Language, legislation and labour: Trade Union responses
to Conservative Government policy 1979-1990

Thesis submitted for the degree of Ph.D.

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29 November 1996

UMI Number: U105724

UMI

Dissertation Publishing

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ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

Abstract

The thesis examines the responses, as articulated in language, of the trade union movement in the UK (especially, the TUC) to changes in labour legislation introduced by the Conservative Government between 1979 and 1990. The research attempts to identify and interpret key words, themes and repertoires within union discourse by analysis of TUC pamphlets, 'campaign' literature, policy documents and speeches at the annual Congress, supplemented by information obtained from informal interviews with several union figures involved in constructing a response to the legislation. The nature and extent of changes in patterns of union language are explored through consideration of the materials over two distinct time periods - 1979-1983 and 1986-1990 - thus allowing examination of the rhetorical responses of the TUC/unions throughout the duration of the Thatcher Government.

In order to place such responses in context, and to examine the extent to which the vocabulary of the unions was both shared with and shaped by other participants in the policy process, consideration has also been given to the language of Government in documents such as Green Papers and in Parliamentary debates, in addition to that of 'New Right' commentators who may have influenced the making of policy on labour legislation. Particular attention is paid to the way in which the characterisation of union immunities from legal liability as 'privileges' shaped the linguistic response of the unions and their strategy towards the presence of law in industrial relations.

Union language during the period 1979-1990 is found to exhibit characteristics both of change and continuity. Those alterations which occured are considered in the light of theories of Thatcherism as a hegemonic project and in the context of wider changes in the discourse of the Left. The problem of isolating causative factors is also addressed.

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List of abbreviations

AC	Law Reports Appeal Cases
AEU	Amalgamated Engineering Union
All ER	All England Law Reports
BALPA	British Airline Pilots Association
BBC	British Broadcasting Corporation
CBI	Confederation of British Industry
CCO	Conservative Central Office
Ch.	Law Reports Chancery Division
CPS	Centre for Policy Studies
DE	Department of Employment
EA	Employment Act
EC	European Community
EEF	Engineering Employers' Federation
EETPU	Electrical Electronic Telecommunications and Plumbing Union
GC	General Council of the Trades Union Congress
GCHQ	Government Communications Headquarters
GMB	General Municipal and Boilermakers' Union
HC	House of Commons
HMSO	Her Majesty's Stationery Office
ICR	Industrial Cases Reports
IEA	Institute of Economic Affairs
ILO	International Labour Organisation
IPM	Institute of Personnel Management
ITV	Independent Television
NCB	National Coal Board
NCCL	National Council for Civil Liberties
NEDC	National Economic Development Council
NHS	National Health Service
NGA	National Graphical Association
NUM	National Union of Mineworkers
NUPE	National Union of Public Employees

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NUR	National Union of Railwaymen
OR	Official Report (Hansard)
SDP	Social Democratic Party
SRB	Special Review Body of the Trades Union Congress
TUC	Trades Union Congress
TGWU	Transport and General Workers' Union
UCW	Union of Communication Workers
UK	United Kingdom
USSR	Union of Soviet Socialist Republics

CHAPTER ONE: Introduction

This thesis examines the responses of the trade union movement in Britain (particularly, the Trades Union Congress) to the labour legislation policies of the Conservative Government from 1979 to 1990. Its emphasis is upon the way in which these responses were articulated in language - the key words, narratives, themes and rhetoric which were used in the explanation and projection of policies and programmes of action, in justification of campaigns of opposition to the legislation, and as a means of creating and mobilising constituencies of support. However, while the central focus is upon the union reaction to legislation, I have also considered, albeit in rather less detail, the language of the Government and the various important 'New Right' theorists who influenced policy-making in order to locate the union movement and its language within the 'terms of debate' on reform of the law relating to trade unions.

Objectives and contribution of the thesis

My work can be seen as part of an ongoing debate about the nature, extent and causes of change (and possible decline) in British trade unionism in recent years. A considerable number of attempts have been made to analyse the changes undergone by unions during the 1980s (for summaries, see Kelly 1990; McIlroy 1995: Chapter 10). These have examined, *inter alia*, the changing role of the law in industrial relations (Moher 1995), union access to political and economic decision-making (Mitchell 1987; Marsh 1992: 111-19), alterations in the pattern of union membership and density (Metcalf 1991) and workplace behaviour and responses to management strategies (Bassett 1986; Guest 1989; Bacon and Storey 1996). Some have concluded that continuity, rather than change, has been the characteristic feature of trade unionism over this period (MacInnes 1987).

However, only limited efforts have been made to examine the changing responses of the TUC to the Government's legislative policies - the strategies and campaigns of opposition to the various measures and the materials which set out the TUC's views; moreover, those accounts which do exist (notably McIlroy 1991: *passim*; 1995: 208-22, 254-61) are primarily descriptive of events rather than analytical or interpretive in nature.

None of the existing literature upon union change sets out to discuss union

responses to the Thatcher legislation from the particular standpoint of *language* - that is, the ways in which the trade unions used rhetoric, themes and vocabularies to construct a position of opposition to the legislation, to mobilise support among union members and the public, to voice their wish to be 're-integrated' into the British political community, and to define a particular audience.[1] To this extent the present study represents an original contribution to the existing portrayals of union responses to the Thatcher legislation in that it focuses upon the specific question of how those responses were articulated in language, and the extent to which there may have been shifts in the vocabulary which was used.

There is also a considerable body of existing literature dealing with the labour legislative policies of the Thatcher Governments and their possible impact upon trade unions (*eg* Brown and Wadwhani 1990; Elgar and Simpson 1993; Dunn and Metcalf 1994; Undy *et al* 1996). The question of the importance of political language in putting forward and explaining these policies has, however, only been touched upon by a few commentators, in the course of broader discussions of the legislative measures or their ideological underpinnings (*eg* Auerbach 1990; Fosh *et al* 1993; von Prondzynski 1985; Davies and Freedland 1993 - for further references see Chapter 3). Perhaps the closest to a full exposition of the political language of Government/'New Right' has been offered by Fredman (see p.34), who analyses the way in which the Thatcher Governments used the 'open-textured' concepts of 'democracy', 'rights' and 'freedom' to mobilise support for measures which were restrictive of trade unionism (1992: 24); however, the article deals only with these three themes and considerable portions of it represent a critique of the usage of the terms and proposals for the future of labour law reform.

The analysis contained in Chapter 3 and the first part of Chapter 4 contributes to existing studies in that it represents a *structured* attempt to extract and interpret the key vocabularies and rhetorical arguments of Government and 'New Right' discourse, albeit not in the depth of the analysis of union language which forms my central project. Moreover, the question of the *impact* of Conservative/'New Right' forms of discourse upon union language - the extent to which unions adopted the themes and vocabulary of their political opponents - remains unexplored. This issue runs through my analysis of

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[1] Although the issue of language is addressed tangentially by some writers in the context of changes in workplace behaviour and attitudes (*eg* Ackers, Smith and Smith 1996: 5, 26; Bacon and Storey 1996: 43, 57), rather than responses to legislative policy.

union language in this thesis (see further p.12) and is addressed at greater length in Chapter 7. In this respect, the current work can be viewed as part of the debate on the effect upon trade unions of the legislative changes of the 1980s.

But why study political language at all? What is the importance of language in formulating and projecting programmes of political action? This question has been considered by an increasing number of scholars in recent years. Influenced, in particular, by French linguistic theorists, historians have stressed the way in which language does not merely *reflect* a pre-existing and objectively knowable 'reality', but rather functions to *structure and create* it. Arguably the most influential attempt to apply this approach was that of Gareth Stedman Jones, whose *Languages of Class* sought to argue that appeals to 'class' could not be understood as mere expressions of an *a priori* 'experience', but rather served to constitute and mobilise 'interest, identification, grievance and aspiration' (1983: 22) amongst those to whom they were addressed. Accordingly, if one wished to define and understand a political movement such as Chartism, it was necessary to study the language which was used by its proponents, since it was this which created and orchestrated needs and demands and altered behaviour and self-identification (*ibid*: 24):

> 'A political movement is not simply a manifestation of distress and pain, its existence is distinguished by a shared conviction articulating a political solution to distress and a political diagnosis of its causes. To be successful, that is, to embed itself in the assumptions of masses of people, a particular political vocabulary must convey a practicable hope of a general alternative and a believable means of realising it, such that potential recruits can think within its terms. It must be sufficiently broad and appropriate to enable its adherents to inhabit its language in confronting day to day problems of political and social experience, to elaborate tactics and slogans upon its basis, and to resist the attempts of opposing movements to encroach upon, reinterpret or replace it' (*ibid*: 96).

Similar analyses of nineteenth-century radicalism have been offered by Joyce (1991) and Belchem (1996), while others, such as Wahrmann (1995) and Epstein (1994), have focused on language in other historical contexts.

The significance of language has also been emphasised by those working in political science. On a theoretical level, Michael Shapiro has argued that language is '*constitutive* of political phenomena rather than merely *about* political phenomena' (1981: 5 - emphasis in original), while Murray Edelman (1964; 1971; 1977; 1988) has written extensively on the role played by language in politics, stating that 'it is language about

political events, not the events in any other sense, that people experience; even developments that are close by take their meaning from the language that depicts them... it is not 'reality' in any testable or observable sense that matters in shaping political consciousness and behaviour, but rather the beliefs that language helps evoke' (1988: 104-5). For Edelman, therefore, language is '*performative*, that is, political action in [itself]' (Merelman 1992: 2 - emphasis in original) and thus a central constituent in establishing the identity and justifying the programmes of any political grouping, a fact which has often been obscured by a tendency to depict language as an entity separate from the 'real' world (Edelman *ibid*: 107): 'The failure to attribute much significance to language in the study of politics has its roots in certain attitudes to language. As befits our trade and practice, one of the stubborn convictions of commonsense academic culture is the view of language as essentially a descriptive instrument, an unfortunately clumsy way of making propositional statements about the facts of the world' (Brenneis and Myers 1991: 5).

This approach, which sees language as a crucial *tool* for the formulation and justification of programmes of political action and the creation and mobilisation of constituencies of support, rather than as a relatively neutral means of describing a pre-existing 'reality', remains relatively undeveloped at a more practical level in analysis of contemporary (or recent) political developments in Britain in general,[2] and of the trade union movement in particular.[3] In this respect the analysis offered in this thesis, which may be seen as having a similar agenda to the works on language discussed above, represents an original contribution to the issue of the ways in which trade unions responded to the Thatcher legislation and the question of the extent of change which they underwent during that period.

Nevertheless, while a focus upon language may be regarded as a crucial means of comprehending and analysing a political movement, it may still be queried why I have chosen to apply such principles of interpretation to the particular case of the trade unions in the 1980s.

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[2] An exception is Gaffney (1990); however his work is based upon a close reading of specific speeches in order to illustrate the rhetorical styles of political leaders - as such it differs from the broader nature of the discussion in this thesis which attempts to offer a nuanced interpretation of themes and issues of significance in union discourse.

[3] This is not to argue that the question of language has been totally ignored by those discussing developments in labour legislation generally; see references quoted on p.6 and the discussion of Wedderburn's work which follows.

I believe that there are a number of reasons why it may be particularly relevant to consider the role of language in this particular case. Firstly, a number of commentators, particularly Lords Wedderburn and McCarthy, have drawn attention to the importance of language in labour relations law. Wedderburn comments that:

> 'it is essential to look closely at the meanings of the words offered by those in charge of the debate... In such inquiries it is also to be noted that the agenda for argument is often set by those who have power which they are unwilling to share. Control of the agenda often implies control over the language of the debate and the meaning given to events. This is of great importance in British labour law where the terms employed are often unusually technical... Of course the very language in which we speak of... social objectives is itself a weapon of change or resistance... Labour law is a well known crucible for the fusing of the ideology and semantics inherent in arguments that claim to rest on 'facts' or 'principle'. Many have written, for example, about the ambiguities of 'freedom' in labour relations' (1995: 354).

The most potent example of the power of language in the debate on labour relations law during the 1980s was the representation of union immunities from liability as 'privileges', which enabled those 'controlling the agenda' to draw the conclusion that unions were 'above the law' and thus that the immunities needed to be curtailed. For their part, the unions needed to refute the claims of 'privilege' and to construct an effective vocabulary of their own to counter such arguments and thus mobilise support. I will discuss these issues in detail in Chapter 4. However, the significance of language extended further than legal terminology, as Wedderburn's comment about 'freedom' (discussed in Chapters 3, 5 and 6) implies. Stephen Dunn (1990) has drawn attention to the role played by metaphor in academic analyses of industrial relations, and I argue in Chapter 5 that this analysis applies equally to union descriptions of their situation. Moreover, the lengthy history of the British labour movement offered a powerful repository of symbolism and myth (see pp.131-6) with which the unions could justify opposition to the legislation. Responses to the measures were in this sense strongly shaped by the way in which the unions 'viewed the world' through these - and other - forms of language.

A second reason for investigating the language of trade unions relates to Wedderburn's point about control of the terms of debate. The Government, as the instigator of the measures, was in a position to put across its message first and strongest, and this enabled it to transmit *its* understandings and vocabulary to the public as a whole,

an issue dealt with at greater length in Chapter 7. In this respect, it was assisted by media[4] which were largely supportive of its policies and which themselves used language to mobilise support for the legislation. The unions were deeply conscious of the significance of the language used to portray them by both Government and media: 'the BBC and ITV still refuse to acknowledge the in-born bias against trade unions, and they even refuse to debate in real terms the magnificent research carried out by the Glasgow Media Group' (Sapper, A. TUC 1982: 427); 'The presentation of much of the present Government's trade union legislation has been consciously designed to foster and exploit anti-union prejudice' (TUC 1986a: 4). They consequently emphasised the need to formulate an effective response to counteract this adverse representation: 'These are just some of the myths you can see almost every day in the press and hear from Government speakers. Propagating these ideas has been a major part of the preparation for anti-union legislation. Active trade unionists must think clearly how to counter these myths as part of the campaign against anti-union law. Putting forward a positive image of trade unionism is a key element in rebuilding morale and strengthening membership awareness of the essential role of trade unions' (TUC 1982c: 7). Focusing upon the language of the unions thus enables us to examine how this response was constructed and underscores the relevance of presentation, described by the former head of the TUC's Press and Information Department as a 'continuing theme' (Smith, interview), in coordinating opposition to the policies.

It will be noted that I have referred, both in the title of this thesis and in the above discussion, to union 'responses' to Government policies. I believe this to be a justifiable description for two reasons. Firstly, as previously argued, the Government (in conjunction with certain 'New Right' think-tanks discussed in Chapter 3) was the initiating force behind the legislation and thus union language was formulated in reaction to the proposals. Secondly, trade unions tend by nature to be *reactive* bodies: 'trade unions, it is generally agreed, have been much more passive actors than the state or employers' (Edwards 1995: 608), with a relatively conservative outlook (Flanders 1968: 10; Farnham and Pimlott 1994: 105). The consequence was that the agenda and terms of debate tended

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[4] The issue of media representation of trade unions is too broad a topic to be discussed in the present work; nevertheless, the work of the Glasgow Media Group (collected, 1995) is instructive here in that it demonstrates how media language, much of it anti-union, functioned to construct and shape public perceptions of union behaviour, as acknowledged by Sapper (below).

to be shaped by the Conservatives, a fact often acknowledged by those within the unions (see pp. 130, 237).

The third rationale for examining union language is related to the second, but somewhat broader. Theorists writing for *Marxism Today*, particularly Stuart Hall (1983, 1988) argued that 'for any successful response to Thatcherism there must first be a reconstitution of language and culture that will enable wider social forces to reorganise their experience' (Foster 1985: 37). Although this can be viewed as part of a political programme for defeating Thatcherism and as reflecting Marxist principles, factors which might make the analysis less valuable for academic purposes, the emphasis upon language as a central feature of Thatcherism and of the construction of an appropriate and effective response to it resembles my concerns in this thesis. Moreover, this approach sees Thatcherism as a *hegemonic project* which, *inter alia*, achieved a dominance over British political vocabulary in the 1980s (and which arguably still exists). It is possible, therefore, that the language of the unions came to resemble that of 'Thatcherism' or the 'New Right', and this would suggest the validity of the view that the Conservative Government achieved intellectual hegemony during the 1980s since it can be argued that 'in politics, real intellectual victory is achieved not by transmitting one's language to supporters but by transmitting it to critics. A person who adopts the usage employed by a particular side, though he remains critical, nonetheless adopts the definition of the situation espoused by that side' (Green 1987: 29). I discuss this interpretation at greater length in Chapter 7.

Clearly, however, it would be impossible to reach even a tentative conclusion on such an issue without examining the vocabulary used by Government and the 'New Right' in justification of legislative action against unions. Accordingly, Chapter 3 below discusses such language in order to assess how far themes and terms were shared across the political spectrum. This will indicate the extent to which certain discursive forms became standardised within the industrial relations debate, or more strongly, whether the employment of particular patterns of language by the Government and other policy contributors closed off certain forms of union language while opening up other possibilities. Analysis of such language thus enables consideration of how far the responses of the unions were *shaped* by the vocabulary of Government and allied actors.

It can also be argued that there were fundamental changes in the language of the Labour Party and the Left in wider terms, perhaps as a result of a shift in the terms of the debate brought about by Thatcherite hegemony - an issue to which I shall return briefly

in the concluding chapter. Inquiry into the language of trade unions, therefore, contributes towards an assessment of the extent of the 'reconstitution' of the language of the broader Left in Britain.

Overall, therefore, my work seeks to make a contribution to the debate on trade union change in the light of the legislative developments of the 1980s. Although I will not be offering a definitive answer to the question of whether legislative changes or other developments (such as the decline in traditional manufacturing industries) had a greater effect upon patterns of trade union behaviour and activity (see further pp.238-40), I believe that a focus upon language as a means of constructing and justifying union opposition to the legislation can offer a valuable insight into the question of the nature and extent of transformation in the union movement. Since language can be seen as a fundamental element of political action - indeed, one cannot divorce such action from its mode of articulation - the terms, themes and ideas which were emphasised by unions are as significant as the frequency of industrial disputes or membership density in indicating the way in which they responded to the environment of the 1980s. The language used functioned to orchestrate and shape union demands, grievances and objectives. Consequently, shifts in vocabulary may be viewed as attempts to reconstitute such claims and interests; the goal being to create a less 'inapposite' (Jones 1983: 22) political language so as to mobilise support for the union position since 'the success of political movements and parties may be said in large part to turn upon the elaboration of effective political languages' (Joyce 1991: 27).

A word of caution is perhaps necessary at this point. Edelman argues that 'language use is strategic. It is always part of a course of action to enable people to live with themselves and with what they do and to marshall support for causes' (1988: 108). This might be taken to imply that the trade unions devoted considerable attention to the precise form of words which they used, perhaps deliberately selecting from a range of available options those which were most appropriate. In practice, the use of language seems to have been rather less structured than this. Past and present TUC General Secretaries remarked to me that there was relatively little in the way of coherent design underpinning the vocabulary: 'I suspect we never thought our approach through... I don't think we ever sat down and thought 'this is our strategy" (Murray, interview); 'Our response to events was always very much what seemed right at the time, without a great deal of consideration being given to changing patterns' (Monks, unpublished).

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However, I do not believe that this invalidates the objectives of the thesis. It seems implausible to argue that *no consideration whatsoever* went into the choice of language, given that conference speeches and official publications were political acts aimed, in large part, at the mobilisation of support for particular courses of action; consequently words would have been used which would not only have been credible to the intended audience, but which would elicit a response - indeed, Len Murray spoke of 'standard phrases' which might 'achieve a reaction against Government' (interview) - see p.138. This was especially so in view of the attention which the TUC/unions began to show towards presentation around the end of the decade (see pp.219-23). It would thus be more accurate to say, as Monks implies, that language was chosen for its *appropriateness at a particular point in time*, rather than with a view to a longer-term programme of action - thus there would seem to have been, at least in the short term, a deliberate selection of valid and effective political language, even if this was not sufficiently coherent to amount to an overarching 'strategy'. But even in the absence of this level of intent, analysis of patterns of vocabulary may still demonstrate the way in which the speaker/institution perceives the world at a specific moment, given that: 'language about politics is a clue to the speaker's view of reality at the time' (Edelman 1988: 104),[5] and in this respect alterations in the words used or themes emphasised demonstrate changing views of the political environment and of the appropriate responses to it.

A further related difficulty does, however, arise from the above discussion. While one may examine patterns of language in order to extract important themes and concepts, and to point out any change in the nature of the issues addressed, it is difficult (if not impossible) to *prove* any causal relationship between the language used and specific political consequences such as an increase in support for the trade unions among the public, or the mobilisation of union membership in a specific campaign against a piece of legislation (see pp.98-101). This is particularly so given that the interpretation of political language by the recipient may differ from that of the speaker (Edelman: *ibid*). One can

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[5] The argument here is similar to that of the Glasgow Media Group on the vocabulary of news in relation to industrial action: 'it may be claimed that the vocabulary of the news is not the outcome of deliberate choice from among a number of alternatives but merely reproduces the vocabulary of the wider society... [however] there are significant absences in the vocabulary of industrial news reporting which, along with the vocabulary which is used, reveal selectivity and value preference for a particular view of the causes of industrial conflict' (Vol I: 1995: 192).

plausibly *conjecture* that the use of language may have had certain effects, but the interpretation still remains open to argument. I am aware of this problem, but as it appears ultimately unsolvable I have not attempted to resolve it; rather I have referred throughout to the motivations and intentions which underpin particular forms of words, and the effects that these may have caused, while recognising that such an analysis represents only one possible inference from the evidence available.

One other point needs to be made in respect of the terminology I have used in this thesis. I have referred throughout to 'language', 'vocabulary' and 'discourse' without seeking to draw any particular distinction between these terms. It might be objected that 'discourse' has taken on a specific meaning in recent work on linguistics, with the discipline of 'discourse analysis' which seeks to analyse the rules, conventions and relationships underpinning verbal or written statements (*eg* Coulthard 1985). However, the word has a wide range of definitions - following Foucault, some argue that it refers to 'systematically-organised sets of statements which give expression to the meanings and values of an institution' (Kress, quoted in Fowler 1991: 42), while others adopt a still broader approach which sees discourse as 'the verbal equivalent of political action: the set of all political verbalisations, and expressible forms adopted by political organisations and political individuals' (Gaffney 1988: 26). As this thesis is not an exercise in discourse analysis, my usage of the term most closely resembles that of Gaffney; nevertheless, in so far as I focus upon the way in which the understandings, beliefs and a 'world view' of the trade union movement were articulated in language, it can also be seen as reflecting the idea that certain forms of language are expressive of the values and meanings of that 'institution' or 'social grouping'.

Source materials and methodology

The analysis in this thesis is based on an investigation of *public political language* - that is, words and statements made in a relatively formal, open manner in forms of public communication 'geared towards interventions in the political process and towards audiences interested in such interventions' (Wahrmann 1995: 10; see also Joyce 1991: 17; Belchem 1996: 11). This reflects my concern with union language as a political event *in itself* - such language can be seen as a 'tool' for putting forward union policies and for creating and mobilising support for them and was thus designed for consumption by trade

union members and the wider public.

As such, my source materials for the discussion of union language fall into three categories. Firstly, I have considered pamphlets and 'campaign' materials produced by the TUC which discuss the legislative measures and possible responses to them. These took the form of leaflets or longer booklets, 'workbooks' designed for union activists, posters and speaking notes (particularly for the campaign against the 1982 Employment Bill), policy statements, reports of the TUC General Council to the annual Congress, and consultative/'strategic' documents (notably that on *Industrial Relations Legislation* (1986) and the two reports of the SRB (1988,1989)). I have also considered the important joint statement of the TUC/Labour Party Liaison Committee, *People at Work: New Rights, New Responsibilities* (1986) and the monthly *TUC Bulletin*, published between 1986 and 1990 as a means of disseminating information about the work of the TUC, in so far as its contents related to legislative measures. Various commentaries upon the legislation and union responses have drawn (highly selectively) upon some of these materials (*eg* Auerbach 1990, McIlroy 1991), but there has been no extended analysis of the documents and the language which they use.

Secondly, I have considered speeches made by TUC officials and other union leaders and composite motions put to the annual Congress (including the Conference of Special Executives held at Wembley in 1982) in debates upon industrial relations legislation.[6] I have had to be somewhat selective here - clearly debates upon other issues (*eg* those on Europe, workers' rights *etc*) will have contained statements relating to union responses to the industrial relations legislation; nevertheless, I have not examined these in order to reduce to manageable levels the material for analysis. Once again, such speeches have been used (particularly by McIlroy (1991)) to illustrate the actions taken by the TUC and unions in response to the legislation; but they have not been the subject of a detailed examination which seeks to identify the key themes, vocabulary and rhetoric which were deployed to justify opposition and mobilise support.

These source materials have been selected to enable me to concentrate primarily upon the language and responses of the TUC - I have accordingly not considered the annual conferences or publications of individual unions. In part this represents, once again, a pragmatic decision to diminish the range of material examined, but I believe it is

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[6] I have also considered Presidential addresses to Congress as these invariably included discussion of responses to the legislation.

justifiable on other grounds. While commentators have stressed the limited role of the TUC, particularly in the light of the decline of corporatist arrangements during the 1980s (Hyman 1995: 38; Undy *et al* 1996: 16), it remains the 'national coordinating centre of British trade unionism' (McIlroy 1995: 45) and is comprehensive in its coverage by comparison with European counterparts (Waddington and Whitston 1995: 174). As such, it acts as the principal 'think-tank' for British trade unions and as the chief 'spokesperson' for affiliates in relations with both Government and employers (Hyman: *ibid*; McIlroy 1995: 47). Accordingly, despite the growing significance of 'mega-unions' such as Unison towards the end of the decade, the TUC can be seen as taking the lead in devising and orchestrating responses to the legislative measures: 'the central role of the TUC is both leadership and seeking to achieve things. In terms of the legislation it was a matter of making representations to Government. We had a coordinating role - trying to keep the responses that the unions gave together' (Smith, interview).

However, it is important to realise that the union movement is far from monolithic and that the language used by individual union leaders may have differed from the 'official' TUC response. Consideration of speeches made by such leaders to the annual Congress, together with composite motions proposed allows such distinctions to be taken into account while retaining a focus upon the responses of the TUC (given that Congress is the principal policy-making forum); and I have pointed out divergences between the vocabulary of union leaders and that of the 'official' TUC response where I consider these relevant.

In analysing this material I have adopted a *qualitative* rather than a *quantitative* approach. I have sought to extract the key words, themes, repertoires and attitudes of the TUC/unions which were articulated in discourse and deployed in the formulation of their response to the legislation; I have also considered the issue of creation and definition of an audience *ie* the 'constituency' to which a message was addressed, since 'there is an intimate connection between what is said and to whom' (Jones 1983: 23; also Joyce 1991: 27). I have then attempted to offer an interpretation of such language, commenting upon its potential significance in mobilising support for opposition to Government policies and upon what it might demonstrate about changes in the union movement's view of political 'reality'.

One obvious objection to this sort of approach is that it is considerably less objective than some other means of analysing language, notably content analysis, which

can empirically demonstrate the frequency with which particular words are used (*eg* Holsti 1969). However, this technique also has its disadvantages, notably that it cannot demonstrate the various nuances of meaning which are associated with language. I have accordingly decided (in common with Jones, Joyce, Wahrmann *etc.*) to adopt the more interpretive method outlined above while recognising that there are certain difficulties involved with it.

My discussion of the 'public' source materials discussed above has, however, been further supplemented by information gained from relatively informal interviews conducted with several individuals involved with the construction of TUC/union responses to the legislative policies. While a number of significant figures were interviewed (see p.250), responses to requests were somewhat disappointing - for example, I approached the last three TUC General Secretaries but secured an interview only with Lord Murray; similarly, attempts were made to contact the Press Officers of the six largest unions - however it only proved possible to talk to officials from two unions in the absence of responses to my requests. Nevertheless, the interviews yielded valuable material, which I have incorporated, where appropriate, into the discussion of the public political language which forms the central focus of my analysis.

The analysis of Government and 'New Right' language presented in Chapter 3 and part of Chapter 4 proceeds along similar lines. I have drawn upon three principal 'public' sources - the tracts and books published by 'New Right' think-tanks, Green and White Papers and Parliamentary statements made by Government ministers in debates upon the various Bills. The analysis has been supplemented by reference to political autobiographies of those involved and - very occasionally - to extraparliamentary speeches and remarks which seem to me to be of particular significance. Clearly this does not represent an exhaustive list of statements or writings on the legislative measures of the period - it omits, for example, comments made to the media and speeches made to the Conservative Party Conference[7] - but my essential focus in this thesis is upon the language of the unions

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[7] It might be argued that there are strong similarities between this annual event and the TUC's Congress. However, the latter has a central role in laying down broad lines of policy, which the General Council interprets and applies (TUC 1970:1); accordingly Congress played an important part in formulating responses to the legislation. In contrast, the Conservative Government's policy tended to be formulated at Cabinet or ministerial level, the Conference's role being primarily as a 'rally for the faithful' (Ingle 1987:58 - for the view that Conservative conferences have been undervalued, see Kelly 1989) and it played at best only an indirect part in making policy.

and I have accordingly not attempted to develop an interpretation of Government/'New Right' language which is of comparable scope.

Time periods of analysis

The chronological parameters of this study, 1979-1990, allow a consideration of the 'Thatcher era' in that they represent the dates of the Conservative Party's election to Government and the removal of Margaret Thatcher as Prime Minister. While any division of historical periods must necessarily be somewhat arbitrary, and there were continuities between Thatcher's policies (particularly in economics) and those of the previous Labour administration (McIlroy 1995: 385), I believe this period to be fully justifiable, since the Conservative policy towards unions from 1979 represented a radical break with the post-war consensus (Miller and Steele 1993: 224). It can be argued that 'Thatcherite' industrial relations policies remained in place under her successor, John Major, and consequently that transformation in the unions was not complete by 1990 (see p.228); however with Major's administration still in power at the time of writing, it is perhaps too early to fully assess the impact of post-Thatcher policies upon the unions.

Within these boundaries, however, I have chosen to divide my examination of union language into two distinct periods, 1979-83 and 1986-90. Once again, there are practical reasons for this decision; but the periods also reflect important developments both in legislative policy and union response. The earlier period, which covers the period up to the election of 1983, saw two Employment Acts in 1980 and 1982 and the union campaigns against these measures; additionally it comprises the publication of *Hands Up for Democracy*, the union response to the Green Paper on *Trade Unions and their Members*, which set out proposals which were eventually given legislative effect in the Trade Union Act 1984. The other major statutes affecting trade unions were passed after the 1987 general election - between 1984 and 1987 there was something of a hiatus in legislative activity (see p.26); however, because two documents appeared in 1986 which were influential in shaping union strategy for the remainder of the decade (*Industrial Relations Legislation* and *People at Work: New Rights, New Responsibilities*), I have chosen to start my discussion of union language in the later period at the date of publication of the first of these, in January of that year.

Division of the analysis of union language in this manner allows for comparisons

to be drawn between the two periods, and thus illuminates the extent of change in themes and patterns of language. There were, of course, a number of events which occurred in the years between the two periods selected for study which may have had an effect upon union discourse - most notably the banning of unions at GCHQ in 1984 and the miners' dispute of 1984-5; but although I have drawn attention to the ways in which these may have influenced union language in Chapter 6, I have not examined these episodes in detail since, as discussed above, my focus is upon union language in responses to *legislative policy*.[8]

I have not sought to divide my examination of the language of Government and the 'New Right' into distinct periods in the same manner since my focus is upon changes in patterns of *union* language; however, the discussion in Chapter 3 naturally tends to centre around the periods of legislative activity during which Green and White Papers appeared and ministers attempted to justify policy proposals to Parliament - thus, with the exception of the writings of the 'New Right' which were of ongoing significance in influencing Conservative policy throughout the decade, the analysis presented there tends broadly to mirror the periods examined in Chapters 5 and 6.

Outline of argument

At this stage I feel that it would be valuable to summarise the approach, contentions and objectives of this thesis, in order to indicate more clearly the development of my argument in the material which follows.

It is not my intention to explore in detail the theoretical arguments about the relationship between language and political action. However, the work is based around certain working assumptions which should be clearly stated. The starting-point is that language functions as more than a relatively transparent means of describing 'reality' which in some sense exists externally of its mode of articulation. Rather, language plays a more *creative* or *constitutive* role than this, operating as a central part of the process by which individuals construct reality, by means of its classificatory role - 'segmenting reality into conceptual chunks' (Lee 1992: 24). As such, it carries political significance - it reveals the way in which an individual or institution orders, structures and understands the world.

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[8] Moreover, the miners' dispute has been extensively discussed elsewhere - for a summary of the interpretive literature, see Gibbon (1988).

Moreover, political actors use language for purposes beyond the simple transmission of empirically-verifiable 'facts' to an audience. Rather, they will use language which they consider to be acceptable, appropriate and effective to achieve their desired goals. In this manner, language has a *strategic purpose* in constructing and maintaining identity, justifying programmes of action and mobilising support. Thus, the themes and vocabulary employed in the speeches and publications examined in the following Chapters *were themselves public political acts* - interventions in the political process which it is crucial to analyse and interpret in their own right.

Since a particular form of words conveys a certain view of the world, language becomes a focus for political ideology (Fairclough 1989: 12). This is especially significant in the context of the debate on the labour legislation policies of the Thatcher Government, because powerful ideological themes, such as individual autonomy, freedom of choice in free markets and anti-collectivism, underpinned many of the reforms. The *extent* to which the policies were inspired by ideas and proposals drawn from 'New Right' theorists (especially Hayek) is a matter of controversy among commentators - some view the connection as being particularly close (Wedderburn 1991); others argue that a wider range of ideological (and other) influences should be considered (Fredman 1992; Fosh *et al* 1993); while Auerbach argues that the legislation did not follow a pre-planned Hayekian model, but rather tended to reflect pragmatic, short-term responses (1990: 230-6) - although it should be noted that even he acknowledges that the 'New Right' offered the Conservative Government a valuable source of ideas and rhetoric for justification of the measures (*ibid* 232). While this thesis does not seek to pinpoint precisely the *degree* and *origins* of ideological influence upon Conservative policy, it is contended that insufficient attention has been paid to the *language* of the debate on the reform of labour legislation and the differing 'world views' (particularly of the trade union movement) embedded in that language, given the role of language as a key site of ideological contestation between political opponents (Edelman 1977: 25; Edelman 1988: 104; Fowler 1991: 4).

Consequently, an analysis of the key themes and vocabulary of the Government and 'New Right', (undertaken in Chapter 3) demonstrates the ways in which certain forms of discourse, evoking particular views and beliefs about the political world, functioned to mobilise support for measures which were restrictive of trade union activity. The linguistic responses of the trade union movement (taking the TUC as the most significant and representative voice given its role as chief spokesperson, 'think-tank' and co-ordinator of

a range of views - see pp.15-18 for an explanation of the range of source materials drawn upon for analysis) must be viewed against this backdrop of Conservative language which, particularly given the reactive nature of unions (see pp.11-12), set the terms of debate in this field.

Fundamental to the Conservative justification of legislative action against unions was invocation of the language of 'privilege', explored in Chapter 4. This discourse, which interlinked with arguments based around a Diceyan conception of the 'rule of law', was made possible by the historical formulation of protection for trade unions by means of a system of negative 'immunities' which could easily be portrayed as taking unions above the law. The theme of 'privilege', which therefore sprang from the *form* rather than the *substance* of the law - the manner in which legal relations were categorised - offered a powerful vindication for Government and 'New Right' intervention in industrial relations.

The language of 'immunities' thus offered considerable presentational difficulties for unions in opposing the legislative changes, as they acknowledged (see pp.83-4). Moreover, the structuring of the law relating to trade unions in the terms of 'immunities', which were essentially *negative* in nature, can be seen to have predisposed certain responses within the language of the union movement which were primarily defensive since, as Hendy remarks (1993: 61-2), the withdrawal of labour by workers in the British context of 'immunities' gave the impression that they were doing something wrong. Further, the 'immunities' underpinned a pluralist, abstentionist system of industrial relations by allowing workers to combine and to apply collective sanctions against employers, thereby removing obstacles which the common law would otherwise have presented to the functioning of the institutions of bargaining and self-regulation. Classification by means of 'immunity' was thus closely bound up with *collectivist* discourses within the union movement such as 'class', 'struggle', 'unity' and 'solidarity', and with a view of industrial relations based upon the existence of differences of interest (albeit reconcilable) between employers and employees which was manifested in a militaristic, confrontational vocabulary. These forms of language, and the manner in which they operated in support of union campaigns of resistance to the legislation in the period 1979-83, are examined in detail in Chapter 5.

Complaints about 'immunities', which could easily be adapted into the language of 'privilege', thus offered powerful justification for Conservative legislation against the unions; moreover, while the terms of debate on labour law remained rooted in this

formulation, the union response tended to be negative, collectivist and confrontational.

However, in the light of political, economic and industrial developments (see Chapter 2 and pp.163-5), the unions moved to a position whereby they accepted the involvement of law in industrial relations and attempted to turn it to advantage. This was manifested in adoption of the language of 'rights' (see pp.90-101), which served to open up other strategic possibilities within union discourse during the period 1986-90 and as such can be seen as having *more* than the mere 'presentational advantages' advanced by McCarthy (see p.91). Firstly, as a *positive* formulation representing a break with past approaches, it interlinked with various elements of the language of 'new realism' which stressed renewal, challenge and building for the future. Secondly, the 'moral superiority' of a claim labelled a 'right' (Fredman 1992: 35) lent weight to the argument that unions were being treated 'unfairly' by the Government. Finally, it chimed with the Conservative and 'New Right' invocation of the language of 'individual rights' and thus allowed the unions to foreground the individual in a manner which had not been open to them under the essentially collectivist discourse of 'immunity'. These themes are explored at greater length in Chapter 6.

The importance of language as a focus for ideological contestation between political opponents is, however, evident in the debate over 'individual rights'. Although the language of individualism became increasingly significant in union discourse, the understandings involved were not identical with those of the Government/'New Right' - the unions continued to stress the importance of individual realisation *via* the collective and used the model of the European Social Charter to call for a 'charter' of rights for individuals and unions; themes which were not consonant with Conservative rhetoric of freedom from collective oppression and participation in free markets. In this context, therefore, the *impact* of Thatcherite discourse upon union understandings of the world (both at an elite level and below) is questionable; however, in other areas of discourse, notably 'democracy', the unions moved much closer to a Thatcherite understanding, although even this concept was used *against* the Government, particularly where it appeared to have been subordinated to individualism in the legislative measures (see pp.211-5). Investigation of the changing language of trade unions thus casts light on the question of Thatcherite hegemony, discussed in Chapter 7, which can be seen to be incomplete, albeit considerably assisted by dominance of the media and the reactive nature of trade unions. In this respect, the analysis of Fredman (1992: 24), while stressing the

'ideological power' of Thatcherite discourses in justifying the legislative measures, would seem to overstate both the level of consensus thereby engendered in industrial relations and the extent to which such language (especially that of 'democracy') was closed off to the unions (see p.235) - Thatcherite understandings were powerful, but they were not uncontested.

The changing patterns of union language analysed in this thesis thus reveal changing responses to the political, legal, economic and industrial environment and developments in the way in which the union movement projected its programmes of action and mobilised support, although the extent of change should not be overstated - there were also significant continuities in language, which are summarised on pp.227-8. Pinpointing the *causes* of these changes is more problematic; 'realist' explanations would point to the impact of long-term unemployment, changing patterns of work, the decline in traditional manufacturing industries or changing management strategies (Marsh 1992: 242-4) in creating a difficult environment for trade unions. The contention of this thesis is that, while the precise identification of factors causative of the changes in union language which have been observed may be difficult (if not impossible) to achieve, the ideological underpinning of the anti-union measures of the Thatcher period was a highly significant element in the attempt to build a new consensus in industrial relations, and that language was central to that project. Accordingly, a proper understanding of the nature and extent of change within the trade union movement in response to the labour legislation of the 1980s needs to take account of change in *its* language as a political event in itself. On a broader level, it is possible to see shifts in trade union language as merely one component of significant changes which have occurred in the language of the British Left as a whole in the aftermath of Thatcherism, a process of reconstruction of its identity and redefinition of its vision of the world which continues to this day. A full discussion of this topic is beyond the scope of the present work; but I return briefly to this wider issue in the concluding Chapter (see pp.238-240).

CHAPTER TWO: The legislative, political and economic context

This Chapter briefly summarises the major measures which comprised the Conservative Government's programme of legislation for the reduction of trade union power between 1979 and 1990. The focus here, and in this thesis as a whole, is upon policies which altered the nature and operation of *collective* labour law, although it should be noted that legislation of the period also had an impact upon *individual* employment law; indeed Davies and Freedland suggest that restrictions upon trade unions formed part of a broader series of measures and policies aimed at restructuring the labour market (1993: 426), giving freer play to market forces in order to generate an 'enterprise economy'. I will outline the significant developments and provisions of the legislative programme[1] and comment upon the political and economic background to the changes in law. This will form the backdrop for the analysis of the key themes and changing patterns of Government/'New Right' and union discourse which is offered in the following Chapters.

Employment Act 1980

Marsh argues that the Conservative Party in opposition did not have a coherent policy on industrial relations which it carried through into government (1992: 64). There were tensions between those, such as Sir Keith Joseph and Margaret Thatcher herself, who favoured monetarist, anti-corporatist policies which entailed the reduction of trade union power (Joseph 1979), and moderates such as James Prior who were located in a tradition of voluntarist collectivism. However, electoral pragmatism (in particular, the perceived need for the policies to have a measure of consent and likely compliance from the unions, in contrast to the Industrial Relations Act 1971 (Prior 1986: 158; Dorey 1995: 160)) proved initially stronger than ideology (Marsh *ibid*: 58).

The 'Winter of Discontent' (1978-9) did not fundamentally transform this position, although it hardened Conservative attitudes towards union power and provided a focus for policies on union reform which appeared in the subsequent manifesto; as McIlroy writes, the events of 1978-9 became amplified into a myth (1995: 195) which offered

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[1] For a fuller account of the legislation and policies, see Auerbach (1990), Davies and Freedland (1993: Chapter 9).

justification for Conservative anti-union policies and which the unions were forced to attempt to refute in order to win public support (see p.61).

Consequently, the Conservative manifesto of 1979 contained a commitment to trade union reform, though not of a radical nature. It promised to make secondary picketing unlawful; that immunity for secondary action would be removed; that employees in closed shops be given the right of appeal and compensation if dismissed; that new closed shops should only be established after secret ballot; that secret ballots on various issues should be encouraged by the provision of public funds; and that unions should share the cost of supporting striking workers (CCO 1979). These proposals were 'informed by a voluntary collectivist ideology, rather than an individualist one' (Marsh 1992: 64), reflected also in the appointment of Prior to the Employment portfolio in the first Thatcher Cabinet.

Prior's cautious instincts and reluctance to abandon the voluntarist tradition of industrial relations were manifested in the genesis and development of the Employment Act 1980 (Dorey 1995: 158-64). The proposals were preceded by extensive consultation with TUC leaders (Marsh 1992: 68), and there was serious division within the Cabinet between those who supported a tougher approach and those who urged the need for caution (Prior 1986: 162-5). The consequence was that the proposals were 'ushered in, with an almost defensive supporting rhetoric' (Davies and Freedland 1993: 444), with Prior stressing their continuity with previous measures and their balanced nature (see pp.35-7). The statute represented a bridge between the strategies of the 1970s and the 1980s, and although moderate in tone, foreshadowed many of the more radical measures of following years (Davies and Freedland *ibid*: 447). Its central provisions[2] were concerned with encouraging secret ballots by the allocation of public funds; restricting the closed shop by providing that employees could refuse to join on grounds of conscience or deeply held personal conviction and by requiring that new agreements had to be approved by an 80% majority; restricting coercive recruitment; diminishing the scope of lawful picketing; and removing many of the immunities for secondary action.

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[2] For precise references to section numbers, see the works discussed in n.1, above, p.22.

Employment Act 1982

Prior's circumspection inclined him to allow the provisions of the 1980 Act time for acceptance, although he was prepared to take certain further steps (Prior 1986: 170-1). However, the British Steel strike of 1980 hardened attitudes within the Conservative Party and forced Prior into a compromise whereby he agreed to conduct a major review of trade union immunities with a view to further legislation (Dorey 1995: 162). The result was the wide-ranging Green Paper on *Trade Union Immunities* (DE 1981) which discussed a number of proposals for change in industrial conflict law and even considered the possible introduction of a system of positive rights in place of immunities (see p.99). The fact that this was a very long-term goal reflected Prior's desire to temporise: 'whilst further measures in some areas might be desirable, they were at least for the time being either impractical or impolitic or both. The 1980 Act had gone far enough for the moment, and it would be unwise to push any further' (Auerbach 1990: 71).

Prior was replaced in September 1981 by Norman Tebbit, who had acquired a reputation as a 'union-basher' (Dorey 1995: 164); it was thus expected that he would be considerably less moderate than his predecessor. However, he was also concerned to avoid the unenforceability which had marred the 1971 Act (Tebbit 1988: 233), and introduced new proposals for legislation to Parliament in measured tones (see pp.37-8).

Despite this, the provisions of the 1982 Act were considerably more forceful than those of 1980. Auerbach remarks that s.15 (which removed the immunity of trade unions from liability in tort and thus opened up the possibility of individuals seeking injunctions or claiming damages from union funds for losses caused as a result of unlawful action) was not only the pivotal provision of the Act, but 'arguably of the whole corpus of legislation' (1990: 232). The Act also further restricted the closed shop, requiring ballots for existing agreements and establishing a general right not to belong to a trade union, subject to limited exceptions. It made union membership or union recognition clauses in commercial contracts unlawful, tightened the definition of a 'trade dispute' and removed immunity from industrial action relating to matters arising overseas, unless those taking action were likely to be affected by the outcome of the dispute.

Davies and Freedland remark that the 1982 Act left uncertainties in several areas of the law (1993: 482). However, while the extent and precise direction of future developments in labour legislation remained somewhat unsettled, the statute would appear

to have marked a definitive break with the voluntarist tradition - '[the Act] effectively signalled the abandonment of any serious hopes of maintaining a consensus around a largely voluntarist framework of labour law, and a move towards a framework geared to cope, if need be, with the prospect of a less infrequent involvement of the law in industrial conflict' (Auerbach 1990: 111).

Trade Union Act 1984

The Government's next step was to publish a Green Paper on *Democracy in Trade Unions* in January 1983. This reflected something of a change in strategy from the *restriction* of trade union powers to the *regulation* of their activities and operation (see pp.38, 57-8); however, the 1981 Green Paper had raised the issue of union democratic arrangements (DE 1981: 6) and the new proposals were justified on the basis that unions had refused voluntarily to reform their own internal arrangements (DE 1983: 1). The Green Paper argued that unions were insufficiently responsive to the views of their members and that their power and 'privileges' enabled them to damage economic interests *via* industrial action; accordingly, both union members and the public needed assurance that union affairs were properly conducted (*ibid*). In consequence, it advanced proposals on strike ballots, union elections and the political fund.

Before any legislation along these lines could be introduced, the 1983 general election intervened. The Conservative manifesto referred to the Green Paper's proposals - indeed, Tebbit argued that they had been drafted with the election in mind (Tebbit 1988: 197-8) - and also promised that consultation would take place on restricting industrial action in essential services (CCO 1983: 12). Tebbit was subsequently replaced as Employment Secretary by Tom King, who introduced the Bill incorporating the measures on union democracy into Parliament in November 1983, the Act becoming law in 1984.

The Act provided for secret ballots for election to union executive committees - in the case of voting positions, taking place every five years. It required secret ballots to be held prior to union-organised industrial action and removed immunity from action if there had not been a vote in favour. It also required balloted support for the maintenance of a political fund at least every ten years and re-defined the scope of the political objects of trade unions to include expenditure on advertising *etc* for a political party or candidate. A proposal to replace 'contracting out' of the political levy with 'contracting in' was

dropped (Marsh 1992: 114-9).

The 1984 Act was justified in populist terms as 'giving the unions back to their members' (see p.58), the belief apparently being that 'rank and file' members would be less radical than union leaders (Auerbach 1993: 42; Undy *et al* 1996: 113). In the case of political funds, this view was somewhat misplaced, as ballots demonstrated widespread support for their continued existence (Steele, Miller and Gennard 1986: 443). However, the Act may still be seen as 'a carefully thought out and coherent piece of legislation, aimed at the new Conservative target of individualising union activity through regulation of decision making' (Fosh *et al* 1993: 28), prioritising secret ballots and seeking to depoliticise trade unionism (Marsh 1992: 115; Davies and Freedland 1993: 438).

1984-1988

Between 1984 and 1988, there was 'something of an interregnum in trade union legislation' (Dorey 1995: 165), owing to the relative disinterest which the new Secretary of State for Employment, Lord Young, demonstrated for trade union reform, the belief among certain Conservative backbenchers that no further legislation was necessary, and the preoccupation with the major industrial disputes of the period (*ibid*. 165-6; Auerbach 1990: 157). As discussed above, this thesis is concerned with responses to the legislative policies of the Thatcher Government, and I have accordingly not considered the period between the passing of the 1984 Act and the publication of the Green Paper on *Trade Unions and their Members* in detail in the analysis which follows. Nevertheless, since the developments of this period had an effect upon Government and union discourse surrounding the later legislation, I will briefly discuss them.

The decision to ban trade unions at GCHQ in December 1983 has been seen as 'perhaps the most spectacular and extreme anti-union measure taken by the Government' (Kessler and Bayliss 1995: 256); however, a policy of derecognition was not extended to other civil servants, and the event 'did not... effect a fundamental shift in the balance of power between the Government and trade unions' (Davies and Freedland 1993: 492).

In contrast, the miners' dispute of 1984-5 had considerable symbolic significance for the Conservative Government (Marsh 1992: 119), erasing the memory of the strike of 1973-4 and facilitating the portrayal of trade unions as a threat to public order (see pp.65-6) and the national interest. For the unions, the defeat of the miners arguably

demonstrated the inability and unwillingness of the TUC to coordinate a campaign of defiance of the Government; it may also be seen as having encouraged moves towards 'new realism' (Gibbon 1988: 169 - see Chapter 6).

The other major industrial dispute of the period was the News International dispute of 1985-6, during which employers made extensive use of the new legal powers available to them, in order to 'support a newly aggressive set of managerial strategies' (Davies and Freedland 1993: 499).

These disputes strongly influenced the Government's next legislative steps. In February 1987, a Green Paper on *Trade Unions and their Members* appeared, which was largely predicated upon the mobilisation of dissentient members to control unions from within (Auerbach 1990: 165), a strategy seen as influential during the miners' strike. The Conservative election manifesto affirmed the intention to legislate along these lines, stressing the importance of 'people's right to choice and independence' (CCO 1987: 23).

Employment Act 1988

The ensuing Act gave union members the right to apply for a court order if the union had taken industrial action without the support of a ballot; made it unlawful for a union to apply its property to indemnify any individual for any penalty; and removed immunity from the post-entry closed shop. It also extended the requirement to hold an election ballot to non-voting members of the union executive and to the president and general secretary in any event; required union ballots to be postal; required industrial action to be supported by a majority in a separate ballot in each separate workplace; and empowered the Secretary of State to issue codes of practice for ballots. In addition, it established a Commissioner for the Rights of Trade Union Members to support members in complaints against unions.

The most controversial of the measures introduced by the Act was that establishing the right of an individual member not to be 'unjustifiably disciplined' for refusal to participate in industrial action even after a vote in favour. This provoked considerable criticism, not only from unions, but also from civil liberties and employers' organisations (see pp.211-3).

Employment Act 1990

While the 1988 Act had centred upon the rights of individual members against their unions, the 1990 Act was prefaced by a debate which focused upon the economic benefits which would apparently accrue to the nation in the wake of improved industrial relations. Trade unions, and institutions such as the closed shop, were seen as obstacles to employment, economic efficiency and productivity in both the 1988 White Paper on *Employment for the 1990s* and the March 1989 Green Paper on *Removing Barriers to Employment* (see pp.45-6).

Before the proposals in the latter document were given legislative effect, there was a resurgence of industrial conflict during the so-called 'summer of discontent' of 1989, with strikes on London Underground, British Rail, in the docks, the BBC, local government and elsewhere (Beardwell 1990: 120-124). Several of these disputes were unofficial, and, pragmatically responding to these specific events (Fosh *et al* 1993: 29), the Government produced a further Green Paper on *Unofficial Action and the Law* in October 1989.

The 1990 Act thus had several objectives - abolishing the pre-entry closed shop; virtually outlawing secondary action; extending the powers of the Commissioner; widening the range of persons who could render a union liable in tort for unofficial action; tightening the requirements for repudiation which could enable unions to avoid liability; and permitting employers to dismiss selectively employees taking part in union action.

Economic and political aspects of Conservative union policy

Although the primary focus of this thesis is upon language in the debate on labour legislation, changes in the law are best understood as part of a wider economic and political strategy of which the reduction in trade union power formed a significant element (Miller and Steele 1993: 227; McIlroy 1995: 265). In order to properly comprehend the legislative developments, therefore, it is necessary to give a brief account of this wider context.[3]

The economic policy of the early years of the Conservative Government was based

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[3] For the *ideological* background to the Conservative policies, see Chapter 3.

around 'monetarism'. This policy, as set out in the works of Milton Friedman, centred around the reduction of inflation using supply-side techniques (notably, control of the money supply). It entailed a rejection of incomes policies as a means of controlling inflation and the corresponding belief that levels of pay should be determined by the free working of the labour market, the restriction of public expenditure and an abandonment of a commitment to full employment. This had important effects - 'monetarism involved nothing less than a complete re-alignment of the Government's perception of the trade union movement' (Davies and Freedland 1993: 433). There was no longer any need for corporatist arrangements to determine economic policy (Gilmour 1992 :97) - indeed, corporatism was incompatible with the notion of a labour market in which employers were free to settle wage rates and levels of recruitment. In consequence, the national political/economic role of the TUC and unions was substantially reduced. Additionally, the ability of unions to push for wage increases or to resist cuts in public expenditure, therefore encouraging inflationary pressures and interfering with the free operation of markets, necessitated a reduction in trade union power.

The significance of monetarist policies declined as the decade wore on (Davies and Freedland 1993: 435; Kessler and Bayliss 1995: 49). However, the Government remained committed to the wider objective of freeing the labour market and sought to deregulate and derigidify it with the object of creating an 'enterprise economy' (Davies and Freedland *ibid* 526-38); this required the continued reduction of trade union power, and the virtual abolition of institutions such as the closed shop.

The diminution in the involvement of the unions in economic and political policy-making which was implied by the Thatcher Government's policies was reflected both in institutional developments and in frequency of union access to government. Industrial Training Boards, tripartite bodies with full union representation, were largely abolished in the early 1980s; the Manpower Services Commission, 'perhaps the grandest of all post-war tri-partite experiments' (Davies and Freedland 1993: 440) was disbanded in 1985 and ultimately replaced by employer-led Training and Enterprise Councils; and the NEDC was downgraded in significance, its meetings becoming less frequent before its final abolition in 1992. Other opportunities for union contact with government were also reduced and although the number of contacts did not decrease significantly, fewer were initiated by Government and there was less personal contact (Marsh 1992: 112). Prior consulted the unions throughout the evolution and passage of the 1980 Act and over the 1981 Green

Paper; however, once he had been removed, they had little prospect of influencing legislative policy, their only success being the concession on contracting-in in the 1984 Act (see p.26). The overall picture, therefore, was one of marginalisation - 'a general distancing of trade unions from the policy-making process by the Government' (Davies and Freedland 1993: 438-9).

The economic environment

These policies combined with longer-term and worldwide economic trends to create a changed environment for trade unions. Unemployment reached a level 'unprecedented in post-war Britain' (Kessler and Bayliss 1995: 257), doubling between 1979 and 1981 and reaching 3 million in 1986-7. Manufacturing industry declined, while there were important compositional changes in the British labour force, with a growth in the service sector, in female and part-time employment, in white collar occupations and in self-employment (McIlroy 1995: 86-7). International competition increased throughout this period, resulting in increased pressure for flexibility, efficiency and the reduction of labour costs (Kessler and Bayliss 1995: 51); while the introduction of new technology may have caused new patterns of post-Fordist labour to emerge (McIlroy 1995: 88), although the precise effect is unclear (Marsh 1992: 174-5).

Alongside these developments, there were significant changes in union organisation and activity. Union membership declined from 13.3 million in 1979 to 9.0 million in 1992 - that of TUC-affiliated unions fell from 12.1 million to 7.3 million over the same period (Kessler and Bayliss 1995: 260). The coverage of collective bargaining diminished (McIlroy 1995: 387-8) and managerial authority was asserted (Kessler and Bayliss 1995: 120-1), although the extent to which managerial strategies have changed remains unclear (Kelly 1990: 53). The strike rate also declined, with 521 days lost per thousand employees in 1980 reduced to 83 in 1990 (Kessler and Bayliss 1995: 233).

There seems little question, therefore, that the legal, economic and political environment in which unions were operating during the period 1979-90 was one of considerable change. What remains controversial is the extent to which these developments had a transformative effect upon the trade unions and, if they did, the degree to which those changes can be attributed to legislative policies as opposed to other

factors. By analysing changing patterns of union discourse, I hope to be able to contribute to this debate; however, as explained above (p.12), I turn first to the vocabulary of Government and the 'New Right'.

CHAPTER THREE:- The language of Government and the 'New Right'

This Chapter will focus on the language deployed by the Conservative Government in justification of the new legislative framework for industrial relations introduced between 1979 and 1990. The discourse used in the identification of problems, recommendations and policies for reform as set out in the various Green and White Papers will therefore be considered, in addition to public speeches and comments made by ministers and other spokespersons during debates in Parliament which, as Auerbach remarks, 'may easily attain the status of symbolic embodiment of the very essence of legislative policy' (1990: 6).

However, an exclusive concentration upon the Government's policies and discourse is apt to be misleading, at least in the context of reform of industrial conflict legislation, since it understates the role played in the formation of policy, and in the construction of a language with which to justify it, by the thinkers and groups which constituted the 'New Right'.[1] As Gamble remarks, the Thatcher Governments' 'momentum was maintained by the flow of ideas and policy discussion that came from the New Right' (1994: 5). Accordingly, I wish also to consider the language employed by those individuals and organisations who sought to influence the debate on industrial relations, of whom the most notable were probably the IEA, the CPS, and, in particular, the Austrian economist, Friedrich von Hayek (see Desai 1994).

While the thinking of 'New Right' individuals and groups was undoubtedly of significance in providing a background to the debates on industrial relations and the legislative changes of the Thatcher years, considerable disagreement exists amongst academic commentators as to the *precise extent* to which the Conservative Government's labour law policies were shaped by a 'New Right' agenda. Some have argued that the measures adopted in the 1980s were modelled upon the writings of 'New Right' theorists, especially Hayek. Prominent amongst these commentators is Lord Wedderburn, who has

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[1] The label 'New Right' is in common usage, although certain commentators have questioned its validity, notably Barry (1987) who prefers the phrase 'neo-liberal'. The differences in meaning point to divisions and conflicts among those individuals and groups commonly associated with the phrase. For the purposes of my analysis, I shall refer to the ideas and policies of these individuals and groups as 'New Right', while acknowledging that 'the term certainly does not signify... either a unified movement or a coherent doctrine' (Gamble 1994: 34). For discussions, see Gamble *ibid*; Kavanagh 1990: 102.

stated that 'the character of labour legislation since 1979 can be better understood - and its future course probably better predicted - by reference to this framework set up by Hayek than to any other' (1991: 210). Although acknowledging that Hayek 'did not of course write the 'step-by-step' programme of labour law', he remarks that 'one would need to be juridically tone deaf not to pick up the echoes of his philosophy' (1991: 209) in Conservative Government policies and rhetoric.

Others, notably Simon Auerbach, have been more sceptical of the existence of a connection. He argues that the legislative programme of the 1980s was shaped by a pragmatic, *ad hoc* response to political and industrial events, and that while the work of the 'New Right' may have had some influence on Government policy-making (particularly as the decade wore on, with the rhetoric of Ministers becoming 'increasingly unequivocal and explicit' (1990: 230)), it is insufficient as an explanation *in itself* of the Government's policies. Consequently, he believes that 'a greater range and sophistication of influences and considerations must be seen as having determined the industrial-conflict laws of this period' (1990: 4), especially given that many elements of the Conservative programme were at variance with Hayekian prescription, not least the unwillingness to totally remove trade union immunities, for which Hayek had called (Hayek 1984: 54; Auerbach 1990: 228).[2]

Recent commentaries have attempted to find a *via media* between these two viewpoints. Fredman has argued that the Conservative legislation is not the product of a 'coherent masterplan' drawn from the 'New Right' but rather draws upon its analyses in conjunction with other sources as justification for the legislative measures (1992: 25). Fosh *et al* view Conservative policy as shifting over time, at certain times being reflective of Hayekian principles, while at others owing more to other ideological strands in Conservative thinking (1993: 19). They emphasise, however, that ideology was an important element of Conservative labour law policies in the 1980s.

The debate over the extent of ideological influence upon the legislative policies of the Thatcher Governments in the field of industrial relations is mirrored by a wider debate over the existence of, and meaning of 'Thatcherism'. Some have dismissed the notion that there is a distinct phenomenon called 'Thatcherism', arguing that 'Thatcherism is essentially an instinct, a series of moral values and an approach to leadership rather than an ideology'

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[2] For a summary of this debate, see Miller and Steele 1993: 226; Fosh *et al* 1993: 16.

(Riddell 1985: 7; Willets 1992: 52). Others have seen it both as a distinctive 'style' of government based around the powerful personality of the former Prime Minister and as a 'coherent set of political ideas' guiding the enactment of policies (Kavanagh 1990: 12). Still others have argued for the view that Thatcherism represents a political project designed to re-establish Conservative hegemony, involving ideological doctrines, political calculation and a programme of policies (Gamble 1994: 4-10; Hall 1988). These disputes over the nature of the concept (if it is such) surely point to the view expressed by Gamble, that 'there is no single uncontested meaning [of Thatcherism]. The term denotes a phenomenon for investigation, not a known entity' (1994: 3).

It is not my intention in this thesis to evaluate the accuracy or otherwise of any of the various analyses of the 'Thatcher experiment' (Kavanagh 1990: 1)[3]; neither do I particularly seek to advance the debate on the extent of 'New Right' influence on the Thatcher labour legislation. Instead, I propose, in this Chapter, to follow the approach of Fredman, who has argued that attention must be paid to the *language* by which the Conservative Government sought to justify its legislative changes in the field of labour law, and who demonstrates the importance of certain 'high-minded' ideals such as democracy, individual rights and freedom in furnishing a vocabulary by which the policy proposals could be legitimated (1992: 24).

In expanding upon Fredman's analysis, however, I shall identify a number of other significant words and themes used to justify legislative action against unions. Additional sources, notably the various 'New Right' publications on union reform, will also be considered. As discussed on p.33, certain commentators have claimed that 'the New Right offered a 'pool' of ideas and rhetoric' (Auerbach 1990: 232) upon which the Government drew and that the rhetorical denigration of trade unions was an integral part of a process justifying the legislative measures (Undy *et al* 1996: 12). However, as also stated (see p.7), no extended exposition and interpretation of that language has been attempted; it has merely been seen as one element of a broader ideological process. This Chapter therefore seeks to offer a considered analysis of the discourses of Government and the 'New Right', which will form the essential backdrop to the discussion of changing patterns of union language which is the central topic of this thesis.

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[3] Although I shall discuss the concept of 'hegemony' at length in the concluding Chapter of the thesis.

The language of 'balance'

One important feature of the language in which the industrial relations debate of the Thatcher period was conducted, but which was not readily explicable in terms of 'New Right' theories, was the concept of 'balance'. Indeed, as I shall attempt to demonstrate in Chapter 6 (pp.182-5), this theme was widely used by the unions, particularly towards the end of the decade.

The relative absence of the language of 'balance' from the writings of 'New Right' theorists on industrial relations is not difficult to understand. Hayek and his followers did not seek the restoration of an equilibrium in industrial relations, but rather the complete removal of all immunities from trade union action (see Chapter 4). These radical demands did not lend themselves to exposition in the circumspect language of 'balance'. However, where the requests were somewhat more moderate, as in the 1980 publication of the CPS,[4] *Liberties and Liabilities: The Case for Trade Union Reform*, (which argued that 'abuses by union officials are best tackled <u>not</u> by a frontal assault on 'the unions' but by an oblique approach - by fortifying the individual worker and protecting his rights <u>inside</u> the union' (CPS 1980: 31 - emphasis in original)), the language of 'balance' became central: 'the law must be invoked to restore balance and maintain freedoms... [This Report] looks at the difficulties of balancing trade union rights against responsibilities, the liberties of one group of workers against those of another, the respective rights and duties of employers and employees, and the liberties and liabilities of the unions against the liberties and liabilities of the public. The primary aim of the proposals is to produce a better balance in the current law' (*ibid*: vii).

The use of the language of 'balance' as a form of rhetoric justifying cautious measures against the unions is even more clearly demonstrated by an examination of the policies of James Prior between 1979 and 1981. Prior's central objective in introducing the Employment Bill 1979 was 'to bring about a lasting change in attitude by changing the law gradually, with as little resistance, and therefore as much by stealth, as was possible' (Prior 1986: 158). Accordingly, he was keen to deploy language which was restrained,

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[4] While the IEA was independent of the Conservative Party, the CPS was founded by radical Conservative MPs (Keith Joseph and Margaret Thatcher) and was thus more inextricably bound to the Party. See further Desai (1994); on the IEA see Cockett (1994).

in order to avoid alienating the unions and the public: 'Union moderates were having a tough battle behind the scenes to hold the union movement to a reasonable approach. Strident statements by Ministers could only undermine them. I did not want my consultations on union reform with the TUC wrecked, nor did I want to see the creation of a confrontationist economic policy' (*ibid*: 156-7). Debate on the Bill in Parliament was thus conducted in the language of moderation, the goal being restoration of an equilibrium in British industrial relations: 'I [approach the debate] with some humility and a desire for consensus... Let me reiterate that we have sought a balance. I do not believe that what we have witnessed in the last 20 years has been a balance' (OR HC, 5th ser., vol. 976, cols. 58, 60); 'the last administration tilted the balance too far towards the unions... The Bill tips the balance back towards responsible management and responsible union leadership... [the Bill] is firm, it is fair and it is balanced' (OR HC, 5th ser., vol. 983, col. 1538).

For Prior, then, the language of 'balance' was a key element of his consensual approach to industrial relations, which sought to be inclusive of all participants in the process: 'Mr. Prior's claim... was that all parties, employers, employees, and others affected by industrial action, had legitimate claims, and that his measures were designed to strike a balance between them' (Auerbach, 1990: 62).[5] The desire for highly cautious, moderate reform in order to restore an equilibrium which was manifested in such vocabulary was perhaps given greatest expression in the 1981 Green Paper, *Trade Union Immunities*, as Prior himself acknowledged: 'It seemed to me that if Labour's legislation had been unbalanced in one direction, favouring the unions, we had to be wary of not tilting the balance too far back in the other' (Prior 1986: 169).[6] The Green Paper's genesis and form reflected this prudent approach, in that considerable prior consultation took place before drafting (Prior J., HC Paper 282, 1980-81: 192), and the Paper itself was set out as a series of 'pro' and 'con' arguments concerning each proposal. The content also owed a considerable amount to the language of 'balance'. It was claimed that there had been an historical role for the law in establishing a balance of bargaining power between employees and employers (although this role was minimal, reflecting Prior's voluntarist

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[5] Note also that one of the leading contemporary commentaries on the 1980 Act was entitled *Striking a Balance?* (Lewis and Simpson 1981), and Prior's memoirs, *A Balance of Power* (1986).

[6] Indeed Auerbach (1990: 69-71) and Davies and Freedland regard the Green Paper as a 'manifesto against further legislation' (1993: 471).

outlook): 'What the law can achieve in affecting the balance of power must not be over-estimated, but it has always been recognised as a proper role of Parliament to intervene by statute to correct manifestations - whether by employers or employees - of a disequilibrium of bargaining power' (DE 1981: 2). The conclusion was that any future developments in the law must be directed to creating and maintaining balance:

> 'Essentially, what is involved in each case is finding a balance between the conflicting needs and interests of those involved: the interests of employers seeking to manage their business effectively as against the interests of trade unions in carrying out the functions of representing their members; the ability of trade unions to mount effective industrial action as against the need for the individual to be protected against the abuse of trade union power; and the interests of those in dispute and of the rest of the community, including employers and employees who have no connection with the dispute but whose business and jobs may be threatened' (*ibid*: 92).

On this view, the fundamental objective of reform in labour legislation was not to curb union power or severely restrict their activities, as 'New Right' theorists proposed, but rather to establish an equilibrium. In this respect, the language of 'balance' was that of those 'moderates' such as Prior, who thought radical reform unnecessary and who acknowledged the continuing significance of unions in an essentially voluntarist framework.

A noteworthy aspect of the above passage is that the notion of 'balance' is deployed in several differing contexts - to describe the relationship between *unions and employers*, between *unions and their individual members*, and between *unions and the community*. This suggests that the vocabulary was flexible and could be used to justify a number of measures against the unions. Such adaptability meant that the language of 'balance' continued to be useful even after the end of Prior's 'voluntary collectivist' era.

Hence, Norman Tebbit, in spite of a more uncompromising reputation (see p.24) also found the language of 'balance' to be a useful rhetorical tool. He viewed the 1982 Act as a measure which 'simply tilted the balance of power away from the unions by chipping away the privileges and legal immunities which gave them their ability to ride roughshod over the legitimate rights of the general public' (Tebbit 1988: 186). Consequently, in presenting the measures to Parliament, he and the Under-Secretary of State for Employment, David Waddington, made widespread use of the vocabulary: 'The matters we are dealing with here are designed to restore a balance between the rights of the citizen under the common law and those that have been taken away from him... by successive

industrial relations and employment Acts over the years' (Tebbit, N. OR HC, 6th ser., vol. 13, col. 632); 'We have tried to provide specific remedies for real abuses, to provide effective protection where it has been shown to be necessary, and to redress the imbalance of bargaining power to which the legislation of the last Government had contributed so significantly' (Tebbit, N. OR HC, 6th ser., vol. 17, col. 738); 'We have tried to create a balanced package. Because it is seen as a fair and balanced attempt to deal with some of the worst abuses it continues to attract widespread support' (Waddington, D. OR HC, 6th ser., vol. 17, col. 816); 'A balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a majority and dominant position' (Waddington, D. OR HC, 6th ser., vol. 17, col. 820).

For Tebbit, as for Prior, the language of 'balance' was reflective of a need to proceed with a degree of caution in trade union reform. Although there was widespread belief that he had been appointed to mount a full-scale attack on the unions, Tebbit's 'ideological hostility towards trade unionism was... considerably tempered by a hard-headed realism about what was feasible' (Dorey 1995: 164). In particular, he was 'determined not to enact unenforceable legislation - the memory of the collapse of the 1972 Industrial Relations Act was very much in my mind... I had no intention of exposing more than one move at a time. I was determined first to form public opinion and then to be always just a little behind rather than ahead of it as I legislated' (Tebbit 1988:184). In consequence, it was important for Tebbit to present his proposals in as reasoned and moderate a manner as possible, in order to avoid opposition to the legislation - [the Bill] 'was carefully designed and did not of itself compel the unions to do anything - so there could be no mass refusal to comply with what came to be known as 'Tebbit's Law'' (ibid: 186). The language of 'balance', as the first remark from Waddington cited above suggests, was an ideal means of achieving this objective.

In addition, the notion of an equilibrium in industrial relations was indicative of a divergence, in places, from a purely 'New Right' programme of trade union reform. While the 'New Right' sought to remove union 'privileges' so as to expose unions to the ordinary common law, thereby severely *restricting* their activities, the Government also pursued a policy of *regulating* union activities which 'emphasised the need to accommodate the demands of labour: trade union action should not be outlawed but instead a more equitable balance should be sought between the rights of employers on the one hand and employees and their unions on the other' (Fosh *et al* 1993: 18-19). This approach, which

linked with the authoritarian populist aspect of Thatcherism, was apparent particularly in the measures concerned with democracy in trade unions (see pp.57-60). The language of 'balance' was here deployed in justification of legislative intervention in internal union affairs: 'unions can wield great power over the lives of their members, and the Government has a duty to see that union members have adequate protection against the abuse of this power. There must also be a proper balance between the interests of unions and the needs of the community; and organisations which claim and have special privileges must conduct their affairs in ways which attract public confidence and the confidence of their members' (DE 1983: 37). 'Balance' was being used in this context to imply that the Government would involve itself in internal union issues, *but that it would only go so far*; certainly not to the lengths proposed by some of the 'New Right' theorists (Hayek 1984; Hanson and Mather 1988).

This regulatory strategy - predicated on the continued existence of unions and the accommodation of labour coupled with the need for the Government to win support (both from trade union members and the wider public) for its measures, which expressed itself in the use of the moderate and reasonable language of 'balance', would also seem to explain another important characteristic of its industrial relations discourse - namely, the relative absence of an explicit vocabulary of confrontation. While on the one hand the notion of a 'balance' suggested a cautious move towards a mutually acceptable equilibrium, the very acceptance that there was a 'balance' implied that *conflicting* interests existed in the industrial relations arena (as suggested above, these might be unions on the one hand and employers, individuals, or the 'community' on the other, depending upon which particular problem was being addressed). If interests were in opposition in this manner, the restoration of a 'balance' necessarily involved the Government intervening on a particular side (here, opposed to the unions). It might be supposed that such a bipolar view of industrial relations would result in the adoption of language expressive of hostility and antipathy towards the unions 'on the opposite side'. Certainly, this appears to have been true in reverse, with the unions using strident, militaristic language to portray their opposition to the legislation as I shall attempt to show (see pp.104-21).

In fact, I detected relatively little *overtly* confrontational language in my analysis of the Green and White Papers and Parliamentary debates surrounding the legislation of

the 1980s.[7] This is explicable if we consider the purpose which such debates and documents were intended to serve, and the audience to whom they were addressed. In part, they were a means for the Government to put its case justifying further legislation; but they also served to mobilise back-bench and public support for the measures. As such, it was important for the Government to portray the legislative proposals in moderate language to avoid alienating supporters, particularly amongst those trade union members whose support the Government was looking to secure (Tebbit 1988: 168). The use of such reasonable language was less necessary at events where the primary audience consisted of Conservative Party members, and the tone was accordingly less measured in such instances.[8]

Nevertheless, the contrast with the TUC, which *was* prepared to use confrontational language in many of its publications designed to attract support for campaigns against the legislation (see Chapter 5), is interesting. Moreover, one might expect to find 'New Right' theorists, without a need to maintain electoral or back-bench support, and generally opposed to a regulatory strategy, to be more explicitly hostile towards unions. Yet even here, the characterisation of industrial relations in the confrontational terms of a military campaign - central to union discourse - was relatively absent. Hayek referred to the unions as the 'open enemies' of freedom and to the 'licensed use of force' to attain wage levels (1984: 61, 62); but perhaps the most extended example came elsewhere, in the context of an exhortation to unions to 'conform with the rule of law': 'Unless checked by law or popular resistance, the purpose of union leadership becomes less and less to render service to members and more and more to dominate them. The members become foot-soldiers, who are largely conscripted and must obey their

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[7] Norman Tebbit, who later described his approach to industrial relations law reform as a 'mixture of menace and reasonability' (Tebbit 1988: 186), represented a *(cont.)* *(cont.)* partial exception. In debate on the 1982 Employment Bill, he referred to the closed shop as 'trade union conscription' and to the major unions as 'the big batallions' (OR HC, 6th ser., vol. 17, cols.739, 740), while at the 1983 Conservative Party conference, he spoke of industrial relations as a 'minefield' and claimed that 'the only casualties so far have been on the TUC side. They have been left hanging on the barbed wire of their own defences' (Tebbit 1988: 210). Nevertheless, in Parliamentary debate and in Green Papers, Tebbit's tone was generally more measured. See further n.8.

[8] See for example Thatcher's 1984 speeches to various groups of Conservative MPs, in which she explicitly invoked militaristic imagery, below, p.65, n.24. For an explanation of the source material in this Chapter, see pp.18-19.

officers, in a way which is used for aggression against the whole of society. That is why unions tend conspicuously to be undemocratic bodies, even in those cases where there are formally democratic procedures, and even though theoretically every conscript in the union army may carry a marshal's baton in his knapsack' (Shenfield 1986: 42, 43).

However, while there may have been comparatively little in the way of *directly* confrontational language in use by the Government and the 'New Right', this did not mean that their rhetoric lacked stridency. In the latter part of the decade, and particularly after the Conservatives' third election victory in 1987, the tone became increasingly polemical. The caution and open-mindedness evident in Green Papers such as *Trade Union Immunities* and, to a lesser degree, *Democracy in Trade Unions* had been replaced, by 1987, by dogma and the selective use of evidence (Auerbach 1990: 159-60; Fosh *et al* 1993: 23). The election victory in 1987 'encouraged the Government towards more extreme and ideologically driven measures even than those it had adopted in the early and mid-1980s, in the field of labour legislation as in other areas of government activity' (Davies and Freedland 1993: 502), with the consequence that 'the rhetoric of ministers on industrial relations law became... increasingly unequivocal and explicit' (Auerbach 1990: 230). Thus, Green and White Papers from 1987 onward showed 'few signs of hesitation about the road ahead' (*ibid*: 160).

The growing confidence with which the Conservative Government approached the issue of trade union reform was therefore reflected in the language used in policy documents. This is clearly illustrated by a consideration of the function performed by the language of 'balance' in the late 1980s. The vocabulary was still in use, but its role in Government rhetoric had changed; instead of being the language of moderate, cautious reform, as earlier in the decade, it now became expressive of the Government's *past achievements* in reforming industrial relations. Examples of this were numerous: 'In 1979 the balance of power between trade unions and employers and between trade unions and their own members was weighted heavily in favour of the unions. The Government's step-by-step approach to trade union reform has helped to correct these imbalances' (DE 1988: 16; see also *ibid*: 20); 'The improved record of the 1980s has been achieved at the same time as the Government's reform of industrial relations and trade union law. These reforms helped correct the imbalances of power between trade unions and employers, and between trade unions and their own members, which were among the fundamental causes of the problems in the 1970s' (DE 1989a: 10); 'The principle underlying all our legislation has

been the need to achieve a fair balance of rights between the rights of trade unions and those with legitimate disputes with their employers and the rights of employers and employees who simply want to get on with their business and protect their jobs' (Howard, M. OR HC, 6th ser., vol. 166, col. 41).

The talk now was not of the cautious movement towards an equilibrium which had characterised the earlier part of the decade, but rather of 'imbalances' which had been corrected by the Conservatives' legislative policies. 'Balance' had been achieved, but this did not mean that future reform was unnecessary - rather, such reform was justified largely in the overtly ideologically-charged vocabulary of the free market and of individualism, instead of the moderate, essentially neutral language of 'balance'. It is to these discourses that I now turn.

Discourses of the economy and the market

In Chapter 2, I commented upon the significance of the Government's economic strategy in the context of labour legislation, remarking that measures to control trade union power formed part of wider policies to restructure and free the labour market. One might therefore expect the language of economics and the discourse of the 'free labour market' (Davies and Freedland 1993: 435) to play an important role in justifying the various legislative measures of the 1980s. This was indeed the case, although this vocabulary was closely interwoven with the other discourses discussed in this Chapter, and its importance varied over time.

Such a vocabulary had clear links with the work of 'New Right' theorists. The IEA, in particular, articulated a neo-liberal vision of economics inspired by the work of Hayek (Desai 1994: 45). He particularly stressed the disparity between free markets and the 'privileges' of trade unions (see Chapter 4), in arguing that political wage determination had 'paralysed' the British price structure and that unions were 'destroying the free market through their legalised use of coercion' (Hayek 1984: 55). The only solution was to abolish trade union immunities: 'There can be no salvation for Britain until the special privileges granted to the trade unions three-quarters of a century ago are revoked. Average real wages of British workers would undoubtedly be higher, and their chances of finding employment better, if the wages paid in different occupations were again determined by the market and if all limitations on the work an individual is allowed to do

were removed' (*ibid*. 58).

Hayek's theories were endorsed by Hanson and Mather, who argued that the solution to the problem of distortion in the labour market 'is to be found in a policy which enables the labour market to work more effectively. As Prof. F. Hayek has concluded, the essence of such a policy is the elimination (not the reduction) of the legal privileges initially granted to the unions by Parliament in 1906 and extended to the maximum by the Labour Government in 1974-79' (1988: 20). Their conclusion was equally unequivocal: 'The repeal of all trade union immunities is not only desirable but essential if the British economy is to be restored to full health' (*ibid*. 79).

While the Government did not in fact deem it acceptable to abolish union immunities altogether, the language of the 'New Right', together with its own commitment to monetarist and free market principles, nevertheless offered a 'wellspring' of ideas and rhetoric with which to justify the legislation against the unions. However, consideration of the use of the language of economics and the market also bears out the validity of the assessment of Fosh *et al* (1993: 19), that the influences upon Conservative policies were not fixed and constant, since the significance of the economic discourses appears to have varied over time.

Thus, the 'defensive' rhetoric which surrounded the 1980 Act (see p.23) included relatively little by way of economic or free market discourse. This was scarcely surprising, given that Prior was not a supporter of monetarist principles and sought to portray the legislation in the light of a voluntarist consensual tradition. However, the measures were in a minor way justified by a claim that trade unions had a negative effect upon job creation: 'The changes we propose are limited to those where experience has shown that the law is not working well... where the creation of jobs is being inhibited by fear of this present law and what it means' (Prior, J. OR HC 5th ser., vol. 976, col. 60).[9]

Similarly, the 1981 Green Paper on *Trade Union Immunities* referred to the economic gains to be achieved through improved industrial relations, but this discourse was almost buried among a number of other arguments canvassed by the document: 'A nation's prosperity rests ultimately on the ability of its people to live and work in harmony

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[9] Prior made a similar argument in evidence to the Select Committee on Employment, that the purpose of changes in industrial relations was 'to see whether we cannot get a more effective and competitive economy which creates prosperity and creates jobs' (HC Paper 282 1980-1: 186).

with each other. If its industrial relations are marked by conflict rather than cooperation the nation as a whole pays the price of economic stagnation. For at least a generation now our industrial relations have failed us because they have inhibited improvements in productivity, acted as a disincentive to investment and discouraged innovation' (DE 1981: 1); 'If our industrial relations are to improve, managements and unions in industry must genuinely desire cooperation and must work to achieve it. That is the key in a modern industrial society to higher productivity, and competitiveness, greater profits and greater rewards for employees... We need trade unions who are able to defend their members' interests robustly but also recognise that job security and increased rewards can only come from an efficient industry competing in world markets' (DE 1981: 8).

It would be erroneous, therefore, to ignore the use of the language of the market and the economy as rhetoric justifying the legislative measures during the Prior period in Employment. It presaged the development of discourse on economics and the free market which, as Davies and Freedland remark, was to become of increasing significance later in the decade (1993: 446). However, Prior's personal resistance to monetarist principles meant that the vocabulary of the free market was far from fully developed at this stage.

Something of a change was, however, apparent, with the succession of Norman Tebbit to the Employment portfolio. A committed free marketeer, Tebbit was considerably more willing than Prior to justify legislative measures in the language of 'New Right' economics, as Auerbach argues: 'the accession of Mr. Tebbit signalled a clear and deliberate shift in the Government's rhetoric with regard to trade union immunities. The regulation of industrial conflict was not to be seen as simply a matter of striking an equitable balance between the strength of employers and employees, and of tackling the worst and most destructive abuses of trade-union power. It was also to be presented as an important arm of the Government's economic, and in particular, labour market, policy at a much wider level' (1990: 75).

Thus, Tebbit offered both individualistic (see p.50) and economic justifications for the proposals in the 1982 Employment Bill: 'our aim has been twofold: first, to safeguard the liberty of the individual from the abuse of industrial power; and, secondly, to improve the operation of the labour market by providing a balanced framework of industrial relations law... Unless we rid our industry of restrictive practices, gain a freer labour market and protect people from the abuse of power, the House will fail' (OR HC, 6th ser., vol. 13, col. 630); 'The closed shop need not, but too often does, reinforce

restrictive practices and inefficient working methods. It damages competitiveness, and therefore in the long run it destroys jobs' (OR HC, 6th ser., vol. 17, col. 741); 'The Bill is another step on the road to improving our industrial relations, making our work force more effective and our industry more successful and profitable so that they can offer more, better paid and more secure jobs' (OR HC, 6th ser., vol. 24, col. 401).

Similarly, economic arguments were deployed in *Democracy in Trade Unions*: 'Strikes damage economic performance, reduce living standards and destroy jobs far beyond the ambit of the parties to the dispute' (DE 1983: 17).

However, it is notable that the discourses of the free market were *combined*, in Tebbit's approach, with a number of other discourses, such as freedom, individualism and democracy. While Tebbit was indeed more willing than Prior to justify his legislative moves in the language of the market, there were a number of other themes evident in his rhetoric, reflecting the fact that the 1982 Act and the 1983 Green Paper were not solely based upon a coherent attempt to embrace a specific economic theory (Auerbach 1990: 111-2).

Rather, it was in the latter part of the 1980s that the language of the free market really came to the forefront as justification for further measures against unions. This coincided with the shift away from monetarism and the move towards the creation of an 'enterprise economy', additional legislation to curb trade union power being justified on the grounds that unions were barriers to the effective functioning of such an economy. The greater vigour with which the discourses of economics and the free market were deployed also reflected the growing 'self-confidence' in the Government's rhetorical tone (see p.41).

Thus, *Employment for the 1990s* commented that the industrial relations problems of the 1970s 'were not confined to strikes and restrictive practices. Recent research shows that trade unions have used their power in ways which adversely affected labour costs, productivity and jobs' (DE 1988: 15). In an effort to avert similar problems in the future, further legislation might be required: 'the Government are ready to take whatever further legislative steps may prove necessary and will resist European Community regulation which would make the operation of the labour market more inflexible. Employers, trade unions and staff share the responsibility for making sure that our industrial relations never again become a barrier to employment' (*ibid*: 21).

The theme of industrial action being an obstruction to a free market was taken up

again in the revealingly-titled Green Paper *Removing Barriers to Employment*, which argued that the upturn in Britain's economic position was due to the Government's policy on industrial relations, but that further progress required more legislation:

> 'Employers have been given new freedoms which have enabled them to manage their businesses more efficiently and productively... Removing barriers to economic efficiency has made an important contribution to the improvement in the employment scene... A combination of strong and steadily increasing output, improved industrial relations and a more flexible labour force has provided the framework within which enterprise and job and training opportunities can flourish... The improvements which have taken place show the value of the Government's policy of removing barriers to the efficient working of the labour market, but it is essential to continue the search for greater flexibility and to examine obstacles to the growth of jobs which still remain. In this context we must ensure that the legal framework for industrial relations is adapted to the needs of the 1990s' (DE 1989a: 1, 3).

This document also used the language of economics and the market to justify legislation on the closed shop and on secondary action: 'the closed shop, and particularly the pre-entry closed shop, can push up labour costs very significantly, with consequent damage to profitability and jobs. It also has indirect effects which reduce the flexibility of the labour market and adversely affect employment levels and the supply of skilled workers. It is a restrictive practice and a barrier to employment' (*ibid*: 7); 'Secondary action may deter employers from starting up for the first time in this country, with harmful effects on new investment and on jobs' (*ibid*: 11).

Similarly, proposals to restrict unofficial action were justified by reference to the language of the free market in the second Green Paper of 1989, *Unofficial Action and the Law*: 'Unofficial action costs jobs and undermines our international competitiveness... [unofficial strikes] can make it difficult or impossible for firms to meet deadlines, to fulfill their obligations to customers and to manage their businesses efficiently. This applies not only to the employer directly affected but also to his customers and suppliers' (DE 1989b: 1).

In Parliament, as well, the measures were defended as enhancing economic prosperity. During the Second Reading debate on the Employment Bill 1987/88, Norman Fowler was rebuked by the Speaker for prefacing his remarks with a lengthy disquisition on the improvement in unemployment figures (OR HC, 6th ser., vol. 121, col. 816). He went on to offer a somewhat self-congratulatory justification for the changes in labour law, in terms which nevertheless still denoted a degree of hesitancy over a direct causal

connection between legislative change and economic prosperity : 'No one would suggest that Britain's economic recovery could have been achieved or, once achieved, sustained, by trade union reform alone. Equally, we could have achieved very little without that reform... The decline in the number of days lost because of strikes is a key element in Britain's new-found economic strength. The changes that have been made since 1979 have made an undoubted and real contribution to that' (OR HC, 6th ser., vol. 127, col. 817).

By 1990, however, even this trace of uncertainty had disappeared: 'Nothing did more to drive investment away from this country in the 1970s than our record of strikes, poor productivity and overmanning. Nothing has done more over the past 10 years to convince investors that Britain is the place in which to invest than the reduction in the level of strikes, the improvement in our productivity and the elimination of inefficient and archaic working practices' (Howard, M. OR HC, 6th ser., vol. 166, col. 39).

The language of economics, and particularly of the free market, thus afforded an important source of rhetoric for the Conservative Government in justification of its legislative measures against trade unions.[10] But the degree to which these discourses were paramount varied over the course of the decade, in response to the broader economic policies being pursued by the Government and to the personal beliefs of the ministers involved. Moreover, economic arguments were very rarely the *sole* means of justifying action - they were almost always combined with themes drawn from 'political philosophy', such as the language of individualism, freedom or democracy.[11] I turn now to examine these areas.

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[10] In many respects this may seem an unsurprising statement. Clearly, measures to alter the operation of the labour market form part of broader economic policies, and one would therefore expect them to be justified in economic terms. But, as Davies and Freedland note (1993: 429), pre-Thatcher governments had tended 'to treat economic policies as part of the background of labour legislation; after 1979, the government put them in the foreground', as evidenced by the announcement of labour policies in the annual Budget speech from the mid-1980s onward.

[11] Indeed, von Prondzynski, writing in 1985, argues (see p. 72), that the economic arguments tended to be 'veiled' by the discourses of 'liberty' and 'privilege' because it would be politically unacceptable to talk about introducing legislation to depress wage rates. Although the Government never went quite this far, his argument would seem to have greater validity for the early 1980s than later in the decade, when the language of economics *was* overtly employed and statements such as 'trade unions tended to push up the earnings of people they represented while blocking the improvements in productivity needed to pay for those higher earnings' (DE 1988: 15) were made.

The language of individualism

An emphasis upon individual responsibility and an opposition to collectivist institutions were key features of the approach of the Thatcher Government, both in connection with its policies toward the unions and in a wider sense. Again, as with the language of the free market, the writings of 'New Right' theorists provided a source from which Government spokesmen could draw when arguing in favour of the legislative measures against the unions. For example, Hayek argued powerfully against collective bodies such as trade unions. He remarked that the chief threat to the market order was not 'the selfish action of individual firms, but the selfishness of organised groups' (1982: Vol.III: 89) and viewed the 'last battle ahead' as being 'for the abolition of *all* coercive power to direct individual efforts' (*ibid*: 152).

The elevation of the individual above the collective group was also a key feature of the works of Hayek's 'lesser acolytes' (Wedderburn 1991: 206) in groups such as the CPS and IEA. The CPS opposed the closed shop on the ground that 'It is a derogation from individual liberty in that it denies choice to individuals whether they wish to belong to a trade union or not' (1980: 29) (see further next section). Shenfield, in contrast, was prepared to tolerate institutions such as the closed shop and secondary action, so long as they arose out of a freely-negotiated contract between individual worker and employer (1986: 45-9). He also maintained that as the only 'right to strike' was the right of an individual to withdraw his labour and work elsewhere, he had no continuing right to a job and consequently an employer had the right to dismiss strikers without redress (*ibid*: 46-7). Hanson and Mather applauded 'the move from a collectivist to a more individualistic approach to employment relations' (1988: 18), but argued that further measures might be needed: 'the programme of trade union law reform has moved the framework of law reform some way from collectivism to individual freedom. But the movement can easily be exaggerated because of the wholeheartedly collectivist consensus from which it started' (*ibid*: 87).

But while the rhetoric of individualism and anti-collectivism was a central tenet of the 'New Right' approach, it should not be assumed that it was exclusive to these theorists. The promotion of individual responsibility had a lengthy history in Conservative thinking, dating back at least to Herbert Spencer. Moreover, it has been argued that there were also a number of broader societal changes which tended to reinforce the shift in the political

climate from collectivism towards individualism: 'People are no longer seen as dependent on society and bound by reciprocal obligation to it: indeed, the very notion of society is rejected. Individuals are expected to shift for themselves and those who get into difficulties are thought to have only themselves to blame. Self-reliance, acquisitive individualism, the curtailment of public expenditure, the play of market forces instead of the power of trade unions, centralization of power instead of pluralism - these have become the principles of the eighties' (Phelps Brown 1990: 1-2).

The sources of individualist discourse may therefore have been various, but it is clear that anti-collectivism and 'ideological individualism' were central to Conservative policies during the 1980s, both in labour legislation and elsewhere (Fosh *et al* 1993: 14, Marsh 1992: 65, Hall 1988: 48).[12] How did this individualist philosophy manifest itself in language deployed in justification of the Government's anti-union measures?

As with the theme of unions being a barrier to the efficient working of the market, the debates surrounding the 1980 Act offered an introduction to the Conservatives' discursive motifs (Davies and Freedland 1993: 446). In presenting the Bill to Parliament, Prior called upon the language of individual rights as justification: 'One principle is to ensure that the rights of the individual are respected and upheld, at the place of work as in every other facet of our lives. That has been our guiding principle... What we are doing in this Bill is to provide the individual with effective safeguards' (OR HC, 6th ser., vol. 976, cols. 59, 62). It was characteristic, however, of Prior's cautious and traditional 'voluntarist consensus' approach to industrial relations that this was balanced by an acknowledgment of the need for collective association: 'But the rights of the individual as an individual need to be balanced by the right of individuals to act together' (*ibid*. col. 59).

A similar combination of individualistic language and an acceptance of collectivist institutions is to be found in the Green Paper of 1981: 'The freedom of employees to combine and to withdraw their labour is their ultimate safeguard against the inherent imbalance of power between the employer and the individual employee... the 'rights' of trade unions and their officials have been asserted without the development of corresponding obligations or protection for the individual worker against union power'

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[12] The most well-known rhetorical manifestation of this ideology was probably Thatcher's remark that 'there is no such thing as society, only men, women and families' (interview in *Woman's Own*, 31 October 1987). For an analysis of this comment, see Willets 1992: 47-8.

(DE 1981: 1, 3).

Norman Tebbit's period in Employment was marked by a considerably more anti-collectivist tone of language than that of his predecessor. This was again apparent from Parliamentary debates on labour legislation (in this case the eventual Employment Act 1982), the introduction of which Tebbit defended by using the vocabulary of individual rights as well as that of the 'free market' (see above). He invoked the experiences of the 'Winter of Discontent', which, he argued: 'demonstrated the injustice that is bound to result if the rights of the individual are totally subordinated to those of the group' (OR HC, 6th ser., vol. 17, col. 738). Similar language was used by David Waddington, in closing the Second Reading debate: '[The Bill] will also give better protection for the individual against the abuse of industrial power' (OR HC, 6th ser., vol. 17, col. 817).

The publication of *Democracy in Trade Unions* in 1983 represented a further stride towards individualism in that 'the Government... made the protection of union members the centre-piece of its rhetoric' (Auerbach 1990: 132). Protection of individuals from coercion by the majority was now fundamental to its policies and language. In large part this was manifest in the debate over 'democratising' trade unions, which is sufficiently significant to warrant separate consideration (see pp.57-60), and which formed the subject-matter of the Green Paper: 'Trade union power, which springs from legal immunities and privileges, can be used not just against employers but against individual members of unions. As the law has granted these privileges, it is necessary to consider whether the rights of individual members of trade unions are adequately protected' (DE 1983: 1).

However, the vocabulary of 'individual rights' was employed more broadly than in the context of provisions for trade union ballots, and the Conservative election victory in 1987 marked another stage in the Government's use of the vocabulary of individual rights against the unions: 'with increasing boldness of language and action, ministers began to denounce collective bargaining and the old agenda of industrial relations... Now the emphasis was on the individualisation of workers as the tide of collectivism was to be turned back' (Taylor 1993: 303). Indeed, the Conservative election manifesto of 1987 made powerful use of the language of individualism and of 'balance' in a declaratory manner (see above): 'Conservative reforms have redressed the balance between the individual and his union, preventing coercion of the majority by activists and militants' (CCO 1987: 23). This 'boldness' was perhaps best emphasised by *Trade Unions and their*

Members, which, as Auerbach argues, demonstrated an 'unequivocal commitment to the rights of the individual as opposed to trade union and collective rights' (1990: 164), particularly in the context of the proposal to establish a right to work despite a strike call:

> 'The right of the individual to choose to go to work despite a call to industrial action is an essential freedom. It can often be challenged, however, by those who take a hard line view of the traditional philosophy of the trade union movement based on the concept of collective strength through solidarity... the Government believes that a decision to take industrial action should be a matter for the individual. Every union member should be free to decide for himself whether or not he wishes to break his contract of employment and run the risk of dismissal without compensation. No union member should be penalised by his trade union for exercising his right to cross a picket line and go to work' (DE 1987: 4, 7).

The Green Paper also argued against the closed shop on grounds of individual rights: 'The Government has always believed that individuals should be able to choose for themselves whether or not to belong to a trade union' (*ibid*: 17) (see next section).

Legislative measures (see Chapter 2), White Papers and Green Papers between 1988 and 1990 continued to 'fervently avow' 'the absolute priority given to the individual over the collective' (Auerbach 1990: 230). *Employment for the 1990s* described the rights which individuals had gained against the union collective as a result of the legislation: 'Trade union members too can make use of the rights which legislation has given them, to ensure that their trade unions are run in accordance with their wishes. Trade unionists have welcomed the opportunity to vote in a secret ballot before being called on to take industrial action, and there have been some notable examples of refusals by members to take part in unballoted action and of members voting against a call to go on strike' (DE 1988: 16). Similarly, increases in the powers of the Commissioner for the Rights of Trade Union Members were justified in *Removing Barriers to Employment* in anti-collectivist terms: 'Members contemplating or taking proceedings against their union on the ground that they have been denied rights or duties owed to them under the terms of their union's rulebook may face considerable disadvantages. Trade unions are large organisations with substantial resources and expertise to call upon when legal proceedings are imminent or taking place. Conversely, union members considering or taking proceedings may well face problems... It will always be daunting for a member to contemplate taking on his union without assistance and support' (DE 1989a: 16).

There is no question that the language of individual rights and of anti-collectivism was an important strand of the Conservative Government's legislative policies against

unions in the 1980s. The encouragement of individualistic attitudes among trade unionists fitted comfortably with the commitment of the Thatcher Government and 'New Right' to individual responsibility and 'shifting for oneself'. In consequence, Government ministers and spokespersons were at ease in using this vocabulary to justify their labour law policies, particularly in the confident era following the third election victory in 1987. However, the 'atomisation' of union behaviour also served a practical, as well as ideological purpose, in that it was a means of reducing union power (and therefore liberating the market), 'by fostering patterns of behaviour which would isolate trade unions and workgroups from each other, and which would cause individual workers to define their own interests against participating in industrial action' (Davies and Freedland 1993: 428). This was manifested in legislative policies against secondary action, picketing, the closed shop and on regulating democracy in trade unions. Such policies were backed by the powerful vocabulary of the free market and of individual rights which I have discussed, but also by the - perhaps more nebulous - discourses of 'freedom' and 'democracy', which I will now consider.

The language of 'freedom'

The theme of 'freedom' or 'liberty' was closely related to the above discourses, as exemplified by the work of Milton Friedman, who claimed that there was a direct link between capitalism and personal freedom: 'freedom for the individual consists in making choices and an absence of coercion by others. Capitalism, or the voluntary interaction between buyers and sellers of goods and services, permits this economic freedom which, in turn, is essential for political freedom' (Kavanagh 1990: 80). In this sense, freedom in markets was a crucial means of achieving personal freedom for the individual. The focus upon freedom of choice reflected the neo-liberal strand of Thatcherism (Belsey 1986: 197) which itself derived from classical liberal thought, particularly its negative view of the role of the state as violating personal liberty and choice (Kavanagh 1990: 104).[13]

Turning to the issue of trade union reform, an explicit adoption of the language

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[13] Phillips argues that 'freedom' and 'choice' were two separate concepts in the thinking of key figures such as Friedman and Hayek, and that 'choice' was not a value in itself, but that the two concepts became linked in Thatcherite discourse, so that a choice between courses of action was in itself a form of 'freedom' (unpublished 1993: 109).

of 'freedom' is evident in the writings of 'New Right' theorists. Hayek argued against collectivism (and syndicalism) on the grounds that they 'require a return to coercion without rule. They demand personal submission to a superior to whom a man is assigned, or to dependence on an organised group of special interests whose pleasure determines whether a man is allowed to earn his living in a particular way. The two systems are bound to destroy... personal freedom' (1984: 41), and claimed that unions have become 'the open enemies of the ideal of freedom of association': 'Freedom of association means the freedom to decide whether one wants to join an association or not. Such freedom no longer exists for most workers. The present unions offer to a skilled worker only the choice between joining and starving' (*ibid*: 61). The absence of coercion integral to this philosophy of freedom was stressed in work on unions by the Adam Smith Institute: 'The only safe course for any democracy that is concerned with its own survival, is to organise its economic and political arrangements in a way that allows, and indeed encourages, non-coercive competition between individuals, and organisations, in all aspects of life. A primary social function of the competitive process is that it works continuously to de-centralise power - in the economy, society, polity, academia and so forth - or at least to deter (*via* potential competition) the abuse of power' (Burton 1979: 67). Similarly, the CPS called for the voluntarist system to be reformed: 'the law must be invoked to restore balance and to maintain freedoms' (1980: vii) and produced a document entitled *The Right to Strike in a Free Society* (1983).

The discourse of 'freedom' was therefore in wide usage. But it was particularly prevalent in discussions of the closed shop. Hayek's discussion of 'freedom of association' (above) hints at discomfort over the institution, and the CPS was even more explicit in its adoption of the language of 'freedom' to justify criticism and proposals for reform: 'It is a derogation from individual liberty in that it denies choice to individuals whether they wish to belong to a trade union or not. It interferes with liberty because it means that a man's ability to earn his living is dependent on his good standing with those who hold power in the appropriate trade union' (1980: 29).

Government pronouncements on the closed shop also drew heavily on themes of 'freedom' and 'liberty'. The 1981 Green Paper, while presenting a balanced approach in other areas (see pp.36-7), was emphatic in its condemnation of the closed shop: 'The Government's view of the closed shop is clear: it is opposed to the principles underlying it. That people should be required to join a union as a condition of getting or holding a job

runs contrary to the general tradition of personal liberty in this country... Individual employees should have the right to decide for themselves whether or not to join a trade union' (DE 1981:66). This language was reiterated in statements on the closed shop provisions of the 1982 Employment Bill: 'For many of us the cause of liberty requires more commitment than to hold hands and sing the 'Red Flag' once a year. For those concerned with freedom, the closed shop - trade union conscription[14]- is a matter of deep concern' (Tebbit, N. OR HC, 6th ser., vol. 17, col. 739); 'The principal argument against it [the closed shop] is that it is an affront to liberty' (Waddington, D. OR HC, 6th ser., vol. 17, col. 817).

The powerful use of the language of 'freedom' to justify these measures contrasted with the relatively cautious tone adopted in 1980, when Prior commented merely that: 'What we are doing in the Bill is to provide the individual with effective safeguards' (OR HC, 5th ser., vol. 976, col. 62). Nevertheless, as with other instances already discussed, the moderate tone of 'Prior's generally collectivist discourse' (Davies and Freedland 1993: 454) foreshadowed the emergence of the more forceful development of themes in Government language later in the decade.

This became explicit, once again, in the period after the 1987 election. Proposals for further reform of the closed shop were presented in *Trade Unions and their Members* using the language of 'freedom' and individualism: 'The Government has always believed that individuals should be able to choose for themselves whether or not to belong to a trade union... the closed shop is... fundamentally about individual freedom of choice whether or not to be a union member... in a matter as important as freedom of choice, it may be thought wrong for anyone at all to be forced to compromise on a question of principle in order to obtain or keep a job' (DE 1987: 17, 20).

Employment for the 1990s also justified measures for legislation against the pre-entry closed shop (eventually enacted in the 1990 Act) in the same vocabulary: 'The Government believe that people should be free to choose for themselves whether or not they belong to a trade union. All forms of the closed shop - but particularly the pre-entry closed shop - put unacceptable limits on that freedom' (DE 1988: 20).

The connection between this discourse and that of individualism is readily apparent. The closed shop was an important target of Conservative rhetoric and policies

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[14] See pp.39-40.

because it was seen as denying *freedom to the individual*. The issue thus represented a confluence between distinct, but related, Conservative strains of anti-collectivist and libertarian discourse.[15] For example, 'freedom/liberty', individualism and anti-collectivism were interlinked in the following passage from the Third Reading of the Employment Bill 1982: 'It is contrary to the traditions of personal liberty in this country for someone to be required to join a trade union in order to obtain or hold a job... what is not acceptable in a free society is for a trade union to enforce membership as a condition of employment by means of the closed shop... our first priority in considering questions about the closed shop should be in terms of personal freedom and the rights of the individual... We should not lose sight of the fact that a collective such as a trade union exists in essence and in origin for the sake of the individual, not the individual for the sake of the collective' (Alison, M. OR HC, 6th ser., vol. 24, col. 370).

But the language of 'freedom' went further than the issue of individual rights to embrace the economic discourses discussed above - the notion of the *free* market. Again, the question of the closed shop represented a nexus for these themes, particularly in the post-1987 era: 'Further restrictions on the closed shop would provide greater flexibility in the labour market and increased freedom of choice for employers when recruiting' (DE 1987: 19);

> '- the closed shop, and particularly the pre-entry closed shop, can push up labour costs very significantly, with consequent damage to profitability and to jobs. It also has indirect effects which reduce the flexibility of the labour market and adversely affect employment levels and the supply of skilled workers. It is a restrictive practice and a barrier to employment;
> - the pre-entry closed shop is an infringement of the liberty of the individual. Where it is in operation, workers seeking employment cannot choose for themselves whether to join a trade union' (DE 1989a: 7).

As Davies and Freedland remark, the libertarian discourse of freedom for the individual worker and the economic themes of promoting growth in employment and removing barriers to business had, by 1990, become intertwined (1993: 509).

It should be apparent from this discussion that the language of 'freedom' and 'liberty' could be widely deployed as justification for various forms of action against the

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[15] A similar argument was made for the introduction of provisions to prevent a union member from being disciplined by his union for refusing to obey a strike call contained in *Trade Unions and their Members* - see p.51.

trade unions. Indeed, it could even be used to justify a *refusal* to intervene to control certain union activities. Thus, the notion of 'freedom' was an important element of the argument against *total* individualisation of the employment relationship, even for Hayek, who argued in favour of 'freedom of association' (see above, p.53) - albeit that he chose to 'interpret this freedom with emphasis... upon the right to *dissociate* (Wedderburn 1991: 211), and in favour of a 'right' to strike (1984: 51). Likewise, the CPS linked a 'right' to strike[16] to the existence of a 'free society' (1983), as did David Waddington in the Second Reading of the 1982 Bill: 'In a free country there has to be the right to strike' (OR HC, 6th ser., vol. 17, col. 816). Notions of 'democracy', discussed in the next section, are clearly being called upon in these remarks.

Perhaps unsurprisingly, the clearest exposition of the vocabulary of 'freedom' in the context of a discussion of what trade unions should be *permitted* to do came in *Trade Union Immunities*: 'The freedom of employees to combine and to withdraw their labour is their ultimate safeguard against the inherent imbalance of power between the employer and the individual employee. This freedom has come to be accepted as a hallmark of a free society... The importance of the freedom to combine to withdraw labour in the face of serious grievances at work is not in question' (DE 1981: 1).

The point is that 'freedom' is an elusive concept, which could be used as a vocabulary justifying a number of different positions, as Hall has argued: ''Freedom' is one of the most powerful, but slippery ideas in the political vocabulary: it is a term which can be inserted into several different political discourses. The language of freedom is a rivetingly powerful one, but it contains many contradictory ideas' (1988: 190). While 'freedom' in the context of Government and 'New Right' rhetoric generally carried individualist and *laissez-faire* economic overtones, these were far from being the only understandings of the term, and it was perfectly legitimate for the same vocabulary to be used with a different meaning. *In consequence, it was open to others, such as the trade unions, to adopt a similar vocabulary, but to place a different interpretation upon it.* I will examine the extent to which this occurred in Chapters 5 and 6.

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[16] In the British context, it is more accurate to describe this as an *immunity* from legal process - see Chapter 4.

The language of 'democracy'

Moreover, just as it was possible for the Government's political opponents in the union movement to contest the meaning of a discourse such as 'freedom', so it was open to the Government to diverge in its interpretation of the concept from the understandings of the 'New Right' theorists. This brings me to an analysis of the related vocabulary of 'democracy'.

Several commentators have pointed out that the Government's policies on regulating democracy in trade unions did not fit happily with a Hayekian/'New Right' approach to industrial relations (Auerbach 1990: 232; Auerbach 1993: 47; Fosh *et al* 1993: 14-15; see above, p.33). There was an apparent contradiction between the principle of ideological individualism - that an individual should be left free to do as he/she wished, and the imposition of a certain *structure* of decision-making upon unions by means of mandatory balloting provisions. Moreover, there seemed to be a disparity between the Conservatives' objective of deregulating the labour market and the regulation of trade union activities in the sphere of strike ballots, election of union officials *etc*: 'One compelling argument against detailed interference with trade union rule books is that it runs contrary to a general thrust of deregulation and withdrawal of the state from intervention in the affairs of voluntary bodies' (Hanson and Mather 1988: 74). Additionally, union ballots were not a significant element of 'New Right' proposals for reform simply because these theorists were (at best) indifferent to the very existence of trade unions - a far greater concern was that their 'immunities' should be removed. Ballots ran the risk of legitimating trade union activities in a manner which was incompatible with 'New Right' thinking. Consequently it was claimed that the Government's strategy of regulating union decision-making was a 'merry-go-round' and a 'fruitless process' (Mather 1987, quoted in Auerbach 1990: 234).

How, then, are policies which involved regulation of unions' internal affairs, evident from the Trade Union Act 1984 onward, to be explained? One view is offered by Auerbach, who argues that they demonstrate that the Government was not simply following a Hayekian blueprint. The policy of internal regulation (*via* the introduction of balloting requirements, the regulation of union electoral systems and the mobilisation of dissentient members) was designed to achieve external goals (a reduction in the number of industrial disputes), but 'the pursuit of those aims through the medium of the populist

appeal to individual trade unionists can only be explained in the context of a unique configuration of political and economic circumstances at a particular time' (1990: 233).

This analysis, while valuable in indicating that the Government's policies were not solely governed by a 'New Right' agenda, arguably downplays the significance of ideology. The Government's actions can be understood in the light of its interpretation of the concept of 'freedom', which in this context may have *differed* from a 'New Right' understanding of the term. The Conservatives analysed 'freedom' as negative - 'freedom from' rather than 'freedom to' (Undy *et al* 1996: 74). For example, union members were to be freed from the 'tyranny of the majority' by making decisions about strikes and elections at home, away from the 'pressure' of open meetings, while individual members were not to be disciplined by their unions for a refusal to obey a strike call and could call on the assistance of the Commissioner for the Rights of Trade Union Members in disputes with their unions. Thus,"giving the unions back to their members' does not mean that the members can do what they like with them but means confining the members to specific participation patterns that emphasise the individual rather than the collectivity, a pattern that the Conservatives considered more 'democratic" (Fosh *et al* 1993: 19). All of this was achievable because the vocabulary of 'freedom' was open to differing interpretations.

Understood in this light, the policies aimed at internal union regulation were fully compatible with the discourse of 'individual rights'. They were essentially concerned with the *empowerment* of individual union members, and therefore formed part of the broader individualist philosophy of the Conservative Government, particularly its desire to individualise or decollectivise industrial relations (Martin *et al* 1991: 197). They also fitted with the authoritarian populist strand of Thatcherism which was particularly dominant in the post-Falklands era.

It followed from this that the language of 'democracy', which the Government used to justify many of these internal regulatory measures (particularly, of course, those on balloting), was closely connected with - indeed, arguably formed a subset of - the individualist discourse examined above. The slogan of 'giving the unions back to their members'[17] prioritised the rights of the individual member of a trade union over and above

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[17] Auerbach notes that this phrase was actually first used by the SDP (1990: 123 n.31), but 'whether or not it devised the slogan... the Government rapidly proclaimed that crusade as its own' (*ibid.* 153).

the collective will. But 'democracy' was itself a powerful discourse - indeed, it was a 'given' in British political life, a concept almost universally accepted. By deploying the language of 'democracy' against the unions, therefore, the Conservatives were implying that their arrangements and institutions, understood as not being properly 'democratic', were consequently illegitimate. This enabled them to 'marginalise' the unions, defining them as outside the bounds of acceptability in British political society.

This strategy could be seen at work in *Democracy in Trade Unions*. Certain arrangements were portrayed as being essential to 'proper' democracy, and the unions' failure to embrace these thus laid them open to the charge of illegitimacy: 'The right to vote in secret for the candidate of one's choice is now widely accepted as one of the fundamental rights in any democratic society or organisation; and those who claim to make decisions binding on others should establish electoral arrangements which can be seen to be fair and satisfactory. If electoral arrangements are evidently defective or open to serious challenge, the legitimacy of the organisation concerned is bound to be called into question and the authority of its leaders eroded' (DE 1983: 3).

The marginalisation of the unions' position which was effected by the labelling of their arrangements as unacceptable to democratic society was further strengthened by the claim that there was public disquiet over the issue: 'Much public concern has been voiced about the need for trade unions to become more democratic and responsive to the wishes of their members... There is undoubtedly widespread concern about the electoral arrangements of trade unions. This concern, felt by many trade unionists as well as the public, stems in part from the fact that decisions which it is claimed are reached on behalf of the members and in their interests can in practice be contrary to the wishes of those concerned' (*ibid*: 1, 3). The expression of public (and 'rank and file' trade unionist) discomfort at trade union electoral practices served not only a populist purpose in attracting electoral support for the proposals; it also delegitimised and marginalised the leadership of the unions as unacceptable to the majority of people. It therefore functioned in a similar fashion to the language of 'privilege' discussed in Chapter 4[18] (and see further next section).

The language of 'democracy' thus performed a variety of significant functions in

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[18] It is notable that the Green Paper explicitly linked the 'public concern' over union democracy to the fact that 'unions have important legal immunities and privileges not afforded to other organisations' (*ibid*: 1).

Government discourse and formed a major strand of the attack on unions, despite its incompatibility with the thinking of the 'New Right'. However, Hall's point about the elusive nature of the language of 'freedom' (see p.56), is equally valid here. There was no single uncontested meaning of 'democracy' or of the precise institutional arrangements which might constitute it. As a result, it was open to the unions to argue that their definition of 'democracy' was just as valid as that of the Conservative Government. This indeed formed an important element of their response to the policies on regulating unions' internal affairs, as I shall argue below.

Marginalisation of the unions and the language of 'community' and 'nation'

If the vocabulary of 'democracy' was not fully compatible with neo-liberal thinking on the role of unions, the same was even more true of the language of 'community' which played an important role in the Government's attacks on trade unions. Writers such as Hayek, with their emphasis upon the individual, and with a belief in a minimal role for government (albeit that a strong state might be needed to provide the conditions in which a free market might flourish) had little use for the language of 'community', with its attendant notions of social cohesion and collectivism.

However, as Kavanagh states, British conservatism has traditionally consisted of two main strands, liberal and collectivist. The latter, which has 'dominated the policy thinking of Conservatives in government' in the twentieth century (1990: 70), has 'stressed the importance of community and made a positive case for the use of public power to promote the general interest, which they [collectivists] see as emerging from purposive state action rather than the free interaction of individuals' (*ibid*: 189). In this sense, the - apparently collectivist - language of 'community' can be viewed as compatible with a lengthy conservative tradition. This is the view of Willets, who argues that 'modern conservatism aims to reconcile free markets (which deliver freedom and prosperity) with a recognition of the importance of community (which sustains our values). This is not a new project. It is the distinctive insight of British conservative thinkers, from Hume and Burke through to Powell and Oakeshott, that these apparently contrasting ideas go together' (1992: 92).

Thatcherism, therefore, aligned itself with this tradition and sought to invoke a

sense of community embodied by 'the nation'[19] and (perhaps more controversially), 'the people' and 'the society' (but see above, p.49, n.12) in conjunction with strong government, particularly in certain social and moral areas (Willets 1992: 52; Belsey 1986: 197). Accordingly, 'community' can be viewed as an *inclusive* vocabulary, defining those who were within it as a part of the British nation/people whose interests the Conservative Government represented.

In the industrial relations arena, the language of 'community' was most extensively employed in relation to the issue of regulating strikes in essential services, which formed a topic for debate at various points in the Thatcher period. The basic nature of the services involved (health services, water, electricity, emergency services *etc*) made it easy to juxtapose the interests of 'nation', 'people', 'public' or 'community', which would inevitably be harmed by industrial action, against the 'narrow sectional interests' represented by the union movement. In this context, the spectre of the 'Winter of Discontent', during which there had been strikes among lorry drivers and public sector workers, was 'a valuable political and rhetorical weapon' (Auerbach 1990: 115) justifying Government action.[20] Hence, in introducing the Employment Bill in 1979, Prior invoked the lorry drivers' strike and the language of 'community' as validation of measures on secondary picketing:[21]

> 'In the road haulage dispute, for example, there was secondary picketing at the docks to stop the movement of essential supplies, there was secondary picketing at the suppliers of raw materials to bring production lines to a halt, and there was secondary picketing at the producers of basic foodstuffs, and at food wholesalers, to bring about food shortages in the shops. That was not traditional picketing. Its aim was to bring industry to a halt, to spread and intensify disruption, and to put pressure on the whole community. Uncontrolled minorities put workers, who had no dispute with their employer, out of a job and inflicted needless hardship on the whole community' (OR HC, 6th ser., vol. 976, col. 65).

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[19] Hall argues that Thatcherism was particularly successful in achieving an identification with the interests of the nation: 'What Thatcherism as an ideology does, is to address the fears, the anxieties, the lost identities of a people. It invites us to think about politics in images. It is addressed to our collective fantasies, to Britain as a social imaginary. Mrs. Thatcher has totally dominated that idiom' (Hall 1988: 166).

[20] It was also an important element in shaping the unions' response to Government policies, as in the early Thatcher years, the unions were 'still living with the legacy of the Winter of Discontent' (Hall, interview), which constrained their ability to appeal directly to the public.

[21] The measures were not solely concerned with essential services, but Prior argued in favour of the provisions by recalling what had happened in 1978-9.

Similar language was used by the CPS, which was also concerned about the type of action seen in 1978-9: 'It is essential that in industrial relations a fair balance be kept between the rights of the individual and the welfare of the community at large. Industrial action may be justified when it is directed at an employer. It cannot be tolerated when it threatens to blackmail the community by putting health, safety or life itself at risk' (1980: 21); 'Now we are a totally interdependent society. No community, no industry and no public service lives to itself alone. We are all dependent on one another. More importantly, we are now so utterly reliant on some services that, without them, convenience, security, health and even life itself can be disastrously affected if any are disrupted or withdrawn from the community'; 'the paramount consideration is the welfare of the community as a whole. This is now under threat' (1983: 1, 11).

The problem of regulating strikes in essential services recurred at various points during the decade, and the language of 'community' continued to be deployed in support of proposals for reform. *Trade Union Immunities* juxtaposed the interests of trade unions with those of the 'community' although it characteristically argued that most trade unionists were responsible: 'Most people, for example, would accept that action which puts lives at risk or imperils national security constitutes an emergency... In general workers who are in a position to endanger life or threaten security either do not go on strike, or if they do so, ensure that essential services are maintained. The community has the right to expect nothing less' (DE 1981: 79).

The Conservative manifesto for the 1983 election again raised the issue and argued that 'the nation is entitled to expect that the operation of essential services should not be disrupted' (CCO 1983: 12),[22] while the later Green Paper on *Unofficial Action and the Law* linked the problem of unofficial strikes with essential services in the context of the vocabulary of 'community' and of the impact on the public: 'Essential public services have also been the target of unofficial action in recent years. In some cases, this has caused widespread hardship to the community... The public can do nothing to bring such disputes to a conclusion, yet they are the main sufferers. Such action is often deliberately targeted on the public in order to put pressure on the employer' (DE 1989b: 2).

In the event, it proved impossible for the Government to introduce restrictions on

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[22] The vocabulary of 'nation' as opposed to 'community' being more appropriate to a national election campaign, but showing the linkage between the terms.

the right to strike in essential services, despite the urgings of 'New Right' theorists (Hanson and Mather 1988: 26; for an explanation of the difficulties facing the Government, see Auerbach 1990: 115-117). However, the language of 'community' in which the proposals were presented could be used as justification for other measures against unions. This was most readily apparent from *Trade Union Immunities*, which employed the term in a variety of contexts: 'The freedom of employees to combine and to withdraw their labour... has come to be accepted as a hallmark of a free society. But implicit in that acceptance is the assumption that this freedom will be used responsibly, that industrial action will be taken only with proper regard for the interests of others and of the community as a whole' (DE 1981: 1); 'Sympathetic action has too often been used as the pretext for extending a strike or blacking to involve employees and employers who have no interest or connection with the original dispute. Its purpose can become simply to inflict maximum damage and the interests of those not involved in the dispute and the community as a whole can suffer severely' (*ibid*: 39); 'The increasing damage industrial action can inflict on the community has led to demands that the decision of a trade union to take such action should be reached only after fully consulting the wishes of its members' (*ibid*: 61);

> 'Recurring mention has been made in this Green Paper of the problem of protecting the community as a whole against the potentially damaging effects of industrial action... It has to be recognised that there is no absolute protection which can be given to the community without outlawing industrial action altogether... the community must be able to count on trade unions and individual workers to exercise their power with restraint and responsibility... The question considered here, however, is whether there comes a point at which the interests of the nation must override the freedom to take industrial action in order to protect the community and the national interest' (*ibid*: 75).

The Green Paper depicted the 'problem' of industrial conflict as being one of striking the appropriate 'balance' between the rights of trade unions and the interests of the 'community/nation' (see p.37). In this respect, it might be argued that the language of 'community', used so extensively in the document, was indicative of the 'generally collectivist discourse' (see p.54) of the Prior period in Employment. To an extent this would be accurate - it is notable, for example, that restrictions on secondary picketing, justified by Prior in 1979 as necessary for protection of the 'community' were validated, a decade later, in terms of the dominant economic/market discourse of the later 1980s:

'The Government's view is that, in general, employers who are not parties to a dispute should no longer be exposed to the threat of industrial action - a threat which can deter new enterprises from setting up in this country' (DE 1989a: 3).

However, the language of 'community' was not solely expressive of a collectivist approach to industrial relations, later discredited. As discussed above, it continued to be used right up until 1989 in the context of restrictions on strikes in essential services, both by the Government and by organisations such as the CPS. It was also used in justification of measures against unofficial action: 'Unofficial action damages jobs and businesses and, as we saw last summer, it can disrupt the life of the community as a whole' (Howard, M. OR HC, 6th ser., vol. 166, col. 47). Moreover, Tebbit and Waddington in 1982, and Howard in 1990, portrayed the various legislative measures as necessary to 'protect' the community: 'I toyed with the idea of calling it the 'workers' rights Bill', but of course it goes beyond the right of workers to the rights of the whole community' (Tebbit, N. OR HC, 6th ser., vol. 17, col. 739); 'It will mark more clearly than before what the community regards as acceptable and what is clearly not acceptable in an industrial dispute' (Waddington, D. OR HC, 6th ser., vol.17, col. 817); 'We believe that the law should protect the community at large from the abuse of trade union power' (Howard, M. OR HC, 6th ser., vol. 166, col. 49).

The connection between the collectivist language of Prior and the 'Thatcherite' discourse on industrial relations dating from Tebbit onwards is apparent in Waddington's usage of the word 'acceptable' and Howard's use of 'abuse': the vocabulary of 'community' functioned to define what was permissible. By juxtaposing the activities of trade unions with the interests of the 'community', the Government was able to *marginalise* or *delegitimise* those activities in so far as they were represented as the pursuit of narrow self-interest as against the interests of the majority. Trade unions were placed in opposition to the 'community/nation/people' and were therefore seen either as *subverting the nation from within* or as *external agents*[23] - in any event, not properly 'one of us' (see

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[23] The most powerful examples of this discourse, although outside the scope of the source materials for this thesis, came from Thatcher herself in the context of the miners' strike and are worth passing notice. She drew parallels with such 'external' threats to the British state as the Argentine army and the IRA: 'We had to fight an enemy without in the Falklands. We always have to be aware of the enemy within, which is more difficult to fight and more dangerous to liberty' (Thatcher to the 1922 Committee, 19 July 1984); 'At one end of the spectrum are the terrorist gangs within our borders, and the terrorist states which finance and arm them. At the other end are the hard left operating inside our *(cont.)*

Young 1993: ix, for an account of the importance of this phrase).

This was a powerful form of rhetoric for justifying legislative attacks on the trade unions. If the Government could succeed in unifying the nation against the unions, measures restricting and regulating their activities could be introduced with considerably less opposition, both from the public and (potentially) from union members. The language of 'community' therefore fused with claims of public disapproval in documents such as *Democracy in Trade Unions*: 'There must also be a proper balance between the interests of unions and the needs of the community; and organisations which claim and have special privileges must conduct their affairs in ways which attract public confidence and the confidence of their members' (DE 1983: 38).

What was occurring here, as Hall observes, was the creation of a populist 'coalition' between the Government and the British 'people' against the unions, a 'construction of ideological cross-alliances between 'Thatcherism' and 'the people' actually going on in the very structure of Mrs. Thatcher's own rhetoric': 'The language of 'the people' unified behind a reforming drive to turn the tide of 'creeping collectivism', banish Keynesian illusions from the state apparatus and renovate the power bloc is a powerful one. Its radicalism connects with radical-popular sentiments, but it effectively turns them round, absorbs and neutralizes their popular thrust, and creates, in the place of a popular rupture, a populist unity. It brings into existence a new 'historic bloc' between certain sections of the dominant and dominated classes' (1983: 30 - emphasis in original).

This marginalisation of the unions in Thatcherite discourse was not effected solely by employment of the language of 'community', 'nation' and 'people'. The vocabulary of 'privilege', discussed in Chapter 4, also functioned in similar fashion to depict the unions as existing 'above the law' and therefore as unique in British society. Similarly, accusations of the lack of democracy in the union movement served to render it politically unacceptable. However, marginalisation was not exclusively rhetorical. As considered in Chapter 2, the Conservative Government withdrew from the 'corporatist consensus' of the 1960s and 1970s and denied the TUC and individual unions substantial access to policy-making processes. Additionally, the banning of unions at GCHQ in 1984 was justified on

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(cont.) system, conspiring to use union power and the appartus of local government to reak, defy and subvert the laws' (Thatcher, Second Carlton Lecture, 26 November 1984) (both quotes in Young 1993: 372, 373). Note the use of 'we' and 'our' which functions to define the unions as outside the 'Thatcher nation'.

grounds of national security, the implicit assumption being that unions were a threat to the safety of the state.[24] The miners' strike of 1984-5 was also highly significant in marginalising the unions, in so far as the violence of miners allowed picketing - and on a wider level, unions themselves - to be equated with anti-social threats to public order such as inner city riots and football hooliganism (Davies and Freedland 1993: 496), and therefore as an illegitimate activity/institution within society, which needed to be dealt with by legislative action (in the first instance in the form of the Public Order Act 1986).

Marginalisation of the position of trade unions can be seen as a key element in the rhetoric and policies of the Conservative Government on labour legislation in the 1980s (Taylor 1993: 302; Undy *et al* 1996: 29). If successfully achieved, it would render it very difficult for the unions to respond effectively to those policies, simply because they themselves (and their supporters) were regarded as 'illegitimate' and therefore unacceptable to Thatcherite political society. In consequence, anything said or done in defence of the unions would be regarded as unworthy of extended consideration by politicians or the public. This fact, coupled with the dominance of Government definitions of nebulous concepts such as 'democracy' and 'freedom' and the pervasive nature of its 'New Right' rhetoric on the free market and individualism, made the formulation of an effective response to Government policies by trade unions highly problematic. In Chapters 5 and 6 I shall examine in detail the means by which the unions attempted to find a solution to these difficulties, but will first consider the specific issue of the labelling of legal immunities as 'privileges', and the consequences this had for the unions.

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[24] Thatcher in fact told a TUC delegation that she saw an inherent incompatibility between the structure of trade unions and their loyalty to the state (Taylor 1993: 269).

CHAPTER FOUR:- The debate over union 'immunities' and 'privileges'

As an illustration of the importance of language in opening up and justifying legislative strategies on reform of industrial conflict law during the 1980s, and in shaping attitudes towards those policies and measures, one need go no further than the highly significant disputation over the existence and extent of trade union 'immunities' in law. This formed a central element of the various calls for reform throughout the Thatcher era, both from 'New Right' theorists and from the Government itself, in the form of Green Papers and ministerial statements.[1] The power of the vocabulary was such that the union movement was forced to respond, and ultimately to change its strategy, in order to avoid giving the impression (however inaccurate this may have been), that it was 'above the law'.

Historical and legal background

In order to comprehend the issues involved in the debate over 'immunities', it is necessary to gain a basic understanding of the 'unique historical character of British labour law... [its] idiosyncratic nature and the odd semantics of that legal structure' (Wedderburn 1991: 201).

It is a commonplace of the British industrial relations system that it has traditionally been based on the non-involvement, as far as possible, of the state. This system of 'voluntarism' (or 'abstentionism') has its roots in developments in labour law at the turn of the century. As Kahn-Freund has pointed out, English common law has always been based around a belief in equality of individuals, rather than collective forces (Davies and Freedland 1983: 12). Accordingly, trade unions, as combinations conflicting with individual freedom, were originally regarded as criminal conspiracies (Phelps Brown 1986: 32).

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[1] Indeed, the debate over 'immunities' long predated Thatcher. For the views of Dicey and Hayek, see below. Also of significance in this field was the 1958 publication of the Inns of Court Conservative and Unionist Society, *A Giant's Strength* (one of whose authors was Geoffrey Howe), about which Wedderburn comments that 'some lawyers had by now revived the language of 1901, renewing claims that 'the trade union and its members today occupy a privileged position under the law" (1986: 38).

Criminal liability was removed by the Conspiracy and Protection of Property Act 1875. However, civil liability on the grounds of restraint of trade remained, and was developed by judges in the years up to 1901. Since industrial action invariably amounted to a breach of contract, for union officials to instruct or encourage workers to strike constituted the tort of inducing breaches of their contracts of employment, while secondary boycotts and sympathetic strikes were viewed by the courts as civil conspiracies to injure. The apotheosis of these common law developments was reached in the Taff Vale judgment of the House of Lords in 1901,[2] which established that unions (as opposed to individual union members or officials) were liable to be sued in tort.

In response to these judicial moves, the Liberal Government enacted the Trade Disputes Act 1906. This gave protection to unions from action in tort for acts done 'in contemplation or furtherance of a trade dispute'. The torts of conspiracy and inducement to breach of contract, however, continued to exist and could be developed by creative judges. Thus, in a series of cases in the 1960s, the courts held union officials liable for inducing breaches of *commercial* contracts disrupted by the industrial action.[3] They also introduced a 'new' form of liability - the tort of 'intimidation'.[4] Accordingly, further legislation was passed in 1974 and 1976 to protect the unions from these forms of liability.

The important point to note from this brief historical survey is that the protection afforded to unions and officials under the various statutes was by way of *immunities* - the exemption of unions from the common law doctrines of conspiracy, intimidation and inducement to breach contracts. It was a method of 'insulating the unions from judicial law-making' (McIlroy 1995: 230) and 'amounted not so much to 'abstention' by the law as to an exclusion of the judges' (Wedderburn 1986: 18).

If the immunities had not come into existence, trade unions would have found it extremely difficult to organise and operate. The individualist philosophy of the common law meant that unions would have automatically been acting in an illegal manner - in

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[2] Taff Vale Railway Co. v Amalgamated Society of Railway Servants [1901] AC 436

[3] Stratford v Lindley [1965] AC 269; Torquay Hotel Ltd. v Cousins [1969] 2 Ch. 106

[4] Rookes v Barnard [1964] AC 1129

restraint of trade - without the protection afforded by statute law. This was recognised by the Green Paper on *Trade Union Immunities*, which clearly outlined the negative nature of the exemptions:

> 'the present law governing collective industrial action remains based on a system of legal immunities. These immunities protect those who organise industrial action from liability for the criminal offences and civil wrongs for which the act of calling out on strike in breach of contract would otherwise make them liable at common law. The immunities do not abolish the offences and wrongs against which they provide protection. Rather they remove liability in the circumstances of a trade dispute. To the extent to which these immunities are reduced, therefore, the common law liabilities are immediately restored. If they were repealed altogether, then trade unions and individuals would be at risk of legal action every time they organised a strike' (DE 1981:24).

> 'The common law itself, which provides the guiding precepts for our whole legal system, comprises in fact a series of fundamental rights and duties which, unless abrogated by legislation or sometimes by contract, govern all relationships including those at the workplace. As has been seen, however, these fundamental rights are not sufficient to guarantee the legality of trade union activity. It is because the common law operated to make associations of workers and concerted industrial action unlawful, that a system of immunities from legal processes at common law has developed. Indeed, simply to repeal the immunities and to return to the common law could make it virtually impossible for trade unions to exist and operate lawfully at all' (*ibid*: 83).

Voluntarism did not, therefore, imply a *complete* withdrawal of the law from industrial relations. Minimal state involvement, in the establishment of statutory immunities, was necessary in order to protect the unions from the otherwise destructive consequences of the common law.[5] However, the deep suspicion with which unions viewed an apparently hostile judiciary meant that 'union leaders were inclined to steer clear of the law whenever they could' (Pelling 1971: 71). This antipathy towards the judiciary affords at least a partial explanation of the unions' continuing reluctance to establish a system of *positive* rights to take industrial action, as had been done in other European countries (see below). There were, however, other explanations for the creation of a

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[5] Taylor (1993: 7-8 and *passim*) observes that the British industrial relations system was never completely voluntarist - arbitration procedures were provided by the state from 1896 onwards, and there was legislation in areas such as health and safety and low pay (see below).

negative system of immunities, including the absence of a written Constitution (DE 1981: 2; Wedderburn 1991: 83[6]), the early existence of unions in Britain, meaning that there was no 'model' to follow (McIlroy 1995: 230), the absence of a working-class political party during the unions' formative years (Wedderburn 1991:83) and the absence of universal male suffrage (*ibid*: 83; McIlroy 1995: 230), which led to *laissez-faire* compromise with, rather than replacement of, the common law. But, whatever the precise historical explanation for the unions' strategic approach to legality by means of a pattern of immunities, the 'social objective' (von Prondzynski 1985: 186) was the same as in other countries - that is, as Wedderburn observes (1986: 845; 1991: 83), to protect elementary 'social rights'- to organise in unions, to bargain and to withhold labour.

The problem for the unions in attempting to defend these freedoms - both before and during the Thatcher years - lay not in the *substance* of the 'rights' protected by the statutory immunities, but in the *form* which this protection took. The immunities may simply have been a mere 'form of drafting' (Wedderburn 1986: 845), but it was precisely that form which opened up the possibility of attack from those who sought to restrict union activity. The language of 'immunities' - what Wedderburn refers to as its 'confusing semantics' (*ibid*: 847) - invited criticism both from the political Right and from the judges.

A number of legal cases in 1979-80 demonstrate how 'the language of 'immunities' [gave] judges easy, semantic points of entry' (Wedderburn 1991: 86). In Express Newspapers Ltd. v McShane,[7] Lord Denning MR demonstrated the endurance of the traditional, individualist approach of the common law, in commenting that the statutory provisions conferring immunity 'are not to be construed widely so as to give unlimited immunity to law-breakers. They are to be construed with due limitations so as to keep the immunity within reasonable bounds. Otherwise the freedom of ordinary individuals - to go about their business in peace - would be intruded upon beyond all reason'. Similarly, in two House of Lords cases, Duport Steels Ltd. v Sirs and Express Newspapers Ltd. v McShane (on appeal), Lord Diplock spoke of the immunities being 'intrinsically repugnant to anyone who has spent his life in the administration of justice' and tending 'to stick in

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[6] While Wedderburn acknowledges the 'minor' importance of this factor, he points out that it does not explain why shareholders, in contrast to unions, were given *rights* to associate in limited liability companies from 1855.

[7] [1979] ICR 210 at 218.

judicial gorges'.[8]

At the heart of these criticisms was a Diceyan conception of the 'rule of law', that everyone should be ruled by one body of laws, applicable equally to all - Dicey himself had criticised the Trade Disputes Act 1906 on the basis that 'an enactment which frees trade unions from the rule of equal law stimulates among workmen the fatal delusion that workmen should aim at the attainment, not of equality, but of privilege... It makes a trade union a privileged body exempted from the ordinary law of the land. No such privileged body has ever before been deliberately created by an English Parliament' (Dicey 1914: xlvii, xlvi). For these judges, then, the language of 'immunities' enabled them to attack unions on the grounds that they operated above and beyond the law. It was a relatively small step from this position to the argument that the unions possessed 'privileges'.[9]

As has frequently been pointed out, this 'rhetorical leap' was not necessarily accurate. During the Second Reading of the Trade Disputes Bill 1906, the Solicitor General stated that the proposed legislation did not confer 'any exceptional immunity on trade unions, far from it; it was in order... to remove exceptional disabilities imposed on these trade unions, disabilities which are contrary to the general spirit of our law' (Robson, W. OR HC, 4th ser. vol. 155, col. 1483). Wedderburn comments that the work of Hayek and others (see below) 'manifestly misdescribes the liberties of British labour relations law, misusing the negative form of the immunity to prove that it has the substance of a 'privilege' - rather as if an Act that gave slaves an immunity against recapture were interpreted as necessarily granting them a 'privilege" (1991: 207); and even *Trade Union Immunities* conceded the fallaciousness of the argument: 'immunities are not simply legal privileges which could be abolished outright. Without some legal protection - however circumscribed - it would be impossible for trade unions or individuals to organise industrial action without risk of civil proceedings and the ultimate safeguard of a collective withdrawal of labour would be effectively nullified' (DE 1981: 92).

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[8] [1980] 1 All ER 529 at 541; [1980] 1 All ER 65 at 73.

[9] *Osborn's Concise Law Dictionary* defines an 'immunity' as 'exemption from legal proceedings' and a 'privilege' as an 'exceptional right, immunity or exemption belonging to a person by virtue of his status or office' (Rutherford and Bone 1993).

The Government, the 'New Right' and the language of 'privilege'

Valid or not, however, the language of 'privilege' was of considerable significance in offering justification for legislation in the early 1980s which sought to restrain union activity. Auerbach remarks that 'the critique of 'privileges' no doubt forms a useful rhetorical plank for anyone wishing to attack the immunities' (1990: 222), while Wedderburn attributes an even more powerful role to the discourse: 'Of all the legal mystifications that have fuelled the drive against trade union power so as more easily to enact the recent legislation, however, none has been more extensively deployed than the complaints about the 'immunities'... The 'immunities' are often mystified into extravagant 'privileges'' (1986: 845).

The view that the language of 'privilege' was an important rhetorical tool enabling the Right to mount a legislative attack upon the unions is shared by von Prondzynski, who, in addition, sees the language of 'privilege' as playing an important role in allowing the Right to obscure its *true* rationale for moving against the unions. He regards the fundamental motivation for the Conservatives' labour legislation in the 1980s as having been economic - reducing unit costs in order to make the labour market more competitive. Strong unions were not seen as being compatible with this policy, and it was therefore necessary for the Government to justify intervening in the 'voluntarist' system in order to reduce union power:

> 'Although collective laissez-faire could not be tolerated in this scheme of things, it was built on a framework which could be dismantled quite easily. This was so because much of the labour legislation which the government moved to amend was not ostensibly concerned with the protection of social rights, but rather with the withdrawal of the law from industrial relations activity. It was therefore possible to talk about the unions' 'immunities', 'privileges', and so forth, as being indicative of a trade union status outside the law, a licence to engage in destructive and coercive activities apparently available to no other persons, groups or organisation in society... None of this, as has frequently been pointed out, is really true, but it provides an extraordinarily effective opportunity to obscure the real arguments. It would be difficult, from a public relations point of view, to pass legislation explicitly aimed at depressing wage rates, but it is easy to justify measures to combat the power of coercive organisations which restrain individual freedom. The economic argument tends therefore to be veiled; instead, the libertarian justification is given prominence, with particular emphasis on the coercion which unions are said to exercise' (1985: 186).

Hence, the language of 'privilege' was used almost as a diversionary strategy in justifying legislation - as a means of diverting attention away from the real motivation, which might have proved politically unacceptable (for the language of the 'free market', see pp.42-7). The importance of the language of 'privilege' in the debate on industrial relations reform can readily be seen from the writings of the 'New Right' and from the Government's own discourse.

Hayek, for one, was clear about the existence of 'privilege' in industrial relations. He viewed the Trade Disputes Act 1906 as having 'conferred on the labour unions unique privileges' (1982: Vol.I: 142), and trade unions as 'uniquely privileged institutions to which the general rules of law do not apply' (1960: 267). In *1980s Unemployment and the Unions*, he wrote that 'There can be no salvation for Britain until the special privileges granted to the trade unions three-quarters of a century ago are revoked' (1984: 58) and argued that the 'reform of trade union privilege' - the unions being 'the only privileged institution licensed to use coercion without law' - was necessary for economic recovery (*ibid*: 61). On this analysis, the collective 'coercion' exercised by the unions, protected from the general law by their 'privileges', prevented the market from operating freely and was the chief cause of unemployment and the decline of the British economy (see p.42).

The language of 'privilege' was also used extensively by others writing in publications produced by the various 'New Right' pressure groups: 'the growth in the economic power of British unionism has thus rested fundamentally on their ability to acquire unparalleled legal privileges, by their pressure in the political arena' (Burton 1979: 44); 'trade unionists do not object to legislation *per se*, only to the legislative reform which in some way threatens the remarkable array of immunities and privileges which they enjoy' (CPS 1980: 5); 'the 80-year-old immunities and other exceptional privileges granted to the unions by vote-seeking politicians in the early years of the century have become an outdated, superfluous and damaging encumbrance to industry' (Seldon 1988: 8).

Indeed, in some places, 'privileges' and 'immunities' were effectively taken to be synonyms: 'The immunities granted by this Section [s.14 of the Trade Union and Labour

Relations Act 1974] are recent privileges' (CPS 1980: 33);[10] 'Trade union immunities, or privileges, are of two main kinds' (Hanson 1984: 69). The rhetorical 'transformation' from negative 'immunities' to positive 'privileges' was so complete that the two terms had become interchangeable.

However, the language of 'privilege' was by no means restricted to 'New Right' theorists. It was also deployed by politicians and in Green Papers, particularly in the early 1980s. Thus, Norman Tebbit, writing subsequently about the 1982 Act, justified it on the basis that 'too few reformers had faced the fact that the power of trade unions is based on the privilege of immunity from liability in tort' (1988: 184) (see p.37). Arguing in favour of the measures in Parliament, a Government minister equated 'immunity' with 'privilege': 'we should remind ourselves what the concept of immunity means. It means that people who would otherwise have been able to bring civil proceedings to secure redress against unlawful behaviour are prevented from doing so. In that sense an immunity is a privilege - a privilege which must be used responsibly, with proper regard for the interests of others and of the community as a whole' (Alison, M. OR HC, 6th ser., vol. 24, col. 375). In similar manner, *Democracy in Trade Unions* (about which Wedderburn remarks that it took the process of 'the misrepresentation of trade unionists' rights to 'privileges'' to 'a new peak' (1991: 90)) argued that 'Trade union power, which springs from legal immunities and privileges, can be used not just against employers but against individual members of unions' (DE 1983: 1). Even the generally cautious Prior deployed the language of 'privilege', which should be 'restricted to what is necessary' in speaking of the 'exceptional immunities' possessed by unions which were to be restricted by Government legislation (OR HC, 5th ser., vol. 967, col. 824), although characteristically (and in contrast to

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[10] The implication here was that *recent* 'privileges' were less defensible than those which had existed since 1906, a view repeated later in the paper, in a discussion of amendment of s.17 of the 1974 Act: 'Section 17 is *not* part of the ancient rights and liberties of trade unions. Its first subsection gave a legal privilege to trade unions for the very first time in 1974. Its second subsection gave another legal privilege to trade unions for the first time in 1975' (*ibid*: 27 - emphasis in original). This appears to demonstrate a degree of caution over the extent of trade union reform and an unwillingness to repeal *all* immunities, unlike Hayek (hence, the CPS recommended a series of Bills rather than a 'rushed, ill-considered or superficial' 'large-scale and repeated attack on a range of different fronts' (*ibid*: 5)). Note also the conflation of 'privileges' with 'rights' in the discussion of s.17, for which see pp.80-2.

Tebbit), he saw these immunities as 'necessary to redress the balance' which was tilted in favour of the *employer*.[11]

However, it would seem that the Government exhibited greater reluctance than 'New Right' commentators to make an explicit equation between 'immunity' and 'privilege'. This can be seen from an examination of the Second Reading debate on clauses 12-15 of the Employment Bill 1982, which removed immunity from liability in tort for unions (see Chapter 2). During this debate, both Tebbit and Waddington referred consistently to 'immunity' (OR HC, 6th ser., vol. 17, cols. 744-5, 818-9). This can be explained by Tebbit's desire to ensure that the Bill won backing, and to avoid unenforceability (see p.38), which might have been the consequence had the 'privilege' argument been directly evoked.

Nevertheless, while the language of 'privilege' may not have been explicit, it clearly underpinned the arguments of Government spokesmen. Hence, Waddington defended the limitation on damages payable by unions as a concession to them: 'I remind the House that in putting into the Bill that limitation on damages, we are thereby still conferring upon trade unions an element of privilege not afforded to anyone else who commits an unlawful act' (OR HC, 6th ser., vol. 17, col. 819). Tebbit, meanwhile, although avoiding the explicit use of the language of 'privilege', clearly drew from the existence of immunities two important related conclusions common to those who used the vocabulary: 'Since 1906 trade unions in this country have enjoyed virtual total immunity from civil actions even if they have acted unlawfully, quite outside a trade dispute. No other trade union movement in the world is outside the law in that way and, as the Donovan Commission pointed out in 1968, no other person or organisation - not even the Crown - has comparable immunity in this country' (OR HC, 6th ser., vol. 17, col.745).

I would conclude, therefore, that Wedderburn is correct to observe that, in the early 1980s, 'the argument for legislation to make unions ineffective was supplemented

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[11] Labour MPs were critical of the claim that 'immunities' equalled 'privileges', arguing that the Government itself had refuted this view in *Trade Union Immunities*: 'The Green Paper pointed out that we have a system of immunities instead of positive rights which other countries have. They are not privileges. They are alternatives to rights. Therefore, they are not wicked or sinister. They make up the system that we have to enable trade unions to operate. I wish the Minister would learn that simple fact which every O-level schoolboy knows' (Radice, G. OR HC, 6th ser., vol. 24, col. 374).

by semantics that turned legal 'immunities' into social 'privilege" (1986: 846). However, it is possible to go further and identify other aspects of Conservative/'New Right' discourse which sprang from the use of the language of 'privilege'.

Firstly, the implication was that unions were in some sense *above the law*, as they were exempted from the full impact of the common law by the existence of the 'immunities' - for example, Shenfield argued that 'the confusions and idiosyncrasies of trade union law make them feel in a sense outside the law and therefore above it' (1986: 25). In essence, this was a Diceyan 'rule of law' argument, and therefore particularly attractive to judges (see p.71), but by no means restricted to them.[12] Hence, Shenfield went on to urge unions to 'change their character to conform with the rule of law' (1986: 42), Hanson stated that s.4(1) of the 1906 Act 'put trade unions above the law. In future they could do what they liked and cause the most immense damages without being subject to any legal sanctions whatsoever' (1984: 69), the CPS claimed that 'it is probably true to say that trade unions have been writing their own laws', which infringed the fundamental constitutional principle that 'it is Parliament's task to introduce and enforce general laws applicable to all, including those who belong to or work for trade unions' (1980: 5), and Burton argued that 'by the enactment of legislation in the nineteenth and early twentieth centuries, trade unions were put, in many respects, above the law of the land that holds for all other individuals and institutions' (1979: 68).

Government spokesmen were also heard to make this argument, particularly in the context of the 1982 Act: 'The situation was absurd - the rich and powerful unions were beyond the reach of the law' (Tebbit 1988: 185); 'It is wrong in principle to set trade unions above the law' (Waddington, D. OR HC, 6th ser., vol. 17, col. 818). The argument was undoubtedly appealing to Conservative politicians, given that 'the sanctity of the rule of law' was a 'key principle of Conservatism' (Dorey 1995: 4).

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[12] Hayek (1984: 52), Hanson (1984: 70) and Burton (1979: 83) all referred to Dicey's view of the Trade Disputes Act 1906. In addition, several commentators made considerable capital out of the Webbs' opinion that the 1906 Act conferred an 'extraordinary and unlimited immunity, however great may be the damage caused, and however unwarranted the act, which most lawyers, as well as all employers, regard as nothing less than monstrous' (Webb & Webb 1920b: 606, quoted by Hanson, *ibid*; see also Burton 1979: 44; CPS 1980: 5).

The 'uniqueness' of unions

It was a small step from this position, which argued that unions were 'above the ordinary law of the land' applicable to all other individuals and institutions in British society, to the second claim, that unions were *unique*, in that only they were exempt from the common law applicable to everyone else. The language of 'uniqueness' was a central element of 'New Right' rhetoric on the unions: 'the new labour legislation has conferred upon trade unions and their members in Britain a freedom from legal regulation which in its near-comprehensiveness is unique among all the countries of the world' (Grunfeld 1978: 85); 'no other group has managed to acquire such unique and unconditional immunities from the rule of law' (Burton 1979: 45); 'among all social and economic institutions, in the case of the unions Parliament and the courts have uniquely relied upon the principle or device of immunities from the normal provisions of the law. It is an abdication from the true way by which legislatures and courts develop the legal status of social and economic institutions' (Shenfield 1986: 25).[13] In part, this complaint that unions were treated differently from others reflected a belief that they had acquired excessive influence within the political and economic process: 'The growth in the economic power of British unionism has thus rested fundamentally on their ability to acquire unparalleled legal privileges, by their pressure in the political arena' (Burton 1979: 44-5); 'When Parliament put trade unions above the law, it put them on a par with itself. In other words, Parliament invited the unions to play a major part in the legislative process' (Hanson 1984: 71). Such analyses therefore pointed to a reduction in the unions' corporatist role of the sort which the Government undertook (see Chapter 2), and also opened up the possibility of accusing the unions of being 'anti-democratic' (see below and pp.57-60).

The language of 'uniqueness' was by no means exclusive to 'New Right' authors. The Government also employed the vocabulary, particularly in Green Papers during the early part of the decade. For example, *Trade Union Immunities* discussed the historical reasons for the development of the system of immunities and pointed out Britain's peculiar status (DE 1981: 2). This historical and legal exceptionalism led naturally to use of the

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[13] See also Hayek's remarks (above p.73), the CPS' view that 'the British system of collective bargaining has rested (uniquely in the world) on the principle of 'voluntarism'' (1980: vii), and Seldon's description of the 'privileges' as 'exceptional' (1988: 8).

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language of 'uniqueness': 'Britain is not, of course, unique in having to define the status of trade unions and industrial action in law. What is unique is the way the way in which it has been done: not, as in other countries, through positive rights, but rather through a system of legal immunities' (*ibid*: 11).

What is particularly revealing about the 1981 document is the way in which the language of 'uniqueness' appeared to follow logically from a simple (and seemingly ideologically neutral) description of the historical and legal background to the creation of the system of immunities. The Green Paper was drafted in a deliberately 'balanced' manner and 'avoided any clear statement of preferred policy on any point' (Auerbach 1990:70 - see p.37). However, even when the agenda was as cautious as that of Prior, it was remarkably easy for a debate over the exceptional nature of the *form* of protection given to unions under English law to be transmuted into criticism of the *extent* of that protection, in relation to other countries:

> 'Great Britain is unique in the extent of the immunity from legal action which it affords to trade unions as such. Whereas in most other countries the legal liability of trade unions is deeply rooted in the legal system and has shaped their growth and development, the trade unions in this country have grown up with a legal system which has since 1906 protected them from legal action for the unlawful acts of their members. Industrial relations have undergone great changes since the present immunity was introduced in 1906 and it must now be considered whether the extent of the immunity then thought necessary to safeguard the existence and operation of trade unions is still appropriate 75 years later' (DE 1981: 36).

The abnormality of the manner in which unions were accommodated within the legal system thus facilitated their portrayal as 'unique' institutions. In the hands of a less tentative Employment Secretary than Prior this could be a powerful rhetorical tool for the justification of legislation to bring unions into line with other institutions, and Britain with other nations. Tebbit demonstrated this in the Green Paper produced during his time in the post, which sought to regulate the internal affairs of unions: 'Unions have important legal immunities and privileges not afforded to other organisations... the unique legal status which trade unions enjoy and the power their leaders possess to initiate industrial action which can damage the economic and commercial interests of others make it essential for their internal affairs to be conducted in a manner which commands public confidence' (DE 1983: 1).

Nevertheless, although by no means averse to using the argument of 'uniqueness',

the Government's rhetoric seemed to lack the forcefulness of that of the 'New Right'. While Hayek and other theorists sought to justify their call for the removal of all immunities on the basis that unions should not be above the law and treated in an exceptional manner, the Government was reluctant to make such strident claims and preferred to combine the argument with the other forms of discourse discussed in Chapter 3. This seems to point to the view, expressed most powerfully by Auerbach (1990: *passim*, but especially 226-239) that the Conservative Government's policies diverged in certain significant ways from the prescriptions of the 'New Right' (see pp.32-3).

However, the language of 'uniqueness' resulting from the claim of 'privilege' was significant in that it offered the opportunity to 'marginalise' the unions within the British political system. By presenting the unions as 'special', 'privileged' and 'unique', the ideologues of the 'New Right' placed them in a position *apart from other groups within the political system*. 'Marginalising' the unions in discourse in this way could thus render it easier to justify any legislative attacks upon them in that these could be represented simply as attempts to bring the unions into line with all other institutions and individuals (and with unions overseas).

This can particularly be seen in claims that the 'unique' status of unions and their access to the political process as a 'privileged' interest group had enabled them to subvert democracy: 'A first and outstanding aspect of the way in which British unionism has used its accreted power has been to prevent in the last decade, the attempts of democratically-elected British governments - of both Labour and Conservative varieties - to reform it by statutory measures... Now we find the unions seeking... to 'hold the country to ransom', using mob violence to intimidate, writing the laws of the land, and attempting to dictate to government and Parliament the shape and content of government policy. My view is that great dangers face any democracy that allows such power to fall into the hands of any of its constituent parts' (Burton 1979: 55, 67); 'By way of promise of benefit to their members they [unions] first climb on the worker's back, and from that coign of vantage they seek to climb upon the back of the whole society. Thus they become a state within the state, with a claim of right to the use of force upon the citizens which ought to be the monopoly of the state' (Shenfield 1986: 43). On this analysis therefore, the 'unique privileges' of unions placed them apart from the rest of political society; and the exploitation of those 'privileges' enabled them to present a threat to the universally

accepted democratic system of government (which impliedly did not encompass these 'peripheral' institutions). It was thus necessary for the properly elected Government to take measures against those privileges.

As suggested above, the Government itself, with its commitment to 'step-by-step' reform and reluctance to follow fully the Hayekian blueprint, was less inclined to use arguments as bold as these; but the strategy of 'marginalising' the unions through language, which the vocabulary of 'privilege' and 'uniqueness' opened up, remained a powerful rhetorical tool for the justification of its policies, albeit in conjunction with other themes and concepts, as argued in Chapter 3.

Privilege and 'rights'

I wish briefly to consider a further 'rhetorical leap' made by some on the 'New Right' - that from 'privileges' to 'rights'. Paradoxically, this was at once both more and less valid than the shift from 'immunities' to 'privileges'. It was less valid because it was widely understood that the main factor distinguishing the voluntarist British system of industrial relations was the fact that unions did not possess *positive* rights, in contrast to the situation in other countries: 'Other countries with different legal traditions and constitutional frameworks have taken a different approach. They have elected instead to give trade unions positive but defined rights. In Britain there is no specific legal right to strike' (DE 1981: 2). It should thus have been considerably harder to make the claim that unions possessed 'rights' than to argue that they had 'privileges'.

On the other hand, as Wedderburn (1986: 20) and McIlroy (1991: 3) argue, behind the 'form' of the 'immunities' lay certain 'social rights' - to exist, organise, bargain and withdraw labour - with the 'immunities' simply constituting the *method* by which these were guaranteed. Those who spoke the language of 'rights' had thus succeeded in seeing through the 'confusing semantics' of the 'immunities'.

This being so, and given the tactical advantage to be gained by the Right in 'mystifying' 'immunities' into 'privileges', one might expect the language of 'rights' to have been the province of the unions and the Left. To an extent this was true, as I shall demonstrate below. But the language of 'rights' also proved of value to those with an anti-

union stance.[14] Thus, the claim was made that: 'only by the withdrawal of the special legal privileges which provide the basis of union bargaining - the right to conspire, the right to the closed shop, the right to impose union-negotiated contracts upon all employees, the right to coerce their own membership *via* secondary strikes and boycotts, the right to employment protection, the right to picket, the right to state-financed strikes and the right of exemption from general rules applying to corporate bodies - would a determined government restore balance in the political process and offer the rest of society an equal opportunity to make their impact' (Rowley 1978: 92). Such an analysis saw the unions' 'rights' as essentially negative and destructive in substance, disrupting the 'balance' of society (see pp.35-42) and denying liberties to other individuals and groups within that society.

This type of argument was echoed by the CPS, in terms which were even more critical of the unions: 'Parliament, since 1974, has introduced a whole range of laws - many of them contradictory, complex and unwieldy and which, far from limiting the excesses that trouble the public mind, have actually increased them. These laws have created a wide imbalance between the privileges of trade unions and the liberties of ordinary people. They have done much to elevate the right to strike and to make it superior to all other rights, including the right to work and, indeed, even the right to live' (1980: vii); 'in a changed situation we have elevated the 'right to strike', conceived in quite different circumstances, into an absolute right regardless of the consequences to individuals, to the public at large and to the wellbeing of the country. In a world where people may die by the withdrawal of labour from electricity, water and fire stations; where health is endangered by similar 'industrial action' in hospitals and main drainage systems, we have made the 'right to strike' superior to all other rights' (1983: 2).

What is happening here is that the 'rights' of trade unions are being set up in contrast to other rights possessed by individuals. These are so fundamental to human existence that the juxtaposition itself and the allegation that union 'rights' are trumping

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[14] It is interesting that Prior, while clearly seeing the reality of 'immunities', felt constrained to use the 'New Right'/Conservative language of 'privilege': 'it was the industrial barons of the last century who occasioned the need for the privileges which the unions subsequently secured from Parliament to protect their proper rights' (OR HC, 5th ser., vol. 983, col. 1537).

them clearly casts union 'privileges' in an extremely unfavourable light. The implication seems to be that there is a zero-sum game being played - the existence of union 'rights' *necessarily* meant that other individual rights were consequently infringed and reduced. This was endorsed both by Wedderburn, who wrote that judges 'have perceived the statutory 'immunity' as something that detracts from the common law rights of other persons and therefore as a 'privilege' ,which must be construed narrowly' (1986: 20), and perhaps more significantly, by Tebbit: 'Of course, the plain fact is that the laws which give trade unions rights are laws which take away the historic common law rights of the people' (OR HC, 6th ser., vol. 17, col. 738); 'trade union leaders favour legislation that takes away the common law rights of ordinary working people and gives the power and the privilege to the TUC and the leadership of the unions... the TUC always oppose legislation that trimmed that power and privilege and returned common law rights to ordinary people' (OR HC, 6th ser., vol. 24, col. 399).

This returns me to the issue of 'marginalisation'. If the unions were seen as removing the rights and liberties of other individuals and groups within British society, they were, in a sense, launching an attack upon the 'law-abiding' members of that society. Accordingly, they could be seen as somehow 'external' to the remainder of the community of the British nation - 'outside' as well as 'above' the law - or, at best, as an 'enemy within' (see p.64), making it easier for 'New Right' theorists and the Government to justify action against them.

How could the unions respond to the powerful rhetorical attack based on 'privilege'? One possibility was to adopt the language of 'rights' - understood in a more positive manner than in the writings of the 'New Right' discussed above - for themselves. As Wedderburn notes, this was a logical move, because 'rights', unlike the confusing 'immunities', 'say what they mean' (1986: 855): ''rights' must be considered a useful style even if only as the rhetoric of change, secondary though the form may be to the substance of social reality' (*ibid*). I will now turn to examine the extent to which this vocabulary was in fact taken up by the union movement during the course of the 1980s, or whether other responses predominated.

The unions: debunking the 'myths' on immunities

One important element of the union response to the Government and Right's claim that they were in a privileged position was simply to deny that this was the case. More specifically, union leaders and TUC publications sought to argue that the Conservative and judicial argument represented a 'mystification' of the true position and that the so-called 'immunities' were merely the *means* adopted by British law to provide elementary rights to unions:

> 'In Britain, the essential legal freedom of trade unions and their members to organise industrial action has been based on a system of statutory 'immunities' from common law and judge-made liabilities... These immunities were widely portrayed by Conservative politicians as 'privileges' with trade unions being 'above the law'. Elements in the judiciary tended to the same view. Lord Denning said: *'When Parliament granted immunities to the leaders of trade unions, it did not give them any rights. It did not give them a right to break the law, or to do wrong by inducing people to break contracts. It only gave them immunity if they did'*. Both Conservative politicians and judges chose to ignore the fact that the 'immunities' were the British method of providing the elementary social 'rights' which in other legal systems are often provided by legal rights. This attitude underlay the Conservative Government's approach when it assumed office in 1979' (TUCa 1986: 6 - italics in original).

As previously discussed, this argument had a good deal of support from academics such as Wedderburn and was even endorsed by the Government itself in *Trade Union Immunities* (see below).

Yet, despite the apparently strong basis for the unions' claims, there remained the difficulty of putting this view across to union members and the public. There appeared to be a consciousness within the union movement that the Government's deployment of the language of 'privilege' had struck a chord and accordingly had facilitated the introduction of the legislative changes.[15] It was therefore thought to be particularly important to offer an effective counter-argument (and possibly, a *vocabulary* to counter the Government's assertions - see further below) in order to pave the way to effective union opposition to the legislation: 'I think that it cannot be said too often that these immunities do not place

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[15] See in particular the TUC Workbook of 1982, which listed five 'myths' (including 'trade unions are above the law') 'that have been generated and then used to justify anti-union laws' (TUC 1982c: 7).

trade unions above the law in any real sense but simply make practicable trade union activity in the peculiar context of English law. I think that everyone here knows very well that is the case, but it remains the fact that it is a powerful propaganda weapon used by this Government and by its predecessors to say that trade unions are above the law, as though we were in some way enabled to ignore all civilised obligations. I think that the true nature of the so-called 'immunities' needs to be further brought home to our own membership' (Morton, J. TUC (Wembley) 1982: 384-5).

The unions therefore sought to stress that the peculiarity of the English system lay in the *form* which protection for trade unions took, rather than in the protection itself - the semantics rather than the substance. This enabled them to claim that they were asking for no more protection than was offered to trade unions in other nations, and that they were thus not 'uniquely privileged', as the Government and 'New Right' theorists had argued, but were simply attempting to do the job for which they had been created: 'These legal protections are called 'immunities'. The press and the Conservatives like to call them 'privileges'. But it is these protections that create a right to strike in this country - which is not a privilege in any democratic society' (TUC 1981a: 7).

Additionally, the argument of 'uniqueness' was, to an extent, turned back against the Government, in that it was claimed that, because legal protection in Britain took the form of negative immunities, the British system was characterised by fewer positive rights (and impliedly, less protection from a hostile Government or judiciary) than other countries: 'Briefly, the claim that 'immunities' mean 'privileges' is a perversion of the truth. They are merely basic rights, without which all trade union activity could be exposed to actions in the courts. The argument that British unions *have greater freedom from legal intervention than any other trade union Movement in the world'* is balanced by the fact that British unions have **fewer** legal rights than other trade union Movements in democratic societies' (TUC 1982c: 7 - italics and emphasis in original). The system of industrial relations in Britain was, therefore, unique, not because unions were above the law (as the Government argued), but because they had *less* protection than in any other comparable system. This line of argument led logically to a call for the system of immunities to be replaced (at least in part) by one of rights, which was a feature of union debates in the later 1980s, as I shall shortly demonstrate.

If, as the unions claimed, 'immunities' were simply a legal form giving protection

to their activities, the claim that they took them above the law was unsustainable. This being accepted, the unions could then stress that they *did* operate within the law, and thus counter the view that the system of immunities infringed the principle of the rule of law: 'Cabinet Ministers like to give the impression that unions are somehow 'above the law'. They are referring to the fact that trade union rights in Britain stem from 'immunities' from legal action under civil law and they call these 'privileges'. In fact they are basic rights without which all trade union activities would be exposed to action in the courts and massive claims for damages... Unions and their members do work within the law' (TUC 1983: 37); 'It is worth recalling that the so-called special position of trade unions is not concerned with what most people regard as illegal behaviour. The whole debate has nothing to do with the rule of law. These pronouncements about bringing trade unions within the rule of law are rubbish, and the people who put them forward know it' (Morton, J. TUC 1979: 445). However, it would be inaccurate to regard these passages as wholly indicative of the unions' attitude towards the law, particularly during the early years of the Thatcher administration. There was a continuing debate within the union movement as to the extent to which the law should be obeyed, to which I now turn.

Limited acceptance or defiance of the law?

Although, as discussed above, industrial relations in Britain was characterised by 'voluntarism' or abstention by the law, it did not follow that the law had no part to play in regulating relations between unions and employers. The union movement accepted the need for legislation in many areas, notably health and safety, sexual and racial discrimination, and individual employment rights. Such legislation provided a basic minimum, or 'floor', of rights, which could be built upon by voluntary collective bargaining free from legal control.

Accordingly, the unions sought to emphasise their willingness to accede to certain laws which provided the foundations for their wider functions. Such a standpoint fitted closely with the line of argument examined above, that the unions were acting within the law and were not violating any principles of the rule of law:

> 'While the law is very much secondary to collective bargaining in establishing workers' rights, trade unionists have supported two broad kinds of laws:

- laws that protect union organisation and unions' ability to take industrial action
- laws that set basic minimum standards which can be built on through collective bargaining.

The Conservative Government has put forward legislation and policies that affect trade union rights in both these areas. These policies are a sharp reminder of two points:

- 'the law' is not something fixed. Laws reflect the current economic balance of power - and in a recession workers are not in a strong position
- unions can never afford to rely on the law. It is no substitute for strong trade union organisation and negotiation' (TUC 1980c: 2).

'Although there has traditionally been a minimum of legal intervention in, and regulation of, industrial relations, the TUC has recognised that certain kinds of statutory measures can be of positive influence in an essentially voluntary system of industrial relations; and the amount of legislation in these fields has been building up since the early 1960s with the laws on unfair dismissal, redundancy and equal pay, health and safety and sex and race discrimination being the most important. The TUC has welcomed and sometimes promoted such legislation insofar as its aim is to extend, and sometimes supplement, collective bargaining and improve standards; but it has been careful that the process of voluntary negotiation should not be disrupted. Nevertheless, the fact is that the law is in industrial relations and cannot now be excluded - if it ever could... The TUC's approach to the law in industrial relations has therefore been increasingly pragmatic. That is not to say that trade unions should rely on the law and that new proposals should inevitably always take the form of new legislative provisions. A viable and convincing future strategy for industrial relations will require both legislative action and voluntary initiatives by the trade union Movement' (TUC 1986a: 3).

However, as can be seen from these two passages, the unions exhibited a considerable degree of suspicion of the law, which manifested itself in a reluctance to rely too heavily upon legislation or to draw the law too closely into industrial relations. There was a grudging recognition that law formed part of the geography of industrial relations, but there was little question that, at least in the earlier part of the period, the law was regarded in an essentially negative light, with voluntary collective bargaining being the preferred method for unions to achieve their goals: 'Unions were set up by working people despite the law... Unions have learned through experience not to put too much faith in the law. Union organisation and collective bargaining have been much more important in winning workers' rights. But unions have always seen a basic role for the law in setting minimum standards' (TUC 1981a: 3 - emphasis in original).

Why did this negativity in rhetoric and attitude exist? An answer can be gleaned

from the passage quoted above. The unions were wary of the law for *historical* reasons connected with the philosophy of the common law. Its individualist nature and propensity to protect capitalist property rights from collective socialist entities (see p.67) rendered it antipathetic to trade unions, as evidenced by the line of judicial pronouncements from <u>Taff Vale</u> to <u>Express Newspapers Ltd. v McShane.</u> Thus, although the unions were suspicious about law in general, their particular concern was with the *common law* (which was seen as subverting the achievements of legislation) and, especially, with the attitude of the judiciary: 'Judges have a lot of discretion in the way they interpret law, and over time they can change the whole meaning of an Act of Parliament. They have used much ingenuity over the years to undermine the protections unions fought for through Parliament - for example, by inventing new common law 'torts' (TUC 1982c: 11-12); 'Historically unions have had to fight for basic legislation which establishes in the face of common law the essential legal freedoms to organise and carry out their activities. Again and again those rights have had to be regained from adverse and restrictive decisions by the courts' (GC Report, TUC (Wembley) 1982: 352).

Consequently, the judges were viewed in union discourse as malevolent figures motivated by anti-union hostility and eager to take every opportunity to attack them: 'Let us make clear once and for all that judge-made law has never been other than hostile to the working class of this country' (Keys, W. TUC (Wembley) 1982: 397); 'the sheer complexity of the new statutory provisions will open the way to speculative court actions by employers and others, and give a hostile judiciary the opportunity to encroach even further on unions' dramatically reduced legal rights' (GC Report, TUC (Wembley) 1982: 360). As the quotation from Keys implies, antipathy towards the judiciary was not simply a function of union disagreement with judgments; it was also intimately bound up with issues of class, the perception being that the judges were biased against the working class because of their origins, education and socialisation (see Griffith 1991). I discuss the vocabulary of 'class warfare' at greater length on pp.136-8.

The essentially negative attitude to the common law evident in these passages had important implications. If the law in general and the judiciary in particular were indeed hostile to the unions, as union rhetoric sought to argue, it was easier for union leaders to justify a policy of disobedience to the law to their membership (and perhaps also to the wider public, if they could effectively be convinced of the injustice of the proposed

measures). Thus, those who argued for a policy of defiance of the legislative provisions invoked the vocabulary of 'unfairness' and 'injustice' (for an extended discussion of these concepts, see pp.176-82): 'No Government can take away from working people their right to defend themselves and to defend the unions which they have created and which they sustain. If, while unions are going about their proper function, they run up against laws which threaten their very survival as effective bodies, then nobody should be surprised if union members say 'We cannot live with this law'. That is the danger that any Government courts if it puts ordinary men and women into situations where they are left with no option but to resist an unjust law, and to face fearlessly the consequences which flow from doing so' (Murray, L. TUC (Wembley) 1982: 381).

An interesting example of this argument can be found in the speeches made by Bill Keys to the 1981 Congress and the Wembley Conference of 1982. He based his opposition to the legislation upon an analysis of the *moral content* of the measures, which he found to be lacking: 'The making of hostile and unjust acts against the trade union Movement is consistent with the state of mind of those in power, reflecting their deep enmity towards the majority of working people. They are not promoting true laws. I would submit to this Congress, to be true laws they must nurture life, they must promote the common good. Mere order and mere laws are not ends in themselves. They must at all times be related to life' (TUC 1981: 426). This approach had strong echoes of a natural law philosophy, with Keys arguing that laws which are not 'true' according to some moralistic criteria (a somewhat vague concept of 'nurturing life') do not have to be obeyed. He justified this apparently startling proposition by reference to history - by deploying the language of the tradition of 'struggle': 'I believe that the law becomes forfeit when workers believe it to be perverse and when they believe it to be prejudiced. I passionately believe that all we have been able to achieve in society - that is industrially, politically and religiously - has been achieved because men and women were prepared to stand up and fight whenever perverse law seemed to them to be intolerant and unjust' (TUC (Wembley) 1982: 397). As I shall demonstrate below (pp.131-6), the argument from the tradition of the trade unions was a particularly powerful form of rhetoric which was deployed by many in the union movement, especially the more militant leaders such as Arthur Scargill.

While Keys deployed the 'just law' argument in the most developed fashion of any of the union leaders, others echoed his sentiments: 'This is not the use of the law, the

proper and legitimate purpose of the law, to generalise good practice or to correct occasional errors. On the contrary, this is an abuse of the law... 'Mr. Tebbit has told us that his Government has a majority and he is prepared to use it. While he has a majority the TUC will be the last to usurp the democratic processes of this country. Workers are entitled and are determined to pursue a legitimate grievance to defend essential rights' (Murray, L. TUC (Wembley) 1982: 407); 'respect for the law requires that elected Governments legislate within a broad consensus and that they do not attack the right of democratic institutions to exist and operate. What this Government is contemplating is a gross abuse of the law and a gross abuse of the British workers' respect for the law... If these laws do attempt to completely emasculate the trade union Movement, to destroy the closed shop, to put trade unionists in gaol for the exercise of their traditional freedom, we must create a united Movement to fight back' (Basnett, D. TUC 1981: 430) (for 'democracy', see pp.147-54); 'This Movement has always cooperated with the law but this Government is using the law to destroy consensus on which our society depends' (Basnett, D. TUC (Wembley) 1982: 388).

Basnett's comments demonstrate the way in which the trade unions attempted to adopt a primarily *defensive* position - claiming that they were not law-breakers by nature, but had been forced into this position by the Government's 'lack of respect' for the law (see further pp.128-31). This represented a reversal of position - rather than the unions being guilty of abusing the law by ignoring it, it was the Government which had shown disregard for law by legislating in violation of 'true' principles and of democracy. 'Turning the tables' on the Conservatives by deploying their own language against them was a significant strategy, as I shall show at later points in this study.

Although speeches such as this attempted to 'shift the blame' for infringement of the law onto the Conservative Government, many in the union movement remained unconvinced. In particular, they pointed to the difficulties inherent in challenging the democratic processes of Parliament, and the likely effect this would have upon public perception of the unions: 'I urge you that we do not regard this campaign as an encouragement to trade unionists to set out to break the law. Previous speakers have referred to the need to emphasise the positive side of trade unionism, to win the popular and intellectual battle. We are not going to do that, either with our own members or with the general public, if we set out to encourage our members to break the law and if we

entangle with this legitimate campaign of defence on industrial relations issues the idea that we are overturning the Government; that by extra-Parliamentary activities we are usurping the power of Parliament' (Ward, C. TUC (Wembley) 1982: 387). Law-breaking might indeed be justified in the cause of some revolutionary struggle, but Britain was not a society appropriate for this type of response: 'when you break the law now you strike against law determined by that universal suffrage. Rejection of arbitrary law not so based in Poland, Russia, South Africa and Chile is justified. In Britain, it is a rejection of democracy itself - and that is the only real means that we have to change bad law' (Hammond, E. TUC (Wembley) 1982: 394).

Certainly, there was a potential conflict between the unions' often-repeated commitment to democracy and defiance of law made in Parliament. Those who argued for a policy of defiance were forced to justify this by using quasi-natural law arguments based upon the language of justice. Even the more militant union leaders sought to portray themselves as acting out of self-defence. The rhetoric of the rule of law was powerful and, despite the unions' negative attitude to the law (manifest particularly in attacks upon the judiciary) they were reluctant to exhibit open contempt for the law, in part at least because this would be unappealing to the public. They accordingly attempted to clothe their actions, whether of opposition to the law or of grudging acceptance, with rhetoric which protested that unions were, at base, law-abiding, an argument which also underpinned a refusal to accept Conservative accusations of 'privilege'.

'Rights talk' in the union movement

However limited the acceptance of the law may have been in union *rhetoric* of the early Thatcher years, events in the courts, in the collieries and pits which formed the battleground of the miners' strike of 1984-5, and within the TUC itself (see Chapter 2 for a summary of these developments), effectively dictated the unions' stance in respect of the law. By 1986, the unions had come to accept that a policy of defiance of the Conservative legislation was not workable. How did this manifest itself in language?

Undoubtedly the most significant development was the gradual move by the TUC towards embracing a system of positive rights. The consultative document of 1986 canvassed the options in a balanced manner, evaluating the benefits to the union movement of retention of the traditional system of immunities as against a shift to a

'charter' of rights. In particular, it referred to a Fabian pamphlet written by Lord McCarthy (1985), which dealt with the potential advantages to the unions of adopting the language of 'rights': 'The question at issue however is whether there would be benefits in introducing positive rights as the basis of law on industrial disputes - legislating for, say, the right to strike...Lord McCarthy is not arguing that immunities are unnecessary, and he also said that by speaking the *language of rights, we do not solve any of the major problems'* although his view is that in presentational terms, there are good reasons for advancing proposals which are positive (*ie* rights) rather than negative (*ie* immunities)' (TUC 1986a: 7 - italics in original).

One can clearly see here the significance of language to the unions' position. Talking the 'language of rights' had considerable presentational benefits for the unions, as Wedderburn has argued (see above). Moreover, it opened up the possibilities explored in the Green Paper on *Trade Union Immunities*, in particular that the negativity of the unions towards the law and the suspicion of the judiciary would be diminished (see p.99).

While the 1986 document demonstrated an awareness of the potential profit for the unions in moving towards positive rights, it was somewhat tentative in its recommendations. There was a continued reluctance to advance too far down this particular road, in part because it represented a sweeping break with the past in a manner which was anathema to the unions' essentially conservative instincts: 'For the TUC to adopt such an approach to industrial action would mark a radical breach with the immunities approach which has been supported by the TUC since 1871. This must not be done without the most careful examination of all the possible consequences' (TUC 1986a: 7). Additionally, the unions felt that, just as 'immunities' simply represented the *form or style* of protection offered by the law, and that the *substance* was the issue of real significance, so the same would be true of a switch to a system of rights - if this was to be more than a simple change in vocabulary, there would need to be a change in judicial attitudes:

> 'Moreover, just as there have been problems with the boundaries of immunities, so there would be with the limits of a positive right...Not many trade unionists would have much confidence in the courts deciding in their favour on these issues... It may be that it is wrong to pose the argument sharply in the 'rights' or 'immunities' way and instead the aim should be to concentrate on finding clear definitions of the boundaries of immunities or rights or both which would be likely

to stand up in court. Legislation to widen the collective bargaining agenda beyond wages to crucial investment decisions will in any case mean an increased reliance on rights' (TUC 1986a: 8).[16]

The perception was that, whilst undeniably powerful, the language of 'rights' might not be sufficient *in itself* to alter the supposed hostility of the common law towards the unions.

Despite these reservations, the strategic arguments in favour of endorsement by the TUC of a system and vocabulary of positive rights eventually won the day. In July 1986, the TUC and Labour Party produced a joint statement, *New Rights, New Responsibilities*, which started the shift away from 'immunities': 'The Labour Party and the TUC are committed to the repeal of the present Government's divisive trade union legislation and its replacement by positive legislation. In our view there is no question of excluding the law from industrial relations. But it can be given a positive role - with new rights and protection for individual workers and their unions' (TUC-Labour 1986: 4). The statement therefore represented an acceptance that a voluntarist system of industrial relations was no longer an appropriate goal - law must play some part. The statement, predicated upon a combination of rights and immunities, was endorsed by the 1986 Congress:

> 'Congress calls on the next Labour Government to enact a new system of Industrial Relations Law which includes a wide-ranging charter of legal rights for all people at work. Congress calls on the labour Movement to campaign for a system of legal rights which will cover all people at work and give them full protection from abuse at the hands of uncaring and unscrupulous employers. Congress believes that workers' rights should be protected by a combination of positive rights and legal immunities. These should avoid over-reliance on judicial interpretation and should support, not undermine, the process of achieving improvements through collective bargaining' (Composite Motion 1, TUC 1986: 451);
>
> 'None of us believes, I imagine, that you can throw away a traditional history of an immunity-based system, but we do say that the union Movement has always accepted a floor of legal protection, and we must build on that. As we said in our evidence to the consultative exercise earlier in the year, the repeal of the Conservative Government's legislation will produce an opportunity progressively to introduce a... rights-based system' (Dawson, P. TUC 1986: 458).

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[16] See also the passage quoted from Lord McCarthy: 'By speaking the language of rights, we do not solve any of the major problems'.

However, the debate was far from over. Many in the union movement were uncomfortable with a move towards rights and looked to maintain the traditional system based around immunities: 'we see no alternative whatever to a return to the basic legal immunities on which trade union strength has been built. Indeed, without shame or embarrassment we insist on them, and we know that they need to be extended, rather than just restored' (Todd, R. TUC 1988: 623). The arguments between the 'traditionalists' and the 'modernisers' were particularly bitter at the Congresses of 1989 and 1990 (see p.192). In 1989, in the wake of the so-called 'Summer of Discontent', several speakers spoke angrily about the involvement of law in industrial relations and called for a return to immunities: 'We see the continued involvement of lawyers and the courts in industrial relations - at what cost in terms of delays, fines, sequestration and receivership?... We cannot let these blatantly biased laws prevent us from carrying out our responsibility' (Fitzsimmons, S. TUC 1989: 351);

'we are entitled to be angry when we have to spend months before the courts, putting our case, arguing from a legal point of view, before we can give help, support and protection to our members. The Tories have made much of the phrase - and it is only a phrase - 'giving the unions back to their members'. But let me tell you what they have really done; they have actually given the unions to the courts, to the judges and to the lawyers... A wave of the legal wand, a stroke of the judicial pen, and we find that the dockers have never had the right to strike since 1946. And even though we won in the House of Lords, we have left on the statute book the legal missiles fashioned by the Court of Appeal judges. Those missiles are labelled 'balance of convenience', 'public interest', 'statutory duty'. And you had better understand that they can be launched on any union at any time in any dispute...We need a new framework of labour laws. We are told that those who have rights must accept responsibility. Well, those who have responsibility now have a right to ask for some rights as well. My union is not seeking to be above the law; we are not asking for the democratic participation of our members to be reduced. Yes, we want new, positive rights on health and safety, pay and industrial democracy, but we believe that there is another important right: it is important for those who are in dispute to have their industrial action and their freedom guaranteed by the British system of a return to basic legal immunity' (Morris, W. TUC 1989: 353-4).

However, it is notable that Morris speaks here of both 'rights' and 'immunities'. This reflected the composite itself, which called for 'the repeal of anti-union legislation and its replacement by a framework of industrial relations legislation which enshrines the right to strike including immunity in tort for trade unions' (Composite Motion 6, TUC 1989:

348). The language of 'rights' had infiltrated the discourse even of those who wished to repeal the legislation in its entirety.

The argument flared again at the Congress of 1990, but this time with more positive results for the 'modernisers'. The TUC had produced a statement of priorities in 1989 which had at its heart 'a charter of employment rights to protect individuals at work' (GC Report, TUC 1989: 24), based upon the 1986 joint statement. This was followed by the General Council statement, *Employment Law: A New Approach* (1990), which firmly rejected a return to immunities in favour of a rights-based system and accepted that wholesale repeal of the Conservative legislation was no longer feasible: 'The rights of individuals at work are at the heart of our vision... That is the inescapable logic that governs the need for a new Charter of Rights for individuals as set out in the TUC Priorities statement of 1989... It is only malevolent commentators who have ever ascribed the objective of being above the law to the trade union Movement. The idea that unions could somehow be sealed off from the law, is not, and never has been, desirable or deliverable' (TUC 1990c: 23).[17] Speaking in favour of the statement, the General Secretary of the TUC gave clear expression to the view that the language of 'rights' had considerable strategic advantages for the union movement in making it harder for the Conservatives to claim it was 'above the law':

> 'The relationship between trade unions and the law is fundamental to our existence and our role, and it always has been. Today in the General Council statement, you are being asked to endorse a new settlement, based on rights and responsibilities fairly balanced... In the harsh daylight of the 1990s, the yearning for old immunities does not amount to a policy: it is more like a cry for help. It is just not sensible to give any impression that we are asking for trade unions to be above the law, when we have the chance to obtain something which we did not have in the 1970s and which we need desperately today - namely, the chance to have the trade union Movement within a fair system of laws. The law is part of our future' (Willis, N. TUC 1990: 285).

There was still considerable opposition to this approach: 'Congress expresses its strong belief that any future Labour Government must repeal and replace existing anti-union legislation, and restore rights and immunities in line with existing policy, by a new

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[17] It is interesting to note here that the TUC was still anxious to claim that it had been law-abiding all along - however, the adoption of the language of 'rights' represented a recognition that it had presentational advantages over 'immunities'.

framework of measures designed to be immune to unwarranted judicial interference by the application of hostile common law doctrines' (Composite Motion 2, TUC 1990: 294). However, on this occasion the General Council and the 'modernisers' won the day and the statement was endorsed. Moher (1995: 32) comments that, from this point onwards, the 'rights' approach began to command majority support from the major unions.

The shift from 'immunities' to 'rights' within the union movement was therefore gradual and controversial. However, by the end of the decade, there had been a palpable change in the unions' attitude towards the law: 'I would say that the biggest change is now a rather more settled philosophy about the respective roles of legislation and collective agreement' (Lea, interview); 'The debate now was not about defying the law, but whether the TUC and the Labour Party should remain committed to repealing 'all the anti-union laws' and the restoration of the 'immunities' in full - in effect going back to the 1979 position. The terms of the debate had also changed as greater prominence was now given to an alternative 'positive rights' approach. Implicit in this position was the acceptance of legal limits on the conduct of industrial action and some legal regulation of internal union affairs. The talk now was of rights and responsibilities' (Moher 1995: 32). How did this movement to 'rights talk' impact upon union responses?

Just as there was debate over the appropriateness of the replacement of an immunities-based approach with a system of positive legal rights, so there were a variety of responses evident in union rhetoric concerning the role of the law in general, and the use to which it could be put by unions, during the later part of the decade.

As already discussed, many of the more 'traditionalist' union leaders were uneasy about the involvement of the law in industrial relations, and this manifested itself in a continued suspicion of the law and hostility towards the judiciary, evident most strongly in the acrimonious debates of the 1989 Congress (see pp.93-4). However, it is notable that even here there was an acknowledgment that unions should act *within* the law - Ken Gill, while critical of the 'legal hoops' through which trade unionists must pass, and of the 'blatantly class biased' nature of the Conservative legislation, expressed the wish that a new framework of legislation would 'ensure that when workers take action, they do so legally, as is their right' (TUC 1989: 350). There seemed, therefore, to be a grudging acceptance that law was involved in industrial relations (and, arguably, always had been) - the issue now was the *extent* of this involvement and the *form* it should take.

It is interesting to note in this context that, despite the argument that a change in form from 'immunities' to 'rights' would not be fully effective without a corresponding change in the attitudes of the judiciary, certain union leaders believed that it could be a significant means of 'insulating' the unions from a hostile judiciary:

'Remember again that trade union action was protected by an unreliable system of immunities. It sounded all right in theory... But almost every time we went to court, we seemed to lose, because some judge or other would remember a half-forgotten principle of British law and our cast-iron case would end up with holes all over it. Remember Rookes v Barnard, remember the legal action over Grunwick and remember the BBC v Hearn. If, after that list of inglorious defeats, you still have a hankering after the traditional British system, then give yourselves a real nightmare. Remember what the system of trade union immunities looked like in the hands of Lord Donaldson and Lord Denning, that dynamic duo of the judiciary, dressed up in their wigs and gowns like a pair of caped crusaders, stopping at absolutely nothing in their determination to make the world safe for employers... I do not want to go back to the 1970s and I would much prefer going into the 1990s with a system of law which is more civilised, more robust and less likely to be manipulated by some barmy judge with a prejudice against trade unions' (Edmonds, J. TUC 1990: 309).

There is a continuing suspicion of the judiciary here (albeit expressed in jocular manner), but this is compatible with the involvement of the law in industrial relations if a system of rights is seen as a protective shield against the common law. In this way, a change in judicial attitudes to unions might not be necessary so long as judges felt constrained by the existence of a 'charter' of positive rights.

Edmonds' remark illustrates that it was possible for the unions to deploy the language of 'rights' in a positive manner, to turn the law to the advantage of unions rather than simply viewing it in a negative light. However, the positive uses to which the law could be put by the unions ranged much further than simple protection from hostile judges.

Undoubtedly the most significant benefit which a strategy and vocabulary of positive rights offered to the unions was the ability to focus attention upon *individual* rights. I will discuss this issue at greater length in Chapters 5 and 6 - however, the move towards a vocabulary of individualism was a marked feature of the language of the unions in the 1980s, and it was made possible by the shift from the essentially collective conception of immunity from liabilities for unions toward rights which could attach to individuals. The law was thus seen as supporting the unions' drive to protect individuals

at work - it played a positive, not a negative role in union campaigns: 'The law should underpin, and not undermine, the role of unions in supporting individuals at work. There must be a clear and effective right to be a trade union member and to take part in trade union activities without victimisation' (TUC 1990b: 9);

> 'The composite represents a wide range of radical advantage in policy across the whole area of workers' rights - a legal framework in support of people's rights to replace laws enacted to put down workers. Throughout history trade unions and our members have faced hostile legal judgments. Every time we thought we had won an extra immunity the judges came in, re-interpreted the law and took it away... We cannot go on like this always on the defensive. We need a legal framework for people which judges will find impossible to re-interpret or for governments to repeal. This way - and to do it this way - gives individual workers rights that they never had before, and once given they will not easily surrender them again in the future' (Tuffin, A. TUC 1986: 453).

In this way, it was possible for the unions to reverse the traditional 'class bias' of the common law, and put it to their use:

> 'Other countries - and sometimes we scorn them - erect a safety net to protect the poor and the oppressed. In Britain we have always said in the trade unions that we are wary of the law. But think of what our enemies do. Margaret Thatcher has no hang-up about using the law... The TUC has a chance to say to the people of Britain, the law should not encourage exploitation; it should prevent it. The law should not help the rich; it should be on the side of the poor. The law should not be on the side of the powerful; it should be on the side of the underdog. To put it in personal terms, the law should not be on the side of Murdoch and MacGregor; it should be on the side of the kitchen porter, the shop assistant, the chambermaid, the hairdresser' (Edmonds, J. TUC 1986: 452).

Far from the unions avoiding the invocation of the law in industrial relations, the language of 'rights' enabled them to adapt it for their own purposes.

A related development in this field was the move of the unions towards support for the European Community, marked by the triumphant appearance of the President of the Commission, Jacques Delors, at Congress in 1988. In particular, the unions stressed commitment to the Social Charter which set out positive rights to freedom of association and collective bargaining (including union recognition and the right to strike) and to individual employment rights such as employment contracts, paid leave and working time (McIlroy 1995: 324): 'The European Community's Charter of Fundamental Social Rights... sets an important benchmark against which a new balanced framework of law can

be measured. The Social Charter sets minimum standards... it is essential that there is an effective right to belong to a trade union... There must be a new right for members to be represented by a union where no union is recognised. And where there is significant support, there must be a legal right to recognition itself... Union members must have other rights too' (TUC 1990c: 23). Undoubtedly, the unions were influenced by the manner in which the Social Charter set out its protection for individuals and unions in the form of rights, and the TUC's own commitment to the language of 'rights' allowed it to fit comfortably with the European approach. The support for Europe was seen, both at the time and subsequently, as a means of opposing Conservative policies: 'Europe is helping to undermine the Thatcher model' (Lea, interview).

Additionally, the UK Government's failure to adopt the Social Charter provided the unions with another form of response. They were now able to claim that the Government was 'unique' on a European level in not offering workers the protections they would have received elsewhere. This was a powerful attempt to appeal to notions of 'fairness' in members and the wider public (see pp.176-82) and represented a strong counter to the claim made by the Right that unions were 'uniquely privileged' - now they argued that they were 'uniquely discriminated against'.

Perhaps an even more dramatic example of the way in which the unions were able to deploy the language of rights and of law *against* the Government was by accusing it of acting in breach of the law. This did not take the form, as earlier in the decade, of arguing from the breach of some abstract 'moral code', but rather the more concrete breach of international legal obligations arising out of Britain's accession to the Conventions of the ILO. Adoption of the language of rights and a positive attitude towards what the law could achieve for unions enabled them to turn the accusation of disobedience of the law (which had been used against them earlier in the decade - see p.76) *against the Government*. This was perhaps more convincing than the arguments of leaders such as Keys (pp.88-9), which sounded somewhat hollow in the light of the unions' negative view and occasional defiance of the law.

In concluding this discussion on the language of the law in industrial relations, I wish briefly to return to the 1981 Green Paper on *Trade Union Immunities*. This document was quite clear about the strategic importance of language in British industrial

relations, arguing that the 'immunities' were not easy to relate to the realities of industrial conflict, the result being that 'the language and concepts of the law relating to collective industrial action are not the language and concepts of industrial relations' (DE 1981: 26). It went on to argue that a change to a system of positive rights would be beneficial, both because 'the language of positive rights can be more easily related to industrial reality' and because it might result in a change of attitude towards the law on the part of unions:

> 'To the extent that a positive rights system succeeded in moving the language and concepts of the law on industrial conflict away from immunities against tortious liability, it might be easier to understand and more straightforward to apply, not just for unions and management but for the courts as well. Indeed, it is possible that a system of positive rights would help remove the unions' traditional suspicion of the courts. The latter have often been seen as anti-union because their function has been to uphold the common law which is based on individual rights. To the extent that a system of positive rights changed that function into one of defending collective rights, the courts might seem more neutral in interpreting the rights of management, unions and workers' (*ibid*: 91).

These are strong claims, and I believe they are ultimately not susceptible to positive proof. One cannot make a *direct* causal link between a change in 'language and concepts' of the law from 'immunities' to 'rights' and a change in attitudes towards the law on behalf of the unions. Rather, the language and the strategy were intimately fused, the former being perhaps the primary 'public manifestation' of the latter; yet language was significant as a *political event and strategy* in itself. It was not simply a question of the unions portraying their legal position in terms which were more appropriate or 'realistic' (although that was undoubtedly important) - *the shift in vocabulary from 'immunities' to 'rights' also functioned to structure and open up possibilities of response to the legislation which were previously unavailable to them.* In this sense, language was vital in setting the agenda for industrial relations, a fact which the Conservatives grasped from an early stage. While the debate focused on 'immunities', the 'New Right' and the Government had a powerful rhetorical weapon to justify and garner support for the labour legislation of the period, even if, as has been seen, claims of 'privilege' were unsustainable in law. In this situation, the unions could only respond *defensively*, either by denying Government claims that they were above the law - which (as they often acknowledged) was unconvincing as the Conservatives had already got their message of union 'privilege'

effectively across to the public and to 'ordinary' members; or by defying the law - which tended to reinforce Government/'New Right' claims that unions were above the law, despite attempts to justify defiance on the grounds of morality.

Consequently, the unions shifted gradually to a policy and vocabulary of 'rights'. This enabled them to act *offensively*, to seek to turn the law to their advantage and to make positive claims for the betterment of individual workers (which chimed well with the growing emphasis on individualism which discussed in Chapters 5 and 6); to portray themselves in a more favourable, forward-looking light to the public; and, not least, to turn the attack against the Conservatives by portraying them as denying such rights. At the same time, the unions could still counter the powerful 'privilege' argument by stating that they were simply looking for elementary social rights. The combination of these defensive and offensive rationales for adoption of the language of 'rights' in place of 'immunities' was well stated by Bill Jordan[18]:

> 'Trade unions do not seek to be above the law. They do not seek special privileges above the law... This Government's obsession has found its way into seven Acts of Parliament on employment law, an overdose of law, and justice has been the casualty, shown in the scandalous treatment of the fastest-growing section of the nation's workforce, women workers - the overwhelming majority of whom are low paid and part time, most denied protection against unfair dismissal - the unwarranted abolition of vital special protections for young people at work, the indefensible injustice of the denial to individuals at GCHQ of the right to belong to a trade union. These are the flesh and blood reasons for the reform of employment law - reasons for a charter of rights for people at work, reasons the public can see and sympathise with. But let no one here believe that degree of sympathy, that understanding, extends to support for the collective rights of trade unions, the rights they need to defend their organisations and fight for the collective improvement of their members' conditions. Ten years, even ten Thatcher years, have not wiped out their perception of a misuse of privilege. We have to demonstrate beyond reasonable doubt that we are determined to see an industrial framework of law for the future' (TUC 1990: 305-6).

Of course, there were those in the unions who considered that the cost of this approach was too great, in that it accepted once and for all that the law played a part the industrial relations framework. However, by 1990 both the leadership of the TUC and the

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[18] See also Tuffin's remark, 'We cannot go on like this always on the defensive. We need a legal framework for people' (TUC 1986: 453 - full quote above, p.97).

majority of major unions had become convinced that the advantages of adopting a policy and language of 'rights' were too substantial to resist.

The controversy over the nature and form of the law affords a powerful example of the significance which differing patterns of language could have upon the whole debate over the reform of industrial conflict law in Britain during the 1980s. It demonstrates the extent to which forms of words could function not only to enable political actors to represent the realities of their situations in a more appropriate manner, but also to open up various possibilities for political action and response. In the following two Chapters, I will give extended consideration to the various other themes in language which were of significance in articulating the union response to Government policies on labour legislation during the Thatcher era.

CHAPTER FIVE: Union responses and language 1979-83

McIlroy (1991: 191) analyses TUC policy towards the labour legislation of the first Thatcher administration as having two distinct stages, namely 'limited evasive action' from 1979 to 1982 and 'coordinated opposition' from 1982 to 1983. In essence, these periods correspond to the debates over the Employment Acts of 1980 and 1982 respectively, with the Conservative election victory in 1983 marking an approximate end to these approaches as 'new realism' came to dominate the agenda (Taylor 1993: 268).

The responses of the TUC reflected its changing assessment of the political situation. Thus, the reaction to the measures which became the 1980 Act was 'muted and limited' (McIlroy 1991: 50) - the TUC organised a demonstration against the measures and a 'Day of Action' in May 1980, in addition to producing pamphlets (discussed here) and conducting some educational workshops, but 'there was no intention of mounting a campaign to stop the Bill reaching the statute book' (*ibid:* 51). Moreover, when the Act was finally passed, although the TUC expressed its opposition in the form of a call for a campaign of non-cooperation with the Government, no specific proposals were advanced as to how to give effect to this, and decisions on responses were left to individual unions (*ibid*).

A number of reasons can be cited for this restricted response. Firstly, Prior's approach was extremely cautious, as discussed above (p.23). Related to this was the fact that the legislation was of a piecemeal nature, and there was no single provision which might have provided a focus for coordinated opposition. Thirdly, unemployment was beginning to rise, which put the unions in a weaker position; and finally, the unions seemed to underestimate Thatcher's resilience and to misunderstand her views. There was a belief within the union movement - perhaps based on a 'mixture of arrogance and short-term miscalculation' (Taylor 1993: 268) that Thatcher, like Heath, would be forced to backtrack on her industrial and economic policies: 'The biggest mistake we made was not to believe she meant what she said... We thought she would be a harder version of Edward Heath and we therefore thought we would be able to 'outargue' her' (Murray, interview). Consequently, the unions behaved as if it were essentially 'business as usual' (Hall, interview) for much of Thatcher's first administration.

The response to Tebbit's Employment Bill was, however, somewhat more robust. Although some on the TUC staff were 'careful and cautious', warning of the difficulty of

coordinating action against the legislation (McIlroy 1991: 64), a Conference of Executives at Wembley in April 1982 agreed an extensive programme of opposition to the legislation which involved the refusal to participate in closed shop ballots or to accept public funds for ballots; the establishment of a TUC campaign fund and the setting-up of a campaign against the legislation; and giving the General Council power to coordinate action by other unions if called upon to assist a union and if satisfied that such assistance was justified (GC Report TUC (Wembley) 1982: 366-7). The Conference itself was marked by strong rhetorical opposition to the legislation - McIlroy describes it as an 'orgy of verbal militancy' (1991: 67) - and the ensuing campaign, under the banner of 'Fight Tebbit's Law', was arguably the most vigorous of the Thatcher years in its attempt to win public support: 'we produced a lot of materials - 9 million leaflets. It was an attempt to get the message across to the public' (Smith, interview).

Following enactment of the 1982 Act, opposition to Government policies continued to be expressed upon publication of the Green Paper on *Trade Unions and their Members* (1983), the TUC countering with refusal to comment on the document and publication of its own pamphlet, *Hands Up For Democracy*, which argued the case against state regulation of union democratic procedures.

Taken overall, therefore, the TUC's policy towards the legislation in this period can be characterised as one of non-cooperation and opposition, although the extent of this varied - it was certainly most marked in respect of the 1982 Act.[1] Such a description, however, fails to pinpoint precisely how these responses were manifested in the language used within the union movement during this period. In this Chapter, therefore, this issue will be addressed by analysis of the way in which certain key themes, narratives and words were employed by the unions to articulate their approach to the Government's policies and to mobilise support for the campaigns against them. The discussion will focus at length upon the comprehensive materials produced by the TUC in the early 1980s, in addition to speeches made at Congress, neither of which have previously been subjected to more than superficial analysis and interpretation in existing studies of the period.

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[1] In *practice*, the TUC used its discretion under the Wembley principles to refuse to give assistance to several unions, notably the NGA in 1983.

I. The vocabulary of confrontation

The TUC's attitude towards Government policies on the reform of labour law can be gauged from its use of language expressive of hostility towards the measures. The various pamphlets, workbooks and other literature produced to accompany campaigns against the Employment Bills and Acts of 1980 and 1982 made widespread use of a vocabulary of opposition, expressed with varying degrees of forcefulness.

Thus, the explanation of the Wembley principles of refusal to participate in closed shop ballots, to accept state funds for ballots and to participate in industrial tribunal cases arising from closed shops was that 'non-cooperation is an essential feature of the TUC's policy of resistance to the new laws' (TUC 1982c: 32; see also Composite Motion 1, TUC 1980: 390).

The language of 'resistance', touched upon here, was itself a significant element of the unions' rhetorical response - for example: 'Through public campaigns, through our continuous opposition to the Government and, indeed, if necessary through industrial action, we must show our resistance to the imposition of this law within the labour Movement' (Lloyd, G. TUC 1980: 392); 'We are regrouping our resources and harnessing them to our collective needs at a time when the trade union Movement will need its maximum strength to resist the legislative attacks on us that this Government wishes to impose' (Fisher, A. TUC 1981: 397); 'The determination of the Movement to mount a campaign of **resistance** is emphasised by the setting up of a fighting fund' (TUC 1982c: 32 - emphasis in original). The significance of this form of words was that it portrayed the unions as acting primarily *defensively*[2]; responding and reacting to the Government's 'attacks' which could thereby be seen as unprovoked. I discuss this at greater length below (pp.128-131).

However, while 'resistance' had a defensive tone, it shaded frequently, in union discourse, into more *offensive* forms of language. For example, the quote from Lloyd above juxtaposes 'resistance' and 'opposition'. A similar combination of 'resistance' and 'confrontation' was to be found elsewhere: 'If this leads the print unions into a confrontation with our employers, we have no doubt that, in the same way that we have committed ourselves to support any other union in trouble, we shall have the

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[2] Note that the extract from the Workbook continues: 'Campaigning and *defensive work* will require much time and many resources' (*ibid* - my italics).

wholehearted support of the Movement in our fight and our resistance. Because, with your support, fight and resist we shall with all the resources at our disposal, in the certain knowledge that a defeat for one group of unions, or any one union, will be a defeat for us all. So we say, let the message go out from this conference that we do not intend to be defeated' (Wade, J. TUC (Wembley) 1982: 391). This was also true of the language of non-cooperation, as the following extract demonstrates: 'Congress reasserts its total opposition to the anti-trade union and misnamed Employment Act and other legislative changes... Congress congratulates the General Council on their consistent opposition to the Employment Act and calls on all affiliated unions to refuse to cooperate in its implementation... Congress calls on the General Council to continue to mount a campaign opposed to these attempts to control trade unions and undermine trade unions' ability to defend their members. Congress demands the mobilisation of the Movement to vigorously oppose any further legislation placing restrictions on trade unions' (Composite Motion 1, TUC 1981: 429).

The above would seem to suggest that, in terms of rhetoric, although the union movement might use relatively moderate language to express its antipathy towards Government policy (thereby enabling it to preserve an appearance of 'reasonableness', see below p.121), the more confrontational language of 'vigorous opposition' and 'fighting' was never far away, and was not exclusively confined to militant union leaders: 'But while the law is in force, we need to fight against intimidation and demoralisation' (TUC 1981a: 14).

Undoubtedly, however, as McIlroy suggests (above, p.103 and 1995: 254), it was the 1982 campaign which saw the TUC and unions using their most stridently conflictual rhetoric. This was notable at the Wembley Conference, with many union leaders (of varying degrees of militancy) expressing their opposition to the measures in fiercely antagonistic terms: 'We have to fight back and we have to defend the right of workers to combine, their right to bargain collectively, the right not to work except on terms and conditions that have been agreed with employers and (a very important right indeed) the right of the strong in our Movement to come to the aid of the weak when they need help... In this fight, unity and leadership are what are going to count' (Murray, L. TUC (Wembley) 1982: 378, 408); 'It is not the responsibility of the British trade union Movement to try and argue the pros and cons of legislation that seeks to destroy us. Our responsibility is to fight and destroy the Bill and all that goes with it' (Scargill, A. TUC

(Wembley) 1982: 383); 'Solidarity will win and all that we are talking about today is how quickly the fight will take place in order to establish that victory' (Gill, K. TUC (Wembley) 1982: 401). The subsequent TUC campaign also drew heavily on the vocabulary of 'fighting', one of its key slogans being 'Fight Tebbit's Law' (TUC 1982b): 'The TUC is committed to fighting it [Employment Bill] all the way... Every trade union member must join the fightback against it' (*ibid*; see also leaflet 'Join the TUC fightback against the Bill'); 'we must fight again today with the same determination as our predecessors to look after ourselves, and look after our unions' (*ibid*).

There was, therefore, a 'certain stridency' (Smith, interview) about the union movement's tone in the early Thatcher years, particularly in relation to the 1982 measures, and considerable evidence to support the view that 'we [the unions] were using the language of confrontation, of fighting, of employers as enemies, of capitalist exploitation' (Poole, interview - for the language of 'class', see below, pp.136-8).[3] However, the vocabulary of confrontation was frequently even more vociferous than the above discussion suggests.

Industrial relations as conflict: theory and vocabulary

There are a variety of theoretical perspectives which seek to explain or analyse the institutions, activities and behaviour of the participants in the industrial relations process, both in a British context and more widely. It is beyond the scope of this thesis to discuss these in detail (for summaries, see Farnham and Pimlott 1994: 44; Gospel and Palmer 1993: 11); but brief reference to one of the major conceptual approaches will assist in an understanding of the language used within the union movement in connection with the Thatcher labour legislation.

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[3] It is also interesting to note the *masculinity* of much of the unions' language, for example: 'If these laws do attempt to completely emasculate the trade union Movement, to destroy the closed shop, to put trade unionists in gaol for the exercise of their traditional freedom, we must create a united Movement to fight back. This Government and the media will doubtless call that fight back the use of industrial action for political purposes. Let them call it what they like. For it will be a case of industrial survival' (Basnett, D. TUC 1981: 430); note also the reference to 'neutering' the unions (TUC 1982c: 7). Such an element of 'machismo' fitted neatly with the general tone of hostility: 'the language was very military and very masculine' (Morris, interview). The evidence as to the effect of this image upon women is ambivalent (Kelly 1990: 45-6).

Commonly labelled 'pluralism', and deriving from the broader political science usage of this term, this school of thought holds that trade unions are legitimate institutions operating as pressure groups in the political and industrial arenas in defence of their members' interests. Collective bargaining, which resembles political processes of compromise and conciliation, affords stability to the system by containing and defusing disputes between unions and employers (Clegg 1975: 311). Central to this framework is the ubiquity of socioeconomic conflict between employers and employees, which is seen as being regulated and controlled by the activities of trade unions and the institutions of collective bargaining (Edwards 1995: 10).[4] That is, each 'side' in industrial relations (managers and employees, represented collectively by unions), pursues its own interests in relation to the wage/work bargain, and a process of negotiation and bargaining takes place in an attempt to reach an agreement between them.

Pluralist theory represented the dominant paradigm in academic analyses of British industrial relations throughout the 1960s and 1970s (Farnham and Pimlott 1994: 48). Perhaps more significantly for the present work, it had widespread acceptance among policy-makers and trade unions alike: 'it was, in fact, the consensus model of industrial relations broadly accepted by many managements, especially in the large corporate and public sectors, by the trade unions and by successive governments as a matter of public policy' (*ibid*: 56). Thus, a pluralist perspective underpinned the conclusions of the Donovan Commission, which reported in 1968 (Edwards 1995: 10; Farnham and Pimlott 1994: 48); while the unions themselves were apt to view their history as dominated by the 'conflict' or 'struggle' implicit in this view of industrial relations, as discussed below.

This support for a pluralist approach rooted in differences of interest between unions and employers held clear implications for union discourse. It led naturally to an adversarial vocabulary which was predicated upon the existence of two opposing sides in the industrial relations process and the possible existence of a 'balance' between them (see pp.182-5). It also manifested itself in language which evoked images of conflict; not only in the talk of 'opposition' or 'resistance' to the legislation discussed above, but also in the form of a trope or metaphor of industrial relations as warfare.

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[4] Indeed, Farnham and Pimlott (1994: 47) refer to this perspective as the 'conflict theory' of industrial relations, while Gospel and Palmer speak of the pluralist school of thought as accepting 'the inevitability of conflict' (1993: 15). However, such conflict is not viewed as irreconcilable, but can be mediated through collective bargaining processes.

Trench warfare: a 'root metaphor' ?

Stephen Dunn, seeking to uncover a system of ideas by means of which a thinker describes a domain to which those ideas do not literally apply (such as society as an animal or machine), has written of the 'root metaphor' in the 'old' industrial relations as being 'trench warfare' (1990: 7). He draws attention to the preponderance of words connoting military action within traditional industrial relations discourse: 'The old industrial relations has its store of military words, half of them culled from the Great War, which we trot out with monotonous regularity. The management offensive, entrenched shop stewards, the NCB and the NUM digging in for a long struggle, a frontal assault on union rights and so on - these are standard phrases... Words like 'entrenched', 'digging in', 'offensive' and 'frontal assault' are so rooted in industrial relations discourse that they have become literal descriptions of what happens in industrial conflict' (*ibid*: 8-9).

Dunn is critical of the root metaphor of trench warfare as being 'profoundly pessimistic' (*ibid*: 17), and sees the attractiveness of the 'new paradigm' of business-oriented industrial relations, with its emphasis on the techniques and strategies of management and focus upon the worker as a resource to be developed (as opposed to the stress - characteristic of the 'old industrial relations' - upon workers as autonomous actors whose pursuit of their interests inevitably led to conflict with management), as being inextricably connected to the optimistic nature of the new prevailing metaphor - that of the pioneering, American-style journey (*ibid*: 17-20), although it is not clear precisely when this new paradigm is seen as emerging.

Dunn acknowledges that he is, to some extent, simplifying and developing ideas which remain implicit in the literature: 'All this is not to say that the wagon train metaphor is explicitly developed in new wave business and industrial relations writings, no more than the trench metaphor is explicitly developed in the old industrial relations. It is, in a sense, my own metaphor of the root metaphor of the new industrial relations. I am merely bringing to the surface what is buried in the idiom' (*ibid*: 21). Further, his ascription of the success of the 'new' industrial relations to the attractiveness of its optimistic root metaphor has been questioned:

> 'At the root of the trench metaphor lies a conviction that the employment relationship is an institution that mediates the differential interests of employer and employee. The theoretical touchstone is the ubiquity of socioeconomic conflict.

And at the root of the journey metaphor lies the conviction that the employment relationship is an institution that cements the reciprocal interests of employer and employee. The theoretical touchstone is the ubiquity of socioeconomic competition. The first perspective draws its legitimatory rationale from a belief in collectivist or socialist values, the second from individualist and capitalist values. In other words, what differentiates the adherents of Dunn's root metaphors is not the appeal of 'optimism' over 'pessimism', but a preference for a particular explanatory framework' (Keenoy 1991: 324).[5]

Nevertheless, despite such criticism, there appears to be much of value in Dunn's analysis - in particular, the attempt to demonstrate the importance of language (specifically, metaphor) in shaping approaches to a subject and the framing of responses, a concern which also underpins my work in this thesis (see Chapter 1), and which Keenoy himself welcomes: 'by identifying the extensive and sometimes unreflexive use of metaphor and of the figurative devices in industrial relations analysis, he [Dunn] highlights not only the extent to which we actively construct and reconstruct the world but also the perils and limitations of language itself. In this respect it seems that virtually any conceptual apparatus carries figurative, allusive or even metaphorical overtones. We see what we choose to see, and one way of seeing generally precludes alternatives' (*ibid*: 319).

Although Dunn is concerned with the writings of *theorists* in the field of industrial relations, my analysis of the language used in TUC publications and Congress speeches suggests that similar conclusions can be drawn in respect of the unions themselves. Military metaphor abounds in union debates on industrial relations legislation in the early 1980s.

Hence, industrial relations were seen as a battleground upon which the Government was putting into effect its 'strategy' for defeating trade unions: 'The trade union Movement is entering a battleground... the proposals for new law would turn industrial relations into a battleground' (TUC 1979b: 2); 'This time they are aiming their attack at widespread and well-established organisational and negotiating agreements and at the funds of trade unions. Their current targets are the organisational basis of trade union influence: the battlefield will be British industry' (GC Report, TUC (Wembley) 1982: 350). The Government's introduction of anti-union legislation was seen as an act of war against trade unions and those they represented: 'this Government declared war on

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[5] One might add that the 'explanatory framework' of the 'old' industrial relations is pluralist, with its emphasis upon conflict; while that of the 'new' is unitarist *ie* focusing upon cooperation and the identification of employee interests with the enterprise.

working people when they came into office' (Keys, W. TUC 1981: 426); 'The Government has declared war on trade unions' (TUC 1982b); 'It is the Tory Government which has declared war on the trade union Movement and declared war on the working class of this country' (Marsland, T. TUC (Wembley) 1982: 402); and, continuing the imagery of warfare, the legislative measures could be seen as attacks within a wider campaign or broader strategy: 'The first part of this report... examines the background to the present Government's sustained offensive against the basic rights of workers and their unions' (GC Report, TUC (Wembley) 1982: 349).

There were, of course, differences of opinion among union leaders as to how best to respond to the individual offensives or the 'campaign' as a whole. The more militant leaders favoured launching a counter-attack; others saw the unions resisting the assaults by marshalling their forces and using them strategically. The military imagery was, however, common to all: 'it is imperative that we begin to take the offensive against the Tory Government, who are designing a Bill to destroy the British trade union Movement' (Scargill, A. TUC (Wembley) 1982: 383); 'It will not merely be token resistance; it will be the maximum mobilisation of the resources of membership of the entire trade union Movement' (Wade, J. TUC 1979: 442); 'We are regrouping our resources and harnessing them to our collective needs at a time when the trade union Movement will need its maximum strength to resist the legislative attacks on us that this Government wishes to impose' (Fisher, A. TUC 1981: 397); 'when workers are being attacked by the law and when those workers are supported by their own union the TUC has an obligation to come to their assistance, using the combined strength that is necessary and the tactical disposition of forces to ensure victory' (Gill, K. TUC (Wembley) 1982: 400).

On occasion, analogies were drawn between the confrontation taking place in industrial relations and actual military encounters, whether current or historical: 'The Government is handling industrial relations in this country with the same sensitivity and understanding that it has used over the Falkland Islands. There a tin-pot dictator chose the issue and chose the battle ground. Well, 'Tin-pot Tebbit' has chosen the issue, but it is important that the trade union Movement is careful in selecting its battle ground to make certain that we win' (Pollock, J. TUC (Wembley) 1982: 383); 'Remember what Wellington said on the night before Waterloo. He said 'Hard pounding gentlemen, we will see who can pound the longest' (Murray, L. TUC (Wembley) 1982: 408).

More often, however, the references to warfare remained less specific: 'For two

years we have struggled on all these fronts. We have had some victories. The miners drew a line on pit closures and even this Government did not dare to cross it. The gas workers deterred ministers from carrying out their lunatic plans to sell off or close gas showrooms, but often we have faced defeats. Because of those defeats the Thatcher Government believes it can now move in for the kill. But it forgets that all the defeats and victories of the past two years were just the minor skirmishes of yesterday. We know that defeat on Tebbit's Bill will not be just for a day' (Basnett, D. TUC (Wembley) 1982: 387); 'We are going to go into battle. It is going to be a bruising battle. It will not call for a velvet glove approach and I do not believe the General Council are calling for a velvet glove approach. Unity is the most prized weapon that we have in our armoury, and our prime objective at this conference must be to enforce that unity and then to take it out and commit finally this legislation to the dustbin of history. Yes, our troops have been demoralised in recent times but I believe we can raise them, and with everyone cheering us, up and down this country, we can meet them' (Keys, W. TUC (Wembley) 1982: 397).

The prevalence of military language in union rhetoric of the early 1980s is thus readily apparent. It is possible that this reached its height during the miners' strike of 1984-5: 'the miners were referred to as the 'vanguard' and 'shock troops' of the Movement' (Poole, interview). I will examine the extent to which this tone became moderated later in the decade in Chapter 6. For the present, the importance of the language of warfare both in reflecting and shaping a confrontational stance on the part of the trade union movement, cannot be underestimated.

Employers: an adversarial relationship

As discussed above, the acceptance by the trade unions of a pluralist approach to industrial relations characterised by competition and conflict between management and unions had the natural consequence that the unions viewed the relationship with employers in an *adversarial* manner, that is, that the structure was essentially one of bipolarity.

This attitude had its roots in the historical origins of the British system of industrial relations. Fox traces the 'adversarial relationship', described as 'that disposition of labour to respond with a wary arms-length stance which regarded all workplace conditions and

changes in them as potential issues for manifest or tacit bargaining' (1985: 215) to the relatively early development of liberal individualism in agrarian, commercial and manufacturing capitalism which replaced the paternalistic system of control (*ibid*: 433). Hyman concurs with this assessment, drawing attention to the implications which this held for trade union language:

> 'Successful resistance to royal power in the seventeenth century involved the assertion of the rights of the individual against the state. This in turn encouraged the entrenchment of market individualism as the dominant principle of the British political economy: an ideology which both underwrote the rights of property and gave legitimacy to notions of plebian independence. The outcome was a society in which consciousness of class distinction and division was particularly acute, but in which opposing interests were normally reconciled through compromise and accommodation. This is the matrix in which industrial relations evolved: marked by an adversarial tradition in which it was natural to speak of the 'two sides' of industry (the continental vocabulary of 'social partners' is almost incomprehensible in English)' (1995: 30).

The consequence of this adversarial approach to industrial relations was the existence of a 'them and us' attitude towards management, which has been considered to be a central feature of the British system of industrial relations (McIlroy 1995: 48).

An examination of the materials demonstrates the accuracy of this assessment - much of union language in this period can be seen as indicative of an adversarial or bipolar 'world-view'. The most notable evocation of the 'them and us' attitude came in *Hands Up for Democracy*, in the context of a rebuttal of Conservative attempts to marginalise unions as institutions opposed to democracy and freedom: 'Most people don't have very much power. Big decisions always seem to be taken by someone else. *They* have put the taxes up. *They* are closing the local factory or school or hospital. Unions are the way ordinary people try to turn the *they* into *we*, to claim for themselves some of the power over the decisions that can shape their lives... Workers acting together, through trade unions, can achieve much more for themselves and for their families than they ever could if they tried to go it alone against a powerful boss' (TUC 1983: 5-6 - emphasis in original).

Elsewhere, the vocabulary of 'them and us' was less explicit, but an adversarial attitude towards employers nevertheless underpinned much union language. However, in the context of union responses to labour legislation, it is arguable that the true focus of

opposition was the Government, as I shall discuss in the next section. Consequently, employers were rarely seen as the sole authors of the unions' difficulties - rather, they were *bracketed* with the Government as 'joint adversaries' (as suggested by the extract quoted above, which refers to factory closures as well as tax increases and school/hospital closures): 'The Government wants to give more power in industrial relations to employers. The Employment Act seeks to do this by weakening union organisation and cutting back unions' ability to take lawful industrial action' (TUC 1980f: 8); 'The 'answers' to economic and social problems, according to this nineteenth century approach, is to dismantle planning machinery, to give more power to employers to dispose of labour and capital and to create competition for jobs by reducing state benefits... Employers are to have the benefit of increased power to introduce change without consent, and to resist union claims to protect the living standards of their members' (TUC 1982c: 9 - see below, p.119). Employers were seen as the beneficiaries of the legislative measures and of the overall economic situation and could be expected to take advantage of the new conditions, in precisely the manner suggested by a pluralist approach which was posited upon the pursuance of self-interest by both 'sides' in industrial relations: 'Many employers, not just those who are tottering on the brink of bankruptcy, have seized this opportunity to discard workers, to impose new work procedures and to roll back trade union influence' (Murray, L. TUC (Wembley) 1982: 378); 'This new economic climate has been exploited by some employers who have reasserted outdated managerial prerogatives; sacked union activists; and generally behaved in a dictatorial manner' (TUC 1983: 32). In effect, therefore, industrial relations were viewed as a 'zero-sum' game - any measure or development which decreased the power of the unions necessarily increased that of employers (or vice-versa): 'That is why the Government has launched these measures - to weaken the Movement by increasing the power of capital and reducing the power of labour' (Sapper, A. TUC 1979: 444). The dualism of this discourse was clear - what did not benefit 'us', clearly benefited 'them'.

However, the adversarial relationship with employers suggested by this analysis does not tell the full story. It is important to reiterate that management was bracketed

alongside the Government in discussions of legislative changes.[6] This meant that it was possible for the Conservatives, rather than employers, to be portrayed as the 'real' adversaries for the unions, with employers as relatively passive beneficiaries of the legislative changes: 'However, it [bankrupting unions *via* damages awards] can only be achieved by the employers. It is they who have been chosen as the surrogate of this Government's intentions. It is they who are thrust into the firing line by the armchair strategists of Tothill Street, and it is they and only they who can trigger off the use of this law' (Basnett, D. TUC (Wembley) 1982: 388).[7]

This approach towards employers became of increasing importance over the course of the decade, as I shall show in Chapter 6 (pp.173-4). Rather than being in league with, or even controlling, the Government's actions, employers were somewhat reluctantly using the opportunities with which they were presented. This more conciliatory type of language thus changed the nature of the trade unions' task towards employers. Instead of attacking them for using the laws, the unions sought to persuade them that *it would not be in their interests* to use them: 'Managers at the sharp end of things recognise these provisions for what they are - an encouragement to industrial disruption' (Murray, L. TUC (Wembley) 1982: 380); 'It [legislation] will damage our employer as much as us - and perhaps indeed that is what this Conservative Government wants' (Tuffin, A. TUC (Wembley) 1982: 399). This was attempted in practice as well as rhetoric, Len Murray remarking that 'We tried to persuade the CBI that this was not going to do any good for employers' (interview), and a number of TUC publications calling upon workers to

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[6] This is scarcely surprising, since it was the Government which implemented the measures; however, some viewed the employers as being the driving force behind the developments, reflecting perhaps a belief in the continued existence of corporatism which was out of step with Thatcher's attitude towards employers as well as unions: 'The employers are making their demands on the Government and the Government is conceding to the employers so as to weaken the bargaining power of the trade unions, and all this talk about trade union reform should be seen in this light. This is a demand from the big employers, from big business, to weaken the bargaining power of the trade unions, and this Government is going along with those proposals. It is evident that the Government is a legislative instrument for big business' (Urwin, C. TUC 1979: 437). This view held the employers, not Government, to be the more powerful enemy.

[7] Note the metaphor of warfare.

persuade employers not to use the legislation (*eg* TUC 1980e; TUC 1982a).

On this view, unions and employers were effectively (albeit not explicitly) in partnership - pursuing the common interest of peaceful industrial relations in the face of a Government bent upon chaos and disruption (see pp.123-4). This was the traditional language of voluntarism, based upon the belief that employers and unions should be left to formulate their own arrangements, appropriate to their workplace, with minimal state involvement: 'the original employer in Tebbitland is going to lose control of his own industrial relations, instead of being put more in charge, as the employers want, the individual employer will finish up with less control... Well, you do not have to be very far-seeing, Chairman, to understand how once again the employer loses control of his own side of industrial relations and finds on the union side a very, very aggrieved group of members into the bargain' (Evans, A. TUC (Wembley) 1982: 392); 'we have been reminded again and again of how employers will suffer from the undermining of their procedures, their agreements, and of responsible trade unionism. To our brothers in the public service, Jerry, do not refrain from going and putting the frighteners on that manager, because he or she in turn just may say 'But, Minister' - and that is what we want them to say, not 'Yes, Minister', but 'But, Minister' (Murray, L. TUC (Wembley) 1982: 407). A specific concern in this context was the closed shop, the unions arguing that many employers supported such agreements as it made negotiations simpler: 'This is recognised by many employers who welcome union membership agreements as a contribution to good industrial relations' (TUC 1980f: 8); 'Most employers now recognise they can't possibly settle terms and conditions with separate individuals' (TUC 1981a: 18).

Despite their existence on opposite sides, therefore, unions and employers could be seen as being involved in the same game and sharing similar objectives. This opened up the possibility of portraying management and unions as constituting a 'united front' against the Government. The unions attempted to do this by arguing that their position was supported by many employers and employers' groups: 'even employers' organisations... are beginning to say, 'Well, what are you going to do? In certain cases you are going to make it impossible for us to conduct reasonable industrial relations systems', and they are beginning to ask the Government to look again at this sort of thing' (Urwin, C. TUC 1979: 438); 'Even the Engineering Employers' Federation have expressed 'grave

concern' over aspects of the Bill' (TUC 1980a: 2); 'I do want to talk through this question with reference to some - I repeat 'some' - of our British employers. You know, you have to ask if they have got the message yet. Or, if they have, why have they not started shouting already, as one or two groups have, like the shipowners and the Engineering Employers' Federation, on the so-called 'closed shop' issues?' (Evans, A. TUC (Wembley) 1982: 392). The potential effect of this was to isolate and marginalise the Government as a destructive force uninterested in solving the nation's problems which employers and unions united were attempting to address: 'Throughout the country trade unionists, together with management representatives, are trying to solve difficult problems. More often than not they succeed and damaging stoppages of work are avoided. These people need all the help they can get' (TUC 1980a: 3). In consequence, it was the 'partnership' of unions and employers which was acting in the national interest, not the Government (see p.127).

The employer, therefore, was on the whole viewed as *opposed* to the position of the union - simply because he/she stood on the opposite side in industrial relations. However, the employer was not necessarily viewed in a *hostile* light as evil or immoral; rather, management was essentially participating in the same process as the unions, was ultimately working towards negotiation and compromise and was a relatively passive beneficiary of the Government's legislative changes.

There were, of course, exceptions to this. Union rhetoric drew upon the imagery of the 'rogue' or 'unscrupulous' employer who was not playing according to the rules and who could therefore be labelled as a real 'enemy': 'they would introduce highly contentious laws into industrial relations - laws which could be exploited, as was the Industrial Relations Act 1971, by unscrupulous employers' (TUC 1979a: 76); 'The new law would enable a rogue employer to sue workers during a dispute' (TUC 1980a: 2); 'Mr. Tebbit seems to think that strikes are never caused by employers. According to him employers are never awkward or incompetent or plain bloody-minded. Does he think they are all angels?' (TUC 1983: 34).

I will return to this characterisation of certain employers as 'deviant' in Chapter 6. However, it points to a possible distinction in union language between the 'adversary', such as the majority of employers; and the 'enemy' such as the 'rogue' employer or the

Government itself, the unions' attitude towards which I now wish to examine.

'Labelling the enemy': attitude to Government

Edelman draws a distinction in political language between 'adversaries' and 'enemies': the former are accepted as legitimate opponents participating in a 'game' which involves the finding and pursuing of winning tactics; but 'where an opponent is an enemy rather than an adversary, it is not the process but the character of the opponent that focuses attention. Enemies are characterised by an inherent trait or set of traits that marks them as evil, immoral, warped, or pathological and therefore a continuing threat regardless of what course of action they pursue' (1988: 67). Enemies serve an important function in political discourse enabling the building of support around a focus of antagonism and, in consequence, defining the identity and beliefs of the group at least in terms of its opposition to the 'Other' (Dalby 1990: 17): 'Politicised people define themselves in large part in terms of their opposition to other groups they fear and condemn... To name specific enemies is to evoke specific ideologies' (Edelman 1988: 82).

Can it be said that the unions attempted to define an enemy in the manner suggested by Edelman? In part, this question has been answered in the previous section. On the whole, the unions regarded employers as 'adversaries', who were involved in the same process as themselves and who were accepted as legitimate opponents. However, there were certain employers (who may in fact not have existed as claimed by the unions; however, this was unimportant for the purposes of political language - support can be 'built upon the construction of enemies who either do not exist or are not harmful to those who label them' (Edelman 1988: 69)) who were regarded as 'rogue', 'unscrupulous', 'awkward' or 'bloody-minded' - these might be seen as 'enemies' in that attention was focused on their character and motives rather than their positioning on the 'other side' of industrial relations.

However, although the 'rogue' employer was an important feature of union demonology, the focus of enmity for the TUC and unions was the Government itself. In the early Thatcher period this can be seen in particular from the campaign against the 1982 Employment Bill. As already mentioned, one of the major slogans was 'Fight Tebbit's Law'

(TUC 1982b), and this pointed to the personalisation of opposition to the legislation in the figure of Norman Tebbit. The Secretary of State for Employment was a highly identifiable figure with a combative personality and manner (see p.24), and it was therefore understandable that he should represent a focus of opposition to the legislation. Speeches at the Wembley Conference abounded with references to Tebbit and 'Tebbit's Bill': 'The media, not surprisingly, have been kind to Norman Tebbit. They have portrayed union-bashing Norman Tebbit as a hard man but not an unjust man. They present Tebbit's Law as if it was a minor technical change in the laws of cricket, and it is nothing of the sort' (Basnett, D. TUC (Wembley) 1982: 387); 'these proposals are a stupid and dangerous attempt by Tebbit to bring to Britain the sort of legal controls that may operate in other countries... I think that they [employers] have not shouted out the truth about Tebbit yet because they realise that they have backed the creation of a Frankenstein's monster which they do not know how to stop' (Evans, A. TUC (Wembley) 1982: 392); 'I think our good friend Mr. Tebbit this morning has taken us one step further towards a fascist society in this country' (Keys, W. TUC (Wembley) 1982: 397). Language such as this functioned to construct Tebbit as the principal enemy of the unions - the description of him as 'unjust', 'stupid', 'dangerous', a 'Frankenstein', impliedly 'fascist' and 'malevolent' (McCall, W. TUC 1982: 476) drawing attention to his behaviour and character as immoral or pathological in the manner suggested by Edelman. Personalisation of hostility in the figure of Tebbit thus served an important purpose for the unions in that it provided a clear focus for their opposition to the legislation and made it easier to build a coalition of support amongst union members and others.

Elsewhere, the union movement regarded the Government in a broader sense as its enemy: 'We have one enemy, one enemy that seeks to destroy this very Movement' (Keys, W. TUC 1982: 477). However, justification for opposition to the legislation was often expressed in similar terms as with the individual figure of Tebbit, in that the *behaviour* or *character* of the opponent was criticised: 'They are an insidious and a calculated attempt by the Government to undermine and interfere in the internal democratic process of trade unions' (Wade, A. TUC 1979: 441); 'It [1980 Act] is a devious, dishonest piece of legislation' (Urwin, C. TUC 1980: 389); 'The vindictiveness of the Government's industrial relations policy has been underlined by the Movement'

(TUC 1980d: 2); 'This Government has made a vicious, legislative attack against the trade union Movement' (Sapper, A. TUC (Wembley) 1982: 377); 'We have three to four million out of work, and the level of intelligence of Government today in Britain is such that they then turn and attack 12 million organised workers who, by hand and by brain, produce the wealth of the nation. It is the most idiotic way to conduct the affairs of a nation that I have seen in my lifetime' (Weighell, S. TUC (Wembley) 1982: 386). Accusations of 'dishonesty', 'vindictiveness', 'viciousness' and 'idiocy' implied that the Government's motives in introducing the legislation were 'malicious' and motivated from ill-will and this form of language therefore functioned to anthropomorphise the collective opponent as an individual acting from pure spite - unjust or immoral if not evil - and therefore lacking the legitimacy of an adversary in the 'game' of industrial relations.

The unions also sought to justify opposition to Government policies by depicting the motivation underlying them as being more than simple malice or prejudice - rather as an aspect of a broader economic/industrial strategy. This might be seen as a more sophisticated basis for hostility towards the Government in so far as it attributed a degree of coherence to the policies which the argument from 'vindictiveness' did not allow. Certainly, the legislation had an anti-union nature: 'it was designed to weaken trade unions and to weaken their ability to resist attacks' (Murray, interview), but the deeper economic objectives of creation of 'free markets' *via* reform of the labour laws were clearly perceived by the unions as underpinning the measures:

> 'The real aim of the Government is to bring about a permanent weakening of trade union strength. This would give employers more freedom to dispose of both labour and capital as they want, by weakening union bargaining power over wages and conditions, and allowing the 'laws of the market' to operate more freely. Thus the restriction of union rights is not a minor issue of legal reform; it is a key part of the Government's economic and social strategy... the real motives behind the new legal attack on unions are quite different. They cannot be understood properly unless set in the context of the general economic and social policies of the Government. The underlying philosophy of many of the Government's actions is that of the 'free market'... The 'answers' to economic and social problems, according to this nineteenth century approach, is to dismantle planning machinery, to give more power to employers to dispose of labour and capital and to create competition for jobs by reducing state benefits'. (TUC 1982c: 7).

'The logic of this reactionary approach is to seriously reduce the role of fair labour standards across industry... The Government, then, are not concerned with a reform of 'abuses': they are trying to achieve a permanent reduction in trade union influence. Employers are to have the benefit of increased power to introduce change without consent, and to resist union claims to protect the living standards of their members... Many of the details in the Employment Bill cannot be understood unless they are seen as part of this general economic philosophy' (TUC 1982c: 9).

This type of structured analysis of Government policy might be expected from a policy document produced by the TUC; it might conversely be thought that union leaders delivering rousing speeches at Congress would incline more to depiction of the legislation in the overt language of hostility and enmity already discussed. While this was undoubtedly the case to a large extent, the language of such leaders did demonstrate an awareness of the broader 'strategy' being pursued by the Government: 'It has been said today that we face a new challenge and I would like to stress again the fact that that challenge cannot be looked at in isolation but is part of a much broader framework of government policies and government attitudes... over and over again the broad intent of government policy is to diminish and, if possible, destroy the effectiveness and the role of the representatives of the broad spectrum of working people' (Dawson, P. TUC (Wembley) 1982: 401); 'Tebbit's Bill has got to be seen finally as part of a wider assault on working people. Unemployment, dismantling of the Welfare State, the fostering of the hue and cry about 'law and order' all go together to reverse the achievements of years, and they say it is done in the name of freedom' (Bickerstaffe, R. TUC (Wembley) 1982: 390).

The concern demonstrated here was that the legislation was designed to marginalise and undermine the trade unions as *representatives of working people* (for the unions' role in society, see below, pp.154-8); and that it was therefore impliedly an attack on the living conditions of such people, which could only effectively be protected by unions: 'These changes to employment law should be seen in the light of the Government's overall policies. The message of the Government's policies for working people is a grim one - rising unemployment, rising prices, the slashing of social services, the eroding of social security benefits. Attacking the legal support that has traditionally been given to the collective organisations of working people is all part of this strategy' (TUC 1980c: 3). On this analysis, the Government's economic policies - of which the labour legislation formed

a subset - were 'anti-working people' (they had nothing to do with the freeing of markets), and even 'mass unemployment [was used] as a disciplinary device for British workers' (GC Report, TUC (Wembley) 1982:351). Such an evaluation of the Conservatives' policies and motivation facilitated the mobilisation of an important category of trade union discourse - the language of 'class' - as justification for opposition to the legislation (see further below, pp.136-8).

Rhetorical hostility towards the Thatcher Government thus went beyond the simple ascription of pathological or immoral behaviour to its activities (although this formed an important feature of the unions' opposition, particularly in the form of the personalisation of antagonism in the figure of Tebbit); nevertheless, it was clear that the Government represented an 'enemy' in the way that (most) employers did not in that its motives were not accepted as legitimate by the unions. However, criticism of the *motives* underpinning the legislation as designed to weaken the unions and consequently reduce the living standards of working people (*ie* as motivated by anti-working class prejudice, thereby opening up the entire discourse of 'class') shaded very much into criticism of the likely *effects or consequences* of the measures (*ie* that the legislation would create insecurity and disaffection or disorder among working people, which would damage the economy), which offered a means whereby the unions could move away from the vocabulary of confrontation and present themselves as moderate and rational, as I shall now argue.

II. The vocabulary of moderation

My discussion to date has indicated the importance of 'bellicose rhetoric' (Taylor 1993: 268) in mobilising support among members and activists for the TUC's opposition to the legislation, particularly in the 1982 campaign. I also attempted to demonstrate how this style of language reflected the long-standing outlook of the unions on the system of industrial relations in Britain.

However, as discussed above (p.102), the TUC's policy towards the legislation was, especially in the 1979-81 period, marked by a considerable degree of caution - an outlook matched by Prior's approach (see Chapter 2). The General Council urged the

Government to meet with unions and employers to discuss how industrial relations could be improved (GC Report, TUC 1980: 19-20); while at meetings with ministers, TUC representatives attempted to appear open to the possibility of self-reform: 'Our natural response was to try to engage them [Government] in discussion in order to establish what were the issues, what were the problems... on the early occasions when we went to see Jim Prior I literally took a blank piece of paper and pushed it across to him and asked him to say what he thought was wrong with the unions' (Murray, interview). Such overtures proved ineffective, given the Government's refusal to enter into any sort of corporatist arrangement and Thatcher's dogmatic hostility towards unions: 'one of the first things we had to do we had to do when Mrs. Thatcher came to power was to talk to her - it took months and then when she came we had an hour's 'harangue' on what was wrong with unions. We never had a conversation with Mrs. Thatcher' (Murray, interview). Nevertheless, the TUC continued to try to persuade the Government to change its policy right up to the publication of the 1982 Bill, meeting with Tebbit in December 1981 to impress 'strongly upon him the TUC's outright rejection of his proposals' (GC Report, TUC (Wembley) 1982: 358); Tebbit refused to alter his position, following which the TUC decided to step up its campaign.

The language used in campaign pamphlets and publications, and in the speeches of some union leaders, frequently reflected the cautious approach pursued by the TUC, at least until the end of 1981. The General Secretary of the time acknowledged that an attempt was made to depict the TUC and the union movement in general as moderate, reasonable and unjustly treated by Government: 'We wanted to proceed in what we saw as a rational way - let rationality prevail. Our speeches, our pamphlets at the time were written as if the voice of reason would prevail' (Murray, interview). There were a number of ways in which the unions tried to achieve this goal.

The effects of the legislation: disorder and damage

The starting-point for much union criticism of the likely consequences of the Conservative labour legislation was to argue that it was not needed. Effectively, this was a voluntarist argument (or at least, an argument for maintaining the *status quo*), since it

assumed that the current position in industrial relations was satisfactory, and that any abuses which might exist could be addressed through traditional voluntary means - the problems were not sufficiently great to warrant legislative attention. In fact, two related but perhaps not identical claims were made by the unions. They argued that legislative measures were 'unnecessary', *ie* that no problems existed or that they could be solved by bargaining; and that they were 'irrelevant' *ie* that they failed to address the 'real' problems in industry and the economy - the measures were inappropriate to solve Britain's difficulties.

The argument that legislation was not needed and was inappropriate itself cast doubt upon the Government's motives for introducing it, suggesting that there might be some ulterior motive, and thereby returning to the claim of 'deviousness and dishonesty' discussed above (pp.117-21). At best, it implied that the Government lacked intelligence: 'the stupidity and monumental irrelevance of this Bill to the real world of industry that you and I inhabit' (Murray, L. TUC (Wembley)1982: 407) - such an accusation implying that the legislative measures lacked legitimacy as they were not rooted in the knowledge of those who 'truly understood' industrial relations - the unions and employers (see further below).

However, it might be thought that if the measures were 'irrelevant', they could simply be ignored. In order to mobilise resistance to them, therefore, union discourse combined the language of 'irrelevance' with that of 'danger', as in the title of a 1980 pamphlet 'The Employment Bill is Unfair, Unnecessary and Dangerous' (TUC 1980a),[8] and expanded upon elsewhere: 'the proposals are irrelevant to the basic issues of improving industrial relations and promoting improvements in productivity, real earnings and job and income security. Worse, they would make it more difficult to achieve progress on these issues because they would introduce highly contentious laws into industrial relations' (TUC 1979a: 76) 'We warned them that these measures were unnecessary. They were dangerous at the present time, having regard to the exceptional economic circumstances that we would be going into' (Urwin, C. TUC 1979: 440); 'this Bill is utterly irrelevant to the nation's real needs and a danger to the public' (Murray, L. TUC

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[8] For the language of 'fairness', see pp.176-82.

(Wembley) 1982: 381); 'it [the legislation] is irrelevant and totally damaging' (McCall, W. TUC 1982: 476).

The 'danger' alluded to in these statements was that of disruption in industrial relations, of the exacerbation of antagonistic feelings among the workforce, of disorder and chaos: 'This Act will cause nothing but trouble: trouble between pickets and police, trouble between employers and workers' (Parry, T. TUC 1980: 362); 'The introduction of more laws will transform the whole nature of industrial relations and the role of courts and the police in a way which will lead to more anarchy and not less, more danger of vulnerability by the public and not less' (Basnett, D. TUC 1981: 430); 'the current Employment Bill will not only not benefit our members or our industry or our trade unions as a whole; it will exacerbate industrial relations at a time when constructive attitudes are more needed than ever' (Mills, L. TUC (Wembley) 1982: 382). The talk was of 'inflaming feelings' (TUC 1979a: 76) amongst workers, with an implied threat to the public which perhaps drew upon the spectre of the 'Winter of Discontent'.

It might be argued that this was simply the vocabulary of confrontation once more - that the unions were holding out the threat of conflict and disorder as a means of persuading the Government to drop its legislative measures. How then could such an analysis fit with the attempt made by many within the union movement and the TUC to portray themselves as reasonable and moderate which, as argued, underpinned many of the responses, particularly in the 1979-81 period?

Displacement of responsibility: blamelessness

It was possible for the unions to appear cautious and rational while still using the language of 'danger' as a justification for opposition to the legislation by *denying that the responsibility would lie with them* if the threatened disorder or chaos did ensue. The blame would lie elsewhere: 'The trade union Movement is entering a battleground - but not of its own choosing' (TUC 1979b: 2); 'We are expecting the Act to lead to confrontation in the coming months and years. Such confrontation will not be of our choosing, for the Government seems determined to pass laws which are unworkable and to bring, indeed, the law itself into disrepute' (Lloyd, G. TUC 1980: 392); 'We in the trade

union Movement have not picked a fight with the employers or with the Government...
Our message to the Government is that they, not the trade unions, have picked this
quarrel, this fight, but that life will be as difficult as they care to make it' (Murray, L. TUC
(Wembley) 1982: 378, 381); 'the trade unions did not choose this confrontation: the
Government did' (Pollock, J. TUC (Wembley) 1982: 383).

Such language pinned the responsibility for any disruption in industrial relations
or damage to the economy firmly on the Government. Portraying the Government as
being the party to blame for the creation of disruption in the field of industrial relations
had obvious advantages for the unions. It enabled them to depict themselves as
reasonable, responsible and as simply trying to 'get on with their job'. In contrast, the
Government was viewed as malicious, unnecessarily antagonistic and reckless about the
potential chaos its measures might cause to the nation. Moreover, pinning the blame firmly
on the Government allowed the unions to appeal to the sense of 'fairness' both of the
public and of responsible employers: 'the trade union Movement is being pushed once
again into a defensive battle which it does not want. I am convinced that the majority of
employers do not want it and that our nation, which still believes in democracy, does not
want it' (Duffy, T. TUC 1982: 469). This was, therefore, one means of 'marginalising' the
Government - depicting it, rather than the unions, as the intractable obstacle to fairer
industrial relations - which was a significant element of the unions' approach, as I shall
discuss below (section VI).

This type of 'displacement' of blame onto an acknowledged enemy is a common
feature of political language, as Edelman argues: 'to evoke a problem's origin is to assign
blame and praise... Each origin reduces the issue to a particular perspective and minimises
or eliminates others. Each reflects an ideology and rationalises a course of action' (1988:
17). Fixing the blame on the Government reinforced the latter's position as 'enemy' of the
unions and mobilised support among members and the public for a policy of opposition
and, if necessary, confrontation. The other 'enemies' of the unions - 'rogue employers' and
'disaffected individuals' - were also invoked as responsible for the disruption which might
result, the TUC arguing that the legislation 'could be exploited... by unscrupulous
employers and eccentric individuals seeking to disrupt established, customary
arrangements and to inflame feelings in already difficult disputes' (TUC 1979a: 76).

Simply blaming one of the union movement's traditional 'enemies' might, however, be insufficient. In order for potential supporters to feel that responsibility had been effectively transferred from those who participated in the industrial disorder, the unions needed to show that they had given proper notice of the likely consequences of the legislative measures. They were able to do this by emphasising that they had 'warned' the Government of what might happen: 'We warned [Prior] that the measures would create bitter hostility in the trade union Movement, and would poison industrial relations and this would spill over into collective bargaining and influence wage claims and everything else' (Urwin, C. TUC 1979: 440); 'The purpose of the General Council's recommendations for action is... to give due warning to... the Government that the use of the law to impose new and unjustified limitations on unions, and to induce employers and others to attack union funds, could well have widespread repercussions. If there are such repercussions the responsibility will be fairly and squarely on the Government which has initiated this legislation and on those who seek to use its provisions to attack workers and their unions. They are not of the trade union Movement's seeking' (GC Report, TUC (Wembley) 1982: 363).

Due warning having been given by the unions, the Government's refusal to listen rendered it solely responsible for the consequences: 'For the Government to turn their back on the opportunities for progress offered by the TUC Guides would be an act of industrial relations vandalism. To continue on this course will turn industry into a battleground in which the whole nation will be the casualty' (TUC 1979b: 8); 'The TUC consistently warned the Government of the dangers of pressing ahead with its ill-considered and inappropriately titled 'Employment Bill'. In a series of meetings with the Employment Secretary... members of the General Council pointed to the damage which would be caused by the proposed legislation. Yet the Government turned a deaf ear to those who know first hand the real problems of industrial relations. Instead it chose to listen to its wilder backwoodsmen and to bodies which have little or no experience of industry' (TUC 1980d: 2-3).

Similar warnings were given to employers, although as befitted their role as 'adversaries' rather than 'enemies', the tone was somewhat softer and the belief that they would cooperate greater, although the veiled threat of disruption remained: 'The second

task is to leave employers in no doubt that if they use this proposed legislation they will be guilty of causing disruption and damage. Most employers recognised this between 1971 and 1974; their successors in 1982 need to remember this and show the same understanding' (GC Report, TUC (Wembley) 1982: 352); 'Employers have got to understand - they have got to be made to understand - that they could become casualties of this Act... if they are foolish enough to start legal trouble they will face the risk of an escalation of action by the trade union Movement acting together' (Murray, L. TUC (Wembley) 1982: 379); 'unions must stress the dangers of the new legislation to all the employers with whom they deal. Employers must be warned that if they try to use the Bill's provisions they run the risk of serious disruption to industrial relations' (TUC 1982c: 32). The clear hope here was that individual union representatives could persuade employers *via* the traditional voluntarist channels of bargaining and negotiation in which both sides were involved, that the legislation also threatened their position (see also TUC 1980e: 7; TUC 1982a: 4).

Responsibility for confrontation and damage having been displaced onto the Government (and to a lesser extent, employers), the unions could portray themselves as the party which sought to *avoid* confrontation and which had behaved in a reasonable and rational manner while the Government, in contrast, had ignored all advice and proceeded out of prejudice and irrationality.[9] They could also claim to be representing *national rather than sectional interests* since they were seeking to avoid damage to the economy, disruption to industry and anarchy and chaos which might threaten the public whereas the Government was prepared to risk these 'inevitable' results in pursuit of its anti-union goals. Hence, the Government, responsible for turning 'industrial relations into a battleground in which the whole nation will be the casualty' (TUC 1979b: 2 - see p.109) could be 'marginalised' as acting *against* the interests of the British people, a result which might also be achieved by the emphasis laid by the unions on rejection of their offers to discuss national problems with the Government (see section VI).

Having transferred the blame for any industrial disorder or disruption onto the Government, the unions in effect appropriated the vocabulary of 'order', traditionally a

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[9] Note in particular the reference to the Government listening to 'its wilder backwoodsmen' (p.126), which clearly implied irrational prejudice on its part.

Conservative discourse (Barker 1994: 23-4) contrasting it with the Thatcher Government's 'incitement', in this instance, to anarchy and disorder. Yet, while the displacement of responsibility allowed the unions to depict themselves as seeking to avert confrontation, the very fact that such conflict, if it took place, would not be their fault *allowed them to continue using the vocabulary of confrontation* - at least as an underlying threat - without necessarily losing popular support, as in the following instance: 'If our opponents will not listen to the voice of reason, then let them feel the weight of our industrial strength' (Wade, J. TUC 1979: 442). The TUC and the unions might thus seek to appear moderate and reasonable in policy and rhetoric, but the language of conflict remained an underpinning theme to be invoked where necessary.

Passivity and the defensive posture

It follows from the above, however, that while the vocabulary of confrontation undoubtedly remained open to the unions, they conceived of their role as being primarily *passive*. Although conflict was a highly likely outcome of the Government's legislative measures, responsibility for its occurrence could not be pinned upon the unions if it did transpire. They were not actively seeking to bring about such confrontation (since to do so would be a derogation from their role as protectors of the interests of the nation), but it might be forced upon them: 'I do not want to see confrontation - I see too much of it in my life - but I believe that confrontation is inevitable under this proposed legislation' (Keys, W. TUC (Wembley) 1982: 397); 'We are not looking for a fight as a trade union Movement... But when you are faced with an attack which could leave you crippled, then you have to retaliate in kind' (Marsland, T. TUC (Wembley) 1982: 402); 'we are not embarking on a widespread campaign of civil disobedience,... we are not hell-bent on law-breaking, but... when the sword is forced into our hands we will have no option but to use it. But it is not something that we are looking for: it is something of later or last resort' (Drain, G. TUC (Wembley) 1982: 394-5).

Drain's remark is significant because it indicates the way in which a more passive posture and vocabulary was thought to be appropriate for gaining support among the 'rank and file' trade union members, who might be less confrontational in attitude (and here, less

willing to break the law - see p.89) than the union leadership - he goes on to say that 'unless we can get this concept over very clearly we, or many of us, shall have difficulty in carrying our members in the most whole-hearted way. The last thing that we need at the moment is sabre-rattling. What we need is explanation and sober clarification' (*ibid*: 395). In contrast, certain of the more militant union leaders viewed the unions' role in a more active light, and used language which reflected that viewpoint (see Scargill, A. TUC (Wembley) 1982: 383 - above, p.110).

A more common theme, however, was that the Government was 'attacking' trade unions, and that the latter were simply protecting their position. The legislative measures were described variously as 'attacks', 'assaults' and a 'sustained offensive' on the part of the Conservatives (*eg* Sapper, A. TUC (Wembley) 1982: 377; GC Report, TUC (Wembley) 1982: 349; Bickerstaffe, R. TUC (Wembley) 1982: 390), as well as a 'declaration of war' (see p.110). It was clear from this type of language that the Government was portrayed as taking the initiative. Conversely, the unions were described as acting 'defensively'. The language was of 'defence', of 'resistance', of 'retaliation' and of the 'fightback': 'Trade unionists have the right to defend themselves, and will do so if it proves necessary' (TUC 1979b: 8); 'The TUC is committed to fighting it [1982 Employment Bill] all the way...Every trade union member must join the fightback against it' (TUC 1982b); 'There has never been a greater need than at the present time for strong trade unions to defend our members against the most vicious attacks that have occurred in the whole history of the trade union Movement' (Pollock, J. TUC (Wembley) 1982: 383).

There was an element of mutuality about this defensive posture - unions would defend their position from the Government, and therefore continue to defend those that they represented (from employers and the Government); but this could only be achieved if union members were prepared to defend the unions themselves by supporting the campaigns against the legislation. This interaction was well captured by another of the 1982 campaign slogans, 'Look after Yourself: Look after your Union', which, as argued below, reflected the growing significance of the language of individualism, and upon which Len Murray drew at the Wembley Conference: 'We have to fight back and we have to defend the right of workers to combine... No Government can take away from working people their right to defend themselves and to defend their unions which they have created

and which they sustain... We shall defend ourselves and we shall defend the essential rights that we here have inherited' (1982: 378, 381).

Language which depicted the unions in a defensive or passive light was clearly an important element of a moderate policy which attempted to show the unions as reasonable and non-confrontational in order to encourage popular and membership support. It served further to marginalise the Conservative Government in union discourse as the 'aggressor' and thus as an enemy. However, the 'defensive' posture also had disadvantages. It meant, in effect, that it was the Government which was dictating the agenda - both in terms of rhetoric and of concrete policies - and the unions were simply *responding* to this. This made it very difficult for the unions to shape the course of events, a fact acknowledged by Len Murray, both at the time and with the benefit of hindsight: 'It has been said that we must choose the ground for the fight. That will be a luxury. We have not chosen the ground for this fight, and I do not think that we shall be able to choose the ground for particular fights. It will not be of our choosing' (TUC (Wembley) 1982: 408); 'We were reacting. There was no way in which we could have taken the initiative. We were on the back foot' (interview).

These remarks echo the view of commentators that 'since 1979, British unions have been thrown on to the defensive' (Waddington and Whitston 1995: 196), as well as general assessments of unions as 'conservative institutions' (Poole, interview), more given to reacting to events than to shaping them (see p.11) - 'Trade unionists react to events' (Keys, W. TUC 1982: 467); [unions are] 'amorphous masses upon which external forces push and move them in various directions' (Hall, interview). Such evaluations are borne out by the defensive nature of much of the language I have discussed which portrays the unions as ready to fight, but only because they had been forced to do so. The problem this presented was particularly significant in the face of a Government determined to push through substantial changes in labour legislation. By being *reactive* rather than active, the TUC and unions threatened to concede rhetorical and ideological advantage to the Conservatives, especially given the Government's ability to shape public thinking *via* the media (see Chapter 7). In seeking to win the argument, the unions then faced the difficulty of constructing and conveying their own understandings of terms such as 'democracy' and 'individual rights' (see pp.141-53 and Chapter 6) - in contrast to the definitions espoused

by the Government, a task which was often highly problematic.

III. History and the vocabulary of collectivism

The history of the labour movement

Thus far I have focused primarily upon the unions' responses to the legislative measures in terms of their view of the motives which underpinned its introduction, or the effects of the changes in the law on industrial relations and the economy in general. However, the unions also justified their oppositional stance by reference to history, placing the present difficulties which they were facing in the context of previous conflicts with Government and employers.

In essence, what was involved here was the use of 'myth' as a unifying symbol and as a stimulus for action. As Phelps Brown remarks, this word does not necessarily imply that the happenings did not actually occur - the important fact is that a 'myth is an account of past happenings that epitomises and inculcates a certain interpretation of contemporary affairs; it reinforces and energises a certain approach to them' (1986: 215; also Wahrmann 1995: 18). This has been seen as a significant feature of a number of discourses by commentators on political language. For example, Kertzer comments that organisations 'propagate myths regarding their origin and purpose' (1988: 18) in order to establish their identity and distinctiveness; while Edelman emphasises the importance of the simplifying power of myths: 'Myths and metaphors permit men to live in a world in which the causes are simple and neat and the remedies are apparent. In place of a complicated empirical world, men hold to a relatively few, simple, archetypal myths... In consequence, people feel assured by guidance, certainty, and trust rather than paralysed by threat, bewilderment and unwanted personal responsibility for making judgments' (1971: 83). One might add that 'myth' can engender support and justify and explain courses of action.

In the context of the oldest organised labour movement in the world, 'myth' and the language of history could be seen as particularly important features of political vocabulary furnishing interpretations and explanations of contemporary events - 'the appeal to tradition is a very telling argument' (Flanders 1968: 10). Phelps Brown stresses

the importance of the 'group memory' (1986: 20) of British trade unions and argues that:

> 'British trade unionism in this way has been concerned to keep alive and propagate the memory of the struggles and martyrdoms of its early years. The story can be told of many a tight-fisted employer or hard-faced magistrate, of the dragoons riding down the pickets that were striving to keep out imported blacklegs, of the judges repeatedly forging fresh shackles for humble men only seeking to protect the barest livelihoods of their wives and children... With the force of drama it [the myth] convinces the British trade unionist that he is inherently liable to oppression and exploitation, and that the working class is engaged in a continuing struggle to defend and advance itself' (*ibid*. 215).

A study of the materials produced for the campaign against the 1982 Bill strongly verifies these observations. The campaign pack included a poster headed 'They have tried to crush unions before',[10] which detailed a number of 'mythic' events in the union movement's heritage which might offer a justification for similar action against the present legislation:

> 'From their earliest days, workers banding together into unions have faced fierce opposition from people who wanted to see their organisations destroyed. The transportation of the six Tolpuddle Martyrs to Australia in 1834 was by no means the first time that the law had been used to attack trade unionists.
>
> Yet despite the threats and intimidation, unions grew. In 1906 the law was changed so that employers could no longer sue unions for losses due to a strike. But that did not stop employers and government using the threats of unemployment and the courts as the chief weapons in their attack on trade unionists.
>
> Ten years ago Edward Heath tried in vain to shackle unions with his... Industrial Relations Act. He failed because trade unionists were prepared to defend their unions.
>
> From small beginnings, the trade union Movement has grown to over eleven million strong. Yet still we are attacked. So we must fight again today with the same determination as our predecessors to look after ourselves, and look after our unions' (TUC 1982b).

The history described here is one of conflict and of resistance, thus fitting the pattern described earlier, but also alluding to the language of 'struggle against oppression' which linked into the vocabulary of class (see below). The TUC Workbook for the campaign also contained references to Taff Vale, and two full-page 'lessons from the past' scenarios. A similar theme was taken up by speakers at the Wembley Conference: 'The trade union Movement has been attacked by governments many times in its history, and that we have

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[10] Note the 'them and us' vocabulary here. See above, p.112.

been able to resist and fight back is a testimony to the unity that our Movement is able to forge in times of adversity. I hope that will be the spirit of our deliberations today so that this Special Conference injects a new impetus into our campaign against the Employment Bill and gives us the cohesiveness and confidence to win our fight and to defend free and effective trade unionism in Britain today' (Sapper, A. TUC (Wembley) 1982: 377).

Such language attempted to imbue the present campaign with the heroism of previous struggles, portraying the 1982 Bill as the latest in a long series of attacks on the unions. This reaffirmed the identity of the union movement in opposition to the Government and was designed to rouse union members to support the campaign against the legislation by portraying them as of equal valiance as figures of union folklore such as the Tolpuddle Martyrs and the Pentonville Five. This type of language, with its rousing allusions to past battles, heroes and victories, was clearly very powerful - it was, indeed, redolent of the stirring patriotic rhetoric of a wartime leader such as Churchill, which was appropriate given the significance of the language of warfare (see pp.108-11).

Its ability to mobilise support for TUC/union policy amongst union members was arguably increased by the claims made that the movement faced unprecedented danger from the legislation - *ie* that this was a moment of immense historical significance. The extent of this claim varied - some saw it as the most serious threat in the entirety of the unions' existence: 'There has never been a greater need than at the present time for strong trade unions to defend our members against the most vicious attacks that have occurred in the whole history of the trade union Movement' (Pollock, J. TUC (Wembley) 1982: 383), while others chose to compare it to more recent challenges: 'We believe that this Employment Bill is the greatest threat to free trade unionism in Britain since the Industrial Relations Act of 1971' (Duffy, T. TUC (Wembley) 1982: 395). However, the inference to be drawn from the remarks was similar: the seriousness of the threat was underlined, thus providing a focus for opposition; and those who opposed the Bill would need equal or greater fortitude than the 'heroes and martyrs' of the movement's past.

The reference to the 1971 Act was particularly significant, since it was an event frequently called in aid in union rhetoric on the 1982 Bill. Allusions to the earlier law served a number of purposes. Firstly, comparison of the 1982 Bill with the 1971 Act emphasised the severe danger to the unions, a necessary tactic given that the 'step-by-step' nature of the Thatcher Government's reforms meant that there was not the same focus for opposition which existed in 1971: 'the Government's anti-union laws have been promoted

as 'cautious reforms' aimed at 'abuses' by unions... The new legal attack is as - or more - serious than the 1971 Industrial Relations Act' (TUC 1982c: 11). Secondly, and related to this, the unions' 'success' in defeating the Industrial Relations Act was used as encouragement for a similar campaign against the Tebbit Bill - if the unions could overturn the 1971 Act (and, indeed, earlier pieces of legislation), then they could achieve the same result again: 'Our aim... is to lay this proposed law to rest alongside the infamous Combination Acts, the 1927 Trade Disputes Act, and the Industrial Relations Act of 1971' (Murray, L. TUC (Wembley) 1982: 381); 'Our hope and our expectation is that this anti-trade union legislation will share the fate of the 1971 predecessor and end up on the scrap heap' (Sapper, A. TUC (Wembley) 1982: 377). Again, the reference to a defining moment of union folklore was intended to imbue the present campaign with similar heroic stature and elements of 'martyrdom', thus generating support for the continuing 'struggle': 'We defeated the 1971 Act. Yes, five dockers went to prison, but it is my personal belief that men and women in the British trade union Movement will hold that ideal so high that there will not be enough official solicitors to get them out of prison' (Keys, W. TUC (Wembley) 1982: 397-8). Thirdly, union accusations that the 1971 Act was a 'disaster' called into question the Government's motives for introducing the 1982 Bill and implied that the consequences would be equally deleterious for industrial relations: 'As in 1971 the united opposition of our Movement will expose the folly and the nastiness of this proposed legislation' (Grantham, R. TUC (Wembley) 1982: 398); 'We have been reminded of what happened under the 1971 Act. Do not let us forget that and do not let us forget to remind employers and governments of what happened under that Act. Well, no thanks for the memory of that. I thought that that corpse had been buried in 1974 but now it is being dug up again and the fact that it is being dug up one grizzly limb at a time should not conceal that fact from us' (Murray, L. TUC (Wembley) 1982: 407).

The consciousness of the past evident in union rhetoric of this period extended further than the making of references to 'mythical' events in order to imbue the present situation with similar heroic connotations. The language was also that of 'duty' and of 'responsibility' arising from the union movement's previous 'battles'. Since earlier trade unionists had fought for and obtained certain rights from employers and the Government, the present generation of union members would be letting their predecessors down, and effectively disowning their heritage, if they failed to resist the present Conservative 'attacks': 'Our rights have been fought for by previous generations. They are not ours to

tamely give away' (TUC 1982b); 'We are not going to sit idly by and watch the Government destroy the Movement that we and our forefathers worked so hard to build. We are not going to go back 150 years. The rights of working-class people and the standards of life that they enjoy were not given by some enlightened employers, they were not given by some enlightened Government some time in the past: they were fought for by working people and working people will not give them up easily' (Keys, W. TUC 1981: 426). Trade unionists who failed to fight would not only be letting their predecessors down - they would also be destroying the rights of future trade unionists. It was as if the current generation was holding certain rights and standards 'in trust' for future generations: 'We shall defend ourselves and we shall defend the essential rights that we here have inherited and that we here - every one of us - are duty bound to pass on to those who come after us' (Murray, L. TUC (Wembley) 1982: 381).

The argument that the union movement's heritage created a responsibility towards the future demonstrated the power of the language of tradition in union discourse. The movement was seen as being 'engaged in a continuing struggle to defend and advance itself' (Phelps Brown 1986: 215), in a process of unceasing steps forward from its origins. In this way the unions could be represented as forces of progression: 'We have had to struggle for power and authority ever since men and women banded together to start the trade union Movement. We have made magnificent advances since we started that journey, but we have got a long way to go. I am not prepared... to hand over to this Government the most important commodity that the nation has, and that is its people' (Keys, W. TUC (Wembley) 1982: 396). In contrast, the Government was represented as backward-looking and retrogressive: 'They are an attempt to reverse progressive legislation established over many years for the advancement and protection of workers and their trade unions... However much they might dress it up, there can be no doubt that they see this as the first step along the road of returning us to the era of the ragged trouser philanthropist' (Wade, J. TUC 1979: 441); 'This Government, by their economic policies, have turned Britain into an industrial wasteland. Such policies belong to the 1930s and these industrial policies they are now promoting belong to the 1830s. We have got to get the message over to our people, and to the nation as a whole. We are not going to give away 150 years' (Keys, W. TUC (Wembley) 1982: 397). Once again, portrayal of the unions as a force for social and economic advance, contrasted with a 'reactionary' Government, called into question both the validity of the motives for the introduction of

the legislation and its likely consequences, thus marginalising the Government as unconcerned for the improvement of the nation.

Class and struggle

Bill Keys, quoted above, speaks of the history of the trade union movement in the language of 'struggle', a word which carried Marxist overtones (*eg* Marx and Engels 1955: 10, 18).[11] This conception of industrial relations is closely linked with the 'conflict theory' previously discussed, in that it views the interests of capital and labour as opposed, and confrontation between these forces thus as inevitable and ubiquitous. To this limited extent, British unionism might be seen as sharing the vocabulary of Marxist analysis of industrial relations. However, the pluralist theory supposes that the differences can be resolved *via* collective bargaining, and as McIlroy points out, British unions have been, with relatively few exceptions, prepared to work *within* capitalism, seeking gradual reform, improvements in conditions and limited redistribution of wealth (1995: 48). Such an approach was manifested in the adversarial, 'them and us' discourse, which accepted the legitimacy of capital and the state. In consequence, the Marxist language of 'revolution' is largely absent from union rhetoric.

This is not to suggest, however, that anti-capitalist discourse was totally non-existent, for example: 'The Bill's purpose is simple and its simplicity is an economic simplicity. It is designed to undermine beyond repair the living standards of the British people and it is meant to undermine them in the interests of profit' (Gill, K. TUC (Wembley) 1982: 400). As previously discussed, the Conservative legislation of the early 1980s was seen, at least in part, as an element in a coherent strategy designed to weaken working people and the institutions which represented them. It was a relatively small step from this to the argument that the motivation underlying the legislation was to perpetuate the conflict between capital and labour and hence was *class-based*:

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[11] Keys was not the only leader to conceive of union history in these sort of terms - see also: 'History has always proved that when laws are made to protect class interests, to bash people, we always get trouble. To talk of compromise on hard-fought trade union principles would be letting generations of trade unionists down' (Kennedy, P. TUC 1979: 446); 'I call on Congress not to betray those who have fought and struggled before us to build this Movement' (Dubbins, A. TUC 1982: 472).

'They are in fact an essential part of Government economic and social packaging, the economics of money supply, manipulation and control, the theft of our national assets - aerospace and oil, for example, they are selling off to their friends in cut-rate lots; the demolition of the social wage, cuts in education, pensions, social services and transport, and the deliberate use of inflation and unemployment. All these attacks against us and our people can only be rebutted by a trade union Movement which is the most highly organised bulwark against any attacks against the working class in their living and working standards. That is why the Government has launched these measures - to weaken the Movement by increasing the power of capital and reducing the power of labour' (Sapper, A. TUC 1979: 444).

Such an analysis called upon the collectivist vocabulary of 'class' as a unifying focus for opposition to the legislation: 'The object of this Act is perfectly clear: it has been brought into operation in order to facilitate the implementation of the vicious anti-working class political and economic policies of this Administration' (Scargill, A. TUC 1980: 392); 'They are loyal to their class and when they become the government of the day they attempt to blackmail the workers into submission... Equally, we have to recognise our responsibility to our class' (Scargill, A. TUC 1982: 472-3). Thus, the confrontation which would inevitably result from enactment of the legislation was seen as 'class warfare': 'We have to make up our minds today on what we are going to do in the face of this declaration of war - because that is what it is. It is a declaration of class war against the trade union and labour Movement' (Scargill, A. TUC (Wembley) 1982: 384); 'It is the Tory Government which has declared war on the trade union Movement and declared war on the working class of this country' (Marsland, T. TUC (Wembley) 1982: 402); while the resistance which was necessary was needed not only to 'Look after Yourself, Look after your Union', but also to 'look after your class': 'each and every one of us pledge to take industrial strike action to defend our position, our Movement and our class' (Scargill, A. TUC (Wembley) 1982: 384).

These union leaders might be viewed as some of the more militant in the movement. It could be argued, however, that they were simply making explicit a discourse which remained implicit in most TUC publications which referred to 'working people' or 'workers' (see *eg* TUC 1981a: 4; TUC 1982b) - after all, as McIlroy argues, 'unions are *class* organisations: they consist of 'workers by hand and brain' (1995: 3 - italics in original). Moreover, no specific attempt was made by the more moderate leaders to disavow the language of 'class' either at Wembley or elsewhere; although Len Murray implied that there was a certain discomfort with the discourse in agreeing that the

Conservative legislation could be viewed as class-based 'though I would be loath to use the phrase because of its 'class warrior' implications' (interview). The vocabulary of class may also have had implications for other elements of union discourse; notably, the language of 'unity' and 'solidarity' which also had strong collective connotations, as I shall now discuss.

Unity and solidarity

Trade unions are of course *collective* institutions - combinations of individuals formed to redress the inequality of bargaining power between employers and workers who come together because the influence they can wield collectively is greater than the sum of their individual strength. As such, the vocabulary of 'unity' and 'solidarity' - of workers pulling together for the good of the collective organisation - was inherent in the very nature of unions. This was particularly so because, as McIlroy notes (1995: 3), while unions are class organisations, they are organised on a sectional basis and therefore exhibit tendencies to both sectionalism and unity, the latter counterbalancing the former.

It has also been suggested that there are sociological explanations for the prevalence of solidarity in British unionism, Kahn-Freund remarking upon the 'intense corporate consciousness of the union members, their readiness to fight for their particular corporate body, all this too is part of a national heritage, an outstanding characteristic of British society' (quoted in Phelps Brown 1986: 216).

'Unity' and 'solidarity' were particularly important to the TUC leadership as 'keywords... standard phrases' (Murray, interview) facilitating its role as coordinator of union responses to Government (see p.17). The differing interests of various affiliates and the absence of any power to enforce decisions (Marsh 1992: 34) made this task problematic. The regular invocation of 'unity' and 'solidarity' was a means of counteracting the centrifugal tendencies of many unions: 'One is always emphasising the need for unity in order to achieve a reaction against Government and solidarity to produce fair results between unions' (Murray, interview).

The call for 'unity' was especially significant in the context of responses to the labour legislation of the early 1980s. As noted above, the step-by-step nature of the legislative measures, the absence of a specific focus of opposition as had existed in the Industrial Relations Act 1971 and the economic difficulties faced by the unions made the

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coordination of opposition to the legislation difficult. However, there was a perceived need - especially in 1982 - to present a 'united front' against the legislation if there was to be a chance of defeating it - indeed, the 'Wembley principles' were centred around the notion of unity: 'The purpose of the General Council's recommendations for action is to unite the trade union Movement in the face of this grave legal challenge' (GC Report, TUC (Wembley) 1982: 363).

In consequence, it was particularly important for the leadership of the TUC to coordinate responses to the legislation. Len Murray therefore made particular use of the language of 'unity': 'This legislation is not even a curate's egg. We are opposed to it in total, and let us be clear that cooperation with any one part of it could undermine what has to be a united collective response... We need to re-affirm today our commitment to work more closely together, and to help each other in difficulty. That is not just something we can leave until a legal case emerges. We have to build a sense of common purpose among unions in negotiations and industrial action where members see immediately that they have common interests' (Murray, L. TUC (Wembley) 1982: 380); 'If we are to defend ourselves properly, it is crucial for unions to avoid debilitating battles which divide the Movement, and it is critical that we should unite against the external threat' (*ibid*: 381); 'In this fight, unity and leadership are what are going to count' (*ibid*: 408).

His calls were, however, echoed by others on the General Council: 'the fact that we are meeting today is a good show of our recognition of the need to unify and solidify the trade union Movement as it has never been before. We have our differences on the General Council. You know that we are not a mutual admiration society, but there has never been the unity we have at present' (Duffy, T. TUC (Wembley) 1982: 395); 'Only one thing can stop us from stopping them. Disunity, division and lack of leadership. The whole wall of oppression will crumble if the trumpet calls are not discordant and are not unharmonic' (Gill, K. TUC (Wembley) 1982: 400).

The relationship between the language of confrontation and that of 'unity' is readily apparent: 'unity' was a 'weapon' to be used by the unions in their battles with the Government: 'Unity is the most prized weapon that we have in our armoury' (Keys, W. TUC 1982: 466); the inference being that defeat would be the likely outcome if the full mobilisation of union power implied by 'unity' was not achieved. As events transpired, this assessment proved to be correct, with coordinated opposition to the legislation disintegrating between 1984 and 1987, considerably facilitating the Government's task of

ensuring compliance with the legislation, as I shall discuss in Chapter 6.

Whereas 'unity' tended to be used to refer to the coordinated response of the movement as a whole to the legislation, 'solidarity' applied more to the taking of sympathy action - one union supporting another in its dispute - and to the cohesiveness of individual workers within their union, particularly in a closed shop: 'Many disputes couldn't be won without support from other groups of workers. 'Unity is strength' is more than just a slogan. Traditionally, sympathy action has had just the same protection as any other kind of industrial action' (TUC 1981a: 12); 'solidarity action is crucial to our very existence. The right of the strong to come to the aid of the weak - God Almighty, if we stand for anything at all, that is what we stand for, and sometimes we should remember it a bit more ourselves, brothers, but that is one thing that we are going to be fighting for' (Murray, L. TUC (Wembley) 1982: 407); 'Building up membership to 100 per cent is a key trade union objective. It shows employers the solidarity of the workforce' (TUC 1981a: 18). As this last remark shows, union 'solidarity' might be primarily directed towards employers rather than Government, but there were clear connections between 'unity' and 'solidarity', which were both seen as vital elements of the union movement's approach: 'That is why, in meeting this squalid attack, it is imperative that we maintain trade union unity and solidarity. The unity of our Movement is our most precious strength' (Parry, T. TUC 1980: 362); 'solidarity is an important weapon' (TUC 1981a: 15).

The significance of the language of 'unity' and 'solidarity' was that it was a collectivist discourse, 'the language of people working together' (Morris, interview). As such, it tended to reinforce the 'them' and 'us' standpoint discussed earlier: 'us' standing together can resist 'them', whether employers or Government: 'We can't allow our unions to be put in this position. We must warn employers that a blow against one is a blow against all, that a legal case against one union is a challenge to all unions. An employer starting a legal case must expect a united response' (TUC 1982b); 'The Government may seek to divide us, the CBI may try to do the same, but the effect of all they do is to bind us even closer together in our belief that an attack on one is an attack on all' (Fisher, A. TUC 1981: 395). In effect, these words were 'a way of triggering responses' (Murray, interview); keywords which called up the tradition of collective struggle within the movement and thus mobilised support for continued - collective - resistance. The potential problem for the unions was that they may have been incompatible with the increasing emphasis placed by the Conservative Government on the language and policies

of individualism (see pp.48-52). I now move to discuss the unions' response to this discourse.

IV. The language of individualism

As discussed in Chapter 2, a number of provisions in the 1980 and 1982 Acts formed part of the continuing Conservative theme of promoting individualistic attitudes among union members and constraining solidarity and collectivist behaviour. In particular, the restrictions upon the closed shop, the limitation upon solidarity or sympathy action and the provision of state funds for secret ballots represented the prioritising of an individualistic over a collectivist approach. The Government justified these measures, at least in part, by using the language of individualism, as analysed in Chapter 3.

It was accordingly necessary for the union movement to construct an appropriate response to these policies. This was, of course, a continuing task and to some extent the 'problem' grew greater as the decade wore on, since the Government's affirmation of the primacy of the individual over the collective was perhaps at its strongest after the 1987 election (see p.50). Accordingly, I shall deal with this issue at greater length in Chapter 6. However, much of the later union discourse on the individual was foreshadowed by debates in the earlier years, and it thus seems appropriate to examine the initial responses of the unions.

In essence, the unions needed to demonstrate that they *were* concerned for the individual, but that this did not detract from or conflict with the traditional collectivist virtues of unity and solidarity, without which they might be viewed as little more than an agglomeration of individuals. One possible response was to stress the weakness of the individual *vis-a-vis* the employer and the state in order to demonstrate the necessity of joining together in collective organisation: 'The basis of trade unionism is the experience of workers who, as isolated groups or individuals, have been picked off by employers. Trade unionists have realised that protection is provided by safety in numbers. In most situations **collective** action and solidarity are the only defence workers have against arbitrary decisions by employers' (TUC 1982c: 23 - emphasis in original). The notion was of the powerlessness of the individual against capital: 'Most people don't have very much power. Big decisions always seem to be taken by someone else' (TUC 1983: 5), an important constituent of the Marxist analysis of industrial relations (Farnham and Pimlott

1994: 54), but ultimately traceable to the fundamental rationale for the existence of unions, the inequality of bargaining power between employer and employee. The conclusion to be drawn from this analysis was that disempowered individuals needed the protection of strong collective organisation to be able to deal on relatively equal terms with employers, and the stronger the organisation, the more protection that could be offered: 'Only by collective action through trade unions can individual workers effectively influence their terms and conditions at work. The logical objective of a trade union is to achieve 100 per cent organisation by recruiting all the workers in the relevant trade or workplace' (TUC 1980f: 8).

The discourse of the powerless individual requiring protection from a collective body might be thought to be fundamentally at odds with the 'New Right' notion of self-advancement in the absence of coercion, collective or otherwise, *via* participation in free markets (see Chapter 3). However, this did not mean that the language of 'the individual' and the related discourse of 'freedom' was closed off to the union movement. It was possible for the unions to make the argument that, rather than destroying individual rights by 'immersing' them in a collective institution, trade unionism actually functioned to enhance and increase those rights. If the individual was powerless against employers when acting alone, it followed that the protection offered by the collective strength of a trade union enabled the union member to establish and maintain individual rights - such as protection from unfair dismissal. That is, *individual rights were being achieved via the medium of the collective institution* - the union offered a means for realisation of self. This can clearly be seen from the debates on 'freedom' and the closed shop: 'The Conservatives say they're against the closed shop in principle, because it goes against the idea of personal freedom. Trade unions see things differently. Individual workers have little or no 'personal freedom' when faced with their employer unless they have a strong union behind them' (TUC 1981a: 20); 'Mr. Tebbit believes that the 'closed shop' is contrary to the British tradition of liberty of the individual. It is nothing of the kind. Working people have no 'freedom' at work to better their wages and conditions unless they are a part of a strong trade union, bargaining collectively on their behalf' (TUC 1983: 37-8).

The unions' argument was thus that the Thatcherite/'New Right' conception and discourse of the individual and of 'freedom' was incomplete - that the full realisation of individual potential required collective protection. This was not a rejection of individualism - indeed, it took the individual as a starting-point - but the different

understanding of the concepts and discourse allowed continued stress to be placed upon the collectivist values and vocabulary of 'unity' and 'solidarity', a fact specifically acknowledged by the TUC in response to the powerful Conservative anti-collectivist discourse on the closed shop: 'The closed shop does mean individual workers have to accept more limitation of their personal freedom. But in return the individual workers get a much greater collective strength. It's this that underpins their rights and opportunities at work' (TUC 1981a: 20 - emphasis in original).

Such language also allowed the unions to be critical of certain Government policies on the ground that they were not 'genuinely' designed to enhance the position of the individual or to increase 'freedom', according to the unions' conception of these topics. For example, the argument was made that Conservative policy merely increased the potential for employers to exploit labour, and therefore did not result in 'real' freedom: 'Mrs. Thatcher and her friends go on a lot about freedom... But their kind of freedom is the freedom of the employer to pay sweated wages (and there are still plenty who do that) and the right of the hungry person to starve. Far from increasing genuine liberty they have cut back on our personal rights just as surely as they have cut back on public spending' (TUC 1983: 14). Similarly, the argument was made that Conservative policies removed the 'right to work': 'It takes away the fundamental human freedom of the right to work which is just as important as the right of free speech, and day after day, decent people are having this freedom destroyed' (Fisher, A. TUC 1982: 425); and that they allowed disaffected individuals to create instability (see further below): 'It seems the new law ranks the 'freedom' to be a 'union-wrecker' higher than the 'freedom' to join a trade union' (TUC 1982c: 26).

The union accusation was that of *hypocrisy* - that the Government was proclaiming its attachment to the concepts and vocabulary of 'freedom' and 'individual rights' while actually damaging them. This argument could be made in the context of the removal of various individual employment rights (maternity leave, unfair dismissal *etc.*), the freedom to join a union and even the supposed 'right to a job', which all formed elements of union belief as to the proper content of 'freedom' and individual rights: 'On top of that it [1980 Act] robs individual workers of basic rights - protection against unfair dismissal, the rights of working mothers to return to their jobs after childbirth. While trumpeting hypocritically about individual liberties, the Government are systematically taking freedoms away' (Parry, T. TUC 1980: 362); 'The first of these changes [to the

length of the qualifying period for claims of unfair dismissal] robbed around one million workers of protection against unfair dismissal, making nonsense of the Government's often repeated professions of concern for the rights of individuals' (GC Report, TUC (Wembley) 1982: 355);

> 'It has been suggested that the closed shop is a denial of individual rights and that for an individual not in a union to no longer be acceptable to the people he or she works with is almost tantamount to mortal sin. I have always found it extremely contradictory that the so-called Freedom Association can, on the one hand, be so concerned about the rights of the one individual in the West Midlands who lost her employment through not joining a trade union, and on the other hand, without any apparent regard to individuals' rights, can blatantly support the most anti-trade union employers, like George Ward of Grunwick, who sacked those who exercised their right to become trade union members. It would also be a little more convincing if the Government, who express their concern about the closed shop and the rights of individuals, were somewhat more concerned about the right of the individual to a job, bearing in mind that 2 million people have lost their jobs since this Government came to office' (Dubbins, A. TUC 1981: 431).

This was an important element of union response to Government policy, as I shall argue further in Chapter 6. It involved the unions adopting the language of 'freedom' and individualism, but using their different understandings of this discourse to criticise the legislative measures. The potential difficulty for the unions was to convince their members and the public that their definitions were more appropriate than those of the Government.

However, if the union view of these related concepts created problems, it also offered opportunities to emphasise aspects which might be excluded from Conservative/'New Right' discourse. Prominent amongst these was the notion of 'responsibility' or 'obligation' to one's fellows and to society as a whole. The origin of this argument lay in the claim that it was unfair to single out unions as institutions which restricted 'freedom' when it was impossible for society to function effectively in the absence of certain restrictions: 'The 'closed shop' **does** mean that individual workers accept some limitation of their personal freedom. But there is nothing unusual about this. In all walks of life, society imposes all sorts of obligations and limitations on freedom of action by individuals. It is the same in industry' (TUC 1982c: 7-8 - emphasis in original); 'Restrictions to the 'freedom of the individual' exist in any society, for good reasons. Payment of income tax, jury service, laws against committing a nuisance, even traffic lights, are a restriction on your freedom to do what you please, for the good of the majority. Many unions take the view that if there is a 'right' not to join a trade union, then

trade unionists should have a similar right not to work with 'free-riders" (TUC 1982c: 24). Society consisted of a balance of 'freedom' and 'responsibility', and the latter vocabulary allowed the unions both to defend the closed shop and to criticise the Government's concept of individualism as characterised by sheer self-interest involving no wider duty to others: 'Responsibility is the other side of the coin from freedom. Far from restricting 'freedom' in the practical sense, 100 per cent trade union membership requires workers to accept collective responsibility for **their** decisions affecting **their** work, **their** industry and **their** own union... The question which Tories and other groups, like the 'Freedom Association', always dodge is 'who benefits from the freedom-of-the individual philosophy?' (TUC 1982c: 24 - emphasis in original).

Once again, this did not amount to a repudiation of the importance of the individual; it was rather a view that self-interest offered only a partial opportunity to achieve proper 'freedom'. The point was well made by Len Murray in connection with the 1982 campaign slogan 'Look after Yourself, Look after your Union', which itself took the individual as the focus:[12] 'But that [slogan] is only a beginning, because it is not just a matter of narrow self-interest. That is the starting point. But we have to go beyond that...Again and again we have heard from the rostrum about how the union is the collective means through which freedom is enlarged in this country' (Murray, L. TUC (Wembley) 1982: 407). Collective protection was seen as necessary for the ultimate enhancement of the individual, achieving benefits to society as a whole which 'pure' individualism could not.

The criticism of the 'self-interested individual' as the beneficiary of Conservative policy manifested itself most forcibly in rhetorical attacks on the legislative measures as motivated by a desire to 'divide and rule'. The unions saw the provisions on secret balloting, sympathy action and the closed shop as a means of separating the leadership from the members and of attacking solidarity in general: 'The emphasis on taking action against individuals once again shows that part of the aim is to fragment and divide workers and their unions... The Conservative philosophy of 'market forces' and individual 'incentives' leaves little room for the trade union principles of solidarity and across-the-board standards. Many of the Conservative proposals on the law are aimed at isolating and

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[12] This slogan was a play on the Health Education Authority's contemporaneous campaign entitled 'Look After Yourself', which focused on lifestyle changes which could be made by individuals in order to enhance their personal health.

fragmenting workers and restricting collective action. They also undermine basic standards on working conditions and the rate for the job' (TUC 1980c: 3); [Sympathy] action isn't popular with judges or the Conservatives. They prefer to isolate workers - to divide and weaken them' (TUC 1982c: 17); 'secret ballots can discourage greater involvement of members in union activity and decision-making - people can vote without bothering to attend meetings and take part in the arguments and discussion. This can increase the potential for media manipulation of union decision-making' (TUC 1980c: 20); 'The intention of the Employment Bill is to destabilise union membership arrangements and to encourage individuals to leave the union' (TUC 1982a: 4).

The consequence of these policies would thus be to decollectivise the unions, isolating the individual member. This would make it considerably easier for the self-interested, 'disaffected' individual to challenge union solidarity. This was a significant and negative figure in union iconography, somewhat resembling the 'rogue employer' (above, p.116), whose motives were at best 'eccentric' and at worst vindictive or destructive: 'The Government now want to:... introduce a procedure under which disgruntled individuals could challenge, and perhaps wreck, well-established agreements...Under these laws provocative individuals could blow up small local issues into major industrial relations problems' (TUC 1979b: 5); 'The incentive now given to the 'cowboy' and free rider to grab the carrot on offer for opting out of trade union membership and the restrictions introduced on the application of union discipline are such that there can be no doubt that they are designed to smash union organisation and to undermine our ability to maintain union rates of pay and conditions' (Wade, J. TUC (Wembley) 1982: 390). Such a figure was marginalised by his/her suspect motives and lacked legitimacy as a result of damaging unions (and employers) and of going against the wishes of the majority of union members: 'Under this law an eccentric individual could trigger off a dispute about a well-established membership agreement between a union and an employer - despite the wishes of the vast majority of the workers and the management. He could take advantage of all the terms and conditions worked out by union and management together but dodge making the proper contribution to the union which negotiated on his behalf' (TUC 1980a: 2). Accordingly, unions needed to be wary of such individuals: 'Unions should not take at face value any employee's professed 'conscientious objection' or 'deeply-held personal conviction' against trade union membership and every claim should be strongly questioned. It should not be enough for the employee to object to aspects of union policy, the level

of subscription, or a particular incident. Nor should it be sufficient for anyone to object to union membership on political grounds in view of the existing legal right to 'contract out' of contributing to the political fund' (TUC 1980f: 10).

The marginalisation of such individuals by the attachment of epithets such as 'eccentric', 'provocative' or 'disgruntled', or the labelling of them as 'cowboys' or 'free riders' was significant because, as was the case with the 'rogue employer', the unions were able to argue that *most* individuals did not act in this way. This enabled them to continue to use the language of individual rights (since most individuals did not threaten union organisation) while remaining critical of union members who acted for purely destructive motives. But the suspicion of individuals which is evidenced here does point to certain difficulties which the unions may have experienced in marrying the language of individualism with their traditionally collectivist outlook. There seems at times to have been a degree of tension between the discourses, and although the unions attempted to resolve this by criticising the Right's definition of 'freedom' and maintaining that individual rights could best be protected under a collective umbrella, the suspicion remains that it was the Government's definitions of 'freedom' and 'individual rights' which dominated public perception, and that it was thus difficult for the unions to talk these languages. Whether they had any greater success in doing so in the latter part of the 1980s, when the discourse of individualism was even more dominant in Government policy, is a question which I shall examine in Chapter 6.

V. The language of 'democracy'

The problem for the union movement in responding to the Government's legislative policies and vocabulary of 'democracy' was that this language had achieved a hegemonic status in British political discourse, in a manner which was perhaps not true of any of the other discourses discussed in Chapter 3, with the possible exception of the still vaguer concept of 'freedom'. Any attempt to challenge the Government's proposals was thus likely to meet with the accusation that the unions were 'anti-democratic', a claim which would serve to strengthen the marginalisation of the unions by the Government/'New Right' as unacceptable and irrelevant institutions in British political society. Accordingly, in constructing a response to the Government's proposals for democracy in trade unions, the TUC and union leadership had to be wary of appearing opposed to democracy *per se*,

instead challenging the *specific form* of democratic regulation that the Government sought to impose. Equally, however, if the unions could plausibly use the language of 'democracy' *against* the Government, so as to label it as 'anti-democratic', they themselves could make a powerful claim to marginalise it as acting contrary to the national interest.

Such considerations may be seen as strongly structuring the unions' rhetorical response to the Government's legislative measures on secret ballots, balloting for the closed shop, proposals on the political levy and, most significantly, the 1983 Green Paper, *Democracy in Trade Unions.* The union/TUC reaction, enunciated in Congress debate, TUC publications and in the response to the Green Paper, *Hands Up for Democracy,* can thus be seen as falling into two broad categories - an assertion that, contrary to Government discourse, the unions *were* democratic institutions; and criticism of the Government's measures, an important element of which was - as with the language of individualism - the use of the language of 'democracy' *against* the Government, by accusing it of 'hypocrisy', an assertion to which I shall return at greater length in the following Chapter.

The starting-point for the union movement was thus a proclamation of its democratic nature, contrary to Government accusations:

> 'Critics of union democracy normally do not understand that union policies and activities are continually subject to the wishes of our members. These critics are often guilty of arguing one minute that individual members should have 'more say' in the running of the union, and the next that unions should 'exercise greater control' over the actions of their members. This contradiction appears in the detailed provisions of the Employment Bill. More generally, unions actively encourage all members to participate in their democratic structures which decide their policy. Power within unions always ultimately lies in the hands of the membership. It is only through unions that workers can have a say in what happens at their place of work. Contrast the open workings of union democracy with the secrecy and unaccountability of virtually every other institution in industry' (TUC 1982c: 8).[13]

> 'In Britain's trade unions it is the members who decide what is going to happen. Unions run their affairs in the ways laid down by their own members. Just as there are many different unions so there are many different forms of union democracy. One thing however is common to them all. Despite all Mr. Tebbit's attempts to portray them as irresponsible and undemocratic: despite Mrs. Thatcher's belief that

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[13] But note that here the assertion of union democracy was combined with an argument that the unions were being unfairly 'singled out' for legislative attention - see p.151.

her Government and her Government alone is the authentic voice of democracy in Britain: *every man and every woman who belongs to a trade union in Britain has a voice and a vote in their union's affairs*' (TUC 1983: 11 - emphasis in original).

Indeed, it is interesting to note that the closed shop, which was attacked by the Government using the language of individual freedom, was on occasion justified by the TUC as an instrument for the expression of democracy: 'Making sure everyone is in the union guarantees that this process is as democratic as possible. It also makes sure that union standards and decisions are kept by everyone. The union can discipline members who go against democratic decisions' (TUC 1981a: 18); 'Workers' ability to be involved in decision-making is made more practical where 100 per cent membership has been won. Collective bargaining depends on workers being able to elect representatives who speak for the **whole** workforce' (TUC 1982c: 23 - emphasis in original). This pointed to a possible contradiction in the Government's approach. In pursuing 'freedom' for the individual, the Government might be prejudicing democracy (if one accepted the union view that the closed shop was a means by which democracy could be promoted). This potential incompatibility between individual rights and democracy was seized upon with even greater vigour by the union movement in the debate over s.3 of the Employment Act 1988, as shown on pp.211-3.

This small point leads, however, into the more important accusation that the Government itself was anti-democratic. Various ways in which the unions sought to attack the Government with its own 'weapon' of the language of democracy can be identified. Firstly, the claim was made that, by requiring unions to follow certain centrally-regulated democratic procedures, the Government was overriding the democratic choices of union members as to how their union should be run: 'These provisions are wholly at odds with the principles of union democracy and responsibility. Unions have developed their own rules and procedures for dealing with industrial action. Those rules are ultimately under the control of the membership' (TUC 1982c: 19). The language here was that of 'freedom' (Government legislation was interfering with the freedom of union members to (democratically) choose their own rules and procedures) and of the 'autonomy of unions' (TUC 1980f: 31) *vis-a-vis* the state (an appeal to maintain a voluntarist framework which was bound up with the historical development of unions, manifest in their differing rules and procedures for the involvement of members: 'Just as there are many different unions

so there are many different forms of union democracy' (TUC 1983: 10)).[14] The union view, therefore, was that rather than encouraging democracy *via* its legislation, the Government was actually destroying it (see Wade, J. TUC 1979: 441 - above p.118).

The proposals on the political levy were also attacked as anti-democratic: 'It is a deliberate attack on the democracy of our nation. The plan is more reminiscent of the dictatorial decisions that are made in other countries and not in our country, which I still believe is one of the most democratic nations in the world' (Duffy, T. TUC 1982: 470). It is noticeable here that the Government's policy is criticised not only for its effect upon the unions, but for its interference with the democratic nature of British political culture, thus marginalising the Government as acting against national interests. I shall return to this topic in the next section.

The imposition of certain specified 'democratic' rules and procedures on trade unions was not only seen by the unions as anti-democratic; it was also seen as 'unfair'. The language of 'fairness' was increasingly common in the later part of the period, as I shall show in Chapter 6 (pp.176-82). However, the language of 'fairness' was also implicitly invoked in this period, particularly in *Hands Up For Democracy*.

For example, it was argued to be unfair on trade unions to have to achieve an 80/85% vote in favour in order to impose a closed shop (s.3 Employment Act 1982), when no politician would expect to receive such a percentage of votes:

> 'What constitution in which country states that you need 80 per cent or 85 per cent of the votes, not in favour of change, but in order to maintain the status quo set out in agreements? There are countries with reserved legislation which you have to get a substantial majority to alter, but this Government says you have to get this enormous majority in order to maintain what you have already agreed and what is already operating. What politician in this country ever got an 80 per cent or 85 per cent vote in favour of their government on anything at any time? The only people I know who got such majorities were Hitler, Stalin and the other dictators. The position adopted by this Government builds up opposition to the whole democratic principle of involving trade union members in decisions. This Government continues its policy of undermining democracy' (Grantham, R. TUC (Wembley) 1982: 398).

Equally, it was argued that it was unfair that unions should be required to institute postal ballots when politicians were not elected in this way:

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[14] This very variety could, however, be seen as a source of weakness for the unions, as I shall argue presently (pp.152 and 213).

'Mr. Tebbit wants to put the unions into a strait jacket. He seems to think that postal ballots for senior posts are the only 'pure' form of democracy. But Mr. Tebbit isn't elected that way. He owes his position as Secretary of State for Employment to a decision by the Prime Minister. And he was elected MP for Chingford not by postal ballot - people had to go to the polling booths and vote for him (or one of his opponents). Why should unions be different? Why should the various democratic systems - postal ballots, voting at work, voting at union branches - which unions have developed all be reduced to one system? Is it because he believes that a voting paper filled in over the breakfast table and a copy of that morning's paper will favour the candidates *he* would like to see elected?' (TUC 1983: 12 - italics in original).

The union claim was that they were being treated in an exceptional and inequitable manner.

Taking this analysis one stage further, it was not simply that the legislative provisions would impose requirements upon unions that other institutions (particularly politicians) did not have to meet; it was also that these institutions were themselves lacking in democracy. This was made most clear in the section of *Hands Up For Democracy* which was devoted to the application of the 'Tebbit test of Democracy'[15] on various 'great institutions of national life' (TUC 1983: 21) - the conclusion being that commercial companies, pension funds, banks, the press, the Conservative Party and the House of Lords failed the test as undemocratic. This, coupled with the assertion (discussed earlier) that the unions *were* democratic enabled the unions to 'turn the tables' fully upon the Government by representing themselves as unrivalled democratic institutions, setting an example to all others: 'In no other organisation in this country are the commitment to, and the practice of, democracy more deeply embedded than in the trade union Movement' (Murray, L. TUC (Wembley) 1982: 379); 'The TUC is not arguing that every national institution should be legally forced to operate on democratic lines. If Conservatives, like Mr. Tebbit, prefer to belong to a party which gives its ordinary members virtually no say in making policy or electing its leaders, that is up to them... We accept that not every institution may be able or willing to follow our democratic example' (TUC 1983: 29). Consequently, as an exemplar of democratic practice, the trade union movement could make a powerful case for inclusion in the 'democratic community' of Britain from which the Government had sought to drive them (see the following section of this Chapter): 'I have always believed that the British trade union Movement is a very

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[15] Note the personalisation - see above, p.118.

important part of one of the finest democracies in the world' (Duffy, T. TUC (Wembley) 1982: 396).

The adoption by the union movement of the language of 'democracy' to describe its own arrangements, and criticism of the Government as anti-democratic in principle and undemocratic in practice placed it in a position to accuse the Government of hypocrisy in that it was requiring standards of democracy from the union movement which it was unwilling to impose upon itself: 'What we object to most strongly is people who live in undemocratic glass houses throwing stones at the trade union Movement on the grounds that our democratic processes are allegedly deficient. We would remind them of some sound advice. If they want to see clearly to cast out the mote in their brother's eye they should first cast out the beam in their own' (TUC 1983: 29). The Biblical language here emphasised the sense of 'righteousness' evidently felt by many in the unions over this issue - 'We were genuinely under the impression that we'd pretty well invented democracy' (Murray, interview) - and the allegation of hypocrisy, combined with that of prejudice resulting from the exceptional treatment meted out to unions by comparison with other institutions once again cast the Government as 'enemy' (see pp.117-21), marginalising it as insincere in its motives in the eyes of 'fair-minded' people.

The union movement can therefore be seen to have made a powerful attempt to reclaim the language of democracy from the Conservatives and to turn it to its advantage. However, a potential problem remained. As the unions acknowledged in defending the existence of differing procedures against Government attempts to regularise them, there were various forms of democracy: 'There is no one form of democracy. Different countries have different ways of electing their government. In the USA and France all the people can vote on who should be president. In Britain, however, we elect MPs and, as citizens, we have no direct say in who is Prime Minister. No one would say one system was more democratic than the other. It is the same with union democracy' (TUC 1983: 11-12). The fact that there was no single accepted definition of the concept, and the union willingness to admit that there might be problems with their procedures which needed to be addressed - the 'mote' in their eye and the concession that 'Unions are not perfect' (TUC 1983: 3) - left open the possibility that the *Government's definition*[16] might achieve dominance in the

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[16] Or that of right-wing union leaders such as the EETPU's Eric Hammond who remarked that 'We believe that for a union to conduct its elections by postal ballot is honourable and desirable. For sections of the Movement to say otherwise is *(cont.)*

consciousness of the public and union members.

To win support on the issue of democracy, the unions had to convince them that their definition was 'correct' and that the Government was misusing or abusing the term: 'He *says* he is concerned to enhance democracy in trade unions. He *says* he wants to help ordinary members. He *says* he wants to bolster individual freedom. He *says* he wants to ensure that powerful organisations, like unions are genuinely representative and accountable. Well, he would *say* that wouldn't he? Democracy is a fine word for a fine thing. Mrs. Thatcher and Mr. Tebbit misuse it. The unions don't just talk about it - we put it into practice everyday' (TUC 1983:3 - emphasis in original). As will be seen in Chapter 6, this was not necessarily easily achieved.

VI. Unions, society and the public

I argued in Chapter 3 that much Government discourse, in connection with policies which excluded the unions from a corporatist role, functioned (in part at least) to effect a *delegitimisation* or *marginalisation* of the trade union movement within British society. It caused the public and, to a lesser extent, union members to question the significance and continued relevance of trade unions in an increasingly individualised milieu. The materials analysed here show an awareness of this: 'In Mr. Tebbit's nightmare world, trade unions are the evil ogres, threatening democracy and freedom everywhere... Mrs. Thatcher seems to think the unions are a threat to the British way of life' (TUC 1983:5, 10). In response, they needed to devise a means of *re-integrating* themselves within the 'community' or 'nation' - to establish that they were not a 'threat' to society, and that in fact they had a vital role to play in protecting and forwarding national, rather than sectional, interests.

Responding to the Conservative attempt to challenge their relevance to society was a continuing process for trade unions which arguably became more significant as the decade wore on, simply because the 'attritional' nature of Government rhetoric and policies increasingly called the labour movement's role into question. I will accordingly return to this issue at somewhat greater length in Chapter 6. Moreover, the analysis by the

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(cont.) standing principle on its head, for there are some whose opposition to public ballots masks hostility to ballots themselves, for they fear the changes that come in the wake of members' power' (TUC (Wembley) 1982: 393).

unions of their role in British society, which was prompted by the Government's attempts to marginalise them in rhetoric and policy, inevitably ranged more broadly than the issue of labour legislation, covering recruitment policies, services to members *etc.*; matters which are beyond the scope of this thesis (see Taylor 1994). However, in so far as the attempt to exclude the unions from politically acceptable society formed an important element of the Government's anti-union discourse in justification of its legislative policies, it seems appropriate to analyse the union movement's initial response.

Role of the unions in society

MacInnes (1990: 222; following Flanders 1975) has drawn a distinction between two roles for unionism in the British context - 'vested interest', which refers to the use of industrial power in order to achieve improvements in wages and conditions, usually at a local, workplace level; and 'sword of justice', which refers to nationally-based campaigns (often conducted *via* the TUC) against inequality and injustice. It is the second of these roles which is of particular interest here.

The pluralist analysis of industrial relations, which, as discussed (pp.106-7) informed and structured British union discourse and behaviour, was based upon the need for unions to exist to protect individual workers, given the inevitable divergence of interests between workers and employers and the fact that the former lacked power when set against that of the employer. The role of trade unions, in this theoretical structure, was to act as a 'counterbalance' to managerial prerogative (Webb and Webb 1920a: 173-4). This function found frequent expression in TUC/union discourse, although the claim was that the unions had too *little* power to perform this role adequately, not too much, as the Government maintained: 'The new legalistic devices are designed to diminish the negotiating strength of trade unions in modern society - a society in which the power of employers increases everyday. That power does not rest only, or even primarily, on contracts of supply and the like. It is expressed in complex financial and commercial arrangements, through associated companies both national and transnational, against whom trade unions and even governments can frequently offer no countervailing force' (TUC 1980b: 15); 'the past two or three decades has seen the spectacular growth of multi-plant enterprises. This has greatly strengthened the power of employers, enabling them to switch production and use 'divide and rule' tactics. We have seen the rise of huge

transnational corporations with economic power often as great as countries such as Belgium and Norway. Trade unions offer only inadequate countervailing pressure to such developments' (TUC 1982c: 8).

Such remarks were predicated upon the ubiquity of conflict between capital and labour discussed above, but the role for the unions was not simply to protect their members from employers. Protection was also needed for working people against Government policies which worsened their standard of living or job security: 'The Government's policies have caused soaring unemployment, falling living standards, and dramatically reduced social services. Unions are the only defence working people have against the effects of these pernicious policies - that is why the Government wants to weaken us' (TUC 1982b); 'at a time when there are four million unemployed, when living standards are falling, when there is an inhuman attack on the Welfare State - the working people have only one Movement to turn to, the trade union Movement (Duffy, T. TUC (Wembley) 1982: 396).

The adversarial, 'protective' attitude manifest in these statements found perhaps its most dramatic expression in the discourse of Bill Keys, who saw the union role as extending even more broadly, to protection from *society as a whole*: 'I have never seen the trade union Movement other than as an organisation of working people challenging the excesses of a political-industrial-economic society with which our people have to struggle day by day. We are the countervailing force to those excesses, and it is for that reason alone that this Government wish to destroy us as an effective force' (TUC 1982: 466).While this might be seen as an isolated remark, it nevertheless demonstrated the potential which existed for the Conservative Government to marginalise the unions - if there were those within the union movement who viewed 'society' as an 'external force', as Keys implies, then it could plausibly be argued, as the Government/'New Right' sought to do, that the unions were not a legitimate or valid element of that society.

The protective aspect of the unions' 'sword of justice' role thus shaded into a claim by the unions to make representations about, and perhaps become involved in, wider Government policies on the economy and social welfare. In consequence, the unions, and particularly the TUC, claimed the right to exercise a voice in government, a function which had a lengthy history (Taylor 1993: *passim*), given the 'continuing political imperative of British trade unionism' (McIlroy 1995: 185):

> 'Through unions and the TUC, pressure can be brought on the Government on a whole range of subjects that matter to ordinary people:
> - on education, training and youth unemployment;
> - on the public transport system, equality for all those at work and fair treatment for all those without a job;
> - on the social services, the National Health Service, pensions.
> In short, the trade union Movement is concerned about the well-being of its members and their families 'from the cradle to the grave' (TUC 1983: 6).

In effect, the unions were calling for a consultative role on economic and industrial policy which had been denied them by Thatcher's policy of excluding them from decision-making processes: 'Government is determined to deny the trade union Movement any effective voice in the decisions which deeply affect working people. It has rejected any notion of engaging in genuine consultation with, or reaching a broad understanding with, the trade union Movement on economic and social policy' (GC Report, TUC (Wembley) 1982: 351).

However, while the unions' protective role was founded upon the inevitability of conflict with employers and Government, the calls to exercise a voice in economic policy were couched in much more conciliatory terms. The vocabulary here was of rationality, moderation and cooperation: 'Unions want to build a better future. Successful industry competing in world markets. Efficient public services meeting the needs of ordinary men and women. Unions can achieve most when they work with Government and employers, playing a positive role in moving our country forward - when they can work towards common goals rather than being locked out from influence and involvement' (TUC 1983: 13). The unions' cooperative approach was placed in stark contrast to the Government's damaging and destructive attitude towards the economy: 'The trade union Movement has a massive contribution to make in solving Britain's problems. But instead of harnessing the commitment of the Movement to a joint endeavour to cure our national ills this Government have repeatedly turned away from the hand we have held out to them' (Parry, T. TUC 1980:362). In this manner, the TUC/unions could claim to be protecting the *national interest*, with the Government unprepared to do so and thus marginalised.

As custodians of the interests of the nation, the union movement could seek to argue that it was protecting the interests of a much wider constituency than 'working people'. This was a particular theme of *Hands Up For Democracy*, which listed 'some of the things the trade unions are doing' 'for children and young people', 'for people at work', 'for the unemployed' and 'for the retired' (TUC 1983: 6-9):

'Many things which we now take for granted would not have been achieved without pressure from the trade union Movement. In recent years, for instance, the Sex Discrimination, Equal Pay and Health and Safety at Work Acts were introduced following pressure from the trade union Movement. The Health and Safety Commission; the Advisory Conciliation and Arbitration Service; the Manpower Services Commission; and the National Economic Development Council - all doing vital jobs for the country in different ways - depend for their existence on the active support and work of trade unionists. Child benefits, pay slips which show how much has been deducted in tax, the pensioners' Christmas bonus, country of origin markings on goods, public holidays on May Day and January 1 - these are just a few of the things which have become reality only after pressure from the trade union Movement' (*ibid*: 9).

Union leaders also made use of the language of history to emphasise that their role and achievements were fundamental within British political society: 'the very basic fabric of the society that we have taken hundreds of years to build is now under attack and some of us even doubt if it can be restored' (Keys, W. TUC 1981: 426); 'none of our accepted freedoms today would be a possibility had our forefathers not been prepared to defy the law. We could not have combined had we not defied the law. Women would not have won the vote had we not defied the law. We would not have the right of freedom of political expression in the way that we have had we not been prepared to defy the existing law' (Scargill, A. TUC (Wembley) 1982: 384).

As previously discussed (pp.131-6), the language of history could be a powerful rhetorical device. If the Conservative Government was seen not only to be denying unions a *present* role, but also to be attacking a movement which had made a crucial contribution to making the nation what it was today, then its policies might come under increasing public scrutiny, if only because the Government was thereby 'invalidating' nearly a century of British history: 'trade unionism is a major and unique barrier to mass impoverishment and a return to the servitude of pre-1906' (Gill, K. TUC (Wembley) 1982: 400). By focusing in this way upon what they had achieved for the nation, both past and present, the unions thus sought to counter Conservative attempts to portray them as an irrelevant or inimical institution within that nation.

Such language could thus serve the purpose of 'reintegrating' the unions into the political community or nation. A similar result could be achieved by an inclusive definition of *who* the unions represented - the greater their 'coverage', the more difficult it might be for the Government to marginalise them. Thus, the argument was made that the unions were representing a growing number of working people: 'During the past decade the

Movement has come to represent more than ever before a broader and broader spectrum of working people throughout the country and, representing that broader and broader spectrum, we have made great advances and we have made them together' (Dawson, P. TUC (Wembley) 1982:401).

However, while this widening of union coverage might enable them to speak for increasing numbers of people, it is notable that the union movement was still only seen as representing 'working people', a description which might return it to the language of 'class' discussed above: 'We represented the working class, not anyone else. That was what we talked about' (Poole, interview), and thus lend credence to the Conservative argument that unions were 'sectional interests'.

In *Hands Up for Democracy*, in contrast, the emphasis upon the achievements of unions within British society was combined with a definition of unions which equated them with the wider community: 'The next time you are in a crowd look around. Whether you are in a supermarket or a football ground, in a bus or in a café the chances are that many, if not most, people around you will be trade union members. Doctors and lorry drivers; dockers and designers; office workers and shop assistants; they all go to make up the unions... Unions don't just *represent* the people of Britain. They *are* the people of Britain. So when Mrs. Thatcher and Mr. Tebbit attack the unions, they are not having a go at some evil abstraction, some secret conspiracy. They are attacking the British people' (TUC 1983: 2 - italics in original).

Such an equation of 'the people/nation' with the trade unions was potentially an important means of gaining broader support for resistance to the legislation in so far as the *public or national interest* could be portrayed as damaged *directly* by the Government's policies. Such language attempted to contradict the notion that the Conservatives were attacking a force 'alien' or threatening to British society by 'humanising' the trade unions and rendering them familiar - if you were not a member, then your neighbour would be. The Conservatives were therefore attacking you, or those you knew.

Defining the audience

Linked closely to this question of 'who the unions were' was the issue of the audience being addressed. If, as implied by *Hands Up for Democracy*, the unions and the

public were fused and indistinguishable, then it could be argued that there was no particular need to adapt the message so that it was appropriate for public consumption - union interests were identical to those of the public. To an extent this would seem to have been the case - Peter Morris remarked that public service unions 'made no particular attempt before 1983 to appeal to the public' (interview).

Nevertheless, from around the time of the Wembley Conference onwards a greater attempt to appeal specifically to the public may be detected, rather than an assumption that the concerns of unions and the public were the same. This could be done *directly*, tailoring the message slightly so as to suit different audiences: 'We must get across to the public the positive face of trade unionism, which is so distorted in the hostile propaganda spread by our enemies... So these are the messages that we want you to get over. To your members, this Bill is aimed at them and at the ability of their unions to defend them... To the public, that this Bill is utterly irrelevant to the nation's real needs and a danger to the public' (Murray, L. TUC (Wembley) 1982: 380-1); 'The trade unions have to educate their members at the grass roots about what this Bill is going to be to them and what it is going to mean to their families. We also have to go on a programme of educating the public at large that the trade union Movement, in defending their rights, are actually defending their civil liberties as well' (Marsland, T. TUC (Wembley) 1982: 402). Alternatively, the public could be addressed by using union members as channels of communication: 'The first task will be to spread the message of opposition among union members, and through them to the wider public and employers' (GC Report, TUC (Wembley) 1982: 352).

Union discourse can therefore be seen as constructing an audience - classifying those who were receiving the messages (either those sitting in the conference hall listening to Congress speeches, or those reading reports of those speeches or TUC pamphlets or posters) into various categories and choosing the message most suitable to each. A threefold division can be detected, between activists, 'ordinary' union members and the wider public: 'We have to get over the case against the Employment Bill, not just to those who are active within our unions, but to the majority of members who are inactive and to the wider public' (Mills, L. TUC (Wembley) 1982: 382). The advantage of this approach for the unions was that the language could be adapted to suit those being addressed: 'There was an important debate throughout the 1980s as to who the constituency of the unions was... there was a recognition of different types of audience. However, the better General Secretaries did not have 'different voices' - they would say the same thing to

different audiences, but in different ways which reflected the audience' (Morris, interview). This might enable the unions to be somewhat more sophisticated in their use of language, reflecting the fact that each type of audience had a different set of priorities and concerns.

The perceived need to devise or adapt a message to suit a particular audience sprang in part from an awareness that there were high levels of support among union members both for the Conservative Government and the legislation itself: 'some members themselves may naïvely think that the Bill is necessary and there is no shortage of privately funded opinion polls quoting large numbers of trade union members supporting this unnecessary legislation. We have to convince our own members and also convince the wider public' (Mills, L. TUC (Wembley) 1982: 382); 'Does not every measurement of public - indeed, trade union members' - opinion show that we have only minority support? Why?' (Hammond, E. TUC (Wembley) 1982: 393). There was also a consciousness that media support for the Government and the legislation had played an important part in shaping members' attitudes to the policies: 'Many members' ideas about the legal attack on unions are taken straight from the media. Yet the media and politicians present the legal changes in a very misleading way. We have seen how myths have been created to lead into the idea of 'reforms' of 'abuses'. Most members will only learn of the real threats to them and their union if activists take the trouble to tell them' (TUC 1982c: 34).

Yet while this showed the unions to be responsive to the need to adapt their discourse to the interests and concerns of differing audiences, the final extract shows that potential problems remained with this approach. The 'activist' was seen as the primary conduit by which messages about the legislation could be transmitted to the members (and thence to the public): 'So we need to spell out to our activists, and they in turn have to bring home to the members, the nature and purpose of this attack' (Murray, L. TUC (Wembley) 1982: 379); 'Active trade unionists must think clearly how to counter these myths as part of the campaign against anti-union law. Putting forward a positive image of trade unionism is a key element in rebuilding morale and strengthening membership awareness of the essential role of trade unions' (TUC 1982c: 7). Thus, although the TUC/unions knew that they needed to 'convince our members - every one of them, not just the activists, not just the local officials - of the need to highlight the damaging effects that this legislation will have upon their union' (Tuffin, A. TUC (Wembley) 1982: 400),

the language in which they sought to achieve this tended to be directed towards activists,[17] a fact acknowledged by the former TUC General Secretary:

> 'In so far as we were addressing trade union members, and trying to stir them into action with demonstrations *etc.*, we were addressing activists. There most certainly were pamphlets which were addressed to the public, but I suspect we never thought our approach through and we were in fact addressing activists, not the wider public. What we never did was to take opinion polls... We never got through to the rank and file. Demonstrations in Hyde Park, Newcastle, Cardiff - they were gatherings of the faithful. One used to see the same faces all the time. We were talking to each other - it was an internal conversation... We never took a deep breath and said 'what is our public relations position' (Murray, interview).

The result of this approach was that, as another interviewee remarked, the 'activist' tended to be prioritised over the other categories of audience, and the language used was that which would appeal to him/her: 'unions addressed public, members and activists in the same way - using the language of activists' (Poole, interview).

The problem with this - and a potential difficulty in classifying the audience into various categories - was that the interests and vocabulary of activists may not have been compatible with those of 'ordinary' members and the public. In particular, activists, well versed in the history of the labour movement and frequently tending toward a greater degree of militancy than other union members, might favour the discourses of confrontation, unity and solidarity, class and tradition, while the public and union members might regard such language as unpersuasive: 'There was a gap between what was said for public consumption and what may have been said to please the activists. Union leadership was involved in a 'game' in which they appeared sensible and rational to the public in order to win public esteem, and at the same time appealing to activists by talking in fairly traditional terms' (Hall, interview); 'Members didn't want a barnstorming speech - they actually wanted their problems solved' (Poole, interview). These were difficulties with which the unions had increasingly to deal as the decade wore on, as I shall discuss in Chapter 6.

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[17] This problem tended to be exacerbated by the fact that the TUC Congress was attended by union activists rather than 'ordinary' members or the public; while many TUC publications (with the notable exception of *Hands Up for Democracy*, which had a considerably more populist tone) were also addressed to activists - for example, the 1982 campaign pack contained a set of 'speaking notes' designed for union officials conducting meetings.

In conclusion, Len Murray's observation that, in the early 1980s, unions were 'using language in ways which were hallowed by tradition' (interview) seems to be strongly borne out by the material discussed in this Chapter. The language of conflict and confrontation, the discourse of class, the emphasis upon 'unity' and 'solidarity' and the stress laid upon the historical development and achievements of the union movement all essentially emanated from the unions' pluralist analysis of the industrial relations system in Britain, which had developed over the course of many years, while even the attempt to present the unions as reasonable institutions offering assistance to the nation as a whole owed something to the desire to return to the 'quasi-corporatist' arrangements of the 1960s and early 1970s. The use of such language is understandable, given the conservative nature of trade unions (see p.11), the unions' conviction that Thatcherism 'was a passing phenomenon' (Murray, interview - see p.102) and the priority given to activists as consumers of union discourse.

However, certain shifts in patterns of language can also be seen as emerging during this period - particularly in the unions' response to the Government's use of the language of individualism and 'democracy'. The unions showed themselves aware of the need to respond to these discourses and to construct an effective counter-argument. Moreover, from around the time of the Wembley Conference in 1982, the TUC and union leaders also started to demonstrate a consciousness of the need to adjust the vocabulary to suit a particular audience and to make appeals to the public and union members in an attempt to counteract the Government's attempts to marginalise them as illegitimate institutions within British political society. I shall now move on to discuss the progress of these developments by analysing themes in union discourse in the period 1986-1990.

CHAPTER SIX: Union responses and language 1986-90

In order properly to comprehend the responses, as articulated in discourse, of the trade union movement to Government policies and legislation in the period from the publication of the consultative document on *Industrial Relations Legislation* in January 1986 to the fall of Thatcher in November 1990, it is necessary first briefly to discuss developments in the TUC and unions following the Conservative election victory in 1983.[1]

The 1983 Congress, the first after Labour's substantial election defeat, saw the emergence of 'new realism' in the union movement (Taylor 1993: 268; Bassett 1986: 46). This amounted to a retreat from the confrontational stance of non-cooperation which characterised much of the TUC's response during the first Thatcher administration (see pp.104-21), and placed emphasis upon the moderation and reasonableness of the unions. This conciliatory policy found expression in the document *TUC Strategy* (1984) which stressed the contribution which unions could make to economic improvement and the important representative role they played in society, thereby enabling them to assist in the task of governing the nation. To this end, Len Murray sought to enter into broad policy discussions with ministers, and the refusal to coordinate union action under the Wembley principles in support of the NGA's dispute in December 1983 strongly signalled the TUC's desire for rapprochement with Government. However, Thatcher's refusal to agree to a 'no-strike' deal following the banning of unions at GCHQ (see p.26) and the subsequent miners' strike of 1984-5, 'temporarily derailed' 'new realism' (McIlroy 1991: 79), causing the TUC to withdraw temporarily from NEDC and persuading Murray to resign as General Secretary.

The Trade Union Act 1984 produced a more restrained response from the TUC than previous pieces of legislation, with decisions as to compliance with the provisions being left to individual affiliated unions, several of which changed their rules to accord with the new measures. Although the unions achieved a 'victory' on the issue of political fund ballots (Part III of the Act; see p.26), taken as a whole, 'the summer of 1984 saw the change from opposition to compliance firmed up, even if formal defiance was maintained in relation to certain aspects of the legislation' (McIlroy 1991: 87). This was exacerbated by the dissolution of opposition to the receipt of state funds for union ballots, with the

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[1] See p.19 for an explanation of the periods chosen for analysis in this thesis.

AEU and the EETPU conducting ballots resulting in majorities to accept, and culminating in agreement by the General Council of the TUC in 1986, that decisions on the acceptance of state funds for ballots should be left to the discretion of affiliates.

Important as these developments were for TUC/union language in the latter part of the 1980s, it can be argued that it was the miners' strike of 1984-5 which 'brought about a fundamental shift in the balance of power between the government and the trade unions' (Davies and Freedland 1993: 492), the effects of which manifested themselves in the unions' discourse concerning their role in the British nation (see section V). In particular, the fact that the Government was able to portray the strike as a threat to national security and public order, assisted by the actions of the NUM in transferring funds abroad and accepting funds from the USSR (*ibid*: 495) contributed to the rhetoric and policy of marginalisation, which formed an important element of the Conservative/'New Right' approach to unions (pp.60-6). Moreover, the absence of any coordinated response from the TUC in support of the strike, despite the national - rather than sectional - nature of the underlying grievances, underlined the inability of the TUC to mount an extensive campaign of defiance or to engineer substantial solidarity support. In this respect, the strike was 'a watershed which facilitated the resurgence of the now not so new realism' (McIlroy 1995: 214), reaffirming the TUC's cautious response during the remainder of the decade and causing the TUC and Labour leadership to begin to 'review and revise their whole approach to the law' (Moher 1995: 31), manifested in the gradual shift from a system of 'immunities' to one of 'rights' advanced in the 1986 documents *Industrial Relations Legislation* and *People at Work: New Rights, New Responsibilities* (see pp.91-2).

Thus, 'by the time of the Conservative election victory in 1987 any pretence of TUC coordination of union opposition had vanished' (McIlroy 1995: 259). The TUC opposed the 1988 Act, but the campaign was very different in tone from that surrounding the 1982 Act, being focused around 'lobby[ing] employers, Conservative MPs and the House of Lords on the dangerous consequences of the proposals' (GC Report, TUC 1987: 31; see also GC Report, TUC 1988: 29-30): 'we adopted a workmanlike and methodical approach in our opposition to the Bill. A key focus was on the Bill's various parliamentary stages. We lobbied long and hard at meetings with Ministers and backbench MPs. We attended every meeting of the Commons Standing Committee on the Bill. We kept in very close contact with the Labour Front Bench dealing with the Bill, attending weekly

meetings on tactics to delay and oppose the Bill, and helping to draft probing and weakening amendments' (Grantham, R. TUC 1988: 422). Similar tactics were adopted in respect of the Acts of 1989 and 1990 (GC Report, TUC 1989: 19; 1990: 4), with particular emphasis being given to opposition expressed by certain employers' organisations, notably the IPM (see p.172).

By 1990, therefore, the nature of TUC/union responses to the legislation had changed considerably. The policy of defiance and non-cooperation evident earlier in the decade - and exhibited most powerfully in 1982 - had dwindled, in the light of the inability and reluctance of the TUC to mount any coordinated opposition to the legislative measures, into one of relatively perfunctory protest at each new piece of legislation,[2] coupled with an attempt to persuade employers, MPs and others that the legislation was inequitable (see below, pp.176-82). The unions had learned to 'live with the law' (Moher 1995: 37), accepting - in the light of the Labour Party's reluctance to repeal all of the legislation (McIlroy 1991: 211-20) - that the law was in industrial relations to stay.

The developing responses and strategies of the TUC and unions during this period have been chronicled by McIlroy, while alterations in patterns of workplace behaviour and the rise of so-called 'business unionism' - which might be expected to generate its own language - have been examined by others (Bassett 1986, Roberts 1987 - see further p.196). There remains, however, a need to evaluate and interpret the *discourse* of 'new realism' and the changing patterns of union vocabulary in the later 1980s, which I shall attempt to do in this Chapter, once again drawing upon TUC publications and Congress speeches for the purposes of the discussion.

I. The language of 'new realism'

The reassessment which was implied by 'new realism' in the TUC and unions thus involved, in the first instance, a recognition that they were functioning in a changed (and hostile) political and legal environment. In part, this was an acknowledgment that the voluntarist approach to industrial relations was no longer appropriate: 'In our view there is no question of excluding the law from industrial relations' (TUC-Labour 1986: 4 - see

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[2] The TUC official response to *Unofficial Action and the Law* consisted of a five page typed sheet, in stark contrast to the extensive materials produced for the 1982 campaign (TUC 1989d).

also TUC 1986a: 3), causing the unions to consider the need to switch to a system of positive legislative rights (see Chapter 4). However, it also reflected an awareness of broader changes in the economy and in the culture of management which might affect the position of unions: 'The pattern of work in Britain is changing: the kind of jobs many people do is different, and so is the way they do them' (TUC-Labour 1986: 6); 'Congress recognises the major changes that have taken place in the UK labour market in the last nine years as a result of mass unemployment, the Government's relentless assault on trade unions and individual employment rights, the increasing use of aggressive management tactics in both the public and private sectors, and the development of a divisive and discriminatory, two-tier labour market' (Composite Motion 26, TUC 1988: 622). It also came to entail an acceptance of the fact that the Conservative Government was unwilling to enter into a dialogue with the unions, and that they accordingly needed to wait for the election of a Labour Government for the realisation of their proposals: 'It is not an agenda that we can negotiate with the present Government. It is something that can only be delivered by the return of a Labour Government' (Young, A. TUC 1990: 289). This was not, of course, the initial view of Len Murray, whose proposals at the 1983 Congress were intended to form the basis of discussion with ministers - however, the refusal of Thatcher to compromise on the issue of GCHQ seems to have forced the abandonment of this strategy (McIlroy 1991: 79).

The changes in political, legal and economic conditions which the unions confronted were seen as being so significant that there was no possibility of reversing them. This view was particularly strongly espoused by Murray's successor as TUC General Secretary, Norman Willis, who expressed the belief that 'We cannot simply turn back the calendar, and obliterate the past, damaging decade. We must start from today's problems, and tackle them in a way that reflects the concerns and priorities of today's workers' (Willis, N. *TUC Bulletin*, July 1990: 2). This type of acknowledgment of the intensity of change preventing a reversion to the pre-Thatcher position allowed Willis and his supporters to portray themselves as up-to-date and concerned with contemporary issues - note the repetition of the word 'today' in the extract. In contrast, those who opposed the TUC position were depicted as backward-looking and unrealistic, an accusation made with particular stridency by the 'modernisers 'in the 1990 debate over the TUC statement *Employment Law: A New Approach* (see p.192): 'We all share a bit of nostalgia - the feeling that if it was only like that again, problems would somehow go

away, but life is not like that... We have to start with the only world that we have - the world as it is, not the world as we would like it to be' (Willis, N. TUC 1990: 285); 'Nostalgia is all very well. But it is a bad basis for making policy. I do not want to go back to the 1970s and I would much prefer going into the 1990s' (Edmonds, J. TUC 1990: 309).

Edmonds' statement indicates that this approach involved more than simply learning to live with *current* circumstances. The unions might have learned to adapt to a changed situation; but they also sought to remodel themselves for the future. In this respect, a key word in 'new realist' discourse was 'challenge'. The changes in political, legal and economic circumstances represented difficulties for the unions - but they were surmountable, and therefore also offered opportunities for development which might enable them to move forward: 'We have had many challenges to face during the past year, and there are undoubtedly many challenges ahead. There can be no slackening in our resolve' (Grantham, R. TUC 1988: 423); 'We shall respond to this challenge positively, by continuing to look ahead and to set our own agenda' (Christopher, C. TUC 1989: 304); 'Our task - our responsibility - is to take the Movement to the challenges of the 1990s and beyond' (Willis, N. TUC 1990: 285; see also SRB 1988, *Meeting the Challenge*).

The significance of this language was that it allowed the 'new realist' stance to be represented as *positive* - turning obstacles into advantages, as a fuller consideration of Christopher's remarks indicates:

> 'The Government's attempts to kill off trade unions have failed. Were that not the case it would not have been necessary to keep introducing fresh bills. Unions are certainly hamstrung to a point, but they are keeping to the law and even turning it to advantage... Our enemies have tried to force trade unionism into a negative mould - to portray unions as enemies of progress. We shall not fall into this trap. We are eager to play a positive role. We know that if we are negative we have no real say in planning our future at all. We are willing to take responsibility to help create the future... Next year, as the General Election approaches, the Government will try to hit us hard... Having lost the initiative themselves on the main issues of the day, they will try to characterise the unions as backward looking. We shall respond to this challenge positively, by continuing to look ahead and to set our own agenda' (TUC 1989: 302-4).

The notion that the unions, by meeting the challenges offered by the various changes, could turn them to their advantage and set their own agenda, contrasted starkly with the defensive rhetoric previously commented upon (pp.128-31). Moreover, this approach was *active* rather than passive - rather than simply responding to events, the unions were seen

to be vigorously creating their own future. The vocabulary was accordingly that of 'building' and 'construction': 'We have to start the work and keep it up constructively over the years because our time is coming. We have to build well for the future' (Grantham, R. TUC 1989: 346); 'Congress welcomes therefore the policy adopted by the General Council which stresses the creation of new constructive legislation' (Composite Motion 1, TUC 1990: 287); 'we are not trying to build the shabby monuments of the past again, but trying to get something better. We are building our new system on the knowledge that other people in other countries have done better than us, have got better rights and better powers for trade unions' (Edmonds, J. TUC 1990: 309). This emphasis upon the creativity of unions was thus closely bound up with the shift from a policy of 'immunities' to one of positive 'rights' (see Chapter 4) which enabled them to shape the law to their own benefit, rather than simply seeking to minimise its impact.

The language of 'new realism' was therefore positive, constructive and forward-looking. Unions had not merely recognised the changes in the law and adapted to them; they had started to turn them to advantage - they were not simply coping with present difficulties, but looking to shape and create their future. 'The future' was a fundamental element of 'new realist' discourse, as I have already suggested. The conception that the changes of the 1980s were so fundamental that they could not be reversed encouraged 'new realists' to look forward and to portray their proposals - particularly in the form of *Employment Law: A New Approach* - as progressive: 'The buck stops here. The future starts here. It is an historic step that we have to take... Make a start for the future... Support each other and let us start getting a line under where we have been and a direct line to the future' (Willis, N. TUC 1990: 285, 286, 311); 'to maintain this progress we have to make a clear choice between looking forward to the future and harking back to the past... I urge you to vote for the future' (Young, A. TUC 1990: 288, 289); 'We have to demonstrate beyond reasonable doubt that we are determined to see an industrial framework of law for the future, not resurrect the power of the past' (Jordan, W. TUC 1990: 306). In contrast, those who did not support the proposals were seen as retrogressive, motivated by nostalgia and divorced from reality (see above): 'In the harsh daylight of the 1990s, the yearning for old immunities does not amount to a policy. It is more like a cry for help. It is just not sensible to give any impression that we are asking for the trade unions to be above the law' (Willis, N. TUC 1990: 285 - see above, p.94). The perception seems to have been that the forward-looking vocabulary would be of

greater appeal to the public and to 'ordinary' trade unionists.[3]

Those who endorsed the 'new realism' or modernising approach thus sought to distance themselves from the past. The key vocabulary was thus that of *renewal*, as the very phrase 'new realist' implies. By labelling their policies as 'new', the TUC and its supporters among the affiliated unions could emphasise that they were distinct from those of the earlier 1980s, and therefore that unions had recognised the changes which had taken place and had acted upon them by adapting their policies to meet those developments. This was implicit in the titles of both the 1986 Labour Party/TUC statement, *New Rights, New Responsibilities* and the TUC document of 1990, *Employment Law: A New Approach*. Elsewhere, the language of renewal was to be found in many publications and speeches: 'Britain needs a new approach to industrial relations' (TUC-Labour 1986: 3); 'nothing less than a new start is needed, a new deal for the people of Britain' (TUC 1990b: 9); 'The case for a new, balanced approach to employment law is overwhelming' (TUC 1990c: 21); 'at the heart of our vision is a new deal for individuals at work' (Willis, N. TUC 1990: 285); 'It aims to replace Mrs. Thatcher's anti-union laws all right, but it aims to replace them with a new framework of positive rights, not with the old framework of immunities which have ceased to serve their purpose, a new framework which recognises the rights and responsibilities of trade unionists' (Young, A. TUC 1990: 288).

In so far as the unions had moved away from 'immunities' and towards 'rights', the approach was indeed 'new' (or at least non-traditional),[4] but I would argue that, to a large extent, the *content* of the policy was less significant than the *labelling* of it as 'new', which enabled the unions to make the claim that they had *reinvented themselves*: '[Composite Motion 1] embraces a policy which lets us get on with the job of winning working people to our ranks, creating the new blood of activists and stewards and rebuilding our great Movement, so that we can play our proper part in the economic and social regeneration of this nation' (Davies, D. TUC 1990: 307). As such, the unions could argue that they had divested themselves of the unsuccessful and unpopular policies of the early 1980s and, in

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[3] *Cf* Dunn's discussion of the 'attractiveness' of the pioneering metaphor, which was also progressive and forward-looking (see p.108).

[4] As pointed out (p.67), the debate over 'rights' and 'immunities' had a lengthy history.

response to change, were changing themselves, in order to move forward to the future.[5]

Relationship with employers

Another important component of 'new realism' in the TUC and unions, as mentioned (pp.164-5) was the relationship with employers and, especially, employers' organisations. Particular emphasis was placed upon lobbying employers as to the likely consequences for industrial relations of the 1988 and 1990 Acts, the argument being that the measures would cause disruption which was in the interests of neither side: 'I want to say that the employers are concerned about this proposal as well. They are very genuinely concerned, and so they should be, because it will sour industrial relations on the shop floor, the credibility of ballots will go, and there will be more unofficial action' (Knapp, J. TUC 1987: 439); 'We are not alone in our opposition to the Government's employment legislation... Employers have criticised the impractical burdens which the draft code of practice on industrial action balloting would have imposed. They realise that the code would only inflame disputes resulting in more industrial action' (Grantham, R. TUC 1989: 345).

The 'warning' that the policies would create disruption and damage for unions and employers alike by exacerbating industrial relations problems was, of course, nothing new - similar claims had been made in the earlier part of the decade (see pp.114-115). However, there was a subtle alteration in the tone of these statements. The *active* nature of the unions' role, with the implicit threat of damaging consequences (Murray's 'putting the frighteners on that manager' (p.115) or the claim that 'employers have got to understand - they have got to be made to understand' (p.127)) had been replaced by an assessment of the prevailing mood amongst employers - that they were worried about the measures - which did not necessarily require union leaders to take any action. Again, this represented a 'realistic' evaluation by the unions as to what they could achieve in a changed political, economic and industrial environment - that in the light of declining levels of membership, economic difficulties and the popularity of some of the legislative measures with union members, coordinated action which would bear out the validity of

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[5] There is an obvious parallel between this aspect of trade union discourse and the Labour Party under Tony Blair's leadership, effectively renamed 'New Labour' to distinguish it from the electorally unsuccessful party of 1979-92.

the view that the measures would cause damage and disruption could not be guaranteed; moreover, previous Acts had not caused widespread damage to the economy.

This change in tone from a threatening, adversarial approach to one based primarily upon an assumed identity of interest with the employer was also reflected in the particular consequences which were selected for emphasis. Although some union leaders, as just discussed, warned of possible disorder in industrial relations, the TUC itself chose to focus largely upon the administrative consequences for employers of the legislative measures: 'The Green Paper appears to be as much an attack on employers, for tolerating the closed shop, as on the unions concerned. Although the Green Paper refers to closed shop 'arrangements', we would point out that they are in fact agreements, either formal or informal, between unions and employers. We doubt whether employers would welcome legislation which could result in them being liable for substantial compensation. We also question the proposal to extend the right to compensation to those belonging to a union other than the one with the membership agreement. This could cause employers problems with multi-unionism' (TUC 1989b: 4). Such an analysis of the effects of Government policy moved well beyond the problems which unions themselves could create by industrial action to embrace other difficulties which might be caused to employers. The TUC was thus able to portray itself as - in effect - looking after the interests of employers, as well as workers: 'Contrary to the picture of them that the Government has, small employers are not ignorant or illiterate. The real burdens on small businesses are high interest rates, VAT regulations and commercial uncertainty' (TUC 1989a: 4); 'one of the Government's aims in introducing the Bill is to divert attention from the real problems facing employers such as high interest rates and skill shortages' (TUC 1990b: 7). The implication of this argument would seem to be that while the TUC was dealing with what it claimed were the 'real needs of the labour market' (GC Report, TUC 1989: 22), the Government was simply acting out of anti-union prejudice.

Unions and employers might, therefore, be seen as having common interests and as being ranged together against the Government's proposals, which would damage them both. As in the earlier part of the decade (see p.115) the unions tried to demonstrate that there was a 'community' of opposition to the measures by quoting employers' organisations in support of their position: 'Concern has also been expressed by the Institute of Personnel Management and other employers' organisations that further legislation is unnecessary' (TUC 1990a: 10); 'It is not inconceivable that an employer

could provoke a strike, dismiss those deemed surplus to requirements and then continue business with the workforce reduced to the required size...our concerns in this respect are shared by the Director General of the Institute of Personnel Management' (TUC 1989c: 4). I would argue, however, that such a stance was more persuasive in relation to the later Acts, and more closely grounded in reality rather than rhetoric, since employers' organisations did indeed express concerns over various aspects of the legislation - for example, the Code of Practice on Industrial Action Ballots initially published in draft form in 1988 was criticised by the CBI, the EEF and the IPM (McIlroy 1991: 161 - see quote from Grantham, above p.170), while the TUC and the IPM produced a joint statement criticising various aspects of the Employment Bill 1988 (GC Report, TUC 1988: 30).

The greatest level of criticism was, however, reserved for the provision which later became s.3 Employment Act 1988 (see further below, pp.211-3), which 'united all the employers organisations from the CBI and the EEF to the IPM. Even the Freedom Association and the Association of Conservative Trade Unionists opposed it' (McIlroy 1991: 139). The TUC and union leaders made considerable capital out of this: 'Employers' bodies, including the CBI, the Engineering Employers' Federation and even the Freedom Association, have all opposed the latest proposals. They recognised that it will cause anarchy in internal union organisation. Only last week the Scottish Engineering Employers told the Government that this latest dose of union bashing was going too far. The proposals to remove the right to discipline or expel rule-breakers was described as going against natural British justice by the Secretary of the Federation' (Chiverton, M. TUC 1987: 446); 'We are not alone in seeing this as signalling a contempt for democracy, and as undermining ballots in principle and practice. The CBI, the IPM and a whole host of organisations with whom we would not always find ourselves in agreement have condemned this clause' (Willis, N. TUC Bulletin November 1987: 2).

The rhetorical effect of this was to isolate the Government, rather than the unions, as Conservative language sought to do - note the phrase 'We are not alone' - thus facilitating the depiction of its policies as disruptive, prejudiced and unsuccessful. In contrast, the TUC/union policies, backed by a broad range of support, could be seen as forward-looking and efficacious: 'My hope would be that our vision of employment law would be backed not just by our political friends, but by employers, and all who want to see a stable and effective system of industrial relations' (Willis, N. TUC Bulletin July 1990: 2). In some senses, this might be seen as a stance informed by the union movement's

voluntarist tradition[6] - the unions and employers, not Government, knew best how to construct a stable and effective system, but, of course, with the crucial difference that the TUC now accepted that law and 'positive rights' formed a part of its 'new vision - hence the need for a 'new legal framework' introduced by 'a new Government committed to fairness' (TUC 1990c: 22, 23).

Having established that unions and employers' organisations *shared* concerns about the legislative measures, the 'new realists' in the TUC and the unions could invoke the language of 'partnership' to describe their relations with employers. Once more, it is perhaps erroneous to view this as a wholly new development in union discourse - in 1980, the TUC had spoken of trade unionists and management working together to solve problems (TUC 1980a: 3 - see pp.116) - but the concern shown for employers' wider interests in this later period, coupled with movement by certain unions towards 'business unionism' principles based upon greater cooperation with employers, lent renewed emphasis to this language. There was, moreover, a close relationship between the vocabulary of partnership and the positive or constructive tone discussed above (pp.167-8): 'good industrial relations... must be developed through joint negotiation and agreement at the workplace' (TUC-Labour 1986: 3); '[*Employment Law: A New Approach*] underwrites the guarantee that the Labour Party has given to the electorate to end the conflict-ridden record of Britain's industrial relations, a promise to work for a positive partnership between trade unions and employers... laws that institutionalise cooperation, not conflict' (Jordan, W. TUC 1990: 306); 'We look forward to working with employers to improve industrial relations... We know organisations like the Institute of Personnel Management and the British Institute of Management have been critical of the Government's one-sided measures and we look forward to widening employer support for our new approach and improvements in collective bargaining arrangements' (TUC 1990c: 23).

The language was thus of cooperation rather than conflict, although this was a policy and vocabulary which had to be pursued by other participants in the industrial relations process, not just the unions: 'This is no time for macho management. It is not a time for more law. It is a time for management to listen to what workers are saying, to respond constructively and to work together to solve common problems. The big stick is

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[6] Note also criticism of Government attempts to regulate closed shop 'agreements' between unions and employers (TUC 1989b: 4 - above p.171).

a crude weapon of limited effectiveness. It can bring compliance in the short term. But what we need is cooperation. That can only be achieved by imagination and a genuine willingness to work together, rather than batter a workforce into submission. If the Government was to recognise that, and to encourage that attitude among employers, then it would be a fitting end to a decade of damaging legislation' (Willis, N. *TUC Bulletin*, May 1989: 2).

As Willis suggests, however, the underpinning vocabulary and threat of confrontation had not been totally superseded by that of partnership and cooperation. Conflicts of interest could not be fully eliminated from relations between workers and employers: 'In a free society it is inevitable that disputes will sometimes occur' (TUC 1990c: 23); 'We have constructive relations with countless employers up and down the land, and we always have had - that has always been our goal, a partnership for prosperity. But even in the most ruthless dictatorship you cannot legislate away the clashes of interest that can occur at work' (Willis, N. TUC 1990: 285). It was apparent, therefore, that the unions had not abandoned their pluralist conception of industrial relations, despite the changing environment in which they operated. The persistence of the language of conflict and confrontation could be seen even more strongly in the discourse of those union leaders who were sceptical about 'new realism', as I shall discuss in the next section.

Despite this, the vocabulary of 'partnership' continued to play a significant role in TUC/union discourse well into the 1990s (see GMB/UCW 1990; TUC 1994): 'There has been a seismic shift towards co-determination - this means talking a whole different language' (Poole, interview). In large part, this could be seen as a response to 'human resource management' strategies which had begun to emerge in the 1980s and which generated their own discourse (Dunn 1990; Keenoy and Anthony 1992). In so far as this can be seen as a reaction to changes in management, rather than to the specific issue of Government legislative policies, it is beyond the scope of this thesis; nevertheless, attempts to justify the TUC's 'new realist' policies towards the legislation by using this language, as discussed here, should be seen in the context of this broader development.

The language of the market

Closely linked to the notion of 'partnership' with employers was the vocabulary of economics and the market. Working together with employers was supposed to achieve

economic benefits for union members, since stability in industrial relations (albeit that conflict might on occasion take place) would offer British industries the opportunity to compete effectively in markets: 'All our proposals have as a primary objective the establishment of stable and constructive relations between unions and employers. We want our members to work in successful enterprises and organisations, competing vigorously and effectively. That is most likely to be achieved when all sides are working together and not working against each other, but in a free society you cannot legislate away the possibility of disputes' (Grantham, R. TUC 1989: 346). The stated objective was thus 'a flourishing and fully-employed economy: one that is efficient and internationally competitive; and one in which rising productivity leads to growth in output' (TUC-Labour 1986: 8). Later proposals were therefore justified as providing the 'foundations for a genuine and sustained push for prosperity... essential for achieving the high productivity/high pay economy that the UK needs and deserves' (TUC 1990c: 22, 23), and represented a denial of the Government's claim (in *Removing Barriers to Employment*) that unions acted as a brake on investment, profitability and jobs (see pp.45-6): 'The Green Paper ignores the fact that unions recognise that productivity growth is in the interests of their members as well as the employers. A CBI contributor to a recent TUC seminar on trade unions and the economy said that there appeared to be a greater acceptance of change and flexibility to enhance productivity as part of pay settlements amongst unionised firms compared with non-unionised firms' (TUC 1989b: 9).[7]

Nevertheless, despite arguments such as these, and the assertion that trade unions were addressing the 'real' problems of the labour market - reflected in the claim that 'trade unions were all about the markets' (Murray, interview) - the discourses of the economy and the market do not appear to have been used as extensively, or in as structured a manner, in justification of TUC/union responses to the legislation as in Conservative discourse (pp.42-7). Instead, somewhat vaguer references to 'economic regeneration' (Davies, D. TUC 1990: 307), 'prosperity' (TUC 1990c: 22; Willis, N. TUC 1990: 285) and industries 'thriving' (Philbin, B. TUC 1989: 354) were made.

In part, this may have reflected the failure to develop a viable alternative to

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[7] Note the use of supporting evidence from an employers' organisation.

Thatcherite economic policies.[8] Certainly, union leaders were unwilling to accept the policies of deregulation and freeing of markets which informed Conservative/'New Right' policies and discourse: 'The purpose of deregulation and, in particular, the removal of employment protection, is to create a flexible and fearful workforce, one which is compliant, can be sacked at whim and is reluctant to organise' (McEwen, P. TUC 1986: 459); 'I believe Nicholas Ridley speaks the truth, he echoes the sentiments of Margaret Thatcher, and listen to what he said, and if this is not an indictment, I do not know what is. He was in Japan and he said: 'Japanese businessmen should come to Britain and exploit our low costs and unprotected workforce. Invest in Britain' and the Trade and Industry Secretary informed his incredulous hosts - 'and you will be able to reap the benefits of cheap, compliant but skilled, flexible labour that is unprotected by legislation' (Christopher, C. TUC 1990: 296); 'We cannot leave the issue of union rights and recognition to an unregulated market. Any market must have a social aspect and a social framework, and without it we are left with jungle predators, red in tooth and claw, with constant strife, constant problems and an absence of the progress and prosperity that we and our members want' (Mills, L. TUC 1990: 299). Certainly, in this area, union policies and discourse remained fundamentally at odds with that of the Government.

The language of 'fairness'

The TUC and most union leaders thus continued to express opposition to the Government's policies, both on industrial relations legislation and the economy in general. As noted above, however, the period from 1983 onward saw the disintegration of coordinated opposition to the legislation - no campaigns of defiance comparable to that of 1982 were mounted against the later measures; moreover, the accommodative and conciliatory strategy of 'new realism' emphasised the vocabulary of cooperation, partnership and constructive policies which I have discussed above. Such developments might tend to point to a move away from the use of the 'traditional' vocabulary of confrontation analysed in Chapter 5, predicated upon a conception of industrial relations as adversarial, to justify resistance to the legislative provisions of the later 1980s.

While, as I shall discuss below, it would be overly simplistic to assume that the

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[8] McIlroy (1995: 223) remarks that the TUC's 'Alternative Economic Strategy' of the early 1980s 'never got off the ground'.

confrontational language of the early 1980s had disappeared altogether, it should also be noted that the TUC and union leaders did seek to justify both their policies and their stance of opposition to the legislation in less confrontational ways. One of the keywords for achieving this goal was 'fairness'. Thus, *New Rights, New Responsibilities* was said to be based around two themes, one of which was 'fairness and security at work' and aimed 'to secure freedom and fairness for people at work' (TUC-Labour 1986: 3, 9). Similarly, *Employment Law: A New Approach* was described as being 'based on rights and responsibilities fairly balanced' (Willis, N. TUC 1990: 285) - for the related vocabulary of 'balance', see below); while the statement itself argued that Thatcherite 'abuses' 'must be put right by a new Government committed to fairness' (TUC 1990c: 22).

Calls for 'fairness', which could relate to the treatment accorded to individuals ('consent and support can only be won where there is a perceived fairness in the way people are treated at work' (TUC 1990c: 22); 'A new deal is needed for people at work. Those who are insecure and vulnerable have to be given the confidence which comes from knowing they will be treated fairly' (TUC 1989c: 45)), to unions (see below) or to describe the nature of the industrial relations system as a whole, allowed the unions to present their proposals as moderate and realistic. All that they were requesting was reasonable, equitable treatment: 'All we ask for is a fair industrial relations system - something which is commonplace in other European countries - but only the British Tories cannot live with it' (Todd, R. TUC 1990: 303 - see further below); 'if we are to have... employment laws in this country... that give the trade unions the only thing we need, fairness, then we have to show the public that the laws we seek are realistic, relevant and disciplined' (Jordan, W. TUC 1990: 306).

Such language also enabled the TUC and unions to make a link into a wider discourse of social justice and equal treatment which formed a fundamental tenet of British labourism from the early days of the labour movement - as McIlroy writes, [union] 'practice was based on 'a fair day's work for a fair day's pay' rather than the abolition of the wages system" (1995: 11). In this sense, the vocabulary of 'fairness' was far from new - 'fairness was a continuing theme' (Smith, interview), as illustrated by a TUC pamphlet regarding the first of the legislative measures of the Thatcher era entitled *The Employment Bill is Unfair, Unnecessary and Dangerous* (TUC 1980a).

The moderation and practicality of the TUC proposals enabled it to call for support from a wide spectrum of the public, thus facilitating its reintegration into the

political society from which the Conservatives and 'New Right' had attempted to exclude it: 'The General Council are confident that most workers' and fair-minded people's legislative priorities are closer to those of the TUC than to the artificial concerns of the Government' (TUC 1987a: 7). The unions could thus be seen as located closer to the centre of the political spectrum than the Government, which was marginalised as a result of the prejudice which motivated the legislative measures:'Against this background, all fair-minded people will grasp the one-sided, unbalanced, and hostile nature of the Green Paper's proposals, which in turn will add to the growing public perception that under this Government the law has become unfairly biased against workers and their unions' (TUC 1987a: 4). The vocabulary of 'balance', discussed below, functioned in a similar manner.

In consequence, if the unions' policies were 'fair', then the Government's measures were obviously 'unfair', a central claim in the union movement's continued opposition to them: 'Throughout the year the General Council have continued to highlight the unfairness of the employment legislation introduced since 1979' (GC Report, TUC 1989: 19); 'The ILO has roundly condemned the Tory anti-trade union laws. They are unfair. They are unjust' (Morris, W. TUC 1989: 353 - for the ILO, see pp.198-202). The argument was that the Government was prejudiced against unions, and that this was the stimulus for the legislation: 'There is an increasing recognition that the Government's partisan approach is based on prejudice rather than on any genuine attempt to improve the climate of industrial relations' (Grantham, R. TUC 1989: 345). However, simple assertion that the legislation was 'unfair' and 'prejudiced' was likely to prove insufficient; the unions needed to demonstrate *why* this was the case. A number of interrelated grounds used in support of this allegation can be detected from the materials studied.

Firstly, it was argued that the legislative proposals were based on insufficient evidence. This fits with the analysis of Conservative policies from 1987 onward as being strong on rhetoric, but weak on analysis (Auerbach 1990: 159-60 - see p.41). Moreover, it could be seen as pointing to a more reasoned refutation by the unions of the measures than the language of confrontation might permit. Thus, the TUC criticised both of the 1989 Green Papers on this basis: 'The Green Paper does not provide any convincing evidence to support the proposed legislation... Chapter One of the Green Paper merely gives some bare statistics and anecdotal examples in an attempt to justify the case for legislation... the international comparisons quoted in this chapter are misleading (TUC 1989d: 1); 'The Green Paper is highly selective in its use of research evidence... There is

a considerable volume of academic analysis available on the economic effects of trade unions, but we do not accept that any firm conclusion can be drawn one way or the other... The Green Paper provides no evidence to suggest that so-called secondary action is a problem which requires further legislation... the Green Paper claims that the Commissioner has received such complaints [on union rule books], but no details have been provided' (TUC 1989b: 1, 2). The conclusion to be drawn from the Government's inability to cite any clear evidence in support of its measures was that they were not needed: 'The TUC does not consider that the Green Paper provides any justification for further industrial relations legislation' (TUC 1989b: 1); 'We do not, however, accept that further legislation is called for' (TUC 1989d: 1).[9]

The language of 'irrelevance' may seem to have been some distance away from the use of the language of confrontation to justify rejection of the Government's policies which had characterised union discourse in the early 1980s; however, this was, once again, not a new argument, the claim having been made that the 1980 Bill was 'unnecessary' (TUC 1980a). Moreover, the allegation that the Government was selectively using evidence to justify its position was sometimes backed up by language which called into question the Government's motives as malicious or vindictive, an approach which, as discussed in Chapter 5, firmly cast the Government in the role of 'enemy'. For example, the TUC attacked *Trade Unions and their Members* on the basis that 'few [of the proposals] have been properly thought through - which is unsurprising because the Green Paper is based on either a misunderstanding, or more probably a deliberate misinterpretation, of the way trade unions operate and of the relationship they have with their members. Not only is the case for the proposed 'reforms' flimsy, the motives behind them are malevolent' (TUC 1987a: 1). To this extent, the confrontational approach of the early 1980s remained beneath the surface of TUC discourse (see section II).

The unions also sought to justify their claim that the legislative measures were motivated by anti-union prejudice by comparing the manner in which they were treated with other organisations. Most common, for obvious reasons, was the argument that they were being treated unfairly by comparison with employers, a variant of the language of 'balance' discussed below: 'It should be noted that the proposed legislation [rendering a union liable if an official endorsed unlawful industrial action] goes far beyond the ordinary

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[9] Note also the claim that the IPM and other employers' organisations considered further legislation unnecessary (TUC 1990a: 10 - see p.172).

law which regulates the responsibility of an employer for the acts of its employees... There is no reason in principle why unions should be subject to different requirements, and the fact they are further emphasises the unfairness of the legislation' (TUC 1990a: 9); '[the proposals] seek to impose a burden of administrative law and detailed statutory regulation on unions which is not borne by any other equivalent organisation and is in marked contrast to the Government's readiness to remove many of the statutory obligations from employers in relation to their workforces, and its preference for self-regulation by the City and financial institutions. This illustrates graphically the one-sided approach of the Government to employment law' (TUC 1987a: 4).

As this last extract demonstrates, an implicit comparison was being drawn with a range of institutions wider than those involved in industrial relations: 'The trade union Movement's central criticism of the *1984 Trade Union Act's* provisions on political funds is that the Act provides for the further regulation of unions' political activities while companies continue to be exempt from any legal restrictions equivalent to those applying to trade unions. This inequitable situation cannot be allowed to continue' (TUC 1986a: 12 - italics in original); 'There is also an element of unfairness in this proposal [for a Commissioner for Rights of Trade Union Members]. Members of other voluntary associations do not have Commissioners to protect their rights when the organisations to which they belong are in breach of their rules... An aggrieved trade union member ought, in fairness, to be in the same position as a member of any similar organisation' (TUC 1990a: 14). The inference to be drawn was that unions were being uniquely victimised by the Government: 'the Government is singling out trade unions as having to meet standards which no other comparable organisation is required to meet' (TUC 1987a: 7); 'Independent trade unions are more tightly controlled than any other voluntary organisation' (TUC 1990b: 5). In consequence 'fair-minded' people would reject the policies as simply being a product of anti-union bias and hence unworthy of support: 'We have to say to people that this is discrimination. This is a discriminatory act against a group of trade unions, against the trade union Movement in this country, because nowhere else is that sort of provision made for anybody who seeks to pursue a grievance in whatever sphere of society he may be moving at the time' (Knapp, J. TUC 1987: 438).

Such an analysis resembled the Government's use of the language of 'uniqueness', discussed in Chapter 4 (pp.77-80) to portray the unions as 'above the law' - just as the theorists of the 'New Right' and Conservative politicians claimed that immunities placed

trade unions in a 'uniquely privileged' position above the law, so the unions alleged that the legislative measures had imposed unique requirements upon them. To this extent, the discourse of 'unfairness' could be seen as shared.

Neither was this argument a novel one on the unions' part. As discussed (p.151), the pamphlet *Hands Up For Democracy* had sought to compare the state of democracy in unions with that in various comparable institutions so as to demonstrate that the Government's proposals for legislation to regulate them were inequitable. What was new was that the language of 'uniqueness' was also deployed on a European level, to demonstrate that British unions were being treated in a worse manner than their European counterparts: 'Today, as a result of the present Government's policies, workers in the UK have fewer and less effective employment rights than their counterparts in virtually every other Western European country' (TUC 1987a: 1); 'Britain is now at the bottom of the European league table for trade union rights' (Gill, K. TUC 1989: 350); 'Congress believes that the unending series of ill-founded legislation concerning union affairs has created an unfair and unbalanced framework of law for industrial relations in Britain... By contrast, workers and their unions in all other EC countries enjoy respect from their governments, whatever their politics or differences. Congress believes that workers in Britain should enjoy no less favourable conditions than those granted elsewhere in a free democratic society' (Composite Motion 1, TUC 1990: 286).

The view that unions were being persecuted in a manner unique in Europe gained currency following the TUC's move towards the European Community and the Social Charter (see pp.97-8), and offered an easy opportunity to marginalise the Government, given Thatcher's antipathy towards Europe generally and the Social Charter in particular: 'In Europe the Government is isolated in its opposition to employment protection and measures to promote worker and trade union consultation rights' (Grantham, R. TUC 1989: 345); 'The Government's approach to industrial relations puts Britain at odds with developments in the rest of Europe. The British Government has blocked EC directives in a number of important areas... The measures to establish the single European market by 1992 have further exposed the Government's isolation in Europe... Alone among the 12 EC states, Britain refused to support the Community Charter of Fundamental Social Rights' (TUC 1990b: 8).

Some, however, went still further and argued that the treatment given to unions in Britain meant that workers were worse off than anywhere else in the world:

'Meanwhile legal rights are being stripped away from ordinary people. It is now easier to sack a person in Britain than in any other country in the industrial world' (Edmonds, J. TUC 1986: 452). The assertion that unions and their members were suffering by comparison with all others worldwide, which was given added emphasis by the judgments of the ILO (discussed below, pp.198-202) was perhaps the most powerful of the claims of inequitable treatment which were made in justification of opposition to the legislation.

The language of 'balance'

Closely linked with the argument of 'fairness/unfairness' which formed a key element of union discourse during this period was the vocabulary of 'balance'. Indeed, the two terms were frequently to be found juxtaposed in union rhetoric, to the extent that they seemed interchangeable; certainly, accusations of 'imbalance' could be seen as a subset of the broader discourse of 'fairness' - the legislation was 'unfair', at least in part, because it was unbalanced. If there was any distinction in meaning, it perhaps lay in the difference between an appeal to the *moral sensibility* of the listener (in the case of 'fairness'), while 'balance' was more descriptive of the *state* of industrial relations, being based around a conception of some sort of abstract 'balance of power' between employers and employees/unions.

As discussed in Chapter 3, 'balance' was also a keyword of Conservative rhetoric on industrial relations reform and in this sense could be seen as a shared discourse. However, the views of Government and the unions as to where the 'balance' should lie were clearly different, as acknowledged - albeit in jocular manner - by the TUC General Secretary: 'The Government's original logic was to redress the balance in industrial relations... In fact the legislation has been about as balanced as a two-legged table, and about as fair as those ancient sporting fixtures between Christians and lions' (Willis, N. *TUC Bulletin* June 1988: 2). Thus, while the Government's rhetoric of the late 1980s focused upon the correcting of a disequilibrium in industrial relations, the unions pursued precisely the opposite argument - that the Government's measures had *created* imbalance in the system of industrial relations: 'If its proposals [*Removing Barriers to Employment*] are proceeded with, they will create yet further imbalance in trade union law' (TUC 1989b: 5); 'Yet another stage in the Government's step by step approach to trade union law will only create further imbalance in the already unfair industrial relations framework' (TUC

1989d: 1); 'After eleven years of much ill-founded and malicious legislation the legal framework governing employment matters and industrial relations is unfair and unbalanced... The present law is wholly unbalanced' (TUC 1990c: 21, 23). This problem was exacerbated by the changing economic environment, which had also materially affected the position of working people *vis-a-vis* employers: 'recession and the massive rise in unemployment has had the effect of worsening the imbalance that exists between the worker and his or her employer' (TUC 1987a: 3).

This imbalance had been brought about as a result of the Government's consistent interventions in favour of the employer. Individual legislative measures were portrayed solely as benefiting employers - 'The proposal represents a further shift in favour of employers in the already unfair legal framework for industrial relations (TUC 1989b: 4) ͳ and thus as 'one-sided' (*ibid*: 3), 'partial' (TUC 1987a: 1) or 'biased' (Gill, K. TUC 1986: 433). Once again, this cast doubt upon the validity and morality of the Government's motives and depicted it as the 'enemy' of the unions.

The consequence of such actions was to create disequilibrium in the entire industrial relations system: 'The present Government has tilted the law too far towards employers and this imbalance causes great unfairness in companies where industrial relations have broken down' (TUC 1989c: 45). The 'systemic' difficulties which were created by the prejudiced legislation were such that it was in danger of losing its legitimacy and thus ceasing to function in an effective manner: 'The current industrial relations legislation is so unfair and one-sided that it cannot command respect' (TUC 1990b: 9). In contrast, if the TUC/unions could 'correct' the disequilibrium by introducing a more balanced structure, this would benefit all parties in industrial relations: 'Industrial relations are not improved by having unfair laws. We need a balanced framework of law which commands support from all sides of industry' (TUC 1990b: 2) - accordingly they could be seen as acting in the national interest (including that of employers) in a way which the Government was not.

In this respect, union calls to re-establish 'balance' in industrial relations, which were central to TUC statements on employment law of the late Thatcher era ('the TUC will... continue to argue for a 'fair and balanced' framework of employment law (TUC 1990a: 6); 'the case for a new, balanced approach to employment law is overwhelming' (TUC 1990c: 22)) formed part of the claim to reasonableness and moderation. The laws which they were seeking were not intended to place workers and unions in a predominant

position; rather they were designed to place them on an *equal* footing with employers: 'Our aim is to improve industrial relations, balancing the interests of people at work and their employers' (TUC 1989c: 45); 'Congress welcomes... the policy adopted by the General Council which stresses the creation of new constructive legislation designed to restore a reasonable balance between employers and employees' (Composite Motion 1, TUC 1990: 287). The language of 'balance' also served to emphasise that unions were aware that they had duties as well as the hoped-for rights: 'a fair balance of rights and responsibilities, which is something that I believe our members and the public will overwhelmingly accept because they know it is fair and makes sense' (Young, A. TUC 1990: 310).

Young's remark indicates that the essentially moderate nature of this discourse was intended to facilitate acceptance of the TUC stance (backed by Labour) amongst union members and the wider public; it did not, however, find favour with the more militant union leaders: 'We find it astonishing that all the Labour Party is looking for is a fair balance between employers and trade unions... There never has been a fair balance. We were nowhere near it in 1979, and we will not go along with a policy of even-handedness that treats us as the equal of employers' (Hearn, D. TUC 1990: 301-2).

Clearly, therefore, the precise location of the point of equilibrium was a matter about which there could reasonably be disagreement. This raises an important issue, to which I have already alluded (p.182). The language of 'balance', although a prevalent feature of the discourse of 'new realism' and used by proponents of this approach to convey reasonableness and moderation, could equally be utilised by those holding alternative views - indeed, it was used by the Conservatives. 'Balance' was not, therefore, unequivocally a 'new realist' vocabulary. In fact, it could be seen as inherent in the pluralist approach to industrial relations discussed in Chapter 5, which was based upon the existence of opposing groups pursuing their own interests and the working out of a mutually acceptable compromise between them *via* the institutions of collective bargaining: 'just as society is perceived as comprising a number of interest groups held together in some sort of loose balance by the agency of the state, so work organisations are viewed as being held in balance by the agency of management' (Farnham and Pimlott 1994: 48). While it has been argued that a 'balance' in the sense of equality of bargaining power between unions and employers is not a prerequisite for settlements reached by such processes to be effective (Clegg 1975: 309), the 'balance' could be seen as the (perhaps

unattainable) goal which both parties seek; certainly, the existence of a 'balance' appears to postulate the presence of 'opposing sides' in industrial relations.

To this extent, the language of 'balance' was perfectly compatible with the traditional, 'adversarial' approach to industrial relations which informed union discourse of the early 1980s. For example, the argument that trade unionism represented a 'counter-balance' to the power of employers - a claim made both by those supporting and those opposing the TUC statement on employment law at the 1990 Congress ('trade unions will be needed... to make sure that we have that counter-balance to the power of cruel, vicious, unscrupulous employers' (Dean, B. TUC 1990: 290); 'Congress recognises that strong trade unionism... counter-balances the enormous and unaccountable power wielded by employers' (Composite Motion 2, TUC 1990: 292)) was part of the original rationale for trade union existence, as analysed by the Webbs (see p.154). Similarly, the view that the legislative measures had tilted the balance in favour of employers and therefore away from employees and unions was predicated upon the 'zero-sum' nature of adversarial employer-union relations which had historically been characteristic of the British system (MacInnes 1990: 220-222- see above, p.112). I would conclude, therefore, that the more moderate discourse of 'new realism' was not necessarily inconsistent with a continued use of the language of conflict and confrontation which underpinned the pluralist approach. I turn now to examine the extent to which this discourse did indeed persist.

II. Confrontation, tradition and collectivism

In Chapter 5 I examined a number of features of the language of trade unions which could be said to be attributable to their nature as collective institutions, their consciousness of their historical traditions, their existence as class organisations and their role as representatives of relatively powerless individuals seeking to assert themselves against employers in a relationship which gave rise to clashes of interests between the two. In particular, I attempted to demonstrate that the union perception of British industrial relations as an adversarial, 'them and us' process gave rise to a belligerent, antagonistic rhetoric towards some employers and, especially, the Government.

Although the strategy and vocabulary of 'new realism' represented a softening of this 'traditional' stance, the fact that many of these characteristics were intrinsic to the very rationale of trade unions meant that the language with which they were clothed did not

undergo a fundamental change in character. For example, *Employment Law: A New Approach* maintained that 'in a free society, it is inevitable that disputes will sometimes occur' (TUC 1990c: 24), a point also made by the TUC General Secretary in introducing the statement: 'even in the most ruthless dictatorship you cannot legislate away the clashes of interest that can occur at work' (Willis, N. TUC 1990: 285 - see above, p.174). This demonstrates a continued belief in an essentially pluralist approach to industrial relations - unions existed to defend and protect their members against the employer whose interests, in minimising labour costs and obtaining maximum productive capacity from his/her workforce, were necessarily opposed to their own.

Employers

In the light of this, one might expect union language, even in the period during and after 'new realism', to preserve components of the adversarial approach towards employers discussed in Chapter 5 - and this was indeed the case. Some union leaders portrayed employers in a highly traditional, anti-capitalist way, viewing them in an almost Dickensian manner: 'I remind you that when lives are lost as a result of profit-hungry carelessness, the guilty men at the top walk free - some even get golden handshakes - but when workers try to fight for jobs or try to exercise their democratic rights, then the full force of the law is used' (Gill, K. TUC 1989: 350);

> 'Many of us can tell chilling tales. Let me tell one...A young woman joined the company, soon became pregnant. She told the company, she had a difficult pregnancy. She lost time. It was soon clear why she lost time. The baby was born and, within a few days, died. Four days before that young woman - her name is Louise - buried her baby, she was called in by management and she was sacked. That is Thatcher industrial relations for you... While there are employers around like Louise's employer in London, trade unions will be needed, not just by trade union members, but by society in Britain, to make sure that we have that counter-balance to the power of cruel, vicious, unscrupulous employers' (Dean, B. TUC 1990: 290).

However, as had been the case earlier in the decade, employers were frequently portrayed as relatively passive beneficiaries of the Government's legislative changes. The measures were described as 'encouraging employers to adopt heavy-handed tactics in disputes' (TUC 1989c: 45) and 'giving enormous scope' to employers 'to frustrate industrial action' (TUC 1990b: 5). This allowed the depiction of the Government as the

'real' enemy of the unions, and thus reinforced the legitimacy of the employer in the industrial relations relationship. Given that this was so, a degree of compatibility could be achieved between the language of 'partnership' discussed above (p.174) and language which presented employers as opposed to the union position: 'Forward-thinking managers would want to maintain good industrial relations with their workforce. To do otherwise generates future instability, leaving old scores needing to be settled. Privately, they will admit that the Government have gone way over the top in tilting the balance in their favour; nonetheless, they acquiesce' (Philbin, B. TUC 1989: 354). In consequence, the vocabulary of conflict could be downplayed in this context, as Norman Willis sought to do in arguing that 'We are not engaged in total war with employers' (*TUC Bulletin* July 1987: 2).

The exception to this representation of employers as legitimate opponents was, as previously, the 'rogue' employer. Distinguishable from most other employers by being labelled as deficient in character or morals, this remained an important figure in union demonology to be set alongside the Government itself as an 'enemy' of the unions. Such an individual or company would experience no qualms about exploiting the 'unbalanced' legal framework put in place by the Government in order to achieve an advantage over employees: 'Employment law in the UK is now effectively loaded against workers' interests, giving wide scope for the unscrupulous employer to exploit, ill-treat and sack their employees' (TUC 1987a: 1); 'We fear that unscrupulous employers could exploit this proposal in order to avoid liability for redundancy payments. It is not inconceivable that an employer could provoke a strike, dismiss those deemed surplus to requirements and then continue business with the workforce reduced to the required size' (TUC 1989d: 4). The existence of 'malevolent' employers such as this necessitated a continued role for trade unions in offering protection to relatively powerless individuals: 'Congress calls on the labour Movement to campaign for a system of legal rights which will cover all people at work and give them full protection from abuse at the hands of uncaring and unscrupulous employers' (Composite Motion 1, TUC 1986: 451) - such a role might have been superfluous had the rhetoric and strategy of 'cooperation' been fully pursued.

The Government

In some respects it was simpler for the unions to continue to adopt a

confrontational approach towards Government notwithstanding the more accommodative vocabulary of 'new realism' because of the Government's refusal to enter into discussions with the TUC and union movement over the legislation or economic and industrial matters in general (see Chapter 2). Thus, even *Employment Law: A New Approach* described the legislative measures as 'malicious' (TUC 1990c: 21), while other union leaders were still more strident in their denunciation of the Government as malign: 'It has been a callous, vindictive and spiteful attack on the ordinary citizens of this country and the institutions that try to protect them' (Young, A. TUC 1990: 288); 'British people do believe that this vindictive action has, more than any other, highlighted the iniquitous and hypocritical behaviour of this Government, calling as it does on the one hand for the freedom of the individual and, on the other hand, restricting the individual's right to seek trade union recognition and representation... the British people recognise the injustices which this Government are perpetrating through their various industrial legislations (*sic*). They believe that individuals have the right to have trade union representation' (Horton, D. TUC 1990: 307).[10]

Such language attributed deficiencies of 'character' and 'behaviour' to the Government which facilitated its portrayal as the 'enemy', rather than the adversary, of the unions (see p.117). Thus, even when a 'new realist' appeal for unions to use the law to their advantage was made, the Government continued to be depicted in conflictual terms: 'But think of what our enemies do. Margaret Thatcher has no hang-up about using the law. This government has used legal changes time and again to strengthen employers against working people' (Edmonds, J. TUC 1986: 452). Perhaps the ultimate expression of 'Otherness' in union discourse came in the Presidential address to the 1986 Congress, when Ken Gill cautioned: 'We still have a duty to trade unionism. We must not allow the victory of evil over good' (TUC 1986: 433).

As in the earlier part of the decade, however, the TUC and union leaders did not simply argue against the Government's policies on the basis that they were malevolent or prejudiced. They also sought to demonstrate that the legislative changes formed part of a wider strategy, attributable to the Government's ideological beliefs, designed to weaken the unions as representatives of working people:

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[10] Horton refers here to the banning of unions at GCHQ in 1984. For the argument of 'hypocrisy' in this context, see further p.203.

'hostility to effective trade unionism has characterised a wide range of the policies pursued by the Conservative Government since 1979. The massive rise in unemployment, the privatisation of public enterprise and services, the dismantling of the welfare state and the persistent and damaging cuts in public expenditure are all intended at least in part to weaken trade unions and undermine their ability to safeguard and advance ordinary people's interests and living standards...The presentation of much of the present Government's trade union legislation has been consciously designed to foster and exploit anti-union prejudice. But the legislation is also a key part of the Government's overall social and economic strategy and embodies many of the elements which make up the Government's general philosophy... The Government has sought to justify many of its measures in this field as being to 'improve the operation of the labour market'. Trade unions are seen by the Government as distorting the free market...The aim of the Government has been to bring about a permanent weakening of trade union strength, and to increase the power of employers to introduce change without consent' (TUC 1986a: 4).

The importance of this approach lay in the unions' search for a relevant role in political society. If it could be shown that the Government was not merely 'anti-union', but had in fact caused damage to some of the important elements of British society *via* its social and economic policies in conjunction with the industrial relations legislation which had constrained unions, it would be easier for the unions to make a claim to be protecting the national interest, in contrast to a marginalised Government: 'the Thatcher Government seeks both to undermine our organisation and to dismantle or weaken the tripartite bodies in which the trade union Movement has played a constructive part in the development of the economy... her Government has intervened more in the lives of working people than any previous administration. It is more intolerant, more authoritarian, more determined to weaken the protection offered to working people, more intent on undermining services which help ordinary people, and by its economic policies has exposed more people to unemployment and insecurity than any previous Government' (Jarvis, F. TUC 1987: 391); 'Let us remind ourselves that this plethora of legislation that concerns us today is not merely the result of some deep-rooted prejudice against unions and their members. It is central to a larger vision of destroying those aspects of our society that grew out of the needs and aspirations of working people and their collective struggles - health care, educational provision, social welfare and ultimately, of course, the industrial base which sustains them all' (Woolf, G. TUC 1990: 304). Similarly, the argument that Government measures had the effect of 'turning back the clock' facilitated its portrayal as opposed to the interests of the nation: 'we see how this Government react to such successes by banging their primitive drums and threatening yet more restrictive anti-trade union laws

to prevent unions from representing their members' wishes... These acts by the Thatcher government are destroying rights, attacking democracy and taking this country back into the 19th Century, instead of forward into the 21st. They do this in order to weaken the movement so that we can no longer properly represent and organise our members. They, are, therefore, an attack on every working woman and man in this country' (Fitzsimmons, S. TUC 1989: 351).

These were not new propositions - similar language had been used earlier in the decade (see pp. 119-21; 135). They were, however, particularly significant in the light of the TUC's concern over its role in society, which culminated in the work of the SRB (1988, 1989) discussed in the final section of this Chapter; equally, however, they complemented a continued 'traditional' vocabulary of conflict, as Woolf's statement implies.

Confrontation

Although there were no coordinated campaigns of resistance to the legislation of the later 1980s to match those which had taken place earlier in the decade, the TUC and the unions continued to oppose the measures. This stance, coupled with the enduring pluralist outlook on industrial relations which viewed the existence of disputes as inevitable, and the characterisation of the Government as 'enemy', helps to explain the persisting use of the vocabulary of conflict and antagonism in much of the material investigated.

Thus, some continued to talk in terms of the 'root metaphor' of warfare which had been so significant in the earlier period: 'This Congress should say to Thatcher and to the employers in the gallery 'not one inch further' and that we are determined to win back the ground that has been lost in the past period...What is the lesson of GCHQ? I would suggest that if the tremendous support in Britain for those workers when the ban was announced had been translated into immediate industrial action the Tories would have been forced back' (Macreadie, J. TUC 1987: 443); 'We have to fight daily recognition battles in the private sector with some of the worst employers in Britain. And how will these plans help us and the workers who look to us for help and strength? Or can we look forward to more frustrations and defeats in such battles? Because the next Labour government, with the best of intentions, has given the employers an alternative to use as

a weapon against us... It is never easy under attack, and there are those who always flinch at the sound of gunfire' (Todd, R. TUC 1988: 623); 'given the sustained attack we have been under, it is inevitable that heads have been kept well down beneath the parapet. Now that the possibility of change is in the air, our union welcomes that. But few battles have ever been won by crouching in the trenches' (Plouviez, P. TUC 1990: 297).

However, despite the combative nature of these statements, which suggest that the vocabulary of conflict remained an important underlying theme in union discourse, not all in the union movement were so militant. As discussed above, TUC publications tended to emphasise the language of 'fairness', 'balance' and to argue that the Government's use of evidence to justify measures was selective, rather than to focus a campaign of resistance around an antagonistic slogan such as 'Fight Tebbit's Law'.[11] Other union leaders seemed to feel it necessary to urge the unions to resist, implicitly acknowledging that the Government's measures had had an 'attritional' effect, wearing down the unions so that they had to be *encouraged* to 'fight back': 'We need to show them that we have still got a bit of spirit in us and that we are still prepared to argue our corner and take the message around the country' (Knapp, J. TUC 1987: 439). The absence of coordinated opposition to the legislation on the scale of that of 1982 meant that the unions' adversaries and enemies almost needed reminding of the continuing resistance by the TUC/unions to the measures: 'This motion sends a clear message to the Government and the employers. We have not given up the fight. There have been umpteen battles but the war on working people and their organisations is not over' (Philbin, B. TUC 1989: 354). While remaining essentially confrontational and adversarial in outlook,[12] such language certainly seemed to lack the self-confidence and assertiveness of the earlier years.

Tradition, class and collective values

I have previously discussed the significance of the language of 'newness' in the

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[11] Indeed, the TUC argued that 'The Government's legislative approach to industrial relations encourages conflict. It is more concerned with coercion than cooperation' (TUC 1990b: 6), thus attributing the vocabulary of conflict to the Government, and of cooperation to itself. This was, of course, similar to the 'blamelessness' argument of the earlier period, but with less of a threat of organised disruption (see *eg* Murray, L. TUC (Wembley) 1982: 378, 381 - pp.124-5 above).

[12] Note the 'them and us' tone of Knapp's statement.

discourse of the 'new realists', and argued that those supporting such a stance portrayed themselves as looking to the future, while their opponents were seen as 'nostalgic' and out of touch. The difficulty with this approach was that, as argued in Chapter 5, the British union movement had a powerful sense of history and a number of 'mythic events' in its past to draw upon, which reinforced its sense of identity. Consequently an equally powerful counter-discourse to that of renewal was that of tradition, and a number of union leaders sought to locate themselves within this idiom.

This was most noticeable at the Congress of 1990 which effectively amounted to a debate between the 'modernisers' and 'traditionalists' over the TUC statement *Employment Law: A New Approach*. Those who rejected the General Council's position argued that it was 'abandoning traditions' (Jinkinson, A. TUC 1990: 295) and claimed that, although accused of being 'old fashioned', their standpoint was not incompatible with 'a new positive framework' (Christopher, C. TUC 1990: 295). Others were still more vociferous in their defence of the labour movement's history: 'If you support the General Council's statement, if you support the Labour Party document, if you support Composite Motion 1, you are supporting a move to betray all those principles upon which we have fought for the past 25 years... For God's sake, do not betray two centuries of struggle' (Scargill, A. TUC 1990: 297, 298); 'We are not among those who find it illogical, immoral, or objectionable to go back to 1979. After all, by going back to 1979, we are only making good the 100 years that Margaret Thatcher took us back when she took office in 1979. For the life of us, we cannot understand how, by going back to 1979 and all the things that those who came before us fought for, we cannot build for the nineties' (Hearn, D. TUC 1990: 301).

It can be seen from a number of these statements that an attempt was made by the speaker to locate themselves within both discourses - that of 'renewal/future' and that of 'tradition/past'. This shows the potential appeal of both forms of language - a similar conclusion being reached by the 'modernisers', who argued that 'We have to learn from the past' (Davies, D. TUC 1990: 306) and that 'We are not betraying all previous principles of trade unionism... I would like to think that we could have built a bridge between the two [*ie* motions]. But we really could not, because it would have confused the situation. It would have been seen as us facing both ways' (Young, A. TUC 1990: 309-10); nevertheless, the precise difficulty would seem to have been that 'past' and 'future' might have equal but contradictory claims in union discourse which might cause

some to question the policies being adopted.[13]

Closely linked to the language of tradition was that of 'class', in that, as analysed in Chapter 5, the history of the labour movement was frequently conceived of in the Marxist terminology of the 'struggle'. This was once again evident from Scargill's speech, which continued: 'We ask for no more and no less, Norman, than the Tories. They give to their class special favours. Our party should give to our class special favours' (Scargill, A. TUC 1990: 298). Certain other union leaders also used the language of class, albeit somewhat less stridently, eg: 'Perhaps we... should... be as hard-headed in our search for justice as Margaret Thatcher has been in her drive for class advantage' (Edmonds, J. TUC 1986: 452); 'Those laws must go and they will go. They bring the law into total disrepute because it is so blatantly class-biased' (Gill, K. TUC 1989: 350). Yet, as in the earlier period, the language of 'class' tended on the whole to be subordinate to descriptions such as 'people at work', 'workers' and 'working people' (TUC 1989c: 45) and, in contrast to 1979-83, there was implicit criticism of the discourse (and explicit criticism of Scargill): 'If there is anybody here who thinks that Arthur Scargill is an electoral asset, you want your brains tested. If anybody here thinks that any programme supported by Arthur Scargill is an electoral asset, you want your brains tested' (Lyons, J. TUC 1990: 298). This was echoed by the Assistant General Secretary of the TUC, who remarked to me that 'although there will still be Scargill, voice raised, saying that this is selling out our birthright for a mess of potage, 98% of people don't agree with him - they believe that we've got to see how we can positively protect real people and advance their cause in their real employment problems' (Lea, interview).

Also closely connected to these themes was the collectivist language of 'unity' and 'solidarity'. As discussed (p.139), this was a particularly important appeal for the TUC leadership in 1982, when attempting to coordinate united resistance to the legislation. However, given the disintegration of such opposition after 1983, the language might be thought to have lost some of its intensity. Nevertheless, calls for 'unity' and 'solidarity' continued to be heard from within the unions. As in the earlier period, they acted as rhetorically powerful keywords for the mobilisation of opposition to the legislation: 'We

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[13] This was not, of course, a problem unique to the unions in 1990. Similar difficulties encounter any political grouping seeking to 'reinvent' itself; Blair's 'New Labour' has equally been accused of betraying its political and ideological heritage by (amongst others) Arthur Scargill.

shall need our unity and strength to combat the effects of a further period of Conservative Government' (Jarvis, F. TUC 1987: 392); 'Congress reaffirms its opposition to Tory anti-union laws and calls on the General Council to lead an all-round campaign of vigorous opposition, including mobilising solidarity with those trade unionists directly affected by these laws' provisions' (Composite Motion 6, TUC 1989: 349).

It was, of course, possible to use this language in support of the changing strategy within the TUC and union movement. For example, expressions of 'unity' were used in promotion of *People at Work: New Rights New Responsibilities*: 'That is why Composite 1 is so important: it gives us a real unity of purpose, based on real rights for all our members' (Dawson, J. TUC 1986: 458); 'try to band together on the rather more constructive and widespread unity about fighting oppression through a new legal framework that will give inspiration to our people and rebuild our self-esteem' (Edmonds, J. TUC 1986: 462).

There was, however, a potential difficulty here - as McIlroy points out (1995: 7): 'Unity, often vital to the full mobilisation of power in organisations characterised by sectionalism, is an important goal: it may however conflict with democracy'. The increased emphasis upon individual rights and democracy which I will explore in the next two sections implied a *move away* from the much more collectivist discourses of 'unity' and 'solidarity'. Yet the two words remained potent symbols of the union movement's origins and 'mythic tradition': 'No law, designed by the Tories to immobilise us, should be used within the Movement to excuse or underwrite bad trade union behaviour. Neither must it erase solidarity from our practices, because if solidarity dies trade unionism dies. Mutual support and respect for other trade unionists must remain our obligation' (Gill, K. TUC 1986: 433).

'Unity' and 'solidarity' were, therefore, central to the discourse of many of those who opposed the 'renewal' of unions *via* 'new realist' policies: 'The cornerstone of our Movement is solidarity' (Dubbins, A. TUC 1990: 291); 'Trade unionism was built on solidarity, and that is fundamentally what it is about - the strong supporting the weak, the many supporting the few' (Carr, J. TUC 1990: 292); 'If we abandon these traditions this week, it will certainly be an historic Congress and one that we will look back on with shame and regret. Think of all those banners - 'An Injury to One, an Injury to All', 'All for One and One for All', 'Unity is Strength', 'Workers of the World Unite'. Forget them! If you have not deposited those banners in the Museum of Labour History, do so now,

before they run out of space. And if ever again you find yourself singing the anthem 'Solidarity Forever', remember to incorporate these words in the chorus: 'only when there is a direct interest of an occupational or professional nature' (Jinkinson, A. TUC 1990: 295). The language of 'unity' and 'solidarity' thus represented a powerful rallying call which the TUC leadership may have found difficult to counter.

I have demonstrated in this section that the 'traditional' discourses of confrontation, class and collectivism continued to exist within the unions despite moves toward the more emollient language of 'new realism', particularly from the leadership of the TUC. This can be attributed to the maintenance of an essentially pluralist outlook which was underpinned by the existence of differences of interest and to the consciousness of the rationale and origins of trade unions as collective organisations. Although, as I shall discuss in the remaining sections of this Chapter, the increasing emphasis on individual rights and democracy coupled with the unions' reassessment of their position and role in society increasingly called into question the validity of discourses such as 'class', 'unity' and 'solidarity', they remained potent forms of language which could be mobilised if appropriate.

III. The language of individualism

Emphasis upon the individual formed a key tenet of Thatcherism, informing both its discourse and its policies, as discussed in Chapter 3. The Acts of 1980 and 1982 had introduced the theme of promotion of the individual as against the collective (see p.141), and the unions had accordingly had to begin constructing an appropriate response to these measures. However, the full impact of the Conservatives' individualistic rhetoric and policies was arguably not reached until the latter part of the decade (see p.50). Consequently, it became increasingly important for the TUC and the unions to devise an effective strategy to deal with these developments and discourses, seen by some as a 'very provocative ideology' (Lea, interview).

Furthermore, it was not only legislative policy which forced the unions to reappraise the balance between individualism and collectivism. It has been claimed that Government and 'New Right' ideology was merely a reflection of deeper structural changes in the nature of society during the 1980s, which emphasised individuals over and

above collective groupings (Phelps Brown 1990: 1 - see p.49). This view seems to have been accepted by at least some of those involved with constructing an effective response: 'The emphasis on the individual is a change broader than this [*ie* industrial relations]. The 80s were an era when there was a cultural emphasis on the individual' (Smith, interview).

Equally significant in causing the unions to consider the notions and vocabulary of individualism were changes in management style during the 1980s. This topic is beyond the scope of this thesis,[16] but could be said simplistically in this context to involve a more individualistic approach to employees, with the introduction of direct communications structures between management and employees, the use of consultative committees outside unions and increasing involvement with and commitment to management *via* a unitarist identification with goals and achievements (Martin *et al* 1991: 197). These moves, coupled with the changing pattern and structure of the unionised workforce in Britain (particularly in respect of the decline of traditional manufacturing industries and the increase in service industries, in addition to increasing numbers of part-time and female workers in the economy) called into question the significance of collectivism in British industrial relations, both for employers and unions: 'The new emphasis upon the individual employee in management strategies suggests that any notion of a standardised group of workers pursuing similar interests has become increasingly difficult to sustain, whether or not it had been an accurate reflection of a 'collectivist' past' (Bacon and Storey 1996: 43).

As Bacon and Storey observe (*ibid*), union responses to these developments have been diverse; nevertheless, they detect a 'drift': 'unions have adopted more of an individualist agenda both in vocabulary and in seeking to identify the wishes of their members'. While their argument focuses upon union responses to changing *management strategies* (and only touches tangentially on the question of language), my concern in this thesis is with responses to legislative policy - nevertheless, I believe that it also holds validity in this context.

Individual employment rights

The most significant development in the move towards an individualistic discourse and strategy on the part of the unions came in the development of policies advocating

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[16] There is an extensive literature on this topic. See, *inter alia*, Blyton and Turnbull (1992); Guest (1989); Storey (1992).

enhanced individual rights both for union members and 'people at work' in general, facilitated (as discussed in Chapter 4) by the shift away from 'immunities' towards 'rights' and a corresponding acceptance by the TUC and unions of the positive role which the law could play. In effect, this shift began with the consultative document on *Industrial Relations Legislation* in January 1986, which acknowledged the presence of the law in industrial relations (see pp.90-3) and was reinforced by the joint statement *People at Work: New Rights New Responsibilities* which called for 'new rights and protection for individual workers and their unions' (TUC-Labour 1986: 4). The statement was described as 'a framework for collective freedom and individual rights to replace the thumbscrews and rack of Tory legislation' (Todd, R. TUC 1986: 460).

After the defeat of Labour in the 1987 election the party undertook a substantial policy review which eventually appeared under the title *Meet the Challenge Make the Change* in 1989. This document, which advocated the creation of a 'Workers Charter' based upon the EC Social Charter, 'switched the emphasis from the defence of *union* 'immunities' to the improvement of *individual* worker rights in Britain' (Moher 1995: 32 - emphasis in original), thereby implying a drift away from collectivism and towards individualism. The TUC responded by 'spelling out and promoting a vision of future industrial relations based upon enhanced individual employment rights... at the heart of [which] is a charter of employment rights to protect individuals at work' (GC Report, TUC 1989: 24) in the statement *Employment Law: TUC Priorities* (TUC 1989c), while in 1990 Congress endorsed the Labour Party proposals and the General Council statement *Employment Law: A New Approach*, which proclaimed that 'the rights of individuals at work are at the heart of our vision' (TUC 1990c: 22) and encompassed the extension of employment rights to part-time and temporary workers, new rights to information and consultation for employees, the provision of the right to membership of and representation by a trade union, in addition to more 'collective' rights such as a right to recognition and a right to take sympathy action where there existed a direct interest of an occupational or professional nature.

Policy statements such as these could clearly be seen as representing a move towards a strategy of individual rights within the TUC and unions, particularly when combined with the increased emphasis upon services which could be offered by unions, a focus of the strategic reappraisal of TUC/union roles (see section V). The various 'charters' for individual worker rights were endorsed, unsurprisingly, in an individualistic

vocabulary: 'the trade union Movement is in business to defend their interests as individuals' (McEwen, P. TUC 1986: 458) ; 'Looking after individuals is the primary purpose of trade unions' (Grantham, R. TUC 1989: 345-6); 'The law should underpin, and not undermine, the role of unions in supporting individuals at work' (TUC 1990b: 9); 'The rights of the individual are paramount - not just to join a union, but to join a union and to have that union speak on your behalf' (Horton, D. TUC 1990: 308). The assurance with which those making these remarks seem to adopt the discourse of individualism suggests that they considered there to be no conflict between individual rights and basic principles of trade unionism, a view endorsed by the former TUC General Secretary: 'We thought that we were the guardians of the individual' (Murray, interview). However, it is important to note that each speaker reaffirms the role of trade unions as 'defending', 'protecting', 'speaking for' and 'supporting' individuals - this indicates that they still perceived the individual to require some form of collective protection. I will examine below the extent to which the unions attempted to balance the issues of collective representation and individual rights.

Freedom, human rights and the ILO

In Chapter 5 I commented that the unions had attempted to adopt the vocabulary of 'freedom' which formed a significant element of Conservative discourse in justification of their position, although their understanding of this concept differed from that of the Government and the 'New Right'. This remained true during the later period. The unions were keen to assert the right to 'freedom of association' which might form part of the new 'positive rights' approach: 'Congress, concerned to develop and promote democratic principles and practice, affirms the basic right of freedom of association and, in particular, the basic human right to choose to belong to a trade union and to be represented by it' (Composite Motion 2, TUC 1987: 437); 'The issue is freedom. That is why we have based our contribution to this motion on the notion of freedom of association' (Morton, J. TUC 1989: 350). They also argued that the right to withdraw labour was 'widely accepted as a basic civil liberty in the UK as in all democratic societies' (TUC-Labour 1986: 19). These were, of course, different to the 'freedoms' espoused by the 'New Right', which

focused upon economic freedom and freedom of choice,[17] but it remained a powerful discourse simply because 'freedom is generally considered to be one of the highest aspirations of modern society' (Fredman 1992: 38).

Yet while 'freedom' could be seen as a goal towards which society might strive, it might also be viewed as a fundamental characteristic of modern democratic systems, the basis upon which all other social, political and economic achievements could be constructed. The unions used 'freedom' in this sense to demonstrate that the Government's policies were so destructive that they denied them the ability to perform their 'basic' functions: 'our unions should not play games with immunities and rights. We should not tolerate attempts to put fundamental rights in the political market place. They cannot be traded or bartered. We will insist on a framework of law and immunities that give us the basic freedom that we need to support and represent our members, the freedom that we need to do our job' (Todd, R. TUC 1988: 623); 'It is vital that the law should guarantee the essential legal freedom of workers and their unions to organise effective industrial action, without the continual threat of employers launching debilitating legal actions against unions' (Composite Motion 6, TUC 1989: 348). The depiction of such 'freedoms' as 'fundamental' allowed the unions to make another significant argument - that the Government was acting contrary to basic human rights and civil liberties.

This was not a new claim - the argument had been made in 1982 that 'We also have to go on a programme of educating the public at large that the trade union Movement, in defending their rights, are actually defending their civil liberties as well' (Marsland, T. TUC (Wembley) 1982: 402) - but it was given added emphasis by several developments. Firstly, the European Commission of Human Rights ruled that the banning of unions at GCHQ did not constitute a violation of the European Convention on the grounds that it was justified in the interests of national security.[18] This decision was condemned by Composite Motion 2 of the 1987 Congress (see above), which 'pledged to continue to campaign for the restoration of human and trade union rights at GCHQ and to protect them in all other employments where they are under threat' (*ibid*: 392).

Secondly, civil liberties groups increasingly denounced the Conservative legislation

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[17] Although Hayek refers to 'freedom of association' (see p.53), Wedderburn argues that he places emphasis 'upon the right to *dissociate*' (1991: 211 - italics in original).

[18] Council of Civil Service Unions v UK No. 11603/85

as a breach of fundamental freedoms and rights. Prominent amongst these was the National Council for Civil Liberties which reported on several specific aspects of the legislation,[19] as well as the measures as a whole, arguing that the Government had shown 'contempt' for individual rights and had restricted trade union rights to an extent greater than anywhere else in the western world (1989: 1). It concluded:

> 'Trade unions are the most effective means by which citizens can defend their civil liberties at the workplace. The protections laid down for employees and their organisations in international law set important standards with which domestic law should strive to comply. These standards should not be disregarded merely as bureaucratic impediments to the operation of the free market. The effect of Government measures since 1979 however has been to strip individuals of their rights at work, restrict the ability of unions to take effective industrial action and has amounted to an unwarranted interference in internal union affairs' (1989: 4).

Support from an organisation such as this was important for the unions. It served to emphasise the validity of their use of the language of 'freedom' and 'individual rights' so that this vocabulary could be confidently employed in support of the new 'charter of individual rights': 'But to protect those interests workers must have basic human rights - freedom of association, the right to join a union and for that union to be recognised by management for representation and negotiating purposes' (Dean, B. TUC 1990: 289). Moreover, it facilitated the construction of a broad 'community' of opposition to the Government's policies in a similar manner to the way in which employers' organisations were called in aid (see pp.171-3) - this served to marginalise the Government. It was especially significant that the support of groups of this type enabled the unions to move away from the portrayal of such issues as solely related to industrial relations, depicting them instead as having consequences for society as a whole: 'every citizen who loves civil liberties must defend trade unionism' (Gill, K. TUC 1989: 350); 'What is at stake is not just trade union rights, important as they are, but the fundamental rights that should apply in a democratic society' (Fitzsimmons, S. TUC 1989: 352). This was, therefore, a means by which the unions could seek to reintegrate themselves within British political society, as the representatives of national, rather than mere sectional interests (see section V).

The third development which strengthened the potency of the vocabulary of 'freedom' and human rights for the union movement in this period was the decision of the

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[19] Notably the removal of the right to discipline strike-breakers under s.3 Employment Act 1988 (NCCL 1987). See further, pp.211-3.

ILO in May 1989 that the Conservative Government had violated Convention 87 on freedom of association and the right to organise. In addition to finding a number of specific violations, 'the ILO also warned the Government about the complexity and cumulative effect of piecemeal legal reforms and an apparent lack of concern with the rights of trade unions' (Hendy 1993: 38).

The ILO's condemnation of the legislation reinforced the unions' use of the language of 'freedom' for individuals: 'The ILO has roundly condemned the Tory anti-trade union laws. They are unfair. They are unjust. And they are an affront to human freedom and human dignity' (Morris, W. TUC 1989: 353). The argument was particularly strong because the standards set by the ILO were supposed to represent a basic 'floor' of rights for individuals to associate and enjoy protection against employer discrimination, which could be met on a near-universal basis: 'The standards against which the law has been judged are the minimum standards' (Morton, J. TUC 1989: 351). Accordingly, this gave added emphasis to the argument that the Government had not acted *fairly* towards the unions, particularly when comparisons were drawn with Europe (which of course benefited from a charter of individual rights in the form of the Social Charter): 'We will continue to press for UK employment law to be brought into line with the minimum internationally accepted labour standards set by the ILO. All this points to the need for a fairer balance in industrial relations laws' (Grantham, R. TUC 1989: 345); 'Britain's approach to employment law is out of step with our European neighbours and at odds with international conventions' (TUC 1990b: 2).

All of this served further to marginalise the Government as a 'deviant case', unable to meet the standards set elsewhere in Europe or even the basic requirements of the ILO: 'The British Government's record has attracted criticism from around the world - comprehensively condemned by the ILO, systematically isolated in Europe' (TUC 1990c: 22). In particular it may be noted that, by invoking the judgment of the ILO, the trade union movement was arguing that the Government was *violating international law* - thus, not only was it behaving in a manner which demonstrated pathological antipathy towards unions which was almost unparalleled on a worldwide scale, it was transgressing one of the central principles of its own policy and discourse by violating the 'rule of law': 'The ILO states that the policies of the British Government are in serious breach of civil liberties and democratic rights. That, I would remind you, comes from an organisation which rarely had anything to say to Britain, the home of trade unionism. It usually made

comments on the antics of petty dictatorships. The Tories claimed that they simply wanted to reintroduce the rule of law. Now they have been named as an international outlaw' (Gill, K. TUC 1989: 350). The discourse of the 'rule of law' which had been used by the Conservatives and 'New Right' to justify action against union 'privileges' (Chapter 4) had been adopted by the unions and turned against the Government so as to effect a marginalisation of *its* position.

Government 'hypocrisy'

This was not the only occasion in this context in which the union movement sought to deploy the language of the Government against itself. An increasingly frequent argument was that the Government was guilty of 'double standards' - while proclaiming its attachment to the discourse and policy of strengthening the rights of the individual, it was in fact diminishing those rights.

The starting-point for this analysis was the unions' attachment to the concept of individual rights, discussed above. Once the unions had depicted themselves as the true 'guardians' of the rights of the individual, which they looked to do with increasing vigour from 1986 onward, they were in a position to criticise the Conservatives' policies as not 'legitimately' concerned with individual rights: 'the Green Paper [*Trade Unions and their Members*] cannot be regarded as a genuine attempt to safeguard the interests of the individual union member' (TUC 1987a: 5); 'The Government is not seriously interested in individual workers as its stripping away of their rights at work has proved' (*TUC Bulletin*, April 1987: 4).

However, as this last statement suggests, the 'charge' levelled against the Government's measures was not simply one of inefficacy. Rather, unions argued that the Government was acting *hypocritically*, because its measures were actually achieving (and were intended to achieve) precisely the reverse of what was claimed for them: 'A government which is saying it stands for the rights of the individual is perpetrating these industrial crimes against these same workers, and there are many more attacks of that kind. That is hardly consistent with any genuine concern for individual workers' (Knapp, J. TUC 1987: 438).

A number of interrelated strands to the union claim of Government 'hypocrisy' can be detected. In general terms, the unions argued that, while professing concern for the

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individual, the Government had actually *removed* many individual employment rights in the interests of deregulating the labour market: 'The Government seems intent on pursuing its twin policies of 'deregulation' and restrictive trade union legislation. Yet the victims of both these misguided and damaging policies is the ordinary worker - the individual employee and trade union member whose interests the Government misleadingly claims to have at heart' (TUC 1987a: 1); 'The Government claims its measures have promoted the interests of individuals, but over the past ten years protection has been stripped away from workers across the board' (Grantham, R. TUC 1989: 345-6); 'This latest so-called Employment Bill is yet more evidence of the Government's cynical disregard for the real interests of people at work. Despite its title, the Bill has nothing to do with creating jobs or improving employment conditions and everything to do with removing rights from individual employees' (TUC 1989a: 11); 'One of the myths promoted during the last decade has been that the Government's measures have been aimed at protecting the interests of individuals at work. But in reality important safeguards and statutory rights for those at work have been stripped away' (TUC 1990b: 3).

It was also claimed that the Government, despite its rhetorical attachment to the betterment of the position of the individual *vis-a-vis* the state, had attacked individuals on issues broader than the question of employment rights. For example, the Government's economic and social policies as a whole were seen as weakening the position of 'working people' by creating unemployment and insecurity and reducing services and benefits (see Jarvis, F. TUC 1987: 391; Woolf, G. TUC 1990: 304 - above, p.189). Such an analysis suggested a continued 'protective' role for the unions of the sort frequently discussed in the earlier part of the decade (see pp.154-6).

A more specific matter on which the unions sought to accuse the Government of double standards was the issue of banning trade unions at GCHQ (see p.26). This was seen as denying freedom to the individual to join a trade union if he/she chose so to do, and thus as contrary to the Conservatives' basic policies: 'There is this constant emphasis on the individual and the right to choose - except to be a member of a trade union, for example, at GCHQ and now in many other areas - there is constant prattle about giving unions back to the members, but there is no regard at all for the interests and rights of people in employment' (McCall, W. TUC 1988: 623). Moreover, if the Government could be shown to have been hypocritical in this context, its arguments against the closed shop as a denial of individual freedom (see pp.53-5) would lose weight: 'The Green Paper's

argument that the pre-entry closed shop is an infringement of the liberty of the individual does not hold up given the Government's ban on union membership at GCHQ and the recent dismissals of 18 trade unionists there' (TUC 1989b: 3).

By pointing out the Government's duplicity in talking the language of individual liberty but, in practice, denying that freedom by removing individual employment rights, creating unemployment, restricting freedom of association in trade unions *etc.*, the unions attempted to make appeals to 'fair-minded' people and to marginalise the Government as deceitful and untrustworthy, thus contributing to the portrayal of its behaviour as prejudiced and malicious - see Horton, D. TUC 1990: 307, above p.188. Perhaps the strongest and most wide-ranging statement in this context came from Ron Todd:

> 'The present Government's anti-trade union legislation is not only a denial of freedom but a fraud. While the Tories are snatching away the rights of workers to make their own decisions, they talk about democracy. While they are stopping time off for expectant mothers, they talk about caring Conservatism. While they are restricting the rights of workers to take industrial action in their own defence, they talk about freedom. While they are wheeling out police cordons, High Court judges and sequestrators, in an attempt to destroy independent trade unionism, they talk about human rights. Let us get the record straight: Tory anti-union laws have nothing to do with democracy, compassion, freedom or human rights. Their aim is to undermine the ability of working people to defend themselves through collective organisation. The legislation is industrial terrorism, disguised with liberal window-dressing' (TUC 1986: 460).

As with the issue of democracy, which I will discuss below, the unions were attacking the Government *on its own terms* - arguing that instead of encouraging freedom, the Conservative legislation represented a denial of it; rather than enhancing individual rights, the measures were restricting them. The legislation was criticised because, despite its professed individualistic objective and vocabulary, it actually resulted in *fewer rights for the individual*. This might lead one to conclude that the language of individualism had been fully adopted by the unions and turned to their advantage against their political opponents. However, a certain amount of discomfiture over the language of individual rights seems to have persisted within the union movement, even during this latter period.

Harmony between collectivism and individualism?

The unions would seem to have gone some distance towards asserting their commitment to individualism by confidently employing an individualist vocabulary and

proclaiming their attachment to policies of individual employment rights. Yet difficulties remained: unions were by nature collective organisations, and too strong an emphasis upon the rights of the individual might lead some to question whether they were necessary at all. This indeed seemed to be the standpoint of 'New Right' theorists such as Hanson and Mather (1988) who argued for the decollectivisation of industrial relations, while even the Government itself, in the post-1987 era, moved in this direction: 'For the first time since the early nineteenth century and the passage of the Combination Acts, the British state appeared to see no merit in the continuing existence of trade unionism' (Taylor 1993: 304). The unions needed to find some sort of response which acknowledged and incorporated the increased emphasis upon individualism, yet reasserted their value as collective institutions.

The problem for the unions was that there was a certain degree of tension between the pursuit of vocabularies of individualism and collectivism, which was exploited by the Government: 'the Government uses the language of individual rights to attack collective rights and the ability of trade unions to defend their members' (TUC-Labour 1986: 15). This was demonstrated by a number of provisions in the 1988 and 1990 Acts which sought to use the individual 'disaffected member' as a means of regulating and controlling trade union behaviour.[20] The reaction to these measures, perhaps understandably, was to argue that the Government was prioritising individual rights in an attempt to attack collective organisations: 'In its continuing attack on the trade unions the Government pretends to be concerned for the rights of the individual. What it is actually doing is to elevate the rights of the individual above the rights of the majority and of union membership as a whole' (Jarvis, F. TUC 1987: 391); 'These attempts at undermining trade unions have come in two ways: firstly, by the Government's emphasis on the individual, on self disregarding the majority for personal gain; and secondly, by direct government action in withdrawing rights from trade union members' (Smith, R. TUC 1987: 439).

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[20] Notably Employment Act 1988, s.1 (member could take legal action against union inducing workers to take industrial action without ballot), s.3 (right not to be unjustifiably disciplined - see p.211), s.8 (member can object to union indemnifying for criminal offence or contempt), s.9 (application for court order restraining unlawful use of union funds), ss.19-21 (setting up Commissioner for the Rights of Trade Union Members); Employment Act 1990, s.1 (right of complaint to industrial tribunal for individual refused employment on ground of non-membership of trade union), s.10 (expanding scope of assistance by Commissioner).

However, such a response laid the unions open to the charge that they were concerned with collective values over and above individual rights.

Accordingly, the unions attempted to construct a response which achieved some compatibility between individualism and collectivism by stressing the potential for individual enhancement which could be achieved *via* the collective. The individual was seen as the basis for the existence of trade unions but, being weak in bargaining power relative to the employer, he/she required the collective protection offered by unions to effectively assert the individual employment rights against management: 'we need ways to help unions provide that collective approach, that strength without which individuals' rights have too often been proved meaningless' (Willis, N. TUC 1986: 450); 'But individual rights are no use if they cannot be monitored and enforced. Many issues at work can only be resolved on a collective basis and our experience shows that too often individual rights are a sham unless they can have collective backing' (TUC 1990c: 23); 'The rights that we propose would bring a life jacket to all those victims of Thatcher's Britain, struggling, often drowning, in a sea of despair. Individual rights are the cornerstone on which our edifice is built, but rights need effective enforcement through the collective security of trade unionism' (Willis, N. TUC 1990: 285); 'The advantage of the approach we have here is one that talks about individual rights, but understands that those individual rights are useless if it is one person sitting across a desk dealing with the employer. They require collective support and collective action' (Petch, S. TUC 1990: 305). In this way the unions could adopt the vocabulary of individualism without forsaking their collectivist traditions and values altogether.

There was nothing particularly novel in this approach. The inequality of power between employers and workers was a fundamental precept of trade unionism in that it implied the collective bonding of individuals in order to equalise these respective positions. Accordingly, it was perfectly possible for those who argued from the traditions of the union movement, and for those who opposed the new strategies, to argue in similar terms: 'The first trade unions came into existence precisely because the individual recognised his ineffectiveness as an individual against the employer and the state. To overcome this weakness individuals combined with other individuals to form a collective, and trade unions were born. Without that collective force, individuals would be back fighting alone' (Chiverton, M. TUC 1987: 446); 'For heaven's sake, there is nobody in this hall who is against individual rights... But the individual rights are useless without strong

trade unionism' (Hearn, D. TUC 1990: 302). Moreover, the familiarity of this argument -

Len Murray remarked that the 'tension between collectivism and individualism has always

been what trade unionism was about' (interview) - apparently meant that the unions were

relatively comfortable about responding to individualisation: 'Nothing she [Thatcher] said

about individuals caused unions any difficulty. The reason individuals do great things is

because they are part of the union, the collective' (Poole, interview); 'the essence of trade

unionism was about the right of the individual to answer the boss back and the only way

he could express that was to have the support of his fellows - any rights you might confer

on him were unavailing unless he could go in with half a dozen of his mates and say 'you're

pushing us around" (Murray, interview).

Can it be concluded from this that the unions did not particularly need to adapt

their vocabulary in order to accommodate the individualist policies and language of the

Conservatives and 'New Right'? To an extent there would seem to have been considerable

continuity in the language which was used - unions argued that they were simply doing

what they always had done. However, I believe that certain developments can be detected.

Firstly, there was an increased focus on using the law to establish a basic set of

individual employment rights from 1986 onward; this was identified by the Head of the

Press Department of the TUC as the priority during the later part of the period (Smith,

interview). The individual was seen as the starting-point, with trade unions and collective

rights necessary as a means of supporting him/her; accordingly collective rights and

discourse such as 'unity' and 'solidarity' could be seen as somewhat downplayed, although

they still persisted (see above).

Secondly, the unions' reassessment of their role in society included, *inter alia*, a

move towards the provision of more services to individual members (see p.219); and

thirdly, the support given to the position of the unions by civil liberties groups together

with the capital made from the ILO's denunciation of Conservative policies and legislation

enabled the unions to turn the language of the 'freedom of the individual' against the

Government.

I would endorse, therefore, the view of Bacon and Storey (in a slightly different

context) that 'unions have adopted more of an individualist agenda both in vocabulary and

in seeking to identify the wishes of their members' (1996: 43-4); however they also claim

that 'it is not easy for trade unions to adopt a more individualist strategy' and that such a

vocabulary 'requires some revisionism' (*ibid*: 70). The confident incorporation of

individualist language and policies with 'traditional' union functions discussed above would seem to refute their argument. However, the disparity between Conservative/'New Right' understandings of individual freedom and rights, focusing upon freedom of choice in an unregulated market, and Left/union views, which emphasised freedom of association and individual protection against employers should not be overlooked. It may have been difficult for the unions to adopt the *Conservative* language and strategies of individualism: 'the Tories do not understand the question of the imbalance of individual rights against the employer' (Smith, interview), but it was easier for them to emphasise the individual within their 'traditional' analysis which saw him/her asserting themselves against management with collective support. The question then was which one of these understandings achieved hegemony (see Chapter 7). This problem - that of a contested meaning of a shared discourse - is equally apparent from consideration of the issue of 'democracy'.

IV. Democracy

In Chapter 5, I characterised union responses to Conservative policies requiring individual balloting and the attendant discourse of 'democracy', as falling into two broad categories - an assertion that the unions *were* democratic, and an allegation that the Government was not, which linked into the accusation of 'hypocrisy'. These basic themes can be seen as running through union rhetoric during this latter period, with the additional development of a specific focus for the claim of Government duplicity, in the form of s.3 Employment Act 1988. However, this period also witnessed a growing acceptance of the democratic requirements imposed by the Government and the incorporation of balloting into the repertoire of union bargaining tactics; in consequence some union leaders voiced criticism of the previous democratic arrangements of unions and emphasised their commitment to the new approach.

Union attachment to democratic principles

As in 1979-83, however, the basis for most union leaders' analysis of the issue of balloting was the confident declaration that unions were democratic organisations: 'Democracy is the essence of trade union organisation. In no other major national institution is the commitment to, and the practice of, democracy more deeply embedded

than in the trade union movement' (TUC-Labour 1986: 20); 'We in the unions are the champions of democracy in the workforce. We do not like being lectured by employment ministers who never stood in a parliamentary election. We do not welcome advice from newspaper proprietors whose idea of democracy is notice of termination and the raising of a wire fence' (Todd, R. TUC 1986: 460). As can be seen here, the union claim of democratic essence dovetailed into a criticism of other institutions for failing to achieve comparable standards of democracy, an argument which had been used extensively in *Hands Up for Democracy* (see p.151), and which could be extended, as there, to an accusation of double standards: 'Why is it, if the Government believes so wholeheartedly in making bodies accountable to their members, that the same restrictions have not been put on the city institutions, the legal profession or indeed the Conservative Party itself?' (Chiverton, M. TUC 1987: 446). The language of 'democracy' was being used against the Government to criticise its arrangements and to allege unfairness and prejudice on its part.

The immanent nature of democracy in trade unions was also emphasised by the use of the language of history and tradition to depict the union movement's 'democratic heritage': 'Just as our history goes back to the Tolpuddle Martyrs and before, so must our vision go beyond the next general election. We have won our democracy not because of governments and courts, even though they may be well-intentioned and sympathetic to us, it is the faith in our members and their right to determine what they want to do and how they want to run their organisations that has achieved that for us' (Daly, J. TUC 1986: 460); 'We led the way in the Chartist movement for one man, one vote; today we stand for the involvement of working people in decisions which affect their lives' (Todd, R. TUC 1986: 460); 'One of the great deceptions is that this Government has given democracy to the trade unions. The first ballot held by the NUR was in 1911. That was 30 years before Norman Fowler was born. He is going to tell me that he has given democracy to the workers of Britain! The trade unions have practised that sort of democracy for decades, and they have practised it freely and within the kind of constitution they were prepared to adopt' (Knapp, J. TUC 1987: 438).

Such an analysis, based on the view that 'the principles of free trade unionism.. should include... the right of members to determine and enforce union rules and constitutions through their own democratic procedures' (Composite Motion 2, TUC 1990: 293), offered a potent contrast between the lengthy history of the unions and the more recent 'conversion' of the Conservative Government to the principle. Invocation of the

labour movement's history was, as argued in Chapter 5, a powerful discourse for mobilising and reaffirming opposition to the legislation - here, it served the function of refuting the Government's allegation of anti-democracy (which formed part of the broader attempt to marginalise the unions in rhetoric). It also served to assert the contribution which the unions had made in instilling democratic principles within 'workers' and society in general, and therefore to achieve a reintegration of unions within the democratic community. This was reinforced by attempts to portray the issue as wider than a 'trade union' one by referring to the 'fundamental rights that should apply in a democratic society' (Fitzsimmons, S. TUC 1989: 352 - above, p.200) and arguing that 'every citizen that values democracy has an interest in defending free trade unionism' (Gill, K. TUC 1989: 350), which broadened the potential opposition to the Government's measures.

In so far as this analysis denied the necessity for Government intervention to regulate trade union behaviour and was based upon the historical traditions of the unions, it might be thought to be a 'traditionalist' argument made primarily by those who wished to return to a voluntarist position with minimal state involvement in industrial relations (and in union democracy in particular). However, the language of 'democracy' was also used by the policy-makers within the TUC leadership. *New Rights New Responsibilities* proclaimed that 'the TUC and Labour Party are committed to extending industrial democracy as a foundation for economic policy and planning' (TUC-Labour 1986: 16), but argued that 'it would run counter to the spirit of industrial democracy to impose any one arrangement' (*ibid*: 18). Similarly, *Employment Law: A New Approach* stated that the TUC was 'committed... to the rights of union members to have ballots on strikes and in the election of union executives... Unlike the present Government, the TUC is fully and genuinely committed - as we always have been - to the ideal of a rich and active participatory trade union democracy' (TUC 1990c: 23). The focus upon the diversity of union arrangements, a view heard earlier in the decade (see pp.149-50) afforded a link between the language of 'democracy' and that of individualism - resistance to the legislation could be justified on the basis that it was denying to individuals the right to choose the procedures by which their unions were to be governed: 'If therefore, the Government is intent on proceeding with its legislative proposals, despite the opposition that exists well beyond the trade union Movement, the <u>General Council challenge the Government to let union members decide for themselves on their union's rules and constitutional arrangements</u>' (TUC 1987a: 5 - emphasis in original).

The vocabulary of 'democracy' thus went alongside the moves towards a language and agenda of individualism discussed in the previous section, and, I would argue, could be seen as part of the developing strategy of the TUC in the late 1980s. This was further emphasised by language which projected the unions' democratic contribution into the future, and thus corresponded with the language of renewal (see p.169): 'Colleagues, the 1990s will be a decade of democracy. From Pretoria to Prague the demands for more individual and collective rights will ring around the world. We can capture the mood and help lead the campaign for a new democracy in Britain, or we can leave it to others, whose objectives are less ambitious' (Christopher, C. TUC 1990:296).[21]

Government 'hypocrisy' - s.3 Employment Act 1988

I have already touched upon the way in which the unions' assured adoption of the language of 'democracy' enabled them to turn the vocabulary *against* the Conservatives and to accuse them of being anti-democratic. However, the most potent example of this tactic came in the context of the provision which became s.3 of the Act of 1988, which introduced a right for union members not to be unjustifiably disciplined for failure to participate in a strike, even if official and backed by the majority of workers in a ballot.

This measure provoked widespread criticism, not only from the unions themselves, but also from employers' organisations (see p.172) and civil liberties pressure groups (*eg* NCCL 1987), which facilitated the construction - at least in rhetoric - of a broad coalition of opposition on an issue which went beyond its specific target: 'We are not alone in seeing this as signalling a contempt for democracy, and as undermining ballots in principle and practice. The CBI, the IPM and a whole host of organisations with whom we would not always find ourselves in agreement have condemned this clause...For if the law protects those who ignore a democratic majority to <u>call</u> a strike, what about those who might ignore a majority to <u>end</u> one?... This is not just a trade union issue. It is a question of democracy. All democrats must make their voices heard' (Willis, N. *TUC Bulletin*, November 1987: 2 - emphasis in original).

The argument of the unions and other organisations was that the Government was

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[21] It should be noted that Christopher supported the composite motion demanding the repeal of the Conservative legislation and could thus be seen as a 'traditionalist'; nevertheless, he sought to locate himself within both discourses, - see above, p.192.

guilty of double standards in seeking to promote democracy within unions and then allowing an individual to override a decision which had been democratically taken: 'Moreover, while using the language of democracy to impugn the trade union Movement, its proposal for a 'right to strike break' despite majority support for industrial action in a ballot is manifestly anti-democratic' (TUC 1987a: 1); 'Then of course we have the most infamous proposal of all, that the right of the individual to choose to go back to work despite a call to take industrial action is a fundamental freedom. That is what the Green Paper says. It would have been more honest if they had said they were giving individuals the right to ignore democratically arrived at decisions' (Knapp, J. TUC 1987: 438). In this sense, *the unions were attacking the Government in its own terms, by using the language of 'democracy' against it*. By doing so, the depiction of the Government as 'prejudiced', 'duplicitous' and 'malicious' - as the enemy - was reinforced, with its policies seen as 'unfair' and thus rejected by the majority of 'fair-minded' people: 'The Government apparently wants to 'have its cake and eat it' - by requiring a secret ballot, but encouraging people not to abide by its outcome when the majority favour industrial action. The dangerous principle behind the Government's proposed 'legal right to strike break' if applied in reverse would imply that minorities could justifiably take industrial action despite a majority vote against. While no sensible person would support action on this basis, it serves to illustrate the Government's double standards' (TUC 1987a: Appendix: 2). In addition, resistance to the measure was justified on the basis of its likely damaging consequences:

> 'The facts of trade union life are that unions often have to take hard, finely balanced and closely contested decisions... These decisions are taken by votes rather than by someone exercising autocratic power (in marked contrast to employers). There is frequently a minority who intensely disagree with the majority. Yet the tradition of democracy is that minorities abide by the decisions of the majority. If this principle is substantially undermined as far as unions are concerned - and this appears to be the Government's aim - then it becomes difficult for unions to act in a coherent, consistent and reliable way. That is not in the best interests of union members, nor employers, nor the Government' (TUC 1987a: 4).

The response of the unions to this provision thus seems fairly robust. Bolstered by the support of other organisations, they were able to use the language of 'democracy' against the Government in order to accuse it of double standards, prejudice and a lack of concern for stability in industrial relations. However, two related problems remained.

Firstly, it could be argued that, by condemning this clause, the unions were failing to show concern for the rights of an individual to choose to work despite a strike call. The unions responded to this by impliedly labelling such an individual 'disaffected', thus delegitimising their views: 'In proposing measures for individuals to deploy against their unions, the Government clearly intends to establish detailed mechanisms which could make it difficult for unions to operate without constant harassment from disappointed minorities and individuals' (TUC 1987a: 4); yet this merely demonstrated the disparity between union and Government definitions of 'individual freedom'. This leads to the second difficulty - the effectiveness of using the language of 'democracy' against the Government hinged upon whether the unions themselves were perceived as democratic. I turn now to this issue.

Contested meanings of 'democracy'?

A number of the above statements from union leaders - particularly those of Todd (p.209) and Christopher (p.211) seem to demonstrate the confidence with which the unions used the discourse of 'democracy'. This was significant because an accusation of 'anti-democracy' levelled at the Government would lose considerable force if the perception among public and union members was that the unions were not democratic. This point was clearly grasped by at least one speaker at Congress: 'Motion 1 rightly calls for the removal of Section 3(1) of the 1988 Employment Act, which allows members of a trade union to ignore majority ballot results for industrial action, without being disciplined by his or her trade union. Quite right. That is anti-democracy and we can only make this demand if we are in favour, and publicly prepared to say so, of ballots before strikes in the first place' (Chambers, M. TUC 1990: 302).

The problem for the unions, as pointed out in Chapter 5, was that there were a number of differing varieties of democracy - 'the Thatcher definition was just one definition of democracy' (Morris, interview). The unions could therefore claim that they were democratic as *they* understood the term, but if this understanding of the required procedures and institutions was not shared by the audience, any assertions made of their democratic nature and allegations of lack of democracy on the Government's part were less likely to be effective. Significantly, there were several senior trade unionists who suggested that the union definition of 'democracy' had not gained acceptance: 'The unions allowed Thatcher and Tebbit to cloak themselves in democracy. Union democracy was

good for the 1940s, but it had not been updated. We assumed that because things had always been like that they were OK' (Poole, interview); 'By our own ineptitude in the argument about union democracy we managed on many occasions to get on the wrong side of the argument and to make it seem to people who perhaps were not listening as carefully as they should have been that we were not so much against the precise legal restraints but we gave some people the impression that we were actually against union democracy' (Edmonds, J. TUC 1986: 462);

> 'It is also possibly our last chance to show that we are true democrats - rather than Thatcher-enforced ones. I say 'possibly', because it may already be too late. It may be that the message has already got home to our members that we do not think they are clever enough to make an informed choice about whether they want to go on strike. Maybe they have already twigged that we do not think they are wise enough to decide who should be their General Secretary and who should sit on their Executive Committee. Of course, we can pretend that we are democrats by chanting that it is up to our members to determine their own rules. But who is fooled? We all know how that operates: A handful of activists turning up at a meeting, often in pubs, to determine how hundreds, sometimes thousands, of votes in a local branch should be cast at the union's conference. Let us be honest. That is how it happened in union after union, and my union was as guilty as the rest' (Chambers, M. TUC 1990: 302).

These remarks strongly imply that mere assertions of the democratic origins and traditions of the unions might be insufficient to convince members and the public that unions were properly democratic institutions, particularly given Government dominance of the media and political culture which arguably rendered its individualistic model of democracy more persuasive than that of the unions (see Chapter 7). Although unions practised a form of democracy, this did not necessarily correspond with others' understanding of the term.

Alongside this rhetorical acceptance of the potency of the Government's definition of 'democracy', there was an adaptation to the legislation in practice. Undy *et al* demonstrate that unions changed their rules and practices to comply with the legislation, although they did so reluctantly, making the minimum changes necessary to avoid sanctions (1996: 236). Such compliance eventually led to incorporation of the definition of 'democracy' as securing accountability *via* individual balloting - as distinct from 'participative' or 'developmental' definitions which emphasise interaction and involvement (Fredman 1992: 30) - into union discourse, such that: 'there is no longer any serious

argument in the unions about the principle of balloting' (Moher 1995: 42).[22]

Accordingly, union challenges to Government policies on balloting may be seen to have diminished in intensity over the period. In any event, it had always been difficult for the unions to be strongly critical of the Government's provisions, as pointed out on pp.147-8, because, as Fredman argues, 'criticisms of aspects of the current legislation can simply be labelled as 'anti-democratic' and dismissed' (1992: 24). Accusations of 'anti-democracy' were powerful forms of marginalisation, as the TUC acknowledged: 'To simply remove these provisions [ie those on balloting contained in the 1984 Act] and not introduce some new measures in this area could lead to accusations that unions were diminishing the rights of members and were undemocratic' (1986a: 11-12); this fact, coupled with the apparent popularity of the provisions among members (see p.225) and the adaptation to them which was evident in union bargaining processes, rendered the Conservative/'New Right' definition increasingly dominant.

But I feel that Fredman exaggerates in arguing that the Government 'has effectively deprived its opponents of the vocabulary of democracy' (1992: 24). Although the Government definition of this contested term (Gospel and Palmer 1993: 149) was gradually (if reluctantly) accepted by the unions, they still sought to turn the discourse *against* it by continuing to accuse the Conservative Party and other institutions of being comparatively undemocratic. While the effectiveness of this may be questioned - the TUC's former Press Officer remarked that the public might have felt that 'we were using the concept of democracy against them [ie the Government], but not addressing the real issues' (Smith, interview), the support given to the campaign against s.3 of the 1988 Act, which centred around the accusation of 'hypocrisy', demonstrated that it was still possible for unions to obtain widespread backing for a response which prioritised democracy over individualism, even if this did not result in a change in the law.[23]

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[22] Notwithstanding the call for an 'active participatory trade union democracy' (TUC 1990c: 23), McIlroy argues that the prevailing TUC and union trend has been towards a protective, plebiscitary model (1995: 161).

[23] Greater success was achieved on the draft Code of Practice on Industrial Action Ballots (1988), which the TUC (again supported by the EEF, CBI and IPM) criticised as 'one-sided', identifying as particularly 'iniquitous' a proposal that unions should only endorse action if there was a substantial majority and tunout exceeded 70% (GC Report, TUC 1989: 21). A less extreme Code came into effect in 1990 (McIlroy 1991: 180).

V. Unions and the public

Responses to marginalisation

I have referred on a number of occasions in this thesis to the way in which much of Conservative discourse and policies functioned to marginalise the trade unions, and this remained an important theme in the period 1986-1990; indeed it could be argued that this strategy reached a pinnacle in these years, following the defeat of the miners in 1985 and the Conservatives' third election victory in 1987 which ushered in a period of increased boldness and dogma on the part of Government ministers (see p.41).

The continuing exclusion of unions from policy-making processes, coupled with the legislative attack on them prompted the TUC to fundamentally reassess the role, objectives and methods of trade unions in society. The document *TUC Strategy* (1984) examined the position of trade unions in a changing environment and offered cooperation with Government and employers - McIlroy characterises it as 'a calling card for the TUC's readmission into politics and society based upon an acceptance of the Government's achievements 1979-83 and the consequent scaling down of union influence' (1991: 78). Further substantial reviews were carried out by the Special Review Body (SRB) of the TUC, established in 1987; its reports *Meeting the Challenge* (1988) and *Organising for the 1990s* (1989) examined the future role of trade unions and the TUC.

These developments were a clear indication that the Government's language and strategy of marginalisation had had an impact upon the unions. There was a perceived need to reaffirm the relevance of trade unions to people: 'many in modern Britain need reminding about the case for trade unionism' (SRB 1988: 3), which underpinned the work of the SRB. The task for the TUC and unions was to construct an appropriate and effective response to marginalisation, as the consultative document on *Industrial Relations Legislation* acknowledged: 'The Government has in effect attempted to de-legitimise trade union membership and collective bargaining... the series of challenges has highlighted the importance of the TUC strategy exercise which pinpoints the need to project trade union achievements which are otherwise ignored. As the TUC consultative document issued in March 1984 said: *'The Movement has to counter-attack to make known and understood the positive contribution unions make to British society. But getting the message across will not be enough. Unions must also prove their fitness to*

play a continuing role in the future" (TUC 1986a: 4, 5 - italics in original).

One possible response was for the unions to turn the tactic of marginalisation against the Government by seeking to place it beyond what was politically acceptable. It is therefore important to identify the themes and vocabularies which may have contributed to this goal. For example, the use of language designed to depict the Government as 'vindictive', 'malicious', 'hypocritical', 'deceitful' *etc.* or simply as 'unfair' could be regarded as an attempt to challenge the motives underpinning the legislation and, by ascribing mere prejudice, render the Government's policies unpalatable to ordinary 'fair-minded' people.[24] Similar results could be achieved by branding it or the measures 'anti-democratic', as failing to achieve the standards of other nations, as 'isolated' in Europe and as an 'international outlaw'. In addition, the unions could seek to portray the Government as isolated within domestic politics by emphasising the support which employers' organisations and other groups (such as civil liberties bodies) had given to their position; this served to construct - at least in rhetoric - a broad coalition of opposition to the Government's policies.

Redefining the relationship

Another means of responding to Government attempts to marginalise them was for the unions to reassess their role and strategies in relation to the public. Rather than criticising the Conservative Government, or its legislative measures, this discourse focused upon reintegrating unions within the political community by winning public support.

In part this could be achieved, as the quoted passage from *TUC Strategy* above suggests, by emphasising the contribution, historical or potential, of unions to British society. This had been a feature of earlier documents, such as *Hands Up for Democracy* (see pp.156-7), and a number of union leaders continued to use language which stressed the centrality of trade unionism to the improvement of Britain's economic and social position: 'Mr. President, a few days ago a very distinguished journalist referred to my father as a Bolshie, backroom barber, and so he was. He had such a regard for his fellow workers, and such a love for his country, that he once gave me a classic definition - a working man's definition - of patriotism. It was, 'Make our country better'. Let us do it;

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[24] See particularly TUC 1987a: 4 - above, p.180; Horton, D. TUC 1990: 307 - above, p.188.

let us do it together; let us do it now' (Willis, N. TUC 1986: 451); 'We understand that trade unions are vitally important to the fabric of our national life and democracy. Our procedures are therefore of interest and concern to the nation as a whole' (Switzer, B. TUC 1986: 454); 'The trade union Movement is potentially the greatest power in society' (Macreadie, J. TUC 1987: 444). This language, which implied that trade unions still occupied a position as 'the fifth estate' (Taylor 1980) and called upon the patriotic discourse of 'nation', might be seen as linked to 'traditional' calls for a corporatist-style role in political and economic policy-making (Jarvis, F. TUC 1987: 391 - see above, p.189), but it could also support a more modern, European concept of 'social partnership': 'These [proposals] look forward to an end to confrontation between Government and unions as a basis of building on the European Social Charter. This could only benefit the economy and society' (Young, A. TUC 1990: 287).

However, the refutation of the Government's tactic of marginalisation by asserting the centrality of trade unionism to British society seems to have been regarded by many as increasingly problematic. The 1986 consultative document acknowledged that 'there may be argument about the central role that trade unions must play in the affairs of the nation and industry' (TUC 1986a: 2), while the second report of the SRB spoke of 'promoting trade unionism as a vibrant and attractive force within the community' (1989: 1). The implication of these statements would seem to be that trade unionism was merely *one of a number* of groupings or 'philosophies' within British society and that other social groups could play an equally significant role[25] - a view supported by Roger Poole: 'Let us never use language which says that we are the central point around which society revolves' (interview).

The downplaying of trade unionism's centrality in this manner corresponded with the shift towards an agenda and vocabulary of individualism. The individual was now viewed as the cornerstone, and the task became to persuade him/her that trade unionism was compatible with pre-existing beliefs, rather than presuming an inevitable correlation: 'it will be important to ensure that non-members are aware that the basic values they support are central to trade unionism...there is a need to convince non-members that unions are relevant to their concerns and interests. That can mean understanding the things

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[25] This seems to have been a continuing process - McIlroy comments that the 'relaunch' of the TUC in 1994 'appeared to suggest the TUC was accepting a role as one of many pressure groups' (1995: 224).

that are already done, or it can mean addressing new issues in a trade union way' (SRB 1989: 6 - emphasis in original). This was linked to a growing emphasis upon the services which unions could provide to individuals - pensions, insurance, credit cards, legal services *etc.* - which would supplement existing collective bargaining functions and be attractive components of recruitment campaigns (SRB 1989: 8). Such developments led toward the conclusion that unions primarily existed to enhance the position of the individual: 'Unions therefore contribute to the dignity, self-respect and standing of individual workers' (SRB 1988: 3).[26]

If the individual was, indeed, predominant in the manner that these arguments might suggest, and unions were no longer to be seen as of central significance to British society but were merely one of a number of pressure groups competing for the commitment of individuals, it would seem that the equation of 'unions and 'nation/people' which had characterised *Hands Up For Democracy* (see pp.157-8) was no longer appropriate. The interests of individuals and 'the people' as a whole were no longer viewed as necessarily identical with those of the unions. This represented a realistic response to the declining levels of union membership and to the apparent attractiveness of Conservative policies to union members,[27] but it might have been thought to render it more difficult to counter languages and strategies of marginalisation - the unions could no longer simply invoke the discourses of 'nation' or 'people' to counter the Government.

Addressing the public

However, it could be argued that a move away from an assumption that union interests and vocabulary *necessarily* coincided with those of the public resulted in the unions attempting to *adapt their language* to a greater degree in order to win public support. As noted in Chapter 5 (pp.158-9), this was a process which had apparently begun

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[26] It is notable, however, that this paragraph continues in a more collectivist, 'protective' vein: Unions are a counter-weight to employer and management power. By seeking to organise individuals at work into groups with a common interest, unions seek to avoid that power being used in arbitrary, exploitative or careless ways' (*ibid*). This was therefore a further example of the way in which unions attempted to harmonise individualist and collectivist discourses (see pp.204-8).

[27] In the 1987 general election 30% of trade unionists voted Conservative; only 42% supported Labour (Kessler and Bayliss 1995: 59).

around the time of the Wembley Conference in 1982, but it became increasingly important as the 'attritional' effects of Conservative legislation took hold and union membership continued to decline. The SRB's first report spoke of the need 'to create an atmosphere more favourably inclined towards trade unionism' (1988: 26):

> 'It is also important to seek as wide support for the trade union view as possible. This has necessitated fresh thinking about the presentation of policy and about the need to work with a range of concerned individuals and institutions. This approach is at the heart of TUC work on the NHS, the inner cities and the need to maintain public services. Sometimes this approach involves unions - as on the NHS issue currently - in being careful to present policies in ways which emphasise the needs of the community above the direct and immediate interests of the groups of workers concerned - a development in which unions and members are showing considerable judgment and maturity. It has been argued that during the period of greatest trade union influence in the 1970s, unions paid insufficient attention to their standing with the community. In consequence, unions were portrayed, with some success, as the enemies of the public and when the economic climate worsened in 1980 and the Government was hostile, unions had few allies to call upon for support' (*ibid*: 25-6).

In order to assist in improving public perceptions of trade unionism, the SRB called for the use of techniques such as advertising, videos and opinion research, both generally and in targeting specific groups (1988: 26-7; 1989: 10). There seem to have been several objectives underpinning this call; broadly, there was a desire to 'create an environment more responsive to the role of unions' (1988: 25), which would assist the unions in constructing a coalition of support to counter the Government's marginalisation strategy, as the above extract suggests. But there were also more specific goals of promoting trade unionism among non-members to assist recruitment campaigns (SRB 1989: 6 - see p.219), an approach which had already begun within some unions;[28] and using public support to put pressure upon employers/Government in a particular dispute.

The latter objective is best exemplified by the ambulance workers' dispute of 1989, which involved the use of strategies designed to win public support including the commissioning of private opinion polls, use of the media and the decision to have one

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[28] The TGWU's Link-Up campaign, involving the use of television advertising, had begun in 1986, while the GMB had produced a video magazine (McIlroy 1995: 403). Note the leader of the GMB's remark 'The TUC ought to speak with authority for all the working people of Britain, not just the 10 million in trade unions but also the 12 million who ought to be in trade unions' (Edmonds, J. TUC 1986: 453) which demonstrated the importance attached to presenting an image favourable to non-members.

spokesperson, Roger Poole, for the all of the unions involved. The belief was that 'industrial action on its own would not win the day, so a major public relations offensive was launched at the start of the dispute. The unions' strategy was a twin-track one: in addition to the pressure created by the industrial action, the unions would try to make the government reconsider its offer by making it sufficiently unpopular through a public relations campaign' (Kerr and Sachdev 1992: 133-4). Public support was thus regarded as vital for success, in a way which had not been the case during the 'Winter of Discontent': 'In 1978 we ran the ambulance dispute in a very different way... There was a deliberate conscious decision [in 1989] that our members deserved to be represented properly - the only way of doing this was to win over the public for a chance of winning' (Poole, interview); 'the dispute was a fight for public opinion' (Morris, interview).

Given that this was so, the unions involved attempted to adapt their language and image so that it would be acceptable to the public - Roger Poole, described as an 'emollient' (quoted in Blyton and Turnbull 1994: 263) and as 'amiable and unfailingly reasonable' (Kerr and Sachdev 1992: 134) stated that there was a conscious attempt to avoid confrontational language (interview), a stance assisted by the fact that 'the emergency nature of ambulance work also made good television. There was no film of ugly confrontations with police that had scarred previous disputes' (Kerr and Sachdev: *ibid*). This policy would seem to have worked - opinion polls conducted during the dispute suggested that 80% of the public supported the dispute - and this crucially allowed the unions to marginalise the Government: rather than enabling the Government to portray itself as the guardian of public interest, the ambulance workers were able to represent themselves in this light (Bewsher 1990: 28).

As a dispute in the public sector over a specific issue, it might be queried how far developments evident in the ambulance workers' dispute were applicable to the broader issue of counteracting the Government's marginalisation of unions in general *via* language and legislative policies. However, Peter Morris argued that it was 'a model for approaches elsewhere' (interview), and support for this view can be found not only in the SRB reports, but also from the 1990 Congress, where a number of union leaders showed an awareness of a need to adapt the union message for public consumption, or to persuade the public of its validity: 'We need to determine what is in the interests of our members, and then we need to persuade the country that those interests will benefit the overwhelming majority of the population, to secure justice at work and a radical,

reforming Labour government' (Carr, J. TUC 1990: 291). In particular, those supporting a continued right to take sympathy action were depicted as being out of touch with public opinion: 'I just do not believe that that [an 'open-ended right to take secondary action'] would be accepted in the court of public opinion and that means our members' opinion too... The statement that we are putting to you is something that you could take on to any doorstep in Britain and win the argument. That is what we are going to have to do. Many of the people on the doorsteps are our members, and we have got to win them to it too. We are in tune with Europe. We are in tune with the British people. We are in tune with our members on this statement' (Willis, N. TUC 1990: 286); '[Composite Motion 2] advocates the return of unrestricted sympathy action. We all know that that is unacceptable to the public and that it would open the door to another round of Tory union-bashing' (Young, A. TUC 1990: 289); 'But I will tell you what I heard in some of those speeches today. I heard the reappearance of the arrogance of trade union demands which we had in the late 1970s, which led to the election of the Thatcher Government in the first place and, by golly, you have got to be aware of it. It does not go down well with the public of this country. It may go down with a few of us here, and a few of us back at the branch. But the great majority of trade union members, let alone the public, will not wear it' (Lyons, J. TUC 1990: 298-9).[29]

These remarks suggest a shift towards presentation of union policies in language which would appeal to 'ordinary' union members and the public in order to win support against the Government. While this process remained incomplete - Roger Poole remarked that 'we still need to work towards addressing everyone as if they were the public' (interview) and David Lea that 'I think there is a need for us to do more to demonstrate that what we are advocating is what the people of Kidderminster want rather than saying 'I've got 5 million block votes, you'd better listen to what I'm saying" (interview) - it did represent a move away from the tendency of the early 1980s, previously remarked upon (pp.160-1) to primarily address union activists: 'Now we address members/the public and activists in different ways' (Poole, interview). The 'public' and union members were broadly equated, and were prioritised over 'activists'.

However, as with many of the themes examined in this Chapter, this tendency had

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[29] Note also Jordan's listing of 'the flesh and blood reasons for the reform of employment law - reasons for a charter of rights for people at work, reasons the public can see and sympathise with' (see p.100).

not been unambiguously settled by the time of Thatcher's demise. A number of union leaders continued to express their suspicion of this approach, some seeking to distinguish policies and language which would be appealing to their members and that which was acceptable to the public: 'What we fear is that in order to make trade unions and trade union activity acceptable to an electorate which probably will not be impressed, and certainly not convinced, will render us incapable of defending our members' interests industrially on the shop floor' (Hearn, D. TUC 1990: 302), while others voiced a 'traditional' claim to protect working people as a whole, which seemingly did not admit of a role for the wider public: 'Our first responsibility is to represent our members... But we also have responsibilities to working people everywhere. Would it be meeting our responsibilities if we stood aside and said to a group of workers, 'Sorry, we would like to help, but we can't because you work in the wrong firm or, indeed, the wrong occupation'? Is that being responsible? Of course not. On the contrary, it is to ignore all the best traditions of our Movement' (Christopher, C. TUC 1990: 296). These speakers appeared to demonstrate no particular concern for presentational issues or the adaptation of language to win public support, as the leader of the TGWU seemed to confirm: 'I am not interested in what we say to the press. I am not interested in what the press say to us. I am interested in what we say to our members, who have been slaughtered for eleven years under Thatcher' (Todd, R. TUC 1990: 304). Such remarks, while ostensibly addressed to 'members', more closely resembled the approach of the earlier period which gave precedence to activists, and therefore fitted with the more 'traditional' language used by many of these union leaders.[30]

In this Chapter, I have described a number of key themes in union language by which the philosophy and policies of 'new realism' were projected. The moves towards addressing the public and 'ordinary' union members rather than activists, can thus be seen as a component of the response of the TUC leadership and other 'new realists' in the movement to the changing environment of the 1980s. Similarly, the conciliatory language of 'fairness' and 'balance', the focus on 'partnership' and the vocabulary of 'renewal' can be seen as designed to appeal to the public, in order to provide an atmosphere conducive to

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[30] Todd of the TGWU was something of an exception in that he supported *Employment Law: A New Approach*, but also Composite Motion 2 seeking the repeal of Conservative legislation.

trade unionism and to counteract Conservative attempts to marginalise unions, as well as an aspect of the 'accommodative tendencies' towards employers and (to a much lesser extent) Government (McIlroy 1995: 224).

In spite of these shifts in union language, my analysis of the various material has also led me to the conclusion that strong elements of the 'traditional' language of confrontation, collectivism and class remained, voiced explicitly by those who resisted the 'new' approach, but also underpinning many of the developments in vocabulary. Moreover, the existence of conflicting definitions in political discourse of terms such as 'freedom' and 'democracy' meant that the apparent embrace by the unions of languages of individualism and 'democracy' may have been less than totally convincing to union members and the public, given the strength of alternative understandings. Accordingly, in the final Chapter of this thesis, I shall try to offer some conclusions on the nature and significance of the trends in union language which I have identified.

CHAPTER SEVEN: Conclusion

What conclusions can be drawn about patterns of trade union language during the period 1979-90 in the light of the interpretation offered in this thesis? I would argue that the general assessment of British trade unionism offered by Kelly is equally apposite in respect of the specific issue of union discourse - 'in certain areas it is self-evident that there have been major changes... in other areas it is just as clear that very little has changed' (1990: 29-30). Kelly goes on to urge industrial relations analysts to identify the particular areas of continuity and discontinuity, which I will now attempt to do in this context, briefly summing up the themes discussed above.

Union language: change and continuity

The first point to note is that there has been a developing *acceptance* by the trade unions of certain changes forced upon them by the policies of the Thatcher Governments which is evident in their language: 'if the question is 'have we had to swallow things to which we were opposed at the time', the answer is obviously 'yes" (Lea, interview). In particular, the unions have come to acknowledge the place of law in industrial relations generally, thus moving away (at least from the time of the 1986 consultative document onward) from a traditional voluntarist stance, in stating that 'the fact is that the law is in industrial relations and cannot now be excluded - if it ever could' (TUC 1986a: 3). A similar response can be detected to the legislative provisions on union democracy: 'certainly, balloting before the taking of official industrial action has become widely accepted' (Kessler and Bayliss 1995: 191; also Fredman 1992: 34), in large part conditioned by the apparent popularity of the measures with trade unionists: 'Balloting is here to stay because our members favour it' (Willis, N. TUC 1986: 451); 'I tell you bluntly that we will not get commitment [from members] if we imply that we want to take away their right to a ballot on crucial issues like strikes and the election of union leadership' (Willis, N. TUC 1990: 285). In this respect, the unions' responses can be seen as demonstrating *realism* in that they showed an adaptation to a changed political and legal environment, although compliance was also secured via the threat of injunctions, fines and sequestration (Undy *et al* 1996: 25).

Acceptance of the measures did not necessarily imply approval of them (as Lea's

remark suggests) and the unions remained somewhat suspicious of the law and critical of elements of the Government's model of democracy (Undy *et al* 1996: 235 and above, pp.211-5). However, they were also able to incorporate the language of law and of 'democracy' into their discourse and strategy, accusing the Government of denying rights to workers, labelling Government measures 'undemocratic' and using ballots to enhance the legitimacy of industrial action (Martin *et al* 1991: 207). In these senses, therefore there was validity in the claim that unions were 'keeping to the law and even turning it to advantage' (Christopher, C. TUC 1989: 302).

Accompanying these developments were certain shifts in *objectives and policies*. Perhaps the most notable of these was the move away from the traditional immunity-based approach to the law and towards a system of positive rights, expressed in calls for 'charters' of individual and collective rights in statements such as *Employment Law: A New Approach*. This gradual shift in policy was reflected in an increased use of the language of 'rights' in the union movement in a manner which was very different from its use in Government discourse (see pp.196-8). Another significant element of changing union strategy was the increased emphasis upon services, such as pensions, insurance and legal services, which could be offered to existing and potential members. This was also manifested in altering patterns of language, with some increased focus upon the individual, although collective discourses remained powerful, as I shall argue below.

I have also remarked upon distinct shifts in the *tone* of union responses to the legislation. The period 1979-83 was predominantly marked by a vocabulary of conflict and non-cooperation, a stridency of tone, a characterisation of Government as 'the enemy' and warnings to employers of the possible consequences which would await them if they used the laws, most powerfully expressed in the Wembley Conference of 1982 and the campaign against 'Tebbit's Law'. From 1983 onwards a more conciliatory vocabulary of 'fairness' and 'balance', coupled with calls for cooperation and 'partnership' with employers and (particularly towards the end of the decade), a language of renewal came to the forefront of union discourse.

Closely linked to this were changes in the *style* of opposition to Conservative policies. The Employment Acts of 1980 and 1982 (especially the latter) prompted widespread political mobilisation (Kelly 1990: 58) in the form of organised campaigns and demonstrations coupled with policies of non-cooperation with the legislation. In contrast, the period from 1986/7 to the fall of Thatcher witnessed attempts by the TUC and unions

to persuade employers, MPs and other organisations to oppose further measures on the grounds that they were 'unnecessary' and unsupported by evidence. Coordinated campaigns of opposition to the legislation had ceased to be viable in the light of the defeat of the miners, the disintegration of unified defiance within the TUC and the continued popularity of the Thatcher Government with many trade union members as evidenced by their support for its re-election in 1987. Indeed, Kelly characterises the union response during this period as emphasising membership recruitment, rather than opposition to Government policy (*ibid*). Also in this context one should note the increased attention paid to techniques of presentation, both in an attempt to gain public support for particular grievances (exemplified by the ambulance workers' dispute of 1989) and to attract new members; the latter objective also being reflected in an increasing tendency to address 'ordinary' union members and the wider public rather than union activists.

However, while the changes which I have identified were undoubtedly of considerable significance, it is important not to underestimate the extent of continuity within union discourse. Several strands can be seen as being of continued relevance throughout the period studied.

Firstly, my analysis of TUC publications and Congress speeches has demonstrated the continued significance of several key collectivist themes which, despite being played down by the leadership of the TUC in the latter part of the decade, retained considerable potency amongst many union leaders, particularly those hostile to, or ambivalent towards, 'new realism'. These included the repertoire of myths relating to the origins and history of the labour movement; the conception of industrial relations as 'struggle', which was linked to the language of 'class'; the 'keywords' of 'unity' and 'solidarity'; and a continued vocabulary of confrontation.

Secondly, in the light of the enduring failure of the TUC and unions to engage in any meaningful dialogue with the Thatcher administration, the Government continued to be portrayed in rhetoric as the 'enemy' of the trade unions, with its measures depicted as 'malicious' and as an element of a wider strategy against working people (although the personalisation of opposition in the form of Tebbit was not maintained in respect of subsequent employment ministers). Similarly, certain 'rogue' employers and disaffected members retained a central position in union demonology.

Further, while there may have been, as I have argued, an increased emphasis upon individualistic discourses and strategies in union language, a powerful strain continued to

stress the unequal relationship between employers and employees and the consequent need for collective representation to redress the imbalance. The individual was, on this analysis, fundamental to trade union existence; but the protection and representation which unions could offer functioned to enhance his/her condition and potential.

Tied in with this was the view of industrial relations as inherently based upon a conflict of interest between employers and employees, expressed in the notion that 'you cannot legislate away the clashes of interest that can occur at work' (Willis, N. TUC 1990: 285). Thus, in spite of moves towards a more conciliatory language of 'partnership' and cooperation with employers, I would contend that the unions continued to view industrial relations as underpinned 'by the antagonistic interests of capital and labour and the balance of power between them' (Kelly 1990: 31). The pluralist view of industrial relations discussed in Chapter 5 had not fundamentally altered.

Two further points are of significance in the discussion of change and continuity in union language. Firstly, a number of the alterations in patterns of discourse which were taking place were not complete by the end of the period studied. This was particularly true of the move towards a language and policy of 'rights' which met considerable opposition at the 1989 and 1990 Congresses; but the persistence of collectivist languages and values among many union leaders can also be understood in similar terms. This serves to reinforce a point made in Chapter 1; the trade union movement was not monolithic, and different 'voices' could always be heard. It also demonstrates, however, that change is *gradual* and is unlikely to be irrevocable at a specific date, which inevitably forms a somewhat artificial cut-off point.[1]

Secondly, in Chapter 6, I identified several elements of the developing language of 'new realism' that were not strictly new at all. The notion of 'partnership' with employers, the attempt to create a 'community of opposition' to the measures, the claim that the measures were unnecessary, the vocabulary of 'balance' and of 'unfairness' based upon a comparison with the treatment of comparable institutions - all of these themes had to some extent been prefaced earlier in the decade.[2] 'New realism' may therefore have

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[1] One might argue that the division of the analysis of union language into two distinct time periods adopted in this thesis tends to exaggerate the impression of alterations being relatively sudden rather than gradual.

[2] Indeed, Joyce points out that the language of 'fairness' was an important element of union discourse in the late 19th Century (1991: 117).

represented a change in tone, but it did not involve the use of forms of language previously unheard within the union movement. In this sense, many of the developments in language can be seen as 'recessive themes' in union discourse: 'new arguments... shaped in part out of themes which were previously, like latent genes, recessive or of secondary importance... themes which, like recessive genes, were present but relatively mute, [which] can from a different chronological vantage point be seen to have carried ways of talking about politics which provided some of the language of later years' (Barker 1996: 14). The vocabulary of 'new realism' was based around themes which were present, if not always dominant, in union language of the early 1980s and before.

This leads to an important question as to the relationship between changing patterns of union language and the policies of the Thatcher Governments. If a number of the developments which did take place can be understood as manifestations of 'latent themes' *already present* in union discourse, while in other areas there were substantial continuities in the language used, to what extent can Conservative/'New Right' language be said to have shaped and altered the terms of debate on labour legislation over the decade? In order to address this issue, I wish to explore the analysis of Thatcherism as a hegemonic project (see p.12) in greater detail.

Thatcherite hegemony and the unions

The interpretation of Thatcherism as hegemonic project is most closely associated with the work of Stuart Hall. Following Gramsci, Hall claims that "hegemony' implies: the struggle to contest and disorganise an exiting political formation; the taking of the 'leading position' (on however minority a basis) over a number of different spheres of society at once - economy, civil society, intellectual and moral life, culture; the conduct of a wide and differentiated type of struggle; the winning of a strategic measure of popular consent; and thus, the securing of a social authority sufficiently deep to conform society into a new historic project' (1988: 7). He argues that Thatcherism sought to challenge, and ultimately dismantle, the hegemony of the post-war social democratic settlement and in this sense could not be viewed as merely an attempt at a short-term electoral triumph; instead it sought a transformation and restructuring of the state and society (*ibid*: 163; Hall and Jacques 1983: 11). The exponents of Thatcherism based their challenge around the concepts and vocabulary of 'authoritarian populism' (Hall 1983: 31; Gamble 1994: 182)

which drew upon popular discontents with social democracy and married these with the strengthening of the power of the state in order to achieve its goals. Its success lay, in large part, in what Hall calls 'the remaking of common sense' (1988: 8, 163), such that the old understandings of social democracy and the welfare state were supplanted by those of the free market, and in so doing it managed to speak to substantial numbers of people outside the 'dominant classes': 'Thatcherism was grafted onto the resentment of the 'little non-political person in the street' against the big, corporate battalions - 'big government' *and* 'big unions' which characterised the *statism* of the social democratic era' (Hall and Jacques 1983: 10 - italics in original). Thatcherism also prevented the formation of effective and coherent counter-ideologies, functioning to delegitimate socialism (Levitas 1986: 17), although Hall argues that this was partly due to the Left's failure to understand Thatcherism as a hegemonic project and thus to devise an alternative to it (1988: 11, 170).

Hall's interpretation is not without its critics, perhaps the most notable of whom are Bob Jessop and colleagues (Jessop *et al* 1984, 1990). They argue that Hall exaggerates the significance of ideology as an element of the policies of the Thatcher Governments and as explaining support for them; instead they focus upon economic issues, arguing that Thatcherism represents a 'failed economic project' (Leys 1990: 120). This criticism shades into one previously discussed (pp.33-4) - that Thatcherism was insufficiently coherent to amount to an 'ideology' and to treat it as such assumes a homogeneity in the pursuit of policies which was absent in practice (Hall 1988: 9). Additionally, Hall is criticised on the basis that he overstates the level of support which Thatcherism had among the electorate - that Thatcherism in fact achieved hegemony or, to use Levitas' phrase, that 'we are all Thatcherites now' (1986: 16; see also Hall *ibid*: 154).

For his part, Hall acknowledges the criticisms, but rejects them. He states that his 'foregrounding' of the political-ideological dimension is a 'deliberate strategy' intended to avoid a reduction to economism (*ibid*: 3, 170) and thus that authoritarian populism was only intended to be a partial explanation of Thatcherism; that Thatcherism represents a number of diffuse, sometimes contradictory ideas and languages (*ibid*: 9, 166); and, perhaps most powerfully of all, he refutes the claim that a hegemonic position has once and for all been achieved, arguing that hegemony 'should never be mistaken for a finished or settled project. It is always contested, always trying to secure itself, always 'in process" (*ibid*: 7, 91) - he points in particular to the disparity between its ideological advances and

economic failures (*ibid*: 155). This issue is expanded upon both by Levitas, who argues that the hegemonic project of the 'New Right' can be taken to have achieved success less in electoral terms and more on the basis of its propagation and support by the institutions of civil society and the state (1986: 17); and by Gamble, who considers hegemony to have electoral, ideological, state and economic dimensions and concludes that the project was relatively successful in the first two categories (although certainly not complete), but considerably less so in the other two dimensions (1994: 226).

It is beyond the scope of this thesis to evaluate the accuracy or otherwise of these interpretations of Thatcherism or to seek to reach a definitive understanding of the concept of 'hegemony'. However, Hall's concerns can be seen as extremely pertinent to this study.

The importance of the characterisation of Thatcherism as a hegemonic process lies in the centrality of political language to the project. Commenting upon the relationship between culture and languages of 'nation' and 'race', Seidel remarks that 'any [hegemonic] project of this kind will seek to manipulate words and concepts as an integral part of cultural and political history. Language, particularly processes of renaming and redefinition, is a focus of struggle... ostensibly abstract disputes about the meanings of words have profound implications for public policy and people's lives' (1986: 107-8). Similarly, Hall adopts a discursive conception of ideology which views the forms of articulation as crucial - as Leys states, he develops 'a rich problematic of ideological themes, repertoires, articulations, terrains, condensations and the rest, through which, in his hands, the newly emerging linguistic and philosophical theories of signification became potent practical tools of ideological understanding and struggle' (1990: 125). In this respect, his approach strongly resembles that of writers such as Jones and Joyce (p.8) in that it recognises that the core ideas and policies of Thatcherism must be *constructed*; they do not simply represent pre-existing needs, views and realities: 'I have tried to show how Thatcherism articulates and condenses different, often contradictory, discourses within the same ideological formation. It presupposes, not the installation of an already-formed and integral conception of the world, but the *process of formation* by which 'a multiplicity of dispersed wills, with heterogeneous aims, are welded together" (Hall 1988: 10 - italics in original; Leys 1990: 126); however he stops short of a 'fully discursive position', arguing that material conditions of existence set limits on the validity and effectiveness of forms of political language. Thatcherism is thus 'constituted by, and constitutive of' (Hall *ibid*:5),

changes in political, economic, social and cultural conditions.

Hall's account does not focus specifically upon the issue of the language of Thatcherite legislative reform in industrial relations. However, there can be little question that measures to 'tame' the unions represented a key element of any hegemonic project pursued by the Thatcher Government, both in ideological terms, as part of a philosophy of anti-collectivism, and along the economic dimension, in an attempt to 'free' the labour market. As such, if Hall's interpretation is followed, one would expect language to play a crucial role in the policies, constituting the unions as an appropriate target for legislative control. The validity of this assessment has, I hope, been demonstrated by the analysis in Chapters 3 and 4 above. The discourses of the market, of individualism (themes brought together within the broader and politically potent vocabulary of 'freedom') and of 'democracy' functioned to construct British industrial relations in general and the trade unions in particular as in need of reform; the language of 'privilege' and of 'balance' operated as justifications for the adoption of *legislative* (rather than collectively negotiated) measures to regulate union behaviour and operations; while the discourses of 'people', 'nation' and 'community' sought to delegitimate unions and collectivism - this being an example of Thatcherism's 'constant attempts to expel symbolically one sector of society after another from the imaginary community of the nation' (Hall 1988: 8). These were, therefore, crucial tools in the attempted construction of a new 'common sense' (to use Hall's phrase) which challenged the post-war voluntarist, collectivist, corporatist settlement in industrial relations in favour of a state-regulated, individual-oriented system which denied unions access to the policy-making process.

To what extent did the Conservative Government of 1979-90 succeed in building a new 'common sense' in industrial relations and on the role of the trade unions? If we view the Conservatives' labour legislative policies as part of an attempt to achieve hegemony over the union movement, the question (at least in respect of the ideological dimensions of the hegemonic project) then becomes: did Government articulations of key concepts and vocabularies achieve a dominant position in the industrial relations debate and successfully prevent the formation of a coherent counter-ideology? I will consider this problem by briefly discussing key *shared but contested* discourses, such as 'democracy', 'freedom' and 'individual rights'.

In the case of 'democracy', there was an acknowledgment on the part of several union leaders that there was some substance in Government accusations that unions'

previous internal arrangements had been anti-democratic (pp.213-4), prompted, in large part, by the perceived popularity with union members of the balloting provisions which had been introduced by the legislation (p.225). The result was that a particular conception of democracy, which reflected the Government's atomistic, individualistic model (Fredman 1992: 29) became dominant: 'it does not appear premature to note that the terrain of debate concerning democracy in trade unions has shifted. Discussions of alternative representative and participative forms of democracy now appear academic: the vocabulary has been captured and union democracy is in practice now firmly equated with a requirement for individual balloting' (Dickens and Hall 1995: 292). However, the unions did not fully embrace the Government's model and definition of 'democracy'; rather, they reluctantly complied with it to avoid the imposition of legal sanctions (Undy *et al* 1996: 236).

In similar manner, although perhaps less noticeably, the 'New Right'/Conservative language of 'freedom', based upon an individualised conception of competition between self-interested individuals in the absence of coercion from others or the state, 'has lent strong persuasive power to Thatcherism and such slogans as the 'free market' and 'rolling back the boundaries of the state" (Fredman 1992: 38). In the area of labour legislation this can be seen as underpinning the Conservative discourses of economy and the market and of freedom from the collective pressure of trade unions (embodied in the proposals on democracy and the right not to be unjustifiably disciplined for refusing a strike call), in contrast to the unions' calls for freedom of association and freedom to regulate their own affairs, which were, by comparison, relatively unsuccessful in reshaping policy.

The language of individualism shaded into the language of 'rights' (a right to work enforceable against unions, or a right not to belong to a union), which were 'used to legitimate an essentially individualistic, free market view of society' (Fredman 1992: 37) and thus formed a central element in the Thatcherite assault on the 'common sense' collectivist understandings of the post-war settlement. The unions sought to counter this discourse by calling for 'charters' of rights for individual workers and, in so doing, emphasising that their task was (and always had been) to enhance the position of the individual *vis-a-vis* more powerful employers.

However, despite the apparent confidence with which union counter-claims were made, they faced considerable difficulties in challenging Government/'New Right' discourse. The request for charters of 'rights' did not fit well with a legal system which

had traditionally not been based around positive 'rights' for individuals, particularly in the absence of a written constitution; further, the common law was powerfully underpinned by an individualist philosophy (Hendy 1993: 60 - see above, p.67) which tended to run counter to the type of 'rights' (such as the right to strike and freedom to associate) which the unions sought, even when they couched these requests in the language of enhancement of the status of individuals.

Further, Taylor argues that the history of British state-union relations, underpinned by *laissez-faire* presumptions which prioritised union autonomy and kept government out of industrial relations, did not encourage a belief in state planning and corporatist policy-making. The result was that 'the forces of individualism and the free market proved to be much stronger than the countervailing tendencies towards centralisation and planning' and that the labour movement tended to be characterised by 'self-regarding sectionalism':

'a strong class consciousness could not mask the real and complex social status and occupational divisions that separated workers from each other. The rhetoric of a Labour Movement - an industrial army of the working class of one mind - made little sense beyond the rostrum of union and party conferences. So did any real sense of discipline among workers to achieve a greater good. It is debatable whether social solidarity was ever strong across the working class as a whole... vague notions of social justice made little impact on the hallowed defence of established wage differentials and relativities' (1993: 343-4).

On this view, Conservative notions of the self-interested individual shifting for him/herself in a competitive, free market environment, may have been more persuasive to union members' 'deeper instinctive feelings and beliefs' (particularly their suspicion of authority (*ibid*: 344)) than the union 'mix' of language and strategies of individual rights and services coupled with the function of collective protection which emphasised the relative weakness of the individual. However, this conclusion can be questioned, as I shall presently discuss.

The pursuit of ideological hegemony, both in the debate on industrial relations and more generally was, of course, considerably assisted by the sympathy of much of the media towards Thatcherite values and projects. Gamble claims that 'the active support given to the Thatcher government by the great majority of the national press was very important in sustaining the momentum of Thatcherism and projecting its policies as the only right and possible ones. Under the Thatcher government the British press was more one-sided in its partisanship than at any time in the history of British mass democracy'

(1994: 222), while Hall remarks that 'the colonisation of the popular press was a critical victory in this struggle to define the common sense of the times' (1983: 29). This was exacerbated by the tendency of the media, noted by the Glasgow Media Group - prior to Thatcher's election (1995:Vol.I: 160 - originally published 1980) - to use language indicative of an anti-union 'world view'.

A study of the language of the unions indicates their awareness of the persuasive potency of media presentation, both of union activity and of Government policies. There was a consciousness of a need to counter this, partly by 'debunking the myths' in TUC publications (eg TUC 1982c; TUC 1983); and partly by devoting greater attention to techniques of presentation (for example, the publication of TUC Bulletin and the methods used during the ambulance workers' dispute of 1989 - see pp.220-1). However, neither unions nor the Left in general were ever in a position to challenge the Conservative dominance of the media and it is perhaps instructive that a senior TUC official admitted to me that, even in 1996 'we do have a media problem' (Lea, interview).

This raises an important point, which relates both to the understanding of 'hegemony' and the success of the Thatcherite project. Concepts such as 'democracy', 'freedom' and 'individual rights' were key terms in the political lexicon, and therefore vitally important for all sides to claim; but they were also the sites of considerable ideological contestation. The unions were certainly not 'deprived' of these vocabularies, as Fredman claims of 'democracy' - (1992: 24 - see p.215); indeed, they made considerable attempts to use them against the Conservatives by claiming that they were anti-democratic, opposed to freedom, had removed individual rights etc. The implication of her argument, however, seems to be that the Thatcherite 'definitions' of these terms achieved a degree of dominance in the industrial relations debate such that counter-definitions put forward by the unions were regarded as invalid. In this sense, therefore, Conservative/'New Right' ideology could be said to have achieved a degree of hegemony: 'By capitalising on the shifting denotations of these ideas, the Thatcher Government has successfully engendered a wide measure of consensus supporting measures which are in reality highly restrictive of workers' rights and trade unionism' (ibid).

Two distinct but related elements of the hegemonic project require disentangling here. Firstly, how far did the Conservatives succeed in establishing consensus support for their legislative measures on trade unions? The evidence of success here is, at best, ambivalent, both at elite level and below. TUC and other union leaders, as argued above,

continued to contest Conservative understandings of key themes; in particular, the type of 'rights' and 'freedoms' which they emphasised differed from the individualistic conception of the 'New Right'; and although 'the individual' had a growing role in union discourse and strategy, the notion that he/she required *collective* protection to redress the imbalance of power in relations with employers remained fundamental. Moreover, where changes in language *did* take place, they often involved the rekindling of recessive themes within union discourse rather than the adoption of Thatcherite understandings. I would argue, therefore, that it is difficult to conclude that union leaders supported Thatcherite strategies or adopted its understandings of key themes.

This may not seem surprising; but the evidence of support from union members and the broader public is also somewhat thin. Although 'the early policy initiatives were popular with the electorate. Opinion polls showed that voters generally approved of Conservative union legislation. There was strong, positive support (even amongst union members) for legislation on ballots before strikes, postal elections for union leaders, and attacks on the closed shop' (Miller and Steele 1993: 228), this support seems to have diminished during the decade, with unions becoming more popular (Edwards and Bain 1988: 313). Moreover, surveys of union members suggest that the major incentives for membership are support at work and the improvement of pay and conditions, rather than individualistic instrumental reasons for joining (*eg* benefits and services) (Waddington and Whitston 1995: 191; Taylor 1994: 23; Poole, interview). There seems, therefore, 'little evidence to suggest that... workers' fundamental loyalty to unions has been destroyed by the Conservatives' political project. Individualism was not central to union decline, and collective issues remain at the core of workers' demands of unions' (Waddington and Whitston, *ibid.* 197). The construction of an anti-collectivist, individualistic consensus therefore seems to be incomplete at best.

However, this does not preclude the possibility of Thatcherite hegemony in the debate on labour legislation, because the term can be understood in another way. Hall has drawn attention to hegemony as an ongoing, rather than a completed, project (see p.230), and therefore the failure to establish consensus does not prevent the existence of hegemony; while Leys remarks that the absence of an effective counter-ideology is a central feature of hegemony: 'for an ideology to be hegemonic, it is not necessary that it be loved. It is merely necessary that it have no serious rival' (1990: 127). If these understandings are combined, Thatcherism *can* be seen as hegemonic in the context of

labour legislation. The Conservative/'New Right' dominance of the media and the elite intellectual groupings discussed in Chapter 3 (see also Desai 1994) enabled their language to shape and control the debate on the reform of industrial relations legislation; the unions, reactive by nature (see p.11-12) and excluded from corporatist policy-making processes which might have allowed them to influence the legislative measures, were forced to respond in similar terms,[3] as they acknowledged throughout the decade: 'We have not chosen the ground for this fight, and I do not think we shall be able to choose the ground for particular fights' (Murray, L. TUC (Wembley) 1982: 408); 'For too long we have let Mrs. Thatcher choose the ground for this debate' (Young A., TUC 1990: 289). In addition, the potency of continued Conservative attempts to marginalise and delegitimise the unions rendered them 'outsiders' in the political debate, a position which their media presentational difficulties tended to reinforce. Accordingly, the unions were unable to challenge Government discourse and strategy at the level of policy-making, or to effectively construct a counter-hegemony which would have presented a coherent 'alternative reality' on industrial relations and labour law to that put forward by the Conservatives; instead they were simply able to dissent to each measure as it was put forward.

Overall, therefore, the relationship between the notion of Thatcherite hegemony and labour legislative policies can be summarised as follows. Conservative/'New Right' policies and discourse challenged the post-war collectivist consensus on state-union relations and the Government's language and understandings of key themes dominated and shaped the policy-making agenda during the 1980s. In the light of the support which the Government had from the media and important think-tanks and intellectuals, and continued Conservative attempts to marginalise them, the unions - conservative by impulse and facing difficulties of presentation - did not come close to constructing a coherent and effective counter-hegemony to challenge or supplant Conservative ideology. However, they remained strongly critical of Government measures, and there is relatively little evidence, either at an elite level or amongst 'ordinary' members and the wider public, of the 'transmission' of Thatcherite language and beliefs in the manner suggested by Green

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[3] Moher argues that both the provisions on balloting and on strengthening the rights of individual union members reflected developments which were actually occurring within unions at the time; however the fact that these changes were imposed by law and that the miners' strike of 1984-5 highlighted the reluctance to change 'meant that unions were thrown onto the defensive' (1995: 46-7).

(p.12), with the limited exception of the theme of 'democracy'.

Thatcherism and the changing language of the Left

The debate, outlined briefly in Chapter 1, about the effect of Government law and policies upon trade union attitudes, behaviour and strategy, can now be returned to. Perhaps unsurprisingly, the Government claimed that 'trade union law played an essential part in transforming Britain's industrial relations' (DE 1991: 6). This view has been partially endorsed by some academic commentators - for example Freeman and Pelletier (1990) attribute the decline in union membership to legislative policy, Evans (1987) points to the importance of injunctions in restraining industrial action, while Marsh (1992: 239) and Kessler and Bayliss (1995: 260) comment upon the considerable reduction in the political role of the unions. Elsewhere, however, the impact of the legislation is seen as questionable. Brown and Wadwhani (1990: 69) argue that declining membership and strike activity should not be linked too closely to legislation, while Kessler and Bayliss do not regard it as a 'major cause' of the reduction in the number of strikes (1995: 236). Many commentators conclude that the legislation had *some* impact upon trade unions, but that it cannot be disentangled from other influences such as macroeconomic factors and changes in industry composition (Kelly 1990: 56; Metcalf 1991: 23; Marsh 1992:242; Dunn and Metcalf 1994: 37).

The interpretation of union language offered in this thesis suggests that, even if we accept that the discourse has not become totally Thatcherite, and that it exhibited important continuities throughout the decade, the fact remains that there *were* shifts in patterns of union language during the 1980s. How far can these changes be attributed to the legislative and other policies of the Conservative Government?

This is a problematic issue not only in the context of developments in trade unions, but more broadly in relation to changes in British political language as a whole. Viewed from the perspective of the mid-1990s, it seems uncontroversial to claim that a redefinition of the terms of political debate has taken place. Barker (1996) has drawn attention to a number of recent changes in political argument, including the disappearance of socialism and conservatism, the replacement of policies with constitutions, the replacement of class with citizenship and the disappearance of enemies. Several of these developments can be seen being played out in union discourse of the 1980s - particularly the diminution in

importance of the language of class; growing attempts to win over employers and moves towards a vocabulary of 'social partnership' and 'talking a language which employers find acceptable' (Poole, interview) which suggested they were not to be regarded as 'enemies' (although enmity continued to be expressed towards Government and 'rogue' employers); and the call for 'charters' of rights for workers and the use of decisions of the ILO, which resembled the demands for constitutional safeguards heard from groups such as Charter 88 influenced 'by the growing presence within British politics of the European Union' (Barker *ibid*. 11). The gradual move to a less confrontational vocabulary within the union movement also corresponded with the observations of reformers such as Bogdanor (1983: 197), who have been critical of the adversarial nature of British public life.

Changes in the terms of debate appear to have been particularly acute on the Left. In 1990, Leys remarked that 'perhaps the idea of formulating a *socialist* project, capable of being pursued in the context of the global market economy, with the long-term goal of recovering control over that market, and hence over our lives, now seems simply a fantastic dream' (1990: 128 - italics in original), while Gamble argues that, by 1992, certain policy changes had become irreversible and had forced Labour 'to recognise... that there could be no return to national economic management and welfare programmes based upon the Fordism of the postwar boom' (1994: 225). These changes have perhaps reached their zenith in the redefined 'New' Labour Party under the leadership of Tony Blair, with the revision of Clause Four of the party's constitution and recent calls to cut its historical ties with trade unions and to phase out the word 'socialism' from the party's vocabulary.[4]

There would appear, therefore, to be strong reasons for claiming that 'the Thatcher government succeeded in shifting the terms of the policy debate' (Gamble 1994: 224) and that 'the Conservatives have an unshakeable grip on the agenda: the language and philosophy of politics remains theirs, and theirs alone'.[5] But how far have these changes been *caused* by Thatcherism (if indeed such a thing exists)? Barker observes that 'it is easier to see how different things have become, than to identify when or in what manner

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[4] For the revision of Clause Four, see 'Blair's October revolution', *The Economist* 8th October 1994, Anderson, P.: 'Nearly there', *New Statesman and Society*, 28th April 1995: 25. For ties with the unions and the language of 'socialism', see 'Blair ready to cut links with unions', *The Times* 13th September 1996; 'What's in a name', *The Times* 16th September 1996.

[5] 'A triumph of conservatism', *Independent on Sunday*, 14th April 1996.

the change took place' (1996: 7). The difficulty is that there are a number of 'catalysts' or potential explanations for change - the collapse of state Marxism in 1989 (Gamble 1994: 226; Barker *ibid*), and a long-term rise in the standard of living (Phelps Brown 1990: 7-8) may be at least as significant in encouraging change on the Left as the dominance of the policy agenda by the Conservatives/'New Right'. Precisely the same can be argued in the narrower context of the changes in union language examined in this thesis. The legislation and policies of the Conservative Government *may* have caused some or all of the alterations in the nature and tone of union discourse which I have observed; but other factors such as declining membership, changing management strategies or new patterns of work may have been equally or more important.

Ultimately, therefore, the problem of causation identified in Chapter 1 remains. One can observe changes in political language and *infer* that certain consequences may have resulted or that these changes may themselves be the result of particular factors; but it is impossible to *prove* that this is the case. However, I do not believe that such difficulties should blind us to the importance of a study of changing political language such as this. Political language 'is not just one more kind of activity; it is... the key to the universe of speaker and audience' (Edelman 1964: 131); it is also a vital element in the construction and maintenance of identity by any political grouping (Belchem 1996: 11). The shifting patterns of language identified in this thesis thus tell us much about whether there have been changes in the British labour movement since 1979 and if so, how fundamental they are; they also demonstrate how it attempted to construct and define itself in a hostile legal environment and a political community from which the Government had sought to drive it. In an era when political identities and the terms of political debate are constantly being revised, these remain critical issues to address.

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Notes: i) *Unless otherwise stated, the place of publication is London.*

ii) *Where required, references in the text to speeches indicate the name of the speaker in addition to publication and page number.*

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