



The Donovan Report

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THE DONOVAN REPORT¹

IN a famous judgment of 1964 (*Rookes v. Barnard*) the House of Lords removed the immunity against legal actions for threatening or inducing a breach of employment contracts which union officers had previously been assumed to enjoy in trade disputes. Since virtually all strikes involve such a breach, the judgment was construed as a fundamental attack on the freedom of collective bargaining which unions had thought established for the best part of a century, and confirmed by the Trades Disputes Act of 1906. The Labour Government returned in 1964 was inevitably committed to a reinstatement of the *status quo ante*. At the same time, however, it had to reckon that since the Second World War British trade unions had been subject to increasing public criticism—arising from the publicity given to strikes (and particularly to unofficial or “unconstitutional” strikes), from alleged inflationary wage demands and restrictive labour practices, from supposed or demonstrated failings in union democracy, and so on. The Labour Government met its commitment to its trade union supporters by passing the Trades Disputes Act of 1965; the second pressure it met by the usual procrastinative device of British Governments, a Royal Commission—in this case “to consider relations between managements and employees and the role of trade unions and employers’ associations in promoting the interests of their members and in accelerating the social and economic advance of the nation, with particular reference to the law.”

The Commission sat for three years and received a great mass of evidence from organisations, institutions and selected individuals.² The written evidence constitutes a wide cross-section of viewpoints on current problems of industrial relations, if it is a little short on factual submissions. The Commission itself had prepared for it and published a number of Research Papers, which though predominantly institutional in scope, also constitute a very substantial addition to the documentation of industrial relations.³

¹ *Report of the Royal Commission on Trade Unions and Employers’ Associations, 1965–1968* (Lord Donovan, Chairman). London: H.M.S.O., Cmnd. 3623, pp. ix + 352. 20s.

² Apart from the evidence published during the Commission’s hearings—the factual survey submitted by the former Ministry of Labour is particularly useful—a volume of *Selected Written Evidence* has also been published (H.M.S.O., 1968, 57s. 6d.).

³ The *Research Papers* are reviewed by the present writer in the *British Journal of Industrial Relations* for November 1968 (which is a symposium on the Commission’s proceedings). The survey of No. 313.—VOL. LXXIX.

Much of the argument before—and presumably in—the Commission concentrated on the demand put most strongly by employers' organisations that collective agreements, and especially "procedure" agreements, should be legally enforceable. This proposal was put in various ways, but would broadly have the effect of making trade unions liable for any failure on their own or their members' part to comply in full with agreed conciliation procedures in disputes, and of exposing employees themselves to penalties for taking part in unofficial or "unconstitutional" stoppages. And to this, the Commission returned both a rejection in principle and a partial concession in its detailed legal recommendations. Otherwise, however, its propositions relate to many controversial matters, so that what one thinks of the Report is inevitably influenced by the extent of one's agreement with the Commission's viewpoint. This review constitutes no exception to the rule that comment on the Report largely reflects personal or sectional views.

To this writer, the Donovan report appears effectively divisible into three parts, one of which is largely missing and which are very different in quality. The first part comprises the Commission's legal and institutional proposals, which seem to him on the whole good. On the one side, these include proposals for an institutional mechanism to examine claims for recognition of unions by employers (and for supporting those claims where they appear justified), for the legalisation of a form of union action which has hitherto been of dubious status, the "secondary boycott," and for provision of an enforceable right of appeal to the individual worker against dismissal. On the other side, the legal recommendations include one for a right of appeal by the individual against expulsion or exclusion from a union (which would have an application also to cases where workers with adequate trade qualifications were refused admittance to a union operating a closed shop, or to employees deprived of their jobs by a union shop). Safeguards for the good internal conduct of trade unions in such matters as elections would also be strengthened by a new registration system. The legal wage-board system (which applies to some 4 million employees) would be made more flexible and capable of development, and the Government is asked to consider and define its policy on minimum wages in general.

The proposal for a permanent Industrial Relations Commission, the Donovan Report's institutional centrepiece, may perhaps be treated with some scepticism, if only on the ground that it amounts to one that the Royal Commission be now established in perpetuity. And since this writer thinks the analysis of contemporary industrial relations the Commission took three years to make to be defective, he doubts it would do much better with eternity. More seriously, however, his view is that many of the commonly

workplace relations prepared by the Government Social Survey and summarised as Paper No. 10 is perhaps especially notable: its detail has since been issued as *Workplace Industrial Relations* (H.M.S.O., 1968, 25s.)

alleged failings of the British industrial relations system (such as its increasing liability to frequent unofficial stoppages) arise largely from defects in its major organisations—a proposition which the Donovan commission was kind enough to refer to in a commendatory way in passing. It seems to him exceedingly unlikely, however, that bodies composed partly of representatives of just the organisations whose defects are at issue (as the proposed Industrial Relations Commission is likely to be) will do much to remedy those defects in any fundamental way. There are other objections to what might be called the “Super-Scamp” Council, as the Donovan Commission puts the proposal. However, there is also certainly something to be said for the experiment of a continuing review body to examine industrial relations and negotiating procedures, in place of the many (at present) *ad hoc* or sectional arrangements which have official support.

The writer finds much more seriously exceptionable the Commission’s majority recommendation that the legal immunity in trade disputes which has already been referred to should be confined only to members or officers of registered trade unions acting with the full authority of the latter’s rule-books. This would not merely expose unofficial strikers to legal action (as the Report intended) but also effectively withdraw the right to strike from non-unionists and from members of unregistered trade unions. The proposal is extraordinary in the main context of the Royal Commission’s argument, which is that legal penalties on strikes are likely to be ineffective and that the right approach is to remove their causes—which it finds mainly in irrational wage structures and defective grievance procedures. Neither is the proposal justified by the balance of such evidence as was submitted to the Commission on the economic effects of strikes—which suggested, if anything, that unofficial strikes have rather little economic consequence because they are mostly small, and that such strikes as can be argued to have been significantly damaging economically were mainly big ones, which were also therefore likely to have been official. The Commission itself relies largely, to support this proposed discrimination, on the argument that the possibility of an unofficial strike is likely to be damaging to managerial initiative; but the exact extent of this risk was a question on which it hardly seems to have consulted the results of its own inquiries. The Government Social Survey investigation which it commissioned was strongly biased towards more strike-prone industries; yet only one-third of the trade unionists consulted could recall there ever having been a strike at their place of employment—at which their average period of personal service was six years.¹ If the threat involved amounts to one small strike in twenty years it can hardly be so bad for the average management’s nerves as the Commission supposed.

The proposal, in fact, is largely interesting as illustrating a quality of the Commission itself. Of its twelve members, four were virtually appointed as

¹ Research Paper No. 10, *op. cit.* Most informants also “. . . agreed that their last strike had lasted one day or less.”

representatives of union or employing interests. Opinion on the Commission seems to have been more or less equally divided between what might be called “mini-reformists”—who were broadly in favour (as a group) only of making such adjustments to the existing, so-called “voluntary” system of industrial relations as would make it acceptable to contemporary opinion—and “interventionists,” mostly in favour of giving more legal support to established and managerial authority. All twelve members signed the Report; but six of them (including the Chairman himself) appended notes of reservation indicating fairly serious resistance to certain of its central propositions. In the Report’s writing the mini-reformists dominated; but many concessions in its formulation and proposals were necessary to the interventionists. This quality of uneasy compromise is one which had perhaps an even more important influence on the Report’s other two parts.

The Report’s second part may be taken as its analysis of contemporary British collective bargaining, and its proposals for the reform thereof. In summary, the Commission’s argument is that there are two systems of industrial relations in Britain: on the one hand, there is the “formal” system of national agreements and conciliation procedures arranged between officials of unions and employers’ associations; on the other, there is the “informal” system of “factory” agreements (or rather, understandings) which are concluded by bargaining between managements and individual workplace groups. And “the central defect,” says the Commission, “in British industrial relations is the disorder in factory and workshop relations and pay structures promoted by the conflict between the formal and the informal systems.”

Thus, actual wages or earnings (the Commission argues) are widely above the rates laid down by so-called national agreements, and are effectively determined through the informal system of bargaining: the whole structure of national negotiations is therefore “unreal,” “a façade” and (again) “at odds with” the actual arrangement of these things. Moreover, “factory bargaining” is not controlled by the official trade unions and employers’ organisations but by shop stewards. The authority of the shop stewards at the workplace is further reinforced by managerial attitudes—a preference for dealing with them rather than with full-time union officers—and by the anomalies of British union structure (particularly, the frequent fact of multi-unionism at the workplace level). There has thus been an effective transfer of authority from the formal leaders on both sides to the workplace leaders. In consequence, “competitive sectional wage-adjustments” prevail, and there is chaos in pay structures. Formal—*i.e.*, industry-wide—conciliation procedures are ineffective; but their existence has prevented managements from developing labour policies of their own.

As further results of this alleged general situation, unofficial strikes increase, there is “indecision and anarchy” at the factory level (clearly,

indecision, anarchy and overtime are the cardinal sins in the Donovan Commission's calendar) and obstacles are created to the improvement of productivity—which can in any case be tackled only at the enterprise level. The answer to this hair-raising state of affairs is, on the one hand, to replace fragmented workplace bargaining through shop stewards by comprehensive company (or “plant”) agreements which incorporate “productivity bargaining”—and, on the other hand, to restrict national or industry-wide negotiations to “those matters they can effectively regulate.”

Students of labour economics and industrial relations will readily perceive what the Report has in effect done. To a now widely accepted analysis of the process of “wage drift” in certain key sectors of the economy (*i.e.*, the mechanism through which actual wage increases tend, on the average and persistently, to exceed those conceded in industry-wide bargaining) has been added the essence of recently published critiques of the current conciliation system in the engineering group of industries; and the whole thing has been dressed up in a terminology borrowed from recent industrial sociology. The National Board for Prices and Incomes, for instance, in a general report on “payment by results” wage-systems and their effects, published some time before the Donovan Report, also attributed a major role in inflationary wage drift and inflammatory wage-anomalies to the widespread system of workplace negotiation of piece-rates and incentive bonuses.¹ And the Board similarly recommended comprehensive company agreements to remedy the deficiencies of industry-wide wage-fixing processes in that sector of employment where this practice prevailed. The novelty in the Donovan “two-systems” formulation is its conversion of what was first devised as a description of, and prescription for, a specific industrial situation into a *general* description of British industrial relations, and a *general* panacea for their reform.

A critical question, therefore, is the realism or otherwise of this transposition. This was in fact an issue on which some rather low-grade statistical debate took place between the T.U.C. and the Commission. The T.U.C.'s evidence argued that industries in which both national and factory bargaining occurred concurrently employed only rather over a quarter of all employees, while nearly half of the latter were employed in industries where the only form of collective bargaining was the national agreement (or some such equivalent as a statutory Wages Council), so that the “two systems in conflict” situation was atypical. The Donovan Commission replied that in several industries which the T.U.C. had listed as covered only by industry-wide agreements, workers generally earned or were paid more than the minimum agreed rates; it estimated that over half the total labour force earned more than the minimum wages or salaries laid down by industry-wide agreements, and put this as a main support for the representative quality of its analysis.

¹ N.B.P.I., Report No. 65, *Payment By Results Systems*, H.M.S.O. (Cmnd. 3627, May 1968).

There are, of course, transparent fallacies in both the above sets of statements: on the one hand, even in industries where there are both national and “factory” agreements, many employees (various groups of salaried workers and women, for instance) will be covered by neither. On the other hand, the majority of workers covered by industry-wide agreements who are actually paid above the rates these embody derive this advantage from simple management decision; and it is further probable that about a quarter of all employed people are covered by no collective agreement of any kind, whether national, company or “factory.” The writer doubts very much whether the actual number of workers subject at the same time to “two systems” of collective bargaining exceeds 4 million (out of some 23 million total employed labour force). For the great majority of employed people, in other words, the normal situation is one in which their pay and other terms of employment are managerially determined, without *any* form of consultation or negotiation, but are *influenced* either by the common management practice of passing on increases in nationally agreed minimum rates to all actual wage scales, or by the labour market effects of high wage drift in that sector where the “two-systems” situation may be said to apply. This sector is thus a pivotal one from the point of view of the determination of national wage levels; but from the broader viewpoint of industrial relations in general it appears quite unrepresentative.

Other evidence of the relative significance—and “reality”—of industry-wide and workplace bargaining can be derived from official estimates of wage drift. Those published by the Department of Employment and Productivity suggest that in recent years some three-quarters of the annual average increase in wages has been attributable to national agreements. The P.I.B. Report referred to above made a very detailed examination of wage movements in the years 1963–66, and concluded that in this period the estimate was something of an exaggeration: even so, it attributed over half the annual wage increase to national bargains or the equivalent, and traced only part of the residual to the effect of workplace negotiations. Even the alleged association of the “two systems” with industrial disputes seems statistically dubious. In recent years the commonest single cause of strikes has been what the D.E.P. now calls “wage disputes other than claims for increases,” most of which arise from the operation of the piece-work system in certain industries—a fact which is confirmed by the heavy concentration of strikes in three industrial groups (the engineering and allied industries, coal-mining and docks) which are characterised by incentive-payment systems with prices, bonuses or work-loads fixed at the workplace level itself. The reform of wage systems in these industries would thus be more to the point (whether this be considered as their effects on wage determination or on management-labour relations) than any general reconstruction of the collective bargaining system.

The Donovan Commission’s preoccupation with the sins of workplace

bargaining in fact appears to have diverted it from undertaking any close examination of the development of industry-wide negotiation (which it dismisses as *prima facie* unreal). Had it made such an inquiry, it would almost certainly have discovered that so far from declining the number and coverage of industry-wide agreements has actually increased. It might also have noted that in recent years national agreements have on several occasions served as instruments of major reform in wage structures or industrial relations—as in the textile and mining industries, and electricity supply. It might particularly have observed that such agreements have, from the nineteenth century on, in several major cases acted as media for the exchange of wage increases for worker acceptance of improvements in technology and working practice (what is now called “productivity bargaining”, in other words). And at no point did the Commission consider seriously the possibility that for this latter purpose national agreements might have very real advantages over more dispersed bargaining arrangements. Unco-ordinated company or “plant” agreements may well, even where they lead to cost savings—or price reductions—by individual firms, nevertheless have a generally inflationary effect, by imposing on the labour market at large wage levels that cannot be offset by any general possibility of productivity improvement.

Equally, the Commission’s analysis conveys no real consideration of the relationship of institutional arrangements for collective bargaining to national economic policy (beyond a few sentences suggesting that its recommendations are not incompatible with contemporary Government incomes policy). On the one hand, however, it seems fairly clear that a higher degree of centralisation in bargaining arrangements in Europe—and particularly the extent of centralisation in bargaining arrangements in Scandinavia, the Netherlands and Britain—has been an important condition of these countries’ experiments in incomes policy. On the other hand, the two major industrial economies in which “plant bargaining” is the predominant form—those of the United States and Japan—have in the one case controlled the results of a much more dispersed wage-fixing system by a similarly much higher rate of unemployment, and in the other case effectively accepted a higher rate of wage-inflation than would be politically or economically acceptable in the United Kingdom.

The section of the Donovan Report on collective bargaining (which has been considered its major theoretical contribution to contemporary discussions of industrial relations) thus seems only to demonstrate that the Commission knew little about economics, was rather under-informed on both the actual organisation and the development of wage determination, and largely ignored the connection between the institutional organisation of the labour market and economic trends and policy. It is pretty clear, in fact, that it was persuaded to accept as the typical situation of British industrial relations that of the mass-production operative in a large engineering establishment.

(The Report continually refers to the “factory” and the “workshop” as representative units of employment.) The engineering industry, however, while it is certainly important, has a rather special situation of its own which has been by no means typical of British industrial relations in general.

In the upshot, the Commission’s analysis is thus largely irrelevant to the conditions and situation of most British employees: while its proposal for reform involves a large ambiguity. Company agreements may have a place (as the P.I.B. suggested) in the reconstruction of an effective relationship between the national level of negotiation and the actual workplace in those industries—of which engineering is by far the most notable—where this relationship has been “fractured.” Equally, however, they could become an agency for the disintegration of the system of national negotiations in general, and with that, the disappearance of any possibility of successful *centralised* collective bargaining, which seems essential to economic planning and incomes policy. They could also become the means of a mere reassertion of managerial authority against the workplace democracy of the shop-steward system. This ambiguity was perhaps what made the proposal and its supporting analysis acceptable to the Commission: however, this part of the Report appears to the present writer to have done less to clarify than to confuse the major issues in industrial relations and labour economics.

The length and prominence of the Donovan Commission’s treatment of its “two-systems” thesis serves, however, also to conceal the paucity of the Report’s third part: that dealing with the general context of industrial relations, and their relationship to trends in the economy and society at large. It is, for instance, quite remarkable (the more especially so in view of the recent and protracted discussion of the implications of “automation”) that the Commission should have almost totally ignored the potential effects of technical progress on its subject. It appears very likely that within a generation the shape of industrial management will have been substantially transformed by the computerisation of decision-making—with obvious and major effects on labour-management relationships. It is certainly almost inevitable that by the end of the century the semi-skilled factory operative whom the Royal Commission apparently thought the typical worker (though he even now constitutes only a very small minority of all employees) will have virtually disappeared. One only has to consider the Commission’s discussion in relation to a labour force composed very largely of white-collar, salaried employees for the Report to assume a large “unreality” itself.

Or again, there is the Commission’s quite summary—almost contemptuous—treatment of the movement for “workers’ participation in management.” Whatever one thinks of this in principle, one would have thought its presence hardly avoidable: as is testified, for instance, by the extent of the works councils movement in Western Europe and the trend towards more direct forms of employee participation in other countries—to say nothing of the evidence submitted to the Commission by trade unions and

individuals from Britain. Any close examination of the factors in the recent increase in the frequency of unofficial strikes—a phenomenon with which the Commission appeared to be so much concerned—might well have suggested a connection between the extent to which this increase arises from non-wage disputes infringing on the traditional area of “managerial functions” and a demand for “more industrial democracy” in the United Kingdom. The Commission itself noted that the system of fragmented workplace bargaining in certain industries, which it criticises so severely, was accepted by those concerned partly because it involved a certain measure of workplace self-government. And its own proposal for company agreements would appear to involve a reduction of this facility, and a new concentration of authority at the level of company managements and full-time trade union officials. One would have thought some compensation in other directions would at least have been indicated.

Perhaps most extraordinary of all is the Report’s extremely brief and superficial reference to incomes policy. Any observer of industrial relations and the labour market in the period since the Second World War in the mixed industrial economies might well have concluded that by far the most notable development in these areas was that of attempts to influence the processes of wage and price fixing, and of income distribution in general, in accordance with national economic and social policy. This is certainly a development which has dominated discussion of wage problems in Britain in the past twenty years, and is one which appears likely to extend. The Donovan Report gives some passing recognition to it as a (by implication) desirable phenomenon, but does not inquire how far the development is compatible with the Report’s own emphatic assertion that “collective bargaining is the best method of conducting industrial relations.” (A principle, incidentally, which the Commission itself clearly did not wholly believe, since it recommended both compulsory arbitration in some industries *and* that all arbitrators should be required by law to take the needs of incomes policy into account in their decisions!) But in the past twenty-eight years there have been only seven in which the processes of wage-fixing in Britain have not been under some form of direct legal restraint in the interests of national policy: and there have been very few years in the post-war period in which no active Government attempt to limit and modify the results of industrial negotiation in the light of economic policy considerations has been under way. Despite the length of its discussion of collective bargaining, the Commission seems at no point to have asked itself to what extent the British system of industrial relations could now really be considered one of collective bargaining in any normal sense at all.

One might perhaps add a further reflection on the composition of such bodies as the Donovan Commission—or its proposed Industrial Relations Commission. Governments commonly think it good to have an eminent lawyer preside over these institutions. Judges, it is reasonably held, are

accustomed to assessing the validity of evidence, weighing the merits of rival arguments and applying to the combined result a body of impersonal and established principle. It is no disrespect to the Royal Commission's distinguished Chairman (whose own Addendum to its Report indicates a certain honourable anguish of mind as to the efficacy of its compromise approach) to say that these things inevitably hold good only in the context of litigation. In the absence, however, of such criteria as enforceable statute and case law provide in that circumstance, another—and equally respectable—professional model may apply: that of a lawyer striving to formulate terms of agreement between contending clients who are somewhat concerned to keep an awkward case out of court. Something of the kind certainly seems to have happened in the present instance.

Which may, of course, well have been what the Government anticipated. If so, the reaction to the Report of major union and employer organisations, and the Conservative Party's commitment (in advance of the Report's publication) to an "interventionist" position,¹ perhaps make it unlikely that the expectation will have been quite fulfilled.

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¹ *Fair Deal at Work, the Conservative Approach to Modern Industrial Relations*, C.P.C., April 1968.