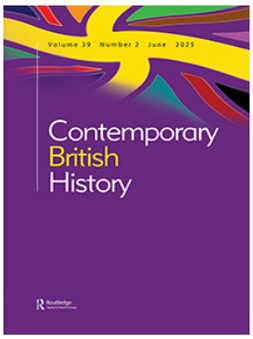

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The Conservative Party and the closed shop: inherent contradictions, non-compliance and the failure of the Industrial Relations Act 1971

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ABSTRACT

The 1970–74 Conservative Government was strongly committed to enacting industrial relations legislation which would simultaneously grant workers the right to belong or *not* to belong to a trade union, provide for legally enforceable collective agreements and facilitate more stable industrial relations by enhancing the authority of trade unions over their members. The associated 1971 Industrial Relations Act was therefore intended both to enhance the liberty of individual workers by weakening compulsory trade union membership and imbue Britain's system of industrial relations with greater order and predictability by reducing unofficial or wild-cat strikes by local-level shop stewards. Drawing on the archival record, we argue that ministerial haste resulted in inherent contradictions at the heart of this strategy being overlooked or underestimated: if the closed shop was outlawed, and fewer workers belonged to a trade union, then the authority of union leaders would be correspondingly diminished. Pragmatic and effective policy was sacrificed to Conservative Party ideological predilections as inherent contradictions and legislative inconsistencies ultimately resulted in a major failure.

KEYWORDS

Trade unions; agency shop; closed shop; collective bargaining/agreements; conservative party

Introduction

The Conservative Party entered Office in June 1970 with the express intention of imposing order and stability on British industrial relations. The new government introduced a *formal* legal framework to regulate trade union activities for the first time as a direct response to rapidly rising unofficial and wildcat strikes of the 1950s and 1960s. Conservative and Labour politicians alike believed the trade union 'problem' was blighting the British economy. This novel Industrial Relations Act 1971 was a radical departure from the status quo. Lord Donovan, Chairmen of the 1965–68 Royal Commission on trade unions and employers' associations, described it at the time as 'state intervention in the field of industrial relations on a massive scale'.[1]

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This Act has, directly or indirectly, been the subject of a voluminous, interdisciplinary literature focused on its place in post-war industrial relations, post-war political history, its legal implications, and the Conservative Party and its relationship with trade unions.[2] This body of scholarship highlights a tension between an ideological desire amongst Conservative Party reformers to protect individual liberty by effectively abolishing the closed shop—through which employees were required to be trade union members as a condition of employment—and empowering trade union leaders to discipline their rank-and-file memberships and secure orderly collective bargaining. Robert Taylor, for example, argues the Act represented an uneasy settlement in which a 'libertarian approach was to co-exist with a more corporatist attitude designed to help not undermine "sensible" trade unionism'.[3] However, the industrial relations and political history literatures highlight this contradictory aim as a significant factor in the Act's demise, reflecting misunderstandings about trade unions and the law, and betraying a disproportionate emphasis on trade unions as a choke on Britain's flatlining economy.[4] Recent accounts based on primary records have confirmed the consensus that the Act was a monumental public policy failure, again highlighting the tension between individualism and collectivism as the primary reason behind its contradictory objectives, inconsistencies and, resultantly, the deeply flawed decision-making of both politicians and officials.[5]

However, despite the literature identifying the protection of individual rights under the Act as the reason behind the philosophical inconsistencies that contributed to its unworkability,[6] the closed-shop provisions themselves—their history and operation—are only superficially explored. Industrial relations and legal scholars provide the most rigorous overview of these provisions,[7] but the specific public policy implications of the 1970 Conservative government's failed strategy towards the closed shop generally receive light treatment because they had limited practical impact on industrial relations. But the significance of this attempt to reform the closed shop for the first time should not be underestimated. Best estimates at the time suggested as many as 4 million largely industrial workers were covered by the closed shop, with the conditions of employment of many more subject to collectively bargained agreements.[8] This failure in government strategy and public policy is therefore ripe for a rigorous reappraisal based on the now released archival evidence.

By making the closed-shop provisions our primary focus, our contribution reveals the frenetic 'behind the scenes' activity—including the missteps—as Conservative politicians and civil servants struggled to make the reforms 'stick'. Our argument is that in trying to accommodate disparate and contradictory aims within its programme for reform, the Conservative Party sacrificed pragmatism for the ideological predilections of its members surrounding individual freedom. Our findings confirm that these diverse and inconsistent objectives pertained to the simultaneous intention of increasing individual liberty for workers who did not wish to belong to a trade union, while strengthening order, predictability, and stability, in workplaces by strengthening the authority of trade union leaders over their members. Reformers failed to heed warnings from within the Party and across British industry that weakening the closed shop would result in trade union leaders exercising their ostensibly enhanced authority over a smaller membership, thus risking further instability. Similarly, the added risk that inter-union rivalry and competition for members would result in more strikes and/or demarcation disputes fell on deaf ears. For

employers, the feared outcome was that collective bargaining would become more difficult and time-consuming because negotiations over terms and conditions of employment, primarily pay bargaining, would no longer be conducted with one set of union leaders.

The ideological objective of 'freeing' workers from the obligation to join a trade union as a condition of employment proved incompatible with the governing objective of restoring order and stability into British industry. Ideological principles clashed with pragmatic political and industrial realities, as did the dual objectives of simultaneously extending liberty, and enhancing authority, in the workplace. These inconsistencies undermined elite decision-making as ministers and civil servants failed to disentangle philosophical inconsistencies surrounding the purposes of the Act vis-à-vis the Heath Government's stance on the closed shop.

Our in-depth reappraisal draws on documents located at the National Archives, Kew,[9] and relevant papers at the Conservative Party Archive, Bodleian Library, University of Oxford. Although our primary concern is the policy-making process and elite decision-making, in acknowledgement of the importance of powerful contemporary interest groups, we also consulted the Trades Union Congress (TUC) and Confederation of British Industry (CBI) archives located at the Modern Record Centre, University of Warwick.

The article proceeds as follows. We begin by setting out the post-war historical context, with a particular focus on voluntarism and the complexities of the Conservative Party's stance on the closed shop. The article proceeds to address the 1964–70 Opposition years in which the party alighted upon its contradictory approach to the closed shop and industrial relations reform. The remaining sections of the article investigate the closed shop provisions under the Act itself, drawing out the influence of intra-party disagreements during both the drafting process and parliamentary Debates, the inevitable challenges of enforcing the provisions of the Act, in particular, the new 'agency' and 'approved' closed shops, and the inability to find a satisfactory means of amendment owing to the philosophical inconsistencies associated with reform of the closed shop. Our analysis reveals the consequences of ideological considerations dominating the policy-making process as an ostensibly simple policy, based on clear objectives, became replete with contradictions and inconsistencies that undermined delivery in practice.

Historical background

The 1971 Industrial Relations Act and its predecessor, the 1969 White Paper *In Place of Strife*, signified a shift away from the bipartisan 'voluntarist' industrial relations policy adopted since 1945, in favour of 'legalism' to achieve order and stability in British industry and the workplace, and to compel trade unions to behave in a more 'responsible' manner. To understand the significance of this transition, this section outlines the historical context in which this cross-party consensus surrounding the need for reform emerged.

The pre-1964 dominance of 'voluntarism' in industrial relations policy

From 1945 until the mid-1960s, 'voluntarism' had constituted the dominant intellectual paradigm pertaining to industrial relations, or what the labour law expert, Otto Kahn-Freud, categorised as collective *laissez-faire*.[10] This comprised two principles. First, that trade unions and employers should be left to conduct negotiations over terms and

conditions of employment, particularly wages, free from State interference or direction—hence the cognate concept of *free* collective bargaining. Second, that trade unions should be left to determine and govern their own internal affairs and organisational matters, drawing on custom-and-practice, or 'what works'. This meant that internal procedural or rule changes would be enacted by the trade unions in an incremental and pragmatic manner in response to changing circumstances, amounting to *voluntary* self-government. When governments were dissatisfied with the conduct or practices of the trade unions, Ministers would normally confine themselves to rhetorical encouragement or moral exhortation *vis-à-vis* trade unions to modify their behaviour or procedures.

Throughout the 1950s and early 1960s, senior Conservatives, particularly successive Ministers of Labour, insisted that industrial relations were, ultimately, human relations, and that mutual respect and trust in the workplace could not be created or compelled by the Acts of Parliament. Instead, they had to be nurtured by patient exhortation, promoting industrial partnership, and by highlighting examples of industrial good practice.[11] It was also hoped that by adopting a voluntarist stance towards industrial relations, the trade unions' innate distrust of the Conservative Party might steadily be ameliorated. This approach, it was hoped, would prove far more effective in securing longer-term improvements in industrial relations than invoking the punitive trade union legislation demanded by the Conservative Right. This more restrictive mindset reflected ideological unease within the Party about trade union power over both the individual and society.[12]

Beyond party politics, and the trade unions themselves, there were two further strong sources of support for voluntarism in industrial relations until the early 1960s. First, the non-interventionist or collective *laissez-faire* stance enjoyed considerable support among prominent academics with expertise in industrial relations or labour history. This close-knit network was either based at, or otherwise had strong links to, Oxford University, becoming known as the 'Oxford School' of industrial relations.[13] The most notable figures associated with the Oxford School were Hugh Clegg, Allan Flanders, Alan Fox, Otto Kahn-Freund and William McCarthy. The second major source of support for voluntarism, until the mid-1960s, was the Ministry of Labour itself, where collective *laissez-faire*, or industrial self-government, effectively constituted the in-house ideology. The Ministry's overriding emphasis was on conciliation to solve industrial disputes, not legislation. This echoed the approach not only of many senior Conservatives throughout the 1950s, but also the perspective of other sections of the Party, such as its Trade Union Advisory Committee, which averred that: 'The function of the Ministry of Labour should be as an office of conciliation, and the Government should not take sides one way or another'.[14]

Conservative toleration of the trade union 'closed shop'

The Conservatives' overall endorsement of voluntarism during the 1950s meant that it greatly tempered one of its strongest ideological objections to trade union practice, namely the Party's libertarian hostility to the trade union 'closed shop'. The Conservative Party regularly argued that the closed shop was a denial of individual workers' liberty, because they were compelled to join a union regardless of their preferences or personal principles. According to one backbench MP, this represented a form of 'industrial conscription'[15] and an impediment to managerial authority in the workplace. Opponents lamented the fact that under a closed shop,

a trade union—not the employer—could effectively determine who was employed. However, the Party leadership's conciliatory position towards the trade unions during the 1950s and early 1960s resulted in broad toleration of compulsory union membership, dampening ideological predilections among much of the Conservative membership for a policy of prohibition. The closed shop was condemned in principle, and the most flagrant abuses were denounced, but it was tacitly tolerated in practice.

The 1947 *Industrial Charter* fully confirmed the Conservative leadership's much more constructive and conciliatory approach to trade unionism in the early post-war years and its adoption of a voluntarist industrial relations policy.[16] The *Industrial Charter* asserted that the Conservatives now attached the utmost importance to the valuable role that trade unions could play in rebuilding the British economy.[17] More specifically, alluding to the closed shop, the *Industrial Charter* declared that 'It is right that the unions . . . should aim to organise all workers in unions so that they are fully representative', but noted that maximum trade union membership was 'best' when it was achieved on a voluntary basis.[18]

Having won the 1951 general election, the Conservative leadership refused to legislate against the trade unions in general, or the closed shop in particular, opting instead patiently to win the trust of organised labour. This conciliatory approach was reflected and reinforced by the fact that from 1951 to 1964, appointees to the post of Minister of Labour emanated from the Conservative Party's consensual One Nation wing: Walter Monckton (1951–55), Iain Macleod (1955–59), Edward Heath (1959–60, a decade before his 'Selsdon Man' phase), John Hare (1960–63) and Joseph Godber (1963–64). Their perspective was that, as far as practicably possible, 'politics should be kept out of industry'.[19]

Bolstering this voluntarist stance towards industrial relations and trade unionism was Ministerial concern that legislative measures to tackle undesirable or questionable aspects of trade union behaviour and practice—of which the closed shop was a prime example—would probably prove unenforceable.[20] As Monckton explained, prescriptive or prohibitive trade union legislation would almost certainly be 'politically inexpedient and ineffective in practice'.[21] The voluntarist industrial relations policy derived from both principle and practicability, and ensured that throughout the 1950s and early 1960s, Conservative Ministers refused to enact legislation against trade unions. The closed shop was widely criticised via Conservative rhetoric, but tolerated in practice.[22]

There was one other consideration which underpinned Ministerial toleration of the closed shop. If trade union membership was entirely voluntary, then apathetic or (politically) moderate employees would be less likely to join. This would then make it much easier for the Left to achieve dominance of unions, and thereupon foment politically motivated industrial strife. Conversely, maximum union membership would make it more difficult for the Left to dominate the trade unions, particularly if the 'moderates' were encouraged to become actively involved in union affairs.[23] The Conservative leadership was thus obliged to balance considerations of individual liberty against the concern to secure industrial order and stability—a dichotomy whose contradictions were to prove fatal to the 1971 Industrial relations Act.

This conciliatory stance can be viewed as part of a pragmatic acceptance of consensus politics by the Conservative leadership during the 1950s, despite ongoing ideological

disagreements within the Party over individual freedom and trade union dominance.[24] This latter was secondary to promoting the perception of competent government associated with aspects of Keynesian economics, a mixed economy (with some industries and utilities nationalised), the pursuit of 'high and stable' levels of employment, a comprehensive welfare state, the reduction of 'excessive' (albeit undefined) inequality, dialogue with the trade unions, and encouragement of consultation in the workplace to foster a sense of partnership or harmony of interests between management and workers. Certainly, the paternalistic One Nation Conservatives, who dominated the senior echelons of the Party during this period, envisaged that broad acceptance of conciliation and consensus politics—although the latter term was rarely used at the time—would strengthen the legitimacy of Capitalism and parliamentary democracy, and thereupon dissuade the working-class from embracing, or being seduced by, more radical variants of Socialism beyond reformist social democracy.

The 1964–70 Conservative Opposition abandons voluntarism

During the mid-1960s, this voluntarist approach to industrial relations and trade unionism came under increasing strain, creating space for a more ideologically informed approach to policy design. The combined impact of increasing inflation and mounting concern about the scale, and damaging impact, of unofficial or unpredictable 'wildcat' strikes produced a growing awareness of the relative decline and structural weaknesses of the British economy. The *de facto* power of shop stewards on the factory-floor increased markedly, partly because of doubts inside the unions about whether national-level trade union leaders in London, who engaged in regular meetings with Ministers, were really representing the material interests of the mass membership. In this context, even Conservative Prime Minister Harold Macmillan (1957–63), who had always been a leading proponent of a conciliatory industrial relations policy and political partnership with organised labour, was beginning to express frustration with the activities and attitudes of some trade unions.[25]

The Rookes vs Barnard case

The outcome of the *Rookes v Barnard* case simultaneously alarmed the unions and enabled Conservative advocates of reform to seize the political initiative.[26] In this landmark legal case, a closed shop trade union was deemed liable, in law, for the intimidation of an employer who had been threatened with strike action over the continued employment of a non-union member. It was judged that in so doing, the union was seeking to coerce the employer to act in breach of contract with the non-union employee. In finding in favour of the employee, the judges signalled that strike action 'in order to enforce a closed shop' would leave the union(s) involved 'liable for damages'.[27] The trade unions condemned the decision, arguing that it grievously weakened their traditional immunities under the law and demonstrated an alleged innate hostility and class bias of the judiciary against organised labour. The unions demanded that legislation be enacted to restore the *status quo ante*.

In this context, the pragmatism of consensual politics was weakened in the minds of senior Conservatives, who now argued that the precarity of the trade unions' legal

position in the wake of the *Rookes v Barnard* verdict warranted a systematic reappraisal of British trade unionism, preferably by a Royal Commission. The last comparable inquiry into trade unionism had been back in 1903, the clear implication being that a new inquiry would have been warranted irrespective of the *Rookes v Barnard* judgement. But this judicial decision provided a major impetus and timely justification for a detailed examination of the conduct, role and status of trade unions, especially as their membership and power had greatly increased since 1945. Some Conservatives also suggested that in the wake of the *Rookes v Barnard* judgement, the trade unions were suddenly anxious about their legal position and might therefore be more amenable to an ostensibly impartial review of their immunities and rights in law.[28]

The Conservatives pledged to establish a Royal Commission on trade union law if they won the 1964 general election, but their narrow defeat meant that they were obliged to conduct their own intra-party policy review in Opposition. Meanwhile, it was the newly-elected Labour Government, led by Harold Wilson, which established a Royal Commission on Employers' Associations and Trade Unions (chaired by Lord Donovan), although the unions were the main focus. Much of the Labour Party leadership was itself deeply concerned about the scale of unofficial strikes, and the industrial disruption they caused. Labour's Employment secretary, Barbara Castle, for example, argued that the intrinsic unpredictably of unofficial strikes was wholly incompatible with the Socialist commitment to a planned economy. It was the 1968 report of the Donovan Commission—or, rather, the Wilson Government's disappointment with its clear preference for broadly continuing with voluntarism—which yielded the ill-fated legislative proposals enshrined in the 1969 White Paper *In Place of Strife*.[29]

The establishment of a Royal Commission lent credence to the Conservative Opposition's own deliberations about trade union law. This internal review was conducted under the auspices of a Policy Group on Trade Union Law and Practice, established in February 1965. Its remit was as follows: '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'.[30] Clearly, there was no concern to subject employers to any comparable scrutiny.

That the Conservatives' intended to shift from voluntarism to a 'legalistic' industrial policy was immediately evident in the Policy Group's first report, published in July 1965, which asserted that 'the present confused, uncertain and out-dated legal enactments' now needed to be subjected to clarification and codification via legislation.[31] This would entail restoring the authority of official senior or national-level union leaders over local-level or workplace shop stewards. By curbing the latter's propensity to invoke strikes which underpinned collective agreements bargained by national union leaderships, particularly those pertaining to wages, the hope was that more orderly and predictable industrial relations would also contribute towards lower inflation as a consequence of more 'responsible' pay bargaining.

The Conservative Opposition's review of trade union law and practice professed another objective, namely 'fairness'. Crucially, though, fairness which reflected ideological dispositions and discourses within the Party, whereupon it was defined in terms of the need to protect both the individual liberty of workers *vis-à-vis* the trade unions, and the rights of the public who sometimes experienced serious disruption due to strikes. To this end, it was proposed that: trade union rules should be subject to scrutiny by

a strengthened Registrar; industrial action (strikes) in essential services should be subject to stronger restrictions; the closed shop should be subject to legal restrictions to provide greater protection (and thus fairness) for workers who did not wish to join a trade union. Regarding the latter, it was asserted that:

> The right to work without being compelled to join a trade union is fundamental, and must continue to be supported whole-heartedly by the Conservative Party . . . the principle of the Rookes v Barnard case, by which an individual should not be forced *by intimidation* to join a Union, should be restored.[32]

Yet as the Policy Group on Trade Union Law and Practice continued its deliberations, intra-party division became increasingly apparent. The divide was primarily between the Conservatives who viewed the closed shop's negation of individual liberty as a 'power savage beyond feudalism'[33] and those in the Party, who acknowledged that many large employers favoured the closed shop on pragmatic grounds. The latter group recognised that if all employees were trade union members and covered by collectively bargained agreements, the process would be easier and more efficient. The closed shop could also assist trade unions in controlling militants via the threat of expulsion and the resulting loss of employment. Some employers (and Conservatives) therefore viewed the closed shop itself as a key source of industrial order and stability.[34]

A further tension which emerged from the discussions within the Policy Review Group was whether employees should be free to choose *which* trade union they joined, or be designated a union, on the basis of workplace, to act as the 'agent' of all employees for the purposes of collective bargaining. The former was commensurate with the Conservatives' libertarian ideological stance concerning trade union membership in terms of eliminating compulsion and extending individual choice. But pragmatic concerns had not gone away. There was equally a recognition that 'multi-unionism often presents added difficulties to good management', both in terms of employers having to bargain with more trade unions, and because of the greater propensity for demarcation and inter-union disputes.[35]

A cognate conundrum was whether collective agreements negotiated with an employer by a designated 'bargaining agent' trade union should also apply to non-union members. This dilemma assumed particular significance given that the Policy Review Group also envisaged that collective agreements would be rendered 'legally enforceable' to underpin more orderly and stable industrial relations. What would the legal position of non-union members be if they engaged in strike action in defiance of collective agreement, claiming that as they were not trade unionists, the agreement was not legally binding on them? Would they then be subject to disciplinary action by the employer, or legal sanctions by the Conservatives' proposed Industrial Court? If so, this would effectively decree that non-union members were equally covered by pay deals negotiated by trade unions, because the latter would, in practice, be bargaining on behalf of *all* employees in a workplace or industry, regardless of whether they were union members or not.

The risk was that this would compound the 'free rider' problem, whereby non-trade unionists benefitted materially from any improvements negotiated by trade unions. As those employees were not financially contributing to the relevant union, they would be 'getting something for nothing'.[36] The Shadow Employment Secretary, Robert Carr,

acknowledged that it was 'a question of finding the right compromise to fit very strong opposing forces'.[37] In search of such a compromise, the Policy Group's first report posited a distinction between the 'closed shop' and a 'union shop' (the latter was subsequently renamed the 'agency shop', although the reason for this change was never clarified). The former required trade union membership as a condition (or a precondition) of being offered employment, whereas the latter required workers to join a trade union as a condition of retaining their job *after* being appointed, in effect, a post-entry closed shop. This arrangement would need to be accompanied by statutory safeguards for employees who had a genuine principled objection to joining a trade union.

The Policy Group therefore proposed that when and where a 'union/agency shop' operated in accordance with the wishes of the overwhelming majority of employees, a 'code of good practice', endorsed by Parliament, should provide protection for non-trade unionists via the following conditions:

- Individuals should be exempt from a requirement to join a trade union if they held strong objections on grounds of morality or conscience. They might, however, be required to pay the equivalent of the union's membership fee to a charity, to discourage free-riders.

- Workers who were not already trade union members when a 'union shop' was established would *not* be expected to join thereafter.

- Expulsion from a post-entry closed shop trade union would *not* automatically result in loss of employment.[38]

The dilemma confronting the Conservative Party was evident in the Policy Group's second report, published in February 1966. It conceded that: 'Politically, the heart of the problem is in trying to reconcile our support of trade unionism with basic principles relating to individual rights and those of minorities'. It noted that 'economic considerations' and the imperative of 'maintaining industrial peace' supported arguments favouring maintaining the closed shop. Yet adopting this position 'would be wrong in principle and politically disastrous'.[39] This seemingly unresolvable tension between pragmatism and ideology led the industrial relations scholar, Lord Wedderburn, to wryly observe that the report had seemingly emanated from 'two phantom draftsmen', an 'organisation man' concerned with bringing order to collective industrial relations and a 'Conservative lawyer' concerned with individual rights.[40]

There was disagreement among Shadow Ministers over how far the Conservative Party ought actively to promote the union/agency shop as a credible compromise. In one of the many meetings to develop the Conservative Opposition's industrial relations policy, the usually emollient Ian Macleod expressed significant concerns. He feared that by proposing statutory safeguards for 'conscientious objectors', the Conservatives' emerging policy seemed to be providing legislative approval of union shops, or at least implying that it would become the standard form of trade union membership. Rather than adopting a genuinely even-handed or neutral stance between trade union membership and non-members, such an approach was treating union membership as the norm. Against this criticism, Shadow

Minister for Education and Science, Edward Boyle, argued that maximum trade union membership was now commonplace in many companies and industries. It was pragmatic realism to acknowledge this, rather than feign neutrality. Instead of actively seeking to deter maximum union membership, the Conservative Party's task was to devise statutory protection for these employees who genuinely objected to being trade unionists.[41]

Fair Deal at Work

The product of the Policy Group's deliberations was *Fair Deal at Work*, published in April 1968, 3 months before the Donovan Report. This was no fortuitous coincidence. Senior Conservatives had strongly suspected that the latter would broadly endorse a voluntarist industrial relations policy sympathetic to the trade unions, due to the prevalence of the 'Oxford School' of industrial relations among the Donovan Commission's membership. This was likely to render the Conservatives' proposals bolder, and more imaginative or innovative, while also enabling the Party to deride a timid Donovan Report as a wasted opportunity. In effect, the Conservatives could castigate the Donovan Report for being too conservative. Indeed, in anticipation, an internal Conservative paper asserted that: 'Our strategy should … be to undermine the Royal Commission in advance'.[42] Publishing *Fair Deal at Work* shortly before the Donovan Report was intended to achieve this tactical objective, thereby enabling the Conservative Opposition to seize the political initiative, and force the Labour Government onto the defensive.

Fair Deal at Work confirmed the Conservatives' shift to a legalistic industrial relations policy. Its main proposals included:

- Establishment of a new Registrar of Trade Unions and Employers' Associations to oversee the rules of the relevant organisations and ensure their fairness. A trade associated rights.
- A new system of industrial courts to be established, with members recruited from both sides of industry.
- Collective agreements between employers and trade unions would be deemed legally binding, unless the two sides expressly decreed exemption(s).
- Employers would be legally obliged to recognise and bargain with registered trade unions.
- Workers would be granted a statutory right of appeal against allegedly unfair or unjust disciplinary action, including expulsion, by a trade union.
- The range of issues over which a trade union could lawfully pursue strike action would be narrowed, to exclude sympathy strikes (in support of other workers or trade unions), inter-union disputes, and strikes to enforce a closed or 'union' shop.
- A 'union shop' would be permissible provided that: a) the vast majority of workers wanted it; b) stringent safeguards were provided to protect workers who did not wish to be members. The latter would be expected to pay the equivalent of the union subscription fee to an agreed charity. This was an attempt to pre-empt trade union objections about 'free-riders'.

Attempting to craft a compromise between establishing a new post-entry 'union shop' to replace the pre-entry closed shop *and* upholding the right of individual workers to reject trade union membership was not easy. It did not resolve the tensions over how far maximum trade union membership should be encouraged in order to secure more comprehensive collective bargaining in the name of stability in industrial relations. Carr argued that the Conservative Party's approach would permit an employer 'to use his best endeavours to persuade an employee to join the union', but that 'if he moved beyond persuasion to compulsion, then he would become liable for [legal] action for damages'.[43]

However, the proposed protection for non-union members was insufficient to assuage the ideological objections of Conservatives who argued that the difference between the closed shop and the proposed union shop was largely one of nomenclature, and the degree of compulsion involved in both rendered them equally 'iniquitous'.[44] Or, as Dudley Stewart Smith fulminated, the proposed post-entry union/agency shop was 'a continued form of closed shop, plus or minus a few days' which therefore rendered it 'intolerable'.[45]

The Conservatives' objective of outlawing the closed shop acquired even greater significance in the context of the proposal to render collective agreements legally enforceable unless both sides of the industry expressly wished their agreement to be exempt. This raised two key issues. First, legal enforceability was deemed integral to making industrial relations more orderly, predictable and stable, yet this objective would be seriously undermined by either reducing trade union membership overall, or facilitating an increase in multi-unionism. In either scenario, some workers were likely to claim exemption from collective agreements entered into by a trade union which they were not a member of. After all, Robert Carr acknowledged that one of the most important factors underpinning good industrial relations was 'union discipline'.[46] Second, eradicating the closed shop raised the issue of whether non-union members would be expected to adhere to any agreements reached by the designated or officially recognised trade union in their workplace or industry. If not, such workers could conceivably engage in industrial action—to pursue their own separate agreement—which the proposed industrial relations legislation would deem unlawful if pursued by union members. In other words, the Conservatives' planned industrial relations legislation risked establishing a bizarre situation whereby members of the designated trade union would be prohibited from striking in defiance of a collective agreement, but such industrial action would be legally permissible if undertaken by non-union members.

It was therefore agreed that collective agreements would be applicable to non-union members in the relevant workplace or industry, sufficient 'to prevent non-members from taking industrial action contrary to the terms of a collective agreement negotiated by the recognised bargaining unit'.[47] However, this raised a further issue, namely *who* should be deemed legally liable if industrial action was pursued which fell outside the proposed new legal definition of a trade dispute; the relevant trade union (designated as the 'bargaining unit' in a workplace or industry) *qua* institution, or the participating individuals *per se*? The Policy Review Group had decided that if a trade union could unequivocally demonstrate that it was *not* endorsing or encouraging 'unlawful' industrial action, then the individuals deemed responsible should be subject to prosecution.[48] Moreover, under the proposed narrower definition of a trade dispute, any sympathy industrial action in support of these individuals would itself be deemed unlawful.

The complexities and potential contradictions of the Conservative Party's' industrial relations policy, especially the proposals on the (pre-entry) closed and (post-entry) union shops, meant that even by the end of 1969, just months before the imminent general election, senior Conservatives were still struggling to imbue their proposed reforms with greater clarity and coherence. As Quentin Hogg (Lord Hailsham) observed: 'The whole Trade Union law is befuddled at the moment with *ad hoccery*'.[49] An increasingly exasperated Robert Carr complained that modernising industrial relations law was 'like renovating an old house. It has been left virtually untouched for generations, and as soon as you start repairs in one part, you uncover the need for consequential work elsewhere'. He conceded that 'in spite of the enormous amount of detailed work we have already done, there is still a formidable list of subjects requiring further consideration'.[50]

Nonetheless, the Conservative Opposition could take some political comfort from the fact that the Labour Government had itself recently sought to place industrial relations and the trade unions within a clear legal framework, via the White Paper *In Place of Strife*.[51] Labour's legislative proposals had sought to restore authority and order into British industry and workplaces by encouraging employers and trade unions to render collective (bargaining) agreements legally enforceable, and establish a Commission on Industrial Relations to investigate inter-union disputes. However, from the trade unions' perspective, the most controversial proposals in *In Place of Strife* were those which would grant the Secretary of State for Employment the power both to demand that a ballot be conducted before strikes began, and to require those involved to desist from strike action for up to 28 days (and for a further period of up to 28 days if necessary), if established procedures had not been fully pursued to avoid an industrial dispute (this became widely known as the 'conciliation pause'). If the unions refused to comply with such orders, financial penalties could be imposed.

Labour's abandonment of its proposed reforms in the face of strong trade union opposition and open hostility from some senior Cabinet Ministers, most notably James Callaghan, did not dampen the reforming zeal of Conservatives. Indeed, senior Conservatives interpreted Labour's abandonment of *In Place of Strife* as further evidence of the urgent need to tackle the trade union 'problem', and hoped that by including proposals for industrial relations legislation in the Conservative manifesto an electoral victory could be secured. A mandate from the British voters, which the trade unions would be expected to acknowledge, however grudgingly, would legitimise the Party's efforts.

Moreover, senior Conservatives envisaged that the trade unions would be persuaded to acquiesce by virtue of the purportedly positive components enshrined in the proposed industrial relations legislation. This included granting trade unions a corporate legal status in return for registering with the new Registrar, obliging employers to 'recognise' registered unions as the chosen representative of workers for collective bargaining purposes, and establishing the new (post-entry) union shop to maximise membership. These assumptions proved fatally naïve and over-optimistic, and compounded the problems arising from the unresolved contradictions inherent in the Conservatives' imminent industrial relations legislation. If the trade unions had emphatically rejected 'restrictive' legislation from their Labour allies, they were hardly likely to embrace a comparable legal framework imposed upon them by a Conservative government. However, as ideological concerns had come to dominate the Party's policy-making process, strategic questions

concerning implementation and how the reforms would be operationalised were neglected.

The Industrial Relations Bill exacerbates intra-party disagreements

Having won the June 1970 general election, the new Conservative Government made the Industrial Relations Bill one of its legislative priorities. Rapid enactment of its legislation followed, despite the warnings of Departmental civil servants that such haste could yield a defective Act of Parliament.[52] Indeed, while drafting the Industrial Relations Bill, just days after the Conservative' June 1970 election victory, the new Attorney-General (and erstwhile barrister), Geoffrey Howe, confessed that there were 'considerable difficulties in doing exactly what we propose', and that he was therefore 'finding hideous problems of draftsmanship'.[53]

Although outlawing the (pre-entry) closed shop remained a core feature, the practical difficulties and the likely need to permit some exceptions were cautiously acknowledged from the outset. In July 1970, the new Employment Secretary, Robert Carr, conceded to his Cabinet colleagues that it 'might prove desirable to accept … pre-entry closed-shop agreements in one or two sectors where they can be justified' due to the specific character or circumstances of employment. Nevertheless, the proposal to permit post-entry 'union' or 'agency shop' arrangements was reiterated, subject to clear conditions, namely that:

- They were supported by an employer and/or the majority of employees.
- 'Conscientious objectors' should be exempt from any requirement to join a 'post-entry' trade union, but they would be expected to pay the equivalent of the unions' membership fee, either to the relevant trade union, or in the case of those who had strong moral objections to trade unionism, to a charity.
- An employee expelled from a 'union shop' would *not* then be liable to dismissal by the employer.
- It would be unlawful to pursue industrial action, or apply any other pressure on an employer, to dismiss a worker who refused to join (on grounds of conscience), or who was subsequently dismissed from, a 'union shop'.[54]

Carr was adamant that the proposed 'union/agency shop' provisions offered:

> a fair and reasonable balance between an individual's right to choose not to be a member of a union, and his social responsibility to the work group of which he was a member to contribute towards the cost of collective bargaining from which he may be expected to benefit.[55]

The Industrial Relations Bill was given its First and Second Readings in the House of Common at the end of 1970, its main provisions broadly reflecting *Fair Deal at Work*. Although this 1968 policy document had been the culmination of an intra-party policy review and two more years of debates and refinement in lieu of the 1970 general election, there was still considerable concern in the new Cabinet that the resultant Industrial Relations Bill risked being rushed. This apprehension was fully shared by many senior officials in the Department of Employment and Productivity (which became simply the Department of Employment towards the end of 1970).

However, it was also recognised that due to professed importance of the policy, the Bill could not be delayed. This reflected both the increasing seriousness of Britain's economic problems and the need to reassure Conservative backbenchers (and the electorate) that the Government was fully committed to wholesale reform. It was one of the new Government's flagship policies and needed to be prioritised even if this meant that it would be subject to rather more amendments than a Bill usually receives at Committee Stage (following Second Reading on a Bill's principles and purpose).[56] As a senior official in the then Department of Employment and Productivity expressed it, 'massive' government amendments would be required, because the Bill might look more 'like a rock rather than like a diamond' with 'some of the rock . . . wrongly shaped'.[57]

On the vexatious issue of maximising trade union membership to promote industrial order while simultaneously defending the right *not* to belong to a trade union, the distinction between a (pre-entry) closed shop and (post-entry) 'agency' or 'union shop' was reiterated. By this time, though, further consideration had led Carr to abandon entirely his previous willingness to contemplate allowing any pre-entry closed shops. As he explained to the Ministerial industrial relations committee: 'I have concluded that there is really no satisfactory principle on which it would be reasonable to permit certain closed shop agreements'. Granting any exemptions to one or two trade unions or sectors, however strict the criteria or conditions, would inevitably encourage pleas for sympathetic treatment from other unions. This risked allowing the continuation of a closed shop in many industries or workplaces, rendering the proposed Industrial Relations Bill seriously flawed from the outset.[58]

Although this effectively remained the same policy as agreed in Opposition, the drafting of the Industrial Relations Bill and its subsequent passage through Parliament afforded further opportunities for scrutiny and criticism of problematic provisions. It also provided time for new perspectives to be offered. One such source was the Department of Employment and Productivity itself, which was formally responsible for drafting the legislation under the political leadership of the Employment Secretary, Robert Carr, and the Attorney-General, Geoffrey Howe. Regarding outlawing the closed shop, senior Departmental officials quickly identified a potential practical problem. There was no easy way to prove whether an employer had rejected a job applicant because they were not a trade union member or if there was an entirely different and legitimate reason. Possible justifications included unsatisfactory performance in the job interview, or because another applicant, who happened to be a union member, had more (relevant) experience, or better references.[59] This exemplified the type of challenges that policymakers had to be cognisant of if the provisions pertaining to the closed shop were going to be effective.

There was also a Departmental reiteration of the contradiction, which some Conservatives had themselves alighted upon in Opposition, namely the dual desire to strengthen industrial order and stability on the one hand, and the libertarian commitment to enhancing the right of workers *not* to belong to a trade union on the other. This tension was in large part a consequence of injecting the ideological predispositions of the wider Party membership into the reform agenda. Echoing earlier deliberations, officials were anxious that outlawing the (pre-entry) closed shop would result either in fewer trade union members (which would potentially be problematic

for employers pursuing collective agreements binding on all employees in their workplace, company of industry), or an increase in 'multi-unionism' (resulting in an increased propensity for inter-union and demarcation disputes). In either scenario, the outcome was very likely to be incompatible with the professed objective of strengthening industrial order and stability, and *inter alia* reinvigorating the British economy.[60]

It is often the case that senior civil servants, rather than Cabinet Ministers, will have engaged in consultations with relevant organised interests and professional bodies when a change of policy is proposed. The institutional responses or feedback will then be reported to the relevant Minister(s). In the case of the Industrial Relations Bill, and the closed shop provisions in particular, expressions of concern did not emanate solely from the trade unions. On 23 October 1970, for example, representatives of the nationalised industries warned that outlawing the closed shop could weaken the disciplinary power of trade unions, and consequently increase the likelihood of militancy. The post-entry closed shop, it was argued, had worked relatively well in this regard, and in practical terms adequate protections for conscientious objectors already existed.[61]

Similarly, at a meeting between representatives of the Confederation of British Industry (CBI) and the Department of Employment and Productivity, officials heard the former express their broad preference for retaining the pre-entry closed shop, albeit with safeguards for genuine objectors.[62] The Secretary of State, however, was not persuaded, instead seeing the proposed agency shop as a critical 'safety valve' to allow dissatisfied members to challenge the 'exclusive rights' of trade unions.[63] Although the CBI's subsequent written comments on the Consultation Document were broadly supportive of many other aspects of the proposed legal framework, they remained sceptical about whether 'the proposal to protect people seeking employment from discrimination on account of trade union membership, non-membership, or industrial activity will work in practice'. Indeed, the CBI argued that it was 'likely to cause more difficulties than it will solve'.[64] Again, it was recognised that it would often be virtually impossible to prove that someone had been offered or denied employment because they were—or were not—a trade union member. Yet Ministers remained unpersuaded, as their ideological hostility triumphed over industrial realities and political pragmatism.

When the Industrial Relations Bill was published in December 1970, the CBI's employment policy committee met to discuss further recommendations. The minutes are replete with frustration at its failure to influence the government, despite the normally close ideological affinity between the CBI (as the employers' 'peak association') and the Conservative Party. Determined to avoid embarrassing the Government, however, the CBI strategy shifted to trying to influence Conservative backbenchers who it hoped would table amendments on its behalf at the Bill's parliamentary committee stage.[65] CBI leaders understood the political difficulty for the Conservative Party of retaining a form of closed shop which conflicted with its ideological conviction that trade union membership should be based on individual choice, not industrial conscription. Acknowledging the Conservatives' predicament, the CBI's employment policy committee confined itself to endorsing (post-entry) agency shops—as the proposed 'union' shops were now called—albeit with appropriate safeguards, both to protect individual employees with genuine objections to union membership, and to provide designated trade unions with protection against 'troublemakers and splinter groups'.[66] Nonetheless, the refusal or unwillingness of

Ministers to respond favourably to the CBI's concerns remained a source of significant frustration.[67]

Despite the CBI's concerns and criticisms—or perhaps precisely because of them—Carr reiterated to Departmental officials the need to hold firm on the Industrial Relations Bill's outlawing of the closed shop:

> I think we must maintain our current position. Of course, it will create difficulties, and of course there is substance in the points of view of . . . the CBI, and the nationalised industries. But there are difficulties in the present situation, and all the alternatives suggested.[68]

Departmental officials struggled to identify a compromise that both accommodated the concerns of employers and was compatible with the government's strategy to prevent continued *de facto* control of employment by trade unions via the closed shop. To this end, any adjustments to 'rules of admission' in trade union handbooks—the CBI's preference—or toleration of the pre-entry closed shop on the grounds of industrial stability, were acknowledged by DE officials to be incompatible with the Government's strategy for industrial relations reform.[69] Yet there remained a recognition among some Departmental officials that, in exceptional circumstances, and for reasons of pragmatic practicability, there might be case for permitting the traditional (pre-entry) closed shop in industries or sectors strongly characterised by periodic or peripatetic employment.[70] This perspective was subsequently to prove highly prescient.

Meanwhile, there was renewed debate within the parliamentary Conservative Party over the Industrial Relations Bill's provisions to encourage or secure maximum trade union membership via 'post-entry union/agency shops'. There were four reasons for this heightened intra-party debate. First, the incorporation of the closed/union shop provisions into a parliamentary Bill would mean that they moved beyond a policy proposal in Opposition and become an imminent measure about to be enshrined in law. They would be 'real' and thereby acquired greater urgency for Conservative libertarians who disliked the 'union/agency shop' compromise adopted by the Party's leadership, irrespective of proposed safeguards.

Second, but closely related, once the policy was included in a Bill, it provided new opportunities for Conservative critics and opponents of the union/agency shop to table amendments at the Bill's committee stage. The risk was either diluting the proposals or the introduction of much stronger safeguards for non-trade unionists. Indeed, with over 600 amendments tabled at this stage of the Bill (albeit on a wide range of issues, not just the union/agency shop provisions), the Committee entailed 137 Divisions (parliamentary votes), of which 75 were after midnight. Altogether, these Divisions consumed over 27 hours, whereas the Division at Second Reading stage (to endorse the principles of the Bill) only took 12 minutes.[71] In the context of a Bill produced at speed, and therefore without adequate time for the usual internal deliberative processes, this added to the risk of a poorly drafted Act of Parliament.[72]

Several Conservatives have subsequently acknowledged that the Industrial Relations Bill had been overly legalistic, perhaps reflecting the significant role of Conservative barristers, like Geoffrey Howe, in drafting the legislation.[73] The existing literature is united in the view that this was a significant flaw.[74] It was ironic that in attempting to render the Industrial Relations Bill water-tight from a legal perspective, the government unwittingly enshrined rigidities and inconsistencies which weakened it in practical terms when

implemented. Our evidence demonstrates that this was primarily driven by ideological considerations and concerns surrounding party management, although this misstep reinforced the subsequent criticism that many of those most actively involved in drafting the legislation had little direct or real-world experience of industrial relations, and the myriad complexities involved in day-to-day industrial life and the human interactions involved.

The third reason for the renewal or intensification of intra-party debates over maximum union membership was that the legislative proposals became clear to *all* Conservative MPs, bringing them directly to the attention of the vast majority who had not been involved in developing the policy in Opposition. This significantly widened the scope for disagreement. For example, in criticising specific aspects of the Bill, some Conservative MPs highlighted issues which had previously been disregarded, downplayed, or remained unresolved. For example, John Page and Sir Edward Brown (a senior member of the Conservative Trade Unionists organisation) expressed concern that in granting workers the right to belong to *a* trade union, rather than a designated or 'appropriate' trade union, the Government would be encouraging multi-unionism. The resultant fragmentation of union membership, as noted above, was deemed contrary to the goal of fostering more orderly and stable industrial relations.[75]

Fourth, the parliamentary passage of the Industrial Relations Bill attracted lobbying from various employers and trade unions who were unhappy with the provisions concerning the closed/agency shop. Several concerned parties sought concessions or exemptions via legislative amendments. This is quite normal; the relevant Minister(s) or/and backbench MPs will often be encouraged to accept or table amendments on behalf of extra-parliamentary organisations or socio-economic sectors who are directly affected by, or have a material interest in, a Bill.

The Industrial Relations Bill's proposed outlawing of the (pre-entry) closed shop attracted lobbying from two occupational groups, namely the entertainment, and seafaring, industries. Both sectors argued that they had 'certain characteristics in common which distinguish[ed] them from most other sectors', most notably that employment was 'typically of short duration, and the attachment to particular employers [was] the exception rather than the rule'. Consequently, workers in these sectors were 'seldom together in the same company or establishment on two successive engagements' and, as such, they effectively constituted 'a large transient workforce'. This meant they would be unable to establish a 'union shop' to protect and promote their collective interests. They lobbied to be treated as exceptional cases exempted from the Bill's outlawing of the closed shop.[76]

Reflecting the weight of this argument, Department of Employment officials were engaged in ongoing negotiations with Equity (the actors' union) and the National Union of Seamen (NUS) about how these two professions might be excluded from the Bill's ban on the pre-entry closed shop. In the words of one official even before the Bill was on the statute book, they were 'conceding the possibility of legitimising certain closed shop agreements'.[77]

When amendments were tabled during the Bill's committee stage to permit these limited exceptions to the prohibition of the pre-entry closed shop, Carr promised to give them careful and sympathetic consideration. He quickly moved away from his earlier insistance that granting exceptions to any industry or profession would weaken a key

objective of the Bill by encouraging other trade unions to seek similar exemptions.[78] Departmental officials quickly drafted proposals in case it became 'politically desirable or necessary to make some concession to meet those critics—not only on the Opposition benches—who have argued that the agency shop provisions will destroy the position of unions in some industries'. Equity and the NUS embarked on extensive discussions with the Department's industrial relations division, after which the 'fairly persuasive case' was accepted.[79]

Consequently, during the Bill's Report Stage (which immediately followed the committee stage), Carr introduced a new Clause to facilitate an 'approved closed shop agreement' in specific instances where trade union membership would normally be a condition or requirement of appointment or employment. He explained that while the Government remained strongly opposed to compulsory trade union membership, 'we do nevertheless accept the force of representations which have been made from a number of quarters and from *both sides of the House*'.[80] These amendments and associated exceptions exacerbated divisions in the Conservative Party between those MPs who were pragmatically willing to accept a closed shop in specific cases, and others on the Government's backbenches, such as Raymond Gower, who feared that the new Clause might 'knock a large hole in the general principle against the closed shop'.[81] These divergent perspectives were exemplified by numerous sharp parliamentary exchanges.[82]

Another backbencher, William Rees-Davies, lamented that the new Clause permitting an approved closed shop for actors and merchant seamen did not extend to the Writers' Guild of Great Britain (who, he noted, wrote many scripts and screenplays for members of Equity) and the Musicians' Union.[83] Similarly, Peter Emery described the new Clause as 'a step in the right direction', but wanted it to permit even more closed shop agreements. He argued:

> The operation of a closed shop in [an] industry, with one union dominating, will allow the unions to have control over its militants, something which has not happened up to the present. Unlike my right hon. Friend the Member for Kingston-upon-Thames [Mr. Boyd-Carpenter], I think that a trade union should have the right to preclude certain people from being members of the union, whether by depriving them of their union cards if they are already members, or by stopping them from obtaining employment, because the trade union believes that such people will not assist in operating the arrangements which the union has entered into, and I hope registered, under the Bill.

In response to his Conservative colleagues who vehemently opposed the closed shop on the ideological grounds of preserving individual liberty and/or as a matter of principle, Emery insisted that an individual trade unionist should *not* equally have a 'right to be able to disrupt an industrial organisation' by single-handedly and disruptively defying collective agreements entered into by the official (and quite possibly democratically elected) union leadership. He insisted that 'under a closed shop … It will be possible for that person to be disciplined and perhaps to have his trade union card taken away, if that is necessary'. After all, Emery reiterated: 'One of the matters with which this Bill is principally concerned … is to obtain a greater degree of industrial discipline'. He continued: 'If the Bill can strengthen the powers of trade unions in this matter, it is a good thing'.[84] The inherent contradictions and inconsistencies embedded within the government's strategy, which these intra-party disagreements reflected, remained unresolved as the Bill wended its way to the Statute Book.

Enforcing the 'agency' and 'approved closed shop' provisions

Once enacted, the 'agency shop' and 'approved closed shop' provisions were implemented in stages. From 1 December 1971, trade unions could apply for agency shop status, making it a condition of employment that a worker must join a designated trade union. Individuals could now opt-out of union membership, but were still required to pay the subscription fee, or, alternatively, if they held genuine deeply held conscientious objections to joining a union, contribute the equivalent sum to charity. Approved closed shops, envisaged as only being permitted in exceptional circumstances, required a joint application on the part of the trade union and employer. This contrasted with agency shop arrangements, which could be granted without an employer's agreement. From 28 February 1972, under Sections 5 and 7 of the Act, it became an 'unfair industrial practice' for an employer to infringe an employee's rights in relation to trade union membership. All pre-entry and post-entry closed shops in effect became unenforceable under the law.[85]

Despite this radical departure from long standing voluntarist practices, the new closed shop provisions had very little *direct* impact on industrial relations. This was because both agency shop and approved closed shop agreements *only* applied to registered trade unions. This tied their fate to the success of registration and the Act's new Registrar of Trade Unions and Employers Associations (RTUEA). However, the Government's decision to place both registration and enhanced individual rights among the non-negotiable tenets of industrial relations reform exacerbated consternation on both sides of industry at the limited consultation over the Act's provisions. This further soured relations with the trade unions.[86]

In March 1971, the TUC held a Special Congress on the Industrial Relations Bill. It decided that no affiliated trade union should cooperate with the new institutions or register under the legislation.[87] The Government's immediate challenge was now not related to enforcing the ban on the closed shop, but rather how to combat the TUC's 'non-cooperation' policy. Ministers were flummoxed because they had not foreseen registration as the immediate flashpoint for resistance. Not only had the Cabinet assumed that trade union condemnation of the legislation was mostly rhetorical or performative to be followed by acquiescence, it was also hoped that access to the new 'closed shop' provisions would provide an inducement for trade unions to register.[88]

The NUS and Equity did register, as expected, to secure approved closed shop agreements. Several other TUC-affiliated trade unions wavered, with access to the agency shop among the stated reasons for registering.[89] However, efforts to cajole wavering unions onto the register proved largely unsuccessful. After 3 months, officials at the RTUEA admitted they had 'been hampered by the unequivocal attitude of a number of influential affiliated unions towards TUC policy on registration'.[90]

The TUC's campaign against registration and the Act's institutions was so successful that 'agency shop' provisions quickly came to be seen as an irrelevance to practical industrial relations. The CIR only ever recommended two approved closed shops—the National Union of Seamen and Equity, noted above—and, as previously discussed, this reflected the particular circumstances of the two unions and their members.[91] Equity entered a period of 'rancorous turmoil' as the decision to register remained a constant source of destabilising internal wrangling between 1972 and June 1974, when the union

eventually deregistered.[92] For many other trade unions, the risk of being suspended or expelled from the TUC was a powerful incentive against registering, even though non-registration precluded access to the potentially beneficial provisions of the Act.[93] As Jack Jones, General Secretary of the Transport and General Workers' Union, observed: 'The Government's plan to use registration as a means of disciplining unions was shattered … Refusal to register was seen as a major act of defiance against the Government's labour legislation'.[94]

The Industrial Relations Act was then fatally weakened in the summer of 1972, when a protracted national dispute involving dock-workers in Hull, Liverpool, and London culminated in the NIRC committing five dockers to Pentonville Prison for contempt of court.[95] In the immediate aftermath of this dispute, the NIRC was heavily politicised, strengthening the resolve of trade unionists to resist the Act.[96] Even before this crisis, Robert Keith, the Chief Registrar (RTUEA), accepted that non-cooperation made it unlikely there would be any significant progress in the foreseeable future. He decided against hustling TUC affiliates onto the register.[97] By the end of June 1972, the TUC's Finance and General Purposes Committee voted to suspend every affiliated trade union remaining on the register. This catalysed the remaining wavering unions to deregister, including the Electrical, Electronic Telecommunications and Plumbing Union, the Iron and Steel Trade Confederation and, soon after, the Civil Service Union.[98] The following month, a senior Departmental official conceded: 'The prospect of any significant move towards registration, short of fundamental changes in the Act, now seemed remote'.[99]

The fact that employers' concerns had been mostly disregarded during the limited pre-implementation consultation process proved to be another strategic error by Ministers. The CBI had already circulated guidance to affiliated employers urging a non-confrontational approach when managing existing closed shop agreements with recognised trade unions. Employers faced an imminent quandary when such agreements, many of which were long-standing, became legally unenforceable. Employers feared the reaction of trade unions if otherwise satisfactory recognition arrangements were disrupted. There was also apprehension about how employers should manage the very real possibility of recruiting an individual who exercised his or her right *not* to become a member of a recognised trade union, or an existing employee terminated their union membership.

When exploring potential recommendations to militate against the worst consequences of trade union non-compliance, the CBI fully acknowledged that it would be 'unrealistic' to urge employers to 'adopt a positive policy in conformity with the Act'. To do so would be 'provocative and could precipitate trouble' while 'in some cases existing arrangements would take time to unscramble'.[100] The 'memorandum of guidance' issued was limited to clarifying the law and offered purely pragmatic advice. Employers were encouraged to take positive action to stabilise difficult situations and exercise common sense to avoid inter-union rivalry. This included following the provisions of the new Code of Industrial Relations Practice, which advised granting recognition and sole bargaining rights to unregistered unions when it promoted good industrial relations.[101] The confirms the conclusion of the most authoritative contemporary study, that 'employers generally did all they could to avoid legal decisions on their closed shops'.[102]

Although the TUC reluctantly permitted affiliated unions to defend themselves in court (contrary to its general stance of non-cooperation with the Act's institutions), the trade unions' overall policy was robust and remained effective. A TUC review

conducted at the height of industrial unrest on the railways and in the docks hailed 'a very satisfactory response' from affiliated members. Despite non-registration resulting in 'certain disadvantages', including sacrificing access to the agency shop provisions, most trade unions still deregistered. Those that did not had either struggled to secure adequate support from the membership under their rules or, alternatively, favoured registration to further their own sectional interests. To reverse the policy now would be a 'breach of faith' and the admittedly 'distasteful' decision was therefore taken to expel from the TUC those unions that remained on the register.[103] By the middle of 1973, the TUC publicly proclaimed that non-cooperation had left the Act 'largely irrelevant to industrial relations' precisely because 'the overwhelming majority of employers had sensibly ignored the battery of legal weapons that the Act makes available'.[104] This triumphalism was underpinned by a TUC survey illustrating that most unions had maintained their pre-Act memberships levels, and 'many employers' were cooperating with unions to maintain '100% membership arrangements' despite the closed shop being outlawed.[105]

Employers feared the potential disruption which could be caused by individual employees exercising their new rights as contributing non-members who were freed from existing sanctions under trade union rules. A notable example was the *Langston v AUEW* case, where 'even the law had to bend to the inevitable'.[106] Here, a former trade unionist, employed by Chrysler, was fighting to continue his employment despite the *de facto* existence of a closed shop. This was unacceptable to the union in question, the Amalgamated Union of Engineering Workers. He was suspended on full pay, before eventually being dismissed by the employer. This was contrary to the Act—a fact the company accepted—and compensation was offered. However, the NIRC refrained from ordering Langston's reinstatement because to do so would not promote 'good industrial relations'.[107] The TUC had warned that the Act would create exactly this type of conflict. The TUC's General Secretary, Vic Feather, had even told court officials privately that individuals like Langston, who had 'a history of troublesome litigation', had the power under the Act to leave 'chaos in their wake'.[108]

That this case had wrangled from July 1972 before reaching its conclusion in May 1974 – involving industrial tribunals, the NIRC (twice), and Court of Appeal—highlights the complexities of the Act's provisions concerning the closed shop. Again, the tensions between stable industrial relations and individual liberty in the Conservative Government's objectives were painfully clear. In replacing the pre-entry closed shop with the post-entry agency shop, Ministers were potentially reducing the number of workers over whom trade union leaders would be able to exercise authority.

Moreover, this was one of several cases involving individual rights and the closed shop where ex-trade unionists successfully played the NIRC and Court of Appeal off against each other.[109] When the Langston case was eventually resolved, the labour editor at the *Financial Times*, John Elliot, wrote that the outcome was evidence that Sir John Donaldson had given up on any notion that closed shops were now unlawful, even if the Act suggested otherwise. The *Langston* case, he argued, underlined 'the IR Act's total failure to stop the closed shop practice'.[110] This case confirmed that where a long-established closed shop existed, employers would rather pay compensation for unfair dismissal than take on the union concerned. Moran argues this was 'a small price to be paid for industrial peace'.[111] Writing in early 1973, David Hills, Secretary to the NIRC, admitted 'the position

remains much as before the Act, with tacit unlawful closed shops persisting in a wide range of industries'.[112]

Conservative opponents of the closed shop were naturally left frustrated at the overall ineffectiveness of the Act. For example, a motion passed by the Wessex branch of the Conservative Trade Unionist National Advisory Committee complained that 'in spite of the Industrial Relations Act, the non-unionist is still often prevented from getting a job … because illegal closed shops still exist with the condonation of certain managements'.[113] As a consequence of months of fraught relations in British industry, tribunals and the NIRC showed increasing reluctance to enforce individual rights under Section 5 of the Act. This included the provisions pertaining directly to instances where an unlawful closed shop operated with the tacit agreement of both trade union and employer. This reflected Donaldson's acknowledgement that greater flexibility was required to promote industrial peace, although a desire to begin repairing the Court's tarnished image also informed the shift in approach.[114] Overall, very few Section 5 applications were ever made. Between 28 February 1972 and 1 July 1973, a total of 325 applications were submitted, but the vast majority of these failed to reach a conclusion. It is not even recorded how many directly concerned closed shops.

Devising a position on amendment

Although the Industrial Relations Act's closed shop provisions proved inconsequential or ineffective, they still represented an issue of considerable political salience and ideological tension in the Conservative Party. The Government's official stance, expressed by Heath in the House of Commons on 3 July 1972, was that it would be willing to consider amending the Act, but only after it had a 'proper period of operation'.[115] In a meeting with TUC's General Council, Heath insisted that a proper judgement could not be reached until 'it had been fully tried out and trade unionists had cooperated in working the institutions created under the Act'.[116] This included the agency shop and approved closed shop provisions.

Behind this public stance, Ministers and senior officials were discretely considering how the Act might be amended. A working group was established in July 1972, chaired by a senior Department of Employment official, Kenneth Barnes. It initially focused on three areas: the closed shop, the consequences of non-registration, and sanctions against individual trade unionists and union officials. On the closed shop, Departmental officials acknowledged that the right *not* to belong to a trade union was widely perceived by trade unionists as both an 'opt out' of collective labour relations *and* a tool to weaken established unions. The group's initial assessment acknowledged that most trade unions remained 'bitterly hostile' to outlawing the closed shop, and were 'determined to exploit every possibility of maintaining in force 100% membership'.[117] Officials considered the possibility of abandoning the agency shop and reinstating closed shop agreements subject to 'suitable safeguards' for conscientious objectors and the ability of employees to challenge a closed shop through a workplace ballot.[118]

However, there were several political challenges to overcome. The Government had rejected the TUC's call to suspend the Act, and Ministers reiterated the need to grant the legislation sufficient time before any objective examination of criticisms and deficiencies was conducted.[119] This inevitably made handling any negotiations around the Act, or

a formal income policy (which was by now deemed necessary due to trade union non-cooperation over the Act and inflationary wage claims), extremely challenging. In a document exploring amendments that might facilitate cooperation—described as 'necessarily tentative'[120] – the closed shop featured extensively. It argued the trade unions' stance was well-captured in a recent article by Lord Wedderburn, noting: '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'.[121] This was of course juxtaposed to the ideological predisposition of Conservatives opposed to the closed shop, many of whom occupied senior positions in the government.

Whilst officials took issue with the veracity of trade union criticisms levelled against the Act, it was accepted that employers broadly concurred with them. The document concluded that:

> it is probably a fair assessment that employers generally would be prepared to countenance the reinstatement in law of the closed shop if this would help to remove some of the bitterness from the present industrial relations scene, and strengthen the hand of the moderate and pragmatic trade unionists.[122]

Options included permitting employers and trade unions to operate a closed shop subject to a prior ballot of the relevant employees to gauge the scale of support, or allowing closed shops to be established or operated voluntarily by employers and trade unions, subject to the right of employees to challenge their introduction or continuation. How Ministers would 'sell' this to Government backbenchers, though, was flagged as the primary obstacle. Such choices depended on 'the tactical and political circumstances in which any "deal" is made'.[123]

The most that the Government was willing to consider at this juncture was a re-examination of the legislation conducted by an inner circle of trusted civil servants. The limited task was to examine potential amendments to 'make the Act work better—not water it down'.[124] There was a willingness to consider oft-repeated criticisms of the closed shop provisions and to examine options to amend registration to broaden access to agency shops. However, the underlying assumption was that the Act was broadly correct. There was to be no criticism of its original architects. Participants in these discussions were advised to 'ask ourselves constantly how far we are prepared to go without cooperation from the trade unions of a kind, and to a degree, which they have not so far shown themselves willing to give'.[125]

Departmental officials struggled to reconcile the apparent incompatibility between the Government's commitment to enshrining individual workers' rights under Section 5, and the view shared by most trade unions, and many employers, that the traditional closed shop was necessary to secure industrial order and peace. From the TUC's perspective, the recent legal decision in the docks dispute strengthened the argument for the closed shop to secure union discipline. This was because one outcome of the legal wrangling was that the unions, not individual trade unionists, could now be held liable for potentially unlimited fines if members defied the NIRC. Yet when Dai Davies, General Secretary of the Iron and Steel Trades Confederation and TUC General Council member, reiterated that union discipline was ineffectual without the ultimate threat of expulsion, officials rejected

the argument as it would involve diluting the right to belong to a trade union and, relatedly, the right *not* to be unfairly dismissed.[126]

This dilemma had been widely acknowledged within the Department for some time. It went to the heart of the Government's predicament:

> To proceed along these lines would make a substantial inroad into the Act's abolition of the closed shop, and as such would be extremely unpopular with the Government's supporters. Moreover, it would be making substantial inroads at a point where the closed shop bears most heavily on the individual.[127]

In an August 1972 brief for Maurice Macmillan (who had succeeded Carr as Employment Secretary in April 1972), prepared in advance of a meeting with CIR officials, it was stressed that there should be *no mention* of the Departmental group discussing potential amendment of the Act. Despite public criticism of the Act in *The Times* by retired Law Lord and life peer, Baron Patrick Devlin, officials insisted: ' . . . we do not want to give impression that the Government is contemplating any early move, but it has said it will be prepared to review after a fair period of trial'.[128]

The following month the first substantive memorandum on amending the Act emerged. Ken Barnes insisted: 'There is no politically acceptable justification for a retreat from the Act's agency shop concept as a unilateral gesture by the Government'. A stalemate was apparent as the same document acknowledged that 'if it ever came to a deal with the TUC, it would probably be necessary to abandon the agency shop and legitimise the closed shop, but provide for its introduction or continuance to be subject to challenge by ballot by (say) 20% of workers affected'.[129] Not only was a political trade-off with the TUC increasingly unlikely, any such deal would almost certainly have proven unpopular among many Conservative backbenchers, particularly those on the Right of the Party who had been most enthusiastic about legislation to curb the trade union power and were therefore most disappointed at the Government's perceived capitulation to union resistance.

The government's predicament was compounded by the fact inflation continued to rise rapidly. The pre-Thatcherite view was that this was fuelled by price increases invoked by employers in response to higher wage costs conceded in the face of trade union power. Whilst the primary Government objective was to explore 'in a necessarily tentative way' the potential to modify the Industrial Relations Act, it also increasingly needed to secure trade union cooperation with incomes policy. Ministers recognised that 'any valid and politically defensible compromise' on the Act would have to be capable of 'satisfying the TUC whilst not putting the Government in an untenable position in relations to its supporters'.[130] This would require corresponding concessions from the TUC, including delivering a commitment to wage restraint. Minsters and Departmental officials were seeking a 'middle way' between not diluting the Act too much and not antagonising the unions by appearing intransigent, such that any agreement of wage restraint would prove to be insurmountable.

With the future of the Act in question and the realisation that trade union concessions on wage restraint were unlikely, the Heath Government found itself contemplating a statutory incomes policy to curb inflation. This was aways likely to further antagonise the trade unions. Not only did incomes policy represent considerable state interference in collective bargaining, but the Heath Government had been elected in June 1970

committed to restoring 'responsible' collective bargaining after a series of increasingly unpopular incomes policies pursued by Harold Wilson's Labour Government (which had itself entered Office in 1964 rejecting a formal incomes policy).[131] Many Conservatives had assumed that by restoring the authority of trade union leaders over their members, the Industrial Relations Act would obviate the need for an incomes policy.[132] However, at least one Cabinet Minister, Reginald Maudling, was never convinced by this perspective, particularly as the Government itself was effectively the employer of workers in nationalised industries and the public sector.[133]

In this context, there was great reluctance to dilute the disciplinary aspects of the Act without reciprocal concessions from the TUC. The closed shop became little more than a bargaining chip that might facilitate a softening of trade union hostility as the need to adopt an incomes policy solidified. 'The ideal solution', Barnes argued, 'would be to preserve the main structure of the Act (including registration) but to offer enough concessions to get the unions to register'.[134] But there were few incentives for the TUC to accept such concessions as it was negotiating from a position of relative strength. Senior Departmental officials did not believe it was possible to reach a meaningful deal with the TUC without offering a total repeal of the Industrial Relations Act. Politically, this was out of the question. A unilateral change of policy was expressly rejected because:

> The 'package' would … 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).[135]

In the event, the TUC barely raised amendment of the Act during the eventual tripartite talks over incomes policy. Instead, talks broke down over the TUC unwillingness to accept statutory control of wages, leaving the government no option but to impose a 90-day freeze on both price and wage increases in November 1972. A phased approach to statutory incomes policy followed thereafter.[136] The Government was now effectively pursuing *two* major policies to which the trade unions were implacably opposed; a legalistic industrial relations policy and a statutory incomes policy to restrain pay increases for the foreseeable or medium-term future. The government was now repudiated from the Right of the Party on two grounds: its perceived capitulation to the trade unions over the Act *and* its apparent betrayal over the commitment not to return to a formal incomes policy.[137]

Too little too late

Having failed to reach an agreement with both sides of the industry on a voluntary incomes policy, finding a conciliatory position on the closed shop proved impossible. The fact that the government was now hampered on two fronts was reflected in the subsequent debates over whether—and, if so, how—the Industrial Relations Act could be amended. The challenge was finding a route forward that was satisfactory to the TUC, the CBI *and* Conservative backbenchers. In early 1973, the Conservative party's Central Policy Review Staff (CPRS) noted that it 'would be an extremely delicate political operation for the Government to retrace its steps by legalising the post-entry closed shop'. A row back might conceivably be acceptable to the Government's supporters if strong legal

protection was provided to workers who had genuine conscientious objections to trade union membership, such as ensuring that a minority of employees—it suggested 10% – could challenge a closed shop through petitioning the NIRC.[138] However, most Ministers still believed that the agency shop was the most sensible option. The main challenge was largely presentational.

The perspective from within the newly created institutions was inflected with practical considerations. For the NIRC, the reality was that the *de facto* closed shop existed irrespective of the Act. David Hills, Secretary to the NIRC, concluded that:

> the only practicable reform would be to remove the restriction on agency shops to registered unions, leaving the basic provisions as to agency shop itself unchanged. However, this would be most unlikely of itself to bring an end to existing extreme forms of closed shop, and the confrontations these entail. There might be more optimism with regard to unions in unorganised sectors, where voluntary agency shops might grow, bringing a gradual acceptability of the system. The machinery for compulsory agency shops is of course likely to remain unused, blocked by the TUC opposition to the institutions themselves.[139]

As Lord Donaldson, President of the NIRC, had moved towards accommodating the closed shop in the pursuit of 'good industrial relations', his position was also primarily tactical and pragmatic. He informed officials that:

> whilst the unlawful closed shop is at present a fact of life which may have to be accepted for the time being, the aim should be to erode it into agency shop. In terms of presentation the tactic should be to abolish the agency shop and re-write the attributes of a permitted closed shop.[140]

If an acceptable presentational process could be found, Donaldson wanted the NIRC to approve a form of closed shop after the CIR had reported, and both parties—trade union and employer—agreed. At this stage, officials considered this a 'fair point'.[141]

By the middle of 1973, officials were briefing the Secretary of State that 'the ban on the closed shop is virtually unenforceable', adding that 'there would be wide support among employers for recognising this fact'.[142] Soon after, the Institute for Personnel Management argued publicly that as there was no prospect of the trade unions diluting their opposition to the Act's prohibition of the closed shop. The group contended that it should be legally permitted, precisely because the ban was unenforceable.[143] Similarly, the Engineers Employers' Association argued that the situation was unstainable and that the law 'should be brought closer into line with the existing situation in industry', even if this meant a recalibration 'to increase collective rights at the expense of individual rights'.[144]

It was suggested that this could be achieved through relaxing registration as the access route to the agency shop, or, alternatively, introducing a new concept that amalgamated agency shops and 'approved' closed shops, to permit 'post-entry' closed shops. This was favoured on three grounds. First, it better reflected everyday industrial relations. Second, the risks associated with industrial disputes brought about by maverick individuals exercising their rights would be eliminated. Third, by stabilising collective bargaining units, the formation of splinter groups and unions would be prevented. And, crucially, the *pre*-entry closed shop would remain outlawed.[145]

The extent to which these practical suggestions directly impacted ministerial decision-making is difficult to ascertain. Nevertheless, a pragmatic acknowledgement of the

industrial reality in relation to the closed shop had permeated most organisations outside of the Government. The CBI's employment policy committee concluded that 'the law must recognise reality' before admitting that the 'unions have managed to frustrate the purpose of the Act, and the present position is detrimental to good industrial relations'.[146] Despite being unable to reach broad agreement on amending the Act, the CBI's stance now focused entirely on 'the practicalities of [the Act's] operation' instead of the 'philosophical considerations' that hampered Conservative politicians who were compelled to look to the Parliamentary Party and wider membership. The CBI explicitly called for the post-entry closed shop to be legalised because an outright ban was simply unenforceable.[147]

Trade unions' successes in resisting the Act—especially registration and the closed shop provisions—emboldened the movement. This was bolstered when the Labour Opposition pledged to repeal the Industrial Relations Act if it won the imminent general election. This became an integral component of a comprehensive 'social contract' with the trade unions. Illustrating this confidence, when Feather met Donaldson in February 1973, the TUC's General Secretary insisted that '[t]here is no need to amend the Act as it has effectively been by-passed'.[148] This argument was reiterated to the Prime Minister and senior officials in early July and August 1973.[149]

Behind the scenes, the government was dancing on the head of a pin as it tried and failed to square the consequences of its broader philosophical concerns with practical industrial relations. For example, Macmillan had already 'agreed that the closed shop had to be made acceptable' in April 1973. However, despite his preference for permitting the closed shop with safeguards (i.e. a 20% membership challenge and the right of appeal against subsequent expulsion), he was always concerned about individuals being expelled by a trade union for minor reasons and then struggling to find work if there was no effective appeal procedure.[150] Whilst the Government's formal position remained that the general ban on the closed shop should be retained, the direction of travel was that registration should not be a condition for entering into agency shop agreements, adjusting the right *not* to belong to a trade union in the manner now broadly accepted by Macmillan. But this was all caveated by acknowledgement that there was now only a 'remote prospect of any agreement or understanding' with the trade unions.[151]

This ultimately prevented any progress on amending the Act. The Government's official stance remained that:

> the agency shop is the best available compromise between union security and individual rights, that if we can reach an accommodation on registration that barrier to use of the agency shop should disappear, and that on this basis the agency shop concept could for the first time be given a fair trial.[152]

Ministers were in an obvious quandary; there were clearly serious problems with the practicalities of the Act, including extensive (and unforeseen) non-compliance by most trade unions. But the Government was unable to secure agreement, either within the Conservative Party, or with the TUC and CBI, on acceptable or practicable amendments to the legislation. A political stalemate ensued.

When Macmillan met with Robert Carr, Geoffrey Howe, Sir William Armstrong (Cabinet Secretary) and Conrad Heron (recently appointed Permanent Secretary in the Department of Employment), the status quo was retained, with putative concessions to the TUC

framed as nothing more than a 'fallback position'.[153] Even then, any willingness to entertain amendment of the Act was to be introduced incrementally, starting with rescinding the registration rules requirements and the investigative powers of the Registrar, only progressing towards consideration of legal immunities if any talks progressed in a meaningful way.[154]

In his final contribution as Secretary of State for Employment, Macmillan was forced to admit that the success (from the trade unions' perspective) of non-registration had meant that 'the Act has remained untried'.[155] In the final months of the government, and with further major industrial unrest imminent in the coal mining industry, William Waldegrave, then of the CPRS,[156] wrote to the Prime Minister's Private Secretary, Douglas Hurd, reiterating that registration and the post-entry closed shop were the 'chief irritants' in the Act. He argued that, given the 'closed shop is historically closely involved in the whole ethos of British unionism', there were persuasive grounds to make 'concessions ... without affecting the essential purposes of the Act'.[157] When the CPRS offered the Prime Minister its recommendations for amendment in January 1974, it presented the legal framework as an advancement in industrial relations, but believed that concessions were necessary because 'the baby must at all costs be kept safely in the bath'.[158]

The water to be discarded was, first, registration, precisely because it was the 'focal point' of trade union resistance and, second, the ban on the post-entry closed shop, which ought now to be legalised alongside requisite statutory safeguards individuals who refused to join. The pre-entry closed shop, however, was described as 'more objectionable' precisely because it provided trade unions with an effective veto over who an employer could recruit. Yet even here, it was now suggested that some concessions might be worth considering.[159]

With William Whitelaw appointed Secretary of State for Employment at the end of 1973, one final meeting was held among senior figures, chaired by Robert Carr (now Home Secretary). Whitelaw accepted that concessions on registration were needed, not least because he could see no possibility of the trade unions softening their stance otherwise. The intention was that by allowing unregistered unions access to the agency shop, the Act could operate as originally planned and thereby avoid the need to legalise the post-entry closed shop.[160] The fallback position was to legalise some type of approved closed shop with safeguards, if this proved to be the only way to improve relations with the unions.[161] It was hoped that productive discussions with the TUC could be conducted if the Conservatives were re-elected with a renewed mandate.[162] After months of political paralysis, there was now a settled position in two key areas:

(1) *Registration*. It was reluctantly acknowledged that this aspect of the Act was not working effectively, and that an alternative 'less controversial' means of securing trade union compliance was needed.
(2) *Closed shop*. Amending the registration requirement would open agency shop agreements to currently unregistered unions and give the provisions the 'fair trial' that the government had been calling for. The 'fallback' position was allowing the post-entry closed shop in specific circumstances alongside safeguards for individuals.

Although Conrad Heron remained 'far from convinced that the TUC could be bought off so cheaply',[163] the dominant view among relevant Ministers was that this package of potential concessions might prove acceptable to moderate trade union opinion in any post-election negotiations.[164]

This was too little, too late. The NUM balloted its members between 31 January and 1 February 1974, returning an 81% majority in favour of a strike. This was scheduled to commence on 9 February.[165] The Conservative Party never found a route through the quagmire that amending the Act proved to be. Heath called a General Election to be fought on the question of 'who governs Britain?' The Conservative Party manifesto pledged a general commitment to retaining the Act, albeit promising to consult both sides of industry (employers and trade unions) on any subsequent amendments. The closed shop itself was not mentioned.[166] This never happened as the Conservative Party was not re-elected in February 1974. The new Labour government enacted the Social Contract, with the closed shop at the heart of a renewed collectivist ethos and tripartite arrangements.

The tribulations of British industrial relations continued, however. The lessons of these years of turmoil profoundly shaped the future approach of Conservative politicians, leaving abolition of the closed shop as a key policy priority for the Party's future industrial policy. Margaret Thatcher's leadership placed even stronger emphasis on the principle of Individualism rather than Collectivism. This meant that the individual liberties of workers were prioritised over the rights of trade unions. However, the enhanced rights that employees were to be granted *vis-à-vis* the unions would be matched by a corresponding diminution of workers' rights in relation to their employers. A 'managements right to manage' became a core principle of Thatcherite industrial relations reform, in tandem with advocacy of 'labour market flexibility'.[167]

When eventually returned to office in 1979, the closed shop was weakened, and ultimately outlawed, via a series of 'Employment Acts', whose incremental or step-by-step enactment clearly reflected lessons learned from the failures of the Heath Government's Industrial Relations Act a decade earlier.[168] Instead of a single piece of legislation which sought to achieve too much, too soon, and provided the unions with a clear target against which to mobilise their members, the Thatcher Governments gradually but decisively weakened the trade unions, and eroded the closed shop before eradicating it altogether. Alongside this legislative programme, the unions were further weakened by deindustrialisation, the consequent diminution of their membership, and a growing political consensus that flexible labour markets were a prerequisite of economic prosperity and employment. In this context, New Labour's subsequent Third Way perspective was that individual rights should be promoted through European Union and domestic courts, not collective self-regulation by trade unions and employers.[169]

The other crucial lesson learned by the Thatcher was to classify breaches of trade union laws as civil, not criminal, offences. This offered two key advantages. First, legal cases against a trade union supposedly acting unlawfully would usually be instigated by affected individuals, such as employers, individual workers, or maybe members of the public, rather than the Government itself. This was intended to extricate Ministers from direct involvement in industrial disputes and associated court cases—Ministers could claim (however, disingenuously) that any legal proceedings against a trade union were a purely private matter.

Second, by designating breaches of industrial relations legislation as civil, not criminal, offences, any successful prosecutions against trade unions would be punishable by fines, not custodial sentences. This avoided creating martyrs who might otherwise attract public sympathy, putting immense pressure on Ministers to intervene to secure their release (as had happened under the 1971 Act).[170]

The failure of the 1970–74 Act thus proved to be instructive for the next generation of Conservative politicians. The outlawing of the closed shop—the culmination of decades of tensions between ideologically-inspired conviction politicians and pragmatic conciliators within the Conservative Party—transformed the industrial relations landscape, rebalancing industrial power and ultimately emasculating the trade unions.

Conclusion

The Conservative Party's intra-party disagreements and difficulties in seeking to outlaw the trade union closed shop via the 1971 Industrial Relations Act were central to its downfall. This article, based on primary archival material, illustrates how, as a result, an ostensibly simple policy, based on clear objectives, proved far more difficult to draft, then enact, in practice. Senior Conservatives increasingly discovered the complexities of industrial relations, particularly their inter-connected and interlinked character. Those sections of the Conservative Party and civil service most closely involved in devising a policy to outlaw the closed shop found that such a ban was not a straightforward and self-contained policy but instead had inconsistent implications and contradictory consequences for the Conservatives' avowed objective of enhancing industrial order and stability. It was also a policy which urgently required the 'consent of the governed', which in this instance meant the acquiescence of the trade unions.

Perhaps most crucial of all, the Heath Government's highly legalistic approach to reform failed to convince the public at large that the time had come for a reorientation of the relationship between the state and trade unions. For example, when there was a highly disruptive miners' strike in 1972, a Gallup poll found that 52% of the British public sympathised with the miners.[171] It was *during* the 1970s that public concern about trade union power and/or the impact of strikes increased, such that by late 1978 and early 1979, they were widely viewed as the most important issue facing Britain.[172] The widespread disruption and inconvenience caused by the 1978–79 'winter of discontent' was instrumental in finally turning the public against the trade unions, although subsequent scholarly analysis suggests that much of the negative impact of these particular strikes was exaggerated for ideological and partisan purposes, and that individual or localised hardships (albeit genuine or traumatic to those directly or personally affected) were portrayed as widespread due to 'selfish' unions.[173]

It is widely acknowledged in the existing literature that the Act contained contradictory aims and objectives. Building on this, we show how the Heath Government strayed away from pragmatism by trying (and failing) to accommodate ideological concerns but to the detriment of policy design and implementation. We reveal the numerous ignored warning signs at all stages of the policy process. The result was an approach to reform that failed to appreciate the strength of dissenting feelings on both sides of industry regarding outlawing the traditional closed shop. The striking failing here is that key policymakers,

including Geoffrey Howe and Robert Carr, were aware that any legislative reform might result in 'multi-unionism' or/and more *non*-trade unionists and that this outcome would almost certainly generate greater instability and disorder in the workplace.[174] Yet, our research illustrates that the strength of feeling in industry against this aspect of reform was too easily, dismissed despite the fact that weakening the authority of employers and trade unions was contrary to the stated aims of the Act.

Despite drafting difficulties and warnings by Departmental officials that the Bill needed considerably more refinement, Ministers' decision to introduce it to Parliament quickly, and with only limited consultation with employers and trade unions, proved disastrous. The Government's failure to heed the criticisms of employers was most damaging. Numerous employers could foresee many of the innate and imminent practical difficulties with the legislation. In the event, the Industrial Relations Act quickly unravelled during its practical implementation. The Conservative Party sacrificed a pragmatic approach to policymaking in its attempt to achieveits wider ideological objectives regarding the closed shop specifically and industrial relations generally. However, despite the failure of the Act to reform the closed shop, our evidence demonstrates the degree of support for these provisions among key figures in Heath's government to the bitter end. Attitudes towards the trade unions and closed shop hardened following its double electoral defeats in 1974.

When the Conservative Party returned to office in 1979 following the Winter of Discontent, the path was set for an incremental, step-by-step, approach to trade union reform, albeit one whose outward caution belied a stronger determination to persevere. This time there would be no abandonment or 'U-turn' in the face of predictable trade union hostility and rhetorical denunciations. Instead, in this brave new world of individual over collective rights, management's right to manage, and flexible labour markets, the previous system of voluntarism, quasi-corporatism, incomes policies, and acceptance of the trade union closed shop, quickly became historical relics of a bygone era, along with the 1971 Industrial Relations Act itself.

Notes

1. Cited in Campbell, *The Industrial Relations Act*.
2. For a detailed overview, see Warner, *Who Governs Britain*.
3. Taylor, *The Heath Government and Industrial Relations*, 166.
4. e.g., Kahn-Freund, *Labour and the Law*; Wedderburn, *Labour Law and Labour Relations in Britain*, 290; and Weekes et al., *Industrial Relations and the Limits of the Law*, 220.
5. Taylor, *What About the Workers?*; and Warner, *Who Govern's Britain?*
6. e.g., Crouch, *Class Conflict and the Industrial Relations Crisis*; Dorey, *Comrades in Conflict;* Wedderburn, *Labour Law and Labour Relations in* Britain; Marsh, *The New Politics of British Trade Unionism;* Moran, *The Politics of Industrial Relations;* Taylor, *What About the Workers?*; and Warner, *Who Governs Britain?*
7. For an overview, see Davies and Freedland, *Labour Legislation and Public Policy*.
8. Weekes, et al., *Industrial Relations and the Limits of Law*, 55–56.
9. Cabinet Paper, Commission on Industrial Relations, Department of Employment, Registrar of Trade Unions and Employers' Associations, Prime Minister's Office and National Industrial Relations Court.
10. Kahn-Freund, "Legal Framework."
11. See Robert Carr, *Hansard: House of Commons Debates*, 5th series, Vol. 568, col. 2127, 18 April; and CPA, ACP 3/4 (54), "Industrial Relations—Draft Report," 11 June 1954. See

also TNA, LAB 43/280, Douglas to Carr, 30 July 1956; TNA PREM 11/921, CP (55) 25, "Memorandum by the Minister of Labour: Current Industrial Relations Problems," 2 June 1955; CPA, CCO 4/7/429, Poole to Brightman, 7 November 1956; TNA CAB 134/1273 IR (55) 10, "Memorandum by Minister of Labour: Survey of Present Situation," 25 July 1955; CPA, CRD 2/7/6, Douglas to Sherbrooke, 23 June 1953; and CPA CCO 4/7/429 Poole to Baxter, 11 September 1956.

12. For intra-Conservative Party opposition to voluntarism in the 1950s, see Inns of Court Conservative and Unionist Society, *A Giant's Strength*, 1958; for a discussion of ideological considerations, see Taylor, *What About the Workers?* 176–78.
13. Ackers, "Game Changer"; and Bugler, "The New Oxford Group."
14. Ministry of Labour, *Industrial Relations Handbook*, p. 16; Ince, *The Ministry of Labour*, p.133; TNA PREM 11/1238, Brook [Cabinet Secretary] to Eden, 30 May 1956.
15. William Brown, *Hansard: House of Commons Debates*, 5th series, Vol. 430, col. 710, 19 November 1946.
16. For a detailed discussion of the significance of *The Industrial Charter* vis-à-vis the Conservative Party's industrial relations and trade union strategy during the late 1940s, throughout the 1950s and in the early 1960s, see Williams, "An Assessment of the Significance of the 1947 Industrial Charter".
17. Conservative and Unionist Central Office, *The Industrial Charter*, 21.
18. *Ibid*, 21, 22. See also CPA, CRD 2/7/44, Minutes of the inaugural meeting of the Central Trade Union Advisory Committee, 10 March 1947. See also CPA, CCO 503/3/2, "Lecture Notes: The Conservatives and the Trade Unions," April 1947.
19. CPA, ACP 3/4(54)34, "Industrial Relations—Draft Statement," 11 June 1954. See also NA, LAB 43/280, Douglas to Carr, 30 July 1956.
20. CPA, ACP 3/6(59)74, "Trade-Union Reform," 25 November 1959.
21. TNA, CAB 134/1273 IR (55) 10, "Memorandum by Minister of Labour: Survey of Present Situation," 25 July 1955. See also, CPA, CCO 503/2/21, Conservative Trade Unionists' National Advisory Committee, Conclusions of Special Meeting with Conservative Parliamentary Labour Committee, 26 July 1951: CPA, CCO 503/2/22, Conservative Trade—unionists' National Advisory Committee, conclusions of the 48th meeting, 14 February 1957: TNA, PREM 11/3570, Bishop to Macmillan, 17 May 1961.
22. On the Conservatives' voluntarist stance throughout this period, see Dorey, *British Conservatism and Trade Unionism*.
23. See, for example: CPA, CRD 2/7/6, Douglas to Sherbrooke, 23 June 1953; TNA, PREM 11/1238, Brook [Cabinet Secretary] to Eden, 30 May 1956; CPA, CCO 4/7/429, Poole to Dixon, 17 August 1956; CPA, CCO 503/2/22, Conservative Trade—unionists' National Advisory Committee, conclusions of the 48th meeting, 14 February 1957 CPA, CCO 503/2/22, Conservative Trade Unionists' National Advisory Committee, conclusions of the 48th meeting, 14 February 1957.
24. See Taylor, *The Trade Union Question in British Politics.*
25. Macmillan, *At The End of the Day*, 66; Macmillan, *Pointing the Way*, 375.
26. For a concise summary of this complex case, see Taylor, The Trade Union Question, 121.
27. TNA, PREM 11/4871, Trend to Douglas-Home, 17 June 1964.
28. TNA, PREM 11/4871, Butler to Douglas-Home, 17 February 1964; Douglas-Home to Brooke, 7 February 1964; Godber to Douglas-Home, 14 February 1964 and 29 July 1964; Shawcross to Douglas-Home, 7 February 1964; CAB 128/38, Cabinet conclusions, 13 February and 17 March 1964.
29. Dorey, *Comrades in Conflict*.
30. CPA CRD 3/17/19, Mr. Heath's Policy Groups, 3 February 1965.
31. CPA, ACP 3/12, PG 20/65/51, 1st Report of the Policy Group on Trade Union Law and Practice, 14 July 1965, 1.
32. Ibid., 4, emphasis added.
33. CPA, CRD 3/17/19, Report on Industrial policy by an Ad Hoc Committee of the Trade Unionists' National Advisory Committee, May 1965, p. 1.

34. CPA, LCC (65) 70, Paper by Sir Keith Joseph, "Trade unions and industrial efficiency," 8 December 1965; CPA, CRD 3/17/20 PG 20/66/60, Sir Keith Joseph, "Industrial Relations Policy: Matters for Further Consideration," 11 January 1966.
35. CPA, CRD, 3/17/20, PG 20/66/2, Keith Joseph, "Our Purpose—a Low-Cost, High-Earning, Economy," 5 August 1966.
36. MS. Howe, dep. 125, meeting of senior shadow Ministers, 19 May 1969, The Bodleian Library.
37. CPA, ACP 2/3, ACP (69) 104th meeting, minutes of meeting of the Advisory Committee on Policy, 19 November 1969.
38. CPA, ACP 3/12, PG 20/65/51, 1st Report of the Policy Group on Trade Union Law and Practice, 14 July 1965, 13–14.
39. CPA CRD 3/17/20, PG 20/66/72: 2nd Report of the Policy Group on Trade Union Law and Practice, 10 February 1966, p. 14.
40. Wedderburn, "Labour Law," 282.
41. MS. Eng. C. 7311 [Papers of Robert Carr], 16th meeting of the Economic Policy Group, 30 November 1967, The Bodleian Library.
42. CPA, ACP 3–14, "Strategy," 12 September 1966.
43. These tensions were discussed (inconclusively) by Robert Carr MP, Reginald Maudling MP, and John Taylor MP at a November 1969 meeting at which the legislative proposals emanating from *Fair Deal at Work* were the main item on the agenda; CPA, ACP 2/3, ACP (69) 104th Meeting, 19 November 1969.
44. CPA, CCO 4/10/48, Trade Unionists' National Advisory Committee, 114th meeting, 2 May 1968; CPA, CCO 4/10/49, Trade Unionists' National Advisory Committee, 118th meeting, 6 February 1969.
45. *Hansard: House of Commons Debates*, 5th series, Vol. 808, cols 1024 and 1027, 14 December 1970.
46. CPA, CCO 4/9/113, Robert Carr to Group Leaders (October 1968 intra-Party Contact Programme consultation on "Reforming the Trade Unions"), 2 January 1969.
47. CPA, CRD 3/17/1, PG 20/66/102, Meeting of the Policy Group on Industrial Relations, 26 January 1970.
48. CPA, CRD 3/17/1, PG 20/66/24, Meeting of the Policy Group on Industrial Relations, 16 January 1967.
49. MS. Eng. C. 7305, "A Note by the Rt. Hon Quintin Hogg, QC, MP, on some aspects of the Chairman's paper", 24 January 1966, The Bodleian Library.
50. MS. Eng. C. 7308, Robert Carr to Reginald Maudling, 24 November 1969, The Bodleian Library.
51. Dorey, *Comrades in Conflict*.
52. Warner, *Who Governs Britain?*, 71.
53. MS. Howe dep. 122, Geoffrey Howe, "Memorandum on Enforceability of Collective Agreements," 1 July 1970, The Bodleian Library.
54. TNA, CAB 129/151, CP (70) 30, Memorandum by the Secretary of State for Employment; "Industrial Relations Legislation," 28 July 1970; TNA, CAB 129/52, CP (70) 63, Memorandum by the Secretary of State for Employment; 'Industrial Relations Bill; Consultative Document, 25 September 1970; TNA, PREM 15/098, Burke Trend [Cabinet Secretary] to Edward Heath, 29 July 1970.
55. TNA, LAB 10/3566, Robert Carr to Francis Pym, 18 June 1971.
56. TNA, CAB 165/519, Robert Carr to William Whitelaw, 29 September 1970; TNA, CAB 134/2946, L (70) 7th Meeting, Cabinet Legislation Committee, 30 November 1970; TNA, LAB 43/600, Robert Carr to William Whitelaw, 10 November 1970.
57. TNA, LAB 43/600, John Burgh to Douglas Smith, 6 November 1970.
58. TNA, CAB 134/3926, INR (70) 2, Meeting of Ministerial Committee on Industrial Relations, 21 September 1970.
59. TNA, LAB 10/3566, D. A. Bayliss to A. W. Brown, 4 August 1970.
60. TNA, LAB 10/3566, N. Singleton to A. W. Brown, 28 August 1970.
61. TNA, LAB 10/3566, Note for the Secretary of State "Industrial Relations Bill; Closed Shop and Agency Shop Agreements," 29 October 1970.

62. TNA, LAB 10/3566, Note for the Secretary of State "Industrial Relations Bill; Closed Shop and Agency Shop Agreements," 29 October 1970.
63. TNA, LAB 10/3566. Extract from meeting with nationalised industries, 26 October 1970.
64. MRC, MSS.200/C/3/EMP/3/78, Detailed Comments on Consultative Document, 10 November 1970.
65. MRC, MSS.200/C/3/EMP/3/78, L.85.71, Employment Policy Committee minutes, 15 December 1970.
66. *Ibid*: 3.
67. MRC, MSS.200/C/3/EMP/3/79, C.1.71 – Minutes of Council of CBI, 16 December 1970.
68. TNA, LAB 10/3566, Handwritten minute by Carr, 1 November 1970.
69. TNA, LAB 10/3566, Note for Secretary of State, 29 October 1970.
70. TNA, LAB 43/586, IRL 5, "Trade union membership and the closed shop," July 1970.
71. MS. Howe dep. 121, "Industrial Relations Bill: Total time spent in Divisions," undated, but circa summer 1971, The Bodleian Library.
72. See Warner, *Who Governs Britain?*, 71–93.
73. CPA, CRD 3/7/12/1, Stephen Abbot, "Industrial Relations—Conservative Policy," 8 December 1973; Robert Carr, quoted in Whitehead, *The Writing on the Wall*, 71; Prior, A Balance of Power, 113–14.
74. e.g., Gilmour and Garnett, *Whatever Happened to the Tories*; Holmes, *The Failure of the Heath Government*; Warner, *Who Governs Britain?*
75. Hansard, *House of Commons Debates*, 5th series, Volume 810, columns 596 and 602, 27 January 1971.
76. CPA, CCO 4/10/49, Edward Heath to [Conservative Party's] Trade Unionists' National Advisory Committee, 15 April 1971.
77. TNA, LAB 10/3566, Alan Brown to John Burgh, 12 February 1971.
78. Hansard, *House of Commons Debates*, 5th series, Vol. 810, cols. 679 and 710–12, 27 January 1971.
79. TNA, LAB 10/3566, Brown to Burgh, 12 February 1971.
80. Hansard, *House of Commons Debates*, 5th series, Volume 813, column 928, 15 March 1971, emphasis added.
81. Ibid., column 931.
82. Ibid., columns 944–45; and columns 956–958.
83. Ibid., columns 982–986.
84. Ibid., columns 957 and 958.
85. Her Majesty's Government, *Industrial Relations Act 1971, Chapter 72*, London: HMSO, 1971.
86. See, for example, TNA, LAB 10/3559, Feather to Carr, 15 October 1970; Trades Union Congress, *Reason: The Case Against*.
87. Trades Union Congress, *Report of the Special Trades Union Congress*.
88. Silver, *Victor Feather*, 191.
89. MRC, MSS.292D24.1/4, F&GPC 4/2, Reviews of meetings with unions, 13 December 1971.
90. TNA, NF 1/2, RTUEA Programme and Objectives at 1 January: A Fresh Assessment, 5 January 1972.
91. See Commission on Industrial Relations, *Approved Closed Shop Agreement British Shipping Federation/National Union of Seamen* (No. 30), London: HMSO, 1973 and Commission on Industrial Relations, *Approved Closed Shop in the Theatre, Independent Television and Films* (No. 40), London: HMSO, 1973.
92. Weekes, Mellish, Dickens and Lloyd, *Industrial Relations and the Limits of Law*, 55.
93. For an overview of the legal implications, see Ibid, 50–63.
94. Jones, *Union Man*, 231.
95. For accounts of this industrial dispute and its legal ramifications, see Moran, 1977, 139–143; Warner, Who Governs Britain?, Chapter 5; Weekes, Mellish, Dickens and Lloyd, *Industrial Relations and the Law*, 278–84.
96. For an overview of events, see Sam Warner, *Who Governs Britain?*, Chapter 5.

97. TNA, NF 1/2, Registration: Effects of the Act, 2 June 1972.
98. MRC, MSS.292D/40.2/2, TUC Press Notice, 26 July 1972.
99. TNA, LAB 10/3929, Barnes to Holland, 27 July 1972.
100. MRC, MSS.200/C/3/EMP/3/83, "L.40.72: Problems Arising from Existing Closed Shop Agreements," February 1972.
101. Ibid.
102. Weekes, Mellish, Dickens and Lloyd, *Industrial Relations and the Limits of the Law*, 56.
103. MRC, MSS.292D/24.1/6, F&GPC 15/1, Review of the Situation, 26 June 1972.
104. TNA, LAB 10/3559, TUC Press Release, 18 April 1973.
105. Ibid.
106. Ibid.
107. *Langston v AUEW* (1974), *Industrial Relations Law Reports*, 182.
108. TNA, J 120/3, Note of meeting with Mr Feather, 12 February 1973.
109. Davies and Freedland, *Labour Legislation and Public Policy*, 319–322.
110. John Elliot, "Donaldson concedes the closed shop many operate despite IR Act," *Financial Times*, 1974.
111. Moran, *The Politics of Industrial Relations*, 145.
112. TNA, J 120/3, Closed Shops—by David Hills, n.d.
113. CPA, CCO 4/10/49, Additional motion passed on 1 July 1972, n.d.
114. Warner, *Who Governs Britain*, 166.
115. Hansard, House of Commons Debates, 5th series, Vol. 840, col. 74, 3 July 1972.
116. TNA, PREM 15/1678, Meeting between Heath and TUC General Council, 4 July 1972, 4.
117. TNA, LAB 10/3929, Draft note for Prime Minister, July 1972.
118. Ibid.
119. See, for example, TNA, PREM 15/978, Edward Heath to Victor Feather, 14 August 1972.
120. TNA, LAB 10/3929, Possible Modification of the IR Act to Meet Trade Union Criticism, undated.
121. Wedderburn, "Labour Law," 190.
122. TNA, LAB 10/3929, Possible Modification of the IR Act to Meet Trade Union Criticism, n.d., 3.
123. Ibid., 4.
124. TNA, LAB 10/3929, Holland to Barnes—Industrial Relations Act 1972, 17 August 1972.
125. Ibid.
126. TNA, LAB 10/3929, Brown to Edwards: Possible amendments to the IR Act, 21 August 1972, 1.
127. Ibid., 1–2.
128. TNA, LAB 43/714, Brief for Secretary of State's meeting on 15 August, 1972.
129. TNA, LAB 10/3929, Barnes to Holland—Changes in the Act, 11 September 1972, 1.
130. TNA, LAB 10/3929, Possible modifications of the Industrial Relations Act to meet trade union criticisms.
    undated.
131. On the chequered history of incomes policies since 1945, see Dorey, *Wage Politics in Britain*.
132. CPA, ACP 1/21, Keith Jospeh to Reginald Maudling, 18 March 1970.
133. Maudling, *Memoirs*, 191.
134. TNA, LAB 10/3929, Barnes—Possible Changes to the Act, 25 October 1972.
135. TNA, CAB 184/90, Barnes to Dawe—Possible amendments to the IR Act, 13 December 1972.
136. Dorey, *Wage Politics in Britain*, Chapter 5.
137. Seldon, *The Heath Government in History*, 7.
138. TNA, CAB 184/90, CPRS: Industrial Relations Act, 8 January 1973.
139. TNA, J 120/3, Closed Shops—by David Hills, n.d.
140. TNA, J 120/3, The Industrial Relations Act 1971: Thew New Approach, n.d.
141. TNA, LAB 10/3911, Revised note of meeting with Donaldson on 25 January, 1 February 1973.
142. TNA, LAB 10/3910, "Revision of Industrial Relations Act: Brief for Secretary of State," 8 May 1973.
143. MRC, MSS.200/C/3/EMP/3/84, Press Release: Reform of the Industrial Relations Act, 25 May 1973.

144. TNA, J 120/3, Engineering Employers' Association: A Review of the Industrial Relations Act, March 1973.
145. *Ibid.*
146. MRC, MSS.200/C/3/EMP/3/84, L.298.73: Report of the Industrial Relations Sub-Committee, undated.
147. MRC, MSS.200/C/3/EMP/3/84, Press Release: Reform of the Industrial Relations Act, 25 May 1973.
148. TNA, J 120/3, Note of Meeting between Donaldson and Feather, 24 February 1973.
149. TNA, PREM 15/1674, Note for the Record, 10 July 1973; TNA CAB 130/697, GEN 181 (73) 2nd Meeting, 12 July 1973, p. 2; TNA PREM 15/1675, Note of Meeting between Armstrong and Feather, 17 August 1973.
150. TNA, LAB 10/3929, Meeting held by the Secretary of State, 12 April 1973.
151. Ibid.
152. Ibid.
153. TNA, CAB 130/697, GEN 181(73) 2nd meeting, Industrial Relations Act, 10 July 1973.
154. Ibid.
155. TNA, CAB 130/697, GEN 181 (73) 3: Revision of the Industrial Relations Act, 30 November 1973.
156. The Central Policy Review Staff was a "think tank" within the Cabinet Office, concerned both with longer- term policy development, and inter-departmental co-ordination. It was established in 1971, and abolished in 1983.
157. CPA, CRD 3/7/12/1, Waldegrave to Hurd, "Industrial Relations Bill, 1970–1974," 2 January 1974.
158. TNA, CAB 184/150, Industrial Relations Act: The feasible options, by CPRS, 28 January 1974.
159. Ibid.
160. TNA, CAB 130/712, GEN 181 (74) 1: Revisions of the Industrial Relations Act, 21 January 1974.
161. Ibid.
162. TNA, PREM 15/2123. Carr to Heath, 5 February 1974.
163. TNA, PREM 15/2123, Heron to Armstrong, 5 December 1973.
164. TNA, LAB 10/3910, Revision of the Industrial Relations Act by Edwards, 25 January 1974.
165. Ashworth, *The History of the British Coal Industry*, 336.
166. Conservative Party, *Firm Action for a Fair Britain*.
167. Dorey, *The Stepping Stones Programme*
168. David Marsh, *The New Politics of British Trade Unionism*; Taylor, *Industrial Relations*
169. Warner, *Who Governs Britain?*, 223; Howell, *Trade Unions and the State*
170. Tebbit, *Upwardly Mobile*, 182.
171. Gallup, Political Index, 1972.
172. Gallup, Political Index.
173. Hay, "Narrating crisis"; Hay, "Chronicles of a death foretold"; Lopez, *The Winter of Discontent*.
174. MS. Eng. C. 7308, Robert Carr to Geoffrey Howe, 23 May 1969, The Bodleian Library.

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Bibliography

Ackers, P. "Game Changer: Hugh Clegg's Role in Drafting the 1968 Donovan Report and Redefining the British Industrial Relations Policy-Problem." *Historical Studies in Industrial Relations* 35, no. 35 (2014): 63–88. doi:10.3828/hsir.2014.35.3.

Ashworth, W. The History of the British Coal Industry, Vol. 5, 1946-1982: The Nationalised Industry. Oxford: Oxford University Press, 1986.

Bugler, J. "The New Oxford Group." *New Society*, February 15, 221–222.

Campbell, A. *Industrial Relations Act: An Introduction*. London: Jonathan Cape, 1971.

Clarke, D. *The Conservative Faith in the Modern Age*. London: Conservative Political Centre, 1947.

Conservative and Unionist Central Office. *The Industrial Charter: A Statement of Conservative Industrial Policy*. London: Conservative and Unionist Central Office, 1947.

Conservative and Unionist Central Office. *Fair Deal at Work*. London: Conservative and Unionist Central Office, 1968.

Conservative and Unionist Central Office. *Firm Action for a Fair Britain*. London: The Conservative Party, 1974.

Crouch, C. C. *Class Conflict and the Industrial Relations Crisis*. London: Heinemann, 1977.

Davies, P., and M. Freedland. *Labour Legislation and Public Policy*. Oxford: Oxford University Press, 1993.

Dorey, P. *Wage Politics in Britain: The Rise and Fall of Incomes Policies Since 1945*. Brighton: Sussex Academic Press, 2001.

Dorey, P. *The Conservative Party and the Trade Unions*. London: Routledge, 2002.

Dorey, P. *British Conservatism and Trade Unionism, 1945-1964*. Farnham: Ashgate, 2009.

Dorey, P. "The 'Stepping Stones' Programme: The Conservative Party's Struggle to Develop a Trade-Union Policy, 1975-79." *Historical Studies in Industrial Relations* 35, no. 35 (2014): 89–116. doi:10.3828/hsir.2014.35.4.

Dorey, P. "Weakening the Trade Unions, One Step at a Time: The Thatcher Governments' Strategy for the Reform of Trade-Union Law, 1979–1984." *Historical Studies in Industrial Relations* 37 (2016): 169–200. doi:10.3828/hsir.2016.37.6.

Dorey, P. *Comrades in Conflict: Labour, the Trade Unions and 1969's in Place of Strife*. Manchester: Manchester University Press, 2019.

Eden, A. *Freedom and Order*. London: Faber, 1947.

Flanders, A. "The Tradition of Voluntarism." *British Journal of Industrial Relations* 12, no. 3 (1974): 352–370. doi:10.1111/j.1467-8543.1974.tb00012.x.

Freedland, M., and P. Davies. *Labour Legislation and Public Policy*. Oxford: Oxford University Press, 1993.

Gallup. "*Political Index Report* 141." London: Gallup, February. 1972.

Gallup. "*Political Index Report* 220." London: Gallup, November. 1978.

Gallup. "*Political Index Report* 223." London: Gallup, February. 1979.

Gilmour, I. *Britain Can Work*. Oxford: Martin Robertson, 1983.

Gilmour, I., and M. Garnett. *Whatever Happened to the Tories: The Conservatives Since 1945*. London: Fourth Estate, 1997.

Hansom, C. *Taming the Trade Unions: A Guide to the Thatcher Government's Employment Reforms, 1980-90*. Basingstoke: Palgrave Macmillan, 1991.

Hay, C. "Narrating Crisis: The Discursive Construction of the 'Winter of Discontent'." *Sociology* 30, no. 2 (1996): 253–277. doi:10.1177/0038038596030002004.

Hay, C. "Chronicles of a Death Foretold: The Winter of Discontent and Construction of the Crisis of British Keynesianism." *Parliamentary Affairs* 63, no. 3 (2010): 446–470. doi:10.1093/pa/gsp056.

Holmes, M. *The Failure of the Heath Government*. London: Macmillan, 1997.

Howell, C. *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain, 1890-2000*. Princeton (US): Princeton University Press, 2005.

Hurd, D. *An End to Promises: A Sketch of Government 1970-74*. London: Collins, 1979.

Ince, G. *The Ministry of Labour and National Service*. London: Ministry of Labour, 1960.

Inns of Court Conservative and Unionist Society. *A Giant's Strength*. London: Inns of Court Conservative and Unionist Society, 1958.
Jenkins, P. *The Battle of Downing Street*. London: Charles Knight, 1970.
Jones, J. *Union Man: An Autobiography*. London: Collins, 1986.
Kahn-Freund, O. "Legal Framework." In Law and Opinion in England in the 20th Century, edited by M. Ginsberg, 215–263. London: Stevens, 1959.
Kahn-Freund, O. *Labour and the Law*. London: Stevens & Sons, 1972.
Lopez, T. M. *The Winter of Discontent: Myth, Memory, and History*. Liverpool: Liverpool University Press, 2014.
Macmillan, H. *Pointing the Way, 1959-61*. London: Macmillan, 1972.
Macmillan, H. *At the End of the Day*, 1961–63. London: Macmillan, 1973.
Marsh, D. *The New Politics of British Trade Unionism*. Basingstoke: Macmillan, 1992.
Maudling, R. *Memoirs*. London: Sidgwick and Jackson, 1978.
Ministry of Labour. *Industrial Relations Handbook*. revised ed. London: Ministry of Labour, 1957.
Moran, M. *The Politics of Industrial Relations*. Basingstoke: Macmillan, 1977.
One Nation Group of MPs. *One Nation at Work*. London: Conservative Political Centre, 1950.
Patten, C. *The Tory Case*. London: Harlow; Longman, 1983.
Prior, J. *A Balance of Power*. London: Hamish Hamilton, 1986.
Pym, F. *The Politics of Consent*. London: Sphere, 1985.
Rogin, M. "Voluntarism: The Political Foundations of an Anti-Political Doctrine'." *Industrial and Labour Relations Review* 15, no. 4 (1962): 521–535. doi:10.1177/001979396201500405.
Seldon, A. "The Heath Government in History." In *The Heath Government 1970-74*, edited by S. Ball and A. Seldon, 1–19. London: Longman, 1996.
Silver, E. *Victor Feather: A Biography*. London: Victor Gollancz, 1973.
Taylor, A. *What About the Workers? The Conservative Party and the Organised Working Class in British Politics*. Manchester: Manchester University Press, 2021.
Taylor, R. *The Trade Union Question in British Politics: Government and Unions Since 1945*. Oxford: Blackwell, 1993.
Taylor, R. "The Heath Government and Industrial Relations: Myth and Reality." In *The Heath Government 1970-74*, edited by S. Ball and A. Seldon, 161–190. London: Longman, 1996.
Tebbit, N. *Upwardly Mobile*. London: Weidenfeld and Nicolson, 1988.
Trades Union Congress. *Report of the Special Trades Union Congress Held in Fairfield Hall, Croydon, 18 March 1971*. London: Trades Union Congress.
Trades Union Congress. *Reason: The Case Against the Government's Proposals on Industrial Relations*. London: Trades Union Congress, 1971.
Warner, S. *Who Governs Britain? Trade Unions, the Conservative Party and the Failure of the Industrial Relations Act 1971*. Manchester: Manchester University Press, 2023.
Wedderburn, L. "Labour Law and Labour Relations in Britain." *British Journal of Industrial Relations* 10, no. 2 (1972): 270–290. doi:10.1111/j.1467-8543.1972.tb01076.x.
Weekes, B., M. Mellish, L. Dickens, and J. Lloyd. *Industrial Relations and the Limits of Law: The Industrial Effects of the Industrial Relations Act, 1971*. Oxford: Basil Blackwell, 1974.
Whitehead, P. *The Writing on the Wall: Britain in the 1970s*. London: Michael Joseph, 1986.
Whitelaw, W. *The Whitelaw Memoirs*. London: Aurum, 1989.
Williams, J. "An Assessment of the Significance of the 1947 Industrial Charter in Shaping One Nation Conservatism." *Revue Française de Civilisation Britannique* XXVIII, no. 1 (2023): 94–119. doi:10.4000/rfcb.10338.