The Industrial Relations Act attempted to break-up the existing settlement between trade unions, employers and the state – a tradition known as *voluntarism*. This can be summarised as 'the absence of state regulation' from collective bargaining (Hyman, 2003, p.41; Dickens and Hall, 2003, pp.125-6). Its origins can be found in a period 'when high levels of unemployment made it unnecessary for capital to resort to overt state action to subordinate labour' (Crouch, 1978, p.239). However, as a term it 'is very far from precise' (Flanders, 1974, p.352). In 1954, Otto Kahn-Freund argued that there is 'no country in the world in which the law has played a less significant role in the shaping of [industrial] relations than in Great Britain' (1954, p.44). However, another leading industrial relations lawyer, Lord Wedderburn, states that:

> in truth there developed after 1871 a clearly enunciated legal framework for British industrial relations, a structure so intimately related to the surrounding social institutions engaged in bargaining and conflict that "framework" suggests too remote a character for laws that grew as threads inherent in the social web (1972, p.270).

Trade union attitudes towards legislation in specific policy areas fluctuated throughout the twentieth century. However, even within the voluntarist tradition there had been a 'positive attitude towards some kind of labour legislation' (Flanders, 1974, p.353). Examples of state intervention can be found in relation to health and safety, the protection of vulnerable groups and social security (Clegg, 1979, pp.290-1; Wedderburn, 1972, p.271).

This ambiguity requires some clarification. In effect, the traditional legal position in British industrial relations has been to provide trade unions with *immunities* (see Wedderburn, 1986, pp.21-4). Prior to the 1871 Trade Union Act there was a degree of state interference in bargaining processes, largely through judicial intervention (Fox, 1985). Voluntarism, therefore, implies 'not so much a distrust of legislation but of the courts of law' (Flanders, 1974, p.354).

Through legislative intervention trade unions gained 'not positive rights to organise and strike but a removal of legal doctrines which would otherwise continually impede such activity' (Wedderburn, 1972, p.272). Crucial pieces of legislation include the Trade Unions Act 1871, the Conspiracy and Protection of Property Act 1875 and the Trade Disputes Act 1906. These Acts of Parliament protected trade unions against prosecution for restraint of trade and being held liable by the courts in criminal or civil conspiracies. Latterly, this was extended to protection from liability in tort law for breaching contracts of employment (ibid, pp.272-3). In summary, Hugh Clegg's description of the traditional settlement is informative, arguing that 'the part played by the state in British industrial relations has always been considered as intervention from outside' (1979, p.289).[1]

In essence, the Industrial Relations Act sought to reconfigure the relationship between trade unions and the state, disciplining the former to curtail more militant tendencies through reliance on the ostensibly independent nature of the law. Its significance cannot be overplayed. It was an 'an attempt to use legal sanction as a means of changing an already advanced system of industrial relations' (Wedderburn, 1971, p.6). It has attracted grandiose characterisations, reflecting 'the most dramatic labour legislation to be introduced since 1945' (Seldon, 1996, p.4). It has been described as 'the greatest revolution in legal thinking about trade union laws since the Trade Union Act of 1871' (Kidner, 1979). In the words of Lord Donovan, Chairman of the 1965-68 Royal Commission, it amounted to 'state intervention in the field of industrial relations on a massive scale' (Donovan in Campbell, 1971, p.xxi). However, for those on the left of British politics, this trend was nothing more than an 'attempt to regulate the class struggle' (Heffer, 1973, p.18). This thesis offers a novel interpretation of the strategy embodied in the Act, providing an alternative account of why this unique piece of legislation failed. To

[1] For a detailed analysis of the development of British labour law see Deakin and Wilkinson, 2004 and Lewis, 1976.

do this, it is first necessary to consider the broad secondary literature, presenting a variety of explanations for its early demise.

I. Existing Accounts of the Industrial Relations Act

Failures in Drafting, Assumptions and Strategy

The Heath government is almost universally seen as a failure (see Holmes, 1997). Orthodox scholars argue that the Conservative Party entered office in 1970 as a radical, reforming government, industrial relations legislation representing a major element of its programme. Based on the Selsdon Man agenda, the government purported to offer a departure from the post-war consensus driven by free market principles, reductions in public spending and limited state intervention in the economy. This stance only changed when economic circumstances proved problematic and social unrest developed (Bruce-Gardyne, 1974; Cosgrave, 1977; Holmes, 1982, 1997; Ramsden, 1996). While the suggestion that the Heath government represented 'proto-Thatcherism' has been challenged (e.g. Seldon, 1996, p.13; Evans and Taylor, 1996), scholars who provide a more sympathetic analysis do not absolve the Industrial Relations Act of its disastrous reputation (see Kavanagh, 1996; Charmley, 2008; Young and Holmes, 1989; Campbell, 1993). It has been described as 'a clear political failure' (Marsh, 1992, p.16), achieving 'virtually no impact on mainstream collective bargaining' (Crouch, 1979, p.81). In fact, it made matters worse by stirring up industrial unrest (Coates, 1989, p.57; Crouch, 1979, p.81; Gilmour and Garnett, 1997, p.258; Gould, 1972, p.1424; Holmes, 1997, p.33; Taylor, 1996, p.176). The Act's failure is often presented among Heath's infamous U-turns (Bale, 2012, pp.161-3; Ball, 1996, pp.327-30; Seldon, 1996, p.7), and while there is some ambiguity within the existing literature as to whether it was abandoned or a longer-term commitment remained (see Bale, 2012, p.163; Dorfman, 1979, p.65; Dorey, 2006, p.74; Middlemas, 1990, p.365; Taylor, 1999, p.164), a narrative of failure permeates secondary accounts.

Ex-Tory MP Ian Gilmour and Mark Garnett have argued that 'the Act was drafted to facilitate its own defeat' (1997, p.257). The problem, for David Marsh, stemmed from the fact that it 'aimed at one and the same time to reform industrial relations and restrict trade unions' (1992, p.12). Its architects accepted that trade unions had a legitimate role to play within society but must be regulated by the law. In this sense, the approach remained broadly corporatist. Nonetheless, trade unions represented an obstacle to the market and their strength had to be limited accordingly (ibid, pp.12-3). Colin Crouch argues that the Act was designed to strengthen individual rights, thus reducing the risk of militancy directed against employers. However, it simultaneously attempted to empower trade union leaders over their membership to protect employers in other scenarios. To argue that the sole intention was to weaken the strength of trade unions is presented as simplistic when clear signs of a corporatist agenda remain within the core tenets of the Act (1977, pp.183-4). For Crouch, therefore, this was more a case of 'paradoxes than contradictions' (ibid, p.183). However, Andrew Taylor argues that with no 'ideological or political consensus to govern government-union relations…there were no collectivist impulses or sympathies sufficiently powerful to bind the putative social partners into corporate politics' (1999, p.165). Martin Holmes, a major critic of the 1970-74 government, describes the Act as 'an example of the State interference that the Heath government had set out to restrain' (1997, pp.33-4). For this reason it would be inaccurate to argue that it was symptomatic of a 'wider resurgence of liberalism, especially market liberalism in the [Conservative] Party' (Moran, 1977, p.62). Perhaps this is why Margaret Thatcher would later describe the Act as 'in part corporatist and in part libertarian' (1995, p.204).

It is clear that there is no consensus surrounding the intentions behind this approach to industrial relations reform. This filtered into a major contradiction within the Act itself – between individualism and collectivism. Lord Wedderburn draws out the contradictory nature of the Act, focusing directly on its architects and draftsmen:

> Behind the dominant theme of the 1971 Act there are really two different, similar but not wholly compatible, philosophies; as it were, two different phantom draftsmen who work together but who represent different aspects of middle-class opinion. The first may be thought of as a civil servant or "organisation man" concerned mainly to bring "order" and a tidy structure into collective British industrial relations. The second is quite different, a Conservative lawyer imbued above all else with doctrines of *individual* rights, often without regard to the shop-floor problems of collective bargaining (1972, p.282; see also Wedderburn, 1971, p.8).

It is the latter position that betrayed an 'extreme individualism' within the Act (Wedderburn, 1972, p.288). Wedderburn argues that 'the duty of a labour law system is *first* to the individuals in the collective majority; and only *second* – not to be forgotten, but *second* – to individuals who wish to opt out of collective labour relations' (1972, p.290). This position is best summarised by Alan Fox, who describes 'a philosophy of atomistic individualism designed to inhibit collective organisation' (1985, p.392). At best, therefore, the Act was 'timid and at cross-purposes' (Dorfman, 1979, pp.52-3) and at worst a 'Donovan-type inquiry' was needed to resolve its inbuilt tensions (Armstrong, 1973, p.177).

Scholars from the University of Warwick's *Industrial Relations Research Unit* focused in detail on this issue. Weekes et al. note that the Act's 'complications hid a confusion of thought and a contradiction of aims which experience revealed' (1975, p.220). Ultimately the Act purported to improve and strengthen collective bargaining arrangements, ignoring the fact that collective bargaining necessarily limits certain individual freedoms. This contradicted the creation of new legal rights under the Act and, in particular, an attack on the closed shop. Furthermore, contradictory aspects of the Act sought to strengthen trade union leaders at the expense of the rank-and-file, while simultaneously making them liable to legal challenge from individual members. The traditional – or Conservative Party – position that held both the rank-

and-file and union leadership as potentially militant confused the purpose of the Act itself (ibid, pp.220-222). A detailed reading of these accounts can only lead to the conclusion that the Act's core tenets were muddled. While the benefit of hindsight allows scholars to make criticisms of the Act's draftsmen, this is not a universally held view. Furthermore, such failings only tell part of the story of the Act's shortcomings and the government's miscalculations.

The differing opinions provide credence to the argument that aspects of the Act 'countervailed against each other to the extent of incompatibility' (Thomson and Engleman, 1975, p.145). However, it must be acknowledged that notable scholars of labour law have provided a more sympathetic analysis of the intentions of the government, even if similar conclusions surrounding the failure of the Act are reached. Paul Davies and Mark Freedland argue that it is unsurprising that a government would want to limit trade union power. Yet a strategic tension inevitably exists between 'on the one hand, coercion and arming employers with sanctions and, on the other hand, encouraging and supporting trade unions to act as the responsible representatives and regulators of the workforce' (1993, p.327). Nonetheless, Davies and Freedland are correct to state that while the Act need not be denounced as confused, it did represent 'a considerable misconception of what was acceptable to trade unions, the workforce and in consequence most employers' (ibid, p.327). This suggests that it was not necessarily the intentions behind the Act that were flawed but that state managers[2] failed to fully appreciate the context within which they sought to enact reform. Following this line of argument the *assumptions* of state managers are of analytical importance. This has been highlighted in a number of different areas.

[2] The term 'state manager' is used throughout the thesis. Fred Block describes an important division of labour 'between non-class-conscious capitalists and those who manage the state apparatus' (1977, p.8). They function in the legislative and executive branches of the state, are not capitalists *per se,* and tend to operate within the political sphere. They are highly invested in the accumulation process and for the most part follow its rationale (for a detailed discussion, see Block, 1977, 1980).

The Conservative Party wrongly assumed that individual trade union members felt coerced and oppressed by existing arrangements, in particular the closed shop. In fact, this was 'largely a figment of their own imaginations' (Hawkins, 1981, p.189). Such miscalculations were not limited to the views of the membership. State managers failed to comprehend that the development of trade union strength in the British context was quite different to their American counterparts, rendering the use of a legal framework deeply problematic (Barnes and Reid, 1980, p.143; Clegg, 1979, p.327). In effect, they did not understand that 'the unions were becoming more political' (Kavanagh, 1996, p.371). Furthermore, they assumed incorrectly 'that trade union leaders possess a reserve fund of power and influence over their members which they can be frightened into using by the threat of union bankruptcy' (McCarthy and Ellis, 1973, p.59). This was coupled with the fact that state managers over-estimated the potential and willingness of employers to hold trade unions to account through the framework provided (see Marsh, 1992, p.22; Moran, 1977, p.152; Thomson and Engleman, 1975, p.147; Taylor, 1996, p.189). Similarly, the strength of the political links between the Labour Party and the trade union movement were underestimated, as was public support for the unions (Engleman and Thomson, 1974, p.154; Gilmour and Garnett, 1997, p.277). This array of miscalculations makes for convincing evidence that the strategy was simply unworkable.

In addition to philosophical inconsistencies and flawed assumptions, the government made a number of strategic blunders during implementation. First and foremost was the fact that 'policy-making in the party was insulated from the main interest groups in industrial relations' (Moran, 1977, p.61). Once in office this trend continued. Indeed, there are few accounts that do not highlight the government's unwillingness to consult on the Act as a major strategic failure (e.g. Campbell, 1993, p.464; Gilmour and Garnett, 1997, p.256; Ramsden, 1996, pp.331-2; Whitehead, 1986, p.73). John Greenaway et al. sum up the position well, arguing that that Act 'was largely a party, rather than government, creation. Neither Whitehall

nor the TUC was involved in the policy's drafting, and the CBI's contribution was to voice its suspicions of the proposals' (1992, pp.172-3). Worse still, the government failed to understand the political and industrial context, essentially introducing a major piece of legislation at a time when it was bound to fertilise resentment (see Campbell, 1993, p.464; Cosgrave, 1977, 120; Gilmour and Garnett, 1997, p.258; Holmes, 1997, pp.32-3; Moran, 1977, p.61; Thomson and Engleman, 1975, p.150). This solidified the view that Heath led 'a hard-faced, anti-labour Government and easily fell into the rhetoric of class war' (Campbell, 1993, p.464). To put it another way, 'the Act was simply insufficient – as an instrument – to cope with the kind of political and economic problems emerging' (Goodman, 1988, p.37). In addition, an often overlooked strategic point is that politicians and civil servants failed to adequately communicate with one another, suggesting 'the British policy process can often fail to match ideas to evidence' (Greenaway et al., 1992, p.175). For an Act of this complexity this is a damning assessment of the policy-making process itself.

The appropriateness of the law in industrial relations has also been questioned. John Griffith, for example, has argued that the NIRC was 'bound to fail' because in industrial disputes it was simplistic to believe one side could be held 'right' and the other 'wrong' (1991, p.93). Such disputes could 'be solved only by compromise and by the exercise of economic and political strength, not by the application of legal principles and guidelines' (ibid, p.93). A focus on legal rights rather than industrial power was simply alien to the trade union movement (Hawkins, 1981, pp.59-60). Ultimately the Act 'stimulated the pursuit of many real and assumed grievances for which there is no legal relief' (McCarthy and Ellis, 1973, p.1). Keith Middlemas focused on this point, arguing that '[t]he law could regulate the balance between individuals but not between bodies whose power rested on extra-legal assumptions' (1979, p.433). In short, the Act was 'absurdly over-legalistic' (Gilmour and Garnett, 1997, p.256). A further consideration was posed soon after the legislation was enacted. Eric Armstrong argued

that the judiciary may throw up conservative or liberal judges who may interpret the Act differently (1973, p.11). Even one of Heath's defenders has acknowledged that 'the TUC cannot be blamed for failing to respect the law when the law was intrinsically unworthy of respect' (Campbell, 1993, p.465). Andrew Thomson and Stephen Engleman are informative here, arguing that legislation 'cannot create revolutionary changes, and if it tries to do so, it is likely to provoke the sort of confrontations that the Act did and these are detrimental, even fatal, to longer term objectives' (1975, p.150). Attempting to understand the failure of the Act highlights the multiplicity of factors contributing to its downfall. The focus here has been inadequate drafting, flawed assumptions, strategic failings and, less often acknowledged, difficulties associated with internal institutional dynamics. As yet, however, there has been little discussion of the theoretical assumptions underpinning these accounts. For this, it is necessary to discuss the interplay between industrial relations scholarship and the decisions of policy-makers in detail.

The Failure to Appreciate Pluralism

There are a number of scholars who have argued that the Act was not an overt attack on the trade unions (e.g. Campbell, 1993, p.457; Hawkins, 1978, p.61; Howe, 1994, p.60; McCarthy, 1992, p.21; Rideout, 1971, p.655; Taylor, 1996, p.165). For example, Armstrong argues that the NIRC was 'not the hammer of the trade unions, although it has pummelled one or two' (1973, p.169). However, leading industrial relations scholars subjected the decision to move towards legal regulation to detailed analysis. The discipline has been dominated by the Oxford School – associated with Hugh Clegg, Allan Flanders, Alan Fox and Otto Kahn-Freund – and underpinned by the theoretical framework of pluralism. Broadly defined, pluralism represents an acceptance that '[w]ithin any political system there are groups with their own interests and beliefs, and the government itself…depends on their consent and co-operation' and 'continuous compromises' (Clegg, 1975, p.309). Pluralism, for Clegg, applies these principles to the

workplace, arguing that 'greater stability and adaptability is given to industrial relations by collective bargaining than by shackling and outlawing trade unions' (ibid, p.311). Industrial conflict, therefore, is an inevitability, although any use of the law to regulate industrial relations was contrary to this basic principle of workplace bargaining (see Fox, 1966). Given that industrial relations scholarship has been 'dominated by pragmatic policy-orientated research' straying into 'institutional description' (Frege et al., 2011), the theoretical and conceptual assumptions adopted must be critiqued.

This tradition defined the work of the Royal Commission on Trade Unions and Employers' Associations (henceforth Donovan) and, therefore, set the parameters of debates surrounding reform (HMSO, 1968). The rejection of this position is detailed in chapter three, although it should be noted here that the attempt of the Labour government 1964-70 to introduce *In Place of Strife* (HMSO, 1969) revolved around the identification of trade unions themselves as in need of reform (Thorpe, 1999, pp.138-9). A rejection of the Oxford School's pluralism also shaped subsequent reflections on the Act. It was seen as confirmation 'that the trade unions were to be held as primarily responsible for the problems in collective bargaining and that the traditional abstention of the law was no solution' (Clegg, 1979, p.320). A similar point was made by Flanders, arguing that 'when [trade union] affairs are brought into a court of law it is particularly evident that they are being dealt with in a manner and on grounds that are totally alien to the working of trade unions' (1974, p.363). Perhaps it is more accurate to acknowledge that the Act reflected both the pluralism of the Donovan Report and the 'traditional' Conservative view that trade union power must be controlled (McCarthy and Ellis, 1973, p.3). However, as has been argued above, it is this that led to the often acknowledged confusions within it.

For members of the Oxford School, the problems of British industrial relations would not be cured through state intervention. Instead, the focus should remain on the workplace. The

process of collective bargaining ensured 'the creation of viable and adaptive normative systems to keep manifest conflict in employment relations within socially tolerable bounds' (Fox and Flanders, 1969, p.160). Although not immune to the challenges of British industrial relations, for Fox and Flanders this stemmed from the 'proliferation of unrelated normative systems each resting on only a small area of agreement in place of more closely integrated systems covering much larger areas' (ibid, p.163). This, they argued, produced 'a progressive breakdown of social regulation' (ibid, p.164). Any breakdown in the existing normative order can manifest itself in governing problems – including strikes, inflation, balance of payments problems and social unrest – forcing the likely increase in state intervention (ibid, p.173-4). In essence, while the malady was accepted, the cure was challenged. Fox and Flanders stressed:

> Demands are widespread for a new kind of legal framework for industrial relations which aims, not so much at restructuring our crumbling normative order on a basis of agreement, but rather at shoring it up by means of external legal constraints on the participants – more especially employees. It would be a profound error to interpret these demands as necessarily the expression of some sinister or reactionary force in politics (ibid, p.174).

It was 'through agreement with representative, voluntary institutions' (ibid, p.180) that calm could be restored, for while the law has some role it 'cannot enforce a regulative order where none exists' (ibid, p.180).

The plurality of competing interests within British industrial relations could not be crystallised into one, state prescribed, new normative order. The Oxford School, therefore, eschewed state intervention in favour of a focus on the complexities of workplace politics. 'The main thrust of the Act', for Clegg, was 'not to encourage managers to reform industrial relations, but to restrict trade unions' (1972, p.469). In a later – and largely more detailed –

edition of this work, Clegg acknowledges areas of consensus surrounding the Donovan Commission's analysis, specifically the need to reduce unofficial strike activity. However, once again, Clegg takes issue with the remedy adopted. The Conservative Party had held organised labour responsible, concluding that 'many of the shortcomings of the unions were due to the traditional abstinence of the law from industrial relations' (1979, p.320). As an architect of the Donovan Commission's Report, Clegg's analysis is unsurprising. Similarly, Weekes et al. conclude that any 'neutral aims' ascribed to the Act shrouded 'political assumptions concerning the nature of trade union power which owed more to *Fair Deal at Work* and *A Giant's Strength* than the Donovan Commission' (1975, p.5). The Act rejected the romanticised pluralist perspective, with proponents of legal intervention arguing 'that there existed in Britain a general industrial relations problem which resulted from the absence of well-drafted agreements backed up by effective, formal and comprehensive procedures' (ibid, p.5). The study concluded that use of the law was highly problematic, as Weekes et al. explain, because it presumed that the interests of the concerned parties to a dispute could be subjugated to the law. As was noted above, this was a flawed assumption (1975, p.6). However, scathing critiques of governing strategies that reject pluralism betray assumptions surrounding the balance of industrial power that do not necessarily reflect the state's priorities, a fact that must be factored into future analysis.

Described as 'pluralism's leading lawyer' (Phillips, 2007, p.216), Kahn-Freund is commonly associated with the term *collective laissez-faire,* defined as the relative absence of the state from collective bargaining (Kahn-Freund, 1954, 1959).[3] The law, for Kahn-Freund, is 'a secondary force in human affairs, and especially in labour relations' (1972, p.8). 'Collective power' was at the heart of workplace dynamics for 'the relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is

[3] For a histiography of collective *laisse-faire* see McCarthy, 1992.

not a bearer of power' (Kahn-Freund, 1972, p.8; see Hawkins, 1981, p.59). The law, once again, is presented as an inappropriate tool to control labour relations. Instead, attention is drawn to the array of social sanctions – linked to the attitudes and power of both trade unions and employers – as a prerequisite for improved relations (Kahn-Freund, 1972, p.11). While the legal implications of the Act are important, the politics behind it is often neglected. Kahn-Freund's focus on power dynamics suggests he is not ignorant of this fact, it is simply not the primary focus of his study. His other useful paper on the Act suffers, Kahn-Freund admits, from being 'too close to this experiment to be able to see what it means in terms of the role the law can play in industrial relations' (1974, p.186). The article does, however, provide some excellent background on major disputes and important sections of the Act in practice. Perhaps his clearest opinion was expressed 10 years later, with the Act described as 'a classic example of the limited social effectiveness of state-established law when confronted with very deeply rooted customs, practices, and attitudes' (Kahn-Freund, 1983, p.10). Yet subsequent events have suggested the law can play an important role in such reforms if deployed effectively.

In part a reflection of these scholars commitment to the pluralism that underpinned the work of the Donovan Commission, these are scathing assessments of the Act. However, as was noted above, it is far from clear that all industrial relations scholars saw the Act as an outright attack on trade unions. For some, it was seen as a means of maintaining a strained collective bargaining system (McCarthy, 1992, p.21). Wedderburn, writing in light of the Thatcher government's approach to reform, offered a more sympathetic analysis. Nonetheless, he still argues that the character of the Act as an approach to legal intervention facilitated its failure. First, while the architects of the Act may have believed that the new system of law would benefit both sides of industry, unions were cautious, seeing no reason to change when their bargaining power could be reduced. Second, the new 'swashbuckling court' was known for considering legal and industrial issues as one and the same, resulting in significant caution before engaging

it. Third, unlike 1986, industrial work was more secure so taking strike activity was an option that many felt was available (Wedderburn, 1986, pp.59-60). This contribution is useful as broader political and economic factors are brought to the forefront of the analysis. However, as with all accounts presented by the Oxford School, the assumptions of pluralism hint at an equality of power relations within the workplace. This can be readily challenged, a point that has been forcefully made across a variety of literatures but is all too often lacking in these accounts.

Challenging the Assumptions of Pluralism

If the inevitability of industrial unrest is pluralism's central claim, the Act failed because its authors neglected this truism. However, that industrial contestation can be managed adequately is far from certain. Moreover, a focus on workplace politics alone is inadequate if the implications of power inequalities are to be satisfactorily analysed. The challenge – seen as amounting to a 'sociological turn' in industrial relations scholarship (Ackers, 2011) – stems from an unlikely source. Fox highlights the analytical deficiencies of pluralism, in particular that the power balance between employer and employee, employers' association and trade union was fairly apportioned. Any moral duty to acquiesce to existing structures and procedures, therefore, rests on shaky ground (1977, pp.136-41). Through focusing on inherent power imbalances, Fox was able to demonstrate that breakdowns in trust resulted in increased militancy among 'lower-level employees' and inevitably to challenges to the authority of management (1974, p.352). Fox presents the argument that the Act did not seek to re-build or eradicate this lack of trust, but instead favoured management as it was 'hoped that trade unions may be coerced into imposing their will on membership groups and reintegrating them into a regulative structure more susceptible to managerial control' (1974, p.353).

What can been described as an 'auto-critique' of Fox's own pluralism (Edwards, 2003, p.11) has, it can be argued, produced findings akin to a 'less dogmatic, more flexible Marxist theory' (Topham, 2002, p.165). However, given this convergence, the fact that Fox's work neglects Marxism has been seen as a weakness, particularly when it is acknowledged as the most important alternative tradition to pluralism (Wood and Elliott, 1977, pp.115-6). Nonetheless, as a critique of the failings of the pluralism he previously endorsed it offers a useful starting point. While it may well be the case that pluralism does not fall down solely as a result of accepting a disparity in power relations (Clegg, 1975, p.315), to take this position as given must also represent an acceptance of an inherently unfair settlement. The odds are stacked in favour of employers from the outset. This debate moves towards greater appreciation of the social aspects of industrial unrest, yet there is still no detailed discussion of the state as the mediator of these unequal power relations. As the legislative reform of industrial relations was state driven, this is a notable omission.

The failure of not only the Act, but also the acknowledgment of traditional pluralism's inability to change the agenda, is not confined to the work of Fox. Radical sociologist, John Goldthorpe (1974), provides a cutting critique of the liberal-pluralist position and the 'traditional' conservatism reflected in the Conservative Party's approach to reform. Goldthorpe does not see the failure of the Act to tame trade unions as vindication of the liberal-pluralist approach (ibid, p.421). Pluralism's assumption that consensus can be achieved and adequate bargaining structures created is challenged. Yet rejecting voluntarism in favour of the power of the law was equally inadequate as it neglects the fact that militancy stemmed from the shop floor where trade union leaders possessed limited control (ibid, pp.451-2). Both arguments fail as 'neither attempts to coerce [trade unions] into greater "responsibility" nor to educate them into more "enlightened" understanding of their interests than they presently possess seemed likely to have any extensive success' (ibid, p.452). With the two dominant approaches to reform

unworkable, Goldthorpe concluded that industrial relations was incapable of being reformed, at least within the existing British context (ibid, p.452). However, 'ungovernability' arguments such as this lead directly to a greater necessity to understand why the state adopts potentially problematic strategies, particularly in the context of industrial strife.

Bringing the state into the analysis, therefore, becomes important. Chris Howell (1995, 2005), for example, synthesises many of the criticisms directed at pluralism, yet seeks to place the state as central to his analysis. The departure, here, is that Howell demonstrates that the state can successfully instigate reform and that 'traditional' accounts have overstated the importance of trade union strength (1995, p.150). The state, Howell argues, 'has been constitutive of the industrial relations system itself and, as a result, that the state has been a crucial source of labour's power' (ibid, p.150). Both pluralism and radical alternatives err in their shared assumptions regarding the strength of labour at the expense of the state. Both sides see the defeat of the Act as evidence that reform could not be imposed on the trade union movement but would need to be bottom up through the workplace (ibid, p.159). The notion that state intervention through the law necessarily produces instability is problematised. Howell argues that it was not market resources alone, but also the political protection of the state and strategic guidance of trade union leaders that facilitated the growth of organised labour. It was British trade union's unique reliance on the state that made the movement so vulnerable when this support was withdrawn by successive Conservative governments in the 1980s (ibid, pp.175-6). While the collapse of the Act may have demonstrated trade union strength at the expense of the state, Howell's work suggests that this could simply be seen as a reflection of a failed state strategy.

Ultimately, pluralism represents 'an ignoble social myth by offering a misleading picture of the realities of social power' (Fox, 1973, p.231). However, approaches that neglect the state at the expense of workplace politics also fall short of providing an analytical framework capable

of illuminating the nature of particular governing strategies. None of the approaches presented above adequately account for the rejection of pluralism in favour of tory-reformism. A new analytical framework is required to understand why the state adopted this particular approach. It is important to ascertain whether the Act amounts to a 'straightjacket' for voluntarism or a framework within which it could flourish (Armstrong, 1973, p.7). Once researchers move beyond the workplace as the primary site of analysis it becomes evident that appreciation of a range of factors is required. Moreover, the traditional approach to industrial relations scholarship has proved inadequate to explain subsequent events. Jim Phillips (2007), building on the work of Dave Lyddon (2003, p.100-3), summarises the position, stating that 'the ideological hegemony of pluralism in the discipline of industrial relations limited the capacity of its practitioners to analyse the political, economic, social and industrial sources of workplace conflict' (Phillips, 2007, p.216). In challenging pluralism, numerous scholars hint at the class dynamic embodied in the Act, noting John Eldridge's (2009, p.836) observation that the critiques of pluralism offered by radical sociology and Marxism often intersect.

The Act and Subordinating Labour

Marxist scholars challenge the assumptions of pluralism directly (see Eldridge, 1973, 1975, Hyman, 1975, 1978, 1989). At the forefront of this turn is Richard Hyman, who is said to have 'injected a stream of radical analysis into the subject of industrial relations' leading to his recognition as 'the unofficial founder of the Marxist perspective on industrial relations' (Frege et al., 2011, p.210). In criticising pluralism Hyman moved away from a focus on workplace relations *per se,* shifting attention to 'processes of control' over those relations (1975, p.12). Hyman's Marxism is broadly orthodox, noting 'that capitalist social relations of production reflect and produce a structured antagonism of interests between capital and labour' (1989, p.125). Conventional industrial relations scholarship is characterised by 'a fetishized presentation of the class struggle and the various forms in which it is (at least temporarily)

constrained, fragmented and routinised' (ibid, p.125). Despite the sophistication of Hyman's approach to the study of industrial relations, there is a notable absence of detailed conceptualisation of the state from his scholarship. Perhaps crudely he argues that 'the state has historically always served class interests, and necessarily so' (Hyman, 1975, p.121). Similarly, he argues that the voluntarist tradition does not imply state neutrality 'but abstention in favour of the domination of capital' (Hyman, 1975, p.148).

For Hyman, the pluralism embodied in the Donovan Commission's report and, therefore, the scholarship associated with the Oxford School, 'was designed to dilute and confine the autonomy of spontaneous collective action at the point of production' (1978, p.35). In this sense, the aim was to weaken broader structures within the trade union movement. The Act simply codified these objectives. Elsewhere he argues that 'the 1971 Act reflected far more the anti-collectivist ideology of the Tory Right (and in particular an influential coterie of Tory lawyers) than the requirements of the dominant sections of British capital' (Hyman, 1987, p.96). In other words, it was 'designed to transform *internal* power relations to trade unions through crude application of *external* powers' (Hyman, 1975, p.144). He goes on to write:

> The Industrial Relations Act also proved little short of a disaster for its creators: the devious strategy to force union officials to curb the rank-and-file was counterproductive. Whether or not union leaders would have welcomed greater authority over their members, this was scarcely acceptable as the gift of a Conservative government which seemed bent on overturning basic organisational rights and imposing a *state licence* on their activities (1975, p.144, *emphasis added*).

So as not to appear to be overtly acting in the interests of capital, the state subsidised its subordinating activities with ideological tools, most notably appeals to the 'national interest' and 'fairness' (ibid, pp.145-6). While such ideological tools are powerful, writing in the

immediate aftermath of the Act's demise, Hyman expressed the view that 'the traditional ideological reinforcements of the power of capital over labour are currently under strain: a process clearly revealed in the development of rank-and-file action' (ibid, p.140). Hyman's insights offer a useful starting point, although in his early work discussion of the state is conceptually unsophisticated. However, as will be demonstrated, this criticism can be applied to a number of Marxian accounts of the Act as a state governing strategy.

Andrew Glyn and Bob Sutcliffe (1971), for example, provide a detailed analysis of the British state's response to the so-called 'profitability crisis' of the 1960s and early 1970s. The strength of organised labour is singled out as a primary cause. British capital was 'compelled not only to arrest any further decline but to redress some of its recent losses' (1971, p.27). The Industrial Relations Bill was designed to provide the political backing required to legitimise the state's attempts to redress the balance (ibid, p.28). Following enactment, they returned to this subject matter. The profit squeeze crisis, Glyn and Sutcliffe argue, was the symptom of a combination of wage increases and the subjugation of British capital to international competition (1972, p.65). To allay the decline of British capitalism, government adopted a pivotal role in three policy areas, including the redistribution of income back to capital, improving the environment through devaluation and access to the European Economic Community (EEC) and, finally, attempts to weaken the strength of the working class (ibid, pp.157-87). The Industrial Relations Act is an example of the latter. Glyn and Sutcliffe argue that '[t]he failure of incomes policy and mass unemployment to protect capital from wage pressure has shifted the emphasis of governments to legal control of workers bargaining strength' (ibid, p.182).

The difficulty with this approach, as John Holloway and Sol Picciotto have noted, is that 'the state is portrayed quite simply as an instrument of the capitalist class in its fight against workers militancy' (1978, p.11). Moreover, writing in 1972, Glyn and Sutcliffe provide no

analysis of how the Act functioned in practice. This criticism can be applied to much of the Marxist literature discussing the Act. In providing an analysis of the Heath government's 'new formula' for the management of British capitalism, Robin Blackburn argues that 'the ruling class [was] attempting to solve the problems of British capitalism at the expense of the working class' (1971, p.4). His contemporary assessment of working class subordination was far reaching:

> Far from abandoning the framework of British bourgeois democracy, Heath intends to use its resources in carving out his new course. In formulating a strategy for restoring the fortunes of British capitalism, he intends to *jettison* the backwardness of British bourgeois politics – its sentimentalism about old friends and old customs – and to exploit the backwardness of the British working class – its parliamentarianism and economism (ibid, p.4).

Blackburn sought to demonstrate how Britain's traditional positioning with American imperialism was faltering. In addition, the Labour Party's grip on the working class through incorporation into the capitalist state apparatus broke down throughout the 1960s. This reflected the rise of trade unions and their effectiveness in achieving economic gains (ibid, pp.6-7). In short, Blackburn, too, offers an instrumentalist view of the state as the ruling class reacted to the Labour Party's failure 'to be an adequate instrument for integrating the working class and tying it to the bourgeois state: hence the need to link the unions themselves more directly to the state, by legislation' (ibid, p.7).

The Industrial Relations Act, for Blackburn, represents 'an assault on the economic strength of the British workers' in part to produce an 'increase in the rate of exploitation' (ibid, p.19). However, the most astute observation of this account is the identification of an

accountability shift as government sought to make British capital the disciplinary arm of the state:

> According to many prevailing notions on the left this will presumably render the class struggle less 'political'; in reality the attempt to reduce the visibility of government intervention is itself a highly political act and will be accompanied by other measures designed to ensure that capital has the whip hand in its confrontations with labour (ibid, p.21).

Here, the instrumental wielding of state power is more subtle, hinting at a covert strategy to protect government itself. Anthony Barnett addresses this very theme, arguing that 'what Heath called his "revolution" was the retreat of the government from day-to-day conflicts of industrial expansion' (1973, p.4). As the Heath government's approach to industrial relations reform is generally presented as highly politicised, this offers a more nuanced understanding of the strategy at play.

In restructuring British capitalism, the reform of industrial relations represents a fundamental change. The Conservative government attempted 'virtually to dissolve the institutional links which had grown up between government, capital and labour' through 'a policy of combining powerful legislation with cabinet *laissez-faire,* of imposing a strategic line whose tactical implementation would be left to market forces and the courts of law' (Barnett, 1973, p.4). The Act, therefore, was just one element of a broader restructuring of the economy as it was 'hoped that an unfettered capitalism would expand into the new European market, its working class held down by legislation' (ibid, p.4). In 1972, the failings of the Act were already becoming apparent. However, Barnett also relies on an instrumentalist view of the state, arguing that the question remained 'how, not whether, bourgeois state power will be extended into the arena of industrial conflicts' (ibid, p.22). There was a 'general consensus among political

leaders of all parties that *some* form of state action was needed' (Barnett, 1973, p.29). Heath's approach was interventionist, deciding 'to increase the powers of a traditional permanent arm of the state, to tip the balance between companies and their workforce in favour of the former, without caring for the consent of the latter' (ibid, p.35). While Heath may have misunderstood the strength of trade unions at the time (ibid, p.36), the Act represents an overt attempt to utilise the apparatus of the state in the interests of capital.

Thus far, Marxist accounts have demonstrated the analytical necessity of the state, albeit offering minimal insight into its nature and form. Yet the focus on restructuring British capitalism leads back to the recurrent, even implicit, focus on the abandonment of corporatism or quasi-corporatism that is prevalent across the literature. For Leo Panitch, therefore, the Act was an attempt to brand certain behaviours as legitimate or illegitimate in the eyes of the state (1976, p.221). The Act was designed:

> not to destroy trade unions, as was often alleged in the course of the labour movement's struggle against it, but rather to define, codify and back by state sanctions the obligations of the unions to employers and the state, including primarily the obligation to discipline unofficial strikes (ibid, p.222; Panitch, 1977, p.85).

In this respect, the Act was designed to secure stable corporatism on the state's terms. Put succinctly, '[i]f trade unions as voluntary democratic organisations were not going to adopt a corporatist conception of the national interest, then state coercive force was necessary to make them do so' (Panitch, 1977, p.85). This analysis strays dangerously close to functionalism. This could also be said of his later work, concluding that the state guarantees control of the means of production, distribution, communication and exchange in the hands of private capital (Panitch, 1994, pp.86-7). Elsewhere, Panitch focuses on 'the state's functions of promoting

capital accumulation' and 'legitimating capitalist domination of the social order' (1999, p.31), a position that will be shown to be conceptually problematic.

Both Barnett and Panitch demonstrate how the imposition of the Industrial Relations Act destroys the illusion of an impartial state. For the former, '[d]irect imposition of the state, especially the law, in the relationship of the wage-contract inevitably tends to destroy the illusion that the latter represents a natural, and so unquestionable, form of "fair exchange" that has nothing to do with the distribution of power' (Barnett, 1973, p.37). It was a clear attempt to 'utilise the majesty of the law to awe the working class' (ibid, p.38). Subsequently, Panitch highlights the folly of using legal controls in this way, for it ran 'the risk of directly connecting the state with the maintenance of that socio-economic inequality which otherwise seems to emerge as the ineluctable product of free individuals engaging in a free market' (1976, p.249). This, in effect, 'repoliticised the functions of the courts for the mass of the proletariat' (Barnett, 1973, p.38). As will be discussed in detail in Chapter Two, conceptualising the state in an instrumentalist or functionalist manner does not stand up empirically. Nonetheless, these accounts demonstrate why a focus on collective bargaining and workplace relations alone is narrow, particularly for researchers interested in unlocking the motivations behind specific governing strategies.

Marxian accounts that shift attention to power relations and the state are helpful. However, owing to the focus on labour, capital and production there is a tendency to present the state as a mere tool of exploitation. The discussion of Hyman's work offers a useful starting point for understanding power and the contradictory nature of the capital/labour dynamic, although his framework provides little analytical clarity regarding how the state should be conceptualised. However, in recent years he has acknowledged that 'Marxist analysis has increasingly insisted that the state must be understood in more complex terms, as a *social form* and a *social relation'* (Hyman, 2012, p.163). Thus, Hyman accepts that traditional Marxist

approaches have 'tended to adopt a rather mechanical conception of the state' (ibid, p.163). While Hyman (2008) has discussed these issues at length, he has contributed little to debates linking Marxist state theory and industrial relations scholarship. This thesis takes up this challenge and develops a framework that acknowledges the complexity Hyman argues is lacking.

II. Rationale of the Thesis

To understand the failure of the Act researchers currently have two bodies of literature to consider. The first, outlined above, presents a number of challenges. It is evident that the Act suffered from a number of contradictions and inconsistencies, although how this impacted on the demise of the Act is less clear, particularly at the institutional level. Similarly, it is simplistic to criticise the flawed assumptions behind a strategy with the privilege of hindsight as this achieves little in revealing *why* these errors occurred. Strategic failings are also easily criticised on this basis, but to do so neglects the no doubt 'logical' reasoning behind the policy-making process. Nonetheless, this does point to the fact that the Act failed because it was a deeply flawed piece of legislation. Alternatively, it could be argued that the failure of the Act was a symptom of the numerous governing challenges Britain faced. The 1970s undoubtedly represents a period of considerable turmoil. As the state expanded, so, too, did its remit. Political and economic uncertainty went hand-in-hand with rising expectations and increasing pressures in numerous policy areas. This is reflected in a range of literature that discusses the challenges of the British state in terms of 'overload' (King, 1975; Brittan, 1975), 'ungovernability' (Rose, 1979) and 'legitimation crisis' (Habermas, 1976).[4] However, Wyn Grant has challenged the idea that the British state had become ungovernable – indeed, Thatcher governed with the use of state power (2000, p.54). Both possibilities would rely heavily on *assumptions* regarding the

[4] For an overview of this literature and its relevance to the British context see Birch, 1984.

Act's operation. This thesis is concerned with uncovering the *intentions* and *motivations* of state managers.

The decision to adopt a historical approach, relying on archival analysis, requires some justification in light of the above statement. Dennis Kavanagh has 'called for more detailed historical studies of the development of particular policies in a country' (1991, p.494) precisely because the approach allows researchers '[t]o gain an understanding of the precise linkages (why and how) in the [policy] process' (ibid, p.494). In short, records of the National Archives provide 'the richest source of evidence for both the core executive itself *and* the policy networks of which individual ministries are often, although not exclusively, the heart' (Lowe and Rollings, 2000, p.100). Rodney Lowe argues that '[t]he great advantage of government records – properly used – is that, in their fullness, they reveal not only the complete range of influences to which government was subjected at any given time but also what did not change' (1997, pp.240-1). Crucially, this includes the 'lower levels' of the core executive. These records are the most wide ranging, represent the level where policy is implemented, benefit from ministers and officials being able to communicate freely and, finally, the intricacies of policy-making and departmental views can be identified (Lowe, 1997, pp.241-2). Use of archives, therefore, can 'reveal dissonance between private and public discourses, a dissonance that illustrates the ways in which political strategies are used to mediate contradictions faced by state managers' (Rogers, 2017, p.124). Peter Mann provides further justification for the use of primary archival records as they provide 'original sets of data produced by the people who collected them' (1968, pp.55-6). The nature of archives does not guarantee results, but the rich contents, 'if used with skill and judgement, can make a significant contribution to understanding the workings of modern government' (Burnham et al., 2004, p.177). Novalis succinctly states the fundamental point: 'Writings are the thoughts of the state; archives are its memory' (cited in Debord, 2002, p.131).

Leading British political scientists have acknowledged the importance of historical analysis, while political historians have noted an appreciation of its interdisciplinary potential (Bale, 1999, p.201; Oliver and Pemberton, 2004, p.416; Pemberton, 2003, p.503). However, focusing on the core executive in an attempt to understand decision-making processes could be accused of overstating the importance of agency. As this thesis takes a broad 'statecraft' approach (see Bulpitt, 1986), it is important to be sensitive to this critique (Buller, 1999). Indeed, this thesis criticises instrumentalist conceptualisations of the state precisely because they reflect this error (see Finegold and Skocpol, 1995). However, as Peter Burnham notes, 'the state itself is a form of the class relation which constitutes global capitalist relations' (2001, p.107). State managers are constrained by, and must be responsive to, economic and political factors beyond national borders (Burnham, 2006b, p.75). Nation states compete over flows of global capital, existing as 'particular nodes within the global flow of capital' (Bonefeld, 1995, p.197). Put simply, 'global markets are the condition of domestic markets, and vice versa' (Bonefeld, 2008, p.67). It is in this sense that domestic policy, instigated by state managers, is constrained by global capitalist reproduction. The point is that to *corroborate* such assumptions it is necessary to pierce the veil shrouding the inner workings of the state and, crucially, unlock the *motivations* of state managers.

III. Argument and Contribution

This thesis subjects the Industrial Relations Act to a rigorous, in-depth empirical analysis. It argues that to understand the intentions behind the Act and the intricacies of its operation it is best viewed through the lens of depoliticisation, underpinned by a *social form* conceptualisation of the state. To understand *why* the government adopted this particular approach to industrial relations reform it is necessary to discover *how* it was designed to achieve its primary aims. The following hypothesis is proposed as a novel approach to these challenges:

Contrary to orthodoxy, the Industrial Relations Act 1971 was adopted as a way of 'depoliticising' the management and reform of industrial relations in an effort to shield government from the electorally damaging consequences of reform

Depoliticisation, here, is seen to be '*the process of placing at one remove the political character of decision-making'* (Burnham, 2001, pp.127-8). In essence, depoliticised governing strategies enable state managers to present highly problematic policy areas as beyond the scope of government. This can be achieved through a number of different tactics or techniques, most commonly described as *rules-based, institutional* or *preference shaping* (Flinders and Buller, 2006). Withstanding suggestions of being state-centric and thus limiting the scope of the 'political' (see Jenkins, 2011; Wood and Flinders, 2014), this approach congeals class struggle into the heart of the analysis, the management of which is reflected in the preferences of the state. The fact that the state seeks to withdraw from overt involvement while retaining arm's-length control confirms that such strategies must be seen as highly political forms of managing social relations (Burnham, 2001, p.136).

It is, of course, necessary to demonstrate empirically that the *intentions* of state managers meet the hypothesis provided. However, in advance of detailed archival analysis certain core characteristics of the Act can be discussed in relation to the central argument of this thesis. It is argued that the Act represents a unique *rules-based* depoliticised governing strategy. Its novel character comes from the detailed body of law it established, legitimised by a set of innovative and tailored institutions. The framework of law would become the ultimate arbiter in disputes arising between trade unions, employers and the state. The main provisions of the new Act include:

- Establishing a National Industrial Relations Court (NIRC) with powers conferred to declare industrial action as 'unfair labour practices' (HMSO, 1971a, pp.78-92).

Authority was granted to impose fines upon trade unions that did not adhere to the principles contained within the Act (ibid, pp.93-4).

- Trade unions would only be recognised upon registration, through which they would submit to their rules being subject to a Registrar's approval (ibid, pp.54-76). Without registration, trade unions could be subject to unlimited fines for strike action outside the parameters of the law (ibid, pp.92-3).
- Collective agreements between trade unions and employers were to be legally binding unless explicitly stated otherwise (ibid, pp.129-30).
- A Commission on Industrial Relations (CIR) was designed to act as an arbiter in industrial disputes. However, it ultimately held the power to make referrals to the NIRC through which its pronouncements could be made binding (ibid, pp.95-100).
- Emergency powers were conferred on the Secretary of State for Employment to declare sixty-day cooling-off periods (ibid, pp.104-108) and order secret strike ballots in advance of industrial action (ibid, pp.108-112). Authority to appoint judges was also conferred on the Secretary of State for Employment (ibid, p.79).
- Individual rights were promoted through the outlaw of the closed-shop, no longer allowing firms to employ trade union members exclusively (ibid, pp.3-16).
- A Code of Industrial Relations Practice was introduced, devised to regulate the behaviour of both trade unions and employers (HMSO, 1972a). Although not legally binding, the Act provided that the code was admissible as evidence and could be held relevant in legal proceedings (HMSO, 1971a, p.3).[5]

The compatibility with the core tenets of depoliticised governing is clear. The Act established a set of legal principles, or *rules*, to be governed and legitimised by a selection of new

[5] For a detailed overview of the core provisions of the Industrial Relations Act see Appendix 1.

institutions with ostensible independence from government. As such, the new NIRC, CIR and Registrar operated as the fulcrum in the state's attempt at depoliticisation, externalising accountability for the management of reform. Yet 'arms-length control', as Burnham describes (2001, p.127), was retained, or, perhaps more accurately in this case, extended in a number of ways. Jim Buller and Matthew Flinders argue that 'to research depoliticisation…is to study a relationship between those that articulate and implement this governing method and those who are affected by it' (2005, p.527). For this reason, this thesis draws not only on the primary records associated with state departments, but also both sides of industry – trade unions and employers.

The existing literature acknowledges the failures, inconsistencies and contradictions associated with the Act. However, no account has been able to adequately discuss the 'lower-level' dynamics of the Act's institutional structure. Moreover, no account has adequately assessed the implementation process and how internal tensions within the British state impacted on the Act as a depoliticised governing strategy. Given the complexity of the institutional structures created by the Act this is a crucial contribution to understanding *precisely* why the framework lacked rigidity. The primary aim of this thesis is to move beyond a superficial analysis and address these 'lower-level' concerns. This necessitates a range of research questions which link directly to the *empirical* contributions of the thesis:

1. How was the Act designed to tame trade unions?
2. How, through this Act, did the government seek to insulate itself from the potentially electorally damaging consequences of reform?
3. What, if any, tensions existed at the heart of the core executive and institutions of the Act? Did this hinder its operation?
4. Was the judiciary an appropriate vehicle for the depoliticisation of industrial relations?
5. Was the Act abandoned and what commitment to this reforming agenda remained?

These research questions are drawn from debates within the secondary literature. However, building on existing accounts, the contribution of this thesis revolves around the *internal* dynamics of the state as revealed through an analysis of primary documents.

Through application of the depoliticisation lens, this thesis makes five substantive empirical contributions. First, it confirms assumptions surrounding the contradictory nature of the Act. However, it proposes an additional challenge. Embedded within the Act was a contradiction in that it sought to depoliticise industrial relations reform while simultaneously politicising the role of trade union leaders. Furthermore, through hasty enactment the concerns of officials within the Department of Employment (DE) were ignored. Second, the thesis uncovers the internal institutional dynamics and interplay at the heart of the state. It highlights tensions between the core executive and the institutions created by the Act. In particular, contradictions related to arm's-length control and 'independence' undermined the strategy from the outset. Third, the thesis discusses the role of the judiciary and depoliticisation at length. It argues that a primary reason for the failure of the Act was the 'independence' of the judiciary and its unpredictable interpretation of the rules provided in the framework. This links directly to the practicalities of the Act's operation. The government was left exposed as the institutions were presented as draconian extensions of the state. Fourth, the thesis provides clarification regarding the abandonment of the Act. The archival evidence demonstrates that it was *effectively* 'put on ice' even though politically it was impossible to denounce the strategy. Nonetheless, there is evidence of longer-term commitment to this approach to reform. Finally, the thesis contributes a novel account of the failure of the Act. Through application of the depoliticisation framework it argues that the Act was inappropriate given the changing industrial context. Through problematizing the mechanics of the Act and its institutions this thesis contributes to debates surrounding the *limitations* of depoliticised governing. This is

achieved through tracing empirically the manner in which industrial relations was (re)politicised.

IV. A Word on Methods

This thesis utilises documentary/archival analysis as the principle research method. As noted above, public records located within the National Archives (Cabinet, Department of Employment, RTUEA, Prime Minister's Office, NIRC and Treasury documents) are supplemented by the holdings of the Trades Union Congress (TUC) and Confederation of British Industry (CBI) archives located at the Modern Records Centre and the Conservative Party Archive stored at the Bodleian Library, University of Oxford. The historical approach adopted is necessary, in part to acknowledge the incremental development of British industrial relations and, crucially, the position of trade unions as 'historical deposits and repositories of history' (Turner, 1962, p.14). This section provides a discussion of the practicalities associated with this research project and some of the methodological pitfalls. In doing so, it acknowledges the necessity for methodological rigour when adopting an historical approach to research.

Debate surrounding what constitutes a document has a long history, with Beatrice and Sidney Webb arguing that pamphlets, biographies and autobiographies are excluded (Webb and Webb, 1932 [1975]) and suggesting that 'if the documents are inaccessible, the subject is impracticable' (ibid, p.106). However, this staunch position has been shown to be unworkable as many of the documents they distinguish from literature are subject to the very the limitations they have sought to overcome (Scott, 1990, p.12). Indeed, the use of documents in social research has been described as 'fairly heterogeneous' in that the data set has the potential to include letters, diaries, autobiographies, newspapers or even photographs (Bryman, 2004, p.381). John Scott argues that a document can be characterised 'in its most general sense as written text' (1990, p.12), and that a more analytical set of criteria should be applied when

deciding on the appropriateness for a given research project. This should encompass *authenticity, credibility, representativeness* and *meaning* (Scott, 1990, pp.19-35; Burnham et al., 2004, pp.184-88; Platt, 1981a, pp.31-52; Platt, 1981b, pp.53-66). This set of criteria, as Alan Bryman notes, is 'extremely rigorous' (2004, p.381) and if applied correctly should set an acceptable standard upon which to ground research. The documents used in this thesis have been judged against this criteria.

To corroborate basic facts and understand the contemporary mood of society, secondary and tertiary sources are useful (Burnham et al., 2004, p.169). Similarly, biographies and autobiographies, of which there are a number relevant to this period (e.g. Campbell, 1993; Gormley, 1982; Heath, 1998; Howe, 1994; Hurd, 1979; Jones, 1986), can provide much in terms of the personality, motives and style of political actors (Kavanagh, 1991, p.485; see also Gamble, 2002). Yet it remains clear that 'personal recollection can mislead or conceal as much as it reveals' (Ball, 1995, p.99), a position that is corroborated by Charles Mowat, who expresses concern regarding the reliability of such sources (1972, p.132). This research aims to provide an accurate account of the decision-making processes of state managers, and such documents would not be a satisfactory analytical base upon which to construct an argument. For this reason it is necessary to turn to primary documents, particularly those contained within the National Archives. This largely overcomes issues raised in terms of authenticity and credibility. It is the case, as Burnham et al. note, that the 'authenticity of public records can be established without much difficulty' (2004, p.186) as when documents are produced by public officials, they are likely to score highly (ibid, pp.186-7). Moreover, an understanding of the relevance of particular political actors can be achieved, at least in the case of the National Archives, through careful consultation of Civil Service Year Books.

In terms of representativeness, it is important to acknowledge that with all archival storage, some documents will be lost. This could cause problems for those who aim to provide

research that is 'representative of the totality of relevant documents' (Scott, 1990, p.24). An intricate system of sifting documents that will be retained does take place (Cox, 1988, pp.73-82). Of the approximately 100 miles of paper produced by government each year, in the region of 50,000 files or other assortments reach the National Archives (ibid, p.82). This is not to mention that which is not recorded, such as telephone conversations, or documents excluded due to their sensitive nature (Kavanagh, 1991, p.484). Furthermore, Rhiannon Vickers has argued that data collection through archival sources has 'the tendency to produce "top-down" studies (skewed by the thoughts of elites)' (1997, p.176; also Burnham et al., 2004, p.187). However, the potential for such a bias can be mitigated against through the analysis of a range of public and private archives as appropriate (Lowe, 1997, p.245). This has been considered and a wide range of documents has been used from across multiple archives. Moreover, where appropriate contemporary newspapers have played an important part in the research.

Interpretation remains a crucial issue to consider. As Scott makes plain, 'interpretive understanding of individual concepts, appreciation of the social and cultural context through which the various concepts are related in a particular discourse, and judgement of the meaning and significance of the text as a whole' (1990, p.31) can all present challenges to even the most scrupulous researcher. It is necessary, therefore, to ensure that public records are not treated as standalone documents, paying particular attention to the wider social, political and economic context (Burnham et al., 2004, p.188). Acknowledging the fact that documents 'do not speak for themselves but only acquire significant meaning when situated within a context set by vigorous analytical and methodological assumptions' (ibid, p.188) is essential to achieving a credible argument. In keeping with the necessary rigours of qualitative research, every effort has been made to approach the data in an objective and systematic manner (see Devine, 1995). Through analysis of a considerable range of documents, it is argued that an accurate representation of the decision-making processes behind the Act can be revealed. When

supplemented with contemporary media, a rich understanding of the political and social context can be produced.

The decisions informing document selection, therefore, are key. The most important tool in this regard is practical experience as the relevance of a file or document is not always immediately apparent and often useful information is found in unexpected places. As a result, practical accounts of the research process are invaluable (see Aris, 1998, pp.186-90; Vickers, 1997). Moreover, documents serve a variety of purposes. For example, researchers should not overstate the importance of Cabinet conclusions as the Cabinet 'can affect administration directly only by limited and judicious intervention at key points' (Aris, 1998, p.187). As this thesis is concerned with the details of decision-making the net had to be cast much wider to cover the numerous bodies and working groups of the 'lower-levels' of the core executive *and* the institutions created by the Act. In total, 464 files were viewed[6] and photographed across the National Archives, Modern Records Centre and Conservative Party Archives (see Appendix 2 for breakdown). This is a large number that reflects the range of political actors affected by reform and the complexity of the logistical task of establishing multiple institutions and new areas of law.

175 of these files are cited in the final thesis. Many of the files regarding establishing the Act's institutions do not feature as they were highly procedural in nature. Final policy documents were often favoured in the knowledge that all appropriate files had been checked for relevant information. Similarly, considerable effort was made to research the role of counter-inflation policy as this was a crucial governing challenge. However, in the final thesis this is very much a secondary concern as the Act was primarily directed at different issues. Nonetheless, developing an understanding of the interplay between the two policy areas would

[6] This excludes Cabinet minutes and memoranda. As they are available online the complete record – amounting to many hundreds of documents – was covered before relevant minutes were studied in detail.

have been impossible without this rigorous approach. A number of files went uncited as they contained duplicates of documents located elsewhere. This was common between government departments but also sometimes the case across multiple archives. Vickers (1997, p.174) reflects that she found a similar experience reassuring as it implied thoroughness. To develop a scrupulous attitude to archival research, this is certainly an important lesson to take on-board.

Other considerations are of a more practical nature. A number of documents in the Conservative Party Archives are subject to 'general access conditions' and require permission to view. Only one request of up to five files is allowed at a time as the archivist must check for potentially sensitive information on living political actors. As permission must be sought from the Conservative Campaign Headquarters – and my visit fell during the campaign period for the 2015 General Election – the length of time to receive a response was far longer than usual. In addition, key parliamentary debates regarding enactment and amendment have been consulted. However, while they are noted in the text, as expert analysis of the passage of the Act through Parliament has been provided by Moran (1977), references are limited to public pronouncements on its current standing. This is also the case for later debates. Nonetheless, knowledge of parliamentary debates is crucial if researchers are to understand the significance of the government's preferences that are not publicly revealed but available through primary documents (Rogers, 2009, p.649). In summary, researchers can take confidence in their conclusions provided document selection decisions are well justified throughout the research process. Political analysis based on a rigorous and far-reaching reading of the primary material available will ensure the contributions provided stand the test of time.

As noted above, a criticism of this approach is that it risks producing a 'top-down' bias. Vickers has argued that any work conducted with a heavy reliance on public records should be supplemented with both oral histories and interviews (1997, p.176), a position corroborated by Burnham et al. (2004, p.187). This was not possible in this case, primarily the result of the

passage of time. There is also a danger of identifying people who were not at the heart of the decision-making process. Furthermore, there is always a risk of hazy memories creating confusion rather than demystifying events. This can, in part, be remedied through reference to accounts that have made extensive use of interviews with leading figures in the Heath government (e.g. Whitehead, 1986). One account also provides details of interviews with junior officials within the DE (Holmes, 1997). With this potential deficiency in mind, the triangulation provided by the range of documents becomes all the more important. The benefits of interviews in this case can be overplayed. It is unlikely that the detail available in the primary records would ever be matched by oral testimonies. Moreover, this decision avoids the danger of the narrative provided by the primary documents becoming clouded by 'politics' through an interviewee's attempt to justify a particular approach. This would obfuscate the realities of events. Completing this research project has demonstrated that on the number of occasions subsequent accounts by key political actors have proved to be 'economical with the truth' as recorded in the primary records.

V. Structure of the Thesis

The thesis is divided into a further seven chapters, starting with the conceptual framework through which the thesis provides its novel empirical analysis. Chapter Two initially unpacks existing challenges posed by Marxist state theory. The approach of the Open Marxist School is favoured, arguing that the state should be understood as a *social form.* As the manifest form of *social relations*, it can be demonstrated that the state tends towards the creation of the optimum conditions for the accumulation of capital, often at the expense of any improvement in the conditions of labour. Indeed, when accumulation is hindered, social relations are reconfigured in the interests of capital in general. Acknowledging the centrality of corporatism in accounts of post-war British governing, the chapter discusses existing interpretations, problematizing the terms use and offering a more precise position taking into account incremental changes in the

dynamics of struggle and how this is reflected in the challenges associated with accumulation. This necessitates a range of different governing strategies. Depoliticisation, therefore, completes the framework as an example of a clear attempt by the state to withdraw from the overt management of the capital/labour dynamic in the hope of insulating government and maintaining electability. The analytical strength of this approach lies in the ability of the researcher to move from the abstract to the particular, following the dialectical method favoured by Karl Marx (see Johnson, 2007; Ollman, 2003)

The subsequent five chapters of the thesis are empirical in nature. They trace the process of industrial relations reform, culminating in the Industrial Relations Act itself. As the discussion progresses the consequences of the attempt to depoliticise are analysed. The failure of the strategy is discussed in relation to the inappropriateness of the legislation itself. Chapter Three discusses the development of legal intervention in the sphere of industrial relations, arguing that the primary aim was to shift accountability for disciplining militant trade unionists away from government to both sides of industry – trade union leaders and employers. The aim was for industry to 'put its own house in order'. Numerous strategic flaws in drafting and enactment are highlighted. Chapter Four builds directly on this argument. However, it moves away from the strategy in a broad sense, beginning to delve deeper into the particularities of the Act's institutional arrangements. The chapter argues that presentational issues, especially the *perceptions* of institutional independence, were crucial to the success of the Act.

With the Act established, the thesis then traces events that led to its demise. Chapter Five focuses on two major industrial disputes – the railways and the docks. It is argued that the role of the judiciary in depoliticised governing becomes immediately inappropriate and deeply problematic. The government was neither insulated from events as they unfolded, nor was it able to influence matters. The 'independence' of the judiciary – the very thing it was hoped provided the strategy its strength – became its liability. The framework of rules became

unpredictable as judicial interpretation created havoc. Chapter Six discusses the aftermath of these events, with a particular focus on arguments within the existing literature that the Act was 'put on ice' or abandoned. Through a detailed examination of discussions between ministers and officials regarding amendment, the chapter argues that, while the Act was 'frozen' for all intents and purposes, it continued to function in the background. In addition, ministers in particular remained committed to the principle of a legal framework to regulate industrial relations.

The final empirical chapter discusses the failure of the Act to function as intended. It does this through an acknowledgment that the industrial relations landscape had changed as the types of industrial dispute the Act was designed to tackle were no longer the government's priority. Large-scale, public sector disputes were, by their nature, highly politicised. Furthermore, with the government now operating an incomes policy, its role in the micro-management of the economy was reaffirmed. As a depoliticised governing strategy the Act had failed. Moreover, trade union militancy had increased, not abated. Unlike most existing accounts an assessment of the institutions of the Act in the final months of its operation is provided. Ultimately, this thesis argues that in its aim to reconfigure social relations and facilitate the smooth accumulation of capital, the state often favours the insulating character offered by depoliticised governing. However, at the turn of the 1970s such strategies were far from perfected. This rudimentary attempt offers insight into the *limitations* of this style of governing and, indeed, the appropriateness of the methods employed. These are lessons state managers are still grappling with today.

Chapter 2
The State, Corporatism and Managing Crisis

Introduction

One of the central purposes of the previous chapter was to review existing evaluations of the Industrial relations Act. It highlighted a number of empirical and conceptual challenges in existing accounts that obfuscate our understanding of the Act as a governing strategy. While it is important to note failures in drafting, assumptions and strategy, this thesis seeks to step behind the veil shrouding decision-making processes. For this reason, a historical analysis based on archival research is adopted to uncover the intricacies of policy-making and the inevitable tensions and compromises within the state. In addition, the chapter noted the thin theoretical underpinning of much of the existing literature, other than tacit acceptance of the pluralist assumptions of the Oxford School of industrial relations. This chapter moves away from a discipline that has been 'characterised by fact-finding and description rather than theoretical generalisations' (Winchester, 1983, p.101). The work of radical sociologists and Marxist scholars has gone some way to redressing the balance. In the case of the former,

however, the focus remains rooted in workplace politics, neglecting the state. The latter addresses the state directly, although often in a crude, instrumentalist fashion. In contrast, this chapter provides a framework that builds on the theoretical underpinnings of Open Marxism. In doing so the state is seen as the *form* of social relations.

As the framework's starting point, a necessarily abstract analysis is provided. In keeping with Marx's method, it attempts to overcome 'a chaotic conception of the whole' and through a process of abstraction provide an analysis based on 'a rich aggregate of many conceptions and relations' (Marx, 1859 [1904], pp.292-3). Burnham argues that:

> high-level abstractions of state theory and the circuitry of capital are essential in helping to clarify the key political economy problems which beset modern governments, but the twists and turns of the policymaking process can only be revealed by close empirical study of government personnel at particular moments (2006b, p.81).

Following this, the chapter moves through levels of abstraction, justifying each step on conceptual and empirical grounds related directly to the practicalities of research. This directly challenges critics of Open Marxist scholarship who argue it possesses an 'overly theoretical and abstract style' (Bieler and Morton, 2003, p.475) at the expense of empirical rigour. Instead, the analysis provided situates this thesis as a contribution to the 'abstract-concrete dialectic', defended by Pinar Dönmez and Alex Sutton for its ability to 'assert the strongest resistance against diverse modes of fetishism and for this reason alone deserves to be treated seriously' (2016, p.701).

The first section outlines the Open Marxist perspective. It focuses on the analytical centrality of class struggle and the inherently crisis prone nature of the capitalist mode of production. The state is discussed in the abstract, shunning both instrumentalist and functionalist characterisations associated with much of the Marxist state theory literature.

Crucially, the state as the fetishized form of the separation of the political and economic will be discussed. The second section considers corporatism in the British context. The critical consensus is that this framework is analytically helpful for scholars seeking to contextualise the 1960s and 1970s. Moreover, as has been acknowledged across the literature, it demonstrates how the Act departed from this consensus. However, the term is far from precise. This section provides a definition that is sympathetic to the ebbs and flows of class struggle without overstating the prevalence of corporatist structures in the British context. This is supplemented with a rigorous discussion of the internal dynamics of trade unions, driven not by a romanticised view of what scholars – particularly Marxist scholars – would like them to be, but grounded in empirical reality. In the final step from the abstract to the particular, the chapter points to statecraft strategies associated with the framework of depoliticisation. Thus, having moved from an abstract presentation of the state and capital accumulation, the chapter concludes with the conceptual tools to conduct concrete empirical analysis of specific state responses to moments of crisis.

I. Class Struggle and the State Form

The Capitalist Mode of Production

At its core, Open Marxism provides an analysis of class, capital and the state based directly on Marx's writings in *Capital* and the *Grundrisse* (Burnham, 2001a, p.103). Placing the analysis of class struggle centre-stage, therefore, is paramount if scholars wish to understand capitalist social relations. Marx made this point clear, for without a class reliant on a wage, there would be no surplus value, no capitalist production and no capitalist (Marx, 1867 [1982], p.1005). In essence, 'the existence of a class of wage labourers, encourages the transition of all commodity production to capitalist commodity production' (Marx, 1885 [1992], p.119). John Holloway and Sol Picciotto make this point explicit, for it is 'only on the basis of an understanding of the

specific *form* of capitalist class exploitation, based on the extraction of surplus value, that we can understand the dynamic of class struggle *in capitalism* and hence of the social and political development of capitalist societies' (1978, p.12). For Marx, capitalism – specifically capitalist production – should be seen as a connected process of reproduction that produces 'not only commodities, not only surplus-value, but it also produces and reproduces the capital relation itself; on the one hand the capitalist, on the other hand the wage-labourer' (Marx, 1867 [1982], p.724). In this respect capital presupposes wage-labour in as much as wage-labour presupposes capital – '[t]hey reciprocally condition each other's existence; they reciprocally bring forth each other' (Marx, 1867 [1982], p.724n).

'Any class society', Holloway argues, 'has at its core an antagonistic relationship, a relation of conflict: the pumping of surplus labour out of the direct producers. The conflict never stops; if the ruling class stops pumping, the society will collapse' (1992, p.149; see Marx, 1894 [1991], p.791). Richard Gunn notes that class should not be seen in a sociological sense – it is not about what groups of individuals have in common – but instead as a social relation, a '*relation of struggle'* (1987, p.15; see also Bonefeld et al., 1992, p.xiii). Building on this perspective, Simon Clarke argues that class relations should be viewed as 'analytically prior to the economic, political or ideological forms taken by those relations' (1978, p.41). While this is undoubtedly an abstract way of approaching analysis, it is helpful to see this as 'the theoretical expression of the unity of everyday experience' (Clarke, 1991, p.33). This mode of analysis draws attention to a stark distinction between the internal dynamics of capitalist social relations and their appearance, or *form*. Holloway and Picciotto argue this specifically: 'The struggle of the ruling class to maintain capitalist relations of production is a struggle to maintain the reality of an appearance; the working class struggles to break through the appearance and realise the reality immanent in the social nature of production' (cited in Clarke, 1991, p.40).

Any suggestion that Open Marxism replicates the determinism of classical Marxism (see Bieler et al., 2010, p.27) can be refuted precisely because of its focus on class struggle. 'If the world is to be understood in terms of struggle', Holloway argues, 'then there is no room for determinism of any kind. Struggle, by definition, is uncertain, open, and the categories which conceptualise it must be understood as open too' (1991, p.71). Yet this unpredictability also accentuates the fact that capitalism is riddled with contradictions, seldom operates smoothly and is inherently crisis prone. Elsewhere Holloway argues 'Marxism *is* a theory of crisis, a theory of structural social instability' (1992, p.147). Indeed, Marx describes how capitalism tends towards periods of 'stagnation, moderate activity, over-excitement and crisis' (1885 [1992], p.264). Therefore, capitalism possesses 'structurally given permanence of change' (Bonefeld, 1987, p.35), the implication being that 'crisis implies that history is not smooth or predictable, but full of shifts in direction and periods of intensified change' (Holloway, 1992, p.146). Furthermore, while crisis may express itself as economic, in reality it reflects the inherent tension within capitalist social relations, i.e. between capital and labour (ibid, p.159). What is fundamental for the researcher is the availability of tools to understand these moments of flux both historically and contemporaneously. This has led to a vast body of literature focusing on the problematic nature of capital accumulation throughout the 1970s. In particular, crisis is identified as the symptom of overproduction (Clarke, 1990b; Kettell, 2006) or the result of a squeeze on profits (see, for example, Armstrong et al., 1991; Glyn and Sutcliffe, 1972; Arrighi, 1978).

Marx is clear that the accumulation of capital, the process through which surplus value is employed as capital and reconverted into capital, is the driving force of capitalism (1982 [1867], p.725). Numerous scholars have emphasised the importance of detailed study of Marx's circuits of capital as described in the first four chapters of Capital Volume Two (see Bell and Cleaver, 2002; Burnham, 2006b; Harvey, 2006; Kettell, 2006; Marx, 1885 [1992]). Here,

capital as both material and social reproduction, rife with contradictions, can be identified (Clarke, 1983). It is possible to move beyond the production process alone and consider capital, in its various forms, in circulation. This is presented as the whole of three distinct but interrelated phases – the circuit of money capital, productive capital and commodity capital. It is expressed as:

$$M – C (LP + MP) \ldots P \ldots C' – M'$$

Following this circuit, capitalists exchange money capital (M) for two commodities, labour power (LP) and means of production (MP). These two commodities are brought together in the production process forming productive capital (P). Here, the capitalist is able to extract surplus value, in essence the unpaid labour of the workers. The outcome of production, new commodities (C'), are imbued with the unpaid labour and hence of greater value than the initial cost of labour power and means of production to the capitalist. Finally, and in the phase of commodity capital, those commodities are exchanged in the market place for a higher return than the initial outlay (M'), thus completing the circuit's three stages. In doing so, Marx describes capital as 'self-valorising value', moving his analysis beyond the class relation alone to see capital in dynamic motion (Marx, 1885 [1992], p.185).

The analytical potential is clear, as 'by focusing on the circuits of capital, we are able to analyse the social form of crisis, thereby relating the particular to the general' and 'begin to theorise the problems that confront state managers' (Burnham, 2006b, p.78). The sale of labour power as a commodity alone causes tension, as do the conditions under which the work takes place. Similarly, the sale of manufactured commodities is rife with difficulties, both domestic and international through trade. In a myriad of different ways, encompassing production or exchange, the circuit can be disrupted. Each occurrence 'is not only a moment of the class relation but carries in it the fundamental character of that relation, an antagonistic conflict' (Bell

and Cleaver, 2002, p.22). When an analysis of the circuits is conducted appropriately, researchers can pin-point breaks and identify how they manifest in particular types of crisis. Burnham describes numerous examples effecting all three circuits. In the circuit of money capital this includes 'demand-pull' and 'cost-push' inflation, balance of payments difficulties and exchange rate pressures. Productive capital suffers at the hands of industrial relations crises and on-going tensions surrounding competitiveness and productivity. The circuit of commodity capital draws attention to further problems relating to the balance of payments (for conversion to money capital is essential) and fiscal crisis through the state's need for associated taxation. All of this must be further contextualised within the international sphere as these processes take place and reproduce themselves beyond the nation state and are governed by corresponding economic and political agreements (ibid, pp.78-9).

To focus on any one aspect of this on-going circulatory flow is at one level problematic. After all, while all three circuits can be presented as separate for analytical purposes, 'every point is a starting-point and a point of return' (Marx, 1885 [1992], p.180). Furthermore, a real unity is realised in the fact that all are driven by the valorisation of value (ibid, p.180). Nonetheless, it allows researchers to focus on moments of crisis associated with finance (M-C…P…C'-M'), industry (P…C'-M'-C…P) and commerce (C'-M'-C…P…C') (Kettell, 2006, p.25). As will be developed below, it can be argued that the Industrial Relations Act was designed to address problems associated with the circuit of productive capital directly – i.e. industry – and as a secondary measure to smooth out corresponding problems created in other sectors. Thus, as Clarke argues, the Act offers a clear example of where theory and empirics intersect. It represents an occasion of reality fading into illusion as 'the "majesty of the law" can inspire awe when it confronts the isolated individual, while becoming an object of ridicule in the face of collective resistance' (1991, p.40). The abstraction offered by associating a class based analysis with Marx's circuits of capital immediately begins to sharpen our understanding

of moments of crisis. However, to better grasp how such moments might be managed it is necessary to consider the state.

The State Form

It is impossible to analyse the 'management' of the circuits of capital without addressing the state. As noted above in relation to existing Marxist accounts of the Industrial Relations Act, conceptualising the state must remain central to an understanding of state management and the dynamics of capital and labour. However, this has often revolved around the debate between Ralph Miliband and Nicos Poulantzas, characterised as proponents of either instrumentalism or structuralism in their analytical approach to the state (Miliband, 2009; 1973; Poulantzas, 1969; 1976). Yet for all its prominence it has recently been characterised as a non-debate (Jessop, 2008a), even if it forms the bedrock upon which much later scholarship has been built. The crux of the issue, however, is provided by Burnham, who has argued that 'these viewpoints are deficient because they mirror errors committed by orthodox political science, which takes the estranged forms of appearance of capitalist social relations and fails to trace what Marx refers to as "inner connections"' (1995, pp.95-6). Building on the analysis developed above, it becomes evident that in capitalist society based on commodity production, labour and its products 'assume a fantastic form different from their reality' (Marx, 1867 [1982], p.170). The source of their form – social relations – is shrouded from view. Yet, for Marx, 'all science would be superfluous if the form of appearance of things directly coincided with their essence' (1894 [1991], p.959), and it is with this in mind that Werner Bonefeld's characterisation of the state 'not as a state in capitalist society, but rather a moment of the class antagonism of capital and labour' (1992, p.113) offers a useful starting point.

Holloway argues that the state should be understood 'not as a thing in itself, but as a social form, a form of social relations' (1995, p.116). In this respect the state appears to exist

as a 'thing' that is separate to the social relations that are the true bedrock of its fetishized form. Its appearance masks the realities of its manifestation (ibid, p.116-7). Open Marxism attempts to bridge the gap between a cursory, surface level presentation of the state and an altogether richer understanding of the interlocking dynamics of social relations. Thus, this approach avoids reproducing in thought the fetishized form of the state, instead treating it as 'an historically determined form of the social relations of capital' (Holloway and Picciotto, 1977, p.79). In a discussion of capital and money, Marx acknowledged that 'certain *specific social relations of production* appear as *relations of things to people'* (Marx, 1894 [1991], p.1005), and this, too, is true of the state. But the fetishized forms of social relations are not pure illusion. Instead they 'give institutional form to everyday social existence, expressing the differentiation of the institutional form to everyday social existence, expressing the differentiation of the institutional forms within which the class struggle over the reproduction of capitalist social relations is fought out' (Clarke, 1991, p.10).

Building in the necessity of the concrete-abstract dialectic, Clarke acknowledges that 'the state cannot be analysed at the same level of abstraction as capital' (1983, p.118). His often cited argument is that:

> The state does not *constitute* the social relations of production, it is essentially a *regulative* agency, whose analysis, therefore presupposes the analysis of the social relations of production of which the state is regulative. The analysis of the capitalist state presupposes the analysis of capital and of the reproduction of capitalist relations of production, despite the fact that in reality, of course, the state is itself a moment of the process of reproduction (1983, p.118).

However, the state should not be seen in an instrumentalist fashion, in contrast to a number of conventional Marxist perspectives. Kettell describes how in the Open Marxist tradition:

> the capitalist state is not understood as an institutional structure or apparatus that is outside economic relations, but is instead conceived as a particular historical form of social organisation, as the "political" counterpart to the "economic" process of capitalist production. The necessity for the state to act in the interests of capital is therefore not derived in an arbitrary or contingent fashion, but inheres through its existence as an integral aspect of capitalist relations themselves (2004, p.21).

Burnham notes that the state is analytically prior 'to the government, the civil service, the military, judiciary, and other civil organisational forms taken by the state (even though the state has no existence independently from these forms) that makes it possible to understand the complexity and possible disjunctures which may arise between these forms' (1994, pp.5-6). The distinction between the political and the economic, therefore, is key and requires further discussion.

The success of the capitalist state form lies in the appearance of the political and the economic as separate. For Bonefeld, 'the economic and the political, although seemingly existing independently from each other stand to each other as moments of one process' (1992, p.100). Not only does Open Marxism seek to elucidate this fetishism, but it demonstrates how this 'real' separation limits contestation surrounding existing social relations. As Holloway and Picciotto argue, separating the political and economic forms acts as a method of control in that capital depends on this separation as it channels 'conflicts arising from the real nature of capitalist society into fetishized forms of the bourgeois political processes' (1977, p.80). A discussion of the state compliments what has gone before as the 'focus is on the changing character of the form of the "political" in relation to the circuits of capital' (Burnham, 2001a, p.105). This is an extremely important contribution, for the presentation of social relations as economic relations devoid of political character can be used to reorganise society. Exploitation in the production process is portrayed as distinctly economic and therefore separated from the

political sphere. This, in effect, privatises the most fundamental social relation, that of capital and labour.

Burnham provides a detailed account of this process in a discussion of the rise of the modern capitalist state (1995, pp.98-102). The fundamental point to be distilled from this analysis is that the appearance of separation between the state and civil society was driven by the demise of direct political control through force, to be replaced by the rise of a regulatory body to sustain the apparent exchange of equivalents through the rule of law (ibid, pp.100-1). It is important to note that this 'enforced separation of the state and civil society is, of course, an institutionalised illusion' (ibid, p.101). This perspective sees 'the relation between the state (politics) and civil society (economics) as discrete but related forms of the expression of social relations under capitalism' (Bieler and Morton, 2003, p.472). However, it is this fetishism that places the state as a political 'thing' separate from other things, i.e. the economy, and thus obscures, or depoliticises, the particularities of social relations (Burnham, 2014, p.191). As Clarke makes clear, 'the state secures the reproduction of civil society by enforcing the rule of money and the law, which are at the same time its own presupposition' (1988, p.127). The moment that such enforcement becomes more difficult it is likely that the fetishized distinction between the economic and political becomes blurred. The relationship between labour and capital, ostensibly an economic relation alone, is in fact underpinned by property rights which themselves are sustained by legal relations and ultimately the political power of the state (Aris, 1998). In this sense, the state regulates the labour-capital relation as much as it is a product of it. It is the illusion of real separation that sustains and manages capitalist social relations, yet every time the mystified distinction between state and civil society becomes strained, the contradictions associated with accumulation become starker.

These contradictions emerge through the abstractions offered by Marx's circuits, yet the implications for the constitution of capitalist social relations cannot be limited to the national

context. While everyday struggles manifest themselves in numerous forms of 'national' economic crisis, balance of payments problems or currency pressures (Burnham, 2006b, p.75), this, in turn, necessitates a response on the part of state managers who become in one sense little more than 'circuit managers' (ibid, p.76). The development of national states should be seen as 'part of the antagonistic and crisis-ridden development of capitalist society' (Burnham, 1999, p.44). However, it is important to note the contradiction between the national and the international. Bonefeld describes how nation states compete with one another over global capital flows, and in this sense exist as particular 'nodes' within it (1995, p.197). This, of course, includes creating the conditions favourable to accumulation, although this is also rife with contradiction, instability and unpredictability. What is crucial to note, therefore, is that capitalism's presentation of the 'real' separation of the political and economic is not only of national importance, but must be sustained for reasons that extend beyond the domestic environment as the implications of the class dynamic are realised globally. Therefore, much state activity is driven by capitalist circuitry far beyond its immediate purview.

Open Marxist perspectives have been subject to a number of criticisms in recent years. It has been accused of 'conceptual vagueness' (Susen, 2012), amounting to a form of 'theological Marxism' claiming absolute knowledge through the class dynamic (Bieler and Morton, 2003, p.473), offering only '*epistemological austerity'* (Bruff, 2009, p.337), reducing everything to the capital/labour relationship while providing nothing on ideology (Roberts, 2002, p.88) and, as a result, presenting a 'totalising ontology' (Bieler et al., 2010, p.27). Perhaps most damning is the accusation that it merely replicates the functionalism it claims to eschew (Tsolakis, 2010). Some would argue that such problems are reflections of the chosen abstraction, the vantage point from which particular studies of the state are conducted (Ollman, 2003, p.110). However, in an excellent defence of Open Marxist perspectives, Dönmez and Sutton convincingly argue that the centrality of class struggle presents the state as contradictory

and its strategies as seldom in the interests of capital-in-general. To put it bluntly, the state's 'functions cannot be carried out successfully' (2016, p.695). Moreover, this approach does 'not suggest that the functions are fulfilled completely and without contradiction and disruption' (ibid, p.696). This conceptualisation of the state represents 'the overtly political form of an inherently contradictory society' (Sutton, 2016, p.3). Dönmez and Sutton argue that Open Marxism's 'central conception of critique and the abstract-concrete dialectic continues to assert the strongest resistance against diverse modes of fetishism' (2016, p.701). It is this analytical motion that this framework attempts to account for, moving from an understanding of the state *form,* through to particular attempts to understand the dynamics between fractions of capital and labour. To this end, the chapter now shifts the level of abstraction to consider corporatism and working class organisations.

II. Corporatism and Working Class Organisation

Bringing Corporatism into the Analytical Framework

The term 'corporatism' will be familiar to students of British politics. Numerous scholars have utilised the term in their analysis, providing a range of interpretations. In a seminal example, Middlemas (1990) argues that Britain was characterised by 'corporate bias' throughout the post-war period, with trade unions acting as 'governing institutions' and both capital and labour forming part of the 'extended state'. It has even been suggested that trade unions became 'part of the apparatus of the state' itself (Macdonald, 1976, p.211). While less integrated, Samuel Beer's description of government, trade unions and employers in 'intimate and continuous relationships' shares a similar sentiment (1969, p.419). However, as an analytical tool, corporatism has largely fallen out of favour – even becoming discredited (Ainley and Vickerstaff, 1993). It is true that cruder characterisations possess little contemporary relevance (Grant, 1995, p.39). Yet during the 1970s proponents argued that Britain was transitioning from

liberal or managerial capitalism to corporatism (Pahl and Winkler, 1976, p.5). Moreover, it would be a struggle to find a text on the period that does not make at least a passing reference to it. This has led to the term becoming 'a tool much blunted by too diverse uses' (Fox, 1976, p.44). However, it also forces the conscientious researcher to be explicitly clear and provide definitional clarity. Indeed, care should be taken when branding particular behaviours as corporatist, not least because it 'takes the form of a dense web of interactions' (Crouch, 1985, p.86). This sub-section demonstrates how, when used with caution, corporatism remains a useful analytical tool.

Bob Jessop has argued that that corporatism 'is one of the most polyvalent *terms* in the social and political sciences as well as one of the *concepts* that have been most contested' (1990, p.107). This section sets out the manner in which corporatism is viewed in the subsequent analysis of the Act. First, this broad literature is traced to demonstrate why clarity is required if the most satisfactory presentation is to be realised. Subsequently, it moves away from simply presenting corporatism as a state of affairs as opposed to a framework. Andrew Gamble, for example, stretches the implications of corporatism during the 1970s when arguing 'that institutional bases of power outside Parliament were now much more important than anything which occurred within Parliament itself for formulation and implementation of policy' (1984, p.170). Grant, on the other hand, is sceptical of such an assertion, providing a looser interpretation of indirect state intervention 'in conjunction with the organisations that are based on the division of labour within society' (1985, p.8). This is a more useful starting point as it begins to uncover the fluidity of what might be termed corporatism. In addition, it notes Grant's scepticism of anything like 'true' corporatism actually functioning in the British context, a reflection of the structures of industrial relations, limited organisational control over *both* capital and labour, minimal cooperation between the parties and a society underpinned by individualism (1985, p.11; see also Streeck, 1984, p.148). This is returned to below.

With numerous contrasting views of corporatism available, settling on a definition is problematic. Those who have attempted broader conceptualisations have ran into difficulty. Philippe Schmitter differentiated between ‘state’ and ‘societal’ corporatism, the former representing a form of imposition through the bureaucratic power of the state (1974, p.105). Societal corporatism, that which could potentially be associated with Britain, is different in that it does not require imposition, but:

> can be traced primarily to the imperative necessity for a stable, bourgeois-dominant regime, due to processes of concentration of ownership, competition between national economies, expansion of the role of public policy and rationalization of decision-making within the state to associate or incorporate subordinate classes and status groups more closely within the political process’ (ibid, pp.107-8).

Corporatism need not be driven by one party or another, instead representing an 'osmotic process whereby the modern state and modern interest associations seek each other out' (Schmitter, 1979, p.27). However, even with this caveat the analysis strays dangerously close to a taken-for-granted, instrumentalist view of the state suggesting class dynamics can be restructured through the state directly (Jessop, 1979, pp.187-8). Alternatively, Raymond Pahl and Jack Winkler see the term as representing ‘a comprehensive economic system under which the state intensively channels privately owned business’ (1975, p.28). This state centric approach has also been criticised by Jessop, who argues that it represents a narrow view of capitalism by placing the emphasis on private control of the technical factors of production, thus overlooking the social nature of capitalist production and its root in class struggle. Competition and conflict between individual capitals is also disregarded (1979, p.189). The approach outlined above provides an opportunity, as Jessop argues, because these accounts make ‘no attempt to analyse capitalism as a mode of production at different levels of

abstraction; nor to examine the complex articulation between its economic and political determinations in different phases of capital accumulation' (1979, p.190).

The management of labour has long been identified as *the* major governing challenge (see Kay and Mott, 1982). However, the most fruitful analysis would not apportion 'blame' on the working class in an ideological fashion, or indeed replicate such mistakes. Instead, Diane Elson argues that any framework should focus on 'the contradictory system of social relations in which workers must act' (1980, p.67). This moves away from an analysis that sees corporatism as simply a response to the 'oppositional' nature of capital and labour. However, this draws attention to a fundamental problem associated with much of the corporatist literature, particularly from radical scholars – that of *incorporation.* Goldthorpe, for example, discusses corporatism as 'a response to the grousing problems of the management of modern capitalist economies which involves the deflection or redirection of the increased power of organised labour away from the labour market into the political arena' (1984, p.328). Writing in the 1970s, Giovanni Arrighi argues that the state may respond to crisis in one of two ways – draconian legislative action or a conciliatory, flexible approach that involves 'the workers in the co-management of their own exploitation' (1978, p.18). In effect, trade unions become 'instruments for the containment rather than stimulation and support of industrial conflict' (ibid, p.23). In essence, incorporation as a form of control over labour represents a ruse through which workers are subjugated to the interests of capital.

This is taken up by Panitch (1977, 1980, 1981), arguing that corporatism is best understood as '*a political structure within advanced capitalism which integrates organised socioeconomic producer groups through a representation and cooperative mutual interaction at the leadership level and of mobilisation and social control at the mass level'* (1977, p.66). For Panitch, 'only class collaboration, not class struggle, can be practiced in the corporatist heart of the state apparatus' (1981, p.38). The Labour Party's incomes policy can be seen in

this way, representing an attempt 'to define the unions' role as "legitimate" interest groups and guide by statute their actions "in the national interest"' (Panitch, 1976, p.241). Corporatism, therefore, should be seen as 'a political structure designed to integrate the organised working class in the capitalist state' (Panitch, 1980, p.175). This notion of 'incorporation' is intuitive, although Panitch's approach could be accused of retaining 'the pluralist's habit of seeing the political sphere as self-sufficient, as made up of undifferentiated interest groupings with no anchorage in capitalist society's class structure' (Higgins, 1985, p.351).

Jessop provides a more sophisticated version of the 'incorporation' argument, although it is not unproblematic. He describes a tendency 'towards a social democratic tripartism based on the articulation of corporatism and parliamentarianism' (1979, p.211). This, for Jessop, was coupled with 'a "strong state" based on the attenuation of the corporations involved in political representation and intervention' (ibid, p.211). In a later, more considered, work, Jessop notes that incorporation of trade unions into the state through corporatism necessarily amounts to controlling labour. Contributing parties must be committed to maintaining the existing economic and social order – hence capital accumulation – and part of this includes controlling memberships (1990, p.125). Yet competing interests among capitals cannot disappear. After all, this is what drives the process of accumulation. As Jessop demonstrates, this makes such structures highly volatile:

> This means corporatism will reproduce class conflict within the heart of the state apparatus itself and threatens to disrupt the continuing realisation of the political preconditions of accumulation. The effect is facilitated under corporatism since it explicitly bases political representation on economic divisions. Thus corporatism can be disarticulated through union leaders' failure to control rank-and-file militancy and/or their own resort to industrial action to influence corporatist negotiations, decision-making and intervention (ibid, pp.125-6).

Bringing the unpredictability of class struggle to the fore is important. However, as was admitted in his 1979 article, instrumentalist and reductionist tendencies creep into the analysis (Jessop, 1979, p.211).

This account of corporatism drives the complexity of the analysis forward, although describing corporatism as a *state form* (Jessop, 1990) is a step too far, particularly in the British context. Indeed, scholars of corporatism have long acknowledged the difficulties of 'consensus-building', making the subjugation of parliamentarianism unlikely (Lehmbruch, 1977). Moreover, there is a danger of conflating 'class struggle' with 'capital strategies' as Jessop does elsewhere (Bonefeld, 1993). Bonefeld is clear that 'class struggle does not take place within the forms; the forms are themselves a moment of the class struggle and are at issue in class struggle, as capital and the working class confront them as issues at stake in social reproduction' (1993, p.44). Winton Higgins argues that the incorporation approach poses conceptual difficulties because its proponents 'unite around a functionalist analysis of the state which, they assume, unproblematically responds to the systemic needs of advanced industrial (or capitalist) society' (1985, p.352). This would suggest that '[t]he needs of the system pre-programme the actual content of state policy' (ibid, p.352). It must be re-stated that the outcomes of struggle are undeterminable, and degrees of change are often overestimated through crude characterisations. Change is not driven by the state so as to imply functionalism (Bonefeld, 1987b). However, even more damning, is that such accounts perform poorly when subjected to empirical analysis.

Colin Crouch has challenged Marxist accounts of corporatism. While he argues that the relationship between organised labour and organised capital must be at the heart of an analysis of corporatism, the latter's automatic strength in the employment relationship can be redressed when the former organises (1985, p.64). The literature is criticised for associating neo-corporatism too closely with incomes policy, an understandable error given the governing context of the time. However, Crouch is right to argue that 'the means of encouraging a

phenomenon should not be mistaken for the phenomenon itself'(1985, p.86). Moreover, Marxist suggestions that corporatism is evidence of a state favouring capital must be treated critically for 'interventions were often repugnant to capitalists themselves, who did not trust the state to represent their interests adequately' (ibid, p.86). Tripartism, often associated with this literature, has analytical potential, although researchers should be cautious about using the terms interchangeably. Grant is again helpful here, describing it as 'an attempt to impose corporatist arrangements by the state from the top down, rather than building on arrangements that have evolved between capital and labour' (1985, p.9). Yet, for Marsh and Grant, the Industrial Relations Act marked 'an all-time low in government-trade unions relations' (1977, p.200). This suggests characterising the post-war period as either corporatist *or* tripartite is problematic. Marsh and Grant (1977) provide perhaps the most complete account of the nature of corporatism in the British context, concluding that it would be an overstatement to suggest Britain had ever been corporatist. Moreover, they argue that the TUC and CBI were limited in their representativeness (finance capital is ignored), and both had weak internal structures making any agreements reached fragile. While interest groups may have possessed the power to influence government, this was only ever at the edges (Marsh and Grant, 1977, pp.206-211).

This acknowledges the critical consensus that corporatism is useful when contextualising research focused on the post-war period. For example, reputable scholars still describe 'the collapse of corporatism' (Howell, 2005, pp.156-7). However, it is important to consider the ebbs and flows of class struggle and the implications for the relationship between the state, capital and labour. In this sense, the encouragement of collective bargaining can be seen as a form of control through membership obedience to the leadership (Kay and Mott, 1982, pp.115-6). Yet this may change where shop floor bargaining is heavily decentralised and concessions to organised labour are required as compensation for statutory measures (Jessop, 1990, p.133). Placing corporatism in historic context, Clarke argues that recognition of trade

unions represented a more systematic subordination to the demands of capital, coupled with the fragmentation of working class interests as sectionalism through trade unionism grew (1988, pp.137-8). For Clarke, corporatism in Britain reflected the tensions between capital and labour and, moreover, created suspicions on both sides 'for they knew, with Marx, that the community of the state is an illusory "community"' (ibid, p.233). Furthermore, as domestic struggle does not take place in isolation, deepening integration of world money markets forced states to ensure they appeared attractive to money capital which is indiscriminate in favouring no groups or industries (Holloway, 1994, p.41). In such circumstances corporatism reflects the reconfiguration of trade union structures, in effect 'a new way of "learning to bow"' (1994, p.41; Holloway, 1995, pp.133-4). The international aspect suggests that it was the insubordination of labour throughout the 1970s that in part facilitated the deregulation of global credit, undermining 'the corporatist integration of big labour' (Bonefeld and Holloway, 1995, p.214). In summary, that corporatism ever functioned in Britain is highly contestable. When overstated it misrepresents the context. However, if used in an illustrative manner to characterise changes in the relationship between the state, capital and labour, it retains analytical potential.

The Character of Trade Unions

The manner in which the state, capital and labour interact is not the reflection of an imposed strategy *per se*, but reflects class struggle and the fluid reconfiguration of social relations in a manner favourable to accumulation. The nature of trade unions, however, is analytically important in its own right. As Claus Offe and Helmut Wiesenthal argue, without workers acting in association, conflict between capital and labour would be limited as a result of the disproportionate bargaining power of the former (1980, p.74). That trade unions formed 'is not only theoretically, but also historically, a response to the "association" that has already taken place on the part of capital, namely in the form of the fusion of numerous units of "dead" labour

under the command of one capitalist employer' (ibid, p.74). In essence, it is through aggregating individual resources and interests that working class organisations can develop a *collective identity* capable of realising change (ibid, p.78). However, the view of trade unions as drivers of social, even revolutionary, change must be reflected upon. The discussion of pluralism among leading industrial relations scholars demonstrates as much. Trade unions are contradictory, reinforce divisions between workers, both resist and accommodate capital and, ultimately, function within the confines of capitalism (McIlroy, 2014, p.497). Moreover, there has been a trend within the literature to overstate their political and economic power (Marsh and Locksley, 1981). The purpose here is to reiterate the need for a set of pragmatic, empirically grounded reference points with regard to the position of trade unions in British politics.

The contradictory nature of trade unions is acknowledged by Perry Anderson, who questions their potential role in any move to socialism as they 'do not *challenge* the existence of society based on a division of labour, they merely *express* it' (1967, pp.264-5). In this vein, Holloway argues that the wage relationship, characterised by the old adage 'a fair day's pay for a fair day's work', is little more than an expression of fetishized trade union consciousness (1992, p.159). It is important, therefore, not to romanticise the role of trade unions and their revolutionary potential. Harry Cleaver argues that while there may well be times when 'official' organisations express working class struggles accurately, it may also be the case that they do not (2000, p.58). Others have argued that trade unions are best described as 'a class within a class' (Burgess, 1975, p.vii) or even as having two 'faces' balancing 'between the employers/state on the one hand, and the workers on the other' (Cliff and Gluckstein , 1986, pp.27-8). In this case trade unionism can stifle workers' struggle, always needing to balance this against accusations of overt collaboration with employers and the state when working class interests are shackled (ibid, pp.27-8). Here, both the internal and external complexities of a trade union's role are acknowledged. Some Marxist scholars have hoped for 'explosions of

class consciousness' through trade unionism (Kelly, 1988), even suggesting that 'the only way to successfully defeat the oligarchic tendencies of trade unionism is to overthrow capitalism' (Clarke, 1977, p.18). However, the successes of the rank-and-file in the 1970s was within a broadly reformist tradition, and subsequent curtailment has resulted in a more modest outlook (Callinicos, 1982).

The relationship between trade union leaders and the membership is a site of real tension. As a result it has received much scholarly attention. The contributions of Sidney and Beatrice Webb and Robert Michels are written in cautious, at times critical, tones regarding the role of trade union leaders (Webb and Webb, 1902; Michels, 1959). Michels describes the subjugation of the rank-and-file explicitly, arguing that trade union leaders were 'no more than paid servants of capital' (ibid, p.311). In this broad tradition, empirical studies place the role of rank-and-file militancy as paramount. Richard Price (1980), for example, praised the role of shop stewards at the turn of the last century, although did note tensions within the class. In a number of publications James Hinton has also focused on the often conflicting relationship between the rank-and-file and union leaders. Indeed, he has described the Industrial Relations Act as an attempt to set both factions against one another, the latter to control and contain the former (1983, p.194). His study acknowledges a period throughout the post-war years when shop stewards operated largely independently from the official leadership (ibid, pp.188-9), even identifying a form of 'dual power' between the leadership and militant shop stewards (Hinton, 1977, p.116). Others have suggested that trade union leaders exude caution and are more often than not anti-strike (Eldridge, 1977, p.182).

Hyman provides the most comprehensive attempt to conceptualise these internal dynamics in a body of work that spans some 50 years.[7] A number of curious contradictions within trade unionism are identified, not least the fact that they incorporate 'a *two way system of control'* (Hyman, 1975, p.73). Union leaders enjoy a certain position of power and control over their membership. However, at all times they are beholden to the membership as their servants (ibid, p.73). To put it another way, trade unionism is necessarily about 'the management of discontent' (ibid, p.195). Elsewhere Hyman conceptualises bureaucracy 'as a *social relation* pervading trade union practice at every level: a social relation corrosive of the foundations of collective solidarity' (1989, p.181). Formal negotiation on behalf of the membership creates a contradiction: 'workers' organisations which are defined and constituted through struggle tend also to contain and inhibit such struggle' (ibid, p.181). This does not mean that researchers should return to the language of 'incorporation' associated with the work of Panitch (1981) on trade unions. However, it must be noted that Hyman's position highlights the need to avoid an 'idealised and romanticised conception of shop floor organisation and action' (Hyman, 1979, p.54). In this sense, it can be argued that the term rank-and-file is little more theoretically than a 'military metaphor' (ibid, p.55).

The most notable critic of the rank-and-file perspective is Jonathon Zeitlin. He argues that the analysis of Hyman and others is based on two flawed assumptions. First, is that the interests of trade unions and their leaders involves the accommodation of capitalism in contrast to the membership. This makes assumptions about the subjective class consciousness of the membership as subjected to wage exploitation. Second, it is assumed that the rank-and-file possess latent power within the institutional structure of trade unions (1989, pp.48-9). Instead, empirical evidence demonstrates passivity and conservatism among the rank-and-file. A more

[7] It is worth noting, as Darlington and Upchurch (2012) do, that Hyman's position has changed throughout this period. His later work offers a more charitable view of trade union leaders, perhaps reflecting some of the criticisms of his earlier scholarship that will be outlined in this chapter.

accurate characterisation may focus on ideologically driven trade union leaders and timid workers, not 'expressions of a deeper contradiction between the interests of capital and labour' (ibid, p.54). Furthermore, Zeitlin notes that empirical evidence does not corroborate the view that the interests of the state contravene that of the rank-and-file. In fact, it suggests that the state facilitated its rise (1985, p.5). Numerous other empirical studies have suggested that the radical nature of British workers can be easily exaggerated (e.g. Fosh, 1981; Kelly, 1988; Lyddon, 1996; Mann, 1977; May, 1975; Terry, 1985). Edmund Heery and Patricia Fosh (1990) highlight how the complicated internal dynamics are not limited to tensions between the rank-and-file and trade unions leaders, but indeed exist within the leadership itself. The political role of trade unions can also be overplayed. Instead, they can be seen as pragmatic organisations, driven by the need to protect bargaining positions and push a bureaucratic, solid image to the membership. Moreover, they must maintain political connections with the Labour Party to ensure a limited role for the state in collective bargaining (Richter, 1973, p.17).

Building on this, Crouch has argued that trade unionism 'cannot be fitted into the stereotype of union leaders "selling out" their members by becoming incorporated in an Establishment world: the policy exchange was too substantial, and the economic position too serious, for such an explanation to suffice' (1982, p.205). Crouch is critical of Marxist scholars, particularly Panitch, for constructing 'an entire theory of trade unionism around a non-existent phenomenon – the revolutionary working class' (ibid, p.219). However, it is also clear that the implications of the reform of industrial relations would be felt differently within the trade union movement, the leadership benefitting from a formalised process at the expense of the shop steward movement (Coates, 1989, p.58). Marxist scholars have acknowledged the flaws in this rather crude debate, with John McIlroy arguing that the 'bureaucracy versus the rank-and-file thesis decontextualises, overgeneralises and unconvincingly accounts for union behaviour. It collapses the primary difficulty, trade unionism, into a manifestation, intermittent discord

between managers and members' (2014, p.525). This is almost certainly true, although here it is being used in a distinct manner. It is accepted that the distinction may underplay the complexities of trade union relations. However, the development of industrial relations policy throughout the post-war period suggests that crude assumptions about the internal dynamics of trade unions influenced the policy-making process. Nonetheless, McIlroy is correct to argue that these mistakes should not be replicated by researchers.

Once the danger of oversimplifying this complex dynamic is acknowledged, we are left with something far more unpredictable and historically specific. Ralph Darlington and Martin Upchurch note that the relationship between the leadership and the rank-and-file 'is clearly not a fixed phenomenon, but depends on the ebbs and flows of the class struggle' (2012, p.90). Moreover, it is problematic to place trade unions as representative of the working class any more than the CBI can be seen as representative of capital (Marsh and Grant, 1977, p.204). While they may be useful proxies, it would be inaccurate to consider trade unions to be homogenous blocks of shared views any more than 'capital-in-general' provides insight into the tensions between the interests of particular capitals (Burnham, 1990, p.181). Yet a discussion of corporatism broadly and British trade unions specifically highlights numerous conceptual and empirical considerations. Capital and labour are necessarily contradictory. Corporatism does not manage contestation, it internalises and reflects these contradictions because it is the product of them. Incorporation of trade unions, while intuitively helpful, presents state activity in an instrumental fashion. It also overplays the notion that trade union leaders are invested in the status quo at the expense of a radical, potentially revolutionary membership.

III. State Management and the Politics of Depoliticisation

The Link to Politicised Governing

This section seeks to operationalise the abstract distinction between the political and the economic through a discussion of politicised and depoliticised governing. The period 1945-1976 is often said to be characterised by the dominance of politicised governing strategies as the remit of the state in the sphere of economic management expanded (Burnham, 2001b). In a sense, corporatism can be seen as a form of politicised governing. David Coates, for example, discusses the politicisation of industrial relations throughout the post-war period as the state attempted to deal with economic difficulties driven by the unruly wielding of class power by trade unions (1989, pp.40-41). The introduction of incomes policy, through which it was hoped that spiralling wages could be controlled through cooperation, ensured that trade unions were 'politicised at a stroke' (ibid, p.50). This resulted in the growth of the trade union movement and shop floor in just one short decade (ibid, p.67). Timothy May makes a similar point, arguing that in the post-war period 'acceptance or accommodation of trade union demands has tended to politicise the unions' (1975, p.20). In this respect, Crouch has argued that through processes of neo-corporatism trade unions 'have moved out of the field of ordinary collective bargaining and have entered politics' (1982, p.208).

Marsh has also discussed 'the politicisation of British trade unions' at length, suggesting it was the result of 'increased involvement in union affairs' (1992, p.31). A contradictory strategy begins to emerge. On a limited scale government was consistently asking trade unions to cooperate in addressing economic challenges through the policy-making process. Yet at the same time, and as a response to the same set of economic problems, government was taking punitive steps against the trade unions as demonstrated through *In Place of Strife* and the Industrial Relations Act (ibid, p.32). McIlroy and Alan Campbell adopt a similar stance, arguing

that governments oscillated between a corporatist and restrictive approach to trade unions. The key point, however, is that 'their moderate corporatist initiatives legitimised the union leaders as political actors to an extent hitherto unknown' (McIlroy and Campbell, 1999, p.94). In effect, trade unions had been emboldened through being drawn close to state managers. Any subsequent challenge of trade union power would engage distinctly political bodies. As suggested in Chapter One, this miscalculation may well lie in a failure of state managers to understand the internal dynamics of trade unions, particularly if an attack on the militant shop floor was planned.

This approach to governing can be problematic as 'state intervention can lead to the politicisation of issues which have hitherto been regarded as being of a purely "economic" character…and this can lead to growing demands and pressure over these issues being directed at the state itself' (Kettell, 2004, p.25). In terms of the separation of the economic and political under capitalism, such processes show how the illusory dynamic can become strained, blurred and even altered if facilitating accumulation dictates (as long as the basic character remains intact). Burnham draws the link to governing, noting that 'a study of the struggles surrounding the differentiation of economic and political forms…can be read as an account of the politicisation/depoliticisation dynamic' (2014, p.191). Changes in state-labour-capital relations here focus on what Burnham has termed 'the politics of incorporation', or politicisation, to manage labour and money (2000, p.18). In conditions of relatively full employment, the ability of the state to pursue counter-inflationary strategies or strategies that restrict the working class depended on the established relationship between government, unions and employers' associations (and the internal dynamics of the membership of the latter two). Class conflict is the outcome of getting the balance wrong (Burnham, 2000, p.20). Burnham states that this was particularly acute in the British case 'with the state's attempt to reconcile the conflicting aspirations of capital and the working class resulting increasingly in struggles over the extent

of state "intervention"' (ibid, p.20). It could be argued that corporatism, seen in this way, politicises the relationship between capital and sections of organised labour in a manner designed to facilitate accumulation. Yet this settlement remains inherently unstable due to pre-existing contradictions of social relations under capitalism.

Clarke discusses how the highly politicised nature of the interventionist post-war state suffers repeated crises, coming under pressure to restructure economic and social relations. In essence, 'the institutional representation of both capitalist and working class interests presents formidable barriers to any such restructuring' (1990, p.27). For Clarke, therefore, the approach of crisis management focuses less on the economic than the political character of crisis through a process of depoliticisation (ibid, p.27). As Chris Rogers argues, that 'the conditions for successful capital accumulation are not naturally occurring means that state intervention in and regulation of the economy are required in order to both offset crises of over-accumulation and to contain the class antagonisms that this inherently creates' (2009, p.636). It is crucial to understand how transitions away from overtly politicised forms of governing take place. To do this, different governing strategies must be studied as they represent tailored responses to specific accumulation challenges. Dönmez and Sutton argue that 'it should be noted that the level of abstraction in the specification of the state-form is not the same as the specification of state management' (2016, p.696). The chapter, therefore, will discuss the additional clarity offered by an analysis of these governing strategies directly, allowing the researcher to unravel the process through which state managers 'externalise the imposition of discipline/austerity on social relations' (Burnham, 2014, p.190). In essence, it is necessary to consider how the Industrial Relations Act, in contrast to the politicised context of the post-war period, might be seen as 'a disengagement of the state from the system of industrial relations' (Clarke, 1988, p.308).

The Politics of Depoliticisation

Characterising the Industrial Relations Act as an attempt to depoliticise industrial relations reform is not entirely novel. Crouch, for example, highlights how political assessment of the national interest linked to the interventionist aspects of the Act 'jeopardised the depoliticisation of industrial conflict which was one of the main purposes of the Act' (1977, p.170). Elsewhere he is more explicit:

> The Conservatives had believed that, by exchanging industrial relations reform for incomes policy, they would not only more effectively limit union power and make strikes more difficult, but would depoliticise industrial relations: disputes which could not be resolved by the parties would go to the courts, the non-political, neutral courts of English law, and not enter politics (Crouch, 1979, pp.80-1).

Gerald Dorfman's characterisation of the Act as placing industrial relations on 'automatic pilot', a process through which 'the law would be enforced by the courts and thus constrain industrial misbehaviour without political intervention' (1983, p.15) fits a similar mould. Anthony Seldon's description of a 'hands-off' approach is a helpful characterisation (1996, p.7). In the same vein, Frank Blackaby argues that the Heath government attempted to reconfigure its relationship with industry: 'the role of government was to create a framework, within which the free enterprise system should operate' (1979, p.53). However, there is no attempt to define precisely what is meant by depoliticisation. When Burnham (2006a, 2014) describes the Industrial Relations Act as an attempt to depoliticise a problematic policy area, the assertion is accompanied by a body of literature from which a definition can be drawn.

The process of depoliticisation is 'as old as politics itself' (Fawcett and Marsh, 2014, p.174). It is not the prevalence of such strategies that is interesting but the variety of techniques and approaches adopted. This, however, can only be uncovered with 'detailed empirical

analysis' (ibid, p.174). In the study of governing Britain, a precise framework has proved invaluable in providing insight into the decision-making processes of state managers throughout the twentieth century and beyond. At its core, this approach builds on Jim Bulpitt's notion of statecraft, defined broadly as '[t]he art of winning elections and achieving some necessary degree of competence in office' responding to 'the electoral and governing problems facing a party at a particular time' (1986, p.21).[8] More specifically, Bulpitt discusses five stages present in a successful statecraft strategy. They include devising a winning electoral strategy, party management, political argument hegemony and the creation of a subsequent winning strategy (ibid, pp.21-2). Governing strategies are devised that 'employ supportive manipulative techniques to ensure, as far as possible, that they achieve their crude, subsistence level objectives' (Bulpitt, 1996, p.225), namely achieving re-election. Governments can establish the perception of governing competence by adopting policies that seek to depoliticise, that is '*the process of placing at one remove the political character of decision making'* (Burnham, 2001b, pp.127-8; 2014, p.189). Although this often entails the delegation of some decision-making tools, it must be acknowledged it does not constitute the absolution of authority for a depoliticised area. Indeed, the key to such strategies is the retention of arm's-length control over a given economic or social policy area while simultaneously seeking to distance government from the potentially electorally damaging consequences of unpopular decisions (Burnham, 2001b, pp.128-9).

This contribution has been complimented by the work of Matthew Flinders and Jim Buller. They define depoliticisation in terms of '*the range of tools, mechanisms and institutions through which politicians can attempt to move to an indirect governing relationship and/or*

[8]This model has been used extensively in the study of British politics. It has enjoyed a broad application, from assessing political leadership (Buller and James, 2012), financial deregulation (Copley, 2017), austerity (Gamble, 2015), electoral modernisation (James, 2010) among many other applications. It has been employed extensively to address approaches to governing of both the Conservative and Labour Parties in office (see, for example, Burnham, 2001b; Buller and James, 2012; Hayton, 2014; Stevens, 2002).

seek to persuade the demos that they can no longer be held responsible for a certain issue, policy field or specific decision' (2006, pp.295-6). In essence, this can be seen as a process of 'arena-shifting' as political decision-making is ostensibly moved (Flinders and Buller, 2006, p.296). However, it must be noted that such strategies remain 'highly political' (Burnham, 2001b, p.136). This point cannot be overstated. Depoliticised governing strategies, by design, seek to veil their political character. In turn, the inevitable class conflict resulting from policies designed to facilitate the accumulation of capital can be presented as economic, cast to the remit of civil society. The positive implications for government are clear, as controversial or divisive policy decisions can be portrayed as entirely necessary. Specifically, as a tool employed to manage economic crisis (Burnham, 2014) such strategies offer much that the conscientious state manager would admire.

Flinders and Buller's primary contribution is to identify three forms of depoliticisation state managers may adopt. First is *institutional depoliticisation,* where policy parameters are established by government but their management and administration is conducted by a non-governmental body. Second is *rule-based depoliticisation,* through which government chooses to succumb to external rules which limit its ability to act contrary to pre-defined objectives. Third is *preference shaping,* where rhetorical devices are employed to portray an issue as beyond the scope of government activity (2006, pp.298-311). All have their merit, and are applicable dependent on the circumstances facing state managers. While 'credible rules' through international systems such as the Gold Standard may be the most solid in terms of outcomes (Burnham, 2001b, p.134), such external pins for economic policy are not always available. Indeed, in terms of industrial relations reform, a domestic approach was necessary that was still capable of achieving a counterinflationary impact through externalising responsibility in the manner Burnham (2001b, p.136) has described. While measuring the success of such strategies can be difficult (Kettell, 2008), as an analytical framework

depoliticisation offers intuitive and plausible explanations for the actions of state managers that can be tested empirically.

The net of depoliticisation as a theoretical lens has been cast wide, pushing the boundaries of what is to be considered 'political' (Jenkins, 2011) and seeking to move conceptual development beyond the *governmental* towards *societal* and *discursive* forms (Wood and Flinders, 2014). However, researchers must remain cautious before suggesting 'depoliticisation is everywhere' (Burnham, 2014, p.190). That *societal* and *discursive* aspects of a particular governing strategy may well be present is not disputed. Indeed, the different 'faces' of depoliticisation may become necessary presentational facets of an overarching strategy. Matthew Wood and Flinders do indeed acknowledge 'the layering and interdependency of governmental, societal and discursive strategies in a range of policy areas' (2014, p.165). Elsewhere they defend their attempt to 'broaden out the conceptual terrain of politicisation and depoliticisation' on the grounds of needing 'to "think big" in terms of generating broad, cross-disciplinary frameworks in an increasingly hermetic and segmented academic context' (Flinders and Wood, 2015, p.227). This necessity, again, is not in itself denied. However, a broad reading of Open Marxist scholarship focused on depoliticisation – including Burnham, Rogers, Kettell and Sutton – speaks of an expansive theoretical approach to understanding the fetishisms of capitalism. However, such examples warrant a focus on aspects of state management due to their chosen subject matter. This need not be taken to mean other sites of analysis, such as gender or discourse, are ignored.

Burnham's approach has also been critiqued by Colin Hay, who argues that a 'conspiratorial sub-text' permeates the secondary literature, seeing depoliticisation as 'a sinister and subterranean device used by political elites to insulate themselves from critique in order more effectively to impose their (presumably malevolent) desires upon those subject to their power' (2014, p.303). Such criticism is best overcome through rigorous empirical research,

allowing the conceptualisation to be defended accordingly. This framework has been utilised to identify governing strategies throughout the twentieth century, suggesting consistency rather than conspiracy. Notable examples include the Gold Standard (Kettell, 2004), Operation Robot (Burnham, 2003), the Minimum Lending Rate (Burnham, 2011), the Social Contract and IMF conditionality in 1976 (Rogers, 2009, 2010, 2012), the Exchange Rate Mechanism (Bonefeld and Burnham, 1998; Bonefeld et al., 1995; Kettell, 2008) and, more generally, the strategies employed by the Thatcher governments (Flinders and Buller, 2006), New Labour governments (Burnham, 2001b; Buller and Flinders, 2005; Hay, 2007) and the Coalition government (Kerr et al., 2011). This thesis offers one more piece of an ever enlarging jigsaw demonstrating that the governing preferences of state managers tend towards depoliticised strategies.

The 'Success' or 'Failure' of Depoliticisation

Any framework designed to analyse the Industrial Relations Act must acknowledge the universal view within the literature that it was a failure. However, evaluating policy 'success' or 'failure' is notoriously difficult (see Marsh and McConnell, 2010). Steven Kettell has noted that approaches to depoliticisation have tended to focus 'on conceptual deconstruction, disaggregating the various meanings and forms of depoliticisation as well as the methods by which it can be deployed' (2008, p.630). However, there has been a 'relative lack of attention given thus far to research into specific depoliticisation policies themselves…the question as to whether, how and to what extent depoliticisation actually works in practice' (Kettell, 2008, p.630). While this thesis provides the first rigorous application of the depoliticisation framework to the Act, its primary significance is that it offers a unique site of analysis when compared to existing examples of the approach. First, it is an early example of the bourgeoning trend moving towards the dominance of depoliticised strategies and, second, it represents an instance of relative failure through which state managers would presumably seek to modify their approach. In this sense, the measure of success or failure offered by Kettell, that of the

material effects and the impact of *perceptions* (2008, pp.635-7), can be a useful starting point to understand why certain strategies perform better than others. In addition, Wood has argued that research needs greater focus on non-state actors and contextual factors, what he calls the '*drivers of depoliticisation'* (2016, p.5). By implication, this would suggest there are drivers of (re)politicisation. It is of course the case with industrial relations reform that context is crucial.

This approach provides an insight into the stresses, strains and constraints that may inflict particular strategies. However, to focus on success and failure is perhaps to ask the wrong question. Rogers argues that while 'the social relations of production appear in an inherently crisis prone form which may make governing strategies of depoliticisation *appear* imperative, it does not determine their deployment' (2009, p.638). Furthermore, analysing success or failure is problematic as the contradictions of capitalism mean they will inevitably fail. With this in mind, Rogers suggests that it may be more fruitful to focus on the appropriateness of the particular type of strategy adopted (ibid, p.649). This can assist in evaluating why particular strategies failed to achieve primary aims. More recently, it has been argued 'that politicisation and depoliticisation can be complimentary and self-reinforcing, a "duality" rather than a dualism leading to a hybrid form of statecraft' (Diamond, 2015, p.449). Often such strategies operate in tandem or potentially in contradiction to one another. Opportunities also exist to look at particular actor groups. For example, the concept of 'ministerial politicisation' could assist in focusing the researcher's attention on departmental responses to policy problems for short-term electoral gains (Burnham, 2007). Ultimately, as Grant has convincingly argued, pressure group politics can 'overload the policy-making process and frustrate depoliticisation' (2008, p.204). However, the manner in which this process takes place will vary considerably dependent on the nature of the strategy and the context within which it is adopted.

The Industrial Relations Act sits uncomfortably in terms of its politicising and/or depoliticising effects. This complexity must be acknowledged if its challenging existence is to

be understood. Stephen Bates, Laura Jenkins and Fran Amery are helpful here, arguing that 'the content and context of (de)politicisation matters; processes of (de/re)politicisation should be viewed in terms of opening up and foreclosing of deliberation, engagement and agency, as well as in terms of shifting boundaries' (2014, p.257). In assessing the limits of depoliticised governing Burnham argues '[i]t would be naïve to assert that by depoliticising economic policy state managers can avoid the emergence of political unrest' (2014, p.202). This is particularly the case when the overall landscape is politicised through years of creeping corporatism and perceptions of trade union incorporation. In essence, it is difficult to depoliticise certain aspects of trade unionism against this backdrop. Indeed, scholars have attributed Margaret Thatcher's ability to tame trade unions to the increasingly depoliticised context within which her governments operated (Davies and Freedland, 1993; Fairbrother, 1998). Acknowledging this ensures that research moves away from seeing the transition as a simple evolutionary trend (Buller and Flinders, 2005), instead focusing attention on 'the relationship between politicised and depoliticised strategies *within* a regime that may be characterised by the dominance of one political form' (Burnham, 2006a, p.305). This provides rich contextualisation without losing sight of the fact that inevitable crises in the accumulation process ensures the resort to depoliticised governing by state managers remains their preference. That the strategy will achieve a momentary reprieve is anything but certain. That it will fail eventually is likely. Historical analysis can assist in identifying the particularities of each case and how they relate to processes of accumulation.

Conclusions

This chapter has argued that an Open Marxist perspective, in particular the abstract-concrete dialectic, can assist in identifying the challenges and constraints faced by state managers and the strategies employed to respond to them. Through an abstract discussion of class struggle and the circuits of capital, researchers are able to pin point moments of weakness or blockage

in the flow of capitals, extrapolating how this manifests itself as political or economic crisis. True to Marx's method, it allows for the elucidation of particular moments of capital accumulation to be studied without neglecting the ever-present context of the social whole. In essence, analysis of the micro-strategies of the state furthers understanding of the state form, highlighting the necessity for 'conceptually informed historical research' (Holloway and Picciotto, 1977, p.90). Given the haphazard and contradictory nature of capital accumulation it is unsurprising that such processes require state management. However, at a fundamental level it is capitalism's ability to present a separation between the political and economic wherein lies its success. While the labour-capital dynamic is able to remain broadly economic, the political nature of the capitalist mode of production is obscured, the state acting as the veil.

This framework reflects the general critical consensus that something akin to 'corporatism' was at work throughout the post-war years. Much of this scholarship, however, is unsatisfactory given the conceptualisation of the state adopted in the first sub-section, even though it is highly informative and necessary for contextualisation. The key argument is that notions of 'corporatism' in the British context should be grounded in empirical reality. Indeed, there is little evidence that Britain could ever be described as truly corporatist. Seeing 'tripartism' as demonstrative of the relationship between the state, capital and labour is also problematic. While offering potentially useful characterisations of particular junctures in British political history, in line with the Open Marxist perspective corporatism should not be seen as a strategy imposed by the state in a functionalist manner. Instead, this dynamic is a product of the class struggle, reflects the class struggle, internalises the contradictions of the class struggle and changes incrementally as the dynamics of struggle change to accommodate the challenges of accumulation. Again shifting vantage point, the chapter argues that it is crucial to explain not only why trade unions – their leaders and members – behave in the way they do, but also how their activities may affect the viability of a governing strategy. This broad-brush

approach, however, must be supplemented with a focus on the *specific* governing strategies found within a loosely corporatist context.

Given the expansion of the state, changes in expectations and the predominantly politicised context of the post-war period, discussion of successive and on-going periods of crises direct researchers to question how this might be smoothed. The framework offered by the depoliticisation literature allows for specific strategies to be analysed against this backdrop. It necessitates in-depth empirical analysis into decision-making processes through reference to primary records. Homing in on this aspect of governing also allows for the tensions between politicised and depoliticised governing to be drawn out. Contradictions surrounding the need to facilitate accumulation and manage the labour-capital dynamic can be highlighted. The Industrial Relations Act stands as a bridge between the dominance of politicised governing and contemporary depoliticised strategies. This thesis argues that that the Heath government attempted to depoliticise the rank-and-file to respond to the challenges of industrial relations, yet did so in a context in which the trade union leadership had been repeatedly drawn into state management, blurring the separation of the political and the economic. It is this tension that fuels the challenges that dominated the life of the Act as a depoliticised governing strategy.

Chapter 3
The Reform of Industrial Relations Law, 1958 – August 1971

Introduction

As discussed in the previous chapter, industrial relations reform represents the state's attempt to reconfigure social relations in light of persistent accumulation problems. This chapter demonstrates that the 'corporatist' context, characterised largely by incomes policy and the voluntarist tradition, was seen to have failed. The pluralism of traditional industrial relations scholarship had been rejected, and its embodiment in the final report of the first Royal Commission on trade unions since 1903 did little to alleviate the growing political discontent at the prevalence of unofficial and unconstitutional strike activity. The role of trade unions had become politicised through a loose form of corporatism, emboldening their leaders and expanding their remit beyond the confines of industrial disputes. It is against this backdrop that industrial relations legislation was devised, intending to depoliticise reform of the militant shop floor, shifting accountability for the maintenance of harmonious collective bargaining to both sides of industry – specifically to trade union leaders and management. The tenure of the

Conservative government, elected in June 1970, can be contextualised by this challenging landscape. The key question of this chapter revolves around whether an 'accountability shift' would require the acceptance of the concerned parties. If so, only then would the eventual legislation be capable of shielding government from the damaging consequences of reform.

The core argument of this chapter is that once in power, the Conservative government pursued its programme in haste to ensure its proposals were on the statute book as soon as possible. The policy implications of this initial miscalculation are considerable. Aware that industrial relations reform was not a short-term solution, ministers hoped it would form part of a gradual withdrawal of the government from its overtly political role during disputes. However, in the process, the government isolated key representatives of capital and labour. First, the chapter looks at the Conservative Party's policy formation process, devising what would eventually become *Fair Deal at Work* (Conservative Political Centre, 1968) and the Industrial Relations Bill. In contrast to the work of the Donovan Commission, the Party's proposals reflected the political mood. In addition, it is evident that the proposals were designed to produce an 'accountability shift' as industry was expected to 'put its own house in order'. The chapter then moves on to discuss the initial stages of government from June 1970, demonstrating how, in spite of attempts to provide detailed policy proposals when in Opposition, disagreements within the Conservative Party over aspects of reform (Dorey, 2001, p.115; 2006b, pp.47-64) were not ironed out in the final Act.

Second, therefore, the perceived necessity for steadfastness in the opening phase of government is discussed. In particular, the chapter evaluates a number of potential contradictions highlighted by officials from the outset. However, such concerns were largely disregarded. Swift enactment was always favoured over a more measured approach necessitated by the complexity of the task at hand. Third, the chapter demonstrates that trade union leaders and employers, representatives of both capital and labour, were now largely ostracised from

any consultation process. Yet it was these actors that were asked to discipline militant labour as part of the state's depoliticised governing strategy. Furthermore, growing disquiet among officials was ignored as the government's sense of urgency dominated the policy process. Finally, the implications of the government's hasty approach are addressed. In particular, the difficulties associated with facilitating an 'accountability shift' when the concerned parties had been isolated from the policy-making process begin to emerge. Government was playing a long-game, yet this was at the expense of inflaming tensions in an already politicised environment.

I. The Conservative Party's Approach to Reform in Context

Industrial Unrest and Formulating Policy

From the late 1950s, the British economy was characterised by the increasing prevalence of unofficial and unconstitutional strikes across all industries except mining (Goldthorpe, 1974, p.419). Given that such disputes tended to rise out of rank-and-file initiatives, they were difficult to predict (Hyman, 1989, pp.41-3). Not only were major industries being regularly brought to a standstill, but the state had few answers to increased militancy and spiralling wage demands (Wrigley, 1996, pp.106-55). A consensus among politicians propagated around the view that militant trade unionists were bypassing their leadership, conducting short, wildcat strikes to drive hard negotiations with management (Coates, 1989, pp.45-6). In addition, trade union immunity and the right to strike had been challenged by the House of Lord in *Rookes v Barnard,*[9] threatening the legal protections of trade unions at the hands of judge-made law (Thorpe, 1999, pp.134-5). The traditional position of relative state absence from the sphere of industrial relations that had endured for much of the twentieth century also came under pressure. Trade union membership had risen throughout the 1960s and into the 1970s, in part a reflection

[9] See *Rookes v Barnard* [1964] UKHL 1 where the trade union was held liable for intimidation of an employer over the continued employment of a non-union member. This case led directly to the incoming Labour government enacting the Trade Disputes Act 1965 to restore earlier trade union immunities.

of increasing retail prices, low wages and increasing unemployment (Wrigley, 1996, p.278). Unsurprisingly, an increase in the concentration and strength of organised labour drew the attention of state managers to their activities, with trade unions often held as scapegoats for poor economic performance (Aldcroft and Oliver, 2000, p.88).

Table 3.1 *Net strike activity known to be official in relation to net total strike activity, 1960-8*

Year	No. of Strikes	As a percentage of total	No. of workers involved (000s)	As a percentage of total	No of working days lost	As a percentage of working days lost
1960	68	5.8	24	4.1	497	19.6
1961	60	4.9	80	15.1	861	37.3
1962	78	6.3	3809	89.2	4109	74.8
1963	49	4.5	80	18.2	527	36.9
1964	69	4.7	119	16.7	648	32.8
1965	97	6.0	94	12.4	607	24.1
1966	60	4.3	50	10.1	1172	51.4
1967	108	6.3	36	5.2	394	14.7
1968	91	4.2	1565	70.2	2199	76.6
Average	**76**	**5.2**	**651**	**54.7**	**1224**	**42.6**

Source: Durcan et al., 1983, p.110

Outside of party politics, anti-union sentiment was taking hold. The Economist, for example, concluded a three article series by arguing: 'If the trade union movement will not be responsible to anyone but its own members, and not very effectively to them, then it cannot have its privileges…The better course, clearly, is to make trade unions responsible' (The Economist, 1958a, p.643; see also The Economist 1958b; 1958c). A year earlier the left-wing Fabian Society highlighted the increasingly murky waters surrounding the relationship between trade unions and individuals (Grunfeld, 1957). However, the Inns of Court Conservative and

Unionist Society provided the first frontal attack, publishing *A Giant's Strength* (ICCUS, 1958) in January 1958. Offering an analysis of the perceived economic and social difficulties created by British trade unionism, the pamphlet focused on the supposed disproportionate strength of organised labour and its ability to damage the national economy (Ibid, p.15). It recommended outlawing both political strikes and those in contravention of trade union rules. In addition, it called for trade union rules to be subject to oversight by the Registrar of Friendly Societies and for a court be established to decide the legality of disputes. Recognition by employers of established trade unions should also be extended (ibid, pp.54-56).

For Tim Bale, once the broadly corporatist governing context had seemingly failed, ideas 'which at the time had seemed needlessly provocative, suddenly seemed like common sense' (2012, p.139). However, in the late 1950s the Conservative Research Department (CRD) branded radical alternatives as 'ill-informed and ill-considered, ranging over a host of problems both real and imaginary' (CPA ACP 3/6, Trade Union Reform, 25 November 1958, p.1). The Labour Party's decision to hold a Royal Commission catalysed events. Responding to the encroachment of judge-made law on trade union immunities, Ray Gunter, Minister for Labour, announced:

> We will restore the legal position the unions thought they had before these legal decisions – on the very clear understanding that they will cooperate to the full in a broad inquiry into the position of the unions and their relationship to society (cited in The Sunday Times, 23 August 1964).

The Conservative Party's policy review centred around the work of the Advisory Committee on Policy, headed by Edward Heath from 1964. A Policy Group on Trade Union Law and Practice was established in February 1965 under the Chairmanship of Lord Amory. The terms of reference were: 'To review the position of the trade unions in our society, and to consider

what changes, if any in the law relating to trade unions are required' (CPA CRD 3/17/19, Mr. Heath's Policy Groups, 3 February 1965).[10] It is here that the Conservative Party's fledgling approach to reform was developed.

The Group's first report represented an immediate departure from the traditional settlement with trade unions, arguing that 'those special legal privileges granted in the days of their weakness should be put to new tests of public interest' (CPA CRD 3/17/21, PG 20/65/51 – Report of the Policy Group on Trade Union Law and Practice, 14 July 1965, p.2). It argued for the vetting of trade union rules by a strengthened Registrar, legally enforceable collective agreements, the creation of special industrial courts, greater restrictions on industrial action in essential services, an opt-in political levy, oversight of restrictive practices, reform of the closed shop, and a code of industrial practice among other recommendations (ibid). This was the first step towards devising a legal framework – rules to which trade unions must comply – although minimal detail was provided regarding enforcement. However, it was acknowledged that such a major piece of legislation should not appear to be anti-union (ibid, p.21). These proposals were translated almost in their entirety into the policy document *Putting Britain Right Ahead* (Conservative and Unionist Central Office, 1965), published in September 1965.

Under the chairmanship of Sir Keith Joseph, it was suggested that the proposals 'appear a little unbalanced objectively' (CPA CRD 3/17/20, Keith Joseph – Matters for Further Consideration, 11 January 1966, p.12). While the aim was to protect the public interest, unions had to be prevented from posing 'as political victims or martyrs in a class war' (ibid, p.12). However, there are clear signs that leading Conservatives believed the law would prove an effective means of managing trade union behaviour. Geoffrey Howe, for example, concluded: 'Prisons are not wildly congenial and martyrdom is not enormously fashionable' (CPA CRD

[10] For a detailed overview of the decision-making processes of this Policy Group see Taylor, 1993, pp.177-86.

3/17/20, Howe – Injunctions and the Industrial Relations Act, 13 January 1966, p.4). The Group's second report is notable for demonstrating a novel aspect of reform – an 'accountability shift'. The state would provide a legal framework, an armoury for employers and responsible trade union leaders to use against militants. The report argued that '[a]rmed with these new rights, and with statutory machinery at hand, an employer will be putting himself in an extremely weak position if he fails to take action after talks have produced no quick return to work' (CPA CRD 3/17/20, PG 20/65/72: 2nd Report of the Policy Group on Trade Union Law and Practice, 10 February 1966, p.6).

Purporting to 'modernise our cobwebbed and anomaly ridden system of industrial relations to the benefit of all' (CPA CRD 3/17/3, Press Notice – Fair Deal at Work, 8 April 1968), the final policy document, *Fair Deal at Work* (Conservative Political Centre, 1968), was published in April 1968. The case for a unifying Act of Parliament was made. It argued that 'unless, as a nation, we can get more harmony, positive co-operation and unity of purpose into our industrial life, our struggles for higher productivity, expanding exports and higher standards of living can make only marginal progress' (ibid, p.9). While a position of conflict existed it was held 'that a fair, relevant and sensible framework of law, while providing no panaceas, can exert stabilising pressures and help raise general standards in the way men do business' (ibid, p.10). Registration would be necessary to receive trade union status (ibid, pp.21-2), industrial courts comprising of legal and lay members from both sides of industry would be created (ibid, pp.36-7), a Code of Practice would be introduced to regulate behaviour (ibid, pp.53-5), legal enforceability of collective agreements would be imposed (ibid, p.32) and large swathes of strike activity would cease to be protected as a 'trades dispute' (ibid, pp.30-31). Various individual rights would be protected through new unjust dismissal criteria (ibid, p.36) and protection against those who abstain from the closed shop would be introduced (ibid, pp.25-6). In a further interventionist proposal, greater power for the Ministry of Labour to refer disputes

to an industrial court was advocated, including the imposition of injunctions and ballots (ibid, pp.39-41). This was the clearest statement of intent in advance of the 1970 General Election.

The Donovan Commission and *In Place of Strife*

The publication of the Donovan Report in June 1968 represents 'the highpoint of intellectual pluralism in the sphere of industrial relations' (Howell, 2005, p.102). Leading figures considered its membership to be left-wing (CPA CRD 3/17/21, Royal Commission on Trade unions, 20 December 1966), in part influencing the decision to attempt to undermine its work (see CRD ACP 3/14, Strategy, 1966), outflanking the report to establish *Fair Deal at Work* as 'a yardstick against which the Royal Commission's report would be judged' (CPA CRD CRD 3/17/3, Carr to Heath, 28 December 1967). Nonetheless, it should not be assumed that there was unanimity surrounding *Fair Deal at Work.* Indeed, Peter Dorey identifies constant tension and compromise between hard-line and practically minded reformers in the Party (2006, pp.50-1). Nonetheless, it is certainly the case that the Donovan Commission was dominated by scholars of the Oxford School of industrial relations, headed by Hugh Clegg, and did not, therefore, reflect the political mood (Davies and Freedland, 1993, p.254). In essence, the predictions surrounding the Donovan Report proved broadly accurate.

While extensive, its conclusions and recommendations were often in contrast to *Fair Deal at Work*. However, it was also 'far from being a mere rearguard action in favour of a fatally weakened status quo' (Davies and Freedland, 1993, p.256). The Donovan analysis focused on two systems of industrial relations functioning simultaneously – the formal and the informal. Constantly in conflict, it was the dominance of the latter which damaged existing regulatory arrangements between the parties involved in collective bargaining. In contrast to the implicit emphasis of *Fair Deal at Work* on taming the trade unions, the Report focused on the deficiencies of employers in collective bargaining arrangements. In addition, the analysis

was mindful of internal trade union dynamics, particularly the need to strengthen trade union leaders at the shop floor (HMSO, 1968). Crucially, the report called for

> a change in the nature of British collective bargaining, and a more orderly method for workers and their representatives to exercise their influence in the factory; and for this to be accomplished, if possible, without destroying the British tradition of keeping industrial relations out of the courts (ibid, pp.46-8).

Although the Report argued for legislation, it should not be of an interventionist nature. It suggested that collective agreements should be lodged by employers with the Department of Employment and Productivity (DEP) and that a Commission of Industrial Relations should be established to investigate, make recommendations and generally facilitate smooth industrial relations (ibid, pp.46-53).

While the Report acknowledged unacceptable levels of strike activity, it stopped short of recommending legal intervention into collective bargaining practices. In contrast to *Fair Deal at Work,* it argued that collective agreements should not be legally enforceable. Such steps 'would not only be useless but harmful, and they would undo a great deal of the good we hope to see done through the reform of the collective bargaining system we recommend' (HMSO, 1968, p.137). The Report, however, was not unanimous in its view that collective bargaining should remain outside of the law. The primary dissenter, Andrew Shonfield, argued that 'the deliberate abstention of the law from the activities of mighty subjects tends to diminish the liberty of the ordinary citizen and to place his welfare at risk' (ibid, p.290). Nonetheless, as Roberts (1968) argues, the final Report was largely ambiguous on the role of trade unions, and with the exception of proposals in *Fair Deal at Work* regarding limitations on strike activity, the overarching conclusions and recommendations had similarities.

The Report did not reflect the political mood of the time. It was not politically feasible, and was even accused of being timid (Howell, 2005, p.108). Richard Clutterbuck, for example, argues that 'the solutions were too gradual and long-term to satisfy public expectations' (1978, p.32). Moreover, the conclusions have been seen as contradictory, largely because legal sanctions were not rejected outright (Panitch, 1976, p.168). The Donovan Commission might have identified the sickness, but its prescription was deemed inadequate. This emboldened the incumbent Labour government to adopt tough measures beyond the Report's recommendations (see Barnes and Reid, 1980, p.110; Clegg, 1972, pp.456-7; Coates, 1989, p.47). Indeed, the response has been said to reflect *Fair Deal at Work* more than the Commission's Report (Dorfman, 1979, p.17). The eventual White Paper, *In Place of Strife* (HMSO, 1969), maintained that industrial conflict was having a negative impact on the prosperity of the nation, arguing that reform could not be achieved by employers, unions and employees alone but necessarily required government intervention (ibid, p.5). Unofficial strike activity had implications beyond the industries directly affected. The ability of existing collective bargaining arrangements to cope with such militancy moved government towards reform covering collective bargaining, the rights of trade unions, particularly strengthening leaders, and measures to protect the community and individuals from the negative consequences of strike activity (ibid, p.8-9). However, running contrary to the Donovan analysis, the Labour government included powers of direct intervention for the Secretary of State through imposing orders to desist strike activity when deemed unofficial and calling for ballots in all cases (ibid, pp.28-30).

While the Sub-Committee responsible for transforming *Fair Deal at Work* into a Bill did not believe the Donovan approach 'would be sufficient or effective to hold the scales of justice and convenience in suitable repose' (CPA CRD 3/17/22, Interim of Report of Sub-Committee of SCL, 14 August 1968), Robert Carr was more positive about *In Place of Strife,* describing how 'the government has taken some of the outer clothing, but we think they have

left off many of the most important foundation garments' (cited in The Times, 1969; see also Wrigley, 1997, p.83). Indeed, the two policies were remarkably similar in terms of intended outcomes, even if in the detail the Conservative Party's approach was more restrictive in places (CPA CRD 3/17/3, PLC (69) 1 – White Paper on Industrial Relations, 20 January 1969). Carr described the Labour government's approach as amounting to 'ministerial intervention' (HC Debate, 3 July 1969, Vol. 786, c.667). His own proposals were designed to provide a framework within which industry would reform itself. Intervention, it was hoped, would be minimal (cited in Taylor, 1993, p.183). In response to criticism from employers that reform would not necessarily reduce unofficial strikes, Carr wrote 'law cannot by itself bring about any magic solution to our problems – least of all overnight; but it can be a powerful influence in creating the climate in which industry itself can put its own house in order' (CPA CRD 3/17/3, Carr to Group Leader, 2 January 1969; CCO 4/9/113, p.1). The essence of the Conservative approach is clear – provide a legal framework in the hope that industry, primarily trade union leaders and management, would act as enforcers.

When the Labour government left office in June 1970, 90 per cent of strikes remained unofficial (Holmes, 1997, p.17). The Party had been damaged politically, creating a void between the political and industrial arms of the labour movement (Dorfman, 1979, p.49; see also Dorey, 2006a; Jenkins, 1970). Furthermore, despite on-going disagreements on the detail of reform (Dorey, 2001, p.115; 2006b, pp.47-64), the Conservative Party's manifesto reflected *Fair Deal at Work,* committing the next Conservative government to legislation. It stated:

> We will introduce a comprehensive Industrial Relations Bill in the first Session of the new Parliament. It will provide a proper framework of law within which improved relationships between management, men and unions can develop. We welcome the TUC's willingness to take action through its own machinery against those who disrupt industrial peace by unconstitutional or unofficial action. Yet it is no substitute for the

new set of fair and reasonable rules we will introduce (Conservative Party, 1970 [2000a], p.184).

Ultimately, as one senior official in the Department of Employment (DE)[11] later put it, Donovan, *Fair Deal at Work* and *In Place of Strife* 'were preoccupied with the need to reduce unofficial stoppages and irresponsible activities at a local level which were regarded as a crippling burden on the economy and a serious nuisance to most of the workers affected' (TNA LAB 10/3928, Barnes to Edwards: The Three Registration Schemes, 1 May 1973). However, the micromanagement and ad hoc intervention in industrial disputes that had characterised the 1960s (Howell, 2005, p.110) would now end. The Conservative Party's proposals contained a unique element. A clear attempt was made to shift accountability away from the party in office in a manner akin to depoliticised governing. How this would be achieved, however, was yet to be fully understood.

II. Putting Planning into Action

A Policy of Real Firmness

In addition to the ongoing crisis of unofficial strike activity, when the Conservative Party entered office in June 1970 wage inflation exceeded 10 per cent, with prices floating around 7 per cent, both almost twice the 1960s average (Cairncross, 1992, p.189). In effect, the new government found itself 'in the middle of a wages explosion' (Blackaby, 1978, p.54). Swift action was taken to ensure the nationalised industries would take the lead on restraining wage settlements (TNA LAB 10/3506, Meeting with Chairmen of Nationalised Industries, 6 August 1970). Given the rejection of incomes policy and the commitment to industrial relations reform, this was undoubtedly a difficult governing context. Carr, newly appointed Secretary of State

[11] It should be noted that the Department of Employment and Productivity (DEP) became the Department of Employment (DE) on 12 November 1970.

for Employment and Productivity, informed the Ministerial Committee on Economic Strategy that 'a policy of real firmness will certainly lead to many threats of strikes or militant action…we shall have to refuse to be frightened by such threats' (TNA CAB 134/2793, ES (70) 2 – 'Wage Inflations', 3 July 1970, p.4). Furthermore, in keeping with previously stated attitudes that industry should 'put its own house in order', access to the DEP's conciliation services was limited (TNA LAB 10/3506, Press Release, 23 September 1970).

Table 3.2 *Retail Price Index, 1969 – 1970*[12]

Year	Quarter	RPI All items	Percentage Increase All items
1969	1	92.5	6.2
	2	94.0	5.4
	3	94.2	5.1
	4	95.4	5.1
1970	1	97.1	5.0
	2	99.5	5.8
	3	100.6	6.9
	4	102.7	7.7

Source: Government Statistical Office, 1975, p.42

The industrial relations landscape, in particular the marked increase in days lost to strike activity since 1966, was presented to Cabinet, justifying the Conservative Party's approach to reform. In 1969 6.8 million working days were lost, the highest figure since 1957 (TNA CAB 129/150, CP (70) 7 – Industrial Relations Situation, 1 July 1970). It was argued that 'the Donovan Commission was wrong in assuming that if proper machinery were established at company and plant level, the problem of unofficial and unconstitutional strikes would shortly

[12] 1970 Average = 100 per cent

disappear' (ibid, p.3). The government faced a national dock strike and disruption was on-going in both the print and steel industries. Numerous other disputes were predicted in the first months of the government, both in the public and private sectors (ibid, Annex 1). It was no surprise, therefore, that the government notified the TUC immediately that a legal framework would be imposed. While this was opposed by Vic Feather, General Secretary of TUC, reassurance was offered that full consultation would be provided and that '[i]t was certainly not the government's intention to rush forward legislation' (TNA LAB 10/3559, Meeting between Carr, Feather and Greene, 23 June 1970). Given the monumental battle that had only recently concluded over *In Place of Strife,* trade union leaders could be forgiven for believing the government would act with caution.

Establishing the legal framework would commence in earnest for, as Heath later noted, it 'represented the centrepiece of our long-term economic programme' (Heath, 1998, p.334). However, in contrast to the message delivered to Feather, Cabinet was informed that the major provisions of the Industrial Relations Bill would be devised without consultation, closely following *Fair Deal at Work* and with only minor additions on points of detail. Haste was at the heart of the strategy (TNA CAB 129/151, CP (70) 30 – Industrial Relations Legislation, 28 July 1970). Carr acknowledged that the proposals would be challenged by the trade unions and were unlikely to be welcomed by employers. It was noted, although only in passing, that employers would 'not find attractive many of the proposals outlined above which, though they establish new and narrower limits to legitimate industrial action, usually leave it to the employer to see that the unions do not take action outside the limits' (ibid, p.5). When Cabinet met to discuss the document, Carr argued that the government must remain steadfast in its commitment to reform, irrespective of the displeasure of either side of industry. He was explicit in stating that 'whatever the political battle or the industrial action that might ensue…when it reached the Statute Book, it would promote an improvement in industrial relations and would offer better

prospects for industrial peace' (TNA CAB 128/47, CM (70) 10th Conclusions, 30 July 1970, p.15).

Understanding the *Fair Deal*

In the early days of government, the Conservative Party's programme for reform came under scrutiny from within the DEP. While there was support for reform among senior officials (Howe, 1994, p.59), it has been noted that 'the Act was scarcely understood by its own advocates' (Charmley, 2008, p.199). In July 1970, soon after the General Election, officials held a conference at Sunningdale Hotel to discuss all elements of the proposals. Designed to formulate advice for the new Secretary of State, a detailed analysis of every aspect of *Fair Deal at Work* was conducted (see TNA LAB 43/586, Conference on Industrial Relations Legislation, Sunningdale, 17-18 July 1970). However, as one junior official reported, 'we went through the legal aspects and there were large chunks I didn't understand' (cited in Holmes, 1997, p.32). Moreover, the reports suggest that officials were well aware of the potentially contradictory nature of the strategy to be employed (see TNA LAB 43/586, Sunningdale – IRL 8, 17-18 July 1970, p.3). In terms of an accountability shift to create a distancing effect from government, a number of pitfalls were identified.

Referral of trade unions by the Secretary of State to an 'independent' body to decide on recognition or bargaining rights was questioned. As this would ultimately require statutory sanctions, the Secretary of State would be exposed, a position deemed 'philosophically unacceptable' (TNA LAB 43/586, IRL 1 – Recognition, Bargaining Rights and Bargaining Structure, July 1970, p.2). Officials acknowledged that legal enforceability of collective agreements would be unpopular with employers and trade unions (TNA LAB 43/586, IR2 – Legal Enforceability, July 1970, p.2). Crucially, employers would favour powers of enforcement resting with the Secretary of State, yet this would pose both 'political and practical

problems' by drawing government too close to the process (ibid, p.11). The report speculated that:

> On balance the better course would seem to be to leave responsibility with the employer who would in many cases decide against taking proceedings. Nevertheless, the risk that proceedings might be taken would be a moderating influence on the unions, and employers will probably take action often enough to make the risk something which unions would seriously need to consider (ibid, p.11).

Nonetheless, it was concluded that trade unions would protect funds rather than risk entering legally enforceable agreements, even those that benefitted them. No homogenous reaction could be expected, but the reality was that this policy would be swiftly damaged by trade union opposition (ibid, p.14).

Concern was also expressed regarding the proposed institutions, specifically their interventionist nature. Freedom to de-register trade unions that did not conform with pre-defined rules would create a Registrar who 'would in effect become an agent of the state, a role which would seem to be inconsistent with the general philosophy of the "Fair Deal"' (TNA LAB 43/586, Sunningdale – IRL 8, 17-18 July 1970, p.3). A role in arbitration for an industrial relations court was questioned on the grounds that courts of law had little experience in rule making or locating common ground between parties subject to an industrial dispute (TNA LAB 43/586, IRL 7 – Establishment of a New Industrial Court, July 1970, p.2). On a more positive note, the need to establish the CIR as a statutory body was pushed on political grounds as it demonstrated that the current government held its work in the same regard as the previous Labour government (ibid, p.5). Of course, at this stage such observations were preliminary. However, they signify early concern with a number of flagship proposals in *Fair Deal at Work.*

It is inconsistencies such as this that led Gilmour and Garnett to identify flaws in drafting as a primary reason for the Act's failure (1997, p.257). Yet the final report presented to the Secretary of State was sanitised of much of this concern. Regrettably, minutes of the meetings detailing the decision-making process are unavailable.[13] However, direct intervention through referral by the Secretary of State and procedures for dealing with national emergencies from *In Place of Strife* were endorsed. The presumption of legal enforceability was accepted and institutions along the lines suggested in *Fair Deal at Work* were preliminarily deemed acceptable subject to further analysis. The only deviation was found in terms of the role of the Registrar, for it was felt that any legislation should not create an office responsible for policing the manner in which trade unions applied their rules. Ultimately, the principles of *Fair Deal at Work* were endorsed and held compatible with the attitudes of officials within the DEP (TNA LAB 10/3572, Conference of Industrial Relation Legislation – Note of Decisions, 23 July 1970).

The presentational aspect of reform, in particular the role of the courts, was not lost on ministers. Indeed, the public standing of the institutional arm of any legislation was deemed to be vital if acquiescence was to be achieved. The proposed industrial relations court was fundamental, although Carr acknowledged that 'as a matter of judicial machinery it is clearly a radical approach' (TNA PREM 15/098, Carr to Heath: The New Industrial Court, 27 July 1970). It was designed to ensure that both sides of industry were represented through employer and trade unionist representatives sitting as members. A 'wigs and gowns' style of legalism was to be rejected in favour of a more informal setting. A clear separation would be provided between ordinary courts of law and the new industrial court. While not strictly speaking a division of the High Court, the new court would be granted the same status, hearing appeals arising from

[13] It is unclear why the minutes have not been recorded or filed in this instance. While such occurrences are rare, this is an example of the difficulties presented by an incomplete archival record.

Industrial Tribunals and acting as a court of first instance where matters of national importance were at stake (ibid, pp.1-2).

Even though the court was seen as a radical departure, caution was always displaced by haste. Carr had made clear that 'the first priority is to establish the new courts; once they were there the people would be found to man them' (TNA LAB 10/3572, Burgh to Simons, 3 August 1970). Among officials, concern remained surrounding public perceptions of the court. If it was given a conciliation role akin to the existing Industrial Court there would be a danger it 'might align the Courts too closely with government departments and prejudice their recognition as impartial or invite criticism that they were not fulfilling their purely judicial role' (TNA LAB 10/3572, Meeting to Discuss Consultative Document, 28 September 1970). This would work against the overarching agenda of depoliticising industrial relations and, therefore, insulating government. Furthermore, maintaining the pre-eminence of the English legal system was of vital importance if the new court was to be respected. For example, in other correspondence it was stressed that all new legal institutions must 'have standing to win public confidence and they should be worthy upholders of the high standards of British justice' (TNA PREM 15/98, Letter to Heath, 25 September 1970). It is the establishment of these early principles that influenced debates surrounding the centrality of public confidence as a major factor in the legitimation of the Act's new institutions.

Given the prominent role expected of employers under the proposals, the views of the CBI are important to note. Tasked with assessing CBI policy in light of the Donovan Report, *In Place of Strife* and *Fair Deal at Work,* a Working Party on the Legal Framework of Industrial Relations was established in January 1970. Although preliminary, the report did accept the necessity of a legal framework for industrial relations, describing it as required for 'maintaining and improving the voluntary system and is in no way concerned to alter its basic character' (MRC MSS.200/C/3/EMP/22/1, L.166.70: Working Party Draft Report, 22 June 1970).

However, the Employment Affairs Directorate noted: 'The Government philosophy was to have a strong legal framework – within which almost all the action would be left to employers and unions' (MRC MSS.200/C/3/EMP/3/77, Note on 'New Industrial Relations Bill', 9 July 1970). It was argued that any legal framework should be supplementary only. In particular, the report advocated a strong Registrar with powers of enforcement over trade union rules and independent arbitration to govern inter-union rivalry. Moreover, a step-by-step introduction was advocated making trade union acquiescence more likely and, crucially, ensuring that the concerned parties would seek to preserve voluntary arrangements (MRS MSS.200/C/3/EMP/22/1, C.48.70: Legal Framework of Industrial Relations, July 1970).

While the CBI favoured a strong Registrar, it would not publicly dissent from the government's chosen position (MRC MSS.200/C/3/EMP/22/2, L.213.70 – Working Party on Legal Framework, 20 July 1970). However, its concerns were rejected on the grounds that it would create a 'policeman' role for the Registrar, associating it with simple enforcement (TNA LAB 43/592, Comment by Howe on CBI Brief, 5 August 1970). Acting as an individual would ensure the Registrar retained 'the detached impartiality of an independent office holder' (TNA PREM 15/98, Industrial Relations Bill: Note by the Secretary General, 18 August 1970, p.2). Nonetheless, Heath was reassured of the CBI's broad support in advance of any consultation process (TNA PREM 15/98, Meeting between Heath and Partridge, 8 September 1970). Yet it cannot be ignored that the CBI report had all but rejected the notion of legal enforceability of collective agreements in favour of a strong Registrar. This, officials suggested, was because 'employers want at all costs to avoid involving themselves in litigation' (TNA LAB 43/592, Brief for Secretary of State's meeting with CBI on 5 August, n.d., p.4). The question of who – government or employers – would be disciplining trade unions was crucial for the strategy embedded in reform. That the government sought to externalise this policy area to industry was not lost on CBI officials.

At a meeting between officials of the DEP and the CBI, Sir Denis Barnes argued that a stronger registrar would amount to 'a very large hawk', although Leonard Neal, then responsible for overseeing the CBI response, maintained that an unfair burden was being imposed on employers when the balance of industrial power lay with the trade unions (MRC MSS.200/C/3/EMP/22/2, Note of Meeting with Carr, 5 August 1970, p.3). In addition, Carr rejected any notion of a step-by-step approach for fear of battles with the trade unions after each introduction (ibid, pp.2-3). In private, Neal was explicit, stating that 'the Government wanted to make the CBI appear to be "hawks" rather than itself' (MRC MSS.200/C/3/EMP/22/2, L.237.70 – Working Party on Legal Framework, 11 September 1970, p.2). The difference in the two positions was 'basically political', Campbell Adamson argued, with Carr 'opposed to direct intervention by a state body' (ibid, p.2). How these differences of opinion would manifest themselves in practical terms was less than clear. Nonetheless, the foundations were anything but solid.

Carr presented his draft proposals to the Ministerial Committee on Industrial Relations at the end of September (see TNA CAB 134/2926, INR (70) 2, 21 September 1970). Manning the institutions was a potential problem, in particular finding individuals of the capability and calibre necessary to garner public confidence. Concern was expressed regarding finding a suitable individual to assume the position of chairman of the Industrial Tribunals given the skills necessary for the enhanced role. Similarly, there was a real possibility that judges of sufficient standing would be unwilling to assume the responsibilities and workload required under the jurisdiction of the new industrial court. Maintaining access to ordinary courts was also highlighted as a potential difficulty, coupled with the inevitable danger of watering down the legal process in the hope of making the new court accessible (TNA CAB 134/2926, INR (70) 1st Meeting, 24 September 1970, pp.3-4). The Lord Chancellor, Lord Hailsham, had also written to Heath to stress that new judges should not be expected to act in a political or

administrative manner (TNA PREM 15/98, Note to Prime Minister on Consultative Document, 28 September 1970). While the principles solidified in these early discussions, numerous presentational pitfalls had been identified. Given that public standing was considered so crucial, the unwillingness of government to take a measured approach is surprising. This is best illustrated by the unswerving position adopted on consultation.

III. The Politics of Consultation

The Government's Unwillingness to Consult

The unwillingness of the government to offer consultation, instead favouring haste, has featured as the major criticism of this early phase of reform. This failure, for Middlemas, ensured that 'what turned out to be serious inconsistencies were set quickly and immutably in a document from which the Party itself ensured there would be no derogation' (1990, p.317). It provided the opportunity for divisions between the industrial and political wings of the labour movement to heal, ensuring that bitter opposition existed before the Bill reached the statute book (Ramsden, 1996, p.332). For Campbell, irrespective of misguided beliefs surrounding the inherent fairness of the proposals, failure to consult flew in the face of traditional trade union values and was a 'serious political misjudgement' (1993, pp.364-5). Similar sentiment is expressed by Moran, who argues that 'the most striking feature of the whole process was the extent to which policy-making in the party was insulated from the main interest groups in industrial relations' (1977, p.61). Such assessments are prevalent throughout the literature (see also Cosgrave, 1977, p.120; Greenway et al., 1992, p.1974; Taylor, 1996, p.161; Gilmour and Garnett, 1997, pp.255-6). The picture that emerges is not only one of sacrificing detail for haste, but also one of mixed messages and hubris on the part of ministers.

Table 3.3 *Stoppages of work, 1969 - 1970*

Year	Month	Number of Stoppages		Number of Workers Involved in Stoppages (000's)		Working Days Lost in All Industries and Services (000's)
		Beginning in period	In progress in period	Beginning in period	In progress in period	
1969	Jan	216	246	146	158	364
	Feb	241	288	143	154	433
	Mar	261	299	96	145	754
	Apr	252	295	105	121	310
	May	264	315	108	122	402
	Jun	255	308	96	112	405
	Jul	229	282	170	183	434
	Aug	241	284	133	142	563
	Sep	289	351	92	122	400
	Oct	386	456	300	332	1,853
	Nov	330	406	204	224	536
	Dec	152	215	61	84	392
1970	Jan	337	374	144	151	446
	Feb	444	503	193	209	880
	Mar	431	530	161	193	874
	Apr	431	504	149	176	928
	May	344	457	127	164	907
	Jun	369	445	194	224	964
	Jul	232	322	115	156	1,105
	Aug	290	353	103	123	530
	Sep	371	433	143	171	770
	Oct	289	403	243	268	1,662
	Nov	246	315	169	250	1,598
	Dec	110	175	36	52	305

Source: HMSO, 1971b, p.121

While Carr had offered early reassurances to Feather that consultation would take place (TNA LAB 10/3559, Meeting between Carr, Feather and Greene, 23 June 1970), privately he

informed officials that 'the timing envisaged for an Industrial Relations Bill may not permit consultations as detailed as the organisations might like' (TNA LAB 10/3559, Notes for Supplementaries, June 1970). Subsequent reassurances by Heath himself (TNA PREM 15/98, Meeting between Heath and Feather on 1 September, 2 September 1970) had been accepted by Feather who informed the TUC General Council that the government was 'open to argument' (MRC MSS.292D/20/3, GC 14th Meeting, 3 September 1970, p.133). That same day, however, Carr reported to Cabinet the grave situation in terms of working days lost through strike activity and inflationary wage settlements (TNA CAB 128/47, CM (70) 12th Conclusions, 3 September 1970, pp.8-9). Crucially, reform 'was not being delayed by the need for formal consultation' (ibid, p.9). Far from adopting a conciliatory position on industrial relations reform, Carr argued that with the impact only likely to be felt in the medium-term, a direct attack on the supplementary benefits of strikers and their families may be a more effective solution in the short-term (ibid, p.10). Such posturing would prove commonplace, although was often hindered by political considerations given the volatile industrial context.

Heath's belief that privately trade union leaders would warm to the proposals and assume greater control of their membership (TNA CAB 128/47, CM (70) 12th Conclusions, 3 September 1970, p.12) betrays a misunderstanding of the broader movement. At the TUC Annual Conference the rhetoric of opposition to reform was forceful (TUC, 1970). Nonetheless, Carr had solidified on his view, informing Heath that 'the time for consultation must be strictly limited' and it was 'not contemplated that consultations will lead to major improvements' (TNA PREM 15/98, Carr to Heath, 15 September 1970). The government was ignoring the corporatist context within which trade union leaders had become accustomed to consultation. Ministers failed to comprehend the impact of this decision. The TUC Economic Committee stressed its dissatisfaction at the lack of consultation, adding that it believed productivity, not wage increases, was the root cause of Britain's economic woes (TNA LAB 10/3506, Meeting with

TUC Economic Committee, 23 September 1970). The following day Feather informed Carr that the voluntary system industrial relations should be maintained and the government must demonstrate willingness to change tack. He argued that 'the introduction of penal sanctions into the relations between employers and workpeople would be unnecessary, irrelevant and unworkable' (TNA PREM 15/978, Feather to Carr, 24 September 1970). However, Carr remained insistent that maintaining the voluntary system was at the heart of the government's programme. While the work undertaken by the TUC to improve industrial relations was noted, a supplementary system of law was deemed crucial (TNA LAB 10/3559, Carr to Feather, 29 September 1970).

Nothing was being done to alleviate trade union concerns. When the Consultative Document was finally made available to the TUC on 05 October 1970 (see CAB 134/2926, INR (70) 3, 8 October 1970), a period of just over a month was provided for formal consultation, with all comments required by 13 November 1970. This position was unsurprisingly deemed inadequate by the TUC. Feather argued that such 'haste seems to me to be inconsistent with the emphasis that the Prime Minister himself has laid on the need to make important changes in policy only after careful thought and the fullest examination of all the considerations' (TNA LAB 10/3559, Feather to Carr, 5 October 1970). As has been demonstrated, this is precisely the sacrifice the government was willing to make. Assuming trade union leaders would acquiesce was a miscalculation, although not entirely foolish. The TUC Finance and General Purposes Committee (F&GPC) agreed that Feather should meet Carr to discuss the Consultative Document. In addition, a leading role for the TUC in the campaign against reform was designed specifically to ensure that militant workers did not spark unofficial action. It was accepted that the eventual Bill would become law, so strategies directed at registration and legally binding collective agreements were made the priority from the outset (MRC MSS.292D, 24.1/1, F&GPC 1st Special Meeting om 9 October, 13 October 1970).

Ignoring Explicit Concerns

At a formal meeting with the TUC F&GPC to discuss the Consultative Document, Carr and Howe emphasised that the principle of a legal framework was not open to debate, with eight essential pillars held sacrosanct. These covered the right to belong, or not, to a trade union, the right of trade union recognition, the principle of registration, legal enforceability of collective agreements unless stated otherwise, limitations on some trade union immunities, safeguards for national emergencies, enforcement of procedure agreements where appropriate and machinery to determine bargaining units and structures (TNA LAB 10/3559, Note of Meeting with F&GPC, 13 October 1970, pp.1-2). This position was justified on the grounds that the Conservative Party's approach had been in the public domain for over two years,[14] and reducing the consultation period would allow for lengthier debate in Parliament. The legal framework was presented as essential to facilitate improvement in industrial relations generally, both on the part of management and trade unions (ibid, pp.2-3). TUC calls for the process to be suspended were rejected by Carr, although interest in further talks was expressed (ibid, p.4-5).

The existing literature grasps the inflammatory effects of the failure to offer adequate consultation. However, the gravity of this omission cannot be fully comprehended without acknowledgement of the numerous warnings, both internal and external, that were ignored. Howe has defended the government's stance, arguing that the ministers believed they were offering 'a balanced package' (1994, p.60). Nonetheless, he accepts that as a result 'the battle lines were drawn – at least for the rest of that Parliament' (ibid, p.60). Given that the overarching aim was to shift accountability to industry itself, particularly trade union leaders, such antagonism is difficult to justify strategically. The TUC withdrew immediately from the process, citing the government's unwillingness to be open to persuasion surrounding the eight

[14] This argument was used on multiple occasions. For example, Carr made the point in the House of Commons on 12 November 1970 (HC Debate, 12 November 1970, Vol.803, cc.221-222).

pillars. The blame was attributed to the government alone (TNA LAB 10/3559, Feather to Carr, 15 October 1970; see also Silver, 1973, p.190 and Jones, 1986, p.228). That the government was in direct confrontation with the TUC, a representative body of organised labour, is at one level to be expected. However, more surprising, is the position adopted in relation to the CBI, particularly given the centrality of the role anticipated.

Within the CBI there were major concerns that the accountability shift would cause employers considerable harm, depoliticising the government's role *at their expense*. In light of the Consultative Document, a paper was produced that summarises employers concerns:

> The Government philosophy is to hold the ring and let the two sides of industry fight out their problems. Apart from the fact that employers would be unlikely to wish to stir up trouble by going to the courts after a dispute is settled, it seems unlikely that court action is the right way to make unions control their members (MRC MSS.200/C/3/EMP/3/77, Jones to Nicholls – Industrial Relations Bill, 30 October 1970, p.2).

The paper recorded that Carr 'expressed some sympathy with this view although he explained that it was in conflict with the basic philosophy of the Conservative Party that the responsibility for initiating actions in the new Courts should be entirely in the hands of the two parties in industry within the new framework provided by the legislation' (MRC MSS.200/C/3/EMP/3/78, L.290.70 – Memorandum by LSAC, 9 November 1970, p.2). For the longevity of the government's strategy, securing only broad agreement was problematic. In comments on the Consultative Document provided to the government, the CBI expressed its desire for the voluntary character of the CIR to be maintained and again stressed concern at the tension between legal enforceability of collective agreements and the role of the registrar. Greater powers of referral for the Secretary of State were advocated, and it was evident that

they were unconvinced that abolishing the closed shop could be achieved. The document argued that, if the balance of industrial power was to be addressed, further restriction of supplementary benefit payments to striker's families would be required (MRC MSS.200/C/3/EMP/3/78, L.295.70 – Detailed Comments on Consultative Document, 10 November 1970).

The areas of concern identified here are significant, yet fell on deaf ears. In December, the CBI compared the contents of the Bill against its submission to the government. The document is littered with the phrase 'no concession has been made' and all major protestations were ignored (MRC MSS.200/C/3/EMP/3/17, L.337.70 – Comparison with CBI's Comments, December 1970). There was no change regarding the powers of the Registrar, the legal enforceability of industry-level procedure agreements or the closed shop. Given the CBI's lack of success influencing the Government, the Employment Policy Committee even discussed whether there was anything to be gained from making further representations to the Secretary of State. Whether the CBI should maintain its present policy of not embarrassing the Government in public was also on the table (MRC MSS.200/C/3/EMP/3/78, L.85.71 – Employment Policy Committee Minutes, 15 December 1970, p.2). Although it was agreed that the CBI would continue to push for a strengthened registrar, every other concern was dropped (ibid, p.3). Neal, primary architect of the CBI position, is recorded stating '[h]e was personally disappointed that all the work of the CBI Committees and the representations to officials and Ministers had made so little impact on the Minister's intentions to date' (MRC MSS.200/C/3/EMP/3/79, C.1.71 – Minutes of Council of CBI, 16 December 1970, p.7). In light of such limited impact, it would prove increasingly difficult for the CBI to sell the proposals to its members.

Officials were also dissatisfied with the speed at which the legislation was being hurried onto the statute book. One official argued 'the chances that, as introduced, it will be a well-considered Bill are bound to be seriously diminished. At best, a large programme of

Government amendments and new clauses, during the passage of the Bill through Parliament, seem inevitable' (TNA LAB 43/600, Krusin to Burgh, 23 September 1970). Another official suggested that 'the timetable is uncomfortably tight, both in relation to the substance of work on the Bill and the credibility of the consultation process' (TNA LAB 43/600, Burgh to Smith, 24 September 1970). The following month it was confirmed that only one version of the Bill would be available for comments before publication (TNA LAB 10/3583, Krusin to Lawton, 22 October 1970). By November one senior official was arguing that publication of the Bill should be delayed or risk the core tenets being inadequately fashioned, comparing the legislation to becoming 'like a rock rather than like a diamond' (TNA LAB 43/600, Burgh to Smith, 6 November 1970). There was no time for parliamentary draftsmen to make alterations in light of comments, and the passage through Parliament was likely to be politically damaging (ibid). Irrespective, ministers chose to stick to their tight timetable of achieving the Bill's Second Reading before Christmas (TNA CAB 165/519, Note of Meeting, 12 November 1970).

The unusual nature of the government's approach was acknowledged by Carr. In correspondence with William Whitelaw, Lord President of the Council, he noted:

> I understand that normally a Bill of this complexity might be expected to go through as many as ten prints before publication. Parliamentary Counsel is now redrafting on many different points and the timetable will not allow more than a few changes in detail on the second print between 18 and 23 November…There is therefore a very real risk that some of the major concepts of the Bill will be found to have been imperfectly fashioned; but even if this is not so it must be a near certainty that further examination will bring to light a number of important points of detail requiring major Government amendments which will have to be introduced no doubt under a guillotine procedure (TNA PREM 15/466, Carr to Whitelaw, 10 November 1970).

Instead of slowing down, Heath even considered accelerating the process. Discussing the problem of inflation with Anthony Barber, Chancellor of the Exchequer, he suggested 'the government might need to consider whether the progress of the Industrial Relations Bill should be expedited, so as to remove the subject of industrial relations from the area of debate and bargaining' (TNA PREM 15/314, Meeting at Chequers, 14 November 1970). If government could weather the storm in the short term, it was hoped this highly politicised issue could be displaced sooner rather than later.

The key issue, however, is not the haste *per se,* but the policy implications associated with it. Whitelaw was informed that 'the Government will be running a very considerable risk if they stick to the timetable and give this Bill a Second Reading before Christmas' (TNA CAB 165/519, Crocker to Whitelaw, 20 November 1970). Irrespective, the Legislation Committee was ultimately willing to allow the Bill to be published in its limited state. However, it acknowledged the tight timetable and suggested that numerous amendments throughout the Committee stage would be necessary (TNA CAB 134/2946, L (70) 7th Meeting, 30th November 1970). The battle would now shift to Parliament, with the government granting a debate to outflank the Opposition in the hope that it would be able to mount a defence of the Bill and gain public support (TNA CAB 128/47, CM (70) 43rd Conclusions, 3 December 1970, p.3). The reflections of Stephen Abbot, a major contributor to *Fair Deal at Work,* are worth quoting at length:

> The proposals that got through the Ministerial net were then re-vamped into an avalanche of complex, sometimes ambiguous, instructions to harassed parliamentary draftsmen. The end-result was a massive Act choked with cross-references and repetition. It was the "lawyers paradise" we had feared – and a gift to opponents intent on misrepresentation (CPA CRD 3/7/12/1, 'Industrial Relations – Conservative Policy' by Stephen Abbot, 8 December 1973, p.3).

It is clear that the government accepted the potential consequences of its approach, at all times favouring haste. Yet in the process it isolated both sides of industry and created a gargantuan piece of legislation. Given the expectation that industry would be accountable for 'putting its own house in order' within the prescribed framework, this was a risky approach.

IV. The Early Implications for Shifting Accountability

Trade Unions and Employers

Given the nature of industrial relations reform, the trade unions would be exposed once the Bill was enacted. However, the government's opposition to trade unions did not relate to strike activity alone, but also inflationary wage settlements. Heath established a 'Group of Officials on Strategy to Deal with Industrial Unrest', tasked with protecting the national interest from excessive pay claims. It immediately concluded that 'serious trouble in a number of industries would have to be expected' (TNA CAB 130/485, GEN 20 (70) 1st Meeting – Programme for Work, 2 November 1970). The scale of the problem is evidenced by the fact that industrial unrest was anticipated in the coal industry, the NHS, electricity industry, gas industry, water supply, company busmen, firemen, police and the Post Office (TNA CAB 130/484, GEN 19 (70) 1 – Major Pay Disputes in 1970 and Early 1971, 6 November 1970). Although indirect, officials hoped that industrial relations reform would 'help to restrain wage inflation in the longer run' while acknowledging that 'in the short run it could exacerbate it by causing conflict with the unions' (TNA PREM 15/314, Note on Inflation, November 1970, p.5). Highlighting the staunch position taken by the government assists in understanding the mind-set that rejected consultation.

In effect, the government was bracing itself for battle on two fronts. Barber concluded that:

> the Government must stand up to a strike, perhaps to more than one strike, in the public sector and to be seen to be allowing the consequences of bad management to work through to bankruptcy in one or two striking cases. He was clear that, if the electricity workers' pay claim was settled at 15%, that would set a new norm (TNA PREM 15/314, Note for the Record, 14 November 1970).

A reconfiguration of the balance of industrial power was the main focus of government policy. Debates within the Ministerial Committee on Economic Strategy were homing in on the supplementary benefits of individual strikers and their families, arguing that reform would make strike activity less attractive. In the longer term, industrial relations legislation would pick up the slack (TNA CAB 134/2793, ES (70) 9 - A Strategy for Dealing with Inflation, 26 November 1970, p.5). However, this tactic remained politically contentious, only ever featuring periodically in discussions between ministers and officials.

The core aim, therefore, was that the 'Bill should contribute to redressing the balance of industrial power in the employers' favour' (TNA CAB 134/2927, IO (70) 2 – Possible measures on Wage Bargaining, 9 December 1970, p.1). However, industrial relations legislation would only ever have a gradual impact on the strength of trade unions and would not prevent high wage demands. Once again, responsibility focused on the willingness of employers to challenge trade union leaders (ibid, annex, p.4). It remained unclear 'whether the Bill could now be strengthened, particularly in view of the Government's commitment to the proposals in the Consultative Document without seriously reducing the chances of ultimate trade union acquiescence' (ibid, annex, p.5). The broad hope of the Official Committee on Industrial Unrest was recorded:

> It was hoped that, when the Bill now before Parliament was enacted, the more militant unofficial union leaders would be forced into the open and that the unions would be

> compelled either to disown them or to make the action taken official at the cost, in at least some instances, of having to pay compensation for it. However, this would be a long-term process (TNA CAB 134/2927, IO (70) 1st Meeting – Wage Bargaining: Possible Measures, 11 December 1970, p.2).

Industrial relations reform was not designed to strike indiscriminately, instead targeting militant shop floor leaders. Those deemed moderate were to be strengthened. However, the approach adopted to this point was based on overplaying this distinction, at least in present circumstances. Indeed, at a meeting of the National Economic Development Council in January 1971, ministers were informed that the combination of the Industrial Relations Bill and the mini-budget of October 1970 had made the task of trade union leaders in controlling their members 'infinitely more difficult' (MRC MSS.292D/560.1/1, Econ Ctee NEDC meeting on 6 January, 8 January 1971).

The stark reality of trade opposition was presented at a TUC Special Congress in March 1971. The government's failure to engage would result in 'the most extensive and determined campaign of opposition to the Government's proposals in the history of the movement' (TUC, 1971a, p.65). Effecting the future Act directly, a number of recommendations must be noted. First, affiliated unions were strongly advised not to register under the Act. A late government amendment automatically moving all trade unions currently registered onto a new provisional register under the Act made this central to future confrontation (Moran, 1977, p.123; Taylor, 1996, p.173). Second, affiliated unions should not enter any legally binding collective agreement. Third, unions should continue to adhere to Bridlington Principles to resolve disputes between themselves. Fourth, trade unionists must not serve on any of the newly created statutory institutions (TUC, 1971a, pp.376-7). Also published in March 1971 was *Reason: The Case against the Government's Proposals on Industrial Relations,* a pamphlet which sought to outline the full details of the Bill and offer a contrary assessment to that of the government. The

proposals were highlighted as draconian, against the principles of the Donovan Commission and, ultimately, ignorant of the efforts of the trade union movement to reform industrial relations practices through collective action (TUC, 1971b). It was forcefully argued that the trade union movement 'does not, and should not, require a licence from the State or the permission of a High Court judge' (ibid).

By January 1971, leading figures within the CBI were arguing that the legislation was falling into disrepute, that legally enforceable collective agreements would only prove detrimental if utilised and that the only way to achieve success was through a stronger registrar (MRC MSS.200/C/3/EMP/3/79, Note entitled Robert Carr, January 1971). It maintained that 'employers cannot always take the necessary action themselves, and that they do not have an overall view of a union's activities' (ibid, p.1). However, following a meeting with Howe, it was recorded that 'the Government have made up their mind to rely on their proposals for selective enforcement of procedures and are not willing to consider any extension of the Registrar's present powers' (MRC MSS.200/C/3/EMP/3/79, Note of Meeting with Howe, 20 January 1971). Reports had been coming in via Senior Manpower Officials that the picture on the ground was not one of full support. Of course trade union opposition existed, but between December and April 1971 the response of local employers was lukewarm. Management expressed concern 'at the extent to which the initiative was left in their hands' (TNA LAB 10/3598, Bayliss to Brown – Reactions to Consultative Document, 21 December 1970, p.2), at the practical realities given a number of 'snags' in the proposals (TNA LAB 10/3598, David Brown to Alan Brown – Reactions to Consultative Document and Bill, 19 January 1971) and, laterally, that the trade unions had been allowed to get a head start on the details of the Bill (TNA LAB 10/3598, Brown to Brown, 19 April 1971, p.1). Both sides of industry had been left disappointed.

A New Role for the Commission on Industrial Relations

To this point, the CIR has only been discussed in passing. However, as it pre-existed the Conservative government and its approach to reform, it offers a useful site of analysis to understand the strategy and the consequences of early resistance. The CIR was established by Royal Warrant on 1 March 1969 to ensure it commenced work quickly and was designed to promote improvement in institutions, procedures and relations. It was first proposed by the Donovan Commission and featured in *In Place of Strife* (for a history, see Kessler and Palmer, 1996). Its early work was cautious and methodical, consisting of eight references from the Secretary of State, seven of which involved recognition disputes (HMSO, 1970). It was a voluntary institution, relying on the goodwill of both sides of industry. CIR officials, however, immediately expressed concern that under the government's proposals its image would be damaged by associating it with balloting procedures and recommendations to the NIRC regarding legal enforceability of collective agreements (TNA LAB 10/3583, Singleton to Heron, 30 September 1970). George Woodcock, the CIR's existing Chairman, argued that both sides of industry would reject it once its recommendations became legally enforceable through an industrial court. To protect the institutions independence, he stressed that the Secretary of State should commission the CIR in such cases (TNA LAB 10/3583, Woodcock to Carr, 20 October 1970). However, this would ensure that the role of the Secretary of State would remain politicised, quite contrary to the overall strategy embodied in the Industrial Relations Bill.

Conrad Heron, a senior DE official who later joined the CIR, was acutely aware of this fact. He argued:

> The whole purpose of the exercise is to relieve the CIR of any responsibility which can be directly identified with statutory intervention, but this would inevitably involve

> passing the responsibility to the Secretary of State and thus putting him in a much more exposed position (TNA LAB 10/3583, Heron to Burgh, 23 October 1970).

This is an explicit example of where the role of government would be depoliticised, insulated from harm as accountability was shifted through reform. However, a failure to listen to such concerns soon resulted in a number of high profile resignations, including Allan Flanders (see LAB 10/3610, Overview of Resignations, n.d.).[15] Officials would now have to accept that 'the unions will not cooperate with the CIR sufficiently to allow it to work on a voluntary basis if they believe that its balance has been upset so as to render it biased towards the interests of employers' (TNA LAB 10/3610, Brownsort to Buckley, 13 November 1970). Without trade union cooperation, it could not function as a voluntary institution (TNA LAB 10/3604, Brownsort to Buckley, 25 November 1970).

Amid growing tensions, an existing institution that was intended to protect government from exposure to political damage caused by industrial unrest was losing credibility. The TUC F&GPC concluded that it no longer represented a voluntary agency, agreeing that withdrawal of cooperation was likely, ensuring that '[i]n effect the CIR as it now operates would become the first causality of the increased tension that is bound to exist in industry if the Bill becomes law' (MRC MSS.292D/24.1/1, F&GPC 4/2 – Commission on Industrial Relations, 9 December 1970, p.4).[16] References to the CIR were limited immediately to avoid inflaming tensions with the trade unions (TNA LAB 10/3604, Meeting between Officials and CIR, 21 December 1970). This led CIR officials to believe the institution was being abandoned (TNA LAB 10/3604,

[15] On resignation of Allan Flanders see TNA LAB 10/3604, Ferguson to Buckley, 4 January 1971.

[16] The government were aware of this decision in advance of any formal announcement: 'Rumour (via the CIR) says that the F&GPC made up their minds at their November meeting to withdraw all cooperation from the CIR in protest against the IR Bill, but deferred a decision until the December meeting to avoid embarrassment to Will Paynter whose resignation was due to take effect on 30 November' (TNA LAB 10/3604, Brief for Secretary of State, December 1970)

Hatfull to Buckley, 17 March 1971; TNA LAB 10/3604, Woodcock to Carr, 24 March 1971). It was further undermined by concerns referrals would inflame relations with employers leading it to 'become the centre of a political row from both Left and Right' (TNA LAB 10/3604, Brimmer to Edwards, 7 April 1971). The demise of the CIR in its existing incarnation was complete with the resignation of Woodcock, attributed directly to the opposition of the TUC to its work (TNA LAB 10/3610, CIR Press Release – Statement by Woodcock, 25 March 1971, p.4). In essence, a central element of reform designed to draw attention away from the governing party was politically damaged in advance of the Industrial Relations Bill being enacted.

No Quick Solution

In addition to anxiety regarding reform, the CBI informed Heath of growing hostility on the shop floor. However, Heath's only solution was to ensure that the Bill would be on the statute book as a matter of urgency (TNA PREM 15/461, Record of Meeting with CBI, 8 March 1971, p.4). This betrays a gross underestimation of the complex forces of resistance that were emerging. In addition, the TUC were informed by Barber that any mutual understanding on growth and productivity could not be reached until the Bill had completed its passage through Parliament (MRC MSS.292D/560.1/2, Econ Ctee 6/5 – Report of NEDC Meeting on 3rd March, 4 March 1971). With on-going unrest and inflationary settlements, Carr advised the Economic Strategy Committee not to expect quick results as 'time will be needed to allay the resentments which the legislation has aroused and because the Bill is designed to operate mainly by modifying attitudes of both sides of industry' (TNA CAB 134/3388, ES (71) 5 – Measures to Reduce the Number of Strikes, 6 April 1971). While reform would redress the balance of industrial power, the Act was not designed to be specifically anti-inflationary and should not be expected to have much impact on unofficial wage claims (TNA CAB 134/2927, IO (71) 12 – Interim Report of the Official Committee on Inflation, 7 April 1971, p.5).

Treasury officials were also unconvinced that industrial relations reform would have any rapid impact on the current climate and that Carr was too 'sanguine' on the matter. First, employers had proved unwilling to take advantage of legal resolutions to disputes due to fear of long-term conflict. Second, interventionist powers of the Secretary of State were limited and would only have minimal effect in practice, although potentially have some psychological impact (TNA T 342/148, Comments on ES (71) 5, 7 April 1971). Nonetheless, on balance, it was agreed that Carr was 'probably right insofar as he judges that the effect of the Bill will alter the balance of industrial power towards employers rather than towards unions' (ibid, p.2). There is little evidence of any significant concern among state managers, even if a long-term approach was favoured at this stage. What is clear, however, is that the government believed it could weather the storm.

While the government may have been naïve regarding long-term opposition, this requires some clarification. Feather and the TUC had accepted the government's commitment to reform, even amid its continued opposition. The major concern was that maverick employers would utilise the legislation unscrupulously, catalysing major disputes. The campaign would not focus on preventing enactment, instead aiming to defeat registration. Due to the risk to trade union finances, there was concern that a two-tiered trade unionism would be created, with some unions unwilling to risk fines. Feather even acknowledged that large unions such as the Transport and General Workers Unions (T&GWU) may register if this position became the consensus (TNA PREM 15/466, Note – Meeting of Vic Feather and Heath on 8 April 1971, 16 April 1971). Some trade unions were expressing concern about proposals for all unions to deregister and, indeed, some were refusing to follow TUC policy (see MRC MSS.292D/24.1/3, F&GPC 12/9 – De-Registration, 26 July 1971). While the total membership of the unions refusing to obey TUC policy was small, a united front against the Act did not exist at this stage. There was also dissention within the TUC General Council when it was agreed to eschew the

opportunity for consultation on the Code of Industrial Relations Practice (MRC MSS.292D/20/4, GC 12th Meeting on 23 June, 23 June 1971). It is perhaps less surprising, therefore, that Carr remained confident that 'we can rely to some extent on the Registrar's power to influence the content of trade union rules' (TNA LAB 10/3551, Carr to Dumalbyn, 9 June 1971).

Nonetheless, both the TUC and CBI were taking steps to ensure members limited their exposure to the legislation (see MRC MSS.292D/24.1/3, F&GPC 12/6 – Guide to Good Industrial Relations, 20 July 1971). The CBI's guide for members was explicit: 'The main effect of the legislation should be to stimulate the improvement of industrial relations by voluntary arrangements. Resort by employers to the legal processes in the Act may well be less effective than good voluntary practices' (CBI, 1971, p.5). The following month, the TUC reported that six major trade unions representing three million members had signed agreements opting out of legal enforceability (MRC MSS.292D/24.1/3, Collective Agreements, 19 July 1971). Carr again reiterated that he did not expect the legislation to be a quick fix. In May 1971, the DE clarified to the Ministerial Committee on Industrial Relations that employers should avoid disclaimers that risk binding them for future agreements, taking into account the behaviour of a given trade union in the past and the likelihood of agreements being disregarded by trade unions (TNA CAB 134/3525, INR (71) 3, 11 June 1971, pp.2-3). However, this battle had largely been lost before it had begun, a direct result of isolating the concerned parties. Instead of preparing to take on the mantle of reform, trade union leaders and employers were preparing to insulate *themselves* from damage.

Conclusions

Enacted in August 1971, the passage of the Industrial Relations Bill was the longest of any post-war non-finance Bill to date, with over 100 hours of Parliamentary time required

(Sandbrook, 2011, p.110; Campbell, 1993, p.367-8). However, Carr remained satisfied that the Bill was in line with *Fair Deal at Work* and nothing overly significant had been lost (TNA PREM 15/466, Meeting between Heath and Carr, 9 March 1971). Reflecting on this period in January 1971, members of the CRD observed:

> The thing I find of interest is the extent to which the main lines of the policy were settled remarkably quickly right at the beginning of the process. If you look at the summary in "Action not Words", it still today would pass as a fairly adequate summary of the main lines of the Bill now going through the House of Commons. There are minor differences of terminology, and one fairly major change – but that is all (CPA CRD 3/7/12/1, Industrial Relations Timetable, 28 January 1971, pp.4-5).

It is true that little had changed in terms of the philosophy behind the strategy. However, the policy outcomes would be affected dramatically by the government's approach to enactment. Through pursuing haste at all costs two major difficulties had been created. First, inconsistencies and contradictions had been written into the Act, in part driven by fastidious officials, in part the result of political miscalculations. Second, if the major strategic aim of reform was for industry to 'put its own house in order', depoliticising the role of government, then isolating both sides of industry was a major miscalculation. Unless these relationships could be sufficiently healed in the medium-term there was little hope that the Act would function effectively.

This chapter highlights how the Act was intended to function. However, it also begins to discuss the significance of the strategic failings of state managers. The existing literature highlights the unwillingness to consult as foolhardy. This is undoubtedly correct, although the account provided in this chapter brings into focus the sheer scale of the government's miscalculation. Ultimately, ministers were prepared to weather a short-term storm if it ensured

that Act was on the statute book quickly. Trade union opposition throughout the life of the Act highlights the flaws in this reasoning. Any solid foundations were swiftly undermined. But what does this mean for the Act as a depoliticised governing strategy? The task of depoliticising the reform of industrial relations was being embarked upon in a politicised context. For success to be realised trade union acquiescence would have to be achieved. Yet state managers reneged on the loose tripartite arrangements that had existed for much of the 1960s. This highlights a major contradiction in the strategy. State managers had hoped that through strengthening trade union leaders and management *they* would be capable of disciplining the militant shop floor without direct government involvement. However, little was offered in return and senior trade union figures were ignored and isolated from the policy process. In such circumstances trade union leaders would be unable to achieve concessions for their members. Given the sensitive nature of reform among trade unions leaders, strategically, haste was foolish. However, the resulting policy implications would be far more significant as the months progressed. The Conservative government had built its framework for reform on sand.

Chapter 4
Achieving Institutional Credibility, August 1971 – February 1972

Introduction

With the Industrial Relations Act on the statute book, the real business of operationalising the legal framework and its institutions began. The previous chapter argued that in reaching this point the government had made numerous compromises. Against the advice of officials it did not give sufficient time to the drafting process, embedding a number of contradictions into the strategy. Moreover, its failure to adequately consult fuelled a bad-tempered environment within which to enact reform. This fundamentally undermined the strategy, at least in the short-term. Any attempt by government to withdraw, leaving industry to 'put its own house in order', was problematized as ministers had alienated trade union leaders and employers, the very people required to fulfil this new, disciplinary role. This chapter addresses a notable gap in the literature. While existing accounts have focused on the Parliamentary battle (Moran, 1977, pp.97-110), little, if anything, is written about the period between enactment and the provisions of the Act coming into force. Establishing respected institutions was essential to legitimise the

legal rules of the Act's framework. In essence, therefore, the chapter draws out the internal tensions between ministers, the 'lower-levels' of the core executive and officials of the new institutions.

The chapter uses two theoretical underpinnings. First, as Flinders and Buller have noted, for the purposes of depoliticisation it is not only important that an institution is independent, but that it is *perceived* to be independent (2006, p.302). While the Act is not an institutional form of depoliticisation *per se,* the framework of legal rules relied on its institutional structure for legitimacy. It is argued that through seeking to create the *perception* of independence, the internal dynamics between the officials in the DE and the various institutions became challenging. It is, therefore, important to acknowledge the day-to-day power dynamics and institutional complexities and tensions associated with the strategy. This was suggested by Burnham (2017) in his study of the move towards, and subsequent dynamics of, operational independence of the Bank of England. Drawing on Jessop (2008, p.9), Burnham argues for 'the analytical importance of disaggregating the centres of power that form the ensemble of institutions and organisations that comprise the "core of the state apparatus"' (ibid, p.174). Albeit a different context, this is analytically helpful as the existing literature fails to elucidate the sophisticated interplay between 'lower-level' actors and institutions, largely a reflection of the fact that ministerial and departmental views are absent bar a limited number of anonymised interviews (e.g. Holmes, 1997).

The primary argument, therefore, is that with trade union non-cooperation ongoing, presentational aspects related to institutional independence became key. However, this was not driven solely by government, but also reflected the wishes of officials within the institutions, albeit for differing strategic reasons. First, the chapter discusses the first phase of introduction – the Registrar of Trade Unions and Employers' Associations (RTUEA). It demonstrates that a major feature of the early strategy was to overcome accusations that the institution represented

a ‘state licence’. However, what ‘independence’ meant was different for officials of the RTUEA and the DE. Moreover, the campaign against registration was far more fragile than is often presented. Second, the CIR is addressed, reiterating the difficulties the institution faced given non-cooperation. However, the sub-section focuses on how it was instantly associated with the interventionist aspects of the Act and the NIRC through its role in conducting ballots under the emergency procedures. This damaged perceptions of independence and its ability to act as a voluntary institution. Third, the chapter discusses two institutions, one minor, one major. It demonstrates that the Industrial Arbitration Board (IAB) lacked independence as government sought to influence its work in the name of the ‘national interest’. The NIRC, too, is discussed, arguing that it offers a primary site of internal tension within the state, as the legal system and the DE became uncomfortable bedfellows. Finally, the chapter turns to the miners’ strike of 1972. While the Act is often seen as an irrelevance, this sub-section demonstrates that ministers feared use of the emergency provisions would further politicise government, preferring to influence events behind the scenes. In contrast to the period covered in the previous chapter, the government proceeded with caution.

I. Phase One: The Registrar of Trade Unions and Employers’ Associations

Combatting the ‘State Licence’ Argument

As detailed in Table 4.1, the government adopted a staggered approach to the introduction of the major provisions and institutions of the Act. Given the TUC’s campaign of non-cooperation, senior officials were clear that the institutions would need to be able to function, irrespective of trade union acquiescence. Government would remain ready to draw trade unions into the process if circumstance allowed (TNA LAB 10/3702, Robertson to Edwards, 10 August 1972).

Table 4.1 *The staggered approach to introducing the institutions*

Commencement Order	Date	Provisions brought into operation
Commencement Order 1 (HMSO, 1971c) (Issued 23 September 1971)	1 October 1971	- General principles for the promotion of good industrial relations - Preparation of Code for Industrial Relations Practice - Provisions relating to registration of trade unions - RTUEA established
Commencement Order 2 (HMSO, 1971d) (Issued 25 October 1971)	1 November 1971	- Sections of the Act to establish the CIR on statutory footing
Commencement Order 3 (HMSO, 1971e) (Issued 4 November 1971)	1 December 1971	- Established the NIRC - Brought into operation provisions relating to: o Collective bargaining, agency shop agreements, approved closed shops, recognition of sole bargaining agents, and remedial action for defective procedures o Legal status of collective agreements o Emergency provisions of the Act
Commencement Order 4 (HMSO, 1972b) (Issued 16 December 1971)	28 February 1971	- Most remaining elements brought into operation: o Pre-entry closed shop unlawful o 'Unfair Industrial Practice' for unregistered organisations to induce, or threaten to induce, breach of contract o Unfair dismissal introduced o Right not to belong to trade union enforceable o Redress available where organisations, registered or otherwise, do not conform with its rules or the guiding principles of the Act

Source: Based on MRC MSS.200/C/3/EMP/3/82, Press Notice – Provisions to be brought into Force in February 1972, 16 December 1971

The RTUEA was the first institution to be introduced, and its importance cannot be overestimated. It represents the trade union movement's primary site of resistance to the Act for, as Moran argues, 'if unions were to register, and the Act were to weave its way into the fabric of industrial life, then the problem of repeal would be enormously complicated' (1977, p.126).

Registration was debated at length at the TUC Annual Conference held in September 1971. Arguing in support of the March 1971 advice to avoid registration, Feather stressed that the trade union movement was 'not prepared to hand themselves over to become a collection of state-licenced organisations subject to government control' (TUC, 1971c, pp.423-4). He referred to 'detailed and wide-ranging powers of surveillance' (ibid, p.424), describing registration as 'a device to divide the movement…To make one union suspicious of what other unions are going to do' (ibid, p.424). If this represented the accommodating side of the movement, Hugh Scanlon, President of the Amalgamated Union of Engineering Workers (AUEW), offered the radical challenge. His motion called for TUC affiliated trade unions to be instructed not to register and to take proactive steps to deregister from the provisional register (ibid, pp.426-427). The motion was passed with a majority of 1,125,000, with 5,625,000 voting in favour of instructing unions to deregister and 4,500,000 voting against. Disciplinary action would be taken against trade unions who rejected the motion (ibid, p.448).

Robert Keith, newly appointed Chief Registrar at the RTUEA, acknowledged that TUC affiliated trade unions currently found on the provisional register were important 'more because of the indirect influence they may exert than because of their actual numbers' (TNA LAB 10/3670, Keith to Morrison, 8 September 1971). Moreover, RTUEA officials noted that the decision of the TUC Annual Conference would mean they were forced to 'play for time' (TNA NF 1/6, Initial Registration Procedure: Policy and Timing, 15 September 1971). Hoping to exploit tensions within the trade union movement, it was believed that if a few trade unions with influence registered it would act as the catalyst required to give smaller or unaffiliated unions the confidence to follow suit (ibid). Keith argued that 'some departure from the highest administrative standards might be tolerated in the early stages if no positive administrative purpose or legally-obligatory process is frustrated, and if influential waverers can thereby be spared the embarrassment of a premature decision on registration' (ibid). Now that the

government's haste for enactment had subsided, a more measured approach within this important institution can be identified.

The RTUEA opened its doors on 1 October 1971, and all trade unions registered with the Registry of Friendly Societies were automatically transferred to the provisional register (HMSO, 1971c). Now liberated from the constitutional convention preventing an overt rejection of trade union arguments while the Bill was before Parliament (MRC MSS.200/C/3/EMP/3/81, Press Notice: Speech by Paul Bryan, 29 September 1971), ministers began a campaign rejecting the argument in *Reason* that registration represented a 'state licence' (TUC, 1971b). Coinciding with the RTUEA's opening, Robert Carr argued that reform was necessary given the shift in industrial relations from industry-level to company-level negotiations, a process that had been haphazard. With industry unequipped to react to these changes, the framework provided was essential (TNA LAB 43/604, Speech by Carr at Birmingham Chamber of Commerce, 1 October 1971). He argued that the Act created 'impartial and independent institutions' (ibid, p.10). Registration was no 'state licence' (ibid, p.24), and any suggestion of a loss of trade union independence was 'a travesty of the truth' (ibid, p.25). Non-cooperation ensured that that the institutions of the Act lacked trade union representation and facilitated a hardening of employer attitudes – both ultimately harmful to trade unions (ibid, p.28). Irrespective, Carr was clear that the Act would remain robust in the face of trade union opposition and would 'not collapse like a pack of cards' (TNA LAB 10/3704, Speech at the Financial Times Conference on "Industrial Relations", 27 October 1971). This bombastic style was in stark contrast to the 'low key' approach favoured by the RTUEA (TNA NF 1/3, Keith to Ingham, 20 September 1971).

To combat 'state licence' arguments, the RTUEA sought to avoid unnecessary antagonism. Officials hoped they would be 'spared the time consuming and invidious task of forcing deregistration on non-cooperative unions, leaving the way open for more productive

relations if those unions are moved later by self-interest to return to registration' (TNA NF 1/6, Opening Phase up to 15.10.1971 and Future Programme up to 31.12.1971, 14 October 1971). A realistic outlook was presented:

> The opening phase has been obscured by questions of cancellation of provisional registration, whereas the Act contemplated a rapid advance to full registration and thereafter to rules examination. Many important unions felt obliged to de-register and it will take time and a change of face if they are to register again (TNA NF 1/1, RTUEA Rules Examination – General Guidance, 12 November 1971; NF 1/52).

RTUEA officials were advised to take a 'sympathetic hand' and avoid deregistering any TUC affiliated union that defied its policy in the first instance. It was concluded that '[t]he pressure towards laxity will be particularly insidious during the early years while rule-making precedents and standards are set. The natural reaction will be to seek methods of postponing decisive action in "awkward" cases' (ibid, p.4). Only the rules of those who wished to be registered would be examined, caution would be utilised in contentious cases and early rules interpretations would be flexible (ibid). Officials within the RTUEA understood well the necessity to build legitimacy before the true work of shaping trade union rules could begin.

The Presentation of Independence

As noted in the introduction to this chapter, presenting the RTUEA as independent was key to the institution's success. For the Act to function as a depoliticised governing strategy, the perception of direct government intervention needed to be reduced. Given the fact that the RTUEA inherited the bulk of its staff from the DE, this would be difficult (TNA LAB 10/3704, Robertson to Winspur, 30 March 1971). The internal dynamics of the state would make the presentation of 'true' independence problematic, primarily in terms of accountability. For example, should the Secretary of State answer questions in Parliament about the RTUEA's

activities? Ordinarily, a Secretary of State would only answer questions regarding statutory bodies their Department had direct control over. In theory this was not the case with the RTUEA and the semi-judicial nature of its remit would make answering even general questions unusual (TNA NF 1/3, Belham to Edwards, 14 September 1971). Keith justified his favoured low-key approach on the grounds that the register itself would be publicly available (TNA NF 1/3, Keith to Ingham, 20 September 1971). Within the DE, however, there was concern that failure to answer questions in Parliament would be presented as ducking difficult issues (TNA LAB 10/3670, Munns to Edwards, 1 October 1971). It was decided, therefore, to 'adopt a fairly liberal attitude towards the answering of questions within the constraints put upon us by the necessity of recognising the independence of the Registrar from ministerial directive' (ibid).

The danger was that the government, not the RTUEA, would be presented as the driving force behind rules revision. Keith believed that by maintaining a low profile a head-on 'TUC-versus-Government' collision would 'blow itself out as quietly as possible' (TNA NF 1/5, Keith to Edwards, 13 October 1971). Information provided should be kept to statistics alone for, as Bernard Ingham, then Press Secretary at the DE, argued, '[t]he object of the entire exercise ought to be in both industrial and political terms to take the heat out of registration; not put it in' (TNA NF 1/5, Ingham to Simons, 25 October 1971). Such sentiment is also reflected in the views of Geoffrey Howe, now the Solicitor General, who maintained that it was essential to 'cut the strings tying the Department to the Registrar as soon as possible and as completely as possible' for irrespective of the necessity of early contact between the two, 'the Registrar should be seen as a totally independent personage as soon as possible' (TNA LAB 10/3670, Holland to Barnes, 18 October 1971). In terms of political presentation, this would benefit the strategy. However, the internal dynamics of the state apparatus, driven by administrative concerns, problematized the position.

DE officials were uncomfortable with a vision of complete independence. In line with depoliticised governing, this is unsurprising as arm's-length control is courted. One official argued:

> I would have thought, without wishing to sound Machiavellian, that while it is clearly desirable that the Registrar is seen to be a totally independent personage, it is also desirable that we should maintain a pretty intimate relationship with him at the present time when his activities are at the forefront of political interest (TNA LAB 10/3670, Simons to Barnes, 21 October 1971).

There is little evidence of the DE withdrawing at this stage. Instead, officials argued that 'it would be to the advantage of all parties for us to maintain close informal contacts with the Registrar. Coaxing the unions back to the Registrar is going to require delicate handling and we will often be able to give the Registrar useful advice in this situation – and vice versa' (TNA LAB 10/3670, Barnes to Holland, 27 October 1971). While there were contradictory arguments within the DE, retaining an influence was deemed favourable. This was clearly a difficult balancing act. The presentational aspects of independence centred on achieving trade union acquiescence to allow for the withdrawal of government from political involvement in industrial relations. Yet there was still no unified front within the trade union movement.

The Fragility of Non-Registration

In a speech delivered to the Financial Times Conference on Industrial Relations, Vic Feather argued that 'the objectives of the Act are political, and registration is the lynch-pin of the Act' (MRC MSS.292D/40.4/1, Speech at FT Conference on Industrial Relations, 28 October 1971). In reality, the TUC position was highly contentious, and the portrayal of a consensus requires clarification (see Moran, 1977, pp.125-135). A rejection of registration was not guaranteed,

only crystallising over a number of months. As Table 4.2 demonstrates, after one month, numerous trade unions remained on the provisional register.

Table 4.2 *The realities of registration during October 1971*

Status	Number of Affiliated Trade unions	Total Membership	Additional Notes
Unions not intending to register	72	4,960,000	Some larger unions, such as ASTMS, had expressed concern that they may not have the authority under current rules to deregister
Unions intending to deregister	9	2,120,000	This group included major unions such as T&GWU. Problems included existing union rules stating registration was necessary, and smaller unions seeking reassurance of the intentions of other unions
Unions postposing decisions	24	2,480,000	A largely unclear category at this stage. Some unions, such as NUS, had provided clear indication that they would register, while others had to consider rules revision and had not reported fully at this stage
Unions intending to register	22	400,000	Reasons included complexities relating to existing rules (NGA), concerns over loss of tax exemptions, previous conference decisions supporting registration and potential problems of competing with other unions
Unions not replying	11	40,000	Further investigation was required

Source: Based on MRC MSS.292D/24.1/4, F&GPC 2/7 – Non-Registration: Action Taken by Unions, 21 October 1971; MRC MSS.292D/24.1/4, F&GPC 2 – Minutes of Second Meeting, 25 October 1971, p.9

The success of the non-registration was far from certain. Several important affiliates, notably the Association of Scientific, Technical and Managerial Staffs (ASTMS) and the T&GWU, had yet to deregister citing internal difficulties. Others, including the National Union of Bank Employees (NUB) and National Union of Seamen (NUS), had rejected TUC policy

outright. It was reported that white collar unions representing bank employees, health service workers and national and local government workers might defy the TUC, or even leave it (The Guardian, 5 November 1971). The TUC General Council adopted a hard-line position on dissent, remaining confident that many more unions would deregister (MRC MSS.292D/20/5, GC 8 – Minutes of 3rd Meeting, 27 October 1971). The reasons given for resisting the TUC policy were numerous. Few unions were in favour of the Act *per se*, although concern existed over financial pressures, competition from other unions and fear that recognition would be withdrawn by employers. Some unions claimed their rules required registration, while others admitted that use of the Act would benefit them. Although a broad church, for numerous smaller unions these real concerns took precedence over TUC policy (see MRC MSS.292D/24.1/4, F&GPC 4/2 – Review of Meetings with Union, 13 December 1971).

Given this context, the RTUEA's strategy of avoiding antagonising affiliated unions and, in the longer term, attempting to cajole larger TUC unions to register at the first opportunity, enjoyed official support (TNA NF 1/6, Note by Keith – 'Registration and Affiliated Unions', 22 November 1971). Carr acknowledged that the early trade union response was 'disappointing; but scarcely unexpected' (TNA CAB 129/160/12, CP (71) 147 – Trade Unions Attitudes to Implementation of IR Act, 1 December 1971, p.2). His focus was on the response of white collar unions as this could facilitate a 'thaw' in attitudes. In particular, he noted that affiliated unions in banking, insurance, local government and the Post Office may face a challenge for recognition rights from unaffiliated trade unions. It was hoped this would force ASTMS, the National and Local Government Officers' Association (NALGO) and the Union of Post Office Workers (UPOW) to register to defend their interests (ibid, p.2). There was optimism that employers would engage and, as a result, Carr concluded 'it is far from true to say that the trade unions will, through their policy of non-cooperation, prevent the implementation or nullify the effects of the Act' (ibid, p.2). In addition, informal meetings with

the major Civil Service unions – the Civil and Public Services Association (CPSU) and Inland Revenue Staff Federation (IRSF) – suggested they would register if a split in the TUC could be avoided. Others would then likely follow (TNA NF 1/2, Note by Keith on Affiliated Civil Service Unions, 25 January 1972).

Nonetheless, after three months, RTUEA officials acknowledged that they had 'been hampered by the equivocal attitude of a number of influential affiliated unions towards TUC policy on deregistration' (TNA NF 1/2, RTUEA Programme and Objectives at 1 January – A Fresh Assessment, 5 January 1972). DE officials remained confident that numerous trade unions of 100,000 plus members were biding their time, yet within the RTUEA the view had developed that the inducements to register had been overplayed (TNA NF 1/2, Inducements to Register under the IR Act, 2 February 1972). In addition, the CBI's Working Party on Industrial Relations had stopped short of advising its members to adopt a policy of conformity with the Act as it would 'be provocative and could precipitate trouble' (MRC MSS.200/C/3/EMP/3/83, L.40.72: Problems Arising from Existing Closed Shop Agreements, February 1972). The government, to this point, had been unable to detach itself from the emotive argument's surrounding the 'state licence'. However, internal trade union dynamics created an unpredictable and volatile context. While the government could be forgiven for envisaging a softening of trade union attitudes, registration rested on a knife edge.

II. Phase Two: The Commission on Industrial Relations

Resisting References to the CIR

As Chapter Three demonstrates, the credibility of the CIR had already suffered as a result of the government's strategy. In its Second General Report, published on the day it gained statutory footing in November 1971, a rocky road ahead was predicted:

> In the past, the Commission have had the benefit of trade union cooperation in carrying out enquiries into problems under reference, and in seeking agreement on plans to effect improvements. The withdrawal of trade union cooperation has added to the difficulties of both operations. Also, in an atmosphere of non-cooperation, the effectiveness with which the Commission can pursue on a voluntary basis certain types of reference, in particular those dealing with industrial relations problems in individual companies, is seriously affected; and recent references have been concerned to a greater or lesser extent with general questions, such as industrial relations training, disclosure of information and industrial communications (HMSO, 1971f, p.1).

Once again, the presentational aspect of independence would prove crucial for the overarching strategy, but the voluntarist tradition supposedly represented by the CIR was certainly now in question. CIR officials feared the institution would descend into underemployment if references were not forthcoming (TNA LAB 10/3688, Hatfull to Buckley, 2 November 1971). They hoped an early reference would provide the opportunity to improve the CIR's battered image (TNA LAB 10/3688, Hatfull to Brownsort, 4 November 1971). However, not only would CIR officials have to combat trade union non-cooperation, but they also became entangled within a web of competing interests among officials and ministers.

In its reconstituted form, there was some hope that the CIR might help moderate trade union attitudes. Indeed, one official argued in favour of a ministerial reference 'where we were fairly sure [trade union] resistance was token only to support the TUC line…If the end result was a CIR report which helped the union to better relations with the employer, it would contribute to re-establishing trade union cooperation' (TNA LAB 10/3688, Brownsort to Cox,

29 November 1971).[17] The difficulty was that employers deemed a referral to the CIR to reflect badly on them, and sponsoring departments were also blocking references regarding nationalised industries. Norman Singleton, Secretary to the CIR, is reported to have argued that 'politically it would be a serious matter if the Secretary of State were to allow the TUC's attitude to starve the CIR of necessary work' (TNA LAB 10/3688, Cox to Barnes, 6 December 1971). However, DE officials wanted to promote the CIR 'as an independent agency for promoting the reform of industrial relations' stressing that 'an organisation whose problems are referred to it is in effect receiving a free consultancy' (TNA LAB 10/3688, Cox to SMAs, 15 December 1971). Yet there was little optimism of a dramatic change in employer attitudes in the near future, creating the potential for the institution to stagnate if ministers were deterred from making references (TNA LAB 10/3724, Cox to Barnes, 13 January 1972).

In January 1972, regular fortnightly meetings were established to discuss potential references moving forward (TNA LAB 10/3691, Note of meeting on 4 January 1972, January 1972). This would raise the presentational issue of independence for a second institution. While there was undoubted concern within the CIR regarding resistance to references, Conrad Heron, now Deputy Chairman of the CIR, was cautious about associating its officials with the DE through preliminary meetings to discuss further references. He argued 'that there is advantage in the Department and the Commission not appearing to be too closely associated at that stage of the game. Where a reference is made despite employer resistance, it is a tactical advantage for us to come on to the scene "with clean hands"' (TNA LAB 10/3724, Heron to Barnes, 1 February 1972). This, again, was a necessary aspect of avoiding association with 'state licence' rhetoric, although tension between the CIR and DE is apparent. There is little evidence of 'true' independence, instead it was merely a presentational tool to ensure perceptions of credibility.

[17] References to the CIR under Section 121 of the Act could be made by the Secretary of State regarding 'any question relating to industrial relations generally or to industrial relations in a particular industry or in any particular undertaking or part of an undertaking' (HMSO, 1971a, p.96).

Overt manoeuvring by the Secretary of State was to be avoided, limiting the potential to politicise individual references and, in turn, the role of government.

The Emergency Provisions of the Act

The emergency provisions represent the major interventionist clauses of the Act. The CIR was tasked with conducting ballots if ordered, although given its small staff, Heron identified 'enormous practical difficulties…which are so formidable so to constitute a political issue of some magnitude' (TNA LAB 10/3684, Heron to Barnes, 11 October 1971). Additional resources to assist were signed off, although it was noted that government must be mindful of a negative public reaction to DE staff conducting ballots ordered by the NIRC after an application by the Secretary of State for Employment (TNA LAB 10/3684, Draft Submission – Use of Departmental Staff, 8 November 1971). Given that Carr favoured ballots over a cooling-off period in the event of a major dispute (TNA LAB 10/3684, Cox to Barnes, 18 November 1971), this could create difficulties. Indeed, officials acknowledged that 'failure by the Commission to inspire public confidence in the way it [a ballot] has been conducted could have unfortunate effects on the Commission's much more important role in the general sphere of industrial relations' (TNA LAB 10/3684, Emergency Procedures, 18 November 1971).

This aspect of the Act ran contrary to the overarching strategy, i.e. the government taking a step-back. As a result it was clear that perceptions of the government acting in a draconian manner would need to be appeased. Nonetheless, both CIR and DE officials were mindful that pressure would exist to make use of the provisions from time to time (TNA LAB 10/3684, Emergency Procedures, 18 November 1971, p.1). The advice of DE officials was fourfold. First, use of the emergency provisions should be avoided for a minimum of six months, preferably up to a year, to avoid a further hardening of trade union attitudes. Second, ballots should only be used at a late stage in any dispute in the hope that favourable public opinion would develop. Third, ballots should not be used in a manner that might weaken

employers. Specifically, use of emergency procedures must not conflict with the overall strategy on pay restraint as final settlements would likely be higher than previous offers. Fourth, the provisions should only be used as a last resort, making every effort to give the impression that the government would use them rather than actually doing so (TNA CAB 134/3376, EO (71) 65 – Emergency Procedures under the Act, 10 December 1971, pp.3-4). In effect, when drafting the Act the Conservative government had created a situation where the institution tasked superficially to act as custodian of the voluntary system of industrial relations was inherently linked to the DE through the legislation's most interventionist measures.

CIR officials addressed the practicalities of the institutional relationship, suggesting that any decision to utilise the emergency provisions 'should also be discussed before the Secretary of State's decision to apply to the Court is taken' (TNA LAB 10/3684, CIR Note: Emergency Ballots, 26 November 1971). Implicit in this comment is the idea that emergency provisions, called for to protect the 'national interest', would be subject to discussion and potential amendment in light of administrative practicalities, not exclusively the result of political concerns. The following month, Leonard Neal, now Chairman of the CIR, argued that government must do more to dispel trade union myths about the Act, although he was far from convinced that TUC opposition would wither away. Carr made clear that 'it was important that the CIR should, through all this, preserve its position of independence and not be seen as merely an extension of the Department' (TNA LAB 10/3688, Note of discussions following dinner with CIR on 21 December, 24 December 1971, p.2). This tension between presentational 'independence' and government control would remain a feature of the CIR throughout its existence. By linking interventionist aspects with an 'independent' institution, the Act created a tension at the heart of the state and, indeed, the strategy for reform. The government and institutions created under the Act were jostling for position in the reconfigured landscape.

III. Phase Three: Industrial Arbitration and the National Industrial Relations Court

The Industrial Arbitration Board

The newly named IAB features little in existing accounts. This is largely because it had minimal impact on the eventual demise of the Act itself. However, in terms of presentational independence it enjoyed a brief moment in the limelight that warrants discussion. This stems a dispute towards the end of 1970 between Sir Roy Wilson, then President of the Industrial Court, and the DE, particularly Carr, over the institution's renaming (see TNA LAB 10/3572, Wilson to Barnes, 5 November 1970; TNA LAB 10/3572, Barnes to Wilson, 12 November 1970). In advance of its renaming on 1 December 1971, Wilson articulated his dismay surrounding the continued independence of arbitration under the Act:

> Because I am a fervent and continuing believer in industrial arbitration, and because I know that in the past the Industrial Court at any rate has been recognised as completely independent of Government control (which in fact the Department has never dreamed of trying to exercise over it) I find the present situation horrifying (TNA LAB 10/3572, Sir Roy Wilson to Carr, 7 October 1971, p.2).

It was perceptions of this nature that the government needed to overcome. Indeed, Wilson's view was challenged by DE officials on the basis of the overarching strategy: 'Germane to [the] Industrial Relations Act and Code – "government disengagement!"' (TNA LAB 10/3572, letter to Holland, 1 November 1971).

This assessment was based on the view that both arbitration and conciliation were essential elements of the Act and the Code of Industrial Relations Practice. This left Wilson's claims unwarranted. The mantra that voluntary measures should be favoured was stressed,

arguing that 'the NIRC with its enhanced role is indicative of this and where for example in comparison to the proposals of the previous administration the Secretary of State's powers are more limited and less interventionist' (ibid). However, Wilson's concerns were not alleviated. Writing to Carr again, he stated 'I do not pretend that at the moment I feel very optimistic about the extent to which disputing parties will be prepared to resort to the Board, at any rate in the initial stages. One can only hope for the best and do one's best' (TNA LAB 10/3572, Keith to Carr, 14 November 1971). The evidence suggests that attempts to influence arbitration had begun, with state managers making efforts to ensure the 'national interest' was considered before settlements were agreed (see TNA T 342/192, various).

While Wilson's private correspondence could be contained, his concern regarding government intervention was made public on 1 December, the day the renamed IAB was unveiled:

> It is the only right course because the independence and impartiality of arbitrators are in my view absolutely basic and essential to the arbitration system. And it is the only wise course because if industrial arbitration becomes thought of as an instrument of Government policy there will be no hope of it being able to play any effective part in industrial relations (TNA T 342/192, Industrial Arbitration Board: Press Conference, 1 December 1971).

The state's habit of micro-managing the industrial relations scene would not be broken overnight. Carr argued that government must defend the national interest, including 'a duty to ask *all* those concerned with pay determination, including arbitrators, to take it into account' (TNA T 342/192, Carr to Wilson, 2 December 1971). The only caveat was that '[t]he extent to which arbitrators take such Government statements into account is, of course, entirely a matter for them' (ibid). Once again, evidence of 'true' independence is lacking, as the state retained a

role in the arm's-length regulation of disputes. Pressure, albeit indirect in this case, would be consistently applied to the institution responsible for independent arbitration to ensure that settlements were in line with broader government policy.

The Independence of the National Industrial Relations Court

Phase three also involved the introduction of the flagship institution, the NIRC, and the vast majority of the remaining provisions of the Act. This offers another site of analysis where internal tensions within the state apparatus can be identified. The Act institutionalised DE intervention in two areas – conciliation and information sharing. Regarding the former, both the Act and the NIRC's rules enshrined the primacy of conciliation before resort to the Act (HMSO, 1971a; HMSO, 1971g). However, this inevitably linked the DE conciliation service with NIRC staff, another potentially damaging connection when shaping perceptions and, crucially, provided further evidence of tension within the internal dynamics of the state. Master Seaton, Secretary of the NIRC, envisaged a role for the DE in facilitating conciliation, although stressed that 'it was vital for the Court to demonstrate its total independence of the Government and it would therefore be careful to avoid too close a public association with the Department' (TNA LAB 10/3624, Note of Meeting to Discuss Conciliation in Cases before the Court, 17 September 1971). 'Informal exchanges' would be permitted, as long as they did not prejudice cases to be heard before the court. NIRC senior officials would learn from staff experienced in industrial relations at the DE, particularly regarding conciliation (ibid).

Sharing information between the NIRC and DE officials was also complex and potentially problematic. On limiting information to statements of fact alone, one senior official noted 'if we want the Court to use us we must normally be more open than this' (TNA LAB 10/3624, Cox to Barnes, 5 November 1971). Both DE and NIRC officials noted that employers and unions would favour conciliation over the narrow parameters of the Act, leaving space for

some cooperation without the risk of the DE conciliation services becoming discredited if they appeared before the court (TNA LAB 10/3672, Note of Meeting, 9 November 1971, pp.1-4). Yet the presentational aspects remained a difficulty, although this was pushed by the NIRC, not the DE. Seaton argued that the NIRC 'had to establish itself as an independent and impartial body…Consequently the Court could not afford to tie itself too closely to the Department's conciliation service' (ibid, p.5). A junior official in the NIRC, David Hills, would act as the key link for 'liaising with the Department and with industry for the Court' (TNA J 145/1, Seaton to DE Private Secretary, 25 November 1971). Discussions of conciliation have to be contextualised by the fact that government had begun limiting access to the DE conciliation service from September 1970, a matter of considerable frustration to the TUC (TNA PREM 15/967, Meeting in Chancellor's Room on 24 November, 25 November 1971). This, however, was in line with the strategy of making industry 'put its own house in order'. Nonetheless, again the Act created a complex web of competing interests as the institutions were linked together. This would only become more complicated with time.

While the DE had established informal information sharing links with the RTUEA and the CIR, the position with the NIRC was different. An unavoidable connection with the DE existed, although at this early stage the NIRC showed little inclination to be involved. DE officials were informed that the NIRC must 'maintain our independence and the confidentiality of some aspects of our cases' (TNA LAB 10/3690, Seaton to Simons, 26 November 1971). Hills had been reluctant to agree to DE official's requests for access to information regarding applications made to the court, although this was eventually accepted (TNA LAB 10/3690, Weston to Numerous Officials, 7 December 1971). This may, in part, be explained by conventions governing the legal system, entrenching the notion of judicial independence and impartiality in the minds of legal professionals (Griffith, 1991, pp.35-6). Similarly, several weeks into the courts operation, Hills rejected the possibility of forging closer working relations

with employers, a position advocated by the CBI. They were informed that only once the perception of the independence of the court was accepted by both sides of industry would the possibility of informal links be explored (MRC MSS.200/C/3/EMP/3/109, Hills to Cobb, 21 December 1971). There is clear evidence of attempts by officials to foster close working relationships with the institutions of the Act, in part for administrative and procedural reasons. However, the realities of independence are more complex. Indeed, influencing the inner workings of the NIRC would prove a difficult task for DE officials, a point that is important to note as it becomes crucial in the coming months.

Opening the Court's Doors

As with the RTUEA, senior officials had advised against an ostentatious opening of the NIRC (TNA LAB 10/3624, Note of Meeting, 9 November 1971 p.7). Instead, the opportunity was taken by the NIRC's incoming President, Sir John Donaldson, to attempt to allay some of the disquiet surrounding its role. The NIRC was presented as a unique court, far removed from the usual procedural nature of the English legal system. First, 'traditional Court attitudes and procedures' were deemed inappropriate, with the NIRC described as more akin to a Tribunal in nature (TNA J 111/1, Opening Statement, 1 December 1971, pp.1-2). Second, nominated members, i.e. Judges, would have an equal footing in discussions to appointed members who were drawn primarily from industry (ibid, pp.2-4). Third, formalities of address in the Court were abandoned (ibid, p.4). This was coupled with a move away from formal Court dress, witness boxes and adversarial style (ibid, pp.7-8). Fourth, any procedural rules, while in place, were flexible and subject to change in the interests of affected parties and/or the public at large. Similarly, in the interests of simplicity, proceedings could be initiated through use of a simple form (ibid, pp.5-6). Sixth, informal meetings would be offered in advance of proceedings. The NIRC would, in effect, aim to facilitate and engage in conciliation, preserving the confidentiality of any subsequent discussions (ibid, pp.6-7). Donaldson argued that the 'Court

will measure its own success not so much by the number of decisions which it gives as by the number of occasions upon which it becomes unnecessary to give a decision' (ibid, p.7).

Finally, legal aid would be available, and any recouping of costs or expenses from the losing party would be 'wholly exceptional' (ibid, p.8). In closing, the unique character of the NIRC was reiterated:

> I should like to say that all the members, officers and staff of the Industrial Court regard themselves as being engaged in a service industry. Our success depends upon the extent to which we provide what our customers – the parties and the public – really need, rather than what we may have thought they needed. We shall therefore welcome informed and constructive criticism from any and all quarters and will do our best to make good use of it (ibid, p.9).

In this short statement Donaldson had inadvertently struck the crux of the challenges the Act, and therefore the NIRC, would face. Its success as a depoliticised governing strategy relied on the ability of its institutions to legitimise the legal framework presented by government. The Act had been designed to produce an 'accountability shift' away from government. Potentially problematic industrial relations conflicts would be outside of its traditional purview, only to be engaged in when conciliation through its own services was likely to succeed. In all other circumstances, the legal system would take up the slack. Success would be governed by the manner in which the NIRC's judgements were received.

The first case before the court, *Car Collection v T&GWU* [1972] I. C. R. 135, was held on 3 February 1972 amid continued trade union resistance.[18] Although the T&GWU refused to appear in court, a letter was sent on its behalf providing sufficient grounds for the NIRC to

[18] Full details of documentation relating to this case are available in MRC MSS.292D/249/2.

reject the employer's claims. This case is crucial as it put the DE and the NIRC approach to conciliation to the test. Links between the two had not been solidified, yet officials had argued that 'we need not…be worried if apparently the Court and DE conciliation are proceeding at the same time – *the less we are seen to be in very close touch with the Court the better'* (TNA LAB 10/3624, Atkinson to Cox, 19 January 1972, *emphasis added*). However, the T&GWU was unconvinced by the NIRC's procedures or its independence. It questioned the point of the DE conciliation service if the NIRC acted unilaterally. Indeed, after the case had been thrown out a letter was sent to the union, although the outcome had not been communicated to the DE. In a meeting between T&GWU and DE officials the latter had to admit they knew nothing about it. It was noted that union officials 'found it hard to believe that we did not know that the Court had conveyed their view to the union and [they] must have concluded that we were either very good actors or fools' (TNA LAB 10/3624, Atkinson to Simons – Section 45 Car Collection v TGWU, 27 January 1972). Following request for details before such letters were sent, the DE was informed 'it would be quite improper for the Court to do so as these were purely matters as between the Court and the parties to the case' (ibid).

It was fundamental to the strategy that the NIRC's independence was accepted, particularly by the trade unions. However, the drafting of the Act implied a close relationship with the DE, and this first case failed to dispel the notion that DE officials were involved in proceedings. Government enjoyed minimal influence over, or distance from, events. Moreover, DE officials were receiving reports that Donaldson was ruffling the feathers of employers engaged in these actions (TNA LAB 10/3624, Smith to Barnes, 26 January 1972). Subsequent cases in this period also provided poor publicity for the work of the NIRC and the Act more broadly. The one affiliated trade union that made an application to the NIRC for recognition under the Act – the NUBE – had been advised to withdraw its action by the TUC or face suspension (MRC MSS.292D/40.5/3, F&GPC 5/9 – NUBE Application to NIRC, 24 January

1972). This case has been described as a success of the NIRC's conciliatory potential. After all, the case never reached a full hearing due to the employers renewed willingness to engage in constructive discussion following the trade union's application (Hills, 1973, p.260). However, the fact that NUBE would have withdrawn its cooperation irrespective, often goes unnoticed (see MRC MSS.292D/249/5 for genealogy of case). The third case would linger for rather longer. *C A Parsons & Co. Ltd v AUEW* [1972] Ch 305 again focused on a recognition dispute, with a newly formed professional union seeking to supplant existing trade unions for bargaining purposes. The trade unions effected – TASS and ASTMS – did not appear before the NIRC (ibid) and refused to cooperate with the CIR following a referral of the case for assessment (HMSO, 1972c, p.3). While the status quo was restored in October 1972 (HMSO, 1972c), there was little positivity to be drawn from this sequence of cases. However, up to this point government had remained outside of proceedings, demonstrating that in minor cases its role could remain depoliticised.

IV. The Miners' Strike

The Relevance of the Industrial Relations Act

Campbell has argued that 'the miners' strike of 1972 had nothing to do with the Act' (1993, p.457). However, Hills has reported that an emergency application 'became very real in the Court's mind about this time' (1973, p.261). In addition, Hills notes that a 'myth has since grown that the miners' strike took place before the Act came into force; so far as the emergency provisions in the Act are concerned, this is not the case' (ibid, p.261). What the existing literature neglects, however, is *why* the Act was not used during this dispute. Of course, utilising an interventionist tool would instantly politicise the role of government, undermining the strategy embodied in the Act. The dispute would take place in the shadow of unemployment breaking the 1 million mark in January 1972, a monumental event in the era of full employment

(Campbell, 1993, pp.407-8). The dispute represents a display of popular agency, described as 'a dramatic demonstration of working-class power' (Pitt, 1979, p.7). Tony Hall demonstrates how 'high politics' was important. The Act certainly contributed to a souring of the industrial climate, but the decisions in 1970 to allow coal to be imported and convert coal power stations to function with oil, underpinned the fraught context. However, it was unofficial disputes in 1969 and 1970 that galvanised the miners, creating pressure on the leadership from below (1981, pp.167-8). Jim Phillips's argument that 'the strike was shaped not so much by miners' leaders but by the miners themselves' (2006, p.190) is certainly a convincing one.

Table 4.3 *Total days lost in all stoppages in the mining and quarrying industry, 1965-72*

Year	Total Working Days Lost (000's)
1965	413
1966	118
1967	108
1968	57
1969	1,041
1970	1,092
1971	65
1972	10,800

Source: HMSO, 1973a, p.100

As table 4.3 demonstrates, the prevalence of strike activity in the coal industry had increased considerably throughout the 1960s, particularly in 1969 and 1970. The social and economic factors behind this strike are complex. Throughout the post-war years the coal industry had been in decline. Working conditions had changed dramatically post-nationalisation in 1947. Pits closed across the country, a process driven by Lord Robens, then Chairman of the National Coal Board (NCB). Employment in coalmining became increasingly precarious

throughout the 1950s and 60s, with increased mechanisation and alterations to miners' pay (ultimately wage cuts) fuelling discontent. The National Union of Miners (NUM) had proved largely impotent, with Joe Gormley, himself a moderate, elected as President on a platform of pursuing a pay increase. In addition, a number of prominent left-wing miners were becoming increasingly prominent within the NUM (Campbell, 1993, p.412; Darlington and Lyddon, 2001, pp.31-6; Pitt, 1979, p.17; Phillips, 2006, p.191; Whitehead, 1986, pp.73-4). The broader context, too, was favourable for strike action. Unlike the strikes of the mid-1980s, unemployment, while rising, had not reached the heights of the Thatcher years. In addition, miners in the early 1970s could rely on solidarity from other industries on picket lines before they became decimated in the coming years (Beynon, 1985, p.17). Carr later admitted that the government grossly underestimated the miners, stating that 'our intelligence about the strength of opinion within the miners' union generally was not as good as it should have been' (cited Whitehead, 1986, p.74). However, while numerous accounts of this dispute exist, none discuss the reasons behind the failure to use the Act.

The strike was conducted between 9 January and 28 February 1972, when the return to work was ordered. Following numerous rejected offers in line with the government's de-escalation counter inflation policy,[19] a Court of Inquiry, chaired by Lord Wilberforce, found in favour of the miners' claim and after over a month of economic disruption a settlement was eventually agreed at 22 per cent. This was far in excess of the government's seven per cent target and represented a major climb down in the face of industrial power (for an overview of events as recorded by DE officials, see TNA PREM 15/986, Pay Negotiations, n.d.). The fact that the emergency provisions had not been used had not gone unnoticed. Sir Gerald Nabarro, a backbench Conservative MP, enquired:

[19] For an account of the government's counter-inflation strategy, see Blackaby, 1978, pp.55-7.

> Why is it that the formulae and provisions of the Industrial Relations Act cannot be applied in this first major stoppage since the Act reached the statute book? Unless the Government act within the framework of the Industrial Relations Act to secure a settlement, I am afraid that Act will be stigmatised as an expensive and irrelevant stumer (HC Debate, 18 January 1972, Vol. 829, Col. 289).

Such sentiment is understandable given the Act was a flagship policy. The early advice of DE officials in advance of industrial action by the miners and electricity workers offers some clarification. The use of the emergency provisions was rejected in both disputes. In the case of the miners, only a lengthy strike would satisfy the Act's 'national emergency' requirement. However, it was held that use of the emergency provisions would not facilitate a settlement, at best playing for time and at worst making the government appear weak. A ballot was rejected out of hand as it would only serve to highlight support for the NUM cause (TNA LAB 10/3684, Emergency Procedures – Annex A, n.d.). Similar sentiment was expressed regarding the on-going electricity industry dispute (ibid, Annex B).

Use of the emergency provisions risked not only politicising the role of government, but also discrediting the Act at a crucial stage. The Official Committee for Emergencies concluded:

> if action under the Industrial Relations Act were thought impolitic, the risk in each case would be that adherence to low "final" offers might precipitate a trial of strength in which the Government would have to use Emergency Powers to preserve the essentials of the life of the community (TNA PREM 15/986, Miners' Pay Dispute 1971-72, n.d).

DE officials wanted to avoid a trial by strength during the initial phase of the Act, advising ministers against any early use of the emergency provisions (TNA CAB 134/3376, EO (71) 65 – Emergency Procedures, 10 December 1971). Yet contingency planning had taken place as the likelihood of industrial unrest increased. However, Heath informed officials that 'any proposal

to use the emergency procedures under the Industrial Relations Act would need very careful consideration by Cabinet' (TNA PREM 15/984, Gregson to Angel – Contingency Planning, 3 January 1972). There was also concern about the implications of not acting. The Official Committee on Emergencies concluded that an early ministerial statement would force the government to explain their intention to not intervene and, moreover, what role the Act might play (TNA CAB 134/3486, EO (72) 1st Meeting, 5 January 1972, pp.2-3). DE officials had advised Carr to sit tight in the first stages of any strike. With numerous outstanding pay claims, the dangers of this strategy were acknowledged. Nonetheless, Carr argued that 'however serious the risks the stakes are so high they are worth taking' (TNA PREM 15/984, Carr to Heath – 'Coalmining', 6 January 1972).

The government was in a Catch-22 situation. To settle would discredit counter-inflation policy. To adopt a hard-line position would require imposition of the emergency provisions, politicising the role of government and risking discrediting the Act. Once the strike commenced, the position remained unclear. Carr had reportedly rejected use of a cooling-off period as he thought it would be unlikely to satisfy the NIRC's criteria of facilitating a negotiated settlement. This was certainly the case given the government's refusal to offer arbitration. Officials remained of the view that the dispute would not qualify as a national emergency, and to argue to the contrary would represent a further sign of weakness. Unlike the advice in December 1971, however, the possibility of a ballot was not rejected, and contingency planning was put in place (TNA PREM 15/984, Holland to Gregson, 6 January 1972). Cabinet met on 11 January 1972, with both Carr and John Davies, Secretary of State for Trade and Industry, advising against use of a cooling-off period as it would not pass the 'emergency effects test' at this stage. However, neither ruled out the use of a ballot order to ascertain levels of support for the strike later. This would involve an application to the NIRC (TNA CAB 128/50, CM (72) 1st Conclusions, 11 January 1972). With regard to another major aspect of this dispute

– flying pickets – the Act was an irrelevance as the appropriate provisions were not due to come into force until 28 February 1972. In any case, the only change of note would be the outlawing of picketing private dwellings, and the police were informed that existing law would be adequate (TNA CAB 134/3485, ES (72) 1st Meeting – Coal Miners' Strike, 17 January 1972).

The Danger Associated with Using the Act

In early January, the TUC F&GPC met to discuss the circumstances surrounding the miners' strike. The minutes record that 'the problem was not a straightforward solidarity issue and it could be complicated by the Industrial Relations Act' (MRC MSS.292D/24.1/5, F&GPC 5/1 – Special Meeting on Coal-Mining Industry Dispute on 10 January, 24 January 1972). However, this was never on the cards. In early February, at the height of the unrest, Cabinet rejected use of a ballot order, citing lack of time and the risk of intimidation skewing the result (TNA CAB 128/50, CM (72) 6th Conclusions, 10 February 1972). Moreover, opinion polls had turned firmly in favour of the miners (see CPA CRD 3/42/16, Snap Survey of the Coal Strike, 14 February 1972). When the government asked the TUC to assist in exerting pressure on the NUM leadership, no mention of use of the Act was made. However, Heath hinted at a hardening of attitudes as government attempted to protect the community: 'If industry and the very life of the nation were to be put further at risk…the Government would have to carry out its responsibilities…the Government would have to deal with the situation' (TNA PREM 15/985, Meeting of Heath, Carr and Feather, 15 February 1972, p.4). Interestingly, while Feather could offer little assistance regarding the miners, for the first time he stated that the TUC would be willing to cooperate with an incomes policy if properly consulted. At this stage, they were simply having government decisions forced upon them (ibid, p.9). Trade union leaders, as much as government, were losing control. The government's strategy of withdrawal had not assisted trade union leaders, just isolated them from their memberships.

There were no further discussions on the emergency powers of the Act. Disruption in the electricity industry ended on 7 February – settled for 7.8 per cent – removing the danger of strike action in two major industries. No such agreement could be reached with the miners (TNA PREM 15/986, Pay Negotiations, n.d., p.5). As noted above, in desperation Cabinet agreed to establish a Court of Inquiry on 10 February 1972 (TNA CAB 128/50/7, CM (72) 6th Conclusions, 10 February 1972). Reporting on 18 February, it broadly agreed with the miners' cause and considered its claim a reasonable one (HMSO, 1972d). Hills states that the NIRC placed itself on standby at this point (1973, p.261). Indeed, letters had been prepared for dispatch to Gormley, President of the NUM, and the Chairman of the NCB, Derek Ezra, informing them of a cooling-off period. The letters were never sent (TNA J 120/1, Seaton to Gormley, 18 February 1972; TNA J 120/1, Seaton to Ezra, 18 February 1972). The government had rejected the idea of using the Act.

A staunch posture was adopted in the early phase of government, although when major industrial unrest reared its head, it did not act. Hills, describing the early life of the NIRC, argues that 'the main dispute of the day passed it by' (1973, p.261). There is also little evidence of government withdrawing from the sphere of industrial relations. Hall makes this point well, arguing that 'the Government were putting strong pressures on the Coal Board to stand firm behind their unofficial pay limit, while remaining publicly committed to a policy of non-intervention' (1981, p.174). Government remained heavily involved in the negotiations, with Carr meeting representatives of the NUM on 21 January and 9 February 1972 (TNA PREM 15/984, Note for the Record, 21 January 1972; TNA PREM 15/985, Note for the Record, 9 February 1972), the National Association of Colliery Overmen, Deputies and Shotfirers on 4 February (TNA PREM 15/985, Note for the Record, 4 February 1972) and representatives of the NCB at the end of January (TNA PREM 15/984, Note for the Record, 27 January 1972). Moreover, Heath was called upon in the dramatic final stages to broker a deal (see TNA PREM

15/986, Meeting at 10 Downing Street, 18 February 1972; TNA PREM 15/986, Note for the Record: Miners' Pay, 21 February 1972). Informal links are also evident throughout the relevant files located in the National Archives. This was in line with the state's activities during the 1960s and represents no departure from existing protocols. The government had failed to bring the Act into play, instead relying on traditional methods, driven by the fear of politicising its role through the use of powers of enforcement. There was little evidence of confidence that the legal system would insulate government from damage if an emergency order was imposed. Withdrawing, even ostensibly, from oversight of collective bargaining processes had been rejected when a major, inflationary settlement was likely. The miners' strike, while not directly involving the Act, provides the first window into an analysis of the strategy as it would unfold.

Conclusions

The broad conclusions of this phase of the Act are expressed well by officials in the NIRC and RTUEA. Hills, for example, suggests that the NIRC's work was kept out of the headlines and, as noted above, it did not feature publicly in the miners' dispute (1973, p.261). Reviewing the first 6 months of the Act, RTUEA officials wrote: 'The Government seemed reluctant to use its powers under the law, including the new Act; and it was already saddled with the odium of high unemployment' (TNA LAB 10/3928, Industrial Relations Act: Registration and the TUC, April 1972). Given the forceful approach to enactment, this period is one of caution as the various provisions of the legislation were brought into force. However, given that the Act represents an attempt to depoliticise the role of government, this need not be seen as surprising. It was essential that the institutions of the Act offered legitimacy to the rules embodied in the legal framework. As a result, the presentation of independence was crucial. While this is perhaps an unremarkable observation, what is more interesting is how the internal dynamics of the state influence depoliticisation. Indeed, the interests of the various institutions, including the DE, were not in harmony at all times. Furthermore, the traditions of the British legal system ensured

the mind-set of judicial officials was not necessarily conducive to maintaining arm's-length control.

The implications of these potentially contradictory relations were not, at this stage, a cause for undue concern. However, they demonstrate how the level of haste discussed in the previous chapter was strategically problematic given the weaknesses in drafting. The chapter also notes crucial contextual considerations. First, while non-cooperation was on-going, this was fragile. Indeed, there is evidence that the resolve of white collar unions to defy the TUC could prove decisive. Second, Carr and senior ministers had accepted that they may have to play a long-game, expecting trade union attitudes to change with time. The miners' strike of 1972 exemplifies the fragility of the current situation and, crucially, how the Act was a difficult weapon for state managers to wield. While it was not used, the reasoning behind this decision is important. If the primary aim of the Act was to insulate government as they withdrew from political involvement in industrial relations, to intervene directly in a major dispute would undermine the strategy. Moreover, it was noted that a determined effort by the NUM could discredit the Act entirely. Thus, discussions surrounding the Act and the miners' dispute uncover a major contradiction. While the Act sought to depoliticise the role of government, it contained politicising elements. To not use them would appear weak, to do so would once again politicise the role of government. Subsequent events would highlight this very conundrum.

Chapter 5
Industrial Unrest on the Railways and in the Docks, March 1972 – June 1972

Introduction

The miners' strike soured relations between government and the trade unions, providing the context for the maiden use of the Industrial Relations Act's emergency procedures. The previous chapter focused on the presentational aspects of reform, in particular the need to garner institutional credibility through creating the *perception* of independence. It argued that internal contradictions and competing interests at the heart of the state made this a difficult task. When it came to the first major industrial dispute – the miners' strike – the government exercised caution and the Act was not used. State managers feared that to do so would politicise the government's role and discredit the Act. Between March and July 1972, with the government now pursuing expansionary economic policies, there was further industrial unrest on the railways and in the docks. The events that followed focus attention on the difficulties of involving the courts in depoliticised governing strategies as judicial interpretation has an unpredictable character. This limited the government's ability to influence events. Instead, its

role became politicised owing to assumptions of direct involvement when in reality it was reacting to, not shaping events. These disputes have been held responsible for 'pushing the Industrial Relations Act to the peak of its controversy' (Holmes, 1997, p.25). As a result, 1972 would suffer the most days lost – in the region of 24 million – since the General Strike of 1926, and a 76 per cent increase on the previous year (HMSO, 1973a, p.49). Table 5.1 demonstrates this dramatic increase.

Table 5.1 *Stoppages in the years 1962-72*

	Working days lost in all stoppages (000's)		
	Total	**Total known to be official**	**Percentage of stoppages deemed official**
1962	5,798	4,109	70.9
1963	1,755	527	30.0
1964	2,277	690	30.3
1965	2,925	607	20.8
1966	2,398	1,172	48.9
1967	2,787	394	14.1
1968	4,690	2,199	46.9
1969	6,846	1,613	23.6
1970	10,980	3,320	30.2
1971	13,551	10,050	73.8
1972	23,909	18,228	76.2

Source: HMSO, 1973b, p.632

The primary argument of this chapter is that an analysis of these major disputes immediately brings into question the Act's ability to depoliticise. It proved incapable – at this stage, at least – of defusing highly politicised, national disputes. The analytical framework

employed in this thesis allows particular frailties to be pinpointed. The argument is weaved through five subsections. First, government relations with trade unions are assessed. In light of the miners' settlement, ministers strengthened their resolve to combat inflationary wage claims. The Act was in danger of becoming an extension of counter-inflation policy, quite contrary to its authors' intentions. Second, the policy of non-cooperation is returned to. For the first time the punitive measures of the Act, in particular unlimited fines, would test the resolve of TUC affiliates. Sections Three and Four discuss the unpredictable nature of the legal system and the implications for the government's strategy. While the evidence suggests that the government did not directly intervene in or shape events, they had little control over, or insight into them, as they developed. Furthermore, unlike successful examples of depoliticised governing where a distancing effect from events is enjoyed, the government's role was politicised. Ultimately, in the volatile environment of the docks, the Act was counter-productive and, moreover, did not fulfil its primary function of allowing government to withdraw. Finally, the chapter addresses the broader implications of both disputes. The fragile non-cooperation policy was bolstered, although there is some evidence that industry was starting to make its own conciliation arrangements. However, this was driven by a rejection, not acceptance, of the government's position.

I. Preparing for Further Industrial Unrest

The Act and Trade Union Relations

The miners' strike completed a difficult period for the government. In addition to unemployment exceeding one million, in the first months of 1972 the government had rescued two 'lame ducks' – Upper Clyde Shipbuilders and Rolls Royce – the first of Heath's infamous U-turns (Ball, 1996, p.328; Campbell, 1993, p.442). This was soon followed by a budget that acknowledged the 'twin evils of inflation and unemployment' (HC Debate, Vol.833, c.1345,

21 March 1972). What would become a second U-turn, for Heath, was designed to stimulate demand and cajole industry into investing as government pursued economic growth (Heath, 1998, pp.398-9). The government was keen to impress the need for wage restraint on the TUC, particularly now that they had responded to calls for a transition towards expansionary economic policies (TNA PREM 15/968, Press Notice – Robert Carr Calls for Moderation in Wage Negotiations, 3 March 1972). Senior officials warned ministers, including Heath, Anthony Barber and Robert Carr, that trade union leaders remained sceptical about any meeting, seeing it as a public relations exercise (TNA PREM 15/968, Meeting at 10 Downing Street, 2 March 1972). Moreover, cooperation over prices and incomes would be difficult unless the Act was suspended (TNA PREM 15/968, Note to Heath, 6 March 1972). However, there was no sign of backing down. Sir Robert Armstrong, Heath's Private Secretary, advised that 'the primary responsibility for creating better industrial relations meets with management and unions' (TNA PREM 15/968, Talks with TUC, Annex 2: 'Response to Union Criticism of Government Policies, 7 March 1972, p.5). The framework created 'a new climate in which responsible voluntary action is given greater support and a far better chance to succeed' (ibid, p.5).

At a meeting on 9 March, the TUC presented the Act as a major obstacle to cooperation. Sir Sidney Greene, General Secretary of the National Union of Railwaymen (NUR), argued that 'the TUC had been preoccupied with the Industrial Relations Act and its consequences', with it 'continuing to create serious problems, particularly because there was now the right not to belong to a trade union' (TNA PREM 15/968, Prime Minister's meeting with TUC, 9 March 1972, p.3). It was unlikely that the government and the TUC could work closely together regarding conciliation unless they had some assurance of the 'non-operation' of the Act (ibid, p.5). The TUC's minutes are more explicit, describing how it was 'hard to see any meaningful dialogue taking place in the context of the existence and operation of the Industrial Relations

Act' (MRC MSS.292D/110.44/39, Meeting with Prime Minister, 9 March 1972). While this meeting lacks detailed discussion of the Act or the broad economic landscape, it represents the first, small step back towards the mutual engagement that characterised the post-war years. On-going, meaningful dialogue was promised, and Carr expressed a willingness to discuss the Act in a more appropriate forum (TNA PREM 15/968, Prime Minister's meeting with TUC, 9 March 1972, p.4).

On 31 March 1972, 41 TUC affiliated trade unions passed onto the full register (see Appendix 3). In light of the General Municipal Workers Union (GMWU) decision to deregister, Robert Keith advised that outside of 20 small TUC affiliates, registration was of little significance. Only cumulatively could there be 'a "nuisance value" against TUC policy' (TNA NF 1/2, Talks between Keith and Officials, 9 March 1972, p.1). Keith hoped that the 'inducements' of the Act would prove difficult to resist as time progressed (TNA NF 1/25, Keith to Edwards, 9 March 1972). DE officials believed there would be a 'thaw' in attitudes, with more and more unions cooperating with the NIRC and CIR, either overtly or covertly (TNA NF 1/2, Brown to Holland, 10 March 1972). Nonetheless, they acknowledged that the miners' strike and on-going perceptions of government indecision had contributed to recent cases of deregistration (TNA LAB 10/3928, Industrial Relations Act: Registration and the TUC, April 1972). Carr informed Cabinet that although disappointing, he was confident that the problems of registration would not hinder the Act (TNA CAB 128/50/17, CM (72) 16th Conclusions, 16 March 1972, p.4). However, officials in the DE and RTUEA showed more concern. Ken Barnes 'doubted whether any real progress with the main purpose of the Act would be seen this side of the General Election' (TNA NF 1/2, Meeting at St James' Square on 28 March, 29 March 1972, p.2). A senior RTUEA official remarked, '[w]hile the "top twenty" of affiliated trade unions are off the register the presumed registration objectives of the Act are clearly not being achieved' (TNA NF 1/2, Gilliver to Keith, 10 April 1972).

Preparing for Disruption on the Railways

A more acute crisis was brewing. The railway unions – Associated Society of Locomotive Engineers and Firemen (ASLEF), NUR and the Transport Salaried Staffs' Association (TSSA) – had been emboldened by the settlement achieved by the miners. Not only did they fancy the fight for their own claim, Greene argued that he had 'no alternative' but to pursue a wage increase (Marsh, 1978, p.171). Low levels of coal stocks strengthened their hand considerably, at least in the initial stages (Darlington and Lyddon, 2001, pp.75-6). Heath was warned of real economic danger: 'Three-quarters of the coal for power stations is normally delivered by rail and, if it were cut off, the effect could soon be worse than during the miners' strike' (TNA PREM 15/980, Note to Heath, 1 March 1972, p.2). Officials believed the likely dispute would require the Secretary of State to advise of his maiden use of the Industrial Relations Act (ibid, p.2). However, as an approach to combat secondary action, a major problem throughout the miners' strike, both the use of troops and the Act were deemed likely to inflame tensions (TNA PREM 15/980, Industrial Relations on the Railways (Draft), n.d.). Initially Carr disregarded use of a ballot order as the membership would be likely to vote with the union leadership. A cooling-off period, however, could allow for coal stocks to be built up in the interim before full scale industrial action commenced (TNA CAB 129/162/6, CP (72) 31 – Rail Dispute: Use of Powers in Industrial Relations Act, 3 March 1972, p.2). Although use of a cooling-off period was designed to create the space within which the parties to the dispute could solve their differences, a direct intervention would inevitably risk politicising the government's role if not adequately protected by the law.

On the other hand, the risk of using the Act had to be off-set against potential condemnation for remaining impotent. The government was criticised for failing to use the Act during the miners' strike, a fact that likely influenced the decision. Carr wrote:

> There would be political pressure for it [use of emergency provisions]. I would have preferred to avoid its use so early in the life of the Act. There is a risk, perhaps small, of deliberate defiance by ASLEF and a greater risk that the order would be rendered ineffective by spontaneous unofficial action which could not be restrained under the Act. This would tend to bring the whole of the Act into disrepute' (ibid, p.2).

This balancing act was crucial. While Carr had made plain his willingness to utilise the Act, the Cabinet Secretary, Burke Trend, informed Heath of his own concerns:

> If I were the leader of one of the railway unions, it is precisely unofficial action which I should be trying to foment at this stage; and, if I thought that even this might put me in significant legal jeopardy, I should resort to "spontaneous" action and then claim that any "cooling-off" order or other Governmental intervention represented a sufficient "provocation" to justify me in promoting official action. How does the Secretary of State propose that we should deal with this, by no means unlikely, situation? (TNA PREM 15/980, Burke Trend to Heath – Possible Rail Strike, 3 March 1972, p.2).

The risk that the Act might catalyse, not impede, industrial unrest had not dissipated. Intervening could leave government exposed. In addition, given the apprehension surrounding inflation, the core purpose of the Act was becoming blurred.

On 21 March, the consensus among the Ministerial Committee on Emergencies was that there was an even chance of a strike. If strike activity was conducted at short notice, a cooling-off period was favoured over a State of Emergency. Action short of a strike or unofficial action may require a different response. In any case, it would be necessary to satisfy the NIRC that an order would result in a settlement, and a lengthy 60-day period would be required (TNA CAB 134/3485, E (72) 14th Meeting – Possible Rail Strike, 21 March 1972, pp.2-3). Carr, however, would not ask for more than 21 days, believing this would avoid accusations of 'mis-using the

Act to gain time not for conciliation but for rebuilding fuel stocks in order to bolster up the position of the employers; and thus bringing the Act to discredit' (TNA PREM 15/980, Burke Trend to Heath, 22 March 1972). Similarly, hastily resorting to a State of Emergency would show little faith in any cooling-off order (ibid).

Douglas Hurd, Principal Private Secretary to the Prime Minister, informed Heath that 'we seem no better prepared than at the same stage of the coal dispute', with one of the areas of particular concern the 'use of ballot or cooling-off provisions of the Industrial Relations Act' (TNA PREM 15/980, Hurd to Heath, 22 March 1972). He made clear that a:

> stand by the Government which led to industrial action but ended in an arbitration or court of enquiry award at around 14-15 per cent would be more damaging than an early inflationary settlement. But a stand which was persevered in until the militants were outvoted on the question of return to work could, if properly prepared and defended, be politically advantageous (TNA PREM 15/980, Hurd to Heath, 22 March 1972).

The outcome of the miners' strike had crystallised opinion on use of the Act, and earlier advice to avoid such an occurrence for a minimum of 12 months was superseded by events. Nonetheless, the dangers were clear. One senior official informed Heath that 'once industrial action, even on a limited scale, becomes official, it will probably escalate; attitudes will harden; and conciliation will be more difficult' (TNA PREM 15/980, Burke Trend to Heath, 12 April 1972). The stakes were undoubtedly high.

II. Weakening the TUC Policy of Non-Cooperation

Industrial Unrest on the Railways

With the government unwilling to make any concession to the railways unions, arbitration was attempted. The process was conducted by Alex Jarret, leading to an increased offer in the region

of 11 per cent, although this, too, was rejected by the railways unions (Darlington and Lyddon, 2001, pp.79-81). The government now hoped that the threat of a cooling-off order may force the unions to consider alternatives, even conciliation through the Secretary of State (TNA CAB 130/577, GEN 94 (72) 3rd Meeting – Railways Dispute, 15 April 1972, p.4). However, on 17 April an official work-to-rule began, with ministers admitting that 'the Government would have to invoke the Industrial Relations Act if the Act was to retain credibility' (TNA CAB 130/577, GEN 94 (72) 4th Meeting – Railways Dispute, 17 April 1972, p.2). It was acknowledged that in all probability this would lead to increased militancy and the NIRC may well be publicly disregarded. It was agreed that in advance of any order the TUC should be consulted in the hope that passions could be dampened (ibid, p.2). The following day, Maurice Macmillan, newly appointed Secretary of State for Employment, informed the unions that all available measures under the Act were on the table. Politically, he argued, 'the Government may have to act and be seen to act quickly' (TNA PREM 15/980, Secretary of State's Opening Remarks to Railways Unions, 18 April 1972).

Writing to Heath, Hurd touted the possibility of a General Election for the first time. The government could fight a campaign on three grounds. First, the level of industrial unrest had made the task of governing impossible. Second, trade unions were exploiting their sectional power at the expense of the community. Third, the resulting spiralling prices and increased unemployment was intolerable (PREM 15/980, Hurd to Heath, 17 April 1972). He concluded:

> My assumption is that an election of this kind would follow an attempt to use the Industrial Relations Act which had been frustrated or defied by the unions. It would not therefore be possible to argue that the Act by itself offered adequate safeguards against the misuse of trade union power…There are other possibilities, but the feeling that the present system is unsuccessful must now, I think, be reckoned with (ibid).

While the Act was souring the industrial context, the government's dual role as conciliator and custodian of incomes policy was taking its toll. It was this politicised role that the Act, in part, sought to alleviate. Heath acknowledged that the government must 'be ready at short notice with specific proposals for further safeguards against the misuse of trade union power' (TNA PREM 15/981, Heath to Macmillan, 20 April 1972, p.1). In keeping with the appeal of depoliticised governing, he questioned 'whether the time has come to hive off your Department's conciliation functions to a non-departmental agency' (ibid, p.1). DE officials would now consider this potentially contradictory role at length.

The NIRC granted a cooling-off period on 19 April 1972, citing disruption to the supply of goods and services as 'gravely injurious to the national economy' ([1972] I. C. R. 7., p.8). The order granted was for 14 days, not the 21 requested, a decision Ralph Darlington and Dave Lyddon argue represented an attempt by the NIRC to 'assert some independence from Government' (2001, p.83). Donaldson stressed the need for 'compliance with and respect for the Rule of Law' ([1972] I. C. R. 7., p.19). Far from industry 'putting its own house in order', government had now intervened, and the independence of the NIRC would be key. Within the TUC there was disquiet, with Vic Feather criticising the government for resorting to the law instead of negotiating – 'The midnight oil has gone on the law' (MRC MSS.292D/253.106/1, Press Statement – Railways Dispute, 19 April 1972). With the early signs suggesting that the unions were adhering to the order, Macmillan informed the British Rail Board (BRB) that they 'should be ready to play it long as well as short' and a ballot order would be prepared (TNA PREM 15/968, Note for the Record, 21 April 1972, p.1). Richard Marsh, Chairman of the BRB, advised caution, suggesting that the 'Government had won a major battle but it would be a mistake, he felt, to try and win the whole war at once' (ibid, p.2). Nonetheless, by 25 April the government was convinced that normal working had resumed and the NIRC was notified that the cooling-off period should begin. Discussions to attempt to reach a conclusion to the dispute

commenced once again (TNA CAB 130/577, GEN 94 (72) 9th Meeting – Rail Dispute, 25 April 1972). The government had achieved a success. Ministers had intervened directly in events, protected by the courts, while the NIRC had been recognised for the first time.

The Docks Dispute

To understand trade union acquiescence at this point it is necessary to shift attention to growing industrial unrest in the docks, for the two disputes become intertwined (Darlington and Lyddon, 2001, p.86). The history of militancy in the docks is a long one. The reform of industrial relations intersected a period of technological change through the process of containerisation. The inevitable consequence was job losses. Employers were able to side-step dock workers in the nation's ports, with the unpacking of container lorries conducted by workers employed on lower wages outside the protections of the National Dock Labour Scheme introduced in 1945 (Lindop, 1998; TNA PREM 15/976, Interim Report of the Joint Special Committee on the Ports Industry, 25 July 1972). In response, dockers began 'blacking' the lorries involved, denying them access to ports. This was particularly prevalent in the Liverpool docks. On 23 March 1972 an affected company, Heatons Transport, applied to the NIRC for a restraint Order. For not restraining its agents – the shop stewards – the T&GWU was held liable for unfair industrial practice. As blacking continued, an initial fine of £5,000 was issued on 29 March. The union did not attend and was not represented in court ([1972] I. C. R. 285, p.299). Two further companies joined the case,[20] although blacking continued. On 20 April 1972, Donaldson declared 'no court can tolerate such an attitude on the part of those to whom its orders are addressed' and fined T&GWU a further £50,000. Now held in contempt of court, if unofficial action in the docks continued, sequestration of the unions assets would follow (ibid, p.301).

[20] The cases were *Bishop's Wharf Ltd v Transport and General Workers' Union* [1972] I. C. R. 285 and *Craddock Brothers v Transport and General Workers' Union* [1972] I. C. R. 302.

The TUC's policy of non-cooperation was under pressure from two angles. Jack Jones, General Secretary of the T&GWU, while willing to submit his union to sequestration, called for a collective view of the problem to be presented (MRC MSS.292D/249/12, Jones to Feather, 19 April 1972). In addition, the TUC itself had been threatened with contempt if it continued to pressure trade unions to avoid using the provisions of the Act (TNA J120/2, Seaton to Feather, 14 April 1972). On 24 April, the TUC F&GPC discussed a letter from ASLEF arguing that it may have been possible to prevent the cooling-off order had it been permitted to appear before the NIRC. By a majority of five to three, the committee agreed to examine the circumstances under which affiliated trade unions should be permitted to defend themselves (MRC MSS.292D/24.1/5, F&GPC 10th Meeting, 24 April 1972, pp.71-2). It has been argued that the TUC policy had already been undermined when the National Union of Tailors and Garment Workers was permitted to cooperate with the CIR (Lindop, 1998, p.63). However, in reality the trade union's views had been relayed through the DE (HMSO, 1974a, p.2). Nonetheless, the trajectory was clear. DE Officials surmised that 'this case – together with the order made against the railways unions – will have persuaded the TUC General Council to adopt a more realistic and flexible approach to proceedings before the Court' (TNA LAB 43/700, Supplementary Brief, 25 April 1972).

If the Act was to be successful, trade unions would have to cooperate with the law. Only then would government be protected. The TUC General Council was split. The militants saw cooperation with the NIRC and payment of fines as the 'slippery slope to compromise'. Greene, however, argued that his union would have been able to nullify the Act in court through resisting a cooling-off period. Similarly, Feather argued that unions were not lame ducks but sitting ducks under current arrangements (MRC MSS.292D/20/5, GC 9th Meeting, 26 April 1972). Cooperation was legitimised by 19 votes to 9 (ibid, p.85). Nonetheless, leading figures in the TUC warned the government that the NIRC's approach made acquiescence unlikely. Small

firms were calling on the NIRC before any attempt had been made to conciliate, risking astronomical fines. Jones warned that the dockers would not cooperate with the Act as easily as the railwaymen. Moreover, insufficient time was provided by the NIRC for trade union leaders to engage with their members, ultimately washing conciliation from the picture (TNA LAB 43/700, Meeting with TUC, 26 April 1972; PREM 15/968, pp.1-5). For the first time the loss of government control was highlighted. Heath admitted that government could not control or even attempt to influence the NIRC. Only trade unions could do this by cooperating. The government would discuss conciliation procedures, but this would be in addition to, not instead of, the Act (ibid, pp.4-9).

With Jones complaining of disunity within the movement (MRC MSS.292D/249/12, Jones to Feather, 2 May 1972, p.2), the T&GWU paid the fine on 3 May 1972. However, with Donaldson insisting that the offending shop stewards be punished, the union appealed. Another clock began to tick, this time for 21 days ([1972] I. C. R. 308, p.326). Moreover, in a subsequent case involving the 'blacking' of another employer – Panalpina Services Limited – an officer of the T&GWU appeared before the NIRC to argue the union's case (ibid, p.328). This was now the second occasion that the procedures of the Act had been adhered to. The following day the TUC General Council endorsed the decision to allow trade unions to defend themselves by 21 votes to 5. Despite his continued opposition to the Act, Jones argued he had little option but to vote in favour, with minimal financial support on the table and his union at risk of sequestration (MRC MSS.292D/20/5, GC 10th Special Meeting, 4 May 1972). The T&GWU swiftly gave the national port employers 28 days notice of a national strike, a move Burke Trend informed Heath was primarily an attempt to regain control of militant shop stewards leading the campaign (TNA PREM 15/974, Burke Trend to Heath, 10 May 1972). With the cooling-off period adhered to, and the fines paid, Dudley Smith, Junior Minister in the Department of Employment, argued '[i]f the Act is allegedly a corpse, then its soul is certainly having an invigorating effect' (MRC

MSS 292D/40.2/2, Dudley Smith – Speech, 19 April 1972). However, this betrayed a naivety regarding how the Act would function in practice. Trade union leaders had not been strengthened, but tried frantically to provide the impression of control in the docks. While trade unions had momentarily been brought to heal, the government was dangerously exposed and there was little evidence that industrial unrest had been shifted outside of the political arena.

The Ballot Order

On 3 May 1972, Marsh recommended that the government settle the dispute in the railways. It 'would have achieved a degree of acceptance of the National Industrial Relations Court; the Union, who had started with a claim based on Wilberforce, would have gone down to a settlement of less than 14%, and a damaging dispute would be avoided' (TNA PREM 15/981, Meeting – Rail Pay Dispute, 3 May 1972, pp.1-2). While Marsh has claimed that he repeatedly warned against a ballot (1978, pp.172-3), he informed John Davies that if a settlement could be reached 'the British Rail Board would be minded to recommend a ballot order on the new offer' (TNA PREM 15/981, Meeting – Rail Pay Dispute, 3 May 1972, p.2). Contrary to its primary purpose, Barnes and Reid argue that the Act 'was being used as a device for supporting what remained of the government wages policy' (1980, pp.160-1). Macmillan considered four options. First, to let events progress without intervention, accepting the danger of prolonged industrial action. Second, to offer conciliation to the BRB and railways unions, even though this would lead to a higher settlement. Third, to apply to the NIRC for a ballot order, attempting to force the unions to accept the 11% offer made in arbitration. Fourth, to extend the cooling-off period beyond 8 May, potentially to the full 60 days available (TNA CAB 130/577, GEN 94 (72) 10th Meeting, 3 May 1972, pp.1-2). At this stage he favoured extension of the cooling-off period, although a Court of Inquiry was ruled out for fear that any concession to the unions might facilitate further industrial action (ibid, pp.3-4).

Senior ministers seemingly settled on the view that facing up to industrial action would be better than a settlement above the Jarratt award (TNA CAB 130/577, GEN 94 (72) 11th Meeting – The Railways Dispute, 4 May 1972, p.1). Extending the cooling-off period was also now rejected on the grounds that a negotiated settlement was unlikely and further delay was pointless (ibid, p.5). The government would now overtly politicise its role. BRB representatives warned that further threats of a cooling-off period or ballot order would have little impact, although the government maintained that any improved offer was politically impossible (TNA PREM 15/981, Note for the Record, 4 May 1972). The presentational aspects of the Act, too, came under strain. Railway union leaders had already publicly proclaimed to be 'greatly disturbed' by the CIR and the DE compiling lists of names to be balloted (TNA LAB 10/3684, The Times: Names Dossier Angers Railwaymen, 1 May 1972), fuelling the view that the institutions of the Act were mere pawns.[21] With each miscalculation the role of the government became politicised in a manner quite contrary to their intention.

On 13 May, the ballot order was eventually granted by the NIRC, although it was promptly appealed against by the trade unions' lawyers ([1972] I.C.R. 19). On 19 May Denning delivered his judgement, dismissing the railways unions' appeal. He reiterated the independence of the judiciary:

> This Act gives great powers to the Secretary of State and entrusts equally great responsibilities to him. It has been suggested that the role of the Secretary of State is so vast that the Courts are in danger of becoming a rubber stamp to carry out his decision. This suggestion must be emphatically rejected. The Courts of this country owe no subservience to anyone save to the law as enacted by Parliament and laid down by the

[21] It should be noted that later TUC investigations did not corroborate these concerns: 'It is known that the CIR refused to collect this information on behalf of the Department of Employment as it felt it had no authority to as no order was enforced. It is clear the information has been collected by the BRB cooperating with the Department of Employment' (MRC MSS.292D/253.106/1, British Railways Board: Ballot Issue, n.d.).

> Judges. If Parliament gives great powers to a Minister these Courts must allow them to him; but at the same time we will be diligent to see that he exercises them in accordance with the law ([1972] I.C.R. 19, p.51).

In describing the NIRC as a 'rubber stamp' ([1972] I.C.R. 19, pp.34-5), Moris Finer QC, acting on behalf of the trade unions, had attempted to politicise the court's intervention. In this he was successful, for plans were swiftly developed to 'forestall any suggestion that the outcome showed the Industrial Relations Act to have failed' (TNA CAB 130/577, GEN 94 (72) 19th Meeting – The Railway Dispute, 24 May 1972). If questioned, ministers should stress that government was not intervening, but creating the space within which the parties could negotiate free from industrial unrest and railwaymen could express their views in secret (TNA PREM 15/982, Q and A Brief in event of an adverse result, 26 May 1972).

The ballot itself was published on 31 May 1972. The BRB offer was rejected, with an overwhelming majority voting in favour of continued industrial action (TNA LAB 10/3684, Neal to Donaldson, 31 May 1972).

Table 5.2 *Breakdown of the result of the railways ballot*

	Railway Trade Union			**Total**
	ASLEF	**NUR**	**TSSA**	
Yes	23,436	80,894	21,581	129,441
No	1,043	10,695	10,321	23,181
Abstained	108	719	633	1,567
Yes vote as percentage of total	95	88	66	84

Source: Based on TNA PREM 15/982, Result of Railways Ballot, 31 May 1972; TNA LAB 10/3684, Neal to Donaldson, 31 May 1972

As one Conservative backbencher noted, 'if you ask a silly question you get a silly answer' (Bruce-Gardyne, 1974, p.85). Existing accounts universally brand this sequence of events as foolhardy. While the Act had worked in a legal sense, the ballot result was an embarrassment for the government (Campbell, 1993, p.459; Moran, 1977, p.139). As Barnett puts it, '[t]he NIRC's existence was thus legitimised even when it was made to look foolish' (1973, p.13). This was a particularly poor miscalculation given that commentators such as Eric Wigham had warned a ballot would amount to a 'futile exercise' (TNA LAB 10/3684, Wigham – A Futile Exercise Confronts the CIR, 9 May 1972). Geoffrey Howe has admitted that the ballot order was a mistake that 'should have been clear at the time' (1994, p.63). However, Denis Barnes recalls 'a brief spell of euphoria' (1980, p.160) when trade unions returned to work and adhered to the NIRC's orders. Heath informed Parliament that 'the trade unions themselves are now co-operating in working the Act and in appearing before the Court and putting their views to it' (HC Debate, 6 June 1972, Vol. 838, c.234), a position he later called 'an important breakthrough' (Heath, 1998, p.404). Ministers believed that the decisions taken by the NIRC and Court of Appeal would now shape subsequent behaviour, with railwaymen less likely to take unofficial action for fear of breach of contract (TNA CAB 130/577, GEN 94 (72) 21st Meeting – The Railway Dispute, 7 June 1972, p.1). Moreover, Feather would soon qualify his position, accepting that trade unions would have to 'live with' the Act. He reported that Jones was more realistic about both prices and incomes and the Act itself (TNA PREM 15/982, Meeting between Heath and Feather, 7 June 1972, p.2-3).

In early May the Home Secretary, Reginald Maudling, wrote of the Act that 'one suspects that more and more of the union members are coming to accept its virtues' but there remained 'the immense danger to this country if we become progressively divided between organised labour and the rest, a danger which without doubt is growing at the moment' (TNA CAB 164/1158, Paper by Home Secretary on Incomes Policy, 9 May 1972). Following the

settlement on the railways, officials recorded that '[o]ur present type of incomes policy can hardly survive another defeat' (TNA PREM 15/982, The Rail Dispute and the Future of Pay Policy, 9 June 1972). There had been no shift away from micromanagement by the government, even though it was attempting to shroud its activities through the Act. Yet the BRB requested greater independence, citing a 'tendency to move toward a more detailed day-to-day control by the Government of British Rail's handling of the pay dispute than was realistic or sensible' (TNA PREM 15/982, Note for the Record – British Rail Pay Dispute, 2 June 1972, p.1). Marsh was of the view that 'Government could not expect to get back to the pre-Wilberforce level in one go' (ibid, p.5). Davies, too, argued that '[b]y siding with employers to redress bargaining strength (and because the national interest requires lower settlements), the Government has forfeited its right to conciliate effectively' (TNA CAB 130/577, GEN 94 (72) 4, The Coal Strike – A Post Morten, 14 June 1972, p.3). Government would have to improve when disputes were 'dragged into the political arena' (ibid, p.2). Although the government had weathered the storm, of its own volition it remained at the centre of wage bargaining and the intended shift to industry to 'put its own house in order' had not been allowed to take place.

III. Escalation in the Docks

The Intervention of Lord Denning

If the government had maintained a politicised approach to industrial unrest in the railways dispute, then it would be crucial that the Act protected it from political damage in the docks. Jones' decision to give notice of a national dock strike had done little to appease the militant majority (Lindop, 1998a, p.67). As noted above, now able to defend itself in court, the T&GWU appealed the NIRC decision that it would be held in contempt of court unless it punished its shop stewards (see [1972] I. C. R. 308, p.326). On 13 June, Lord Denning delivered his verdict, quashing the NIRC judgement in *Heatons* and overturning the fines. He held that if registered,

the T&GWU rule book would not have provided authority for shop stewards to act on the union's behalf. Similarly, when unregistered, no such express or implied authority existed ([1972] W. L. R. 73). Linking back to the legislation's hasty enactment, the issue rested on the drafting of the Act itself:

> If the legislature had intended that an unregistered union should be so penalised, it should have said so in terms. It should have said that an unregistered union – in contrast to a registered union – is to be liable for the actions of its shop stewards, whether authorised or not. For that is what it comes to. But Parliament has not said so. By keeping silent on its liability for shop stewards, Parliament has left it to the courts to decide. And we must decide it according to law, *not influenced in the least by any political considerations* (ibid, p.105-6, *emphasis added*).

Fred Lindop argues that Denning acted to protect the majesty of the law, seeing the NIRC as damaging the reputation of an independent judiciary (1998b, p.69). Irrespective, Carr subsequently described the decision as a 'torpedo below the waterline' (cited in Whitehead, 1986, p.78). Feather proclaimed 'I have consistently stated that unions are not above the law. They behave lawfully and the Court of Appeal has confirmed their lawful approach' (MRC MSS.292D/249/12, Feather Commenting on Court of Appeal Decision, 13 June 1972).

Heath argues that 'the Industrial Relations Act was now being even more grievously undermined, this time by the very courts which were supposed to enforce it' (1998, p.405). It is perhaps more helpful to see this as a case of 'judicial creativity' in that a central part of a judges role is interpreting statute and common law (Griffith, 1991, pp.254-68). In this regard, Denning has been described as 'creative during his long judicial life' (ibid, p.268). The depoliticisation framework is informative here, offering another layer of analysis. This reflects the manner in which the Act's reliance on the judiciary facilitated a loss of control. Barnes

reflects on this, noting that 'government had some influence over events in the railways dispute but it could not influence events in the docks, which were largely the consequence of decisions by the NIRC and superior courts' (1980, p.159). This point is crucial to keep in mind as events unfold. While Howe has argued that the judgement 'undermined the whole rationale of the Act' (1994, p.63), Maureen and John Spencer demonstrate that the true picture is more complex, revealing 'that initially at least sections of the government welcomed Denning's approach in the Court of Appeal decision' (2006, pp.205-6). Analysis of the primary documents uncovers that the true positions of Howe, Macmillan and numerous DE officials do not match those presented in orthodox accounts.

In fact, senior ministers and officials welcomed the judgement. Howe argued that the Act 'was designed to produce a *long-term* change in the pattern of industrial relations…This is a massive change which will, as always foreseen, take time for everyone – unions, employers, even courts – to understand and bring into effect' (TNA PREM 15/974, A Comment by the Solicitor General, 15 June 1972, p.1). In a comment marked 'confidential', he acknowledged:

> The suggestion that unions, registered or not, should be made automatically liable for the actions of shop stewards is beset with difficulties, practical as well as legal. It was expressly considered and rejected during the passage of the Bill, and expressly rejected because it could be counter-productive (ibid, p.2).

Far from undermining the Act, he argued that 'the Act *is* working to bring things into the open, to identify responsibilities and to define rules. After 60 years of mounting disorder, this process is bound to take time. And the play is bound to move from one end of the field to the other' (TNA PREM 15/974, A Comment by the Solicitor General, 15 June 1972, p.2).

In addition, there is no evidence to suggest Macmillan was overly concerned. He saw the original NIRC decision as opening up a short-cut to control militant shop stewards. Had the

NIRC taken the same position as the Court of Appeal *'it would not have been unexpected nor have caused delay*' (TNA PREM 15/974, Comment by Macmillan on Heaton Case, 15 June 1972, p.1. *emphasis added*). There had been no damage to the Act, but it had changed the thinking of trade unions, ensured support from moderates would wane, maintained incentives to register (albeit more slowly), and produced little difference regarding the practicalities of disputes (ibid, pp.1-2). Interestingly, he notes that the TUC General Council did not want the decision reversed, and that the events demonstrated trade union leaders could not control shop stewards. He concluded that '[i]t may lead to Government and employers dealing direct with those who *can* call, or stop a strike, and so force reorganisation on the leadership (including in some cases registration)' (ibid, p.2). DE officials agreed that the NIRC had provided a short cut, although with it created large scale fines and disgruntled shop stewards courting further martyrdom (TNA LAB 10/3688, General Industrial Relations Scene, July 1972, p.3). Ultimately, it was felt that the Act had 'induced important change in union attitudes on recourse to institutions under the Act to defend their interests' (ibid, p.3). Moreover, officials believed it had the potential to improve trade union attitudes to the CIR (ibid, p.4). While reassuring noises were being made, ministers and officials failed to note the broader legal implications – those that would be beyond their control – of Denning's judgment.

The Role of the Official Solicitor

Blacking continued at another container depot, Chobam Farm, where a group of workers, all members of the T&GWU, named three members of the rival National Amalgamated Stevedores and Dockers (NASD) as primarily responsible ([1972] I. C. R. 222). Donaldson ruled that warrants would be issued for the arrest of the three dockers – Bernie Steer, Vic Turner and Alan Williams – if they failed to appear before the Court of Appeal by 2 pm on 16 June (ibid, p.225). Carr notes that he and Howe intended 'to draw up proposals which would make it as difficult as possible for anybody to be sent to prison under the Act…I remember we both felt we might

as well jump off Westminster Bridge that morning' (cited in Whitehead, 1986, p.78). However, while the government had no power to intervene directly, the immediate crisis was averted due to the intervention of the Official Solicitor.[22] On 16 June, Denning, passing judgement on the appeal brought by the Official Solicitor, set aside the NIRC orders for contempt on technicalities ([1972] I. C. R. 222, pp.225-9). This resulted in considerable speculation of government involvement, a position it had worked hard to dispel (Lindop, 1998b, p.72). The independence of not only the NIRC, but also the judiciary more broadly, was now being openly questioned. While the government was held directly responsible for events as they unfolded, the evidence suggests its influence was minimal, even if it was aware of manoeuvring behind the scenes.

Darlington and Lyddon, with reference to a meeting between Heath, Howe and Peter Rawlinson, the Attorney General, on 16 June, argue '[i]t is quite possible that this started the train of events that led to the intervention of the Official Solicitor' (2001, p.157). However, senior figures, including Heath, had discussed the potential for martyrdom and imprisonment the previous day, arguing that government 'could not conciliate and it could certainly not interfere in the Courts, although after the men's arrest the Official Solicitor could intervene to try and get them to appear in Court and purge their contempt' (TNA PREM 15/974, Note of Meeting on Chobham Farm Dispute, 15 June 1972, p.2). While aware of a potential role for the Official Solicitor, the preferred option was for the TUC to intervene, 'either being joined as a party to the proceedings or to persuading the three dockers to go to the Court of Appeal' (ibid, pp.2-3). There is little sign of control, with government instead reacting to events. The document concluded:

[22] The record of the proceedings states: 'The Official Solicitor has authority to apply on behalf of any person who is committed to prison and does not move the court on his own behalf, or to come to the Court of Appeal on behalf of any person against whom an order for committal is made and draw the matter to its attention' ([1972] I. C. R. 222, pp.223-4).

> While is impossible to forecast the Court's attitude as circumstances change and develop, it seems that only persuading the three dockers to appear before the Industrial Court or the Court of Appeal before 2pm tomorrow could give a chance that they would cease to be in contempt and cause the warrant for their arrest not to be issued (TNA PREM 15/974, Note on Chobham Farm Dispute, 15 June 1972).

While previous accounts provide considerable evidence to suggest that Jones worked behind the scenes to quell militancy and did not support the unofficial action (Darlington and Lyddon, 2001; Lindop, 1998b), even making T&GWU lawyers available to the three dockers (Lindop, 1998b, p.71), on 15 June the TUC recorded that Jones 'thought it was for the DE to approach the Court' (MRC MSS.292D/249/18, Container Blacking, Chobham Farm: NIRC, 15 June 1972).

The following day, Heath made clear that if the dockers ignored further approaches 'it would be in order for the Official Solicitor to see them and make a further attempt to persuade them to purge their contempt in Court' (TNA CAB 130/577, GEN 94 (72) 22nd Meeting – Industrial Disputes, 16 June 1972, p.1). Howe was also awaiting advice as to whether, if the dockers rejected the Official Solicitor's advances, 'the Government would then have any locus to intervene' (ibid, p.1). Ministers were still attempting to influence events through the TUC and Feather, a fact they did not want made public, even though the decision was taken to leak that the T&GWU had offered the dockers financial support (ibid, p.3). While the government knew about the role of the Official Solicitor, a note by the Attorney General suggests his activities were instigated by Peter Pain QC – the lawyer of the T&GWU – who had approached Denning in the first instance. After agreeing that contempt could be overturned, the latter made contact with the Official Solicitor who sought a hearing before the Court of Appeal, represented by Peter Pain QC himself (TNA PREM 15/974, Note for the Record – Contempt of Court, 16

June 1972).[23] This matches the account provided by John Griffith in November 1972 (New Statesman, 1972). Aware that the government was being held accountable, DE officials stressed that it must be made explicitly clear that the government had no part in bringing about the hearing, the Official Solicitor acted on his own initiative, and the outcome related to contempt, not the Act itself (TNA PREM 15/974, Note for the Record – Contempt of Court, 16 June 1972).

The government's role had been politicised, even though in reality it was reacting to, not controlling events. The application was made by Pain, and Denning cast aside the committal orders on grounds of insufficient evidence ([1972] I. C. R. 222, p.229). The government immediately launched its propaganda campaign, a fact Lindop acknowledges following 'a reading of most national daily newspapers' (1998b, p.72n). Hills argues that 'the double reversal by the Court of Appeal in the week 12-16 June was a setback as far as the credibility of the Court in the eyes of the public was concerned' (1973, p.270). However, the government missed the opportunity to demonstrate that the courts had acted in the interests of trade unions and were not 'systematically prejudiced against their interests' (The Times, 14 June 1972). Whatever the merits of the approach adopted by the courts, had the Act been working this set of cases should have presented the opportunity for government to withdraw from the dispute, operating at arm's-length, thus depoliticising its role. However, it is evident that the Act had proved unsuccessful in this regard. Yet government had not instigated the actions of the Official Solicitor, even if it was more than happy to facilitate his activities. In 1982, Denning reflected on warnings he had received that 'there was a danger of a general strike' (cited in Lindop, 1998b, p.74). The origin of these warnings remains unclear. A wounded Donaldson reflected that 'if such circumstances ever arise again, which I pray they do not, it might not be better to

[23] In an obituary for Sir Peter Pain, authored by Rex Church (his instructing solicitor at the time), a slightly different sequence of events is recalled: 'Pain and myself, as his instructing solicitor, sought an interview with Lord Denning; after a long discussion in his room at the law courts, Denning suggested we approach the official solicitor, who was responsible for those unable to represent themselves. We did so, the men were released and a threatened mass walkout was avoided' (The Guardian, 27 February 2003).

invite the Official Solicitor to apply to this Court to review its order. We should certainly have done so' (TNA LCO 2/8165, Donaldson to Denning, 20 June 1972). While the framework was standing up, it was producing unpredictable results and creating tension among state managers.

IV. The Pentonville Five

The Implications of Judicial Independence

In the British context, 'the notion of the independence of the judiciary remains primarily a term of constitutional rhetoric' (Stevens, 1999, p.367). Even if courts are impartial and 'independent' of government, as one arm of state authority the judiciary *is* political (Griffith, 1991, p.272). Research has suggested that during the industrial unrest of the 1984-5 miners' strike there was little evidence of direct political pressure being applied to judges. However, it must be noted that a conservative tendency among members of the judiciary is often present (Oliver, 1986). Yet if government could rely on broadly favourable dispositions to its aims, it could not account for internal tensions within the judiciary, particularly those now growing between the NIRC and the Court of Appeal (see TNA J 120/2, Denning to Donaldson, 21 June 1972). Furthermore, DE officials were clearly unaware of the consequences of the legal to-ing and fro-ing. Donaldson had sought advice from the Official Solicitor regarding the legal limits of picketing. A senior DE official remarked: '*one cannot help wondering where it will lead him!* Can we arrange, without legal or constitutional impropriety, to be kept in touch with what he and the Official Solicitor get up to?' (TNA PREM 15/974, Burke Trend to Heath, 21 June 1972, *emphasis added*). Far from shaping events, the independence of the judiciary was ensuring that government was largely out of the loop.

By the end of June, relations with the TUC showed signs of improvement, with Feather moving away from calling for all out repeal, instead requesting that the Act was 'put on ice'. While he accepted this would be unlikely, he suggested that the TUC was ready to cooperate

with the government over inflation (TNA PREM 15/969, Meeting between Feather and Heath, 28 June 1972). However, on 3 July, in an attempt to prevent the picketing of their premises, Midland Cold Storage sought a restraint order against seven dockers, five of whom were directly engaged in the practice. The NIRC returned a verdict of unfair industrial practice, issuing an interim order to immediately restrain the seven named dockers from continuing their pickets ([1972] I.C.R. 230, p.231). Heath informed Parliament that the Act would not be repealed, imploring the unions to cooperate, and committing to discuss the Act after a 'proper period of operation' (HC Debate, 3 July 1972, Vol. 840, c.74). DE officials recommended that 'Government should stand absolutely firm on the Industrial Relations Act' (TNA PREM 15/969, Brief for Macmillan - Prime Minister's Meeting with the TUC, 30 June 1972). They remained convinced that, as a result of astronomical fines, militants such as Hugh Scanlon were beginning to waver. The moderate wing would soon alter its position (ibid).

On 4 July, TUC representatives made their renewed case against the Act. First, the number of days lost through industrial action had increased. Second, the behaviour of the NIRC was creating national disputes through hearing the grievances of small, unknown firms, and providing no time to prepare a defence. Third, and of most concern, the government had lost all control of the NIRC. Fourth, the CBI was advising its members to avoid use of the NIRC in all circumstances (TNA PREM 15/1678, Meeting between Heath and TUC General Council, 4 July 1972, p.2). This was a damning assessment of the Act, although Heath maintained that judgement would be reserved 'until it had been fully tried out and trade unionists had cooperated in working the institutions created under the Act' (ibid, p.4). The government had not been intimidated by the TUC-CBI proposal to move towards independent conciliation. Indeed, in the subsequent press release it stated that as the Act was always intended to be a recourse of last resort, 'any resulting conciliation arrangements would be valuable if they helped to resolve disputes without recourse to the machinery of the Act but with due regard to the

interests of the community' (TNA PREM 15/969, Brief for Ministers – Press Release, 4 July 1972).

On 21 July, with picketing continuing at Midland Cold Storage, contempt was demonstrated and warrants were issued for the arrest of five of the seven dockers (Hills, 1973, p.271). Passing judgement, Donaldson was forceful. He argued that:

> the issue is far greater even than good industrial relations. The public at large through a properly elected Parliament has set up the Industrial Court. It has given this court the power and duty of protecting the rights of all workers, unions, and employers in accordance with the law. The issue is whether these men are to be allowed to opt out of the rule of law. Can they pick and choose relying on it for the protection of their homes and families but rejecting it when, even temporarily, it obstructs their industrial objectives (TNA PREM 15/975, Brief for Debate on Docks Dispute, July 1972).

The view at the time was that the government had picked its moment for a decisive battle, although Lindop admits there is little evidence that this was the case (1998b, p.79). In the region of 340,000 trade unionists descended on Pentonville Prison in solidarity with the five imprisoned dockers (ibid, pp.84-5). By ignoring the NIRC, the dockers had forced Donaldson to defend the law, in effect moving the dispute beyond the provisions of the Act itself. This was far removed from the intentions of its architects who believed that the threat of prison would keep trade unionists in line (CPA CRD 3/17/20, Howe – Injunctions and the Industrial Relations Act, 13 January 1966, p.4). However, early assessments of the Act argue that it was the height of naivety to not anticipate such a furore (Thomson and Engleman, 1975, p.147).

Senior minister now acknowledged that 'there is no indication of the attitude which the Industrial Court proposed to adopt if, as seemed likely, the men refused to purge their contempt' (TNA CAB 130/577, GEN 94 (72) 23rd Meeting – The Docks Dispute, 24 July 1972, p.2). With

the Official Solicitor likely to intervene again, Heath argued that the task now was to demonstrate that the imprisonment 'was not related to the merits of the industrial situation in the docks but was purely a matter of upholding the rule of law' (ibid, p.3). However, the Times reported that 'the Government will have to find some way to get them out' (The Times, 22 July 1972). With the TUC refusing to cooperate on the economy while the dockers were imprisoned, Heath was forced to explain that:

> he could not accept the argument that the Industrial Relations Act was a political law or that the NIRC was a political court. The courts in this country were entirely independent of the Government; and the intervention of the Official Solicitor in the Midland Cold Storage case, for example, had not been at the prompting of the Government' (ibid, p.5).

With government unable to influence the court, he admitted to the TUC that he could not get the dockers released (ibid, p.6). The following day, the NIRC further exerted its independence from government, with Donaldson refusing the meet a senior DE official (TNA J 120/2, Note Concerning 25 July, 25 July 1972).

Appeal to the House of Lords

Three employers – Heatons, Craddocks and Panalpina – appealed to the House of Lords to challenge Denning's earlier judgement. The Law Lords ruled that the NIRC had acted appropriately in its initial judgement and that the T&GWU was guilty of unfair industrial practice due to implied authority. The NIRC's orders were restored ([1972] I. C. R. 308). Once again, the courts were deemed to be acting for 'frankly political purposes' (Campbell, 1993, p.461). Lindop draws attention to the unusual speed at which proceedings were conducted (1998b, pp.94-5). This was acknowledged by Jones, who wrote that 'it seemed clear that their Lordships had already made up their minds' (MRC MSS.292D/249/12, Jones to Feather, 17 July 1972). Wedderburn, citing the criticisms of Lord Devlin, argued that the Act 'went far

beyond *consensus* law; judges were beginning to speak not for "the voice of the community" but for "the voice of the government or the voice of the majority"' (1986, p.55). In the months that followed, John Griffith, Professor of Public Law at the London School of Economics, suggested 'the use of the Lords' judgement was an unconvincing attempt to provide legal justification for a political act' (Griffith, 1972, pp.758-9; see also Griffith, 1991, p.92). Wilson's earlier description of the NIRC as a 'puppet court of the Executive' (HC Debate, vol.840, cc.41-2, 3 July 1972; Griffith, 1972, p.759) was shaping perceptions, even though the government had no influence over the NIRC. Perhaps the most accurate summary is that '[t]here was no conspiracy, just the ruling class helping each other' (cited in Lindop, 1998b, p.94n).

The government did not lose control over the NIRC, it simply never had the ability to influence events before the courts. The complications of the case had led to a number of disagreements. In reply to Donaldson's claim that he was enforcing orders, not punishing trade unionists, the Official Solicitor had argued 'that blacking would go on in any event' (TNA J 120/2, Note on Telephone Conversation between Donaldson and Turner, 25 July 1972). However, it is clear that the concerned parties were starting to pull together, and Donaldson was aware that the House of Lords had mobilised. He recalled informing the Official Solicitor that 'an application at 2 o'clock tomorrow (Wednesday) afternoon would be more likely to meet with success for reasons which I was not prepared to reveal, but repeated that the decision must be his' (ibid). Donaldson was in a Catch-22 situation. He complained that: 'The problem, as I saw it, was that Vic Feather had said that it was up to the Government to get the dockers out. Accordingly there seemed to me to be a real danger that whatever I did to get the dockers out would be *interpreted as having been done at the instigation of Government*' (TNA LCO 2/8165, Donaldson – Memorandum, 25 July 1972, *emphasis added*). Furthermore, there was clear tension within the judiciary, as Donaldson lamented the Court of Appeal's intervention into

NIRC affairs. Donaldson's sequence of events, relayed to the DE, suggested Denning approached Turner recommending he appeal the decision to commit the dockers (ibid, pp.2-3).

Contrary to the necessary perceptions regarding the NIRC, its independence was being questioned throughout the mainstream media.[24] Hailsham, the Lord Chancellor, wrote to Heath on the matter, stating:

> I saw the MR this morning. He categorically denies having instructed the O. Solicitor to act this morning. He claims that the O. Solicitor came to see him, told him that he was applying to NIRC for the immediate release of the 5 defendants, and in the event of refusal would be obliged if the Court of Appeal would be available at 2 pm…I am reasonably sure the MRs version is the right one (TNA PREM 15/975, Hailsham to Heath, 25 July 1972).

It is difficult to judge which account is accurate. While all parties were denying impropriety, Lindop argues that 'there were few people who doubted "constitutional principle" had been sacrificed to extract the government from a threatening situation' (1998b, p.96). In releasing the dockers, Donaldson stressed that the Official Solicitor was 'not a political or industrial Fairy Godmother armed with a magic key to unlock prisons and solve the problems of government, unions or those who defy the law' (TNA PREM 15/975, Donaldson's Judgement, 26 July 1972).[25] In an attempt to dispel the rumours of government influence over the NIRC, Donaldson argued 'we owe it to ourselves and to all concerned to make it clear that no attempt has been made by anyone directly or indirectly, otherwise than in open court, to influence our decision. Right or wrong, the decision has been ours alone' (ibid, p.3). Concluding, he reaffirmed his

[24] A reading of the mainstream print media would suggest this is an accurate assumption. Lindop (1998b) also argues this point.

[25] The reference to a Fairy Godmother almost certainly refers to an earlier quip by Harold Wilson, Leader of the Opposition, who said: 'Even Gilbert and Sullivan could not have envisaged the dramatic intervention in court of a good fairy in the unlikely shape of the Official Solicitor' (cited in Thomson and Engleman, 1975, p.101).

original position, that through the Act the NIRC would direct its attention at the funds of organisations, not individuals (ibid, p.5). Whatever the reality, the *perception* of government micromanagement remained. At best the Act had turned a local dispute into a national disaster. At worst it had unnecessarily politicised the role of government and the law.

V. Implications for the Act

The Impact on TUC Perceptions

It could be argued that this sequence of events demonstrates the fundamental unsuitability of the Act and its legal institutions. Yet throughout this period, Hills notes that 'the Court was very busy about its routine business: indeed, this was one of the most fruitful periods in the year for the quantity and variety of work' (1973, p.272). Perhaps, then, it is necessary to distinguish between the highly politicised work of the NIRC and its day-to-day functions. With regard to the former, the government's role became highly politicised. Feather wrote of 'the impracticality of imposing an un-acceptable legal framework on industrial relations and the trade union movement' (TNA PREM 15/978, Feather to Heath, 28 July 1972). He reiterated that if the Act was suspended he was sure progress could be made 'in the national interest' (ibid). However, a rather disjointed trade union position was emerging. Trade union leaders were worried about the House of Lords decision, primarily because they were once again liable for potentially astronomical fines (TNA PREM 15/1678, Meeting with Heath, Greene and Feather, 31 July 1972, p.1). They requested that a form of sieve be devised, preventing maverick employers bringing cases before the NIRC without ministerial approval. This, however, was counter to the depoliticising intentions of the Act's authors. Heath argued that '*the whole point of the industrial relations legislation had been to keep the Government out of these matters as far as possible*' (ibid, p.2, *emphasis added*). Feather acknowledged it would politicise the role

of government, but the TUC feared ministers rather less than maverick employers (ibid, p.2). Trade union leaders were advocating state intervention, but only in carefully selected areas.

While the TUC had accepted that the Act would not be repealed, Feather maintained that registration was unacceptable. This was not because he believed the government would use it against trade unions, but because the possibility existed (ibid, p.3). In June 1972, well before the events surrounding Pentonville, the RTUEA had accepted progress would be slow. Indeed, officials decided 'to refrain from hustling a number of the TUC affiliates, and others, as fast along the rules-revision road as the Act seems to contemplate. In fact, it may take till the end of 1974, or later, before we get most of the union rule-books into reasonable line with the Act's provisions' (TNA NF 1/2, Registration: Effects of the Act, 2 June 1972; LAB 10/3928). However, even those trade unions who cooperated, such as NUBE, were dismayed at the number of employers' associations being registered, despite no evidence of independence from employers (TNA NF 1/33, Jones to Morgan, 3 June 1972). The CBI, too, had begun to lobby the RTUEA for greater flexibility, particularly regarding the lodging of company accounts (MRC MSS.200/C/3/EMP/3/83, L.189.72 – Registration of Employer's Organisations, 7 June 1972).

By the end of June, the TUC F&GPC agreed that affiliated unions still registered should be suspended (MRC MSS.292D/24.1/6, F&GPC 15th Meeting on 26 June, 27 June 1972). There had been a notable shift, for '[a]t one time it had seemed that mass membership and local TU officials and officers were "pro-Act" in opposition to union leadership; now it seemed that the membership, more than officials, had turned against the Act' (TNA NF 1/25, Registration and the TUC, 30 June 1972, p.1). This was a dramatic change, highlighting the complexities and unpredictable nature of relations between trade union leaders and the rank-and-file. It was now acknowledged that events since February had crystallised trade union opposition, with a split in the movement a real possibility (ibid, p.2). With the docks dispute on-going, a further wave

of deregistration took place. Both the Electrical, Electronic Telecommunications and Plumbing Union (EETPU) and the Iron and Steel Trade Confederation (ISTC) requested immediate deregistration, while the Civil Service Union (CSU) leadership advised its membership to follow the same course (MRC MSS.292D/40.2/2, TUC Press Notice, 26 July 1972; see also Moran, 1977, p.143). One senior DE official commented: 'The prospect of any significant move toward registration short of fundamental changes in the Act now seemed remote' (TNA LAB 10/3929, Barnes to Holland, 27 July 1972). This is particularly striking given the Act had been operational for less than 9 months.

A Potential Success

Negotiations between the TUC and CBI surrounding an independent conciliation service had continued, despite industrial tension. By the end of June, following pressure from the TUC, the CBI issued advice to its members dissuading employers from resorting to the Act (MRC MSS.292D/24.1/6, F&GPC 15/7, Conciliation and Arbitration: Meeting with CBI on 21 June, 26 June 1972). Feather made it clear that the proposed arrangements for independent conciliation were designed to 'markedly reduce the number of issues which might otherwise be referred to Industrial Tribunals and the National Industrial Relations Court for legalistic interpretations and solutions' (TNA PREM 15/988, Feather to Barnes – Conciliation and Arbitration, 7 June 1972). After initial concerns, DE officials reacted positively, arguing that:

> the development can indeed be seen as a positive development which it was always hoped that the Industrial Relations Act would stimulate – namely persuading employers and trade unions to shoulder their responsibility for sorting out their own problems, and for resolving disputes between themselves (TNA LAB 43/710, Reaction to TUC/CBI Agreement, July 1972).

Furthermore, a briefing paper noted that: 'No doubt that one of the drivers behind the TUC/CBI search for agreement on conciliation is [the] desire to keep disputes out of the industrial relations court; this again is entirely in line with Government objectives in introducing legislation in this field – that recourse to law should be a last resort' (TNA LAB 43/710, Briefing: Reaction to TUC/CBI Agreement on Conciliation, n.d.).

While members of the TUC General Council intended an independent conciliation and arbitration service to circumvent the Industrial Relations Act (MRC MSS.292D/20/5, GC 18 Minutes, 23 August 1972), the government had achieved a minor success. Yet for all the posturing surrounding the withdrawal of politics from the industrial relations arena, there was little evidence that the government was committed to its own mantra. Indeed, CIR officials warned that 'the establishment of an independent agency would be an abdication of responsibility by the Government though it might lead to some short term political advantage' (TNA LAB 10/3688, Note of Meeting between Macmillan and CIR Officials, 26 June 1972). This will be analysed in Chapter 6 which deals with the upcoming months. Ultimately, the government would face more pressing questions surrounding the NIRC's role in Heatons, with the TUC arguing that procedures had been bent for political purposes (TNA PREM 15/977, Feather to Hailsham, 24 August 1972). Protestations would fall on deaf ears, and Hailsham was forced to defend his role and that of the government (TNA J 120/2, Lord Chancellor to Feather, 13 September 1972). The Act had been tested for the first time. Successes were few and far between, yet the role of government remained politicised both through its own actions and through association. As a depoliticised governing strategy, the failure of the Act now seemed assured.

Conclusions

To understand why these events are so crucial for the Act it is important to be reminded of its core aim. The Conservative Party had hoped that through providing a framework of legal rules within which industrial relations was conducted, it could withdraw from micromanagement, depoliticising its role and leaving industry to 'put its own house in order'. Intervening in disputes, therefore, was always seen as a measure of last resort. As Davies and Freedland note: 'The framers of the Act had sought to legitimate the emergency procedures by making their imposition an act done by the NIRC at the instance of the Secretary of State for Employment rather than the Government' (1993, p.315). In the case of the railways dispute, the Act functioned successfully, even if it offered little in terms of facilitating wage restraint. The government was able to intervene directly and the institutions of the Act were adhered to. While it must be acknowledged that the settlement was inflationary, as a first-step towards acceptance of the Act this was an important event. Nonetheless, the institutions of the Act could only legitimise the rules if they were perceived to be independent. As events unfolded in the docks the perception of judicial independence was anything but a given. Moreover, the prominent role of the Secretary of State ensured the distancing effect of the Act was minimal.

While the analysis confirms the view of Lindop (1998b) and Spencer and Spencer (2006) that the government was not intervening in judicial decision-making, it is the influence on *perceptions* that is important. These events demonstrate that the government did not enjoy the benefits of depoliticisation in three key ways. First, it was held directly responsible for the industrial unrest and was seen to be intervening as affairs unfolded. Indeed, Barnes subsequently remarked on the fact that 'the judiciary could take such different views of its meaning implied that the Act wasn't as well drafted as it might have been' (cited in Whitehead, 1985, p.80). Second, state managers were unable to influence events as they unfolded and thus possessed little, if any, arm's-length control. Third, unlike other rules-based examples of

depoliticised governing strategies, in the case of the Act there was little distance between the rules and the government. This left an acute risk of (re)politicisation. In addition, the government's miscalculations regarding the internal dynamics of the trade union movement were beginning to show. In this instance the rank-and-file were dominating the agenda and the Act offered little to redress this balance. As Jones indicates, the NIRC was seen as 'an arm of Government, not part of the independent arm of the judiciary' (1973, p.141). The judiciary, according to Griffith, had 'bent itself to the needs of the politicians' (1991, p.73). The hope that the NIRC would take the position of a 'non-political' actor, as the government intended, had been proved unfounded (Crouch, 1977, p.239). Perhaps most catastrophically, Thomson and Engleman argue that 'the application of the Act diminished public trust in the power of the law' (1975, p.143).

Chapter 6
The Realities of Non-Operation, July 1972 – March 1973

Introduction

The events discussed in this chapter must be considered in relation to the industrial unrest in the coal industry, railways and docks. In the latter two cases the inherent weaknesses of the Industrial Relations Act had been apparent, while in the former dispute the counter-inflation strategy of de-escalation had been shattered. The previous chapter argued that the Act and its institutions proved inadequate and inappropriate for dealing with the type of disputes that evolved. In fact, it exacerbated tensions, transforming local disputes into national disasters. The Act was failing to adequately operate as a depoliticised governing strategy. Government had no influence over events as they unfolded, yet its role was politicised as the concerned parties and the public identified its fingerprints all over the management of industrial unrest. This chapter discusses the resulting context and the implications for the Act. A range of positions on the future of the Act are presented in the literature, including abandonment (Seldon, 1996), 'tacit abandonment' (Ball, 1996, p.329), 'cold storage' (Taylor, 1993, p.200), 'put on ice' (Holmes,

1997, p.30), 'put on the back burner' (Whitehead, 1986, p.79), 'suspended animation' (Thomson and Engleman, 1975, p.126) and that it was 'shelved' and became little more than a bargaining chip (Campbell, 1993, p.463), to mention a few.[26] Arguments that it became a hindrance (Marsh, 1992, p.21) and 'continued to poison industrial relations' (Taylor, 1994, p.526) are compelling. However, it can be argued that placing the Act among the Heath government's infamous U-turns (e.g. Seldon, 1996) is simplistic. Indeed, numerous scholars point out that the Act was not repealed and with only minor concessions it featured in the upcoming manifesto (Dorey, 2006b, pp.73-75; Bale, 2012, p.163; Dorfman, 1979, p.65; Taylor, 1999, p.164). Others have noted it was simply not possible for the Act to be truly 'put on ice' (Barnes and Reid, 1980, p.168; Middlemas, 1990, p.365).

Using the primary records now available, this chapter contributes clarification to this debate. The chapter argues that a distinction must be drawn between the government's public position and the reality of the Act's operation. The government remained committed to the Act, although the actions of all parties, including the government, suggest it was, indeed, *effectively* 'on ice'. The analysis must be set against an economic context that saw the collapse of Bretton Woods, the flotation of sterling and global increases in the price of primary commodities. Domestically, inflation was on the rise and unemployment was increasing (Coopey and Woodward, 1996). First, the return to tripartism is discussed in relation to the Act. This sub-section focuses on the negotiating positions of both the government and the TUC from a political standpoint. It argues that a stalemate was assured as the government could not publicly denounce the Act and TUC leaders could not temper militancy given its success. Second, the chapter turns to the developing internal view on amendment. A contradictory position emerges, as in almost every document 'holding firm' is advocated, even though the government needed

[26] See also Goodman, 1988, p.37; Leys, 1989, p.100; Coates and Topham, 1982, pp.275-6; Kavanagh, 1996, p.371 and Phelps Brown, 1983, p.196.

a compromise on the economy. Third, the issue of non-operation of the Act is analysed. While DE officials advised that the Act could not be 'put on ice' as legislation would be required, for all intents and purposes this is what happened. While not abandoned, the government was now playing a long-game. Fourth, this argument is developed through an assessment of the work of the Act's institutions. The strategy certainly suggests a 'cooling' in the approach adopted. Finally, clarification is provided regarding the government's commitment to the Act, albeit in a changing context where statutory counter-inflation legislation was in play. The Act had largely become an irrelevance, failing to feature as a meaningful legal framework.

I. A Brief Return to Tripartism

The Act as a Bargaining Chip

In light of the dockers imprisonment, the dynamics between the government and TUC had changed. While the Act was not designed to attack inflation directly, as was noted in Chapter Three, DE officials hoped that this would be a secondary outcome. Denis Barnes, then Permanent Secretary at the DE, describes the Act as part of a two-pronged approach to counter-inflation (1980, p.183). Campbell notes how it 'had been conceived as a substitute for incomes policy, providing a framework of law in which collective wage determination should operate without detailed government interference' (1993, p.463). Gilmour and Garnett argue that the Act was 'almost the only element' of the government's counter-inflation strategy (1997, p.254). While this overstates this aspect of the Act, Thomson and Engleman are correct to acknowledge the Conservative Party's hope 'that the restructuring of collective bargaining and the constraints on economic behaviour would reduce the rate of wage inflation and obviate the need for an incomes policy' (1975, p.140). In the case of the railways, ministers had strayed dangerously close to using the Act as a counter-inflation tool, a fact of which they were well aware. Furthermore, it proved incapable of dampening the fires of discontent in the docks. In fact, it

had catalysed disruption and transformed a local dispute into a national disaster. The context within which the parties re-entered tripartite discussions could not have been worse. However, the Act possessed the potential to become a key bargaining chip as the government pursued economic stability.

At a meeting of senior officials, Sir William Armstrong, Head of the Civil Service, noted the likelihood that Vic Feather and the TUC delegation would pursue its criticisms of the Act. Ministers would need to reflect on the government's position, not offering an immediate review, but acknowledging that this may be required at a later date (TNA CAB 130/601, GEN 118 (72) 3rd Meeting on 26 July, 27 July 1972, p.6). Armstrong met senior ministers, including Edward Heath, Anthony Barber, Robert Carr and Maurice Macmillan, presenting the political quagmire that would soon leave the government impotent. Reiterating his view that a review should be avoided, Armstrong argued that the Act may need amendment, both to appease the trade unions and to strengthen statutory powers against militant individuals who defied their union. No review could be offered without ensuring the government achieved something in return. Furthermore, any amending legislation would require a Parliamentary debate dominated by extremists, a position that would be politically unhelpful (TNA CAB 130/598, GEN 117 (72) 2nd Meeting on 31 July, 1 August 1972, p.3). Heath insisted that the existing position should be maintained by ministers (ibid, p.4). However, despite these concerns, at the first tripartite meeting following the docks dispute reform of the Act was not discussed. Instead, the talks focused on pre-set agenda items of price restraint and the low paid (see TNA CAB 130/598, GEN 117 (72) 6 – Meeting with CBI and TUC on 1 August 1972, 3 August 1972).

Unsurprisingly, the government's public position remained steadfast. Carr reiterated to Parliament the government's willingness to consider improvements to the Act, although the legal framework and principle that no individual or group was above the law remained sacrosanct (HC Debate, 1 August 1972, v.842, cc.380-1). Of course, it would have been

politically impossible to admit that more dramatic amendments were required. Moreover, there was still a ministerial consensus that altering the balance of industrial power was necessary. Again unsurprisingly, initial discussion of amendment within the institutions had focused on a defensive stance. Robert Keith had argued that 'it might be a mistake to retreat too hastily to a position further back than the pre-1971 system unless solid advantages in other fields could be expected' (TNA NF 1/25, Meeting on IR Act and Registration, 30 April 1972). Leonard Neal argued publicly that the Act should be 'revised, refined and improved' with trade union cooperation (The Times, 10 July 1972). In private, however, he lamented the previous government's capitulation to the unions, favouring no concessions on the legal framework while encouraging Heath to be willing to fight a drawn out battle (TNA PREM 15/1678, Meeting between Neal and Heath, 8 August 1972). Nonetheless, he noted that without trade union cooperation the work of the CIR would be limited for the next two years at least (ibid, p.3). He expressed similar sentiments to Macmillan, arguing against repeal or modification and highlighting the danger of giving the impression that the Act would be reformed prematurely. Employers could be brought into the fold once the Act had been in place for some time (TNA LAB 43/714, Meeting between Macmillan and CIR, 15 August 1972).

Politicising Trade Union Leaders

As a negotiating position, it was impossible for the government to offer to repeal or suspend the Act. By the middle of August Heath was ready to respond to Feather, welcoming talks, but reiterating:

> the Government cannot agree to suspend the Act, but we are ready, after it has been in operation for a reasonable period, to examine with the Trades Unions Congress any evidence which might be produced of damage caused by the Act to either side of

industry or to the country and to consider any suggestions for amending it (TNA PREM 15/978, Heath to Feather, 14 August 1972).

However, the TUC's assessment of its resistance strategy was positive. The non-registration policy was deemed a success. Even those unions that had doubted the approach were deregistering and a split in the movement had been avoided. The anticipated onslaught from employers had not taken place, although the hasty approach of the NIRC was a major concern given the speed at which minor disputes had escalated (MRC MSS.292D/24.1/6, F&GPC 15/1 – Review of the Situation, 26 June 1972). The TUC was also working in conjunction with the Labour Party to devise an alternative, committing to repeal the Act and restore trade union immunities (MRC MSS.292D/40.2LPMR/1, Liaison Committee 6/1 – Proposed Joint Statement, 20 July 1972). Nonetheless, with talks on-going, moderate voices within the TUC F&GPC remained capable of blocking a request by two unions – the NUM and the National Graphical Association – for a one day stoppage (MRC MSS.292D/24.1/6, F&GPC 17 Minutes, 21 August 1972, p.117).

On 4 September, all 32 registered affiliated trade unions had their suspensions ratified, further bolstering the total opposition to the RTUEA (TUC, 1972, pp.354-68). However, a call by Hugh Scanlon to impose a position of total opposition to the Act – i.e. no cooperation with the institutions, even as a mode of self-defence – was overwhelmingly rejected by a majority of 2,198,000, with 3,479,000 in favour and 5,677,000 against (ibid, p.441). While total opposition was prevented, the stance remained firm, with several motions arguing in favour of non-cooperation and calls for no future legislation, the position that was ultimately adopted (ibid, p.441). Feather, speaking in defence of the TUC General Council's position, reiterated the necessity for the Act to be 'put on ice' (ibid, p.440). Noting the highly problematic political context is crucial for understanding the negotiating strategy. Barnes and Reid summarise the TUC position well, arguing:

> whatever concessions it gained, however far the government was prepared to go, it was highly improbable, despite Heath's optimism, that the General Council would face the anger of militants or would embarrass the Labour Party by agreeing with a Conservative government to limits on collective bargaining. It was hardly credible that Scanlon, for one, would accept any agreement so long as the Industrial Relations Act was in operation (1980, p.167).

Both sides had dug-in to their trenches, leaving little hope that the Act's future could be resolved through tripartite discussion. Even if DE officials acknowledged scope for amendment, it was politically impossible. Similarly, with the success of non-cooperation there was little incentive for trade union leaders, even moderates, to back down. The role of trade union leaders was re-politicised from a position of strength.

II. The Possibility of Reforming the Act

The Working Group on Amendment

The government remained publicly committed to the Act, although there was little clarity surrounding its future. Preliminary work on amendment had been completed by Denis Barnes in late July 1972, arguing that substantial changes concerning the outlaw of the closed shop, registration and sanctions against trade unions would be required if trade union cooperation was to be realised (TNA LAB 10/3929, Barnes to Macmillan – Draft Note for Prime Minister, 23 July 1972). Intensive work commenced in August, with Macmillan believing some amendment 'may be desirable on merit' (TNA PREM 15/1678, Macmillan to Heath, 9 August 1972). He informed Heath 'I am now considering what changes could be made in the Industrial Relations Act without weakening its prime purpose – mainly in the hope of changing the public attitude of the more moderate unions' (ibid). He remained committed to altering the balance of industrial power, although how this would be achieved was less certain. Nonetheless, in the

initial meeting of the working group it noted its task to '*make the Act worker better – not water it down*' (TNA LAB 10/3929, Holland to Barnes – Industrial Relations Act, 17 August 1972, p.1, *emphasis added*). It was argued that 'at every stage we should make clear that whatever changes or developments we might contemplate, the central purposes of the Act remain right and essential and no re-examination should be construed as criticism of those who had drafted the Act' (ibid, p.2).

Attention quickly focused on registration. In the drafting process CBI calls for a strong registrar had been rejected as it 'would shift responsibility for enforcement of agreements from employers to the government and thus run counter to the basic philosophy of the Act' (TNA LAB 10/3929, CBI Proposals for Strengthening the Powers of the Registrar, 11 August 1972). The notion that registration was designed to create distance from government had not been lost at this stage. The working group argued that a voluntary system of registration was politically unacceptable, undermining the pillars of the Act and amounting to a capitulation to the unions (TNA LAB 10/3929, Possible Amendment of the IR Act – Registration and Possible Amendments, 21 August 1972). To hinder controversial cases before the NIRC, a 'buffer' or 'screening' process was considered, possibly involving a statutory agency to review cases. In addition, greater emphasis on the court's conciliation role was debated (TNA LAB 10/3929, Possible Amendment of the IR Act – How to Limit Cases before the NIRC, 21 August 1972). Following discussions with Macmillan, Barnes recorded that fundamental change to strike a deal with the TUC was not on the cards. The government could only seek to influence opinion (TNA LAB 10/3929, Barnes to Holland, 23 August 1972). At a subsequent meeting with Macmillan, it was recorded that reform of registration could not be tackled unless a deal between the government and trade unions was likely. In addition, Macmillan did not want to prevent employers taking trade unions to court, but simply shift the emphasis to ensure it was a last resort. Any additional conciliator, therefore, must be independent of both government and

the NIRC. It was even suggested that immunities under the Act stretched too far (TNA LAB 10/3929, Holland to Barnes – Industrial Relations Act, 25 August 1972).

It is problematic to assign too much weight to this working group. For example, Keith reported to RTUEA officials that 'there seems to be no sense of urgency at all in the minds of Ministers about starting practical exercises on amending the legislation' (TNA NF 1/15, Keith to O'Toole, 31 August 1972). Furthermore, while the next wave of discussion papers expanded on these rudimentary proposals, Barnes noted that they had 'not identified any worthwhile changes which the Government might contemplate as an early unilateral move to influence public opinion and union moderates' (TNA LAB 10/3929, Barnes to Holland – Changes in the Act, 11 September 1972, p.3). Any 'court conciliator', while potential helpful, would only be sensible as part of a package, either negotiated or unilateral (ibid, pp.1-2). A more radical approach was floated, designed 'to outflank non-registration by making legal constraints on industrial action bite on all unions regardless of registration' (ibid, p.3). The immunities provided by the Act would apply to all *recognised* trade unions and their agents, whether registered or not, although this would be coupled with a tightening of restrictions on secondary action. Registration would only be relevant for tax relief (ibid, pp.3-4). This reflected the view 'that the abandonment of the registration provisions in the present form could not be politically acceptable without some stiffening of other provisions of the Act' (TNA LAB 10/3929, The Consequences of Non-registration under the Industrial Relations Act, n.d.). Even if amendment was deemed necessary or concessions required, the government was in no position to act as this would be politically disastrous.

The Political Impossibility of Backing Down

With talks due to recommence on 14 September, officials briefed ministers that they did not expect the Act to feature heavily. Noting the position adopted by the TUC Conference, it concluded 'though the TUC position on the Act remains unchanged, this should not stand in

the way of trying to reach agreements on ways of tackling economic problems generally' (TNA CAB 130/598, GEN 117 (72) 13 – Steering Brief for Meeting on 14 September, 12 September 1972). Broader economic concerns were dominating the minds of ministers. John Davies, for example, warned that the CBI's price restraint initiative was due to end on 31 October, the next round of public sector wage claims were imminent, and Britain's international competitiveness was suffering. If progress was not realised through tripartite talks, a unilateral approach was required (TNA PREM 15/970, Davies to Heath, 12 September 1972). However, the government's negotiators could be forgiven for optimism. Once again, the TUC delegation refrained from raising the Act as a bargaining chip (TNA CAB 130/598, GEN 117 (72) 14 – Tripartite Talks on 14 September, 18 September 1972). The following week the Cabinet was informed that the talks were progressing satisfactorily and in a more cordial manner than previous meetings (TNA CAB 128/50/43, CM (72) 42nd Conclusions, 21 September 1972, p.8). No doubt emboldened by this conciliatory atmosphere, the government misjudged the mood.

On 26 September, a voluntary approach to counter-inflation policy was proposed in exchange for a commitment to a five per cent growth rate. Price increases would be limited to five per cent, with nationalised industries expected to follow the private sector's lead. Wages should not rise above £2 per week, and a new body would be established to assist the low paid. While no specific policy change on pensions was presented, it was argued that pensioners would benefit from reduced inflation rates and ultimately share in the country's improved prosperity (TNA PREM 15/971, The Government Proposals, 26 September 1972). Of course, this represents a dramatic change in government policy. However, it is also important in relation to the Act as the events that followed demonstrate the political impossibility of it being involved in any bargain. The TUC General Council rejected the government's position as little more than an 'attractive publicity approach' (MRC MSS.292D/20/6, GC 2nd Meeting on 27 September, 9 October 1972, p.11). The working group saw a bargain as highly unlikely, a position echoed by

the TUC General Council. It was also recorded that 'if a bargain was to be made, there must be an insistence on the repeal of the Industrial Relations Act – there could be no cooperation while that remained – and an immediate £2 increase for pensioners in addition to the annual review adjustment' (ibid, p.11).

The issue was not that the Act was non-negotiable *per se*, but that fruitful negotiation was politically impossible. In addition, DE officials were of the view that a more pragmatic position was developing regarding non-cooperation within the T&GWU, with leading officials meeting Neal, President of the CIR, supposedly without the knowledge of Jack Jones. It was even suggested 'that the question of union cooperation need no longer be an obstacle except where the AUEW are in a predominant position' (TNA LAB 10/3688, Heron to Barnes, 22 September 1972, p.2). However, this must be off-set against the Act's potential to cause further political disruption. While a secondary aspect of the strategy embodied in the government's legislation, the emergency provisions remained available. Industrial unrest was brewing in the electricity supply industry as the next round of pay claims approached. Industrial action seemed likely, bringing the emergency provisions to the fore once again. A ministerial committee noted the risk of 'political difficulties in refusing to make a cooling-off order if the statutory power was available and electricity supplies were being interrupted' (TNA CAB 130/598, GEN 117 (72) 7th Meeting – Presentation of Government's Proposals, 1 October 1972, p.6). There was now another toxic potentiality about the Act.

III. The Curious Position of the Act in Negotiations

'Putting the Act on Ice'

Throughout September and October 1972, price and wage inflation accelerated (TNA CAB 134/3496, ES (72) 43 – Monthly Report on Economic Situation, 24 October 1972). As Table 6.1 shows, the miners' and railways settlements contributed significantly to this trend. The TUC

Economic Committee, however, concluded that the government's proposals went 'half way to making the trade union movement appear responsible for inflation' (MRC MSS.292D/560.1/7, EC (S) 1 – 1st Special Meeting, 4 October 1972, p.4). They now advised TUC negotiators to seek commitment from the government to non-operation of the Act (ibid, p.7). This received overwhelming support from the TUC General Council, passing with 26 votes to 2 (MRC MSS.292D/20/6, GC (S) 3 – Discussing Prices and Incomes, 10 October 1972). Feather had already informed Sir William Armstrong that the TUC would accept 'non-operation' of the Act if the government would encourage concerned parties to not make use of it, particularly in disputes with potentially large fines. While not seen as part of a bargain, Feather insisted that the suggestion was designed to improve relations with the government in the coming months (TNA PREM 15/972, W. Armstrong to R. T. Armstrong, 5 October 1972, p.3). On 16 October, the TUC delegation insisted that they wanted to discuss the Industrial Relations Act, among other issues, as part of any package (MRC MSS.292D/110.44/39, GC 4/1 – Meeting at Chequers on 16 October, 25 October 1972). This is absent from the government's minutes, which instead focus on the TUC's unacceptable demands for statutory control of prices and voluntary restraint on wages (TNA CAB 130/598, GEN 117 (72) 51 – Minutes 16 October, 18 October 1972).

Table 6.1 *Increases in wage rates and earnings in 1972*

Quarter (1972)	**Average Earnings (Wages and Salaries Combined)**[27]	
	All industries and services	**Manufacturing industry**
1	126.7	126.7
2	132.3	132.1
3	135.5	135.4
4	142.0	140.4

Source: HMSO, 1975, p.92

[27] January 1970 = 100

The ‘putting on ice’ debate now requires clarification. The strict legal position must be set against the reality of the Act’s operation. Barnes argues that a formal deal on the Act was impossible as it could not ‘be made inoperative without legislation and this would be a politically unacceptable acknowledgement of error and failure on the part of the government’ (Barnes and Reid, 1980, p.168). Holmes suspects that the government were encouraging employers not to resort to the Act (1982, p.31). At the time, Barnes confirmed to Keith that ‘“putting the Act on ice” could only mean that the Secretary of State would undertake to forego use of the emergency powers and that the CBI and Secretary of State would exhort employers not to invoke the Act’ (TNA NF 1/25, Meeting between Barnes and Keith, 18 October 1972, p.1). However, for all intents and purposes this is exactly what happened. While he believed it was inconceivable that Macmillan would commit to never to using the emergency provisions, both he and the CBI had been urging against use of the Act for some time (ibid, p.1). Nonetheless, he concluded that ‘the atmosphere was so volatile and attitudes seemed to be changing so fast that no-one could say that the sudden appearance of the Act as a bargaining-counter was out of the question’ (ibid, p.1). While the government remained publicly committed to the Act, behind the scenes key provisions had been ‘put on ice’, and intentionally so.

Keith was now arguing that the time had come to make registration seem a more viable option for trade unions, reducing the appearance of state control without sacrificing the basic principles (ibid, pp.2-3). However, once again political considerations made any public acceptance of error impossible. There was concern among senior officials that a ‘recognition model’ would undermine registration and the need for statutory oversight of trade unions (TNA LAB 10/3929, Roberts to Brown, 9 October 1972). Barnes produced a paper for the working group outlining the political considerations:

> The broad effect would be to confer the legal immunities of registration on established unions regardless of how they conduct their affairs. This would probably only be

> politically possible if it were balanced by more sweeping curbs on sympathetic action, but I do not believe it is realistic to contemplate these in present circumstances. To step up constraints on industrial action so extensively when we are in enough trouble trying to make existing constraints stick does not seem to me to be on (TNA LAB 10/3929, Barnes – Possible Changes to the Act, 25 October 1972).

This provides a richer understanding of the complexities of the position. However, at the same time Macmillan was presenting a more dogmatic stance, informing Heath that '[t]he Act is non-negotiable' (TNA PREM 15/972, Macmillan to Heath – Appreciation of the Situation, 20 October 1972, p.5).

The distinction between the public position and the reality of the Act's operation is a subtle, but important one. The primary aim of the Act – shifting accountability for industrial relations to industry itself – was fading. Negotiations in the electricity industry were now reaching breaking point, with Macmillan arguing 'it is difficult to say how the game can continue at all unless there is a settlement in the Electricity Supply Industry' (ibid, p.8). He suggested that there was the possibility of insisting on a settlement of less than £3, hoping that this would demonstrate such a figure was workable. In any case, he accepted that an all-out battle with the power industry was one the government could not win (ibid, p.7). This, like most major disputes of the day, involved a nationalised industry, rendering the Act largely irrelevant as unfair industrial practice did not apply. The only tool available to state managers was the interventionist emergency provisions (Thomson and Engleman, 1975, pp.140-1). The Industrial Relations Policy Committee considered the potential of a cooling-off period if it could facilitate a settlement and not merely be seen as a delaying tactic (TNA CAB 134/3527, IRP (72) 3rd Meeting – Contingency Planning in the Electricity Industry, 23 October 1972, p.6). However, it has to be noted that these secondary aspects of the Act damaged the credibility of both the

government and the NIRC (Davies and Freedland, 1993, p.315). Moreover, even if used it was hardly evidence that the primary aims of the Act were being achieved.

Mixed Messages

With industrial unrest in the electricity industry on-going and no agreement reached in the tripartite discussions, the government was shifting its attention to a statutory alternative from its preferred voluntary approach to counter-inflation policy. Three contingency options were laid out. First, would be to confront inflationary wage claims directly, fighting battles as they arose. This would be coupled with tightening legislation on picketing and reducing supplementary benefits for strikers' families. Second, a more cautious approach could be followed, assessing each case on its merits and fighting as and when it felt winnable. Third, was reverting to a statutory policy. This could be defended on the grounds that all parties agreed that controlling inflation was a necessity (TNA PREM 15/972, Note of Meeting on Tripartite talks, 22 October 1972, pp.8-9). On the Act, officials were now advising ministers 'to review it next year in the tripartite framework after an agreement is endorsed and gets underway' (TNA CAB 130/600, GEN 117 (72) 62 – Steering Brief for 26 October, 24 October 1972, p.9). However, this was vetoed by Heath, who argued that 'it would be preferable to adhere simply to the Government's previous line that, if amendments to the Act were proposed, the Government would consider them' (TNA CAB 130/598, GEN 117 (72) 10th Meeting – Briefing for Tripartite Meeting on 26 October, 25 October 1972, p.5). No explanation is provided, although it is evident that ministers were unwilling to lose face.

Sir Sidney Greene had to defend the negotiators approach on the Act before the TUC General Council, arguing that there was simply insufficient time to iron out every issue (MRC MSS.292D/20/6, GC 4th Meeting on 25 October, 4 November 1972). It is perhaps unsurprising, given that the sticking point remained the statutory control of prices, that the Act did not feature

at the next tripartite meeting either (TNA CAB 130/600, GEN 117 (72) 68 – Meeting with TUC and CBI on 26/27 October, 30 October 1972). In between tripartite meetings, Greene informed Heath that the government's proposals might be easier to sell to the General Council if the TUC negotiators were able to present the whole package, including pensions, rents *and* the Industrial Relations Act. Heath, however, was unwilling to commit to any agreement on other elements when the issue of prices and incomes remained unsettled (TNA PREM 15/972, Note for the Record – Heath, Feather and Sidney Greene, 27 October 1972). At breaking point, the TUC negotiators now focused on the 'full package'. Heath once again rejected these discussions based on the argument that the disagreement on the control of prices was so fundamental that no other issue could be discussed before a settlement was agreed (TNA CAB 130/600, GEN 117 (72) 78 – Tripartite Meeting on 30 October, 1 November 1972, pp.9-10). There was no need to defend the legal framework provided by the Act or discuss amendment at length because ministers ensured it was never truly on the table. This was despite the advice of DE officials to adopt a more conciliatory tone.

This staunch defence of the Act was not replicated in the government's actions. The electricity union had been persuaded to delay industrial action on the proviso that their employers would make an offer once the outcome of the tripartite talks was known. If no offer was made, it would be impossible to satisfy the requirements of a cooling-off period. However, if an offer was made and industrial action followed, the government would be in a positon to resist (TNA CAB 128/50/48, CM (72) 47th Conclusions, 30 October 1972, p.7). In the most pronounced departure from the primary aims of the Act, in particular the withdrawal of government from direct intervention in collective bargaining, senior ministers were discussing further micromanagement. The Industrial Relations Policy Committee now suggested that as a contingency that government should be prepared to take an overt role in negotiations: 'This would involve acceptance publicly of the fact that the Electricity Council and the CEGB were

acting under the Government's overall guidance' (TNA CAB 134/3527, IRP (72) 4th Meeting – Various, 27 October 1972). The cautious approach of government was now well and truly over. It was acting in the interventionist manner that characterised much of the post-war period.

The eventual report of Barnes' working group spoke more to political considerations than the Act's operation. The influence of Macmillan is evident. First, the operation of the Act had to be provided a reasonable trial period, and fully assessed on those terms, not unfounded fears. Neither trade unions nor industry could judge it on 'causes celebres'. Second, the TUC needed to move away from its position of calling for outright repeal or 'putting on ice', the latter position being deemed beyond the power of government. The necessity of a framework of law had to be accepted (TNA CAB 130/600, GEN 117 (72) 74 – Review of the Industrial Relations Act, 31 October 1972, p.151). Officials suggested that as a last resort, and only if it came to be the broker in any deal, the government could commit to a joint working party to review the Act if the principle of the legal framework was accepted. Furthermore, ministers should only consider the essential pillars of the Act against evidence provided by the TUC. 'Putting the Act on ice' was described as an 'impossible concept', as the only area it could be applied was the emergency provisions, with the Secretary of State agreeing as a last resort to consult both sides of industry before acting (ibid, pp.152-3). It can only be assumed that this reflects the government's long-term commitment to reform and not the view of the parties concerned with the Act's operation.

The TUC General Council was now insisting that a complete package, including the Industrial Relations Act, must be on the table if an agreement was to be reached (MRC MSS.292D/20/6, GC (S) 5 – Special Meeting on 1 November, 13 November 1972). Both Feather and Greene hoped that they would be able to get detail on other aspects of the package, although this could only be achieved if discussions returned to inflation. Greene even wondered whether the TUC position on statutory control of prices could be overcome if the government

made its intentions for the Act clear (ibid, pp.43-4). In the event, without a commitment to a voluntary agreement on prices, Heath would not entertain further discussions (TNA CAB 130/600, GEN 117 (72) 81 – Meeting with CBI and TUC on 1/2 November, 3 November 1972). When the full Cabinet met on 2 November, it was noted that it would make no sense to concede room on the Act when militant trade unionists were rendering it largely inoperable. It was concluded that:

> it would be unwise to sacrifice the support of the more moderate elements in the unions by appearing to be ready to compromise on the principles of a statute which the Government had deliberately enacted in an attempt to create a more equitable and orderly structure of industrial relations (TNA CAB 128/50/49, CM (72) 48th Conclusions, 2 November 1972, p.6).

The talks broke down for political reasons, although Heath expressed hope that tripartitism might resume in the future (TNA CAB 130/600, GEN 117 (72) 82 – Minutes from 2 November, 6 November 1972). The TUC General Council apportioned the blame to the government alone (MRC MSS.292D/20/6, Tripartite Talks – General Council Statement, 6 November 1972). With immediate effect the government introduced a freeze on increases in wages, prices, rents and dividends to continue for 90 days from the eventual Bill receiving Royal Assent (HC Debate, 6 November 1972, Vol.845, cc.622-627; see HMSO, 1972e; HMSO, 1972f). This, Feather would later admit, was secretly welcomed by all other than the militant 'nuts' on the TUC General Council (TNA PREM 15/973, Meeting between Feather and Heath, 13 November 1972).

IV. The Position of the Institutions of the Act

The Tactical Procrastination of the RTUEA

The government had refused to publicly denounce the Act, even though in a number of ways it was effectively 'on ice'. An analysis of the activities of the institutions confirms this

assessment. In the RTUEA's first Annual Report, published in July 1972, Keith argued that it would be 'premature for me to draw any general conclusions or to speculate on how the system might develop until further experience, backed by statistical data, has been gained in more stable conditions' (HMSO, 1972g, p.5). Some had wondered whether it would be given 'teeth', noting that previous registration arrangements were 'not insensitive politically and it has sometimes seemed a way out of trouble to vest wide discretions in a non-political Department' (TNA NF 1/15, Gilliver to Keith, 2 October 1972). However, out of public view concessions were being made in an attempt to encourage registration. For example, the CBI's Industrial Relations and Wages and Conditions Committee confirmed that following a meeting with the Chief Registrar an agreement was reached regarding the stringent nature by which company accounts were inspected. A more flexible approach was adopted, a position that the Committee acknowledged had taken place as a direct result of CBI pressure (MRC MSS.200/C/3/EMP/3/7, LW 12 72 – Industrial Relations and Wages and Conditions Committee, 6 October 1972, p.3).

Similarly, following the breakdown of the tripartite talks, RTUEA officials argued that while amendment may be premature, a tactical position to entice those teetering on the edge of registration was needed (TNA NF 1/22, RTUEA Objectives and Staffing for 1973, 3 November 1972). The overall assessment was certainly reserved. Progress had slowed as a direct result of Pentonville and industrial unrest in the docks. Changing attitudes, even among sympathisers, would only be possible 'if the courts produced no further deterrents to rational union thought' (ibid, Annex A, p.2). Established trade unions – in particular ASTMS and NUBE – were persistently irritated by the registration of staff associations who sought to challenge their dominance. This would be difficult to manage, although a two-tiered system whereby established TUC unions would enjoy the privileges of the Act, with a lower tier offering limited rights, was proposed (ibid, Annex B, pp.7-8). Finally, it was felt that no real progress could be expected before September 1973. As larger unions had been hinting at registration before the

summer, some relaxation of protocol might prove fruitful. If the impression of state control could be overcome, trade union acquiescence may follow. However, this had to be weighed against destroying the system itself (ibid, Annex C, p.2).

Table 6.2: *The increase in breakaway unions in manual and non-manual sectors*

Classification	Numbers	Approximate Membership
Manual	82	277,000
Manual "breakaway"	5	6,000
Non-manual in public services	48	300,000
Staff Associations		
(a) Banking, finance	14	76,000
(b) Insurance	13	32,000
(c) Others	20	12,000
Non-manual, others	37	174,000
Non-manual "breakaway"	10	27,000
Special register	24	300,000
Totals	253	1,204,000

Source: TNA NF 1/52, Registered Trade Unions: General Classification, 7 February 1973

In spite of the loss of certain immunities, membership of the TUC remained more attractive than registration. It was the most effective protection against rivals poaching members, a problem the Act exacerbated. The General Secretary of the Electrical, Electronic, Telecommunications and Plumbing Union (EETPU) cited this as the primary reason for refusing his union a ballot on registration under the Act (TNA PREM 15/1664, Note for the Record – Meeting between Heath and Chapple, 29 January 1973, p.4). As Table 6.2 demonstrates, the RTUEA's own figures suggest that the formation of breakaway unions – those challenging traditional unions for recognition – was a legitimate concern.

In February 1973, the RTUEA identified two fundamental false assumptions that had rendered registration ineffective. First, that there had ever been any real consensus after

Donovan. Second, that non-registration would place an unbearable burden on individual trade unions. Both had been proved grossly inaccurate (TNA LAB 10/3610, RTUEA Rules Work: General Policy, 15 February 1973, pp.1-2). While it is of course true that the RTUEA had not been officially abandoned, it resorted to a plain meaning interpretation of the Act – irrespective of whether the NIRC favoured this position – coupled with cutting corners to avoid disputes and embarking on a policy of *tactical procrastination*. Although it was acknowledged that this could create the perception that the RTUEA had become soft, the strategy was designed to place it in the best possible positon for when the future of the Act was decided (ibid, pp.1-5). Under previous arrangements 75 per cent of trade union members, including a large number affiliated to the TUC, were covered by registration. Under the Act this was down to just 11 per cent of trade union membership and just 30 TUC affiliates (TNA LAB 10/3928, Three Briefs on Registration, 26 April 1973, p.1). Now that the registration battle was largely won in favour of the TUC, Clegg notes that the 'outcome made it impossible to reform union rules and behaviour through the requirements of registration' (1979, p.324).

The Abandonment of the Commission on Industrial Relations

The effective freeze on the Act was also felt acutely in the CIR. Not only was the TUC policy of non-cooperation effective, but employers were reporting their displeasure to the CBI if the CIR found in favour of the unions (MRC MSS.200/C/3/EMP/3/84, L.346.72: Employment Policy Committee – Disclosure of Information, November 1972). Furthermore, DE officials were now arguing that references would have to be delayed as a result of entry into the EEC to avoid potentially divisive situations where the CIR would have to judge how EEC practices should be adopted by trade unions or the government (TNA LAB 10/3688, Meeting held to discuss s121 references, 24 October 1972). Non-cooperation remained extremely effective. In recognition disputes referred to the CIR, trade unions were boycotting decisions even when it ruled in their favour. Officials concluded it was 'unlikely that we shall now be able to refer

many more recognition disputes affecting affiliated unions so long as the TUC policy of non-cooperation continues' (TNA LAB 10/3688, Cox to Barnes, 31 October 1972). In a brief on references from the Secretary of State it was noted that the Act provided the CIR no enforcement powers, creating a situation where it had to rely on voluntary acceptance of any recommendations. While the TUC may not have been wholly opposed to the CIR's role in principle, as an institution of the Act it was boycotted irrespective (TNA LAB 10/3688, Background Note – Section 121 Reference, 8 November 1972).

Another institution had been rendered largely inoperative. While Macmillan had offered reassurance that his department was working on references (TNA LAB 10/3688, Macmillan to Neal, 12 November 1972), DE officials were concerned that referral of a major industry would result in strike action from the larger affected unions, such as AUEW, in support the TUC position of non-cooperation. Thus, only medium sized companies could be considered at this stage (TNA LAB 10/3688, Cox to Loveman – s.121 Reference to the CIR, 13 November 1972, pp.2-3). It was acknowledged that 'since the CIR is the Government's agency for reforming industrial relations it cannot very well allow the CIR to rust away through a lack of references caused by the TUC boycott and employer resistance' (TNA LAB/3688, Secretary of State's Reference to the CIR, 13 November 1972, p.1). The problem, however, was not industry alone. It was true that the policy of non-cooperation meant that the vast majority of affiliated unions refused to cooperate. Moreover, few employers had taken advantage of it, viewing a reference as counter-productive even when industrial relations problems had been acknowledged. However, numerous ministers had also rejected the possibility of a reference, tending to support employer concerns (ibid, pp.1-2). The consequence was that of 'all the possible references which are explored by the Department probably the failure rate is 90%' (ibid, p.3). As a fundamental institution of the Act the CIR had been all but abandoned.

The Impact on NIRC Behaviour

For the NIRC, the question was how it could disentangle itself from highly politicised disputes such as those on the railways and in the docks. Regarding the latter, a more cautious approach was soon adopted. When Donaldson eventually met officials of the T&GWU, it was recorded that '[t]he court fully appreciated the problems which faced the union in light of the political opposition to the Act and for that reason we have taken no action and were generally proceeding with extreme caution' (TNA J 120/2, Note by Donaldson, 13 October 1972). Furthermore, as Weekes et al. argue, although from February to September 1972, of the twelve applications for injunctions made eight were granted, between October 1972 and June 1973 this number fell dramatically, with only one of ten granted (and that was delayed) (1975, p.198). In a further case related to blacking – *Howitt Transport Ltd v TGWU* – the NIRC argued that interim orders should be suspended to give the union time to react and persuade its members to discontinue industrial action ([1973] I.C.R. 1). Other cases, such as a little known case known as *Kaymet,* have been used as evidence that the conciliatory role of the NIRC was working (see Scott, 1972 in MRC MSS.200/C/3/EMP/3/109; MRC MSS.292D/249/10). The case never reached open court, in part a result of the NIRC's role in facilitating discussions between union officials and the company. Improved offers were made, and strike action was called off (Financial Times, 24 March 1972). Further progress is demonstrable by the fact that the T&GWU had ordered its shop stewards to stop calling unofficial strikes, to which Heath responded: 'This is Progress' (TNA PREM 15/1678, C. W. Roberts to Angel, 24 November 1972).

Donaldson also worked to repair his damaged image. As noted in Chapter Five, it had become the common view that the judiciary, particularly the NIRC, had acted politically. Countering this view, he was quoted stating:

> My attitude towards political life is much the same as that of a monk toward sex – nostalgic memories of youthful indiscretion, a frank acknowledgement of its attractions, and unshakeable conviction that I could do far better than those currently engaged in it, but an acceptance that it can never be for me until I go to a far better world (MRC MSS.200/C/3/EMP/3/109, 'Industrial Relations Court Not Political', November 1972).

The TUC, however, was yet to see humour in the situation. As an attempt to facilitate acceptance of the court, Feather had suggested it may have been more palatable had it been part of the High Court (TNA PREM 15/973, Chilcot to Armstrong, 10 November 1972). While this was taken seriously by Heath on grounds of strengthening legitimacy, Hailsham argued it offered 'a very doubtful psychological advantage' (TNA PREM 15/1734, Hailsham to Heath, 9 November 1972). When pressed, he argued that while there was potential for some political advantage there was 'no legal advantages and it would probably lead to a loss of flexibility of the present set-up which has considerable practical value' (TNA LAB 10/3637, Owen, to Armstrong, 16 November 1972). The problem, as Donaldson saw it, was twofold. First, if the Act collapsed it would be unwise to have it too closely associated with the High Court. Second, while the 'awe' of the High Court may induce acquiescence, it may also put off trade unionists from making use of the Act (TNA J 120/3, Donaldson to Barnes – Industrial Relations Act Paper dated 29 January, 7 February 1973).

On the NIRC's first anniversary, the New Law Journal commemorated the occasion with an assessment of its activities. The author noted a fundamental problem: 'We have all known of cases in courts of law which have attracted considerable publicity, but never has it been *the court itself* which has focused attention' (Scott, 1972, p.1052 in MRC MSS.200/C/3/EMP/3/109). A period of relative quiet for the NIRC would soon be disturbed by another inflammatory case, *James Goad v. A. U. E. W (Engineering Section),* demonstrating the on-going fragility of the court's position. After Mr Goad was denied access to an AUEW

branch meeting, an Industrial Tribunal ruled that as a member his individual rights had been violated. When he was subsequently denied access he sought a remedy from the NIRC. The AUEW shop stewards' actions were held to be unfair industrial practice and an order to desist was granted. When it was ignored, fines totalling £50,000 were issued against the AUEW for contempt of court ([1972] I. C. R. 429). As Hills recalls, '[t]he union had now obviously chosen this case as a battlefield upon which to confront the Act and all its works' (1973, p.276). As an example of contempt this was more serious for, unlike the T&GWU, the AUEW was wilfully flouting an NIRC order (ibid, p.277). The case was only halted when Goad accepted a cash settlement, although in the interim Scanlon had been withdrawn from the tripartite talks and a series of one-day strikes had been conducted (Moran, 1977, p.145).

Competitive militancy between Scanlon and Jones was problematic and contributed to the confrontational stance against the NIRC (TNA PREM 15/973, Meeting between Feather and Heath, 13 November 1972). The NIRC's legitimacy was also questioned in Parliament, with an Early Day Motion presenting Donaldson and the NIRC as politically biased (TNA LAB 10/3637, Brief on Early Day Motion, 10 December 1972). In terms of perceptions, such events were damaging. Nonetheless, there was some nuggets of hope. In a case known as *Horizon Holidays v. ASTMS,* the first TUC affiliated trade union made an application to the NIRC. This demonstrates, as Hills put it, that '[t]he doctrine of self-defence had come a long way since Heatons!' (1973, p.278). Moreover, against TUC policy, officials of ASTMS cooperated with the CIR, providing evidence that would be found in the final report (see MRC MSS.292D/249/21). It is unsurprising that such cases would give a glimmer of hope in an otherwise deeply troubling landscape. However, the position of the Act remained precarious. Furthermore, controversial cases created headlines, reiterating the view that the Act had achieved minimal success. While the Act was effectively 'on ice', the institutions, TUC, CBI

and government, could operate with caution. However, the Act was still operative, and there was little that could be done to halt maverick employers or individuals.

V. How to Move Forward with the Act?

Developing a Position on Amendment

Even with the collapse of the tripartite talks, Feather was reporting to senior officials that he was having some success in moderating hostile attitudes on the TUC General Council (TNA PREM 15/973, Chilcot to Armstrong, 10 November 1972). Indeed, at the end of November he confirmed that Scanlon, the General Council's most vocal critic of the Act, had now agreed that they should pursue amendment rather than repeal (TNA PREM 15/973, Chilcot to Armstrong, 28 November 1972). However, the moderate voice of Frank Chapple, General Secretary of the EETPU, reported that the radical elements of the TUC, Scanlon included, would not discuss potential amendments for fear of being seen to recognise the Act (TNA PREM 15/1678, Note of Meeting between Heath and Chapple, 4 December 1972, p.1). With such mixed messages it is perhaps unsurprising that it would be difficult to devise a strategy for amendment. Nonetheless, relations between moderate elements of the TUC and the government had improved quickly following the breakdown of talks. Feather was even open to a meeting between ministers and the TUC negotiating team to discuss the next stage of the government's counter-inflation strategy (TNA PREM 15/973, Note for the Record – Meeting between Feather and Heath, 6 December 1972). There was little sign of significant hostility, especially within the moderate arm of the TUC leadership.

However, this did not change the fact that the TUC strategy had shackled the government politically. DE officials in the working group remained convinced that the TUC would only accept radical amendment. Barnes described the position:

> It seems therefore to follow that the Government would be forced to introduce amendments to the Act – if amendments there are to be – on its own initiative and in the absence of a reasoned debate with the TUC beforehand. The "package" would therefore be seen to be a Government package; and it could not fail to be highly controversial (indeed it might be none too easy to persuade the Government's own supporters, let alone the TUC, of the merits of different parts of the proposals for amendment) (TNA CAB 184/90, Barnes to Dawe – Possible Amendments to the Industrial Relations Act, 13 December 1972).

In this document it is acknowledged that the exercise of considering amendment was purely to be ready if the government's hand was forced. The preferred option was that any amending legislation would be introduced following the next General Election. Provided a new mandate was granted the chances of achieving a balanced package would be far greater. Nothing in the government's position had changed, and proposals were still being judged against the need to maintain the basic legal framework and principles (ibid).

In November 1972, the TUC/Labour Party working paper on the Act was leaked to the press (see MRC MSS.292D/24.1/7, F&GPC 3/5, New Industrial Relations Legislation, 15 November 1972). Reflecting on the document, Conrad Heron, now a leading official in the working party on the Act, wrote:

> Even after ample allowances have been made for a negotiating element in these proposals, the TUC are setting their sights very high indeed – higher even than they did after June 1969, if my memory serves me right. If this is their stance, and they would clearly hope to get the lion's share of what they are seeking from a future Labour Government, it makes the chance of "doing a deal" on the IR Act very remote indeed (TNA LAB 10/3913, Heron to Smith, 19 December 1972).

From the other side of industry, the CBI produced a scathing report on the operation of the Act. Focused primarily on registration, it concluded that '[t]he idea of using registration for disciplining purposes has not proved effective [Handwritten: It is therefore proposed it should be abandoned]' (MRC MSS.200/C/EMP/3/84, registration – CBI View, n.d.). Leading figures in industry, notably Sir Arnold Weinstock, Director of Rolls Royce, were trying to influence the government to take industrial relations reform out of the political arena through creation of an independent body to consider the matter (TNA PREM 15/973, Armstrong to Heath, 21 December 1972, pp.1-2). The Lord Chancellor, however, was sceptical whether it was possible 'to remove industrial relations law from the field of party political controversy' (TNA PREM 15/1678, Owen to R. T. Armstrong, 19 January 1973). Heath now acknowledged that it was 'unrealistic to suppose that [industrial relations] can be taken out of the field of current political controversy by such a device' (TNA PREM 15/1678, R. T. Armstrong to Owen, 22 January 1973).

Views on the Act from outside of the official working group were also critical. The Central Policy Review Staff (CPRS) identified numerous failings. It recommended that the risk of imprisonment should be removed to avoid the creation of martyrs. Registration was seen as a failure and should be abolished as the principle that trade unions should not be subject to state control had proved too strong to overcome. Coupled with this was a move to provide the RTUEA an ombudsmen-type role, hearing complaints made by individuals. If sufficient caveats were in place, the post-entry closed should be permitted (TNA CAB 184/90, CPRS: Industrial Relations Act, 8 January 1973). At a meeting with Keith and leading figures of the working group it was recorded that amendment of the Act was 'on the shelf and likely to remain there pending a General Election, unless matters take an unexpected turn requiring fresh legislation' (TNA NF 1/15, Note of meeting on 24 January, 25 January 1973). The position was made explicit in a footnote, arguing that 'pre-election amendment [was] obviously controversial,

time-consuming and tactically weak' (ibid). This summarises the position well. Even though discussions continued on potential amendment of the Act's registration provisions, it seems it was never seen to be feasible politically.

The Political Role of Sir John Donaldson

In line with the position of a 'political' judge, Donaldson made numerous critical interventions into debates surrounding the future of the Act. As early as August 1972 he argued that there was no public advantage to registration. Furthermore, he was concerned about the link created between the Secretary of State and the NIRC by the Act's emergency provisions, a position that made it 'easy for opponents to brand the Court as a rubber stamp of the Executive' (TNA J 120/2, Donaldson to Dobson, 29 August 1972). In the coming months he produced a number of papers under the pseudonym 'Officious Bystander'.[28] His initial assessment was that 'although the Act was, technically speaking, a brilliant piece of work it was, frankly, "not a workable Act"' (TNA LAB 10/3911, View of Sir John Donaldson on amendment, 14 December 1972, p.1). His emerging view was that the NIRC should be strengthened, notably that 'far more discretion should be given to the Court in its jurisdiction under the Act' (ibid, p.1). However, for political reasons, DE officials were taking a contrary view. Numerous voices remained positive about attaching conciliators to the NIRC, providing the option of recommended conciliation or advocating an inquiry in advance of a legal remedy. This, it was hoped, would remove the image of the NIRC as a purely punitive court. The *Horizon* case was provided as an example (TNA LAB 10/3911, Heron to Barnes, 28 December 1972, p.2).

[28] In a letter Donaldson explains the title's relevance: 'The initials "O.B." stand for "officious bystander" who was immortalised by Mackinnon, L. J. in *Shirlaw v. Southern Foundaries (1926) Ltd* (1939) 2 K. B. 206 at page 227. His function in life was to suggest terms for inclusion in agreements under negotiation, only to be told that the suggestion was too obvious to need expression' (TNA J 120/3, Donaldson to Barnes, 7 February 1973). Donaldson later admitted that this was designed to 'reduce the risk of anyone discovering the extent to which I have been considering amendments of the Act' (TNA J 120/3, Donaldson to Dobson, 13 February 1973).

Donaldson's starting point established the parameters of any possible amendment as he saw it. While an attempt by trade unions to force a General Election was regrettable as it obscured the motivations behind the Act, it was nonetheless deemed quite proper. However, an attempt to defeat the principle of legal regulation was not. This, for Donaldson, was a constitutional issue, leading to the conclusion that any 'proposals contained in the new approach must be examined not only from a technical view point, but also to see whether and to what extent they may weaken the whole concept that unions are subject to the rule of law' (TNA J 120/3, The Industrial Relations Act 1971: The New Approach, n.d., p.1). The concrete suggestions again betray his desire for an extended remit. Through the agreement of unions and employers, a 'respectability' test should be added to registration. Central to the expanded role would be the assessment of the underlying causes of disputes through a focus on the relationship between the parties (ibid, p.3). The court would be empowered to make recommendations regarding procedure agreements, although caution was advised before imposing statutorily prescribed rules on trade unions (ibid, pp.4-5). Any temptation to abandon the principle of legally binding collective agreements was deemed a 'serious tactical error' as it would put the principle of legal regulation in doubt (ibid, pp.6-7). While the problem of individual union members causing national disruption was acknowledged, this was attributed primarily to the TUC non-cooperation policy, not the Act's flaws (ibid, p.8). Finally, Donaldson argued that the NIRC should have its jurisdiction extended, covering all areas of industrial relations, acting as a *de facto* Labour High Court (ibid, p.10).

In a subsequent paper, these proposals were developed. In an attempt to make the court appear less partisan, Donaldson proposed providing trade unions, not just employers, with a potential redress before the NIRC. In essence, employers would also be liable for unfair industrial practice. The main thrust of the paper, however, remained the extension of the NIRC's role to one of investigation, not simply applying law (TNA J 120/3, The Industrial

Relations Act 1971: The New Approach (No. 2), n.d., p.3). Through an elaborate analogy of the King and barons, he argued that instead of wasting resources by resorting to force to dissipate disputes, the Crown sent justices to adjudicate the underlying causes. There was now:

> the general acceptance that in every field other than industrial relations – even in that penultimate stronghold, the matrimonial home – disputes are settled by amicable agreement or, if that fails, by the Courts. But force is not acceptable. Has the time not come to apply the same approach to industrial relations (ibid, p.6).

Donaldson was demonstrating a lack of political understanding, for the NIRC was seen as a toxic institution by trade unionists. Indeed, the working group dismissed this suggestion on the grounds that '[t]he unions would be unlikely to co-operate with a move that would move the NIRC further towards the centre of the industrial relations scene, particularly if the power of imprisonment was retained' (TNA LAB 10/3911, Meeting to Discuss OB's Paper "The New Approach (no. 2)", 12 April 1973, p.1).

Donaldson's interjections had little impact on DE thinking, with Barnes presenting a politically conservative and defensive approach to amendment in advance of the Act's final phase. While not pronounced publicly, the working group's draft report confirmed that the prime objective remained altering the balance of industrial power through legal intervention (TNA LAB 10/3911, Barnes to Edwards: Thoughts on OB's Paper "The New Approach" (Draft), 2 March 1973). Whatever the position of the Act in practice, this remained the ultimate goal of reform. Indeed, both ministers and DE officials clung to this position. There was, however, caution surrounding any attempt to extend the Act as Donaldson had hoped. Reform should only be considered if two conditions were met. First, that any sanctions remained effective if utilised. Second, that the disincentives attached to amendment did not overrule the incentives (TNA LAB 10/3911, Barnes to Edwards: Thoughts on OB's Paper "The New

Approach", 2 March 1973, p.1). Existing sanctions had proved largely ineffectual, and little could be gleamed from the new counter-inflation legislation which remained in its infancy (ibid, p.2). The final conclusion, therefore, was that: 'Broadly it would be better to go for a legal framework which does less than might be desired but which has a reasonable chance of being made to stick' (ibid, p.2). However, DE officials were now turning their attention to how the Act might function in relation to counter-inflation legislation, leaving Donaldson's hopes for an extended role unfulfilled.

The Impact of Statutory Incomes Policy

The introduction of a statutory incomes policy is important because it effectively undermined the weakened Act. Stage II commenced following the expiration of the 90 day freeze. A White Paper and draft Bill were published in January 1972 (HMSO, 1973c; HMSO, 1973d), closely followed by a Consultative Document the following month (HMSO, 1973e). The TUC Economic Committee immediately recommended opposition to Stage II (MRC MSS.292D/560.1/7, Econ Ctee (S) 5 – 5th Special Meeting on 19 January, 23 January 1973). Backing this position, the TUC General Council discussed how '[u]nions had to decide whether, in addition to the Industrial Relations Act which eroded their strength, they were now to accept an imposed permanent system of statutory wage control' (MRC MSS.292D/20/6, GC 10th Special Meeting on 14 February, 20 February 1973). The final proposals introduced a Pay Board and Prices Commission, limiting wage increases to £1 plus 4 per cent (HMSO, 1973f). Yet with the next pay round approaching, industrial unrest was either present or expected in the gas industry, the railways, the National Health Service, the Civil Service, London schools and potentially at Fords. In addition, tensions were rising again in the coal industry (TNA CAB 128/51/9, CM (73) 8th Conclusions, 20 February 1973, p.3). The Cabinet discussed how the emergency provisions of the Act could be used if industrial action was taken to support a pay claim (TNA CAB 128/51/8, CM (73) 7th Conclusions, 15 February 1973, p.8). However, even

in this regard the Act was ineffective. The Secretary of State argued that any dispute in the gas industry would be unlikely to meet the 'cooling-off' period requirements and would simply be viewed as playing for time (TNA CAB 128/51/9, CM (73) 8th Conclusions, 20 February 1973, p.3).

While counter-inflation legislation and the Act would operate in tandem, it was not necessarily a comfortable relationship. Barnes wrote: 'The Act has been supplemented for the time being by a further major extension of the legal framework – sanctions on industrial action against the counter-inflation policy' (TNA LAB 10/3911, Barnes to Edwards: Thoughts on OB's Paper "The New Approach", 2 March 1973, p.2). However, if the Act was designed to depoliticise the role of government in industrial relations, statutory intervention on wages and prices achieved the opposite. The government's earlier attempt to withdraw from collective bargaining was over. The CBI acknowledged this tension, distinguishing between a 'managerial' and 'governmental' approach. The former, represented by the Industrial Relations Act, involved rational management and free collective bargaining supported by civil law. The latter, represented by the counter-inflation proposals, put the government centre stage in deciding wage and price levels, with the ultimate sanction of criminal law in place (MRC MSS.200/C/3/EMP/3/84, Review of the Industrial Relations Act, 22 March 1973, p.1). In terms of policy implications, given that an incomes policy weakens collective bargaining, amendment to strengthen the Act in that regard became less important, while measures to increase cooperation between both sides of industry and the government came to the fore. Indeed, the CBI concluded that any suggestions on amendment to the Act must now consider how it would support incomes policy (ibid, p.2). In this respect the Act had been undermined, subjugated to a supporting role as a very different framework to regulate collective bargaining developed.

The changing landscape created new problems. Macmillan feared that the government had produced a second statute through which trade unionists could court martyrdom. However,

to remove the risk of imprisonment would have undermined the counter-inflation legislation and created a two-tier approach to disputes, with only cases before the NIRC subject to contempt proceedings (TNA CAB 184/90, Macmillan to Hailsham, 8 January 1973). This could only strengthen the view that the NIRC was an anti-union, political court. Removing the sanction of imprisonment from both Acts required strategic consideration but should be retained as a bargaining counter (TNA CAB 184/90, Macmillan to Heath, 23 February 1973). Donaldson argued that controversy surrounding the Act had reduced as the focus of trade union anxiety shifted to incomes policy (TNA J 120/3, Donaldson to Dobson, 28 March 1973, p.2). Senior officials would be watching the trade union response closely, for the implications of acquiescence to Stage II were also relevant to industrial relations reform. If trade unions were seen to cooperate with Stage II it would weaken arguments against a legal framework to regulate industrial relations. Amendment, therefore, should only be considered in light of the trade union response to Stage II (TNA PREM 15/1678, W. Armstrong to R. T. Armstrong, 26 March 1973). The period had seen little progress on plans for amendment. The most convincing conclusion at this stage is that senior officials and ministers were simply playing for time until the Act was allowed to thaw.

Conclusions

Entering the final phase of the Act, it is evident that ministers and officials were at a loss as to what to do with it. While ministers remained convinced that its core tenets were correct, outside of this new 'status quo' there were few useful ideas. Without ever publicly denouncing the Act the government allowed it to slip into 'ice'. An analysis of the activities of the working group on amendment highlights the constraints the government was subject to as a result of political considerations. It was impossible to acknowledge that the Act had been devised in error. Furthermore, any overt commitment to amendment was impossible when the government was entering negotiations with the TUC on economic management. There is little evidence to

suggest that ministers had taken on-board the drafting flaws that events in the railways and docks had brought to the fore. Instead, ministers reverted to a primarily politicised approach to governing, similar to that which had characterised much of the post-war period. The government moved towards statutory intervention into collective bargaining as a means of controlling wage inflation when no agreement could be reached with the TUC through tripartism. While the Act remained on the statute book, it was effectively 'put on ice' for political reasons, only to be amended when a renewed mandate was in place. In this vein, Bale argues that this phase of the Act should be viewed through the lens of political science 'as policy shifts made by a party which fully intended to govern Britain for another term and, up until it lost office, fully expected to do so' (2012, p.163).

The tactical procrastination of the RTUEA, relative abandonment of the CIR and change in attitude of the NIRC all point to something far closer to the Act being 'on ice' than the government's public presentation would suggest. This seems to reflect Clegg's observation that 'a more diplomatic Industrial Relations Court could have avoided confrontations at least until the new institutions became established' (1979, p.327). Nonetheless, it must not be forgotten that the Act was still in operation. Ministerial pressure, primarily from Macmillan but also Heath, had ensured that any root and branch reform was unlikely. The Act was still courting controversy through cases brought by individuals and maverick employers. In this respect, there was little sign of success on the horizon. The coda of the Act is on one level uneventful. However, the commitment to the Act requires discussion, for it remained on the statute book for well over a year. As Dorfman argues, while the government may have ceased overtly using the Act, Heath 'staunchly preserved it' (1979, p.65). In effect, he 'tried to have his cake and eat it too' (ibid, p.65). Simply focusing on the Act being 'put on ice' ignores some important events in the life of the Act. Moreover, with long-term commitment to legislative reform unwavering, the potential for success must be assessed. It is to this set of issues that the thesis now turns.

Chapter 7
Collapse of the Government and the Demise of the Act, April 1973 – February 1974

Introduction

Due to the consensus within the literature that the Act was 'put on ice' following the disputes of 1972, analysis of its final 12 months of operation tends to be rather thin. Moran provides an 'epilogue' describing how the Act 'continued to haunt political and industrial life like a malign spirit' (1977, p.144). In a similar vein, Holmes argues that throughout 'the last year and a half some of the cases that trundled through the NIRC were bizarre, and even tragic-comic, if less politically controversial' (1997, p.31). The previous chapter confirmed the orthodoxy in concluding that the Act was frozen for all intents and purposes. However, it also noted a broad commitment to the notion of a legal framework for industrial relations. It cannot be ignored that the Act remained in operation even if the government ceased using it. The final months of operation include some important developments that all but a few accounts ignore (e.g. Davies

and Freedland, 1993, pp.315-23; Holmes, 1997, p.31; Moran, 1977, pp.144-8; Thomson and Engleman, 1975, pp.126-56). As the Act remained on the statute book, any discussion of it as a governing strategy must not neglect these final months. To understand its inability to depoliticise the reform and management of industrial relations, this chapter sets the analysis within the changing industrial and political context. Davies and Freedland have observed that throughout the life the Act the 'strike problem' changed. The Act was designed to attack unofficial, wildcat strikes instigated at the shop floor. However, the industrial unrest of the day was dominated by official, public sector disputes that played out nationally (1993, p.284; see also Durcan et al., 1983, p.168; Weekes et al., 1975, p.185). With this in mind, the chapter argues that the Act seldom functioned as intended and was consumed by rapidly changing events. Furthermore, in the major disputes of the day, it was simply an inappropriate vehicle for depoliticisation as the government was unable to abdicate responsibility.

In tracing the final months of the Act's operation it becomes evident that at best it was an irrelevance, at worst it deepened resentment, primarily because it was ill-conceived. The first section demonstrates that in advance of Stage III of the counter-inflation strategy, both sides resorted to little more than posturing over the Act. In fact, it had slipped down the priority lists of the government and TUC. This is in line with the Act being 'put on ice'. However, as it remained on the statute book, it is necessary to consider which elements still functioned and how this contributed to the overall strategy. Second, therefore, the position of the NIRC and the judiciary at large is discussed. It is argued that, contrary to the wishes of Macmillan, Donaldson went about redefining his role. In doing so, the inappropriateness of the courts acting as custodians of a rules-based depoliticised strategy comes to the fore again, as the unpredictable nature of judicial interpretation fuelled the unstable legal environment. Thirdly, as the conciliation work of the NIRC is neglected in the existing literature, the chapter turns to its unreported successes as ministers sought to defend reform. By viewing the Act as a 'pilot

study', its proponents were able to identify areas of success as evidence of the merits of the framework. Fourthly, the second miners' strike is considered in relation to the Act. While the emergency provisions were not used, this major dispute reiterates that the Act was inappropriate for the changed landscape. Acknowledging the *limitations* of depoliticisation as a form of statecraft, it is concluded that the Act failed to have any notable impact on the industrial relations landscape.

I. The Attempts to Reach Agreement on the Economy

Re-Defining Positions on Amendment

Between January and April 1973 there was no further industrial unrest involving the NIRC. Furthermore, while it was the court's busiest period in terms of caseload, the media had shifted its attention to incomes policy as the likely source of discontent (TNA J 145/15, The N.I.R.C. in 1973: A Personal History, n.d.). Donaldson was forced to argue that he had not 'fled the country' and began pushing the narrative that the NIRC was enjoying considerable success in its conciliation work, an often unreported but essential feature of its role (TNA LAB 10/3911, Dallas Lecture: Glasgow Junior Chamber of Commerce, 9 April 1973). The TUC was again captured by mixed messages. By the end of March, cooperation regarding amendment was a possibility, with Hugh Scanlon proposing a ministerial fiat to filter cases reaching the NIRC (TNA LCO 2/8165, The Times: Reform of the Industrial Relations Act, 30 March 1973). The TUC F&GPC was split on whether to propose amendments, ultimately favouring forcing the government to show its hand as non-cooperation had proved so effective (MSS.292D/24.1/7, F&GPC, Minutes of 10th Meeting, 16 April 1973). Similar sentiment was expressed by Vic Feather, informing Sir William Armstrong that if an amending Bill was brought before the House of Commons trade unions could be made to acquiesce, even if publicly they remained opposed (TNA PREM 15/1678, W Armstrong to R. T. Armstrong, 27 April 1973).

The rejection of Scanlon's proposal demonstrates a lingering commitment to the broader strategy embodied in the Act. Donaldson rejected it on the grounds 'that to do so would turn the Court into a political court or at least would cause it to be seen as such a court' (TNA LCO 2/8165, Donaldson to Dobson, 4 April 1973). The idea of exposing the Secretary of State was against the philosophy of the Act, and when officials presented Scanlon's proposal to Maurice Macmillan, he simply noted in the margin, 'NO' (TNA LAB 10/3910, Heron to Dawe, 27 April 1973). Whatever the private assurances of Feather, when Macmillan briefed Heath on the current position of the Act, little had changed. With Stage III on the horizon, he wrote that 'the TUC will look to the Government to put forward proposals for changes in the Act while they will remain committed to repeal. This confirms that their agreement cannot be bought by amendments which would retain the essential structure of the Act' (TNA PREM 15/1678, Macmillan to Heath, 'Revision of the Industrial Relations Act', 17 April 1973). When the two met, it was clear that bar retaining the principle of a legal framework, there was little clarity on any workable amendment. It was concluded that there should be no filtering system and the status of the NIRC must remain intact. The pre-entry closed shop could be legalised, although decisions on further restricting secondary action were not made at this stage. Options ranged from total illegality to making strategic picketing during national emergencies illegal (TNA LAB 10/3910, Note of meeting held on 30 April, 30 April 1973).

The government had been discussing other means of shackling trade unions throughout its time in office (see Davies and Freedland, 1993, pp.327-8), although Heath was encouraged to delay any announcement on the reform of picketing until after decisions on amendment of the Act had been made. He argued that '[t]he situation has changed now that we are likely to be engaging in discussion with the TUC about amendment of the IR Act' (TNA PREM 15/1669, Macmillan to Heath: Picketing, 4 May 1973). Nonetheless, DE officials briefed that there was little chance of any government package influencing the TUC negotiating position (TNA LAB

10/3910, Revisions to the Industrial Relations Act: Brief for the Secretary of State, 8 May 1973, p.5). While certain relaxations could be considered, this would have to be offset by tightening the restrictions on secondary action, including picketing, and 'experience of the Act so far surely shows the difficulty of existing legal restraints, let alone new ones' (ibid, p.2). Furthermore, DE officials stressed that other means of controlling industrial action, such as further restrictions on the payment of supplementary benefits for strikers' families, would be politically toxic and should not be brought to the table at this time (ibid, p.4).

The TUC's review of the operation of the Act provided a positive assessment of non-cooperation:

> Apart from some isolated and damaging cases, the Industrial Relations Act has not had as adverse an effect on unions as was first feared. This is not because the Act is well-conceived and helps to improve industrial relations; it is because the policy of non-registration and non-cooperation has demonstrated both to unions and to employers that the Act is largely irrelevant to industrial relations and that when it is used for the most part it is a source of disruption (MRC MSS.292D/24.1/7, F&GPC 10/1: Industrial Relations Act: Review of Unions' Experience, 16 April 1973, pp.6-7).

The TUC's position, much like that of the government, now revolved around an unwillingness to show its hand. With the Act brought to heel, the evidence suggests that it was no longer the primary concern of trade union leaders. The following month, the minutes of the TUC General Council record: 'The IR Act was not so important now in regard to collective bargaining rights because the Government's incomes legislation restricted those rights and was achieving what the IR Act set out to do in this regard' (MRC MSS.292D/20/6, GC 15th Meeting, 23 May 1973, p.132). This, it was thought, could lead to a 'throw-away' of aspects of the Act by the government in negotiations (ibid, p.132). This view was confirmed to Heath by moderate trade

union leader Frank Chapple. The Act had taken a backseat as the TUC's attention shifted to the control of prices (TNA PREM 15/1674, Note for the Record – Meeting between Chapple and Heath, 19 July 1973, p.3).

Heath is reported to have been 'characteristically reticent: his view is not definitely known but he has shown little sign of interest' (TNA NF 1/25, Handwritten Note of Meeting with CFH, 8 June 1973). Douglas Hurd has reflected that Heath often neglected 'political' matters for policy areas he deemed important, notably Europe and Northern Ireland (1979, p.111). However, when he met TUC negotiators to discuss the future of counter-inflation policy, he made clear it was for them to demonstrate how free collective bargaining and controlling inflation could be reconciled. From the TUC side, Sir Sidney Greene only mentioned the Act to acknowledge that the government had not made use of it directly. He reiterated that private individuals retained the potential to cause considerable disruption (TNA LAB 112/50, GEN 145 (73) 74 – Meeting with TUC on 13 June, 15 June 1973, p.2). While the Act was 'on ice', as long as it remained on the statute book the danger of industrial conflict existed. This meeting is important because it established sub-groups to produce papers on agreed topics including free collective bargaining, prices and rents, social security and pensions and the Industrial Relations Act (ibid, p.6). The focus of this chapter is not the on-going talks between government and the TUC on economic policy. However, it is important to note that because of the potential for the Act to feature in discussions, the policy documents produced offer a useful site of analysis with regard to the future direction of the strategy.[29]

[29] The move towards Stage III of the government's counter-inflation policy is important in any overall assessment of the Conservative government 1970-74. However, given the negotiating positions adopted by the government and TUC, there was never any meaningful discussion of amendment and the available minutes confirm the Act never actually featured as a bargaining chip. The Act was only discussed briefly once, confirming this conclusion. DE officials recorded that Jack Jones mentioned the Act, but there remained little hope of an agreement being reached: 'The discussion with the TUC at Chequers on 23 August tended to confirm this assessment, since there was only the briefest reference to the Industrial Relations Act by Jones, right at the end of the meeting, when he

No Clear Direction for the Act

Even though an agreement was unlikely, in anticipation of renewed talks an official working group of senior ministers – including Heath, Macmillan, Carr and Howe – was established to focus on the Act specifically. At the group's first meeting Heath outlined three distinct options. First, was to accept that as the government introduced the legislation, it was for the government to monitor its effectiveness, making amendments as required. Second, was to present the operation of the Act as largely the responsibility of trade unions and employers, the government overseeing processes to ensure that the national interest prevailed. In this case, it was for both sides of industry to present amendments. Third, was to use the Act as a bargaining chip with the TUC in relation to negotiations on Stage III of the government's counter-inflation legislation (TNA LAB 10/3910, GEN 181 (73) 1st Meeting: Industrial Relations Act, 26 June 1973, p.1). Sir William Armstrong was concerned that any attempt to tighten restrictions on trade unions would ensure that any cooperation with the TUC would be lost, particularly given the fact that they had expressed a willingness to discuss amendment of the Act on 13 June (ibid, p.2). In discussions, it was agreed that the government would be foolish to commit to amendment as this would create an opportunity for opposition forces to further discredit the Act. Ultimately, the pressure should remain on the TUC, through informal channels, to show its hand. Work should commence once again on producing a definitive government position on amendment (ibid, p.5).

The resulting document, circulated on 3 July 1973, offers insight into what a future version of the Act might look like. It was acknowledged that it had 'not made the intended impact on the long-term improvement of industrial relations' (TNA CAB 130/697, GEN 181 (73) 1: Revision of the Industrial Relations Act, 3 July 1973, Annex 1, p.1) and, ultimately,

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put up a marker that he at any rate was still interested in repeal or amendment of the Act; but he did not pursue the point and no-one else took it up' (TNA LAB 10/3910, Lawman to Carr, 12 September 1973).

'remained untried' (ibid, p.1). Little clarity on a radical alternative was presented, driven primarily by Macmillan's view that there was little hope of a TUC agreement (TNA CAB 130/697, GEN 181 (73) 1: Revision of the Industrial Relations Act, 3 July 1973). Seven key areas must be highlighted. First, it was concluded that there could be no concession on the principle of legal limitations on industrial action. Second, immunities could be applied equally to both registered and unregistered trade unions, with concessions under registration in exchange for financial oversight. Third, immunities for industrial action could be narrowed, making all cases unfair unless adequate notice was given. Secondary action would be severely curtailed. Fourth, two possibilities were presented regarding the closed shop – maintaining the status quo or legitimising it with safeguards – although no definitive position was presented. Fifth, conciliation could be extended, essentially offering a greater barrier between employers and recourse to the NIRC. Sixth, alterations to the NIRC's powers of imprisonment and changes to the presumption of legally binding collective agreements was rejected. Finally, the government should be willing to make minor concessions regarding the extension of unfair dismissal (TNA CAB 130/697, GEN 181 (73) 1: Revision of the Industrial Relations Act, 3 July 1973, Annex 1).

The government was in a political quagmire, and no matter how much wading through detail officials and ministers conducted, they remained shackled by their commitment to a legal framework that was barely in operation. In its contribution to discussions surrounding free collective bargaining, the TUC wrote:

> It is largely because the authors of the Industrial Relations Act did not appear to understand the strength of jointly determined arrangements, that they wrongly supposed that such a statute could materially change such arrangements. Use of the Industrial Relations Act – leaving aside the fact that there has to be adequate protection against unfair dismissal – can only exacerbate problems in industry and the TUC representatives

are seeking a clear assurance on non-operation of the Act (MRC MSS.292D/20/6, TUC: Collective Bargaining, Prices and Social Services, 2 July 1973, p.3).

On 9 July, Feather confirmed the government's suspicions that amendment alone would buy few concessions. The TUC was now looking forward to the next government and, if the Labour Party was returned, complete repeal (TNA PREM 15/1674, Note for the Record – Meeting between Feather and Heath on 9 July, 10 July 1973). Sir William Armstrong confirmed that there was little chance of the Act becoming a bargaining chip as Feather had stated that the TUC position would not change before the General Election (TNA CAB 130/697, GEN 181 (73) 2nd meeting: Industrial Relations Act, 12 July 1972, p.2).

In advance of Stage III being enacted, a final document was produced on amendment. Once again, the long-term commitment is clear. After months of analysis, the shift towards a desire to tighten the provisions regarding secondary action and picketing is notable, even though a blanket ban was deemed impossible (TNA CAB 130/697, GEN 181 (73) 2: Industrial Relations Act, 26 July 1973). Donaldson's suggestion that the NIRC should be empowered to consider the underlying merits of a dispute, a position at this stage conducted by the DE conciliation service, was deemed politically dangerous given union opposition and was ultimately rejected. Crucially, this suggestion demonstrates that ministers were torn regarding how far they were willing to depoliticise industrial relations through the Act. Macmillan was concerned about the potential loss of control as it would be 'a major step to delegate to any outside body the power to handle major disputes including the setting up of inquiries and the consideration of references to the CIR, since political and other wider considerations are so often involved' (ibid, p.7). Given the changed industrial relations context, it had become increasingly difficult for the government to absolve itself of responsibility when the political stakes were so high. However, given the loose drafting of the Act, ministerial resistance could not necessarily prevent an extension of the judicial role in industrial relations.

II. The Developing Role of the Legal System

Extending the Role of the NIRC

A central argument of this thesis is that the judiciary was an inappropriate custodian of the government's rules-based depoliticised governing strategy, precisely because of its 'independence'. The traditions of the legal system and the mind-set of judges proved difficult to predict. Macmillan's caution surrounding the role of the NIRC stemmed from the political difficulties this created. Yet Donaldson had been heavily involved in proposing potential amendments of the Act and commenting on the future of industrial relations reform. This was made public in early May 1973, when it was reported that he had met with the Engineering Employers' Federation as far back as March 1973 (The Guardian, 14 May 1973). In spite of presentational difficulties, he remained unrepentant, arguing 'I am convinced that it is an essential part of the job to hold myself out as being willing to listen to anyone who wishes to come and talk about the workings of the Court and the Act' (TNA J 120/4, Donaldson to Jukes, 18 May 1973, p.1). While Donaldson had also been meeting the moderate leader of the EETPU, Frank Chapple, to discuss the courts work (TNA LCO 2/8165, Donaldson to Dobson, 14 June 1973), suspicions that the NIRC was operating in the interests of capital in general developed.

The Labour MP Eric Heffer brought Donaldson's extra-judicial behaviour before Parliament, asking: 'Is it not the job of this House and of the Government to determine the nature of the Act and not the job of the judge, who should be responsible only for implementing it? Does it not underline the point made by the trade unions that this is a political court with a political judge who is interfering in political matters?' (HC Debate, 11 June 1973, Vol. 857, c.990). Lord Hailsham's response focused on Donaldson welcoming constructive discussions, reassuring, however, that the NIRC was 'not a political court and Sir John is not a political

judge' (ibid). Donaldson's comments on the dispute highlight a confused stance on his 'political' role and, indeed, the limits he assigned to it:

> The true limits to the role of a judge in a politically sensitive area are, I think, very clear in practice, although difficult to express in simple terms. Manifestly it is for Parliament and the Government of the day and not for the judiciary to decide on policy. Equally, and as a necessary corollary, the judiciary must stand aside from any controversy on the relative merits of the existing policy or of any alternatives which may be being canvassed. On the other hand the judiciary has an essential contribution to make in advising on the practical effect of possible changes in policy based upon its experience of how the existing policy works. In saying this I am, of course, thinking of policies the results of which manifest themselves before the courts. In theory there can be no objection to a judge giving this advice publicly and to all the world. In practice this is objectionable because it would be misunderstood and the judge would be thought to be advocating the adoption of particular policies which is not his function (TNA J 120/4, Donaldson to Dobson, 15 June 1973, pp.1-2).

Ultimately, for Donaldson, the fact that he had taken on 'an experimental and very specialised' field of law meant that his interventions were 'a proper and useful judicial function and should not be restricted to consideration of the reform of the Court's procedures' (ibid, p.4).

Quite contrary to the position favoured by Macmillan, Donaldson was now not only shaping, but extending his remit. In his judgement in *CEGB v Coleman*, Donaldson concluded: 'The principle object of this court is to promote better industrial relations. No one who has the same object at heart should object to being asked to consider constructive suggestions for the improvement of the agreed procedure' ([1973] I.C.R. 230, p.239). In effect, Donaldson was making recommendations regarding procedure agreements and commenting on the underlying

causes of the dispute. The role of the NIRC was moving centre stage at a time when the 'put on ice' strategy was designed to play for time. Donaldson's views are exemplified in a speech given to the Westminster Chamber of Commerce, where he called for the full remit of the court to be acknowledged and it to be characterised 'based on fact not fiction' (TNA LAB 10/3911, Speech Notes: Westminster Chamber of Commerce, 18 October 1973). He disregarded the view that the NIRC was a court of last resort, arguing it was 'in the business of settling disputes, not deciding them' (ibid, p.4). In this respect its first duty was to provide 'a very special form of conciliation service' (ibid, p.13). However, he had attracted the attention of DE officials when reports emerged that he had publicly described the Act as 'thoroughly ill-conceived' (The Telegraph, 19 October 1973).

Donaldson was described as having developed 'the habit of making certain generalisations about the right to strike which may be strictly true within their context' although there was a danger of such comments being 'quoted out of context' (TNA LAB 10/3911, Hodgkins to Edwards, 22 October 1973). Officials were concerned that 'Sir John has now several times said that those who say the Industrial Court is for use as a last resort misunderstand the role of the Court' (TNA LAB 10/3911, Brown to Hodgkins, 23 October 1973). After conducting an assessment of government pronouncements on this issue, it was concluded that Donaldson's attitude 'does not reflect Government intentions at the time in stressing that the Court is not for use as a last resort' (ibid). In a copy of another speech given by Donaldson, a handwritten note by an NIRC official states, 'we say this frequently in speeches, briefs etc. Should we not do so?' to which it was responded '[t]here is a real difference of concept here between his J. Donaldson and the Dept' (TNA LAB 10/9111, Dallas Lecture – Donaldson, n.d.). DE officials increased oversight of Donaldson and the NIRC, investigating judgements for any criticism of the Act. DE officials saw little within his judgements to justify disparaging comments about the Act (TNA LAB 10/3911, Mawson to Brown, 21 October 1973). Criticisms

that were found were deemed unlikely to have any impact on making the Act more acceptable to the trade unions (TNA LAB 10/3911, Hodgkins to Edwards, 25 October 1973). However, the developing divergence of views undermined the rigidity of the framework.

The Implications of Common Law and Judicial Interpretation

The fact that there was considerable room for interpretation of the legislative framework once again demonstrates the limitations of its drafting. The 'loose' nature of this rules-based strategy was not lost on the appellate courts. As Davies and Freedland point out, both the Court of Appeal and the House of Lords 'clipped the wings of the NIRC' (1993, p.316). The problem of judicial interpretation perpetuated uncertainty and further undermined the court. In shaping the NIRC's role, Donaldson was diverging not only from government, but also the traditional courts. This led to a number of decisions being overturned. As one official noted:

> the state of common law with regard to internal union relations was in some areas – and indeed is – far from satisfactory, still in a condition of flux and evolution, development by the Courts is inevitably piecemeal, dependent on cases instructed before them. There are gaps, uncertainties and conflicts of judicial opinion (TNA LAB 10/3914, The Guiding Principles and the Common Law, June 1973).

This was a concern because every time a judgement was overturned the NIRC lost credibility. For example, in *Post Office v Crouch* [1973] I.C.R. 366, the Court of Appeal overturned a decision of the NIRC to favour industrial peace over an individual's rights under Section 5. This was justified by Donaldson as fulfilling the primary guiding principle of the Act – 'promoting good industrial relations' (HMSO, 1971a, p.1).

This uncertainty was exacerbated by the power of individuals to use the Act to challenge the strength of its core tenets. In *Langston v AUEW* [1973] I.C.R. 211, an employee relinquished his membership of AUEW even though a closed shop was in operation. He was suspended by

the company, irrespective of the NIRC upholding his right not to belong to a trade union. His attempts to sue the company were dismissed by the NIRC, a position he appealed and was granted (see [1974] I.C.R. 180). While the legal intricacies of these cases are important, a crucial principle was developing regarding the practicality of the law and industrial relations. As Moran notes, '[f]aced with the determination of workers not to tolerate someone who refused to join their union, and the firm to avoid disruption, even the NIRC judged it impractical to order Mr Langston's reinstatement' (1977, p.145). The editor of the Financial Times noted that the 'exchanges are significant because they underline the IR Act's total failure to stop the closed shop practice' (Financial Times, 11 May 1974). As Davies and Freedland put it, 'the closed shop came to be seen as a patent example of the capacity of industrial relations systems to resist legal reform which did not command the support of employers' (1993, p.321). These cases demonstrate that the NIRC could only facilitate solutions when the core tenets of the Act were abandoned.

Scholars have made a number of reflections on the relationship between the courts. Davies and Freedland note that 'the NIRC had earned itself such a generally unfavourable reputation that such decisions were apt to be written off as further instances of over-legalism on its part' (1993, p.317). However, they go on to note that Donaldson and the court were 'perhaps given insufficient credit for trying to preserve existing bargaining structures' (ibid, p.317). This argument is also made by Thomson and Engleman, who saw the NIRC as adopting 'unquestionably sound principles of industrial relations' (1975, pp.79-80). Yet more critical accounts see such cases as an example of how the NIRC 'exceeded its proper boundaries and generally served to increase the time and expense spent in attempts to obtain recognition' (Weekes et al., 1975, p.153). Unlike Donaldson, the Court of Appeal was liberated from taking into account the industrial relations consequences of a judgement (Thomson and Engleman, 1975, p.80). By the end of October 1973, following a series of judgements being reversed,

Donaldson expressed displeasure at what he felt was the Court of Appeal pulling in a different direction. It appeared 'reluctant to fall in line with the philosophy underlying the Industrial Relations Act' (TNA LCO 2/8076, Donaldson to Dobson, 30 October 1973).

In October 1973, Gordon Scott published a feature article on the NIRC. Of particular interest is his observation 'that experience has shown that the *approach* of the Appeal Court to industrial relations seems to be fundamentally different to that adopted by the Industrial Court' (1973, p.11). He noted that 'when in the Court of Appeal, I have listened to an appeal from an Industrial Court decision and have wondered whether it really was the same case I originally heard in the courtrooms at Chancery Lane' (ibid, p.11). He concluded that '[t]he divergence in outlook is now so blatant that it is a question which cannot be shelved indefinitely' (ibid, p.11). This tension is often neglected in the existing literature. Yet given the industrial context and the nature of the strategy attempted it is a critical aspect of the analysis. The legal framework was anything but rigid, and in this novel area of law the judiciary pulled in different directions owing to different legal priorities. As with the Goad case, individuals could commence extremely complicated legal proceedings that achieved little in terms of the Act's primary aims. Instead, such cases provided the opportunity for trade unions to resist the courts. Moreover, while Donaldson acknowledged that under the TUC non-cooperation policy most trade unions were now attending the NIRC, the AUEW remained a notable exception. The result was that: 'Acceptance of the Court as an institution is not complete: the substantive provisions of the Industrial Relations Act are still active matters of debate' (TNA LAB 10/3911, Donaldson to Heron, 8 October 1973).

Tensions between the courts consistently undermined the NIRC, although it remains the case that there had been no major dispute associated with it during the first half of 1973. This changed in September, following a dispute between an engineering company – Con-Mech (Engineers) Ltd – and the AUEW. The company had refused to recognise the AUEW as the

sole bargaining agent and several employees began strike action. This included pickets and persuading members of other trade unions to not deal with the company. An interim order to desist was granted and a referral to the CIR in relation to recognition of the AUEW was made. For the first time the AUEW's refusal to comply with a court order led to the sequestration of assets totalling £100,000 to cover a £75,000 fine ([1974] I.C.R. 332, pp.332-335). DE officials, while concerned, noted that the AUEW was the only union overtly challenging the NIRC. They hoped that publication of the CIR report would limit broader trade union support for its position (TNA PREM 15/1678, Dawe to Roberts: The Fine and the AUEW, 10 October 1973, p.2). It was argued that the government's defence should again rest on the intolerable challenge to the law of the land – no-one should be above the law (ibid, p.3). With the fine still unpaid, attitudes hardening, and further confrontation with the NIRC imminent, Heath was advised that there was little the government could do (TNA PREM 15/1678, Hunt to Heath: Industrial Affairs, 17 October 1973). This, however, was not a view shared by Donaldson who embarked on a campaign to ensure that the government did more to defend the NIRC and the Act. The actions of Donaldson, the appellate courts and the AUEW ensured that the system of industrial relations remained dangerously unstable.

III. The Operation of the Act Out of the Limelight

Arguing for a Measure of Success

Following a meeting with Donaldson in the early stages of the Con-Mech dispute, Robert Carr, now Home Secretary, reported to Heath that '[Donaldson] was very concerned, as am I, that we are in danger of allowing it to become assumed that the Industrial Relations Act is a dead-letter, whereas in fact, in spite of all the difficulties, it is achieving quite a lot of good results which very few people know anything about' (TNA PREM 15/1678, Carr to Heath, 4 October 1973). Along with this letter was an analysis, conducted by Donaldson, of the work of the NIRC

between 1 December 1971 and 13 September 1973 (see Table 7.1). The paper argued that the NIRC had, contrary to trade union propaganda, contributed considerably to 'improved' industrial relations. Although the NIRC's conciliation function was often overlooked, it had prevented many disputes descending into industrial unrest. This was in line with the primary purpose of the Act. Furthermore, secondary aspects such as unfair dismissal had proved successful, and while registration had given trade unions a rallying point, in reality many of them were keen to utilise the NIRC. Some elements of the Act remained dormant as a result of the refusal of trade unions to register (TNA PREM 15/1678, National Industrial Relations Court, 4 October 1973). On the emergency powers, Donaldson acknowledged that they had 'aroused so much controversy and have been the subject of so much misrepresentation that they may have to be taken back into the political sphere' (ibid, p.10).

Overall, Donaldson's assessment was a positive one, although he acknowledged that the 'volume of work can only be regarded as sufficient to constitute a pilot experiment' (ibid, p.2). However, he did identify a number of problems. First, it was generally the case that industry was avoiding provoking trade unions, and the AUEW had been particularly successful in this regard (ibid, p.12). Second, Donaldson acknowledged that his experience of 1973 led to 'a step which came very near to amending the Act' as he accepted that he was, in fact, assessing the underlying causes of industrial disputes to avoid stoking the fires of confrontation. This, however, was a careful balancing act between reducing the likelihood of trade unions defying the court and ensuring an employer could be granted relief (ibid, pp.13-4). Carr was supportive of these ideas (TNA PREM 15/1678, Carr to Heath, 4 October 1973). There is also evidence that wild-cat stoppages were being controlled. In its Annual Report for 1973, the CIR reported that while there had been an increase in the total number of stoppages since 1972, the number of days lost through industrial unrest had fallen considerably – 23.9m in 1972 to 7.2m in 1973 – a position attributed to a shift towards shorter stoppages (HMSO, 1974b, p.18). Of course,

this must be qualified against the major industrial disputes resulting directly from the Act, in particular in the summer of 1972. However, it offered reassurance to weary ministers.

Table 7.1: *Caseload of the NIRC at October 1973*

Cases started	
Appeals from Industrial Tribunals	507
Collective bargaining applications	117
Complaints on Unfair Industrial Practice	124
Emergency Applications	2
Total	750
Cases withdrawn (usually the result of an agreed settlement)	
Appeals from Industrial Tribunals	141
Collective bargaining applications	33
Complaints of Unfair Industrial Practice	64
Total	238
Cases adjourned at the request of the parties with a view to settlement negotiations	25
Cases decided	
Appeals from Industrial Tribunals	289
Collective bargaining applications	53
Complaints of Unfair Industrial Practice	39
Emergency applications	2
Total	383
Cases awaiting hearing	104

Source: TNA PREM 15/1678, National Industrial Relations Court, 4 October 1973

These measures of success reiterate the need to avoid the simplification of seeing the Act as idle. Of course, this should not be overplayed, and the 'pilot study' analogy of Donaldson is a useful characterisation. Nonetheless, leading employers' associations such as the Engineering Employers' Federation, Institute of Personnel Management and Industrial Society, had all called for major amendment or repeal (MRC MSS.292D/20/6, General Council 17th Meeting, 25 July 1973; MRC MSS.200/C/3/EMP/3/84, Press Release: Reform of the Industrial

Relations Act, 25 May 1973; MRC MSS.200/C/3/EMP/3/84, The Industrial Society – Possible Amendments, 27 August 1973). Moreover, while supportive of the legal framework generally, a CBI working group concluded that 'the law must recognise reality' and that the 'unions have managed to frustrate the purpose of the Act and the present position is detrimental to good industrial relations' (MRC MSS.200/C/3/EMP/3/84, L.298.73: Report of the Industrial Relations Sub-Committee, n.d.). Amendment was advocated, although following six meetings of detailed discussions the Employment Policy Committee of the CBI found it 'virtually impossible to reach complete unanimity on any particular point' (MRC MSS.200/C/3/EMP/3/84, Employment Policy Committee, 4 October 1973). Converting the doubters was essential, particularly employers. To achieve broad acceptance, however, the 'successes' of the Act would need to be publicised.

Defending the Act

Beyond the legal implications, the Con-Mech dispute undermined the Act in the most public way. Donaldson wrote to the Lord Chancellor's Office expressing serious concern at the lack of a defence of both the Act and the NIRC:

> In the end the court will stand condemned if the law which it administers is not understood and accepted as being fair by a substantial majority of the public. On ordinary constitutional principles and because I have deliberately chosen to stress the independence of the court both from Government and its Act, I cannot embark on a campaign to sell to the public the concept of the law and order in industrial relations. Only ministers can do this. The Act has been in force for nearly two years. Week by week its purpose and content have been misrepresented both by the trade unions and, to a lesser extent, the Opposition. The case for the Act or at least some Act has gone by

> default. If this is allowed to continue the court must fail (TNA J 120/4, Donaldson to Dobson, 25 October 1973, pp.1-2).

He went on to ask: 'Are Ministers not interested in the fate of the Act and the court or do they not understand the situation which exists? I understand and appreciate their wish to maintain the separation of powers between the judiciary and the executive, but this should not prevent their speaking out in defence of their policy and of the court' (ibid, p.3). For the first time, the strain created by the persistent resistance to the NIRC was beginning to tell.

Writing in response, a senior official in the Lord Chancellor's Office argued: 'I do not see how Ministers can prudently intervene in such a way as to effect the objects that the judge has in mind. They would almost inevitably seem to be discussing sub-judice matters' (TNA LCO 2/8076, Dobson to Hailsham, 25 October 1973). Lord Hailsham notified Heath, expressing broad agreement with the concerns expressed by Donaldson and the NIRC. He argued that more needed to be done to sway public opinion in favour of the NIRC, possibly through a ministerial statement in the House of Commons. As yet, the Act and the NIRC were misunderstood (TNA LCO 2/8076, Hailsham to Heath, 25 October 1973). Following a meeting with Donaldson, Howe, too, argued for a concerted effort to defend the Act:

> A reiteration of the Government's willingness to consider amendments would now go well alongside *a robust pronouncement about the basic rightness of the Industrial Relations Act*. It seems to me that the CON-MECH dispute is precisely the kind of case for which the Act was designed – and I believe we should assert, well designed. I should be happy to discuss this with our colleagues if it were thought that would be useful (TNA PREM 15/1654, Howe to Hailsham, 30 October 1973, *emphasis added*).

Heath was in agreement that the Act and the NIRC should be forcefully defended. However, he was clear that 'in all this Sir John Donaldson's position must be preserved and no hint that these

are his views should be allowed to get out' (TNA PREM 15/1654, Butler to Owen, 30 October 1973).

Howe's assertion that Con-Mech was the type of case the Act was designed for betrays mixed messages at the heart of government. This was hardly akin to the quiet conciliation work that kept disputes out of the political sphere. Donaldson had described the AUEW's attempt to wield 'old "industrial power"' when other trade unions such as the T&GWU were cooperating in similar circumstances' (TNA J 120/4, Donaldson to Dobson, 25 October 1973, p.3). If the Act was to break such power then these cases would have to be confronted. As Con-Mech involved a dispute over recognition it was been referred to the CIR. By now, Leonard Neal was prepared to shape the CIR report for political purposes, punishing the AUEW for its behaviour and contempt of court through ruling against recognition. Donaldson, however, stressed that the NIRC would disregard political considerations, just focusing on the operation of the law. It was recommended that Neal do the same and be a 'purist' (TNA J 120/4, Note of Telephone Conversation – Con-Mech: The President and the Chairman of the CIR, 29 October 1973). In the event, the CIR's report recommended Con-Mech should recognise the trade union (HMSO, 1973g). However, with the AUEW unregistered its recommendation could not be enforced. Both the NIRC and CIR were made to look foolish once again.

In spite of repeated embarrassments, ministers publicly defended the Act based on its successes out of the limelight. Robin Chichester Clarke, Minister of State for Employment, argued: 'Most of the cases coming before the court have been settled to the satisfaction of both parties without difficulty. This work has gone on largely, indeed almost totally, unpublicised, quietly and unspectacularly' (HC Debate, Vol. 863, cc.491-492, 2 November 1973). However, government whips continued to resist use of parliamentary time to defend the Act for fear of 'giving a platform to those opposing the work of the court' (TNA PREM 15/1654, Note to Butler, 2 November 1973). DE officials briefed that 'the case for the Industrial Relations Act

should not be allowed to go by default' (TNA LAB 10/3911, Dawe to Hodgkins, 19 November 1973). Jim Prior, Lord President of the Council, highlighted the lack of information on the conciliation role of the NIRC as 'a sad failure on the part of the Government to get a good story across' (TNA PREM 15/1654, Prior to Hailsham, 20 November 1973). His letter went on to state that more should be made of the fact that the AUEW's assets had been sequestrated for contempt, not any other behaviour (ibid, p.1).

However, perhaps most important are his comments on the operation of the Act generally. Prior argued that it was vital to:

> get over to the public and also to employers and unions the success which the Act has achieved. We need to separate out from its politically controversial provisions (where it has not proved a great success) those of its provisions which have made a substantial contribution to the improvement of industrial relations in this country (ibid).

A sustained campaign conducted by the DE was required, focused on the importance of the NIRC (ibid). Soon after, a Select Committee was established to investigate Donaldson's decision to sequestrate the £75,000 fine from the AUEW political fund (TNA LCO 2/8076, Select Committee on the Conduct of Sir John Donaldson, 15 November 1973). Furthermore, an Early Day Motion was launched by 20 Labour MPs calling for Donaldson to be removed, a position called 'unprecedented in this century' in The Times (TNA LCO 2/8076, The Times: Labour MPs want NIRC Judge Dismissed, 16 November 1973). This trio of circumstances – the actions of Donaldson, the AUEW and failure to mount a defence – had once again left the Act exposed. Any accountability shift was limited at best. It is difficult, therefore, to ignore major weaknesses in the presentational strategy associated with the Act.

DE officials now focused on areas of success in the NIRC's work, particularly those associated with conciliation. They sought to highlight the ways in which unregistered unions

cooperated as a result of cracks in the TUC's policy of non-cooperation. However, trade union refusal to participate in any meaningful way remained the main cause of difficulties, not the provisions of the Act itself (TNA LAB 10/3911, Dawe to Hodgkins: Briefing for Secretary of State on Industrial Court, 19 November 1973). As illustrated by Table 7.2, when compared to the overall caseload the proportion conciliated or withdrawn is considerable. This is particularly striking in relation to cases of unfair industrial practice, a primary feature of the Act. As the sample was small this had been allowed to continue unreported. However, it does demonstrate that the Act could keep some of the cases it was designed to tackle out of the political sphere. Nonetheless, the difficulty was that the industrial relations landscape had changed as private sector disputes no longer represented a problem for government of the scale of the 1960s.

Table 7.2: *Percentage of cases conciliated before reaching open court as of November 1973*

Type of Case	Total	Withdrawn		Decided Including Referred to CIR	Outstanding	Adjourned (including outstanding)		Percentage of total conciliated
		Conciliated on Court Premises	Other			Adj. Gen with liberty to apply	Other	
Collective Bargaining Applications	131	13	34	67	17	2	1	9.7
Complaints of Unfair Industrial Practice	141	53	19	40	29	13	11	37.6
Appeals from Industrial Tribunals	558	14	160	341	43	5	1	2.5

Source: TNA LAB 10/3911, Dawe to Hodgkins: Briefing for Secretary of State on Industrial Court, 19 November 1973, Annex

At a meeting held by the Lord Chancellor, differing opinions among leading figures associated with the Act began to emerge. Carr and Howe favoured a staunch defence of the need for rules, legitimised by the courts, to govern industrial relations. A long-term campaign

was advocated. On the other side was Macmillan, who favoured a measured approach that avoided pushing the Act into the limelight when no decision had been made on amendment. He was also keen to avoid linking the Act with the now burgeoning miners' dispute (TNA LCO 2/8076, Meeting in Lord Chancellor's Room, 19 November 1973, p.2). The former view prevailed on the grounds that '[t]oo much harm had already been done by failure to answer those who were concerned in activities which, if allowed to continue, would be destructive of the rule of law' (ibid, p.3). There were also disagreements regarding the role of the NIRC, with Macmillan favouring the 'last resort' positon. However, Carr and Howe[30] again disagreed, believing that expanding the NIRC's role was within the spirit of the Act and was making a positive contribution to industrial relations (ibid, p.3). Those who sought to defend the Act were clutching at straws. Any minor successes must be set against the broad industrial context where the government's attempt at reform had proved an irrelevance. This is demonstrated acutely by the second confrontation with the miners.

IV. The Second Miners' Strike

The Decision to Force a Ballot

The fact that the Act was 'on ice' had meant that major disputes associated with it had been kept to a minimum. However, the miners were about to test the government's resolve to hold firm on Stage III of the counter-inflation strategy. Following the NUM Annual Conference decision to call for a pay increase in the region of 31 per cent, the miners challenged its core tenets directly (Ashworth, 1986, p.332). Economic pressures were also growing. The balance of payments had been under pressure since flotation of the pound in June 1972, a position massively exacerbated by the oil shock towards the end of 1973. Inflation continued to rise, both a reflection of domestic prices and spiralling international commodity prices (Cairncross,

[30] The document states 'others Ministers' disagreed. As only three ministers were present, it can be assumed that this refers to Carr and Howe.

1996, p.192). The Act, however, is often absent from any analysis of events. Yet its role was discussed, with senior ministers pushing for the emergency provisions to be activated up until the very last moment. As has been noted on a number of occasions, the interventionist emergency provisions are secondary to the primary purpose of the Act. However, an analysis of these final events illuminates the on-going tension at the heart of government and the toxicity associated with the legal framework more generally.

Before Stage III had been finalised, Joe Gormley was warning that there would be 'no compromise' on the miners' pay claim (TNA LAB 112/50, TUC Go-Ahead for Phase Three Talks, 6 September 1973). However, the government had to contend with the fact that oil imports were likely to be cut in half, and conservation of existing supplies would have to commence immediately (TNA CAB 128/53/3, CM (73) 42nd Conclusions, 27 September 1973, p.6). By the middle of October it was suggested that with 70 per cent increases in the price of oil expected, in the region of £420 million would be added to the United Kingdom balance of payments (TNA CAB 128/53/9, CM (73) 48th Conclusions, 18 October 1973, p.2). To conserve oil, there would have to be a dramatic increase in the amount of coal consumed, leaving the government exposed to the miners (TNA CAB 134/3588, CCU (73) 39th Meeting, 18 October 1973). On 10 October, the NCB made what has been seen as an unnecessarily generous offer – the maximum available (Whitehead, 1985, p.102; Heath, 1998, p.503). This left little wiggle room for negotiators.

While preparations were made to resist strike activity, it was evident that 'any form of industrial action in the coal industry would greatly weaken our capacity to cope with an oil emergency by switching from oil to coal' (TNA PREM 15/1655, Brief for Meeting with NUM Delegation on 23 October, n.d., p.2). Macmillan was arguing that the NUM should be 'under no illusion' that there would be no exception to the terms of Stage III once in force (TNA PREM 15/1655, Macmillan to Heath, 23 October 1973). Gormley, however, was well aware of the

impending energy crisis, seeking to highlight a positive role for the miners in finding a solution. Nonetheless, the miners argued that Wilberforce had guaranteed them higher remuneration than the manufacturing industry. They had already slipped behind, and the offer of the NCB would continue this trend. Moreover, a severe manpower shortage continued, in part a reflection of the low rates of pay (TNA PREM 15/1655, Meeting between NUM and Heath, 23 October 1973, p.2). The direct link between the energy crisis and the miners' pay claim had now been forged and the battle lines were drawn. State managers were subject to constraints created well beyond their national borders.

The government desperately wanted a ballot to be held, yet discussions surrounding use of the emergency provisions of the Act demonstrate the complexity of the situation. Officials recorded that they would need to hold out until February 1974, as there was little chance of the NUM calling a ballot. Given the controversial nature of the Act, it was felt that to force a ballot 'would undoubtedly in the present climate lead to a massive vote for industrial action' (TNA PREM 15/1680, Dawe to Butler – NUM, 30 October 1973, p.3). The government was directly controlling events from the early stages of the dispute, with the NCB subjugated to its authority (Ashworth, 1986, pp.323-4). The role of government was politicised, yet the Act was too toxic to offer any buffer at a time of emergency. Failure to act would have to be defended on the grounds that the NUM had adequate arrangements to conduct a ballot themselves and this would be preferable to enforcement (TNA PREM 15/1680, Butler – Industrial Acton in the Coal Industry, 9 November 1973).

The miners' overtime ban commenced on 12 November 1973. The following day, John Davies informed Cabinet to expect a loss in production of 40 per cent the following week. The decision to call a State of Emergency was taken to conserve fuel and protect industry, in particular exports (TNA CAB 1285/53/16 CM (73) 55th Conclusions, 13 November 1973). Industrial action within the electricity supply industry over the government's refusal to honour

the agreement reached under Stage II was also a major concern. Heath even acknowledged that 'it would be difficult to persuade public opinion that the EPEA, whose cooperation in imposing any necessary power cuts on an orderly basis would be of great importance, did not have any genuine grievance' (TNA CAB 128/53/17, CM (73) 56th Conclusions, 15 November 1973, p.7). Furthermore, little support could be expected from the TUC for, as Len Murray informed officials, having rejected Stage III he could hardly criticise the NUM for attempting to break it (PREM 15/1655, Note of Conversation between Heron and Murray, 15 November 1973).

The government was facing threats on three fronts, covering both external and internal constraints. Owing to the highly politicised nature of the dispute, Macmillan summarised the government's position to Heath, arguing that their hands were tied:

> In view of the deferment of a ballot, the question will be raised about the use of legal sanctions, particularly the Government's power to apply to the Industrial Court for a ballot order. But any attempt to use this provision of the IR Act would result in an overwhelming vote of confidence in the NUM. The Coal Board might have a case for claiming that the overtime ban is unfair industrial practice under the Act, but this could be difficult to establish and the Coal Board would not wish to invoke legal sanctions under this Act or under the Counter Inflation Act. It seems clear that legal action could only harden miners' attitudes in the present situation (TNA PREM 15/1680, Macmillan to Heath – Handling the Miners Dispute, 21 November 1973, p.3).

Gormley explicitly warned that pressure to call a ballot would make the task of NUM moderates more difficult (TNA PREM 15/1655, Butler to Mountfield, 26 November 1973). In a press conference following a further attempt to get the NUM to desist (TNA CAB 130/651, GEN 142 (73) 175 – Meeting with the NUM NEC, 28 November 1973), Heath was forced to explain why the Act was not used. He argued: 'If we thought there was an aspect of it which would be helpful

then obviously we would use it' (TNA PREM 15/1655, Note of Press Conference by Heath, 28 November 1973, p.15), implying the opposite was the case.

Macmillan now released the final policy document on potential amendment of the Act. Unsurprisingly given the debates above, the principle of a legal framework was retained:

> Although the sanctions provided by the Act have so far been of limited practical use, the principle that there should be such restraints must certainly be maintained in any revision of the legislation. To jettison it would put the clock back to the continuously deteriorating situation which forced the present Government and its predecessor to abandon traditional concepts of a mainly voluntary system of industrial relations and to resort to the law as a brake on industrial power (TNA CAB 130/697, GEN 181 (73) 3: Revision of the Industrial Relations Act, 30 November 1973, p.1).

With this principle intact, the main attention, as before, would focus on abandoning registration, while simultaneously attempting to appeal to moderate trade union opinion. Immunities would no longer be linked to registration, with a voluntary system in place linked to financial oversight. With immunities for industrial action now applying to both registered and unregistered unions, efforts should be made to tighten restrictions, including providing notice for strike action. As discussed above, secondary action could not be addressed further without a total outlaw, a position considered too extreme. No agreement had been reached on the closed shop, although an extension of conciliation arrangements was favoured. In terms of sanctions, no changes were envisaged (ibid, pp.2-3).

It is worth reiterating that the primary aim of the Act as a depoliticising governing strategy was to shift accountability for industrial relations to industry itself. This involved a framework of rules, detailed oversight and credibility through the legal system. In addition, it was seen as a long-term strategy. However, it proved incapable of influencing trade union

behaviour. Stephen Abbot, a key architect of the Act, provided the CRD with a detailed analysis, arguing that it was now seen as a 'non-event or else positively harmful' (CPA CRD 3/7/12/1, Abbot to Douglas, 9 December 1973). The document lamented the loss of a once simple approach to the reform of industrial relations. Within a liturgy of potential amendments, however, he provided a measured assessment of the Act:

> For years Robert Carr warned the public not to expect quick or easy results: and when he introduced the Bill in Parliament, he said: "We do not expect the law to produce a direct or immediate effect…the law can only help gradually changing behaviour". The Government can justifiably claim that it made no rash promises (ibid, p.10).

These themes were discussed in some detail in Chapters Three and Four. It is interesting, therefore, to read such reflections on the Act emerging. There had been no quick fix to the industrial relations 'problem' and the trade unions had not been tamed.

In the context of the ongoing miners' strike and energy crisis, Macmillan, Conrad Heron and Robert Dawe would meet with trade union leaders for the last time. The Act featured prominently in discussions once raised by Jack Jones. For the first time throughout the discussions of amendment, Macmillan was forced to show his hand. The TUC delegation was informed that amendment was impractical, and could only be considered on a limited basis (TNA LAB 10/3913, Note of meeting between Macmillan and TUC Employment Committee, 12 December 1973). Similar sentiments were offered in correspondence by Heron, who identified two practical difficulties at this stage. First, it would be impossible to limit the scope of discussions on amendment to the areas the government had identified. To do so would only result in raking over old ground. Second, the Act could not be suspended, simply because there was nothing with which to replace it. It would, in effect, turn the clock back to before 1906. If any discussions were to take place, repeal would have to be off the table. Amendments could

only be considered if the framework of law was maintained, the TUC would have to accept the fundamental principles of the Act, and only then could a package of amendments be discussed (TNA LAB 10/3910, Heron to Dawe, 12 December 1973).There would be no 'throw away' of elements of the Act, even as the relationship with the trade unions reached crisis point.

The Irrelevance of the Act in Public Sector Disputes

In the major dispute of the day, the Industrial Relations Act was not just irrelevant but was seen as counter-productive. Moreover, the government was once again taking a hands-on role in negotiations. At a meeting of the Cabinet on 12 December, William Whitelaw, new Secretary of State for Employment, [31] acknowledged that even if a ballot was called, the likely outcome would be support for continued industrial action (TNA CAB 128/53/21, CM (73) 60th Conclusions on 12 December, 14 December 1973, p.1). Given the outcome of the ballot during the railways dispute, the caution surrounding such an order is unsurprising. However, analysis of the broader context was concerning. Anthony Barber warned of 'the gravest economic crisis since the Second World War' (ibid, p.4), with action required to reduce demand to alleviate the ever growing balance of payments deficit and sure-up sterling. This would inevitably involve an assault on public spending (ibid, p.4-6). On 13 December, in an effort to limit energy consumption, Heath imposed the three-day week (HC Debate, 13 December 1973, v.866 cc.645-61).[32]

DE officials had made inquiries regarding a potential Bill to extend the immunities offered by registration to all unions, modify the closed shop and introduce a conciliation stage

[31] Whitelaw was brought back from Northern Ireland to replace Macmillan. Heath states he 'had proved his negotiating abilities amid all the tensions and difficulties of Ulster' (Heath, 1998, p.505).

[32] There is an interesting discussion to be had about whether this was a misjudgement, as has been suggested by a number of scholars (see, for example, Campbell, 1993, pp.571-2). There is certainly evidence from the National Archives to suggest the situation was not as dramatic as ministers had first feared. As a result, the decision had to be defended at length against criticisms from the TUC (TNA PREM 15/2118, Meeting at 10 Downing Street on 19 December, 21 December 1973). It was seen as 'equivalent to putting eleven million people out of work' (ibid, p.5).

in cases of unfair industrial practice. The issue, however, was that this Bill should not amend existing legislation, but owing to Parliamentary procedures it would be difficult to prevent broad discussion on the major provisions of the Act itself (TNA LAB 10/3910, Billam to Barnes, 10 December 1973). Kenneth Barnes wrote to the Office of Parliamentary Counsel outlining the key proposals of the new Bill, suggesting that '[t]he key provision in the hypothetical Bill would be that relating to registration' (TNA LAB 10/3910, Barnes to Stainton, 13 December 1973). The advice received reiterated that any attempt to limit the scope of any potential Bill would be problematic, particularly if the aim was to limit Parliamentary time to prevent the Act from being debated more broadly (TNA LAB 10/3910, Edwards to Secretary, 14 December 1973). Senior DE officials were informed that 'even legislation with limited objectives set out in the note would run the risk of opening up a pretty wide range of controversial issues' (TNA LAB 10/3910, Edwards to Dawe: Revision of the Industrial Relations Act, 20 December 1973). It is unclear how seriously the introduction of new legislation was taken. Indeed, there is no mention of it by ministers and it was never put before Parliament.

By January 1974, Whitelaw *once again* commenced a review of existing plans, concluding that there were only two areas where amendment could be considered. These were registration and the extension of conciliation. The agency shop, another major area of contention, should be given a fair trial before any alteration was considered (TNA CAB 130/712, GEN 181 (74) 1: Revision of the Industrial Relations Act, 21 January 1974). A senior official in the DE Industrial Relations Division commented favourably, arguing that the proposals would be 'likely to be supported by moderate opinion in the trade unions and elsewhere' (TNA LAB 10/3910, Edwards: Revision of the Industrial Relations Act, 25 January 1974). Elaborating, he made clear that '[b]y altering the registration provisions in the way

suggested we would remove the main rallying point of the TUC's campaign against the Act without sacrificing anything essential' (ibid). In addition, the CPRS now reported its view:

> Ministers will note that the basic view of the CPRS is that, in principle, the achievement of founding a legal framework to regulate industrial relations is considerable and must be retained. That achievement is the baby in the bath; the CPRS believes that though a certain amount of water can be thrown away, the baby must at all costs be kept safely in the bath (TNA CAB 184/150, Industrial Relations Act: The Feasible Options, 28 January 1974).

Discussions had come full circle. Ministers could offer little more than a commitment to once again review the operation of the Act in its entirety (TNA CAB 130/712, GEN 181 (74) 1st Meeting on 31 January, 4 February 1974). The level of indecision ensured 18 months of analysis returned the status quo. All that can be concluded is that commitment to the legal framework remained strong.

The NUM balloted its members on 31 January and 1 February, returning an 81 per cent majority in support of strike action (Ashworth, 1986, p.336). When senior ministers met to discuss the result, three options were presented. First, the government could fight it out until the end of May on a 2-day week, hoping the NUM cracked in the interim. Second, the government could settle with a favourable agreement, sacrificing credibility in the process. Third, a dissolution of Parliament could be sought, and if there was a positive outcome from the General Election that followed the government's position would be strengthened (TNA PREM 15/2128, Meeting of Minister at 10 Downing Street, 5 February 1974). In discussions, the latter position was gaining traction. The minutes record that: 'If the Conservative Party were then returned there would be a better chance of dealing effectively with the situation, and if they lost they would have done so in circumstances which would preserve their honour and

Party unity' (ibid, p.2). Officials were still mulling over use of the emergency provisions, although yet again it was concluded that 'use of these procedures to avoid a strike is clearly not a realistic option' (TNA PREM 15/2118, Smith to Lambert – Coal Dispute: Possible Application for a Cooling-Off Period, 4 February 1974, p.1). Even if an order was achieved, it was highly likely that the NUM would ignore it and fail to cooperate with the NIRC (ibid, p.2). However, in a final attempt to defend the Act its long-term advocates interjected one last time.

Carr had been tasked with devising 'a detailed negotiating position' for post-election discussions with the TUC on the Act (TNA PREM 15/2123, Carr to Heath, 5 February 1974). However, he had not given up on its principles or its use to prevent a miners' strike. On 6 February, the day before Heath called a General Election, Carr wrote to him with details of a 'bold' and 'controversial' strategy. It involved first referring the dispute to the Pay Board which would act as a Relativities Board. Once a review was in place it would be possible to achieve an order for a cooling-off period from the NIRC for the full 60 days. While it was questionable whether the NUM would adhere to an order, public pressure would be applied (TNA PREM 15/2128, Carr to Heath, 6 February 1974). A further positive implication was noted in light of the now probable General Election:

> Geoffrey [Howe] and I believe this course has one other merit – we think it is inevitable that if an election were to take place with a strike going on at the same time, we should be repeatedly asked why we were not using the Industrial Relations Act to attempt to save the country from the damage being caused. Our answers, we feel, would inevitably appear rather weak and unconvincing and would bring into question the credibility of saying in an election manifesto that we still believed in the need for a framework of law in industrial affairs. We fear that people will say that if we are not prepared to use the provisions of the Industrial Relations Act to attempt to deal with a crisis of this

> magnitude, it is unlikely that we should ever make use of it and the whole thing is therefore a dead letter (ibid).

A handwritten note argued that this strategy could still function if the decision had already been taken to call an election (ibid).

At the beginning of this chapter, it was argued that the Act was coming up against disputes that it had not been designed for. To prove successful as a depoliticising governing strategy, it would have had to be able to take the sting out of highly political disputes when the government was involved. In essence, the government should have been able to take a step back. In response to Carr and Howe's suggestion, the inappropriateness of the Act was all but acknowledged. An unidentified DE official wrote:

> The cooling-off period, as set out in the Act, was designed to give time for people to discuss ways out of disputes, consult members of their unions and so on. In the present mood of the miners' executive, as further demonstrated by their response to the Prime Minister's appeal, it is difficult to see how these conditions exist (TNA PREM 15/2128, Note on Cooling-Off Period, n.d.).

The Act was not designed for industrial unrest in a politicised public sector and was outdated even before it had bedded-in. If a distinction between the everyday work of the Act's institutions and these major disputes is to be drawn, then this point is crucial. Heath did not reply to the letter, instead calling a General Election the following day on a 'Who Governs Britain?' platform. The Party remained committed to the basic structure of the Act, conceding only to consult both sides of industry on any future amendments. The only concrete proposals were that the government would acknowledge valid criticisms, it would make conciliation a pre-condition of action in the NIRC and improve membership control of trade unions through elections by postal ballot. Greater employee participation in large and medium sized firms was

also promised (Conservative Party, 1974 [2000b], pp.203-4). In the event, the General Election was lost and the Act was repealed by the incoming Labour government (see Butler and Kavanagh, 1999).

Conclusions

The Conservative Party had hoped that victory in the General Election would act as endorsement of the Act with only minor changes (Howe, 1994, pp.684-5). It did not, and all that was left of the Industrial Relations Act was a record of failure. No matter how DE officials and ministers attempted to present the *potential* for success based on its fledgling work, when judged against its core purpose, little positive can be gleamed. Although this period is often neglected in the existing literature, this chapter has argued that the Act's demise was catalysed by the changing context of industrial relations as well as its own internal tensions and contradictions. The government enjoyed minimal influence over trade union behaviour. Major industrial unrest – albeit of a different character to that envisaged by the Act's authors – continued, and with the shift to incomes policy the government's role in collective bargaining structures reverted to the politicised status quo. While major disputes associated with the NIRC reduced, this analysis demonstrates that the inappropriateness of the judiciary for rules-based, depoliticised governing must not be overlooked. Donaldson understood his role in a flexible manner, and as a result of judicial interpretation the intended stability of a legal framework was never achieved. There was no time for it to rigidify. Subtle successes explain the continued commitment of DE officials and minsters to the Act. However, this reflects dogmatic resilience rather than pragmatic governing.

The fact that the Act had a short life does not detract from its importance in British political history. Instead, it provides a unique site of analysis, offering insight into the *limitations* of depoliticisation in the sphere of industrial relations. There is the potential to make

inferences regarding this approach to governing more broadly. As is expanded upon below, it is far from clear that the success of depoliticised governing strategies can be taken as a given (Kettell, 2008, p.632). Indeed, often a change in policy is necessitated by the practicalities of governing. The introduction of an incomes policy, by its very nature a politicised approach to governing, dominated the final 18 months of the Heath government. That the Act continued in the shadows should not be overlooked. However, if its primary aim was to depoliticise, then the government's fear of using it sealed its fate. Nonetheless, as a 'pilot study' it remains a crucial event in the historical analysis of the British state's approach to the management of industrial relations. Its legal complexity obscures its crude nature as a depoliticised governing strategy. Lessons would be learnt. Never again would the legal system be politicised as a means of insulating government. Furthermore, an all-encompassing approach to industrial relations reform would not be repeated.

Chapter 8
Conclusion

I. The Failure of the Industrial Relations Act

Reflections on the Act from Within

The Industrial Relations Act represents a rudimentary rules-based depoliticised governing strategy. It failed to achieve its primary aim of shifting accountability to industry to 'put its own house in order', an attempt to insulate government as trade union leaders and employers assumed the disciplinary role. This thesis has considered the decision-making processes of ministers and 'lower-level' state managers, identifying a number of tensions within the Act's institutional structures. It has discussed the presentational difficulties associated with this strategy given the highly volatile industrial relations context of the early 1970s. Here, the thesis draws together the threads of analysis, reflecting on the failure of the Act in relation to the politics of depoliticisation. In the months that followed the General Election of February 1974, the primary institutions of the Act – the NIRC, RTUEA and CIR – produced final reports. These closing assessments are important because they present the difficulties associated with shaping trade union behaviour through a legal framework, particularly when the institutions designed

to legitimise the rules-based strategy are rejected. First, this section reiterates the pressure points that catalysed the Act's demise. In light of this analysis, the section moves on to reflect upon the utility of an Open Marxist perspective and the politics of depoliticisation, highlighting the conceptual tools that are particularly important for researchers to sharpen our understanding of the fragility of depoliticised governing.

Unsurprisingly, Donaldson mounted one final defence of the NIRC before the Act was repealed. Although it had operated with a limited workload, he claimed that it was 'sufficiently large to be treated as a valuable pilot experiment from which *lessons can be learnt'* (TNA J 120/5, Donaldson to Blacklaws: National Industrial Relations Court, 19 February 1974, *emphasis added*). His assessment of the NIRC highlights that *aspects* of the Act were beginning to facilitate resolutions in private sector disputes, even if its primary goals remained deeply problematic. Of course, this does not account for the changed industrial context discussed in Chapter Six. In line with an experiment, Donaldson suggested amendment based on evidence of the Act's failures. In particular, he argued that opening up recognition dispute provisions to unregistered unions would improve the court's image (ibid, p.2). He called for an extended role and jurisdiction for the NIRC, covering all matters related to labour law (ibid, pp.2-3). The majority of his comments were reserved for industrial disputes. He argued that the NIRC had been highly successful in conciliation terms, with all negative press focusing on seven key cases (the docks cases, Goad and Con-Mech). Unions were now appearing before the NIRC, and there had been no major dispute with the T&GWU since the docks dispute (ibid, p.3). This immediately highlights the implications of the broader context within which this depoliticised strategy was attempted. Indeed, given the politicisation of trade unions throughout the post-war period, success would always have been difficult to achieve.

The main point, for Donaldson, was that the Act's 'procedures have been frankly experimental' (TNA J 111/2, Postscript of Opening Speech, 25 July 1974). He acknowledged that '[s]ome were more successful than others. But the whole point of an experiment is to find out what works and what does not' (ibid, p.20). It had long been acknowledged that trade unionists were finding ways around the exemption of unregistered unions from making use of the provisions of the Act. Individual trade unionists were bringing cases against employers, with the relevant trade union eventually supporting the case to ensure they would be named the sole bargaining agent (see TNA LAB 10/3911, Dallas Lecture: Glasgow Junior Chamber of Commerce, 9 April 1973). Such displays of 'ingenuity' ensured that trade unions could, in effect, make use of the Act (TNA J 111/2, Postscript of Opening Speech, 25 July 1974, p.10). The emergency provisions associated the NIRC directly with arguments surrounding 'the quite separate merits or demerits of the Industrial Relations Act' (ibid, p.9). Thus, there was minimal distance between the rules, the legitimising institutions and the government. This is in stark contrast to rules-based strategies associated with international regimes which have often be seen as more *credible* (see Burnham, 2001b, pp.142-44).

Similarly, within the unfair industrial practice provisions, Donaldson identified what he considered to be the primary difficulty: 'It is the fate of the neutrals to be abused and wounded – sometimes mortally – by both parties to hostilities. The Court was a neutral victim in "The Battle of the Act"' (ibid, p.11). It was again reiterated that the NIRC was known for the cases in which it was 'spectacularly ignored or defied' (ibid, p.12). Instead, Donaldson argued for a greater focus on the impact on trade unions, such as the T&GWU, who acknowledged 'the valuable machinery for conciliation' offered by the NIRC ([1973] I.C.R. 339). Donaldson later yearned for a 'Trade Unions and Workers Rights Act' that gave weight to the grievances of workers and unions ensuring the NIRC was 'seen as a Court of Justice in the traditional sense' (TNA J 120/5, A Judges View of Industrial Relations and the Law, n.d., p.15). This, of course,

was never on the table. Ultimately, this crucial institution of the Act was consistently associated with draconian rules and was unable to detach itself from the resulting controversy.

Table 8.1 *State of the Permanent Register*

	Trade Unions	Employers Association	Special Register
On registers on 31 December 1972	229	211	24
Transferred from Provisional Register	5	19	-
Added by direct application	33	20	1
Total	267	250	25
Cancelled by request	32	13	-
Cancelled as ceased to exist	9	1	-
Total removed from the register	41	14	-
On registers on 31 December 1973	226	236	25

Source: HMSO, 1974c, p.5

That lessons would be learnt is unsurprising. However, given the controversy associated with the Act's demise, an extension of oversight is unexpected. Before the RTUEA closed its doors, officials noted that new arrangements of oversight under the incoming Labour government would be more intrusive than was ever the case under the Industrial Relations Act (TNA NF 1/27, Gilliver to Keith, 19 August 1974). In its final report it was accepted that non-cooperation 'retarded the implementation of the rules-revision purposes and greatly reduced its scope' (HMSO, 1974c, p.16). Of the registered unions subject to rules-revision, all failed to meet the requirements of the Act, although none contravened the guiding principles (ibid, p.16). Furthermore, the RTUEA failed to influence the rules of trade unions at large and, therefore, it did not fulfil its primary objective. While there may have been bourgeoning signs that the Act's principles were influencing registered trade unions and employers' associations, this represented a tiny fraction of those the government had hoped to control. Robert Keith's final reflection on the strategy is telling: 'Control over irresponsible industrial action can be asserted by rules (as indeed it generally is asserted in order to protect the financial interests of the union

and its agreements with employers) only in broad terms' (ibid, p.17). Ultimately, it was concluded that such an intricate and ambitious rules-based strategy was unworkable given the context of the early 1970s. Table 8.1 confirms that little progress had been realised.

Table 8.2 *References made to the CIR, 1969-74*

	Recognition		Procedural	General	Industry	Wages Councils	Approved Closed Shops	**Total**	
Source	Sec of State	NIRC	Sec of State	Sec of State	Sec of State	Sec of State	NIRC	Sec of State	NIRC
1969	8	-	2	1	1	-	-	12	-
1970	4	-	8	3	1	-	-	16	-
1971	1	-	-	2	1	-	-	4	-
1972	2	5	2	2	1	4	2	11	7
1973	1	26	5	-	2	-	-	8	26
1974	-	5	-	-	-	-	-	-	5
Total	16	36	17	8	6	4	2	51	38

Source: HMSO, 1974d, p.2

The final major institution, the CIR, also provided a final analysis of its contribution to industrial relations reform. As Table 8.2 demonstrates, its workload had begun to increase, irrespective of its on-going battles with DE officials and ministers over references. While it remained committed to the idea that industrial relations could be improved through facilitating responsible collective bargaining, it was accepted that 'the Commission has not fulfilled the highest hopes which attended its inception' (HMSO, 1974d, p.12). The report identifies a number of problem areas. Employers and trade unions considered a reference to be a sign of criticism and remained uncooperative for the most part. This attitude was seldom changed, a position not aided by the TUC policy of non-cooperation. As a result its work was always limited (ibid, p.13). Once again, it was the broader politicised context that created

insurmountable difficulties for an institution that was otherwise expected to front the 'new' form of voluntarism the Act's proponents had hoped for.

The CIR's recommendations for the future were broad, focusing on the necessity of making its work acceptable to both sides of industry. A point on the continuity and quality of its work is particularly poignant:

> "Taking industrial relations out of politics" is a common aspiration. We believe that some aspects of industrial relations which affect the economy generally and the social well-being of the community are inevitably bound with political issues. This reinforces the argument for having a specialised agency devoted to improving that important area concerned with the professional aspects of industrial relations where general agreement on desirable objectives can be reached and maintained (ibid, p.15).

This gets to the crux of the issue. To depoliticise is not necessarily the appropriate response, even if that is what state managers had hoped to achieve. Where industrial disputes in major nationalised industries had implications for the British economy and public generally the government felt compelled to intervene. Of the three primary institutions of the Act not one can be given a clean record. The NIRC was tarnished as a political court and often facilitated industrial unrest. The RTUEA was largely redundant, leaving a major source of influence over trade union behaviour dormant. The CIR, too, had a limited impact on the broader landscape. None survived the change of government. In what follows, some of the broader theoretical implications of this case are addressed.

Open Marxism, the State and the Act

The Industrial Relations Act was designed to reconfigure the relationship between the state, capital and labour. However, in attempting to discipline the latter it intensified the nature of class struggle. As Clarke argues, this expanded the terrain of struggle as forms of resistance

were directed against the state itself (1992, p.138). Nonetheless, as Marx's method of abstraction necessitates, before state strategies themselves can be discussed it is necessary to understand the contradictory and crisis prone *form* of the state itself (see Johnson, 2007, pp.161-3). An Open Marxist perspective focuses on precisely this by presenting the state as the reified *form* of social relations. The Act, therefore, reflects the challenges for capital accumulation created by the changing nature of class struggle, ultimately attempting to supress the industrial unrest that produces blockages in the circuit of productive capital and elsewhere. Thus, the historically specific nature of the reproduction of capitalist social relations informs both the Act's character and its failure. Crucially, an empirical analysis of the Act gives weight to arguments that the state should not be bound conceptually to any notion of functionalism or instrumentalism. That the state *form* is in a perpetual state of change draws to the fore the difficulties associated with state (or *crisis*) management which, in turn, reflect the ebbs and flows of class struggle. Governing, therefore, is often haphazard despite attempts to be strategic. Strategies are subject to amendment as either domestic or international conditions of accumulation change. Policies may be seen to favour capital-in-general while being resisted by particular capitals. Under the umbrella of the state *form,* Open Marxism highlights the contradictory connection between capital accumulation, class struggle and state management. The strength of this approach comes to the fore when employed in conjunction with rigorous empirical analysis as abstract theoretical assumptions can be tested and the *motivations* of state managers revealed.

An important line of argument in this thesis is that the Act pitted the institutions of the state against one another in an unexpected manner. An Open Marxist perspective reminds us that the *form* of the state as a capitalist state presupposes its institutional structure. This is why Burnham (1994) argues that the state is conceptually prior to government, civil service, judiciary etc. However, it is important to remember that the state is *not* a unified actor but

instead represents 'a set of hierarchical institutions with overlapping powers and contradictory objectives' (Aris, 1998, p.9). An analysis of the Act clearly supports this position. Indeed, the competing interests between institutions further problematizes the process of state management. The manner in which social relations congeal can have unexpected implications for the state's institutional form as a range of historical, cultural and strategic factors influences the behaviour of state actors. As this thesis reveals, there is no guarantee of a homogenous response and, crucially, institutional structures can undermine the state *form* itself. An Open Marxist perspective, therefore, should not be seen as 'an esoteric theoretical argument' but one that has played out directly through struggle (Clarke, 1991, p.40). The Act represents one moment in attempts to manage the antagonistic nature of the reproduction of social relations under capitalism and the indeterminable direction of history. It reflects empirically how the on-going struggles between capital and labour inform the political *form* of the state (Marx, 1894 [1991], p.927). Nonetheless, it is necessary to shift level of abstraction to understand the detail of particular strategies and the politics behind them.

The Politics of Depoliticisation

The central argument of the thesis is that the Act is best seen as a flawed depoliticised governing strategy, an attempt to shift the 'political character of decision-making' (Burnham, 2001, pp.127-8). If judged crudely against this criteria it cannot be seen as anything other than a failed example of the phenomena. The final CIR report states as much. It did not insulate government from the damaging consequences of reform. Ultimately, the Conservative Party was removed from office in February 1974. As noted in Chapter Two, Burnham points out that '[i]t would be naïve to assert that by depoliticising economic policy state managers can avoid the emergence of political unrest' (2014, p.202). The life of the Act illustrates this fact. Similarly, Kettell argues that a strategy's ability to depoliticise government cannot be taken as a given. State managers must be seen to be reactive to changes in both social and economic

circumstances (2008, p.632). In the same way that multiple contextual factors, even paradoxical ones, can have an impact on the process of depoliticisation (Wood, 2016a), there is considerable complexity in the process of (re)politicisation. To invert Wood's terminology, consideration must be given to the *drivers of (re)politicisation.*

The analysis provided points to the fragility of depoliticised governing. This in itself is not conceptually novel. Much recent scholarship has pointed to tensions between depoliticisation and politicisation (e.g. Bates et al., 2014; Fawcett and Marsh, 2014; Foster et al., 2014; Wood, 2016b). However, it remains the case that the Industrial Relations Act offers a unique site of analysis as there are few, if any, examples of rigorous empirical work evaluating a failed depoliticised governing strategy. In essence, the Act sought to depoliticise the rank-and-file of the trade union movement while simultaneously seeking to strengthen, thus politicising, its leaders. Moreover, a loosely tripartite tradition in the latter half of the 1960s legitimised a broadly 'political' role for trade union members. The strategy embodied in the Act – that industry should 'put its own house in order' with trade union leaders and employers holding a militant rank-and-file to account – betrayed a failure to understand the complexity of relations within working class organisations, such as trade unions. In addition, through creating an interventionist element – the emergency provisions – the Act inevitably politicised the role of government in some of the most controversial disputes of the day. Furthermore, given the TUC's characterisation of the Act as a 'state licence', the RTUEA, NIRC and CIR could not disentangle themselves from the *perception* that they operated as an extension of government. Given the failure of the institutions to legitimise the rules this was a tension that could not be overcome. This cocktail made the Act extremely unstable and eventually a liability. It is evident that 'hybrid form[s] of statecraft' (Diamond, 2015, p.449), those containing elements of both depoliticisation and politicisation, are particularly susceptible to problems if the latter comes to dominate.

'Putting the Act on ice' after July 1972 was coupled with a move towards a politicised approach to counter-inflation policy when a statutory incomes policy was introduced. This provides evidence for how reactionary ministers become when their electoral viability is in danger. Thus, something akin to 'ministerial politicisation' (Burnham, 2007), responding with policy adaption for short-term gains, needs to be taken seriously when assessing the failure of this approach to governing. The decision undermined the strategy embodied in the Act. However, this brings the argument back to the importance of contextualising the analysis. Ultimately, alterations here had major implications for the strategy. Both sides of industry began circumventing the Act, at times following encouragement by the government. Furthermore, the controversy associated with the NIRC left the emergency provisions impotent as no minister would risk their use. What is evident, however, is that depoliticisation is often far from static, responding to the ebbs and flows of contestation. In a manner similar to that identified by Bates et al. (2014), areas of deliberation change, as do the groups involved. As noted above, this was in part reflected in the flawed assumptions surrounding the ability of trade union leaders to impose discipline on the movement. However, it also suggests that attempts to reconfigure social relations often extend beyond the 'traditional' parameters of the state. This adds a layer of complexity state managers are not necessarily well suited to counteract. In this case, understanding of the rank-and-file, the very group whose behaviour the state sought to depoliticise, was inadequate.

The example of the Industrial Relations Act, therefore, offers insights into the *limitations* of depoliticised strategies when applied to industrial relations of the 1970s. From this a number of observations can be made about this approach to governing generally. The Act was designed to solve a specific problem – unofficial wildcat strikes, particularly those in the private sector. However, the major disputes during the tenure of the Heath government were in the public sector where the state was the major employer. Moreover, industrial unrest in key

nationalised industries would inevitably be highly politicised. Ultimately, 'the state has a permanent presence in the reproduction of capitalist social relations, particularly in the core areas concerning the management of money and labour' (Burnham, 2001b, p.145). Thus, there will be cases where the state cannot be absolved of direct responsibility in the manner that depoliticised governing supposes. The limits are not static, but depend on the nature of capitalist reproduction and the dynamics of capital, labour and the state at particular historical moments. This, in part, explains why Burnham (2006a) describes shifts between the dominance of politicised or depoliticised governing throughout the twentieth century as the limits of both can change. Resistance to the Act revolved around a disregard for the judiciary and state apparatus itself. As Burnham notes, '[c]ollective action that threatens the exclusive realm of "the political" and that directly seeks to politicise "civil society" threatens that very basis of capitalist order' (2014, p.203). In short, the fetishized presentation of separation between the political and the economic becomes apparent, rendering the strategy flawed and the risk of a political crisis more likely. As a result, the reform of industrial relations was not abandoned, but over the next 25 years the approach changed dramatically. This is returned to below.

II. Contributions of the Thesis

Through a detail empirical analysis of the Industrial Relations Act this thesis provides a set of empirically grounded *conceptual* contributions to on-going debates within the depoliticisation literature. It argues that scholars must ensure that the broader context and character of relevant interest groups are considered when evaluating particular depoliticised governing strategies. Contestation can be focused around particular groups or the public at large. Moreover, the 'parameters' of depoliticisation may well adapt as the governing priorities of state managers change. This can be subtle, although reflects the ebbs and flows of class struggle and the often haphazard and reactionary nature of state management. As discussed above, the thesis makes a number of observations regarding the limits of depoliticised governing. However, in doing so,

it provides further detail of the day-to-day tensions that such strategies create within the state itself. This suggests that further empirical work is required into specific depoliticised governing strategies to uncover the decision-making processes of the 'lower-levels' of the 'core-executive'. In demonstrating the fragility of this particular approach to depoliticised governing the thesis has contributed further grounds upon which to discuss the *limitations* of this approach to statecraft.

The five central empirical contributions of this thesis link directly to the research questions outlined in the introduction. They reflect gaps within existing interpretations of the Act or areas where clarification is required. The thesis demonstrates that the Act contained a fundamental contradiction related to its character as a depoliticised governing strategy. It sought to politicise and strengthen trade union leaders in the hope that the rank-and-file would be subdued. However, state managers failed to adequately account for the constraints to which trade union leaders are subject, in particular the danger of isolating their membership in an already politicised context. Furthermore, analysis of the Act highlights the tension trade union leaders feel when faced with economic decline and defending the rights of their members. In addition, the thesis argues that to fully appreciate the Act's failure it is necessary to drill down to the 'lower-levels' of the state, uncovering not only decision-making processes but also the on-going tensions, strains and compromises required when multiple institutions have competing interests. Moreover, there is evidence that the 'lower-level', represented in part by the Act's institutions, did not always operate in conjunction with the 'upper-level' where issues of political presentation often take precedence over the practicalities of governing.

Taking up the suggestion of Rogers (2009), the thesis also considers the appropriateness of this particular approach to depoliticised governing. State managers trusted in the fact that the working class would show deference and reverence to the majesty of the law. In a sense, the 'independence' of the judiciary was seen as a driver of success. However, arm's-length control,

a key feature of depoliticised governing, could not be achieved as judicial interpretation was unpredictable. Moreover, the position of the judiciary was undermined through accusations of state control. In effect, the Act achieved the exact opposite to the government's intentions as it did not achieve the 'best of both worlds'. Once again, this reiterates why delving into the mechanics of the Act itself is crucial if researchers seek to uncover exactly where the pressure points of failure lie. Finally, the thesis provides clarification regarding debates within literature on the abandonment, tacit or otherwise, of the Act. Through a detailed reading of the archival evidence it becomes clear that while the government publicly supported the Act, it was for all intents and purposes 'put on ice'. However, this should not be taken as a lack of commitment to the principle of a legal framework. Instead, this decision represents an acceptance of the unfavourable context within which reform was attempted. It was hoped, however, that following the General Election of February 1974 this context would change when a new mandate was achieved. Each of these empirical contributions acts to reiterate the arguments of Burnham et al. (2004), Kavanagh (1991), Lowe (1997) and Rogers (2017), that a historical, archive-driven analysis can prove invaluable when uncovering the intricacies of policy formulation and operationalisation.

III. Future Research

It is a widely held view that lessons were learnt from the repeal of the Industrial Relations Act (e.g. Ball, 1996, p.382; Campbell, 1993, p.466). Indeed, Marsh considered the Act separately from other reforms of the post-war period precisely because 'its fate clearly affected the political and legislative judgements of Mrs Thatcher' (1992, p.10). Heath himself reflected on the failure of his government's approach, even if the motivations were sound:

> I do not claim that we made no mistakes in these affairs. Perhaps we were mistaken to try and achieve the changes we sought to make through the Industrial Relations Act at

> one go, rather than a more gradual series of measures over time, as proved successful in the 1980s. On the other hand, these judgements are easy to make with the benefit of hindsight, and there was a fundamental difference between what we set out to achieve, and the reforms of the 1980s (Heath, 1998, p.409).

This belief was shared by other senior figures in the government (see Hurd, 1979, p.105). The view from the right is that the Conservative Party's subsequent approach has resulted in trade unions being successfully tamed (Hanson, 1991). While many excellent accounts of the Thatcher government's approach to industrial relations reform exist (e.g. Auerbach, 1990; Gallie et al., 1996; Marsh, 1992; McIlroy, 1991; Taylor, 1994; Willman et al., 1993), in recent years the release of primary records at the Modern Records Centre, Conservative Party Archives and National Archives has produced important reassessments building on existing scholarship. This includes the Authority of Government Group (Dorey, 2009) and the Stepping Stones Programme of the Party's opposition years (Taylor, 2001; Dorey, 2014). This scholarship relates well to what Davies and Freedland (1993, p.427) describe as the 'de-politicisation of trade unions' or the 'reversal of corporatism' under Thatcher. Most recently, Peter Dorey (2016) has conducted a review of the first two Thatcher government's approach to reform using documents recently released at the National Archives.

This literature is extensive, and the addition of archival material is welcome. Building on this, the analysis offered by this thesis has generated a number of avenues for future research. First, relates to the subsequent Labour government's approach to reform. The suggestion has been made that the Social Contract was little more than an 'illusion' (Pimlott and Cook, 1982, p.6) and has even provocatively been termed the 'social contrick' (see Cliff and Gluckstein, 1996; Rogers, 2009). There is certainly evidence to suggest that officials within the DE did not envisage much change. Officials within the CIR expected to be 'simply working for an organisation doing the same work, probably at the same desk, in the same Government office,

but with a different name above the door' (TNA LAB 10/3802, Hodgkins to Goss, 2 July 1974). Other officials suggested that the earlier position of the trade unions was not restored. A senior official in the RTUEA remarked that the 1974 proposals 'brought about what is, in effect, a compulsory registration scheme, although it does not actually use the word "registration"' (TNA NF 1/27, O'Toole to Keith, 2 August 1974). Further archival analysis is required to understand the link between the Industrial Relations Act and the Social Contract, ascertaining if, indeed, aspects of the former were intentionally smuggled into the latter.

The work of Dorey has made a number of important contributions to understanding of the development of Conservative Party policy. In particular, he corroborates the fact that lessons were learnt from the collapse of the Industrial Relations Act (Dorey, 2016, p.181). However, an examination of the documents released at the National Archives suggests that there is scope to further knowledge of the implications of the Act for Thatcher and her approach to reform. For example, on consultation Jim Prior informed Thatcher directly that the government 'must live up to our promise to consult' as it was 'far more important to minimise opposition as far as we can and to finish up with legislation that sticks' (TNA LAB 10/3939/2, Prior to Thatcher, 14 May 1979). Thatcher informed trade unionists that her government's approach 'was small and moderate and would not follow the paths of 1971' (TNA PREM 19/69, Stowe to Fair: PM's Meeting with Murray, 1 June 1979). Senior officials also noted that '[t]he history of 1970-74 points to the dangers of a head-on assault' (TNA PREM 19/70, Hunt to Thatcher, 18 June 1979). Similarly, there are numerous references to the need to avoid anything that would 'look alike a return to the 1971 attempt to regulate in detail the content and operation of union rules' (TNA LAB 10/3939/1, Mellish to Derx, 17 August 1979). A cursory review of the documents thus far released suggests considerable scope to analyse this link in rigorous detail.

Finally, a thesis discussing the state's attempt to tame trade unions cannot neglect a word on the recent Trade Union Act 2016. This Act is unique in the history of British labour

law in that unlike the Industrial Relations Act and Thatcher's numerous legislative steps, the latest Tory driven reforms do not attack the trade unions at a time of strength, but weakness. What is interesting about the latest intervention is that there is little that is novel in the approach. Indeed, a reading of the archives from both the Heath and Thatcher government's points to the fact that many of the controversial aspects have been in gestation for years. There is room for future research to ascertain the originality of the core tenets of the new legislation, in particular the introduction of quotas and thresholds. It seems likely that these punitive measures to contain trade union militancy have been on the Conservative Party's wish list since the days of Thatcher (potentially earlier), although were deemed politically dangerous. Linking Conservative Party policy across the three periods is likely to display a degree of continuity of thought that has now reached fruition given the changed political climate. In effect, the 2016 Act represents the completion of a long-term project to shackle the trade unions. The Industrial Relations Act was just the start.

Appendix 1
Overview of the Industrial Relations Act

The motivation behind this appendix is to provide a detailed overview of the Act. Early in the process of drafting the thesis it became apparent that it would be necessary to avoid an overly legalistic style when referring to the Act. This was to allow for the *political* as well as the legal implications of the legislation to be highlighted. The Act is a daunting document. It consists of nine parts, 170 sections and nine schedules (HMSO, 1971a).[33] A number of excellent overviews of the Act are available, providing useful reference points for those who wish to begin to delve into its complexity. However, they necessarily require some knowledge of the legal process and are at times difficult to follow in isolation (Campbell, 1971; Crouch, 1977; Rideout, 1971; Weekes et al., 1975). This appendix is intended as a companion to the analysis provided in the thesis. As such, the Act is discussed in relation to the core tenets of depoliticisation. In doing so, the intricate system of rules is set-out, uncovering the framework within which reformed industrial relations practices would be conducted.

[33] For the sake of clarity, citations in this appendix will make reference to specific sections of the Act. This account is not exhaustive, but covers all of the major provisions, including those that had little impact on events as they unfolded owing to the TUC policy of non-cooperation.

The Act was designed to promote 'good industrial relations', primarily through 'collective bargaining freely conducted on behalf of workers and employers', 'maintaining orderly procedures', 'free association of workers…and of employers' and 'freedom and security for workers' (Section 1 (1)). The Department of Employment's *Guide to the Industrial Relations Act* (HMSO, 1971h) highlights the seven primary areas of reform. These include:

- The general reform of existing voluntary arrangements concerning industrial relations, establishing a Code of Industrial Relations Practice to regulate future behaviour
- Providing individual benefits and rights, altering trade union membership and establishing new legal protections, notably unfair dismissal
- Establishing a new legal concept of 'unfair industrial practice' in industrial relations
- Creating an Industrial Court for the first time which, together with existing Industrial Tribunals, would police the abuse of 'unfair industrial practices'
- Introducing a system of registration for all trade unions and employers' associations, providing certain rights, protections and responsibilities
- An attempt to improve communication and the settling of disputes
- The protection of society at large at times of emergency, providing the Secretary of State for Employment powers of application and intervention in industrial disputes. This included restraint periods of up to 60 days and the calling of strike ballots among a trade union's membership (ibid, p.5)

In what follows, each of these aspects will be considered in detail with reference to the particular sections of the Industrial Relations Act in question. Where appropriate, a brief commentary will be provided in relation to the intentions of state managers that are revealed through application of the depoliticisation framework. First, however, the appendix will turn to the institutional structure provided by the Act.

Institutions

The National Industrial Relations Court

Based in London, the NIRC was permitted to sit anywhere in the country if required. It was intentionally designed to have an informal style. Unlike other courts, its procedures were intended to provide ample time to the parties concerned to reach an agreement by conciliation. It was, however, granted the powers of any other court in the English legal system (Schedule 3, Part 2). It possessed the status of a High Court, although criminal proceedings were heard elsewhere (Section 136). It consisted of High Court judges and lay members, to be appointed by the Lord Chancellor (a senior minister), the Lord President of the NIRC or the Monarch (Section 99). This offers an immediate example of where political influence could permeate the character of the court.

The NIRC held jurisdiction over all other areas covered by the new concept of 'unfair industrial practice' (Section 101). It also policed contraventions of collective agreements (Section 102). It was the ultimate arbiter where an application was made requesting a referral to the CIR in relation to disputes surrounding recognition of bargaining units (Section 45). The NIRC was also central to the Act's emergency procedures (Sections 138-45). Further detail on each of these provisions is provided in the appropriate category below. When finding a party liable for 'unfair industrial practice' under the Act, the NIRC was empowered to award compensation at a level it deemed 'just and equitable in all the circumstances' (Section 116(1)). Limitations to compensation related to the membership of a registered trade union (Section 117). Unregistered organisations of workers did no enjoy such protections, a position designed to 'impart the widest discretion to award compensation' (Campbell, 1971, p.288).

Registry of Trade Unions and Employers' Associations

The Office of the Chief Registrar was created by the Act and subject to the approval of the Secretary of State for Employment (Section 63 and Schedule 3, Part 1). Its primary responsibility was oversight of the Register of Trade unions and Employers' Associations for all independent bodies (Section 71). A Special Register covering chartered bodies and companies was also created by the Act (Section 84). In the first instance, all previously registered trade unions passed onto a Provisional Register which existed for the first six months of the RTUEA's operation (Section 78). Cancellation of registration was available to all concerned bodies (Section 92). As will be discussed below, the RTUEA was also tasked with determining and providing oversight of the rule-books of trade unions and employers' associations. The RTUEA, therefore, governed a core aspect of the framework designed to shape trade union behaviour. In essence, it was custodian of the government's rules for industrial relations, a means through which arm's-length control could be achieved.

The Commission on Industrial Relations

First created as a Royal Commission in March 1969, the CIR was re-established as a statutory body by the Act. While it was often presented by the government as an example of the maintenance of the existing voluntary system of industrial relations, in reality it was designed to operate through references made by the Secretary of State for Employment and the NIRC. In the case of the former this included collective bargaining arrangements, procedure agreements, recognition rights, disclosure of information by employers and industrial relations training (Section 121(1) and (2)). Non-enforceable recommendations would be made in the form of a published report (Sections 122 and 123). Similarly, following a reference by the NIRC, the CIR could be asked to report on procedures or recognition issues. In a number of cases it could be asked to conduct a ballot of trade union members (Sections 11, 12, 144, 145 and Schedule I). Further detail on inquiry and ballot arrangements is provided in Schedule 3 of the Act. It was

hoped that the CIR would allow for industry to 'get its own house in order' or, as Robert Carr put it, for disputes to be 'voluntarily resolved' (TNA LAB 43/604, Speech by Robert Carr, 1 October 1971). The interventionist aspects would operate in the background.

Industrial Tribunals

First established under the Industrial Training Act 1964, the Industrial Tribunals drew their jurisdiction from a range of legislation (see Section 100(1)). The Industrial Tribunals were primarily tasked with the protection of individual rights, hearing cases regarding alterations to trade union membership (IRA, Section 5) and the newly created unfair dismissal provisions (Sections 22-26). The NIRC was the appellate court for the Industrial Tribunals (Section 114).

Industrial Arbitration Board

Formally the known as the Industrial Court, the Industrial Arbitration Board considered disputes between employers and trade unions in relation to terms and conditions of employment following referral by the NIRC (Sections 124-7). When the Secretary of State for Employment's attention was drawn to specific complaints, they, too, could be referred to the Board if a registered trade union was involved (Section 152).

Registration

Registration under the Act created a distinction between registered and unregistered organisations of workers, the former being granted the legal title of 'trade union' (Section 61). By doing so, two key principles were established, both relating to the control of trade union behaviour. First, the Act provided detailed guiding principles to which all registered organisations of workers were subject (Section 65). The role of the RTUEA, therefore, was to ensure that trade union behaviour conformed to principles pre-defined by the state. In addition, the Act prescribed detailed guidance for the rules of registered trade unions (Schedule 4). Trade union rules would be vetted by the RTUEA and registration could be rescinded if trade union

leaders did not ensure standards were maintained (Section 77). To become registered, an organisation of workers had to convince the RTUEA that its rules conformed (Sections 61 and 67). A registered trade union could not exclude or inhibit an individual from membership, terminate membership, discriminatorily prevent an individual seeking office in a given organisation or discipline members who refused to take part in industrial action. To do so would amount to 'unfair industrial practice' (Section 66). Complaints of a breach made by individual trade unionists could be investigated by the Registrar (Section 81).

As a second form of control, the Act made a number of inducements which were intended to make registration attractive. Unless registered, a trade union could not be party to an agency shop agreement (Section 11), apply for post-entry closed shop agreements (Section 17) or be recognised as a sole bargaining agent (Section 49(2)). The officials of unregistered organisations of workers could be held personally liable for cases of 'unfair industrial practice', such as the inducement of strikes (Section 96). No trade union had been subject to such restriction outside of wartime under previous legislation as the 1906 Trade Disputes Act protected union members and officials against action taken in tort. As mentioned above, where a registered trade union was found to have committed an 'unfair industrial practice', compensation was limited and could not exceed £100,000 for a trade union with a membership of, or exceeding, 100,000 (Section 117(2). An unregistered organisation of workers was subject to no limit bar that which was deemed 'just and equitable in all the circumstances' (Section 116(1)). This, in effect, subjected unregistered trade unions to potentially unlimited fines.

Individual Rights

One of the key features of the Act was the strengthening of individual rights. It enshrined in law the right of every worker to be a member of a trade union. However, it also provided protection for workers who did not wish to be a member of a trade union (Section 5 (1)). Acting

in a manner contrary to this provision, either by a trade union or employer, was deemed an 'unfair industrial practice' (IRA Section 5 (2)). Similarly, if an organisation of workers pressured an employer to disregard any of the Act's protections it would amount to an 'unfair industrial practice' (Section 33 (3) (a)). The pre-entry closed shop was outlawed and no employer was permitted to reject workers because they were not a member of a particular trade union (Section 7). Any attempt to add such a provision to an agreement could be held void by the NIRC (Section 7(2)). The Act also created the concept of unfair dismissal, offering limited protections to employees as when a dismissal was deemed 'unfair' it would amount to an 'unfair industrial practice' (Sections 22-32).

The Act provided for a post-entry 'approved closed shop', although this was subject to agreement by the CIR and a strict application process (Section 17). Such agreements, when in place, had the potential to supersede the right of an individual not to belong to a trade union under Section 5 (1) (b). Workers could challenge an 'approved closed shop' through a ballot provided one-fifth of the membership agreed (Schedule 1). An 'agency shop agreement' allowed for an arrangement between a registered trade union and the employer that membership of that union was a prerequisite of employment (Section 11). However, this was subject to strict procedural arrangements and required input from both the CIR and NIRC (Section 12 and 13). If established, a worker who was subject to an agency shop agreement could challenge it by applying to the NIRC who, once satisfied there was sufficient opposition, could request a ballot be held by the CIR (Sections 14 and 15). It would be considered 'unfair industrial practice' if an attempt was made, either by striking or any other irregular industrial action, to induce or attempt to induce an employer to not enter an 'agency shop agreement' or fulfil any other duty (Section 13(2)). It would also be considered 'unfair industrial practice' for an employer to attempt to hinder an application regarding the establishment of an 'agency shop agreement'

(Section 16) or if an employer continued to operate an 'agency shop' without the support of employees (Section 5 (2)).

Collective Bargaining

The Act empowered the Secretary of State to produce a *Code of Industrial Relations Practice* (HMSO, 1972a), applicable to all parties involved in industrial relations (Section 2). It was designed to interpret industrial relations in the 'widest sense' and was not only concerned with procedural matters (HMSO, 1972a, p.2). The Code came into force on 2 February 1972, and in the words of one of its primary architects was designed 'to raise standards across industry by giving practical guidance on the conduct of industrial relations and the development of policies to improve human relations in all types of employment' (Howe cited in Whittingham and Towers, 1972, p.2). Although not legally binding, disregard of the Code was admissible as evidence before the NIRC and could be held relevant to any proceedings (Section 4). In a nod to arm's-length control, the Secretary of State for Employment retained the right to 'revise the whole or part of a code of practice' from 'time to time' (Section 2 (3)), albeit after consultation with the TUC and CBI, referral to the CIR and, ultimately, approval by Parliament (Section 3 (3), (4) and (5)).

The most radical proposal (but also most futile) was an attempt to influence collective bargaining practices by stating that legal enforceability of a collective agreement (defined under Section 166) would be assumed unless an explicit term to the contrary was included (Section 34 (1) and (2)). Each collective agreement would require this express term, and blanket opt outs were not permitted (Section 35). Where a disagreement existed, the NIRC could be approached, at which point a judgement would be provided in circumstances where the court deemed it just and equitable (Section 112). It could be held 'unfair industrial practice' to break any legally enforceable agreement (Section 36(1)) or to fail to take steps to prevent the breakdown of such

an agreement (Section 36(2)). If a remedy through conciliation could not be reached, one of the affected parties could apply to the NIRC, instigating an investigation by the CIR and the potential imposition of procedures on the concerned parties (Section 37). Any proposals made by the CIR could become legally binding after a period of six months and upon application to the NIRC (Section 41).

The Act also provided procedures to decide disputes between employers and trade unions in relation to recognition for bargaining purposes, i.e. those who legally held the right to bargain on behalf of workers (Section 44). Concerned parties could make a reference to the NIRC (Section 45) resulting in a referral of the dispute to the CIR which was tasked with making recommendations capable of maintaining industrial peace (Section 46 and 47). The CIR also held the ability to conduct investigations and make recommendations regarding the appropriateness of bargaining units and sole bargaining agents (Section 48). In a similar fashion to disputes surrounding collective agreements, CIR recommendations regarding bargaining arrangements could be made enforceable if one of the parties requested a ballot (Section 49 and 50). The Secretary of State was empowered to demand detail of existing procedure agreements (Section 58), another example of ministerial influence. Once a given trade union had been assigned as the sole bargaining agent, an employer could not seek to negotiate elsewhere or it would be deemed ‘unfair industrial practice’ (Section 55(1)). However, a trade union was not permitted to force an employer’s hand through strike action or the threat thereof (Section 53(3)).

Emergency Provisions

The emergency provisions feature heavily in chapter five. They are important because they highlight the contradictory nature of the Act. Intervention by the Secretary of State for Employment was overt, even if it was hoped that the courts would provide an insulating effect. An ‘emergency situation’ was defined as one that involved the disruption of the supply of goods

or services causing a situation that was ‘gravely injurious to the national economy’ or would ‘endanger the lives of a substantial number of persons’ (Section 138 (a) and (b)). This runs contrary to depoliticised governing as what constituted endangering the ‘national interest’ was a political decision (Crouch, 1977, p.170). The Act provided two emergency procedures, both to be instigated by the Secretary of State for Employment.

First, an emergency restraint order could be sought, prohibiting industrial action for a period of up to 60 days (Section 139). Second, was an emergency ballot order, forbidding industrial action until a ballot of affected employees had taken place. The ballot was to be conducted by the CIR. Both required the application to be accepted and an order granted by the NIRC (Sections 142, 143 and 144). These provisions were also applicable for what is deemed to be ‘irregular industrial action short of a strike’, amounting to anything intending to prevent, reduce of interfere with the production of goods or the provision of services, particularly in breach of contractual obligations (Section 33(4)).

Appendix 2
Breakdown of Primary Documents

Name of archive	Detail of files		
	Type of file	Viewed	Cited
Conservative Party Archive	Advisory Committee on Policy	9	2
	Conservative Research Department	21	7
	Conservative Central Office	8	1
	Uncatalogued Liaison Committee Minutes	1	-
Modern Records Centre (CBI)	Employment Affairs Directorate	30	12
Modern Records Centre (TUC)	TUC, Predominantly 1970-1990	84	25
The National Archives	Records of the Cabinet Office (CAB)	63	31
	Records of the National Industrial Relations Court (J)	10	9
	Records of departments responsible for labour and employment matters (LAB)	86	36
	Records of the Lord Chancellor's Office (LCO)	5	2
	Records of the Registry of Trade Unions and Employers' Associations (NF)	38	11
	Records of the Prime Minister's Office (PREM)	63	37
	Records of HM Treasury (T)	7	2

Appendix 3
Trade Unions Passed to Full-Registration, 31 March 1972

By 31 March 1972, there were 41 registered trade unions on the full register (TNA NF 1/52, Industrial Relations Act 1971: Registration and the TUC, April 1972):

Association of Broadcasting Staff

Association of Government Supervisors and Radio Officers

Association of Scientific Technical and Managerial Staff

Bakers Union

British Airline Pilots Association

Chain Makers and Strikers' Association

Civil Service Union

Confederation of Health Service Employees

Electrical Electronic and Telecommunications Union-Plumbing Trade Unions

Electrical Power Engineers Association

Engineer Surveyors' Association

General Union of Associations of Loom Overlookers

Greater London Council of Staff Associations

Grimsby Steam and Diesel Fishing Vessels Engineers and Fireman's Union

Huddersfield and District Healders' and Twisters' Trade and Friendly Society

Managers' and Overlookers' Society

National Association of Cooperative Officials

National Geographic Association

National League of the Blind and the Disabled of Great Britain and Northern Ireland

National Society of Brushmakers and General Workers

National Union of Agricultural and Allied Workers

National Union of Bank Employees

National Union of Basket, Cane, Wicker and Fibre Furniture Makers of Great Britain and Northern Ireland

National Union of Footwear, leather and Allied Trades

National Union for Funeral Service Operatives

National Union of Journalists

National Union of Scalemakers

National Union of Seamen

National Woolsorters Society

Pattern Weavers' Society

Professional Footballers Association

Retail Book, Stationary and Allied Trades Employees' Association

Scottish Union of Bakers and Allied Workers

Society of Shuttlemakers

Trade Society of Machine Calico Printers

Unions of Shop Distributive and Allied Workers

United Road Transport Unions

United Rubber Workers of Great Britain and Ireland

Wall Paper Workers Union

Writers Guild of Great Britain

Yorkshire Society of Textile Craftsmen

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