

Secretary A. Brugind.

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Last time E discussed the Employment Bill, the Secretary of State for the Environment suggested that Ministers should consider "the Armageddon option". The Secretary of State for Employment has spoken of possible massive resistance to stronger legislation. This note, which has not been discussed with or shown to anybody outside the Cabinet Office, attempts to consider what forms it might take and how the Government could counter it.

(i) Parliamentary opposition to the passage of legislation.

The Opposition would presumably exploit every procedural opportunity to delay the Bill. If some of the Government's own supporters were unenthusiastic, this might hold up its passage; but with a guillotine it could still be enacted before the Recess.

(ii) Union resistance during passage.

There would no doubt be large demonstrations, mass lobbies, token one-day strikes (themselves already actionable since no industrial dispute would exist) etc. But since the object would be to stop or delay the legislation, the trade union movement would presumably stop short of action which would underline the need for the legislation and strengthen public support for the Bill.

(iii) Union resistance after enactment.

A major general challenge is possible; but it seems more likely that the unions would await

- (iv) A test case. Because the legislation would work by giving each employer a legal remedy, it is not easy to forecast when the first challenge would come. The Government might not be able to do much to make sure that the test case was on the most favourable ground: there is no control over maverick employers, though some informal co-operation with the CBI might be possible. It would be preferable that the first challenge should come over a sound case: it will be

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important, especially if the law leaves a lot to the discretion of the courts, to ensure that the new instrument does not break in the employers' hands. If Ministers were worried about the possibility of the first test case coming on a Grunwick rather than a United Biscuits type of case, it might just be worth considering whether some procedural device like the Attorney General's fiat could be introduced into the Bill. The objection to this would be that it would introduce the Government directly into the case, and would be an interference with the plaintiff's legal rights.

(v) Defiance of a Court Order.

The normal use of the new Act will probably be an interim injunction against named individuals (or, if Section 14 is amended, against a union) requiring them to desist from some form of secondary action. Resistance could then take two forms: the named pickets could be replaced on the picket line by others; or (if officers of the union were enjoined, as in the Duport case) new officers could be elected. This latter process would take time (so Duport's tactics were probably correct) and it seems probable that even the new officers would be in contempt if they continued with the forbidden action. More probably those enjoined might continue to picket, etc. That would certainly be contempt of court, and it would then be for the officers of the court (the tipstiffs) to enforce the judgment. The police would no doubt provide cover, but could intervene only if there were a breach of the peace.

(vi) Mounting resistance.

Two reactions would then be possible. Either there could be massive defiance of the police, as at Saltley (the turning point in the miners' strike of 1972, whose significance was certainly not lost on Arthur Scargill), and it would then be for the Chief Constable concerned, in the knowledge of any guidance which the Home Secretary might give him, to decide whether to withdraw. Or the self-appointed martyrs might go to jail.

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(vii) Escalation.

Things might then go either way. A head-on collision with the police, leading to violence, could produce similar episodes all over the country. Or it might provoke a reaction. It would all depend very much on whether trade union leaders (with the unwanted help of the CPGB and others) had managed to generate a strong current of support in the movement, or whether the Government succeeded in turning the opposition to the new measures to their advantage, and holding the support of the mass of moderate opinion. But the risk of an upsurge of violence is there. Jailing martyrs is, on the whole, less likely to provoke immediate violence; but might more easily provoke some kind of official trade union reaction.

(viii) Organised resistance.

The TUC might feel forced to organise a response to the jailing of martyrs, or to police action. Or there could be a 'spontaneous' outburst like the 'Stop the Act' campaign in 1971. Such a response might take at least two forms: a series of individual protest strikes, or a general strike. The first would probably not constitute 'industrial disputes' within the meaning of the present Section 29, but clearly there would be little point in seeking legal remedies, in a situation in which the law was already being challenged. The second, while perhaps less likely, is the TUC's ultimate threat. It is a matter of judgment whether, in the end, they would be prepared to use their deterrent. In either case, there would be a mounting risk of serious disorder, confrontation with the police, etc. In a war of nerves of that kind, the Government would need to have a clear idea of how far it was prepared to go and what escape routes were open to it (short of complete withdrawal of the Act). It is not clear what these might be.

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- (ix) A referendum might seem an attractive way of enabling the voice of moderate opinion to find decisive expression. But it would be an uncertain card to play: it would take at best some weeks to organise, the campaign would be full of traps and troubles for the Government, and (as successive French Presidents have found) the result might not be welcome when it came, because those opposed to the legislation would have done their best to make the issue one of general confidence in the Government.

*R. J. Wright*  
PP (Robert Armstrong)

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