

# Rearming the State

Bob Fine surveys the Tories' assault on civil liberties

Since the rise to power of the current Tory administration, there has been a steady and marked drift toward a more authoritarian state.

There have been moves toward a more centralised policing (remember the role played by the Association of Chief Police Officers, ACPO, and the National Reporting Centre, NRC, during the miners' strike); more militarised policing (more extensive use of guns, shields, riot formations, cavalry charges, etc., and the development of specialised riot police units); an increasing emphasis on what is usually called "public order" rather than individual criminality; a diminution in police accountability whether to local authorities, parliament or the courts; more overt right-wing politics from the police at the level of Chief Constables and the Police Federation; and the growth of police powers through statutory changes like the 1984 Police and Criminal Evidence Act (extending police powers of detention, stop and search, search of premises, etc.), the 1986 Public Order Act (extending police powers to ban and impose conditions on marches, demonstrations and pickets) and the 1984 Prevention of Terrorism (Temporary Provisions) Act (which extended the original 1974 Act to include members and supporters of any organisation in the world which uses "violence for political ends" and made the legislation semi-permanent).

Police powers have also grown through administrative changes within the police itself, like the extensive use of roadblocks in the course of the miners' strike or broad interpretations of what counts as "threatening behaviour", supported after the event by the courts.

In the courts, we have seen magistrates extend their power to grant bail conditions as auxiliary forms of social control, in effect imposing forms of preventive detention on selected groups and individuals like striking miners or West Country peace convoys. This is not unprecedented, but appears to be more institutionalised, and has been supported with dubious legality in the higher courts.

In the crown courts we have seen more cases tried without juries, and the curtailment of rights of peremptory challenge to jurors. The steady judicial erosion of the right to silence and the curtailment of the "exclusionary rule" of evidence, that is, the exclusion from the trial process of



evidence improperly acquired, has been buttressed by the Royal Commission into Criminal Procedure and now by statute.

The government's decisions to prosecute Sarah Tisdall, Clive Ponting and then Spycatcher on grounds of "national security", its attempts to censor the media over widely defined matters of "national security" (for example preventing information appearing about the Zircon spy satellite programme) and its gagging of Sinn Fein on radio and television have encroached upon rights of free speech and widened the arena of "national security" considerations.

The decision not to prosecute policemen in Northern Ireland "shoot-to-kill" cases, together with the suppression of the Stalker inquiry, the rejection of the appeal of the Birmingham Six, the acquittal of police officers in connection with the death or serious injury of John Shorthouse, Stephen Waldorf and Cherry Groce, the failure to take action against the police following the death of Cynthia Jarrett — all these cases have demonstrated the lack of independence of the judiciary from the executive.

There are more people in prison, more custodial sentences, more prison buildings to house convicts. We have had restriction of parole for violent offenders and drug traffickers serving over five years as well as for certain categories of those serving life sentences for murder, an increased emphasis on security at the expense of rehabilitation and a heightened repression of protest against prison regimes. The

Criminal Justice Act of 1982 also introduced a tougher framework of custodial sentences for offenders under 21.

The greatest prize for a law and order government, the restoration of capital punishment, has eluded Thatcher in spite of her own personal support for it. In both of two free votes in the House of Commons in 1979 and 1983, the move to restore hanging was defeated by a large majority. Recently Douglas Hurd announced a programme to abolish the barbaric practice of "slopping out" by putting toilets and washbasins in all prison cells — a much-needed move to introduce some measure of civilisation into the running of the prisons, and one which the Labour Party to its shame found impossible to make in five years of government in the 1970s.

The second major front of "authoritarianisation" has been against the trade unions. Here we have seen major incursions on the right of free association, the right to strike or take other forms of industrial action, the right of free collective bargaining and the right to organise independently of state interference. The measures contained in the 1979 orders in council, the 1980 and 1982 Employment Acts, the 1984 Trade Union Act, the 1986 Wages Act and other ancillary measures have imposed a wide array of controls over trade unions and their members (ably summarised in John McIlroy's book, 'Trade Unions in Britain Today').

The qualification for bringing a case of unfair dismissal was increased from six

months' to one year's continuous employment in 1979, and then to two years' in 1985. The onus of proof in tribunal cases, which used to favour the employees, was neutralised and the tribunal could now take into account the employer's financial resources. The basic award for compensation was reduced and arrangements for maternity leave and pay were weakened. The 1980 legislation weakened trade union rights to demand recognition, in 1983 the Fair Wages resolution was rescinded and in 1986 young workers were removed from the protection of wages councils. Restrictions on women's hours of work were repealed and legislation supporting collective bargaining were dismantled. There were contrary pressures, however, coming from the EEC, which impelled the government to introduce Protection of Employment and Equal Pay Regulations in 1981 and 1983 and the Sex Discrimination Act in 1986.

The definition of a "trade dispute" — the key to trade union protection — has been restricted to disputes *wholly or mainly* between employers and *their workers*. Lawful picketing has been limited to workers picketing their own place of work and a restrictive Code of Practice, limiting the number of pickets normally to six, passed to "guide" the courts. Protection for trade unionists taking secondary or sympathetic action has been severely restricted and the definition of "secondary action" opened up to wide judicial discretion. Lawful industrial action, that is action protected against civil damages, has been restricted to the workers' own immediate employer — even, as the seamen's strike revealed, action taken by other seafarers against the same employer in a separate workplace has been construed by the courts as "secondary" — and solidarity action has been minimised.

Employers' protection when dismissing striking workers has been extended and unions now lose their immunities if they support or fail to repudiate industrial action taken without a secret ballot. After the seamen's strike, it seems that even holding a secret ballot to strike may be against the law if the courts deem that the strike being balloted for would not be protected under the law. Social security has been used as a further weapon against industrial action: a sum deemed to have been paid by the union as strike pay may be deducted from the social security benefits of strikers whether or not such payment actually exists.

The 1980 and 1982 Employment Acts legislated that closed shops were only protected if approved in a ballot by 85% of those voting or 80% of those covered by the arrangement. It has also deemed it "unfair" for employers to dismiss employees who refused to join the union on grounds of conscience after a successful closed shop ballot. Trade unionists exerting pressure on management for the dismissal of non-members were opened up to legal action. Legislation has sought to remould the internal practices of unions by demanding secret ballots in the election of executive members and in the setting up

or continuation of a political fund.

In the courts many legal actions have now been taken against unions both by employers and by dissident members of the unions often supported by right-wing pressure groups. These actions have been taken both under the new Tory legislation and under pre-existing laws of contract and trust. In the miners' strike, for example, so-called "rule book" actions were followed by injunctions, sequestration of union funds, the placing of union assets under receivership and threats to imprison union leaders. The Employment Acts were used by the police to limit the numbers of lawful pickets.

During the miners' strike any picket who attempted to halt a working miner for a couple of minutes to put the union case was liable to be convicted for obstructing the highway or some other breach of the criminal law. A miner who succeeded in peacefully convincing workers at a neighbouring pit not to work could attract an injunction against the NUM. The Coal Board used its rights under the law of contract and unfair dismissal to sack striking miners. Court orders were successfully used against individual miners occupying a colliery and parts of a steelworks.

The courts placed the entire union assets under receivership — at that time an unprecedented use of a procedure normally applied to cases of debt and bankruptcy.

Employers have used the protection of the law to sack strikers — Eddie Shah against the NGA, Aire Valley Yarns against the T&G, Mercury Communications against the POEU, Dimbleby against the NUJ and Austin Rover against the T&G. Since then, the courts have been used ruthlessly and effectively in the cases taken by Rupert Murdoch against the NGA and SOGAT at Wapping and by P&O against the National Union of Seamen. In the latter cases, the offices as well as the funds of the NUS were sequestered, and the courts made it clear that for the union to escape penalty for an unprotected industrial action it must actively and publicly repudiate the action — no nods and winks behind the scenes. If it wanted its assets to be returned, it had to make a full and public apology for its actions and a firm commitment never again to follow the same road.

Some Tories have argued that "life without immunities offers unions an honourable and responsible role as voluntary associations active within the limits of the ordinary law of the land" (quoted in McIlroy). The implication is that all immunities for industrial action should be removed. The government has now announced plans to ban unions from disciplining workers who refuse to take industrial action called after a successful ballot under the 1984 Trade Union Act.

According to the Guardian (4/11/88), the new Code of Conduct being considered by the government suggests that unions should consider not taking industrial action unless they receive a "very substantial" majority or a turnout in

secret balloting of at least 70%. The code would not be law, but could be used as evidence in the courts. Unions are to be advised that all disputes procedures should be exhausted before a vote on industrial action is taken and that the services of a third party, like ACAS, should be sought before a ballot is launched. Unions are also to be instructed that a strike ballot is only to be used if it has first been established that there is sufficient demand for it from members and only if "official" industrial action is in prospect. Unions will be required to give employers prior notice before conducting a secret ballot and to seek their assistance in a workplace ballot if a postal home ballot is not possible.

The code further suggests that the unions should give an employer "sufficient" notice of industrial action to allow any necessary arrangements to be made to "ensure that there is no risk to the health and safety of employees or the general public". According to Norman Fowler, "British trade unions have all too often seen industrial action as a weapon of first resort. This is no longer acceptable — neither to the public at large nor to the members" — and certainly not to a government which claims to speak on behalf of both.

As with the criminal justice system, the Tory government has not on the whole undertaken sudden dramatic measures of right-wing reform (unlike the Industrial Relations Act of Ted Heath), but has moved in a piecemeal, step-by-step fashion — without, I think, a grand design, despite the plans sketched by Nicholas Ridley in the 1970s. I think the Tories have been rather surprised by their success in containing the unions and their confidence has grown with every victory. There seem to be ever fewer boundaries in the control of unions which the government is unwilling to cross.

The general strategy of the government has been to take measures which purport to extend trade union democracy and the rights of individual members against their collective bureaucracies — some of which are merely notional and some real in their effects — and to link them with further measures curtailing the sphere of operation of the union as a whole and exposing the union as a whole to a combination of crippling financial penalties for crossing the boundaries of legally approved action and tough police restraints on picketing and demonstrations.

I have focused on two aspects of the drift towards an authoritarian state: the criminal justice system and trade union regulation. The first points especially to the increasingly undemocratic character of the state machinery itself and the second to the diminishing space accorded to working class democracy outside the state. Both dimensions, democracy within the state and working class democracy outside the state, have been attacked together. There are, of course, other arenas in which the drift toward an authoritarian state has been equally revealed: arguably the most important has

been the attack on local democracy through the dismantling of the metropolitan authorities and the GLC and through restrictions on the financial powers and spheres of authority available to local authorities.

If the attack on trade unions represents an attack on one bastion of the labour movement, the attack on local democracy represents the other key element of this strategy. Already Labour's local base has been severely hit by rate-capping and the enforced sale of council houses and flats to tenants at cut-rate prices. Now new laws will allow whole council estates to be sold off (by a method which treats abstention in ballots as if they represented agreement with the sale — "democracy" is a flexible concept), permit parents and governors of schools to opt out of the local education authority and come under direct central government finance and control, impose a national curriculum on schools which excludes many of the progressive education measures introduced by Labour Local Education Authorities, and force local authorities to put services out to competitive tender, and so forth. The imposition of the poll tax, a regressive and almost feudal form of taxation, in place of rates, and the legal obligation placed on local authorities to collect the poll tax and seek the punishment of defaulters, is another step.

Probably the most significant development at the national level has been the restructuring of the civil service and public administration under Thatcherite directors, and the toughening of the managements of nationalised industries prior to their privatisation. This has included the tearing up of tripartite agreements (like the Plan for Coal in the mines) and negotiating frameworks (like the Burnham conditions in education). Major changes are likely in the bargaining structures of the civil service, British Rail workers, coalminers, etc. as privatisation and fragmentation take their toll.

Meanwhile we have the further tightening of immigration controls under the British Nationality Act of 1981 and subsequent directives.

When we look more closely at the "drift toward an authoritarian state", we see that it cannot be understood in isolation from its economic content. The substance of authoritarianism is an attack on the social foundations of the labour movement; the trade unions, local government in the large cities and the capacity of workers to use their vast numbers to control the streets. Thus the focus of the government's strategy: on criminal justice, labour regulation and local democracy. I think that the general idea behind the government's approach has been to take measures which weaken the labour movement from within before imposing on it major constitutional changes from without. In this regard the backdrop of mass unemployment has been vital in securing the defeat of particular labour movement struggles — the miners' strike, the Fares Fair and Save the GLC campaigns, the anti-rate-capping movement,

the seafarers' strike, Wapping, etc. — to resist the onslaught.

It would be wrong to conclude, as some left commentators seem to have suggested, that what we have is just a movement of the state from "consent to coercion". The new authoritarianism has been coupled with an ideological offensive designed to mobilise popular support for a new form of consensus, significantly breaking from the accommodation between labour and capital which has characterised post-war Britain. Consent has now been charged with a new content: anti-union, anti-left, individualistic, asocial and crassly materialist. The drive for consent is directed no longer at the "corporations" of the old labour movement — the unions, the Labour Party and local government — as was the case in what was termed the age of corporatism, but rather over the heads of the leadership of the labour movement to the atomised and self-interested citizen.

Structures of consent have been slowly emptied of what democratic content they

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had in the post-war period, with individuals increasingly being asked to identify with executive decisions taken independently of them. It is not, however, the case that the more coercive the state becomes, the less legitimacy it will retain in the eyes of the people. Delegitimising the state requires a battle of ideas waged by our own movement and not a fond expectation that the state will delegitimise itself through the nakedness of its own coercion.

One of the lynchpins of the Thatcherite programme has been its self-presentation as a defence and protection of individual rights. It is the neo-classical tune of 19th century liberalism — or even 18th century liberalism — that the government has played. The government has sought to appropriate the discourse of individual rights, against the collectivist discourse of state welfarism, trade union power and city hall patronage ascribed to "socialism".

On the trade union front we hear of "returning power to the people": the right of the individual member to have a remedy guaranteed in law against the decisions of the collectivity, especially when that collectivity is bureaucratically organised, and the right of members more generally to hold their leaders democratically accountable for their actions. On the policing front we hear of the rights of citizens to "walk the streets

without fear" in the context of worsening crime rates, or the "right to work" of non-striking workers when attempts are made to prevent them crossing a picket line, or indeed the "right to manage" of the owners and controllers of capital when workers demand a say in decision-making.

On the state front, we are told of the rights of workers and other citizens to "own their own houses" rather than be tenants of the local authority or to "share in the ownership of companies" rather than work for a state bureaucracy or "choose a schooling for their children" rather than have to accept the schooling on offer from the LEA or to "choose their own health care" rather than be forced to wait in the long queues for NHS treatment.

This language of rights contains no magic ingredient capable of hypnotising the collective consciousness of the nation. Some of these rights on further investigation turn out to be so much baloney, offering little more than illusion and camouflage. But others have significantly affected the lives of the individuals who have chosen to exercise them and appeal to workers who desire the same room to express their individuality, the same arena of free will and caprice, as the middle classes have long enjoyed.

The basic equation, theorised by Von Hayek and popularised by the Thatcher administration, is that the protection of individual right against the might of the collectivity (the unions, the welfare bureaucracies, the criminal classes) requires a strong state to enforce. The appeal to a market-based individualism is placed in gleaming colours against the dark backdrop of collectivism. Like the authoritarian programme of the government itself, the neo-classical language of rights within which it is packaged was less of a Grand Design of Thatcherism than a product of trial and error and debate within the New Right. What was discovered was a discourse which gnaws at the underbelly of the labour movement's whole ideological edifice.

I shall reserve my critical analysis of how the labour movement has responded to the gathering clouds of state authoritarianism and how it might respond in the future, to another day. But I think that the power of Thatcherism lies less in the ruthless intelligence of its designers, its alleged capacity to resonate with popular discontents, or its symbiosis with the realities of a "Post-Fordist" era, than in our own, the labour movement's inability to re-forge the link between socialism and democracy. It is above all the uncoupling of this connection that has weakened the labour movement from within in the face of the storm and allowed the new realists of Marxism Today, the Labour Party and the trade unions to restrict their vision of a future to no more than an adaptation of the Thatcherite present.

The books which I have consulted for this article are:  
John Mellroy, *Trade Unions in Britain Today*.  
Phil Seraton: *Law, Order and the Authoritarian State*.  
Paddy Hilliard: *The Coercive State*.  
Bob Fine and Robert Millar: *Policing the Miners' Strike*.