



TRADE  
UNION

10 DOWNING STREET

31st January 1980

Private and Confidential

*Dear Peter,*

Unions and Public Opinion

I showed to the Prime Minister your Paper dated 30th January, and she approves this.

For reasons which I expressed on the telephone last evening, the Prime Minister thought it best not to distribute your Paper to members of the Cabinet this morning, but that you should distribute the Paper to each Cabinet Minister from Central Office.

The subject of the reform of Trade Union Law is not on the Agenda for today's Cabinet; even if we had circulated the Paper last evening, it would not have been within the forty-eight hour rule; and your Paper is addressed to your colleagues not so much as members of the Cabinet, but rather as leading figures in our Party.

The subject of the reform of Trade Union Law is likely to be considered at the Cabinet today week; by then, all Members will have had an opportunity of considering your Paper and the Prime Minister will be able to refer to it at Cabinet.

I am not sure whether you have seen Lord Denning's judgement. In case not, I am enclosing the full text. I am also enclosing a copy of the Writ which was issued by the Private Steel Companies against the three leaders of the ISTC.

Denning did make an Order in terms identical to those for which the Plaintiffs had asked in paragraphs 1 - 4 inclusive on the endorsement of the Writ.

I am sorry to say that I missed Jim Prior on television last evening, although I heard him on the wireless this morning. I was rather encouraged by what he had to say this morning.

/Continued .....

I had a long talk last evening with John MacGregor who is the Whip on our Standing Committee on the Employment Bill. He said that Jim had given the impression to the Committee that he would be introducing, next week, during the Committee Stage a new clause the effect of which would be the restoration, at least in part, of the Law to what it was before the House of Lords decision in the McShane case. I am getting hold of the Committee Hansard (so far there have been two Meetings of the Committee only) and will send this over to you as soon as possible.

I reported to the Prime Minister on your Meetings with Quintin, Michael Havers, Jim and Peter Carrington.

I am not copying this letter to anyone else. I return all the documents which you handed to me.

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-m.

Ian Gow MP  
Parliamentary Private Secretary

The Rt Hon the Lord Thorneycroft CH

PS I have handed copies of your Paper to John Hoskyns and David Wolfson. I think it best that you should send a copy to the Prime Minister in the same way as to other members of the Cabinet.

From

THE CHAIRMAN OF THE PARTY

The Rt. Hon. The Lord Thorneycroft

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PT/SO

30th January 1980

THE UNIONS  
AND  
PUBLIC OPINION

A paper by Lord Thorneycroft

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1. It is the duty of the Chairman of the Conservative Party to inform colleagues of the state of public and Party opinion upon important matters.
2. Having received and discussed the information on Opinion Research carried out by ourselves and others, I would summarise the situation as follows.
  - (a) The largest single factor in securing the substantial majority which the Conservatives now enjoy was the massive swing of skilled and unskilled workers, many of whom are Trade Unionists, to the Conservatives during the Election.
  - (b) An important factor in this swing appears from subsequent polling (see Times poll, published 21st January 1980, at Appendix A) to have been the hope that the Conservatives would find some way of limiting the overmighty power of the Trade Unions while preserving the Trade Union movement. Disillusion with the Trade Union movement and its link to the Labour Party was, one must suppose, a major factor in the change of Government.
  - (c) Party and public opinion outside the Militant Tendency and the extreme Left would seem to be concentrated upon a wish to preserve the individual rights of Unions to strike against employers but to stop well short of the widespread picketing and blacking of outside firms.
3. Against this background the Cabinet will no doubt be considering public re-action and the political consequences if the Denning judgement in the current ISTC case is over-ruled.

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4. Such a decision would be widely interpreted as a licence to extend certain strikes over an almost indefinite area. Whether we like it or not, that would be the law of this country and we could not halt activities within it.

5. Clearly any decision as to what action should be taken must await their Lordships' judgement and immediately subsequent developments.

6. The Government will at that time come under very great pressure from inside and outside the Party to restate its position. The Times Leader of 28th January 1980 (attached) indicated the kind of line which responsible criticism may take. Although the occasion for extreme public concern will be the current ISTC case, the real mischief will have been caused by the decision of the House of Lords in the McShane case, and an urgent demand will therefore arise to reverse the consequences of that decision.

7. Public opinion will, in my judgement, regard an "every strike a General Strike situation" as wholly unacceptable. There will be strong and urgent demands for leadership and for action.

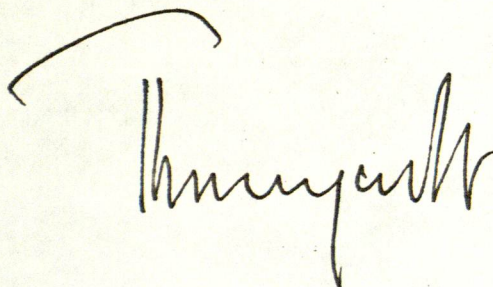
8. The decision on whether to legislate and if so when and how extensively will be for the Cabinet. The options open to them will, however, only be possible to judge with precision if an attempt is made to prepare in advance the kind of draft clauses at least to reinstate the Court of Appeal judgements in the McShane case as law of the land. Parliamentary draftsmen should be capable of framing draft legislation for consideration by Cabinet in whatever circumstances may arise after the House of Lords has given its judgement in the current case. Such work should in my judgement be put in hand forthwith. The Law Officers are no doubt already considering the constitutional position and the legislative possibilities.

9. I should make it clear that in my view opinion in the Party and in the country would regard a change on these lines as absolutely essential but by no means sufficient to meet the situation. And there will be growing calls for more radical changes in legislation which will be increasingly difficult to resist.

10. Public opinion is in my judgement firm in its support for the law, whether as declared by the Courts or laid down as can if necessarily be speedily done by Parliament. What public opinion is less likely to forgive is a period of inertia and uncertainty- while industry grinds to a halt.

11. The critical judgement, I suggest, that the Government would therefore have to make is whether Trade Unions, as opposed to the wider public, would in the present atmosphere comply with such new legislation or whether they would challenge it to the damage of both the Law and the Government. The judgement involves the weight attached to the advantage of moving quickly with the Denning judgement and public opinion over steel to the forefront of everybody's minds or a delayed and drawn out battle seeking to filter in more powerful provisions in our present and modest Bill.

12. We must constantly bear in mind that public opinion is not static, and that the Government plays a crucial role in determining whether public opinion holds firm or falters. I have in hand the outline of a private opinion poll to test the situation which could follow a reversal of the Denning judgement by the House of Lords.



Henry Jenkins

TIMES  
21 JAN 1980

An extremely high poll supports the law now going through Parliament to ban secondary picketing

# A sweeping disapproval of flying pickets

The general public, trade union members—and even active trade union members—strongly disapprove of the flying picket tactics currently being used by the British Steel strikers.

An astonishingly high 86 per cent of all adults believe the new law going through Parliament should make it illegal for strikers to put pickets anywhere except outside their own place of work. This view is shared by a majority of workers and trade unionists:

Non-union members 90 per cent  
Union members 79 per cent  
Active union members 70 per cent

These facts emerge in a special poll of attitudes to trade union reform carried out for *The Times* by Opinion Research and Communication.

The findings were not affected by recent publicity on pickets clashing with the police since the fieldwork was done before the picketing problems began to emerge in the BSC strike.

The survey shows that public hostility to the power of trade unions has not abated since the general election.

Public opinion is still strongly behind the Government's plans to bring in legislation designed to curb some union powers.

The first questions asked confirmed that most people now believe unions are too powerful and that steps should be taken to reduce that power. The general feeling, too, is that the unions should accept the reforms.

**Q:** Some people feel that British trade unions have too much power and show too little responsibility. Do you think this is true or not true?

	All	Non trade union workers	Trade union members	Active trade union members
True	78	83	68	56
Untrue	16	11	27	39
Don't know	6	6	5	5

**Q:** The Government is planning to bring in a law shortly which will reduce trade union power in certain ways. Are you in favour of this or not in favour?

	All	Non trade union workers	Trade union members	Active trade union members
In favour	73	78	61	45
Not in favour	20	14	31	44
Don't know	7	8	8	11

**Q:** Do you think that the unions should accept this new law cutting their powers, or do you think that they should fight it?

	All	Non trade union workers	Trade union members	Active trade union members
Should accept new law	70	76	56	39
Should fight it	22	16	35	50
Don't know	8	8	9	11

The arguments on productivity and the need for wage increases to be keyed to an increase in productivity appear to be getting across. A

majority of the public at any rate seem to attach quite a lot of blame to the unions for the national problems of low productivity.

**Q:** How much do you think the trade unions are to blame for the country's problems of low productivity?

	All	Non trade union workers	Trade union members	Active trade union members
A great deal	34	38	24	19
Quite a lot	25	27	22	16
A certain amount	25	23	28	34
Not much	7	6	10	12
Not at all	7	4	14	17
Don't know	2	2	2	2

However, high unemployment is not laid at the door of the unions to such a great extent—though four out of ten think a great deal or quite a lot of blame can be placed on the unions.

**Q:** How much do you think the trade unions are to blame for the country's problems of high unemployment?

	All	Non trade union workers	Trade union members	Active trade union members
A great deal	21	24	15	10
Quite a lot	21	24	15	11
A certain amount	26	26	25	24
Not much	15	13	20	26
Not at all	13	8	23	26
Don't know	4	5	2	3

A good majority is in favour of tackling both the closed shop and picketing.

Q: Two of the subjects to be tackled by the new law will be the closed shop and rules

about picketing during an industrial dispute. Are you in favour or not in favour of the new law changing the present rules which cover...

(a) The Closed Shop?	All	Non	Trade union	Active
		trade union	members	trade union
		workers		members
In favour	64	66	59	55
Not in favour	22	18	32	39
Don't know	14	16	9	6

(b) Picketing?	All	Non	Trade union	Active
		trade union	members	trade union
		workers		members
In favour	72	75	67	66
Not in favour	18	14	27	29
Don't know	10	11	6	5

However, public feeling is very much stronger on picketing than on the question of the closed shop. Only 37 per cent would like to see it abolished completely. More people favour the idea of democratising it so that a closed shop only operates if a majority of workers have voted for it.

Q: Which of the following statements is closest to your own opinion on the closed shop?

	All	Non TU	TU	Active
		workers	mem-	TU
		bers	bers	members
The closed shop is a bad thing and should be abolished completely	37	41	29	21
The closed shop should only be allowed where the great majority of workers vote for having it	45	41	53	60
All large companies should operate a closed shop	7	5	10	13
Don't know	11	13	8	6

The figure in favour of limiting the activities of pickets is the highest in the entire survey—and among the highest recorded in surveys of opinion about industrial relation matters. There can be no doubt about the strength of feeling on this issue.

Q: The new law will make it illegal for strikers to put pickets anywhere except outside their own place of work. Do you agree with this, or do you think that in a dispute workers should be able to put pickets in other places as well?

	All	Non TU	TU	Active
		workers	mem-	TU
		bers	bers	members
Limit picketing to place of work	86	90	79	70
Put pickets in other places	9	6	17	27
Don't know	5	4	4	3

It is interesting that trade union activists are also in favour, by a substantial majority, of limiting picketing activities.

The public view is also clear on the subject of sympathy strikes and blacking. Seven out of ten reject the idea that they are a legitimate weapon in an industrial dispute and believe that the new law should restrict their use.

Q: Another area where the Government might act is on sympathy strikes or "blacking"—for example where the dockers help the miners' strike by refusing to move coal. Do you think sympathy strikes and blacking are legitimate weapons to use in an industrial dispute, or should the new law restrict their use?

	All	Non TU	TU	Active
		workers	mem-	TU
		bers	bers	members
New law should restrict their use	71	76	62	48
Legitimate weapon in industrial disputes	19	14	31	46
Don't know	10	10	7	6

In this instance one in two trade union activists feel that sympathy strikes are legitimate weapons to be used in a dispute situation.

The survey looked at two other controversial issues—the so-called "funding of strikes" by state benefits and the issue of tackling those who misuse the state benefit system.

Q: Which of these statements is closest to your own opinion?

	All	Con	Lab	Lib	Others
Strikers' families should get social security benefits from the State	19	5	34	13	20
Strikers' families should only get social security benefits when union funds are exhausted	27	28	24	32	24
Strikers' families should not get social security benefits	19	26	12	19	19
Strikers' families should get social security benefits—but the money should be paid back when the strike is over	31	37	26	34	28
None of these	2	3	0	1	4
Don't know	2	1	4	1	4

There is clearly no consensus on handling this thorny problem and views are so widely

split that any action on it would be bound to be controversial. So far as "scroungers" who abuse the Social Security benefit system are concerned there is a lot of anger. Three quarters of the entire sample thought that the system was misused and only two out of 10 thought it was treated responsibly.

However, public opinion is strongly against tackling this misuse by taxing unemployment benefits, as has been considered.

**Q:** Some people believe that there is a lot of misuse of Social Security benefits, with people drawing benefits while they are earning money. Others believe that, by and large, people treat the Social Security system responsibly. Do you think . . .

	All	Men	Women	Con	Lab	Lib	Others
The system is misused?	76	70	81	81	71	79	77
That people treat it responsibly?	19	24	15	14	24	17	19
Don't know	5	6	4	5	5	4	9

**Q:** One way to penalise people who cheat the system, which is being considered by the Government, is to tax unemployment benefits. However this would also hurt the genuinely unemployed. Would you be in favour or not in favour of taxing unemployment benefits?

	All	Men	Women	Con	Lab	Lib	Others
In favour	29	27	31	35	25	28	25
Not in favour	59	63	56	52	65	63	56
Don't know	12	10	13	13	10	9	19

Finally, two other areas which find strong public support are for a secret ballot before a strike, which is supported by eight out of ten people, and that trade union leaders and officials should be elected by secret ballot. The latter is supported by three quarters of the sample.

	All	TU Non TU men	Active TU members
Trade union leaders and officials should be elected by secret ballot —			
Agree	73	72	75
Disagree	21	22	19
Don't know	6	6	5

	All	TU Non TU men	Active TU members
There should be a secret ballot of all workers before a strike is called —			
Agree	85	85	87
Disagree	10	11	9
Don't know	5	4	4

**Note:** The fieldwork for the survey was carried out between January 4 and 6 with a representative national quota sample of 1,039 electors. The sample was designed and the fieldwork carried out by Opinion Research Centre in 100 constituencies in England, Scotland and Wales.

\* All figures in the tables are percentages.

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THE TIMES MONDAY JANUARY 28 1980



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## MR SIR'S OFFSIDE

Undaunted by the superior timidity of the House of Lords the Court of Appeal perseveres in its determination to set limits to the scope of the immunities granted to trade unions by statute. By granting an injunction to restrain the Iron and Steel Trades Confederation from extending its strike to non-nationalized steel producers Lord Denning and his colleagues have unquestionably decided the issue according to its broad merits. There is at present no dispute between these private employers and the union. The strike call is to men who by and large do not want to hear it, against employers with whom the union has no quarrel. Its effect on profits and employment in the privately owned steel industry would be damaging. The damage it would do to manufacturing industry is wider still. It is a strike without merit or justification.

The ground on which the court granted the injunction was that the strike was probably unlawful because it was called not in furtherance of a trade dispute, which would have earned immunity, but in furtherance of a political dispute. The judges convicted Mr Bill Sirs out of his own mouth, so to speak. He had given notice to the Independent Steel Employers Association in these unguarded terms, "Whilst agreeing that there is no dispute with any independent steel employer [my executive council] were firmly of the opinion that this dispute is becoming politically stage-managed by the Conservative Government. . . . It is because of the political intervention that my executive council feel that we should now take the action of involving the private

sector in the public battle against the government attitude."

Perhaps by putting it like that Mr Sirs hoped to send the private steel producers to their friends in government to plead for a softer line. What he has actually done is allow the Court of Appeal to find that his union has embarked on a second, political dispute distinguishable from the first, trade dispute; and unlawful acts done in furtherance of a political dispute have no immunity at law.

Though not wholly blocking it, the recent judgment of the House of Lords in the McShane case has weakened the argument of "remoteness" in its application to trade disputes. The argument has become less capable of supporting the equitable principle that people should not be deprived of the means of redress when they are embroiled by trade unions in disputes not of their making and to which they are in no sense parties. On the facts of the present case that principle would seem sufficient, in equity if not in law, to make the extension of the strike unlawful. By choosing a different ground, namely that it was a political dispute that the union was proposing to embark on, the Court of Appeal has injected another dose of uncertainty into the law of strikes.

All that is said about the union's objectives in extending the strike can be said equally about the strike proper. It too is aimed at winning some relaxation of the government's financial policy towards the Steel Corporation—the only hope, the unions are informed, of "more money on the table". Does it follow that the primary strike against BSC

has turned political too, having as its object coercion of the government?

If not, what makes one political and not the other? Is it that in BSC the employer's ability to pay wages is ultimately determined by the government (so it is all right to coerce the government) and in the private sector of the steel industry it is not? Where in the legislation on the subject is the basis for that distinction to be found?

How are those unions whose numerous membership have their pay directly or indirectly determined by government policy to understand their position in the light of this judgment? Is their latitude to strike narrower than that of other unions? Or their freedom to elicit sympathetic action from other groups of workers?

What happens, should those times ever return, when the government of the day has a full-blown incomes policy, which becomes a factor, perhaps the decisive factor, in most pay settlements in and out of the public sector? What meaning would "coercing the government" be given in that context?

This judgment of the Court of Appeal is most timely, not only for its merits, but because it obliges the Government to reconsider the Bill it now has before Parliament and convert it into a piece of legislation which deals comprehensively with industrial disputes and the scope of immunities in connexion with them. To the unbalance of the present law must now be added its uncertainty. It should not be left to the courts to reform it. That is Parliament's business.

# TRADE UNION POLICY.

Lord Horeyoffs  
Paper

## THE SITUATION AS IT IS.

1. The situation as it is <sup>was</sup> ~~has been~~ stated in forthright terms by Lord Diplock - and what he said must be the basis from which any Parliamentary activity is launched. Under the law as it stands the Unions in Lord Diplock's own words "have a power which has no other limits than their own self-restraint". His precise words would form the preamble to any statement of Government policy which sought to deal with this situation.

### Wide powers

Lord Diplock explained why he reached the conclusion with considerable reluctance.

"Given the existence of a trade dispute it involves granting to trade unions a power, which has no other limits than their own self-restraint, to inflict by means which are contrary to the general law untold harm to industrial enterprises unconcerned with the particular dispute, to the employees of such enterprises, to members of the public and to the nation itself."

It was possible that Parliament, when the Acts of 1974 and 1976 were passed, did not anticipate that so widespread and crippling use as had in fact occurred would be made of sympathetic withdrawals of labour and of secondary blacking and picketing in support of sectional interests able to exercise "industrial muscle."

But if this was the case, it was for Parliament not the judiciary to decide whether any changes should be made to the law as stated in the Acts.

Lord Diplock said: "If limits should be put upon the use of industrial muscle, the law as it now stands must be changed, and this, effectively as well as constitutionally, can only be done by Parliament—not by the judges."

2. The ball is fairly and squarely in the Government's Court. As the law stands virtually any strike can be turned into a general strike. If we want the law to be different only Parliament can make it so. The intention to change it was stated in fairly specific terms in the Conservative Election Manifesto.

THE DIVISIONS OF OPINION.

3. Probably most members of the Cabinet would agree with the ultimate objective of curbing the immunity at present enjoyed by the Unions while keeping it for the direct dispute between an employer and his employees. There is certainly wide disagreement about timing - some arguing for immediate action and others for delay. This paper is not about the merits of the case but about how to deal with the Divisions in the Cabinet.

## OPTIONS FOR ACTION.

4. There appear to be three options open to the Prime Minister -

(a) To patch up the differences and present a slightly tougher Two Bill.

(b) To announce her policy in clear and resolute terms and risk a resignation or resignations.

(c) To draw up a short statement expressing what she considers the policy ought to be and legislate to secure a referendum on it.

These three courses are examined in rather more detail below.

5. THE AGREED SOLUTION. The test here must be what can be agreed. An agreed solution which left the Union with the unlimited powers described by Lord Diplock in a Bill introduced by a Conservative Government would do more than leave them powers as they are. It would give them the status of carefully considered

Statutory respectability. I doubt myself whether this course is open to the Prime Minister without her losing political credibility. Certainly if this course is adopted an enormously complex public relations exercise must be considered and mounted.

6. CHANGING THE LAW. The Prior Bill could be amended to deal with the Challenge posed by Lord Diplock's judgement. Jurisdiction could be kept for ordinary disputes and abolished for Secondary strikes, picketing and blacking. Those who argue that this course would lead to a general strike might leave the Cabinet. It would certainly be hard for her Prior to conduct such a strong measure through the House of Commons. Much turns on how many resignations could be expected. I believe that if

The number of resignations was relatively small. The Gov would certainly survive and need carry the Party in the House of Commons and the Country. Nevertheless this situation is certainly to be avoided if in any way possible and there is no doubt that the Government would ~~certainly~~ be weakened in any confrontation with the Unions which might then follow.

T.  
 (7)(e) THE REFERENDUM: This view of this course or idea which, in this context, was originated by the Prime Minister while in opposition. It deserves to be considered. We have just completed a Trade Union Survey Poll and covered the question of attitudes to

Secondary strikes. This poll showed  
 for what it is worth a majority  
 for banning them of 73% to 17%  
 among non-Trade Unionists and  
 56% to 36% among Trade Unionists.

The referendum could not of  
 course ask the public what  
 to do. It would have to  
 state in blunt and simple terms  
 what the Government had in  
 mind for correcting the  
 situation so starkly described  
 by Lord Diplock. I do not  
 know whether the Cabinet could be  
 brought to agree to such a  
 referendum, but the knowledge  
 that the Prime Minister had  
 such a course in mind  
 might concentrate the  
 minds of some of them.

There are those who have a  
 distaste for any referendum but  
 the circumstances here are  
 certainly rather special. The  
 Governments have ~~fallen~~ <sup>already</sup>  
~~that~~ ~~at least largely~~ failed  
 in this field; the Court of  
 Appeals unanimously opinion  
 has been reversed by the  
 House of Lords and the  
 Cabinet is divided.

I recognise that there are  
 large costs in any course that  
 we take. Nevertheless there is  
 a tide moving in our  
 affairs which may not come  
 again or may only come when  
 we are too weak and discredited  
 to take it. A ~~referendum~~ <sup>now</sup> ~~if~~  
 legislative action is ~~not~~ <sup>possible</sup>  
 a referendum which could make  
 it so desirable to be considered.

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The question we have to decide is to what extent we are to restrain the people affected by ~~the~~ individual action their common law rights to protect themselves - and what is equally important now their employees - from action which would ~~cause~~ cause them a their employees serious damage - and in circumstances in which if the action had been taken by anybody else they would have had a right to protect themselves.

The answer would seem to be that to restrain those rights to parties who are not parties to the dispute who are seeking the protection of the Courts for interference with contractual relations other than contracts of employment.

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