Trade Unions and the Law
a timeline of repression

The IER's Professor Keith Ewing and Lord John Hendy trace the key events in a long history of attempts to curb the power and free association of working people and their trade unions.

Capitalism has aggregated capital and exploited labour to make profit from that capital. Wherever workers were engaged to work together for an employer the possibility arose of them combining to increase their bargaining power. The exploitation of their labour depended on them not being permitted to act in combination. Laws against workers organising together to negotiate and fix the terms and conditions on which they would agree to work, therefore have a long history.

Workers have thus had to struggle to (i) establish free trade unions; (ii) engage in collective bargaining with employers to protect and promote working conditions, and (iii) exercise the right to strike in order to redress grievances by exerting pressure on their employer. No one should be required to work for anyone else against their wishes. Compulsory or forced labour is the true Road to Serfdom. Yet this is where we have reached with the Strikes (Minimum Service Levels) Act 2023. The main landmarks of how we got to the latter are set out in this document.

IER Institute of Employment Rights

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We begin in 1306, when Edward I issued a Royal Proclamation outlawing London building workers insisting on minimum levels of pay. Note the role of the Sovereign. Workers have had to struggle against all forms of government and all sources of power.

1306

The Ordinance of Labourers 1349 and Statute of Labourers 1351 were passed in response to the Black Death which killed more than a third of the population and created a shortage of labour which increased the bargaining power of workers. The statutes set the level of wages at pre-plague levels and required the able-bodied to work for any employer who needed them - with prison for those who refused. It forbade workers leaving the town or village in which they lived.

These statutes were only partially successful in holding wages down and were reinforced by Acts in 1360, 1368, 1388, 1414, 1427, 1444 and 1495. The 1360 Act was typical in prohibiting: 'alliances and covins of masons, carpenters, congregations, chapters, ordinances and oaths betwixt them made.'

Existing law was consolidated in the Statute of Labourers 1562 which also gave power to magistrates to set wage levels, and (apart from journeymen) required hirings to be for one year (with prison for those who left the job).

There were, up until the end of the 18th century, many laws passed to prevent workers combining to set rates. An example is the Bill of Conspiracies of Victuallers and Craftsmen 1548. During the 17th and 18th centuries, many Acts were passed, aimed at specific trades and declaring any collective demand for higher wages a criminal conspiracy, for example the Journeymen Tailors Act 1720.

The Judges developed the common law to similar effect, such as R v Journeymen Tailors of Cambridge (1721) which held that, regardless of the 1720 Act, a trade union whose members took strike action to enforce a demand for higher wages was a criminal conspiracy.

1799

The Combination Acts 1799, 1800 consolidated many of the Acts applying to specific trades and made any combination of two or more workers (or two or more masters) to raise or lower wages or hours of work, a criminal offence.

The Combination Acts 1799, 1800 were repealed by the Combinations of Workmen Act 1824 but replaced in more limited form by the Combinations of Workmen Act 1825 which also reimposed criminal sanctions for picketing and other means of persuading workers not to work. Meanwhile the common-law principle of the Journeymen Tailors case persisted.

The Judges inventively used the Unlawful Oaths Act 1797 - an obscure law against the taking of oaths - to convict and deport to Australia the Tolpuddle Martyrs in 1834, for agreeing not to work for less than a minimum rate. Public pressure and the rise of trade unionism reversed this sentence.

1834

In the 1867 case of Hornby v Close, the courts used another device: trade unions were held to be illegal as being 'in restraint of trade', because collective bargaining reinforced by strike action necessarily restricts 'the free disposition of labour and capital'. While capital had freedom to compete and combine, labour was only permitted to compete.

The Trade Union Act 1871 protected unions from that decision and was the first Act recognising the essential role of trade unionism. The purposes of trade unions were no longer to be regarded as unlawful, even though they were in restraint of trade. But no other material protection was extended to unions from the ceaseless attacks of the common law (judge-made law), and in the same year the Criminal Law Amendment Act 1871 retained criminal liability for peaceful picketing.

In R v Bunn, 1872, moreover, gas workers were imprisoned for striking. It was held to be a criminal conspiracy in common law to coerce the employer in the carrying on of his business 'contrary to his will'. The strikers were jailed for two years, though released after four months. The Conspiracy and Protection of Property Act 1875 protected unions from criminal conspiracy 'in contemplation or furtherance of a trade dispute' and granted the right to picket subject to various codified offences for acts going beyond peaceful persuasion on the picket line.

Notably, however, the 1875 Act retained criminal liability for industrial action that was deemed to relate to the law of 'riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or Sovereign'. The Act also retained criminal liability for strikes by gas and water workers (later extended to those in electricity supply). It was also an offence for a worker to take strike action that would endanger human life, cause serious bodily injury, or expose valuable

1871

property to destruction or damage. Although liberalised, peaceful picketing continued to run the risk of criminal liability.

Towards the end of the 19th century and into the 20th century the judges sidestepped the limitations of the criminal law, but held unions liable in civil law for organising industrial action. Conspiracy to injure an employer, a strike-breaker or a non-union member could give rise to liability in tort, as could inducing a union member to break their employment contract. Most strikes are said by law in the United Kingdom to involve inducing people to break their employment contracts.

In Taff Vale Railway v Amalgamated Society of Railway Servants (now RMT) in 1901 it was held sensationally that a trade union could incur civil liability in damages for losses caused by calling a strike. The union as an organisation would be liable for the 'unlawful' acts of its officials. The damages of £23,000 (plus £19,000 in costs) in that case were a major

STRIKE !
ON THE
Taff Vale Railway.

Men's Headquarters,
Cobourn Street,
Cathays.

There has been a strike on the Taff Vale Railway since Monday last. The Management are using every means to decoy men here who they employ for the purpose of black-legging the men on strike.

Drivers, Firemen, Guards, Brakesmen, and SIGNALMEN, are all out.

Are you willing to be known as a

Blackleg ?

If you accept employment on the Taff Vale, that is what you will be known by. On arriving at Cardiff, call at the above address, where you can get information and assistance.

RICHARD BELL,
General Secretary.

1901

impediment to the right to strike, an impediment created by the judicial branch of the State.

Under a Liberal government (and in light of the newly formed Labour Party) Parliament again intervened by the Trade Disputes Act 1906 to give unions protection for any act that would otherwise be unlawful in civil law so long as the act was done 'in contemplation or furtherance of a trade dispute'. Referred to as Labour's Magna Carta, the 1906 Act was widely interpreted in Conway v Wade (1909) to include the right to engage in sympathy and solidarity action.

In Amalgamated Society of Railway Servants v Osborne (1910) the court found a new weapon in holding that a trade union could not use its funds for any purpose not specifically listed in its Rules and so could not have a political fund to support the growing Labour Party. Multiple unions were thereafter banned by the courts from collecting the levy. The effect of the decision was modified by the Trade Union Act 1913 which permitted trade unions to fund political parties so long as they had a separate political fund to do so.

The First World War produced various restrictions on the right to strike which were lifted at the end of the war. By then governments were committed to a policy of encouraging collective bargaining manifested in Parliament's Fair Wages Resolution 1891 (the 'going rate' to be a condition of public procurement), and the Trade Boards Act 1909 (minimum wages in four 'sweated' trades)

It was also seen in the adoption of Joint Industrial Committees recommended by the JH Whitley Committee (1917-18) (voluntary collective bargaining on an industry-wide basis as part of post-war reconstruction). Actively promoted by the Ministry of Labour (established in 1916), this led to a sharp increase in the number of workers covered by a collective agreement, until the government changed direction in 1921.

1926

Diluted war-time powers were retained in the Emergency Powers Act 1920, which enabled the government to declare a 'state of emergency' and introduce 'emergency regulations' to deal with large-scale strikes in a host of industries, including coal production. These powers were used severely to curtail civil liberties during bitter disputes in mining communities in 1921 and 1926.

The General Strike in defence of miners' wages was declared by the High Court to be unlawful in 1926. The miners remained locked out by the coal owners until starved back to work in December 1926. A series of states of emergency were declared. Coal-mining communities were said to be besieged by 'police terror' and 'martial law' for more than six months.

The Trade Disputes and Trade Unions Act 1927 was passed by a vengeful government in retaliation for the General Strike of 1926. The Act declared it illegal to take industrial action designed to coerce the government, and also made it an offence to take strike action which would cause injury, danger or grave inconvenience to the community. It also attacked the trade-union political levy, and thereby trade-union funding of the Labour Party.

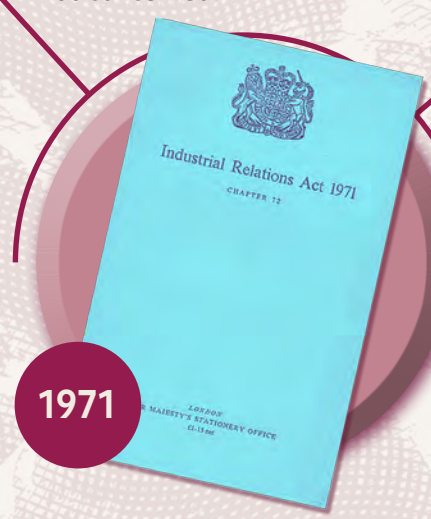
1927

The 1927 Act was repealed and the principles of the 1906 Act restored by the Attlee government in 1946. But the Labour government retained war-time powers, under what was called Order 1305. This made it a criminal offence to take part in a strike which had not been referred to arbitration. These powers were used against striking gas workers (who were convicted) and against dockers (who were acquitted).

War-time powers were revoked in 1951. In 1952, in a dispute with D C Thomson, injunctions and interdicts were issued by the High Court and the Court of Session. The Court of Appeal discharged the injunctions in one of these cases but in doing so made clear that industrial action continued to attract liability in the civil courts. A new front for the attack on trade-union freedom was thus opened by the courts.

Though legislation did not alter the shape of union protection over the next 25 years, the Judges showed no such restraint in cases such as Rookes v Barnard (1964) (reversed by Labour's Trade Disputes Act 1965), Stratford v Lindley (1965), and Torquay Hotel Co Ltd v Cousins (1969). In these cases the courts intervened to restrain industrial action designed to enforce the closed shop, solidarity action, and trade-union recognition.

In 1971 the Conservative government introduced a far-reaching new regime of coercion and restraint in the Industrial Relations Act 1971, for which the way had been laid in the 1950s by a Conservative Party document A Giant's Strength. Trade-union action, particularly the call for a general strike in response to the jailing of the Pentonville Dockers in 1972, led to the Act becoming inoperable in so far as the regulation of trade unions was concerned.



1971

In 1974 a Labour government repealed the 1971 Act (save for unfair dismissal) and in the Trade Union and Labour Relations Act 1974 reintroduced, restored and strengthened the underlying principles of the Trade Disputes Act 1906. However, the legislation was badly mauled by the Court of Appeal where the judges took strong exception to trade-union freedom and the right to strike.

The Employment Protection Act 1975 contained measures which were designed to promote trade-union recognition. These were resisted by some employers, again with the help of the courts, which succeeded in making the right to recognition ineffective. Trade-union mobilisation in the face of hostile employers and hostile judges led famously to a mass demonstration at Grunwick in 1977 in defence of trade-union freedom, a demonstration met by a mass mobilisation of the police.

1972

In 1979 a Conservative government was again elected, this time with a neo-liberal agenda. To avoid the possibility of mass resistance to the law as in 1971, it opted for a gradualist strategy of a series of Acts and statutory instruments which imposed greater and greater restrictions. Amongst these were the Employment Act 1980, Employment Act 1982, Trade Union Act 1984, Employment Act 1988 and the Employment Act 1990.

1980

The Tory restrictions were later consolidated in the Trade Union and Labour Relations (Consolidation) Act 1992, which was amended by the imposition of new attacks in the Trade Union Reform and Employment Rights Act 1993. These Acts together have imposed (as Tony Blair put it in 1997) 'the most restrictive laws on trade unions in the Western World'. The right to recognition was removed, the right to conclude closed-shop agreements was gradually made unenforceable, while the right to strike was heavily restricted. Trade-union political funds were also attacked.

1984

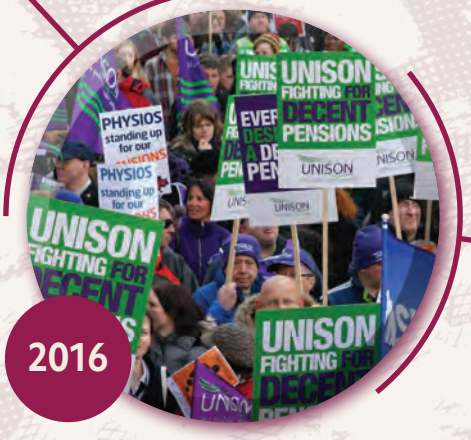
In addition, the full force of the law was used against the miners who in 1984 and 1985 were engaged in a bitter battle to save their jobs and their communities. Their union was attacked from the inside by rule-book disputes, leading to court orders challenging the legality of the industrial action as being in breach of union rules. It was also attacked from the outside, with one of the biggest peacetime police operations since the General Strike being deployed against the miners.

A TUC Day of Action to protest against the legislation was ruled unlawful by the courts in 1980. As a result of the legislation:

- the purposes for which strikes could be held was limited to make strikes against privatisation unlawful;
- secondary and solidarity action was eventually prohibited, having first been tightly contained, and
- trade unions could now be sued in damages again, and strikes for purposes which were permitted could take place only after complex notice and balloting requirements were met.

Those who took unofficial action could be sacked without redress.

Unions which tried to resist the legislation were found to be in contempt of court. Unions which continued their resistance in defiance of the law were held to be in contempt of court and subject to unlimited fines. Some unions were the subject of sequestration proceedings run by court-appointed officers. It quickly became clear that defiance of the law would carry a heavy penalty: not only for trade-union officials, but also for trade-union organisations.



2016

In 1989 the International Labour Organisation concluded that many of the legislative attacks on trade unions introduced by the Tories were a breach of ILO Conventions 87 and 98. These are international treaties which British governments have ratified. In addition, the ILO also concluded that the banning of trade unions at GCHQ was also a breach of ILO Convention 87. All of these findings were ignored by successive Tory governments, despite their ostensible commitment to the 'rule of law'.

The incoming Labour government in 1997 infamously declared that it would not repeal the major planks of the Conservative anti-union laws. One amendment, introduced by Labour, was introduced by the Employment Relations Act 1999 establishing a statutory recognition procedure, though the latter has had negligible impact in slowing the decline in collective-bargaining coverage. Labour was no more prepared than the Tories to comply with international law.

Trade-union freedom in the United Kingdom is thus at its lowest ebb for many years. Legal restrictions and government policy (media campaigns, privatisation, out-sourcing, globalisation etc) have reversed collective-bargaining coverage (which had grown throughout the 20th century to 86% of workers by 1976, but following the anti-trade union legislation on the statute books since, has resulted in a continuous decline to 25% in 2022). Trade-union recognition legislation has been so ineffective that it has survived 13 years of Tory government.

The accumulated statutory and common-law restrictions on the right to strike have contributed to the disempowerment of workers who seek to redress their grievances by industrial action. The attack continued with the Trade Union Act 2016, notable for its additional procedural obligations relating to industrial action, the need for thresholds in strike ballots, and the need to renew ballot mandates after six months. It also introduced additional hurdles for strikes in 'important public services'.

The onslaught shows no signs of abatement. Workers who rise will be met by the full force of the law.

Two statutory instruments during the Truss government in 2021 saw an increase in the damages that could be awarded against trade unions, and legitimated the use of agency workers as strike breakers. The latter has been successfully challenged in judicial review proceedings – but on procedural not substantive grounds. These gratuitous initiatives indicated a renewed aggression from the increasingly right-wing Tories.

That aggression has culminated so far in the Strikes (Minimum Service Levels) Act 2023. The latter imposes new obligations on workers and trade unions which have no place in a free society.

PROTECT THE RIGHT TO STRIKE

2023

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