

## TRADE UNION IMMUNITIES

Jim Prior's attempt to head off the Right of the Tory party is a long and rather nasty document. Remember that much of the impetus for tougher action on picketing came from Margaret Thatcher herself: she was reportedly outraged at film of the picketing outside the private steel firm Hadfields in Sheffield last winter. Only a legal quagmire devised by her chief wet, Jim Prior, could dampen her ardour for draconian measures. Hence the complex and unworkable clause 17 of secondary action in the Employment Act — and now the Green Paper.

In fact it's a kind of Whitehall sandwich. In the middle there's a long and tedious amble through possible changes to the law on trade union immunities, obviously written by cautious Department of Employment lawyers. On either side there are the short, primitive and doctrinaire attacks on trade union power that only a cornered Minister could approve.

Thus the introduction claims that the UK's industrial relations have inhibited productivity, and discouraged investment and innovation. Strikes have not only been too widespread, but have been too rapid and far-reaching: the law must be tightened.

The facts of course directly contradict this argument. Strikes in the UK in the last decade have run at about the average of OECD countries — half a day lost a year per employee. The truth is that strikes are symptoms of industrial failure, not causes: British capital has been abandoning the UK for decades. £6 billion was invested overseas last year alone; in the 1960s and 70s only 3.8% of GNP was invested in manufacturing industry, compared with 4.9% in West Germany, and 6.9% in France. In 1976 — the last year for which full figures are available — the UK's per capita investment in manu-

facturing industry ran at 79% of that in West Germany, 52% of that in Japan, 45% of that in France, and only 29% of that in the USA (Parliamentary written answer 2/6/80). It is precisely low investment and low spending on research and development which leads to low wages, low productivity, dated and dangerous machinery — and aggravated industrial relations.

The meat of the Green Paper is the set of changes to the law on immunities from civil action in tort against individuals and trade unions arising from industrial action. The only changes considered are to tighten the law and further restrict trade union activity. There are sections discussing ways of removing the immunity for trade union funds and for secondary action, on inhibiting picketing, on narrowing the definition of a trade dispute, on introducing legally enforceable collective agreements, on encouraging secret ballots, on prohibiting union membership agreements, and on outlawing industrial action in the emergency services. All these have been widely discussed in the past, most of them were tried in the 1971 Industrial Relations Act, and totally discredited in the bitter conflict which followed it.

What the Green Paper completely fails to recognise is that legislation on its own cannot *solve* industrial relations problems. Workers take industrial action because negotiations have broken down. A strike is usually the culmination of a long dispute, or a series of linked situations. You can't legislate such industrial conflict out of existence. Adding to the legislation in this way is only likely to involve judges more in disputes — and their involvement in the past has been at best unpredictable and at worst disastrous.

One detour the Green Paper indulges in is its wistful look at a system of positive rights, such as exists in many other countries. Withdrawal of immunities would leave trade unionists open to the full force of common law actions in tort whenever they took any industrial action — so why not introduce a system of positive rights, which would lay out precisely who has the right to strike, when, and where — and who has the right to lock

out! Two points need to be made: firstly, without a comprehensive Bill of Rights to replace the common law, and covering every citizen, positive industrial rights would set up two parallel legal systems. Secondly, once again, positive rights only invite the more active intervention of the legal profession.

A crucial secondary theme of the Green Paper is the relationship between the shopfloor and the trade union leadership. It identifies correctly a shift of power in the last two decades away from highly centralised leaderships towards the shopfloor. The Green Paper sees this as a dangerous slide towards industrial anarchy — whereas in fact it has been an important point of principle in many unions to democratise their structures: those who draw up an agreement should be those who have to live and work with it. It's at the workplace that the fundamentals of industrial life have got to be solved.