

INDUSTRIAL RELATIONS: THE CONTRIBUTION OF THE UNIVERSITIES

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Although I have spent most of my life in the practice, one way or the other, of industrial relations, my responsibilities now lie within a university and it seems to me that one must consider what a university can contribute in this area. In the very short period of twenty minutes, all I can do is sketch some thoughts for you. The fact that our session tonight consists of a number of brief and necessarily undeveloped views is an indication perhaps that this ancient society recognises that there is a public preoccupation about industrial relations but does not really believe that it is the subject of serious academic study. My view – naturally I suppose – is that it is indeed a matter of serious academic study and that such a study would make at least some contribution to meeting what has been described as the challenge of the times – although I am not without some anxiety that the ancient society may be correct and I may be mistaken.

Universities in these islands have come very late into the field. It is only in very recent times that chairs have been established in the subject, first in UCD and now also in Trinity College. But, surprisingly, even in the United Kingdom the subject did not really emerge as of academic significance until after the war, until in fact in 1949 when two major appointments were made, one in Oxford and the other in the London School of Economics, all this in spite of the early and remarkable pioneering work of people such as the Webbs, G.D.H. Cole, and Henry Clay.

But the subject itself was particularly unmanageable in academic terms; worse than that, as Professor Kenneth Walker of INSEAD has remarked, “practitioners of industrial relations are commonly as suspicious of theory as they are of experts, regarding theory as the opposite of practice (and) many . . . would applaud its absence”.¹ And yet how can one proceed without at least some understanding of what one is engaged in? In large measure, it seems to me, the problem lies more in the practitioner’s uneasiness with such theories as are presented to him – with their apparent irrelevance to what he understands he is about – than in any opposition to theory as such. One recognises for example a good deal of respect for the work of economists in the labour field, and much of their material is in common use in the daily business of bargaining and planning. The sociologist has not had as happy a journey, in this country at least. An early experiment by the Tavistock Institute in the case of CIE bus men² – although in a number of respects of great practical interest – caused some hostility and resentment, as also did a subsequent study in Shannon, and while in the years between some very interesting work has been done, sponsored in some degree by the Human Sciences Committee, the results on the whole do not seem to have had as much impact on practitioners as we had originally hoped.

Although one can see the economist, the sociologist or the psychologist using phenomena in industrial relations as material for their studies, the question that was raised particularly in the UK was whether or not some decent academic discipline particularly related to industrial relations might be devised.

Naturally, the first instinct of scholars in British universities was to describe and attempt to classify what they found in the field, moving gradually to more speculative endeavours, analysing pay structures, examining bargaining systems and attempting to link such practices with the traditions of the law. There developed as well the human relations school – which has had quite an influence on developments in this country – and finally the great flush of activity that accompanied the Donovan Commission which sat from 1965 to 1968.

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There was much practical work to be done, much grubbing about, which only a highly organised and resourceful institutional system could undertake, in order to find out what in fact was taking place in relations between workers and employers throughout industry. There is a frightful temptation for practitioners, knowing only the fragment that is their own experience, to assume that they can confidently generalise regarding the society as a whole, believing firmly, therefore, that there is no need for further information, believing the questions they perceive are indeed the correct questions and believing as well that the major task is the finding of answers. My own feeling – not indeed without some solid basis in experience – is that this particular form of myopia is not uncommon in Irish industry. I experienced it in a considerable way myself. It was a myopia which the Donovan Commission discovered in the UK to have been profoundly misleading. The industrial relations system there was not at all as many had confidently expected. An informal and unrecognised system of considerable magnitude was found to exist and this discovery had of course a very marked effect on policy later. But all this activity had, as its principal effect, a considerable accumulation of information of all kinds, great mounds of information, which tended to become more and more intractable in the absence of a theory to make sense of it.

It was in these circumstances that Britain discovered John Dunlop. Perhaps “discovery” is somewhat inappropriate for a Harvard economics professor of considerable reputation academically who had built up a reputation no less considerable in the field of conciliation and arbitration in industrial relations disputes, rising in recent times to be Secretary of Labour in the Ford Administration. His book which was published towards the close of the fifties³ applied the fashionable notion of systems theory to industrial relations, was taken up by Alan Flanders, one of a handful of enormously influential UK scholars (although he made no attribution to Professor Dunlop) and became in time the theoretical nucleus of the strategy evolved by the Industrial Relations Research Unit which was established by the Social Science Research Council. Hugh Clegg and George Bain, the directors of the Unit since its establishment describe their approach as follows:⁴

In developing a strategy for industrial relations research, the first task is to make clear what we conceive to be the scope and nature of the subject. Our definition flows from the work of Dunlop in the United States and Flanders in the United Kingdom. They see industrial relations as a social system composed of actors – workers and their organizations, employer-managers and their organisations, and the state and certain of its agencies – interacting in a context composed of the labour and product markets and the work place and social environments. A major output of this system is the establishment and administration of a network or “web of rules” which govern the process of job regulation. For Dunlop “the central task of a theory of industrial relations is to explain why particular rules are established in particular industrial-relations systems and how and why they change in response to changes affecting the system”. Flanders agrees with Dunlop’s contention that “the rules of the work place and work community become the general focus of enquiry to be explained by theoretical analysis”, and claims that “the study of industrial relations may therefore be described as a study of the institutions of job regulation”.

The Research Unit went on both to broaden and deepen this idea, using the Dunlop-Flanders approach more as an inspiration than a definition, and much useful work has come from it.

Yet I have found myself rather unhappy about all this. It has been argued that it is particularly useful as a heuristic device rather than as a social theory of action, since the idea of a system not only gives the subject of industrial relations an analytical focus but also casts up the various factors which must be described and accounted for; and yet this cannot be what we are about. Our endeavour must primarily be to understand and explain what happens in the field not merely to find an elegant taxonomy for teaching purposes. I think it is the inadequacy of the approach as an intellectual illumination, indeed its

tendency to exclude something of the whiff of gunpowder, that caused Lord McCarthy of Nuffield College, Oxford and indeed quite a number of others to rail a little against it all. And yet there has, it seems to me, been a marked absence of any alternative.

And what of our condition here? Not only are we short on theory, but we are also short on facts, being dominated by fragmented vision where even more substantial phenomena may have escaped us than did the practitioners in the United Kingdom. We need to know a great deal more about local bargaining systems, the manner of participation, trade union supports and employer approaches, categorised and handled in such a way as to make sense of national proposals and national institutions. This is all essentially a question of money and manpower, and if we have made as yet no contribution to it, it is a mark of the vastness of our myopia.

But what of theory? I am by no means happy about a lurking assumption that there must be only one, comprehensive and to some degree intolerant, to which all must subscribe. Indeed it seems to me that a healthy diversity is not to be discouraged. Academics of like mind, recruiting only those of like mind and publishing, often on a co-operative basis, with three or more authors clambering on to the title page, can produce a very respectable publishing programme, but can also suffer from closing horizons and a growth in vested interests in particular theoretical ideas in a way not dissimilar to a branded product in the market place.

And if I were to suggest where theory might most fruitfully be developed I think I would turn for aid to that most popular and most delightful of jurists, H.L.A. Hart. From him I derive the idea of the observer without and the observer within, the observer at the traffic lights who when he observes the behaviour of people when the traffic light turns red, concludes that a red light gives rise to a high probability that persons will stop; and the observer within, the involved observer, on the other hand, who perceives that what is at work here is the notion of duty, the notion of experiencing an obligation rather than being obliged.⁵ If one concerns oneself not so much with the insights of a kind of social physics, however powerful it can be at times as an explanatory device, but concerns oneself instead with the notion of rights and duties, adjudication and penalty and the institutions to which these ideas give rise, I believe one is not only close to the heart of industrial relations but also in a tradition of great academic learning as rich in this country as in another.

This approach requires that we begin with a different kind of question from that which is normally asked, a question which demands a quite different vocabulary than that which is normally used. As we approach our question we must recognise that if there are strikes, lockouts and other forms of injurious industrial action, there is no less a strong moral sensitivity as to what is appropriate and what is not, on the part of those who are engaged directly in industrial disputes. Industrial relations may at times be a jungle, but, curiously, it is a jungle inhabited by moral men. The question therefore which we must put, the opening question as it were, is why in such circumstances moral men have not defeated the jungle and created the rule of law.

To recognise man as *homo pius* is not of course to raise expectations for a degree of moral awareness which is markedly different from that which exists at present. It is merely to recognise a factor which, on the one hand the observer without – and the disciplines he favours – finds some difficulty in handling (but not the observer within) and which, on the other hand, is a necessary preliminary to an understanding of any scheme of jurisprudence however elementary.

Nor do I suggest here any greater moral sense for those engaged in industrial relations, any greater normative awareness (as the jurist, not the sociologist understands that term) than exists in general in society, and which is a necessary condition of its survival. However, there is abundant evidence that those engaged in industrial disputes are, in the ordinary business of living, as disposed to good order as any other citizens, that they are not exceptional in that regard, that they do not, as a general rule, suffer, in the matter of relations at work, from moral infantilism or turpitude. One can always point to gross exceptions (and we are sometimes tempted to offer such as a spurious explanation when

we find ourselves bewildered by events) but in fact it is much more reasonable to assume in those engaged in industrial disputes a disposition of moral normality than it is to assume the contrary.

Already we find ourselves deeply involved in difficult questions of jurisprudence, since we must try to explore what we mean by duty, indeed what we mean by the rule of law and our question must be of considerable practical intent: why, in a word, in the business of industrial disputes there are occasions to which we can point when the law – which normally operates effectively and comprehensively – is of little account. One must of course inquire whether the traditional system of adjudication in relation to wrong-doing – I refer in particular to the traditions of the common law – is an appropriate system. Before one hastily replies that the law must be the same for all men, let us recognise that societies develop and circumstances change, and that a system of law which evolved in the heady days of economic individualism is intrinsically indifferent to combinations of any kind and hostile to those which are in restraint of trade. But even if one attempted to set aside the common law and substitute instead some statutory system of offences, as the ill-fated UK measure of 1971⁶ attempted to do, one is still left with a further question – the most serious and difficult question of all in industrial relations – the appropriateness of adjudication in any event in much that occurs in these disputes. Frequently disputing parties are in conflict because of interests which each of them legitimately holds, interests which are no less legitimate because they are in conflict. One may offer a third view for the purpose of breaking the impasse; but one cannot offer an adjudication on the basis of any organised system of rule or guide; and the notion of a penalty becomes highly implausible.

It is this that leads us directly to a consideration of the kind of institutions which are appropriate, institutions of adjudication (which, in our present circumstances must be limited in scope), institutions of mediation, institutions which offer a role for a wider governmental interest and so forth. One is led on to consider how, in the interests of good order, the area of adjudication might be extended, how in a word a wider basis of normative agreement between the parties might be established.

I am personally satisfied – as I am sure you are too – that there is much in our present institutional provision that is inadequate, and an institutional framework in turn is inadequate because of the superficiality of our organised thinking on the subject. The clear rigorous traditions of jurisprudence, which in my view must soon experience a renaissance among scholars in these islands, opens the way I believe to attempting at least some answer to the question with which I began – the dilemma of moral men (perhaps not dramatically so, but with an ordinary moral disposition) wishing to escape from a system intrinsically inadequate to reflect the moral standards of those who inhabit it. It is in this I believe the subject has not only academic but industrial relevance.

I have done little here tonight other than to mark the undeveloped state of the art and say a little about where we might go, being conscious indeed that in the establishment of the two chairs in industrial relations at least a beginning has been made as far as Irish universities are concerned.

FOOTNOTES

1. *British Journal of Industrial Relations*, November, 1977, p. 307.
2. Hans Van Beinum, *The Morale of the Dublin Busmen*, Irish National Productivity Committee, Dublin 1966.
3. J.T. Dunlop, *Industrial Relations Systems*, Henry Holt, New York, 1958.
4. *British Journal of Industrial Relations*, March, 1974, p. 91.
5. H.L.A. Hart, *The Concept of Law*, Oxford University Press, 1961.
6. Industrial Relations Act 1971.

DISCUSSION

Eugene McCarthy: In relation to David Sapsford's paper I must declare a prejudice at the outset. Having fairly extensively read the literature of econometric studies on strike activity I am of the view that econometrics (certainly in its present state of development) has little to contribute to the examination of strike activity in Ireland. I am sorry to say that David Sapsford's paper affirms this view.

At the heart of the model suggested by Dr. Sapsford in paragraph 6 of his paper is the hypothesis that the objective of trade unions in wage bargaining is the achievement of some target level of real wages, etc. In examining the basis of this hypothesis it is important to note the proportion of disputes which relate to pay issues. In the 10-year period 1969-1979 the proportion has ranged around the early 30 per cent. Hence, any overall exercise based on this hypothesis has questionable validity.

Throughout his paper, Dr. Sapsford seems to suggest that trade unions in conflict situations act in a logical and predictable way. On the basis of my own experience over the past 10 years nothing could be further from reality. In his conclusion Dr. Sapsford suggests that to minimise strike frequency what is required is a national money wage policy. While appreciating the sincerity with which this proposition is put forward, in the absence of any suggestions as to how this very desirable objective might be achieved, I can only conclude that, again, the econometricians have run away from the reality of life in the industrial relations world.

One small comment I would like to make in relation to the high ranking that the metals and engineering sector holds in so far as strike activity is concerned. This might partly be explained by the muscle that those with scarce skills can exert in the labour market. There is substantial evidence that both in established industries and in those companies at start-up stage, craftsmen with scarce skills have been able to capitalise on that fact.

Regarding Dr. Hillery's paper, while accepting that the underlying principle in our collective bargaining system is that of voluntarism, political expediency rather than any other consideration seems to be the trigger for the involvement of a government minister in the collective bargaining system. Furthermore, successive governments have run away from any attempt to reform the antiquated legislative framework within which our industrial relations system operates. The present framework is demonstrably negative and undermines any attempt by employers or trade unions to operate a rational system. Dr. Hillery seems to be offering excuses on behalf of government as to why it does not involve itself in the collective bargaining system. Nobody wants governments necessarily involving themselves every other day in disputes but a government has a clear responsibility to lead and provide a framework within which a voluntary system can operate in an orderly way.

While, on the one hand, Dr. Hillery says the government has done little, on the other he says it has "played a major role" in meeting this institutional need by the establishment of independent structures which have been set up to solve industrial relations disputes. The reality is that since the enactment of the 1946 Act and with the sole exception of the establishment of the office of Rights Commissioner, successive governments have contributed nothing to the development of industrial relations in Ireland. Rather, they seem to have gone overboard in what Dr. Hillery describes as exercising "the role of worker protector". The raft of legislation of the mid-70s, which derived in large part from EEC developments and obligations, has created a significant imbalance in our bargaining system with workers having all the protection with no responsibility and employers having all the responsibility with no protection.

Dr. Hillery suggests that "the notion that employers and employees should not any longer be free to conduct their quarrels with little or no regard to the effects of what they do on other workplaces has appeal in some quarters. I suggest that this appeal is more widespread than Dr. Hillery infers. Fair-minded trade unionists are heartily sick and tired of the public wrangling that has taken place within the trade union movement in recent years. Disputes caused by key groups in the public sector have been hacking

away not alone at our economic foundations but at the whole ethos on which the trade union movement was founded.

Dr. Hillery suggests to those who advocate extensive and radical change in the role of law in Irish industrial relations that it would not be a practical proposition and would not seem to accord with the universal requirement for industrial peace. As I have said earlier, our industrial relations legislative framework is greatly out of date, is counter-productive and positively negative in its influences. Surely Dr. Hillery is not proposing a continuation of such a framework. Employers do not believe that the law, in itself, will necessarily make a significant positive improvement in the short term. However, the reforms that employers have sought will ensure that the framework within which our industrial relations system operates is modern, in tune with the industrial requirements of the '80s and positive in its orientation.

The approach suggested by Dr. Hillery of "a framework of rules and accepted standards of behaviour" is just precisely what the trade unions might wish for – all pious words but no responsibility or obligation. Desirable though such a framework of rules and accepted standards might be, there is little point in such a development unless within the framework of a reformed legislative code.

And desirable though secret balloting might be, I do not believe it would necessarily alter the prevalence of unofficial disputes.

Dr. Hillery suggests that many disputes can be attributed to the inadequate use of the collective bargaining process. All the evidence available to me suggests that, while the procedures of themselves are adequate, the extent to which they are aborted – principally by trade unions – is where the weakness lies.

There are very many other points I would like to mention in relation to Dr. Hillery's paper but, in general, I find little sympathy with many of the suggestions he has made. His paper displays a naivete which I find worrying. I can only suggest that this paper demonstrates the significant gulf that exists between the practitioners and the academics and all our energies should be devoted to ensuring that this gap is bridged at the earliest possible date to the mutual benefit of both practitioners and academics.

I have greatly over-run my time and I would simply say in relation to Professor Charles McCarthy's paper that, as in all his other presentations, I have found this paper most stimulating. A presentation like this helps us to think beyond the nitty-gritty in which the practitioners seem to get bogged down daily. Professor McCarthy has helped us to think beyond life in the jungle of industrial relations.

A.F. Ryan: The speakers have referred to the way in which the law permits activities to take place with regard to industrial disputes which are not permitted in other areas of commercial relationships. Might I suggest that this phenomenon is indicative of the fact that there is a public conscience at large, which feels that the contract of unemployment, which is at the base of all industrial relations, is an unequal one, and the permitted "extra-legal" activity in terms of strikes, pickets and general disruption, is an effort on the part of society to redress the balance in this unequal contract.

The contract of employment, following the rules for all other commercial contracts purports to be between equal parties free from duress. We know from our own experience of job-seeking and the initial stages of "contract of employment making" how unequal the parties are, and that the employer is in a far stronger position than the employee. It might well be that the prospective employee could be labouring under legal duress to such an extent that it would make the contract null and void.

The other aspect of the law which might indicate a public consciousness is the fact that there is so much legislation protecting the employee as a party to an obviously unequal contract, arriving as we do at the Unfair Dismissals Act. Indeed the appearance of the word "fair" – although in a sense in the negative – in the title to this Act may be a clue to the sort of industrial relations we should be seeking.

R. O'Connor: I have to intervene in the debate in order to reply to a point made by

Professor Charles McCarthy. In his opening remarks he says "The fact that our session tonight consists of a number of brief and necessarily undeveloped views is an indication perhaps that this ancient society recognises that there is a public pre-occupation about industrial relations but does not really believe that it is the subject of serious academic study." As a member of the Council of this "ancient society" I cannot let that statement go unchallenged.

There are two points to be taken up:

- (1) that the contributions consist of a number of brief and necessarily undeveloped views, and
- (2) that the Society does not believe that industrial relations is a subject for serious academic debate.

Taking the second point first I must say that the Society considers all topics discussed at its meetings to be subjects for serious academic debate: this applies to papers presented at symposia as well as to ordinary papers. There is no difference. It has been customary over the years to organise symposia on topics which the Council of the Society considered to be of urgent national importance, and which they feel needed to be discussed in depth from various angles. Important issues discussed at symposia in recent years were energy, employment, inflation, and social insurance, to name but a few. Nobody has said that these topics were not worthy of serious academic debate. So why should this topic be different? With regard to the first point, that the contributions consist of a number of brief and necessarily undeveloped views, I can only say that the Council always invites people of the highest academic ability (as it has done in this instance) to discuss the topic under consideration. If the views expressed by these experts are undeveloped then the experts themselves are to blame: they cannot put forward the short space given to them as an excuse for a poor contribution because a short paper need not necessarily be a poor one. On the contrary I would argue that if a writer takes time to polish off his work he can be far more effective in a short than in a long communication. Time of course is necessary at some stage of the work, but time spent in preparation can substitute for time spent in presentation. As Shaw said "it takes time to be brief".

I do not intend to enter into the discussion on the topic of the symposium. I leave that to more qualified members of the audience. I would like, however, to thank our three main speakers for their very stimulating papers. I for one do not consider that these papers are in any way under-developed.

Reply by Brian Hillery: In his comments on my paper Dr. Eugene McCarthy says that I "seem to be offering excuses on behalf of government as to why it does not involve itself in the collective bargaining system". This is not so. May I remind Dr. McCarthy, himself an official of a trade union of employers, that the deeply-rooted system of free collective bargaining is supported by both trade unions and employers. This same system has not been legally regulated by government because this would be contrary to the wishes of both sides. This is why I said in my paper that "government provides relatively little by way of ground rules for the parties to follow" in collective bargaining. Of course when weaknesses are exposed in the collective bargaining system, there is a tendency to blame the government of the day.

Government assistance has usually taken the form of dispute-settling machinery, like the Labour Court, to support the collective bargaining system which both sides want. This I see as a "major role" by government in meeting the institutional need to help settle disputes when these are not resolved by direct negotiations through collective bargaining. Dr. McCarthy has misinterpreted what I said in my paper about the role of government in regard to collective bargaining *per se* as opposed to its role in establishing third party machinery like the Labour Court.

It is not a government's function, in my view, to spell out the ground rules for collective bargaining. This is a continuing task for the parties themselves in accord with the

long-established wishes of both sides. The ground rules are best devised by managers and shop stewards and their representative organisations to meet the specific requirements of individual enterprises. Some of these rules, like the full use of agreed procedures and the provision of company information to employees could, as I have suggested in my paper, be underpinned by legislation if both sides agreed by activating the Fair Employment Rules section of the Industrial Relations Act 1969.

I agree with Dr. McCarthy that the law on industrial relations is outdated and it is in need of review. At a minimum, there is a strong case for making secret ballots compulsory by law. Furthermore, the position under which pickets in unofficial disputes enjoy the same protection under the law as official pickets needs to be closely examined. I hope that these issues, among others, will be looked into when the Commission on Industrial Relations reports. There is an urgent need to investigate the causes of unofficial disputes and to conduct research into workplace industrial relations generally.

Let me again make it clear that I am opposed to extensive and radical change in the role of the law in industrial relations because I believe such change would be impractical and potentially counter-productive. My considered view, which is based on study as well as several years practical experience in the field of industrial relations, is that limited extensions in the role of the law are desirable. I also believe that most people who work in the field of industrial relations view the law as having only a limited and secondary role.

I have indicated in my paper that I believe intervention by the Minister for Labour in industrial disputes affecting the public should be used "very sparingly indeed". Dr. McCarthy considers that "political expediency" is the main consideration which causes ministerial intervention. A government's role is to protect the public interest. Pressure on the Minister for Labour to intervene in disputes affecting the public can come from many quarters, including employer and commercial interests as Dr. McCarthy will know. When essential services are at risk, a government has the right and duty to intervene if the system of collective bargaining, fashioned by employers and trade unions themselves, and third party machinery are unsuccessful in coping with disputes which seriously affect the public. In practice, ministerial intervention in these disputes is relatively infrequent and takes place on an *ad hoc* basis. A Minister for Labour needs to be careful that he is not pressurised to intervene unless the public interest demands it.

On the recent statutes on individual employment law Dr. McCarthy has this to say: "The raft of legislation of the mid-70s, which derived in large part from EEC developments and obligations, has created a significant imbalance in our bargaining system with workers having all the protection with no responsibility and employers having all the responsibility with no protection." This is a generalised criticism. Ireland has gained very considerable economic benefits from membership of the EEC. Our membership has given rise to obligations like individual employment legislation. More specifically, the individual employment law of recent years is viewed by trade unions as an attempt to achieve equilibrium in the "significant imbalance" to which Dr. McCarthy refers. Mr. Andrew Ryan in his comments on the papers read at this symposium, holds the view that the contract of employment is unequal and the employer is in a stronger position than the employee. Legislation on unfair dismissals, equal pay and so forth while deriving in part from EEC developments are nonetheless indicative of the reality of the redistribution of power in our society at the end of the 1970s and underline a shift from the traditional approach of the common law towards workers' rights.

In conclusion, I subscribe to Dr. McCarthy's suggestion for closer liaison between practitioners and academics in the industrial relations field. I feel confident that both groups will continue to benefit from this kind of cooperation.