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The Impact of Industrial Action Ballots on Trade Union Procedures, Practices and Behaviour*

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This article provides an analysis of the developments that have taken place within British case-study trade unions in response to the introduction of the Conservative balloting legislation pertaining to ballots on industrial action. Using data derived from interviews with senior officials, national officials and shop stewards it links any changes in the unions' approaches to calling, organising or conducting industrial action to the introduction of the new legislation. It considers the impact of industrial action ballots on the procedures, practices and behaviour of trade unions and, more specifically, whether workers under the new balloting system seemed more inclined to vote to avoid confrontation with employers and, in so doing, took a less conflictual and more accommodating stance than would have been the case under the old legislative provisions.

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I. Introduction

The role of the law in regulating British trade unions has long been contested and

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unions have fiercely defended their organisational autonomy. In the 1980s Conservative legislation was seen as a full frontal attack on trade unionism, deeply resented, resisted and thought by many to be designed to 'destroy' union power. Initial research cast some doubts on the extent to which legislation was having its presumed intended impact. However, as always withthe law, it takes some time for real effects on behaviour to become apparent. The research conducted for this thesis is designed to provide a comprehensive evaluation of the long-term impact of the post-Conservative legislation pertaining to industrial action on the procedures, practices and behaviour of trade unions.

This paper draws on empirical data gathered from an in-depth analysis of seven case study trade unions: Transport and General Workers Union (TGWU), Electrical, Electronic Telecommunications and Plumbing Union (EETPU, now part of AMICUS), Civil and Public Services Union (CPSA, now part of the Public and Commercial Services Union (PCSA)), Associated Society of Locomotive Engineers and Firemen (ASLEF), Rail and Maritime Trade Union (RMT), Bakers Food and Allied Trade Union (BFAWU) and National Association of Teachers in Further and Higher Education (NATFHE). The research also involved the execution of interviews with trade union officials, trade union members, the Commissioner for the Rights of Trade Union Members (CROTUM), the Certification Officer (CO) and the Deputy General Secretary of the Trades Union Congress (TUC).

Qualitative data was required in order to ascertain the nature and content of the trade union movement's response to industrial action ballots and to obtain union interpretations of ballot results and union behaviour. A series of interviews were therefore held with 5 senior officials from each of the trade unions. Each official had been identified by his or her union as having major responsibility for, and involvement in, collective bargaining and industrial action. A variety of unions were represented in this sample including those in the public sector, textiles, engineering, electricity, gas and water supply, transport and communications as well as general unions. The size of union ranged from approximately 2,700 to approximately 1.4 million members. The selection of a variety of unions was not based on the misconception that the trade union movement can be treated as a homogeneous domain. Instead, it reflects a desire to establish whether trade union responses, techniques, and strategies as well as voting patterns transcended union boundaries and extended right across the trade union movement wherever industrial action ballots were held. Many of the insights discussed in the results section of this article are

based on the colligation of data gathered from the interviews and supporting documentation provided by the organizations participating in this part of the study.

Each official was interviewed once and for approximately one and a half hours. The interviews were semi-structured and asked open questions which sought to identify the nature of the individual union's response to the imposition of industrial action ballot.

The article commences with a discussion of the historical development of the law pertaining to industrial relations. Section two provides a critical analysis of previous literature dealing with the effects of strike ballots on industrial action and also explains the justification for the current study. This is followed by an examination of trade union responses to the balloting legislation. Section four considers the impact of industrial action balloting on trade union decision-making. Finally, there is a summary and conclusion.

II. Trade Unions and the Law

In order to appreciate the development and nature of Conservative trade union legislation in the 1980s and 1990s, it is necessary to have a basic understanding of the historical character of British Labour law (Wedderburn, 1991: 201). The British industrial relations system has traditionally been characterised by minimal legal regulation and, as far as possible, the minimal involvement of the state. As such, the system was labelled voluntarist or abstentionist (Flanders and Clegg, 1954: 44; Flanders, 1970: 288; Lewis and Simpson, 1981: 8; Clegg, 1983: 290). As Otto Kahn-Freund wrote in 1954:

> There is, perhaps, no major country in the world in which the law has played a less significant role in the shaping of industrial relations than in Great Britain and in which today the law and the legal profession have less to do with labour relations (quoted in Flanders and Clegg, 1954: 44).

However, whilst abstentionism meant that the state refrained from legislating in the arena of industrial relations it did not equate to complete withdrawal of the law (Taylor, 1993: 7-8). First, the state intervened to ensure basic standards of health and safety in the workplace (Clegg, 1979: 291). Second, there was state involvement in the establishment of statutory immunities to protect trade unions from the hostility of the common law (Wedderburn, 1986:

20). The Trade Disputes Act 1906 gave trade unions a blanket immunity by prohibiting legal actions in tort against them, and for persons acting 'in contemplation or furtherance of a trade dispute', it provided immunities from liability for the torts of simple conspiracy, inducing a breach of employment contract and interference, as well as apparently confirming their right to picket peacefully (Wedderburn, 1991: 203).

Aside from such limited intervention, governments actively refrained from legislating to affect the workplace. Regulation of the workplace was instead left to trade unions and employers, to develop their own norms and their own sanctions (Humphreys, 1999: 5; Davies and Freedland, 1993: 3). Kahn-Freund characterised the limited role of the law as collective laissez-faire, observing that 'it is in connection with trade disputes that the retreat of the law from the scene of industrial relations can be most clearly seen' (Kahn-Freund, 1959: 44). However, this voluntarist system began to be questioned in the late 1950s and throughout the 1960s, for several overlapping reasons (England and Weekes, 1985: 417). The main factors were the slow growth of the economy, the rate of inflation, the level of unemployment, a growing perception that the narrow concerns of traditional collective bargaining were failing to meet urgent social and economic problems, and a belief that trade union power was a significant contribution to the country's economic difficulties, which had to be confronted (Kahn-Freund, 1977: chapter 1; England and Weekes, 1985: 417-421; Marsh, 1993: 5; Clegg, 1983: chapter 8; Davies and Freedland, 1993: 240). The problems facing the country resulted in greater government intervention of the economy, in particular a search for a viable incomes policy. Central to this strategy was corporatism, which involved close cooperation with trade unions, the TUC and employers' associations (McCarthy, 1985: 439). A recognition that traditional collective bargaining was failing to provide minimum standards for employees led to the introduction of a series of legislative acts designed to advance workers' rights. These included: the Contracts of Employment Act 1963, which required minimum notice periods for employees; the Redundancy Payments Act 1967, which entitled workers to minimum redundancy payments; the Industrial Relations Act 1971, which introduced the right for employees not to be unfairly dismissed; the Employment Protection Act 1975 and the Employment Protection (Consolidation) Act 1978 which extended the statutory rights of workers and the Health and Safety at Work Act 1974 which provided general duties on employers and employees in the workplace in an attempt to improve safety. Finally there was a raft of anti-discrimination measures, introduced by the Equal Pay Act 1970, the Sex Discrimination Act 1975 and the Race Relations Act 1976 (Marsh, 1993: 5).

However, in respect to trade union power and the legal regulation of trade unions the only attempt to curb trade union activities during the period 1960-1970 came from the judiciary, not Parliament. In Rookes v Barnard [1964] AC 1129, it was held that the threat of industrial action in breach of employment contracts constituted a breach of the tort of intimidation (a civil wrong). In response to this, the Labour government elected in1964 introduced the Trade Disputes Act 1965, which resurrected trade union immunity. However, at the same time, and due to the Labour government's continued concern about the power of trade unions, a Royal Commission was established under Lord Donovan to examine the role of collective labour law. It was expected that the problems of British industrial relations would be laid at the door of the trade unions (Clegg, 1983: 315-316; England, 1985: 420). However, in its report the Donovan Commission gave strong support to the voluntarist tradition and rejected arguments in favour of increased trade union regulation. The autonomy and fragmentation of informal workplace bargaining, together with ineffective employer personnel policies, was blamed for industrial relations' problems (Clegg, 1983: 316; England and Weekes, 1985: 420; Marsh, 1993: 6).

In spite of the Donovan Commission's conclusions, the Labour government felt it necessary to break with the past and to intervene in the domain of collective labour law, publishing a White Paper In Place of Strife in January 1969. This proposed compulsory conciliation under which unconstitutional strikers might be legally ordered to return to work, a compulsory strike ballot and a statutory recognition procedure for inter-union demarcation disputes (paras. 78-79, 93-96). The proposals met fierce opposition from the TUC and were subsequently withdrawn (Crouch, 1977: 161-162).

The freedom from state interference in the activities of trade unions remained until 1971, when the Industrial Relations Act 1971 was introduced by the then Conservative government (Moran, 1977: 56; Strinati, 1982: 144). The Industrial Relations Act 1971 reflected traditional concerns of a section of the Conservative Party about the power of trade unions and about how the law could be used to resolve industrial relations' problems. In 1958 the Inns of Court Conservative and Unionist Society (ICCUS) published *A Giant's Strength*, which criticised trade unions as too powerful and sought legal protection against them, for individuals and for society (Clegg, 1983). The ICCU proposed that any strike could be unilaterally referred, by either of the parties, to an independent tribunal. The tribunal's decision would be binding; trade union immunities would be removed from action called in breach of the procedure or report of the tribunal. Furthermore, unions should be registered and the immunities would

protect registered unions only. Unofficial strikes were also targeted, with the proposal that they should be subject to criminal and civil proceedings (Weekes *et al*., 1975: 5; Kahn-Freund, 1974: 186; Marsh, 1993: 11). The ICCU proposal did not dictate the content of the Industrial Relations Act 1971; however, it did signpost the way ahead. On this point Moran comments:

> The pamphlet did not shape the final Act (the Industrial Relations Act 1971); rather it reflected Conservative concerns – over strikes, the closed shop and the constitutional position of unions which were also found in the 1971 legislation. Nevertheless, the pamphlet was a good indicator of one important strand of Conservative thinking(Moran, 1977: 56).

The Industrial Relations Act 1971 attempted to demolish the previous labour law structures set out in earlier legislation and to erect a new code of industrial relations. Specifically, it sought to establish a new framework of law in relation to industrial disputes involving the creation of 'unfair industrial practices' and a new court, the National Industrial Relations Court (NIRC). The Act also laid down emergency procedures in the event of major industrial action (O'Regan, 1991: 45).

The Act required unions to register with the Chief Registrar of Trade Unions and Employers' Associations and to revise their rules relating to the calling of industrial action if they were to maintain fiscal benefits. Trade unions that wished to register had to have their rules inspected and approved by the Registrar. In return for compliance with the legislation, registered unions were granted bargaining, recognition and disclosure rights over unregistered unions. The unions were hostile because they objected to the state instructing them how to run their own affairs. Indeed, trade union opposition to the Act was longer than had been expected:

> Even when the de-registration policy of the unions was announced, it was generally expected that eventually the majority of trade unionists would recognise that the Act contained advantages for 'responsible' trade unionism or that the disadvantages of not being registered would lead unions to accept the need to register. Perhaps the greatest presumption of all was that respect for the law and a belief in the 'rule of law' would override other considerations if the interests of any party to a dispute appeared to be threatened by the intervention of the courts (Weekes, *et al*., 1975: 6).

As a result of the TUC policy of opposition to the Act, the refusal of most trade unions to register, and of employer reluctance to use the legislation, the Act failed to have any significant impact on the operation of trade unions (Weekes *et al*., 1975: 69).

The repeal of the 1971 Act and the introduction of the Trade Union Labour Relations Act 1974 (TULRA) by the incoming Labour government restored the previous abstentionist position, so that, according to Lord Scarman: 'The law is back to what Parliament intended when it enacted the Act of 1906, but in clearer and stronger terms than before' NWL v Woods [1975] IRLR 234. In fact, the Employment Relations Act 1975 and TULRA 1974, as amended in 1976, strengthened the rights of trade unions and union representatives in the workplace. These measures included the encouragement of trade union recognition and the establishment of the closed shop, the right to disclosure of information necessary for effective collective bargaining, and the right of union representatives to advance consultation and information and to take time off for trade union or public duties. On these developments England and Weekes (1985: 419) remarked:

> That these provisions should be enacted after so long an outcry that something must be done to curb union power is a dramatic illustration of the political power of trade unions.

However, the power of trade unions in industrial relations resurfaced as a central feature of the 1979 election campaign, with the Conservative Party manifesto stating that control of the trade unions was a priority:

> … between 1974 and 1976 Labour enacted a militants' charter of trade union legislation. It tilted the balance of power in bargaining throughout industry away from responsible management and towards unions, and sometimes towards unofficial groups acting in defiance of their official union leadership (Conservative Party manifesto, 1979, cited in Lewis and Simpson, 1981: 1).

Between 1979 and 1993 a succession of Conservative governments introduced six Acts of Parliament, which contained legislative provisions regulating trade unions. These were the Employment Act 1980, Employment Act 1982, Trade Union Act 1984, Employment Act 1988, Employment Act 1990 and the Trade Union Reform and Employment Rights Act

1993. This paper examines the impact of the legal provisions pertaining to industrial action ballots on the procedures, practices and behaviour of trade unions.

III. A Critical Review of Existing Research into the Impact of Conservative Legislation on Trade Unions

There is an abundance of published literature which has attempted to assess the impact of Conservative industrial relations legislation on trade unions (for the most renowned see: Brown and Wadhwani, 1990; Elgar and Simpson, 1993; Miller and Steele, 1993; Dunn and Metcalf, 1996; Undy *et al*., 1996; Brown, Deakin and Ryan, 1997).

Brown and Wadhwani (1990) considered the significance of the Conservative legislation designed to control the level of strike activity. This involved the analysis of Conservative labour law policy, including the restriction in the operation of the immunities, the re-definition of a trade dispute, the limitation on secondary action and picketing and the introduction of pre-strike ballot requirements. Brown and Wadhwani (1990: 62) observed that the threat of sequestration of a union's assets was a major deterrent and that the law had made trade unions more careful about calling for industrial action. They argued that the strike had become a more considered tactic and that the impulsive use of picketing and secondary action had been restrained. This might be deemed to be a product of the moderate trade union member. Alternatively it could simply be a reaction to the fact that trade unions found themselves operating in a more hostile commercial and economic environment. This paper makes a judgement on this issue. Brown and Wadhwani (1990: 62) also observed some unexpected consequences of the balloting legislation from the Conservative perspective. Strike votes in favour of industrial action improved the position of trade unions, encouraging management to settle disputes on more favourable terms to the union (1990: 62). Overall, Brown and Wadhwani (1990) indicate that the impact of the law on strikes was limited; other factors, such as unemployment, increased market competition and management policies, were all paramount in weakening trade unions.

Elgar and Simpson (1993), in an attempt to determine the impact of industrial action ballots, interviewed 846 union representatives and a cross-section of employers. Their findings made them sceptical about the importance of the law, indicating that ballots alone

were not seen by either trade union officials or employers as being responsible for bringing about major changes in workplace relations. However, they observed that trade unions had adapted to the requirement to hold industrial action ballots and had been able to use them to strengthen their negotiating positions. Further, and most interestingly in respect to union democracy, and in contrast to the research of Undy *et al*. (1996) (see below), they did not find that the balloting process caused uniform centralisation of union government. The research also reported that the balance of advantage brought about by the introduction of industrial action balloting legislation was generally seen, by both trade unions and employers, to be with the trade unions. Elgar and Simpson subsequently cast doubt on whether this position had endured following the introduction of the TURERA 1993, which required trade unions to use postal ballots rather than workplace ballots and tightened up the regulations surrounding the balloting process. Elgar and Simpson (1996) report that as a result of this new legislation the trade union movement believed that the balance of advantage derived from the industrial action balloting laws shifted significantly towards employers.

Miller and Steele (1993) considered changes in employment law since 1979 and their impact on trade unions. In respect to union government they concluded that successive Acts had placed additional responsibilities upon trade unions, making internal administration a more complicated and onerous task. However, the provisions relating to strike ballots were regarded as the most complicated and burdensome issue. The detailed rules about the content of the voting form, the presumption in favour of separate workplace ballots and rules about specifying who is authorised to call the action were regarded as having a highly restrictive effect on trade unions. The provisions were clearly regarded by Miller and Steele (1993: 231) as increasing the likelihood for legal action by employers and members, who could have legal action declared illegal because of a technical breach of the balloting rules. However, it was claimed that the overriding impact of the legislation had been on trade union power and influence. There had been a major reduction in the scope of trade union immunities, unions had to comply with detailed balloting requirements before taking strike action, the method of election of their executives was dictated by statute and there was a challenge to the unions' traditional links with the Labour Party. Unions were frozen out of relations with Government and the corporatist traditions of the post-war era were ended (ibid: 232).

Dunn and Metcalf (1996) made an adventurous attempt to isolate the impact of the law from other factors that might be equally or more important in altering union behaviour and employee performance. An assessment of the impact of legal change is often problematic,

since it can be difficult to know whether it is the law or other related changes that have produced an observed result. They suggest that the law has been a significant contributory factor in: falling trade union membership, the collapse of the closed shop, the near elimination of all kinds of secondary action and the alteration of trade union democratic processes. Dunn and Metcalf (1996: 93) concluded that the industrial relations system and its economic effects seemed to be going in the direction in which the Conservatives hoped the law would propel it. However, whilst they acknowledge the influence of the law, they make it clear that they think it is impossible to isolate the law's contribution from what is often referred to generically as the 'industrial relations climate'. This comprises factors which include government policy, economic circumstances, the decline in traditional manufacturing, employer industrial relations strategy, worker apathy and membership disillusionment. To this end, Dunn and Metcalf (1996: 67) state:

> The implication is that the legislation has been peripheral. It began to leech on a trade union body already draining of strength in adverse market conditions and, as unions became increasingly enfeebled, it had the opportunity to take hold - irritating, parasitic, but not the main source of union discomfort.

Dunn and Metcalf concluded that 'whether the result of the legislation has been less militant trade unionism, as the voice of an assumed moderate majority shaped union policies and actions, is far from clear-cut' (ibid: 83).

The most comprehensive research to date into the impact of the legislation on internal trade union affairs was conducted by the Imperial College-ESRC survey (Undy *et al*., 1996). The research consisted of an analysis of the constitutional procedures and practices of 24 TUC affiliated unions and 6 in-depth case-studies that were used to illustrate the impact of the TUA 1984 and the EA 1988. The major findings were the following. The legislation was found to have left 'an indelible if uneven mark upon the structures of union government' (Undy *et al*., 1996: 194). The research found that after initial hesitation, almost all unions had by 1992 complied with the new statutory requirements by reforming their rules and/or practice (Undy *et al*., 1996: 163). However, the research also observed that some unions adapted their practices to conform to the legislative provisions, but without formally or immediately changing their rules (ibid: 169). The research usefully categorised unions by reference to a continuum of the minimal, moderate and marked changes the law wrought in

different unions (ibid: 181). The study explained that even those unions which were categorized as making "marked" changes in election procedures in order to comply with the legislation demonstrated considerable continuity in policy (1996: 192). Undy and his colleagues went on to suggest that:

> In its early years at least, the legislation singularly failed to initiate a transformation in the political complexion of the union leadership or a reorientation of democracy in a 'moderate' direction (ibid: 380).

The Imperial College-ESRC study also makes some useful observations in connection with the development of union policy and the role of activists. It asserts that the legislation altered trade union policy-making processes by strengthening the influence of the centre and weakening intermediate bodies and local activists (Undy *et al*., 1996). The suggestion was that the major effect of the balloting provisions was to increase centralisation (Martin *et al*., 1991: 205). The nature of these developments in trade union organisation and decision-making was explored in the fieldwork for the current research and this casts doubt on the finding that trade union government automatically became more centralised as a result of the introduction of the legislation. Significant variations were detected amongst trade unions in this respect. Further, Undy *et al*. (1996: 177) stated that 'the legislation disenfranchised particular groups and local committees'. However, the Undy *et al*. (1996) analysis then counters this by claiming that the legal changes were subsumed within a union's collectivist ethos and organisation. It says that opinion formers and activists found new roles in the administration and political processes of the union (1996: 193). However a major problem with the study carried out by Undy *et al*. is that it does not fully explain how opinion-formers and activists obtained new roles within specific unions.

The current research adds to and informs the existing literature after more time has elapsed and further legislation has been introduced. As well as the above research the author draws on recent empirical evidence using data derived from interviews with senior officials, national officials and shop stewards. It examines the impact of industrial action ballots on the procedures, practices and behaviour of trade unions and, more specifically, whether workers under the new balloting system seemed more inclined to vote to avoid confrontation with employers and, in so doing, took a less conflictual and more accommodating stance than would have been the case under the old legislative provisions. The expectation was that the

empowerment of the individual member would result in more moderate decision-making.

IV. Trade Union Responses to Industrial Action Legislation

Table 1 compares the methods for calling industrial action used by each of the seven case-study unions before and after the Trade Union Act 1984 (TUA, 1984) and Trade Union Reform and Employment Rights Act 1993

<Table 1> Changes in the Trigger for Industrial Action by Union

(Union: Trigger for Industrial Action)

	Pre 1984:	Post 1984:	Post 1993:
BFAWU	Secret postal ballot	Mixture of secret postal ballots and workplace ballots	Mixture of secret postal ballots and workplace ballots
ASLEF	NEC decision	Workplace ballots	Secret postal ballot
RMT (NUR)	NEC decision	Workplace ballots	Secret postal ballot
TGWU	NEC decision and workplace votes using a show of hands	Workplace ballots	Secret postal ballot
AMICUS (EETPU)	Secret postal ballot	Workplace ballot	Secret postal ballot
NATFHE	Branch ballot	Workplace ballot	Secret postal ballot
CPSA (PCS)	Sectional ballot	Workplace ballot	Secret postal ballot

Prior to the introduction of Conservative legislation, each of the case-study unions had its own method for the calling of industrial action. This had been part of their respective constitutions for many years and could be located in the rule-book. Since the introduction of Conservative legislation all but the BFAWU have moved towards a system of strictly secret postal ballots. The Conservative legislation requiring the holding of secret ballots prior to engaging in industrial action resulted in some significant changes to the procedures of some trade unions.

Firstly, the legislation required fundamental changes in ASLEF, the RMT and the TGWU in order for these unions to successfully avoid litigation. In these three unions the power to call industrial action originally lay with the executive, there was no duty on the executive to

consult the union membership before undertaking strike action. The RMT, TGWU and ASLEF all eventually took the necessary steps to bring their arrangements into line with legal requirements.

Secondly, some unions which did ballot their members were also required to make changes at various junctures in order to bring their procedures into line with the requirements of legislation. NATFHE, for example, traditionally held branch votes. When the Trade Union Act 1984 was introduced it moved to secret postal ballots. In respect of the CPSA, the union had traditionally held sectional ballots. On the introduction of Trade Union Act 1984 it also adopted secret postal ballots. In respect to the EETPU, the union traditionally used secret postal ballots. It moved to workplace ballots on the introduction of Trade Union Act 1984, but reverted to postal ballots on the introduction of Trade Union Reform and Employment Rights Act 1993. The BFAWU traditionally used secret postal ballots. However, since 1984 it has used a mixture of workplace and postal ballots, the workplace ballots now being held are in contravention of the legal requirements.

Third, the case-study unions encountered a number of challenges, relating to the holding of industrial action ballots and the law surrounding them. A major problem was the inflexible and technical nature of the balloting rules with which trade unions needed to comply. The complex legal requirements meant trade unions could easily fall foul of the law hampering their ability to call industrial action lawfully. This viewpoint was most prominently expressed by officials in ASLEF, the RMT, the TGWU, the EETPU and NATFHE. The complex nature of the law also provided opportunities for employers and dissident members to challenge the balloting process (Elgar and Simpson, 1993).

The legislation resulted in all the case-study unions, with the exception of the BFAWU, laying down detailed procedures on the process of organising industrial action. Senior officials of trade unions sent out the message to lower-level officials and committees that if the advice was not followed, it was impossible to comply with the law and organise a lawful and effective campaign of industrial action. Due to the technical nature of the balloting process, shop stewards needed support and guidance from national officials and legal officers.

The informants from the case-study unions indicated that trade unions attempted to comply with the legal obligations surrounding industrial action. In particular, senior trade union officials tried to ensure that unofficial action was not taken(Lockwood, 2000). However, unofficial action was prominent in disputes on London Underground involving

both ASLEF and RMT members. Moreover, survey evidence suggests that the Conservative legislation did not succeed in one of its primary targets, the eradication of unofficial industrial action; however, it is apparent that the law has contributed to a significant decline in unofficial action ((Millward *et al.,* 1992; Elgar and Simpson, 1993; Elgar, 1997; Brown, Deakin and Ryan, 1997).

Furthermore, whilst the Conservative legislation, now condoned by New Labour, may have contributed to a significant fall in the number of working days lost (WERS, 1998; Waddington, 2003) industrial disputes have not been consigned to the history books (ACAS, 2001; Lockwood, 2003). Indeed, the last three ACAS annual reports show ACAS as having conciliated in almost 1,500 disputes each year (ACAS, 2001, 2002, 2003). Figures prepared by the Office of National Statistics (ONS) show that for the year 2002 the number of days lost to strike action rose sharply to 1.3 million, the highest figure for more than a decade and more than double the number lost in the previous two years. However, as when strike activity was at its height in the 1970s and tended to be concentrated in particular sectors (such as coal-mining, engineering, docks and public transport) the industrial unrest in 2002 has been confined to industries, such as the railways and the Post Office. During the last three years there has continued to be a stark comparison between the levels of strike activity experienced by the public sector in contrast to the private sector. Public sector disputes accounted for 76 per cent of the total number of days lost in 2002. The figure increased in the twelve months to April 2003 to 87 per cent for the public sector (Bradley and Leach, 2003). The total number of disputes for the year was 146, which is a fall from 2001, when there was a total of 194 disputes, although an increase from 2002 when there were 135 strikes.

The Conservative legislation relating to industrial action was also used by some trade union leaders to justify changes in union procedures that secured increased power for those in control of union affairs, at the expense of other groups, committees or officials. The leadership of the TGWU and the EETPU used the law pertaining to industrial action to justify the introduction of procedures that centralised power within the unions, undermining the traditional autonomy of shop stewards**.** Shop stewards could not determine the timing of ballots, and they were required to confer with senior officials prior to taking a particular course of action.

The decision of the respective leaderships to centralise decision-making, taking authority away from shop stewards, was made despite the fact that the law demanded this only in exceptional circumstances. In the case of Tanks and Drums v TGWU 1992 ICR 1, the Court

of Appeal acknowledged that the law allowed unions to leave the final decision about resort to industrial action to the union official involved. Moreover, the centralisation of decision-making was implemented in the 1980s, at a time when bargaining arrangements were becoming fragmented, placing more responsibility on local officials. It could therefore be argued that the leaderships of the TGWU and EETPU embarked on a process of centralisation at a time of countervailing tendencies, that is, during a period when the level of pay-bargaining became more decentralised, in response to employer-led policies.

The degree to which decision-making was devolved to lower-level officials in relation to industrial bargaining was an area of substantial difference between the trade unions. The BFAWU, ASLEF and the RMT decentralised bargaining, increasing the power of shop stewards. These developments can be explained by various contextual factors, including: internal reform of union government, leadership policies and changes in the arrangements for collective bargaining. In the cases of both ASLEF and the RMT, the changes have bolstered the position of local officials in respect of the bargaining process. A similar position is also detectable in the BFAWU, where bargaining has also become more devolved. In the BFAWU, the RMT and ASLEF there has been a much greater degree of decentralisation and autonomy for branches, as a result of the organisational change that has taken place. This contrasts with developments in the TGWU, EEPTU and CPSA central control of bargaining strategy, tactics and sanctions by the national leadership was viewed as necessary in order to ensure consistency in representation amongst trade groups, to reduce the possibility of 'maverick' local officials embarking on a bargaining agenda of their own, and to ensure compliance with legal requirements in respect of balloting. The latter was regarded as important not only in a strict legal sense, but also to safeguard the financial position of the union, since balloting and legal sanctions could be costly. At a time when trade unions were faced with financial difficulties associated with membership decline this caused the leadership of the TGWU, EETPU and the CPSA to be very sensitive to the balloting legislation (Undy *et al*., 1996: 228). In respect of NATFHE, the position differed between sections of the union. In the FE sector the collective bargaining process became more devolved, while in the HE sector it remained centralised. This was mainly due to employer policies in respect to collective bargaining. The centralisation that occurred might be regarded as somewhat surprising. This is because during the period under review the level of pay bargaining became more decentralized, in response to employer-led policies. The changes that occurred within the respective trade unions can therefore be explained by the

fact that each union was starting from a different contextual base.

The technical nature of the balloting rules, the financial expense of the balloting procedure, the pressure management could place on employees not to engage in industrial action, and the ability and willingness of employers to challenge perceived breaches of the balloting process were emphasised as harmful consequences for trade unions of the requirement to ballot on industrial action (Brown and Wadhwani, 1990; Elgar and Simpson, 1993; Undy *et al*., 1996; Elgar, 1997). These administrative and legal factors acted as centralising pressures, promoting oligarchy within some trade unions and subverting democracy. This was contrary to the Conservative rhetoric that the legal measures surrounding industrial action balloting were designed to increase democracy (Democracy in Trade Unions, 1983).

However, overall, the case-study trade unions appeared to have coped with the legal, financial and administrative burdens surrounding industrial action ballots. An analysis of interviews, conference reports and NEC minutes revealed a significant shift in the attitude of ASLEF, the RMT and the TGWU towards the concept of balloting before industrial action. At the time legislation on industrial action ballots was introduced, and for several years after, the stance taken by officials and members in these unions was confrontational. Activists argued for the retention of the status quo and for refusal to comply with legislation.

This fighting stance has gradually ebbed away, to the extent that the principle of holding a secret postal ballot before industrial action is now taken for granted in all cases. Indeed, the following statement by John Monks (the then General Secretary of the Trades Union Congress), made at the ASLEF annual conference sums up the current position on the concept of industrial action ballots:

> It must be recognised that such laws have proved popular. No union leader would dare go anywhere near a group of workers and say we are not having ballots before strikes. The fact is that prior to the introduction of the legislation many unions did not have them before; no one can take that away from what the law achieved (ASLEF Conference Proceedings, 1999).

V. Industrial Action Balloting and Trade Union Decision-making

The research reveals that prior to the introduction of the legislation requiring industrial action ballots, the majority of case-study unions did not use this mechanism as a means to elicit the views of members on the decision to engage in industrial action. In this respect, the legislation on industrial action ballots could therefore be regarded as improving the democratic rights of trade union members. Industrial action ballots have provided a means for trade union members to express their strength of feeling on workplace issues, to both the employer and trade union (Kessler and Bayliss, 1995: 191; Fredman, 1992: 34).

The balloting legislation caused changes to the method by which industrial action was called. However, if Conservative administrations thought this would encourage members to be more inclined to vote to avoid confrontation with employers, and in so doing to take a less conflictual and more accommodating stance than would have been the case under the old legislative provisions, the results from the BFAWU, ASLEF and the RMT indicate that this was not necessarily the result. Rather in recent years more and more workers have shown a readiness to engage in industrial action (Welch, 2003). The perception of the interviewees from the case-study unions was that industrial action ballots had improved the position of trade unions in negotiations and legitimated the decisions of their senior officials. The balloting process provided shop stewards with the opportunity to mobilise support amongst the rank-and-file membership for industrial action. During the 1980s and early 1990s the case-study trade unions had to deal with employers who were adversarial in their approach to conducting industrial relations (Gospel and Lockwood, 1999). In response to these managerial offensives, ballots often produced votes in favour of industrial action. This was noticeable in ASLEF and the RMT, where the membership became particularly active in attempting to safeguard and advance their terms and conditions of employment in the privatised rail industry by engaging in industrial action (Darlington, 2001). It was also evident in the higher-education sector of NATFHE, where the erosion of working conditions alienated members to such an extent that they voted in favour of industrial action for the first time in 1990. Trade unions became adept at carefully planning and preparing members for

involvement in disputes. The ability of trade unions to adapt their procedures to the demands of the law and their ability to use industrial action ballots as a weapon against employers clearly ran counter to the intentions of the Conservative law-makers.

In terms of obtaining a 'yes vote' in industrial action ballots and fostering the necessary 'collective spirit', it was evident from the fieldwork that pre-meetings and consultation were vital. This enabled officers to avoid situations in which a vote against industrial action would have been particularly damaging. One national official from ASLEF commented: 'a ballot was not held because the members indicated a lack of support for the action'.

Some union officials indicated that a positive ballot led to a negotiated settlement of the dispute, without the need to undertake industrial action. In this context, industrial action ballots were seen as an important device in bargaining strategy. Although industrial action ballots gave the individual member an increased role in union decision-making, unions successfully conveyed the view to members that collective solidarity and action was still necessary in order to protect and advance the interests of members in the workplace. The law acts as a blunt instrument because whilst it can require changes to the decision-making mechanisms of trade unions, it cannot influence the motivation or instrumental behaviour of members' voting habits or willingness to participate in trade union affairs (Lockwood, 2001).

The evidence from the case-study unions was that balloting per se does not act as a deterrent against industrial action. In this respect, the research findings are in line with those of Dunn and Metcalf (1996) and Brown, Deakin and Ryan (1997). This research concluded that broader legislative, political, social and economic changes, together with employer policies, made trade unions more careful about calling industrial action, not the requirement to hold a ballot. In respect to industrial action, it is difficult to distinguish the precise impact of the law on strike activity from other factors that have contributed to a reduction in industrial action (Dunn and Metcalf, 1996; Edwards, 1995). It is particularly difficult to separate the impact of industrial conflict legislation from the broader environment. In short, it is evident from this research that these 'other factors' were often important reasons for trade unions not embarking on industrial action.

However, industrial action balloting did have some negative implications for trade unions in terms of the dynamics of the balloting process, not just in terms of cost and organisation. The balloting process gave the employers scope to try to influence the decision-making of union members, by threatening disciplinary action against anyone who participated in industrial action. Both NATFHE and the CPSA experienced this practice, claiming that it

thereby undermined the democratic decision-making of union members. These factors were particularly stressed by NATFHE and the CPSA as the reasons for 'no' votes in industrial action ballots. The impact of the balloting legislation on the mobilisation of trade union members differed amongst the trade unions. BFAWU, RMT and ASLEF have, to date, had a more favourable experience than the other case-study trade unions in this respect. The outcome of ballots was dependant on the industrial relations context. In particular, the strength of union presence in the workplace, employer tactics, the economic environment and membership attitudes were important relevant factors determining ballot results.

The threat of sequestration of a trade union's assets has resulted in a decline in unofficial action. In fact, the steady increase in the willingness of employers to take legal actions against unions and striking workers in relation to unofficial and unlawful industrial action (breaches of balloting requirements or action falling outside the definition of a trade dispute) posed significant problems for trade unions. Most legal challenges took the form of the interlocutory injunction; that is, a court order to prevent the onset or continuation of industrial action, issued at the discretion of the High Court, pending a full trial rather than an action for damages. In this context, ballots for industrial action inhibited trade union behaviour reducing union power, because the rules were extremely complex, technical, ambiguous and restricting, thus leaving unions exposed to potential challenge in the courts on several counts (Deakin and Morris, 1995: 794). McIlroy (1999: 52) suggests that the employment legislation regulating industrial action introduced to Britain by Conservative governments between 1980 and 1993, and which has endured under Britain's New Labour administration, continues to restrict fundamental union purposes and traditional forms of action.

In sum, the material enables conclusions to be drawn on the impact of industrial action ballots on the procedures, practices and behaviour of trade unions. All trade unions (except the BFAWU) have complied with the Conservative legislation, adopting a secret postal ballot of the membership as the mechanism for calling industrial action. Secret strike ballots have increased the financial cost to unions and have had several burdensome effects upon union organisation. Because the ballot procedures are extremely complex and cumbersome, it has been difficult for unions to ensure that they always act within the law. However, trade unions have used industrial action ballots as ammunition in their bargaining strategy (Lockwood 2003). They provide opportunities to mobilise support amongst members and a credible strike threat to test an employer's final offer (Martin *et al*., 1995*)*.

VI. Summary and Conclusion

The majority of case-study unions greeted industrial action ballots negatively on their inception. However, whilst there is no doubt from the evidence that the balloting requirements have caused substantive changes to the practices and procedures of trade unions, the fear of ballots, so deeply embedded in the rhetoric of union debate, turned out to be somewhat misplaced. The notion that a moderate majority would automatically surface and that they would prevent the union embarking on industrial action has proved illusory and chimerical (Fatchett, 1992: 326). Moreover, the majority of the case-study unions have accommodated the law into their processes, and have used them to legitimise their practices procedures and behaviour. The industrial action balloting process enhanced the collective voice of those in favour of engaging in industrial action. Industrial action ballots have now become an accepted and integral aspect of union decision-making.

Finally, the findings of this research are neatly encapsulated in the following quote made by a national official of the TGWU who observed:

> The Conservative legislation was originally feared by trade unions and portrayed by the media as a disaster for the trade union movement. As things have turned out, the Conservative legislation actually legitimised union procedures, practices and behaviour and contributed to making trade unions more efficient and, dare I say, democratic. Trade unions proved themselves to be reliant and adaptable in the face of a wide raft of legislative reforms which laid down strict templates for union decision-making processes.

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