ELEMENTS IN A THEORY OF INDUSTRIAL RELATIONS

CHARLES McCARTHY



IRISH ACADEMIC PRESS

This book is concerned with law and industrial relations. It does not follow the normal pattern of the debate which appears to have reached a considerable impasse; rather does it attempt to put the questions in a different way. It does this by analysing not merely the law as it stands and applying it to industrial relations but also by exploring a deeper problem – what those engaged in industrial relations believe to be right, to be appropriate, and on the basis of such analysis to identify those rules of conduct which are generally agreed and could well form the basis for law and those rules which carry no such general legitimacy and are doomed to failure. In this way expectations are made clearer, and areas are identified where progress may be made.

3 1028
8 code
Missing

NATIONAL COLLEGE
INDUSTRIAL REL
NCI Library
3 9006 01007851 9

SHORT LOAN
ONE WEEK ONLY

This book is due for return on or before the last date shown below.

18 DEC 1996
21 JAN 2002
11. FEB. 2004
-3 FEB 1997
27 MAR 1997
26 JAN 1998
26 FEB 1999
15 DEC 2000
05 JAN 2001
27 MAR 2001

Don Gresswell Ltd., London, N.21 Cat. No. 1208 DG 02242/71

This b
and in
not fo
the de
reache
rather
the qu
It doe
merel
applyi
but al
proble
indust
right,
basis
those
genera
form
rules
legitin
failure
are ma
are id
be ma

By the same author:
The Distasteful Challenge (1968)
The Decade of Upheaval: Irish Trade Unions in the Nineteen Sixties (1973)
Trade Unions in Ireland 1894 to 1960 (1977)

Charles McCarthy

ELEMENTS IN A THEORY OF INDUSTRIAL RELATIONS

SHORT LOAN
ONE WEEK ONLY
NATIONAL COLLEGE
LIBRARY
OF INDUSTRIAL RELATIONS

IRISH ACADEMIC PRESS

This b
and ir
not fo
the de
reache
rather
the qu
It doe
merel
apply
but al
proble
indust
right,
basis o
those
genera
form t
rules v
legitin
failure
are ma
are ide
be ma

CONTENTS

I	The Placing of the Subject	11
II	Obligations Arising from Agreements	27
III	Obligations Arising from Personal Rights	57
IV	Obligations Arising from Public Authority Intervention	103
V	Consequences	129
	Notes	136

NOTES TO CHAPTER ONE

1. Alan Ryan, *The Philosophy of the Social Sciences* (London 1976), p.142.
2. See Nico Stehr, 'Sociological Language' in *Philosophy of the Social Sciences,* Vol.12, No. 1, (Waterloo, Ontario) March 1982.
3. H.L.A. Hart, *The Concept of Law,* (Oxford 1978) p.86.
4. Idem.
5. Idem.
6. Op. cit., p.87.
7. Op. cit., p.88.
8. Auguste Comte, *The Positive Philosophy,* trans. Harriet Martineau (London 1896), reproduced in J.H. Abraham, *Origins and Growth of Sociology,* (Harmondsworth 1973).
9. Alan Ryan, op. cit. p.216. Some social scientists will of course find a place for notions of justice or fairness in their models as when Glenn A. Withers discussed the Rawlsian theory of justice *(British Journal of Industrial Relations* xv, 3, p.332) but the model remains categorical and logical and never reaches the idea of personally experienced obligation.
10. Jeff Coulter, 'Remarks on the Conceptualisation of Social Structure' in *Philosophy of the Social Sciences,* op. cit., p.42.
11. Alan Ryan, op. cit. p.143.
12. H.L.A.Hart, op. cit. p.88.
13. Emile Durkheim, *The Division of Labour in Society,* trans. George Simpson (New York 1933), reproduced in J.H. Abraham, op. cit., p.160. For an interesting discussion of ethnomethodology in all this see Jeff Coulter, op. cit. p.33.
14. John Dunlop, *Industrial Relations Systems,* (New York 1958).
15. Allan Flanders, *Management and Unions: The Theory and Reform of Industrial Relations,* (London 1975).
16 Allan Flanders, op. cit. p.220.
17. John Dunlop, op. cit. p.6.
18. In passing perhaps we might ask ourselves how and in what sense a political system might differ from an economic system in a manner which renders them mutually exclusive, while variations within a system (which arguably should carry some exclusivity about them and consequently should be fissiparous) nevertheless have not this effect. The answer lies of course in the fact that where in a system or a model we introduce variations these are variations of the characteristics that we attribute to a category; they are not variations of the categories themselves or in the logical relationships that exist between them. Indeed such variations in characteristics are a necessary part of system building, the intention being to refine the whole structure and thereby increase its explanatory power.
19. If one derives obligation exclusively from the notion of the duty one owes to another, one is confronted with the difficulty of regarding attempted suicide, for example, as a punishable offence. Fortunately, it is not an area which needs concern us here.
20. See for example Mary Redmond, 'Towards a Hohfeldian View of the Rights and Freedoms in the Irish Constitution' in *Dublin University Law Journal,* 1979-80, p.55.
21. *Crowley and Ors v. Ireland, the Minister for Education, the Attorney General, the INTO and Ors.* 1978 (unreported). See also F.F.V.R. von Prondzynski, 'Constitutional Law — Rights in Balance', in *Dublin University Law Journal,* 1981, p.82.

22. So much is owed to Kant in all this, who saw in a society which conforms to law, those conditions under which the arbitrariness of one person can be unified with the arbitrariness of another in accordance with a general law of freedom, the maxim being that what he wills can at any time be considered the principle of a general legislation.
23. John Rawls, *A Theory of Justice,* (Cambridge, Mass. 1972).

NOTES TO CHAPTER TWO

1. Allan Flanders, op. cit., p.213.
2. See also Charles McCarthy, 'Worker Participation and the Commission of the European Communities' in *Discussion Papers in Industrial Relations* Vol I, Trinity College, 1981.
3. An adversary institution working within some consensual context is very well understood and is part of our political tradition. In the Parliament of Westminster the idea is happily summarised in the phrase 'Her Majesty's Loyal Opposition.'
4. For an early and influential formulation of this view, see Sir William Erle, 'The Law Relating to Trade Unions' in *Tracts on Trade Unions,* (London 1868), also separately published (London 1869); see also the eleventh and final report of the Royal Commission on Trade Unions 1869, Sessional Papers Vol. XXI, 1868-69, (20) p.235. Erle's view was quoted with approval by Budd J. in *Educational Company v. Fitzpatrick* %1961—I.R. 345, at p.367.
5. See Charles McCarthy, *The Decade of Upheaval,* (Dublin 1973), p.189.
6. Allan Flanders, op. cit., p.220.
7. See W.E.J. McCarthy, and N.D. Ellis, *Management by Agreement,* (City 1973), p.41.
8. Industrial Relations Act, 1946, s.4.
9. See Michael McGinley, 'Pay Negotiation in the Public Service', *Administration,* (Dublin, Spring 1976), 24, 1, p.76. Mr William Norton, who was largely influential in establishing the civil service conciliation and arbitration scheme was General Secretary of the Post Office Workers' Union from 1924 to 1957 and Tanaiste (Deputy Prime Minister) in 1950.
10. See Charles McCarthy, *Trade Unions in Ireland* 1894-1960, (Dublin 1977), p.544.
11. See Charles McCarthy, *Decade of Upheaval,* op. cit. p.58. See also *Annual Reports* (Irish Congress of Trade Unions, Dublin 1962), p.264 and 1963, p.239.
12. Industrial Relations Act 1946, s.68 (1).
13 *The Labour Court: Twenty-third Annual Report* (for 1979), p.5.
14. Industrial Relations Act, 1969, s.19.
15. *Report of the Commission of Inquiry on Industrial Relations,* (Dublin, Stationery Office, 1981) Pl.114, p.100.
16. See Charles McCarthy and David Dillon: *Freedom and Obligation under the law* (Dublin 1981), Chapter 3.
17. Trade Union Act 1871, s.4.4.
18. Idem, s.3.
19. *Ford Motor Company Ltd., v. A.E.F.* [1969], All E.R. 481.
20. *Goulding Chemicals Ltd. v. Bolger* [1977], I.R. 211.
21. Kadar Asmal: *The Law on Collective Agreements in Ireland,* 1977, (unpublished), Submission to the Commission of the European Communities, in the Department of Law, Trinity College Dublin.
22 *Transport Salaried Staff Association v. Coras Iompair Eireann* [1965], I.R. 180.
23. O. Kahn-Freund, *Labour and the Law* (London 1977) p.138.

24. Some scholars in Warwick University surveyed the consequences of this provision in the 1971 Act and found employers on the whole indifferent to it, and ready, without bargaining advantage, to include disclaimers. See Brian Weekes, Michael Mellish, Linda Dickens and John Lloyd, *Industrial Relations and the Limits of Law* (... 1975) p.159, where it is stated: 'Securing compliance with agreements did not emerge as a major problem from our interviews with management. On the whole managers were satisfied with their industrial relations and did not want to involve the law. Where companies told us that they had difficulties securing compliance with agreements, they tended to be related to other issues, like the informality of negotiations, or the sectional nature of bargaining. We did not interview any manager who had tried to bargain seriously about putting a disclaimer in agreements, or who thought that the introduction of legal sanctions ensured that "agreements are really meaningful and are carried out by all parties."'
25. *Report of the Royal Commission on Trade Unions and Employers' Associations,* Cmnd. 3623, (London, HMSO 1968), para 502.
26. Charles McCarthy, *Trade Unions in Ireland,* op. cit., 1977, Chapter12
27. Charles McCarthy, idem.
28. Charles McCarthy, *The Decade of Upheaval,* op. cit., Chapter 3.
29. Charles McCarthy, 'A Review of the Objectives of National Pay Agreements', *Administration,* (Dublin) 25, 1, 1977.
30 *The Labour Court: Twenty Third Annual Report* (for the year 1969) Prl. 1308 (Dublin, Stationery Office, 1970).
31. See Charles McCarthy, 'Productivity Agreements: the Problem of the Spurious' in *Journal of Irish Business and Administrative Research* 4, 1 (Dublin, April 1982), p.99.
32. A particular difficulty arose on the amalgamation in 1967 (see *Annual Report,* Irish Congress of Trade Unions, 1967) of the Irish Engineering, Industrial and Electrical Trade Union and the National Engineering Union to form the National Engineering and Electrical Trade Union. The electrician members of the first union, finding themselves, by reason of the access of numbers among their engineering colleagues, in a very diminished minority, challenged the amalgamation in the courts, and some subsequently were associated with a breakaway electricians' union.
33. See *Review Body on Higher Remuneration in the Public Sector:* Report No 20, (Dublin, Stationery Office, 1979), Prl. 8148, in particular chapterI.
34. See in particular, *The Labour Court – Thirty First Annual Report* (1977), (Dublin, Stationery Office), Prl. 7100.
35. This raises a complex problem. The Labour Court, in its general policy, tends to recommend in cases coming before it increases which are in conformity with such general movements in pay as exist at the time. It tends therefore to stabilise and confirm, so much so indeed that in disputes where workers are seeking a departure from the general norm they are reluctant to avail of the Labour Court (See for example: Con Murphy, *Report of Inquiry: Dispute between FUE and Maintenance Craft Unions,* (Dublin, Stationery Office, 1969), Prl 798, p.15). This is, however, a matter of commonsense. General movements in pay arise either spontaneously or by national agreement. The Labour Court, in the task of examining disputes one by one, does not normally set out to create any general movement; this is a matter for national bargaining. It follows therefore that it will tend to conform to such movements, whether nationally agreed or spontaneous. But it is a matter of respect for a general wish, not a matter of obligation, as the Court itself makes clear in its *Thirty-third Annual Report* for the year 1979.
36. *Report of the Commission of Inquiry on Industrial Relations,* (Dublin, Stationery Office), 1981, Pl. 114.
37. Charles McCarthy, *Trade Unions in Ireland,* op. cit., p.532.

38 Charles McCarthy, *Trade Unions in Ireland,* op. cit.
39. Charles McCarthy, 'Reform: A Strategy for Research' in *Reform of Industrial Relations,* ed. Hugh M. Pollock, (Dublin 1982).

NOTES TO CHAPTER THREE

1. H.L.A. Hart, op. cit. in particular Chapter V.
2. Kenny, J. in *Murtagh Properties v. Cleary* [1972], I.R. 330 at p.335 and confirmed by Walsh, J. in *Murphy v. Stewart* (1973) I.R. 97. See also *Bunreacht na hEireann, Constitution of Ireland:* Preamble.
3. Nagle v. Feilden [1966] 2 Q.B. 633 at p.650.
4. Supreme Court, unreported, 30 April 1981. See Ferdinand von Prondzynski and Charles McCarthy, 'Case and Comment' in *Dublin University Law Journal,* 1981, p.99.
5. In order to appreciate the reason for this, one might consider the remarks of Mr Justice Lavery in *The Educational Company of Ireland v. Fitzpatrick* [1961] I.R. 323. 'The (interlocutory) injunction is merely provisional in its nature and does not conclude a right. The effect and object of the injunction is merely to keep the status quo until the hearing or further order. In interfering by interlocutory injunction the court does not in general profess to anticipate the determination of the right, but merely gives it as its opinion that there is a substantial question to be tried and that until the question is right for trial, a case has been made out for the preservation of the property in the meantime in status quo. A man who comes to the court for an interlocutory injunction is not required to make out a case which would entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges and can satisfy the court that the property should be preserved in its present actual condition until such can be disposed of.' But in a labour dispute what is the status quo? How can it be determined? The law here appears to be that the principle of the balance of convenience comes into play. Where a doubt exists as to the plaintiff's right, or if his right is not disputed but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience. In a word it asks itself the question: 'What would be the extent of the damage suffered by the defendant if the injunction were granted and if in the event he was shown to have acted lawfully?' Against this is balanced the extent of the damage which the plaintiff would suffer if the injunction were not granted. It can readily be seen that in such circumstances a trade union is in some difficulty. Once picketing for example in an industrial dispute is enjoined at the interlocutory stage the dispute from the trade union's point of view is well-nigh lost. The final hearing of the action is too remote to be significant. When in addition the balance of advantage is judged solely in financial terms (as is the case in Ireland although not necessarily in the United Kingdom) then the trade union finds itself on remarkably weak ground. (See also von Prondzynski and McCarthy, 'Case and Comment', in *Dublin University Law Journal,* Trinity College Dublin 1981, p.101.)
6. Sir William Erle, *The Law Relating to Trade Unions* (London 1869), p.51.
7. *Educational Company of Ireland v. Fitzpatrick* [1961] I.R. 323.
8. We discuss later whether and in what sense a trader possesses an actual right in these circumstances.
9. Sir Henry Sumner Maine, *Ancient Law* (London 1878), p.170.
10. Franz Mestitz, 'The Right to Work — the Legal View' in *Universitas,* (Stuttgart 1979), 21, 1, p.2.
11. In the United Kingdom the consensus is not only well-documented but extended to

quite detailed matters. The Donovan Commission (paras 530-567), the white paper *In Place of Strife* (paras 103-4), the Industrial Relations Act 1971 and the Guide (paras 42-53) all reinforce or elaborate on the same principle. The Trade Union and Labour Relations Act of 1974 explicitly re-enacted the provisions regarding dismissals that were contained in the Act of 1971, and while they were modified by the Employment Act 1980 they have remained essentially the same.

12. *Fair Deal at Work* (London 1968), p.42.
13. See Unfair Dismissals Act 1977; see also Redundancy Payments Acts 1967-79, Maternity Protection of Employees Act 1981, Minimum Notice and Terms of Employment Act 1973, Employment Equality Act 1977, Anti- discrimination (Pay) Act 1974.
14. This point we explore later in regard to sit-ins and similar forms of industrial action.
15. It was provided that in the case of a charge that the employer had acted unreasonably the onus of proof was shifted to the employee.
16. See a very full report in the *Irish Times,* 30 August 1976.
17. Charles McCarthy, *The Decade of Upheaval,* op. cit., p.133.
18. Con Murphy, *Dispute between FUE and Maintenance Craft Unions,* (Dublin, Stationery Office 1969), Prl.798.
19. Brian Weeks etc. *Industrial Relations,* op. cit. p.6. See also 'Chronicle' in *British Journal of Industrial Relations,* (London), XII, 2, July 1974.
20. Trade Union Act 1871.
21. *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants* [1901], A.C. 426.
22. International Labour Organisation, *Convention 87: Freedom of Association and Protection of the Right to Organise* (Geneva 1948).
23. *The Observer,* 26 October 1975, p.3.
24. See Irish Congress of Trade Unions, *Annual Report,* 1964, p.91.
25. See 'Chronicle' in *British Journal of Industrial Relations,* XIII, 1, March 1975, p.131.
26. *Educational Company of Ireland v. Fitzpatrick* [1961] I.R. 345.
27. *Nagle v. Feilden* [1966], 2, Q.B. 633 at p.655.
28. *Edwards v. S.O.G.A.T.* [1971] Ch. 365 at p.382-3.
29. See *Murtagh Properties v. Cleary* [1972] I.R. 330 and *Murphy v. Stewart* (1973) I.R. 97. See also *Tierney v. A.S.W.* [1959], I.R. 254.
30. 'Chronicle' in *British Journal of Industrial Relations,* XII, 1, March 1974.
31. *Royal Commission on Trade Unions and Employers' Associations* 1965-68, (London, HMSO,1968) Cmnd. 3623.
32. Byrn Perrins, *The Trade Union and Labour Relations Act 1974* (London 1975) (1973).
33. *Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co.* [1894], A.C. 535 T.L.R. 636. See also *White v. Riley* [1921] 1 Ch. 1 and *Crofter Hand Woven Harris Tweed v. Veitch* (1942) A.C. 435.
34. See n.29 to this Chapter.
35. Idem.
36. *In Place of Strife,* op. cit.
37. *Fair Deal at Work,* op. cit.
38. Industrial Relations Act 1971, s.5.
39. Trade Union and Labour Relations Act 1974, s.5.
40. The issue in constitutional terms was first raised in *National Union of Railwaymen v. Sullivan* [1947] I.R. 77, although here the object was exclusive representation rather than an obligation to membership.

41. *Educational Company of Ireland v. Fitzpatrick* [1961] I.R. 345.
42. Meskell v. Coras Iompair Eireann [1973] I.R. 121.
43. *The Case of Young, James and Webster; Judgment,* Council of Europe (Strasbourg) 13 August 1981.
44. *National Union of Railwaymen v. Sullivan* [1947] I.R. 77.
45. *Cooper v. Millea* [1938], I.R. 367.
46. See Charles McCarthy, *Trade Unions in Ireland 1894 - 1960,* op. cit., in particular Chapter V.
47. Perhaps it does, to some degree, help to demonstrate the trade union position on discipline in membership, Cooper's case being discipline exercised by a union acting within its own powers, and the NUR case being discipline exercised by way of statutory intervention.
48. *Educational Company of Ireland v. Fitzpatrick* [1961], I.R. 345.
49. *Meskell v. Coras Iompair Eireann* [1973], I.R. 121.
50. *Report of the Commission of Inquiry on Industrial Relations,* (Dublin, Stationery Office, 1981)Pl.114, 1981.
51. See Lord Denning, *Enderby Town Football Club Ltd. v. Football Association* [1971], Ch. p.606 and (1971) 1 All E.R. 215, where he says: 'Has the court power to go behind the wording of the rule and consider its validity? ... if the rule was contrary to natural justice, it would be invalid'. He goes on to cite other instances of invalidity.
52. *Faramus v. Film Artistes Association* (1964) A.C. 925, [1964] 1 All E.R. 25.
53. *Kruse v. Johnson* [1898] 2 Q.B. 91.
54. Perrins, op. cit., (175).
55. *Edwards, v. S.O.G.A.T.* (1971), Ch. 354.
56. Para 628.
57. Indeed such was provided for under s.7 of the Conspiracy and Protection of Property Act 1875. It was repealed by s.2 (2) of the Trade Disputes Act 1906. The 1875 Act appears to have concerned itself with communication merely; peaceful persuasion was not covered.
58. *Roundabout Ltd. v. Beirne* (1959) I.R. 423 at p.426.
59. Charles McCarthy, *Trade Unions in Ireland 1894-1960,* op. cit. in particular Chapter XII.
60. Some examples are the strikes of teachers in the 1960s and 1970s and in more recent times those of postal workers. Until very recently those workers not being engaged in trade or industry were not workers for the purposes of the 1906 Act and therefore did not enjoy the immunities which that act conferred.
61. Ferdinand von Prondzynski and Charles McCarthy, 'Talbot (Ireland) Ltd. v. Merrigan' in *Dublin University Law Journal,* 1981, p.99.
62. Op. cit.
63. Charles McCarthy, *Decade of Upheaval,* op. cit.
64. This is particularly evident not only in the 1982 Employment Act in the United Kingdom but also in Mr Norman Tebbit's green paper of January 1983.
65. For a discussion on this and on the general question of property rights in employment see Ferdinand von Prondzynski, 'Property Rights in Industrial Relations' in McCarthy and von Prondzynski, *Discussion Papers in Industrial Relations,* Vol I, McCarthy and von Prondzynski, (Dublin 1982).
66. *Laborem Exercens* (London, 1981), in particular section 12.
67. Charles McCarthy, 'Workers Participation in Ireland: Problems and Strategies', in *Administration* (Dublin), Institute of Public Administration, 23, 2, 1975.
68. For a brief summary see Vester and Gardner, *Trade Union Law and Practice,* 1958, pp.134-5.

69. This point is not recognised by Sir William Erle, and contributes to the difficulty inherent in his well-known dictum: 'Every person has a right under the law as between himself and his fellow subjects to full freedom in disposing of his own labour or his own capital according to his will. It follows that every person is subject to the correlative duty arising therefrom and prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others' (Erle, op. cit., p.12). But if he is speaking here of a freedom and not a right, the second part of the statement does not necessarily follow.
70. The third schedule to the 1972 Act provides a guide to the restrictive practices commissioners on what constitutes unfair practices, but again, as with the court's pronouncements on restraint of trade, each practice is qualified by such adverbs as 'unreasonably' 'unjustly' and 'unfairly', and in any event they are very general in character. They therefore do not provide as good an indication for our purposes as the actual prohibitions.
71. See John Walsh and Charles McCarthy, *World Law of Competition: Ireland* (New York 1979), Chapter 5.
72. Restrictive Practices Act 1972, s.5, 1 (1)(a).

NOTES TO CHAPTER FOUR

1. See Charles McCarthy, *Trade Unions in Ireland 1894-1960,* op. cit., p.383.
2. See for example Dail Debates, 25 June 25, 1946.
3. The proposal is set out in National Industrial Economic Council: *Report on Incomes and Prices Policy:* Report No 27 (Dublin, Stationery Office, 1970), Prl.1102.
4. The debate on the proposal and its rejection is reported in Irish Congress of Trade Unions: *Annual Conference 1970 Twelfth Annual Report,* p.137 and p.273. See also Charles McCarthy, *The Decade of Upheaval,* op. cit., p.179.
5. James F. O'Brien, *A Study of National Wage Agreements in Ireland* (Dublin 1981).
6. *National Understanding for Economic and Social Development,* 1979 and *Second National Understanding for Economic and Social Development* 1980 (Dublin) Mount Salus Press.
7. Jean D. Reynaud, *Problems and Prospects of Collective Bargaining in the EEC Member States:* Commission of the European Communities (Brussels 1981).
8. Conservative Political Centre: *Fair Deal at Work* (1968), p.10. For an interesting evaluation of developments in the United Kingdom from 1912 to 1982 see Lord Wedderburn of Charlton, 'Introduction: A 1912 Overture' in *Labour Law and the Community,* ed. Lord Wedderburn of Charlton and W.T. Murphy, (London 1982).
9. *Industrial Relations: A Guide to the Industrial Relations Act 1971:* Department of Employment 1971, p.6.
10. *Royal Commission on Trade Unions and Employees' Associations 1965-68: Report 1968* Cmnd. 3623 para 39. See also Trade Union Act 1871, s.4.
11. Under the Trade Union Act 1871 s.4 became necessary in regard to internal contracts with members because s.3 made them justiciable. Perhaps the point should be made that the primary object of these exemptions was not so much to remain aloof but rather to avoid the impossible problem of making a refusal to go on strike a breach of

contract. There were the further difficulties associated with the doctrine of vicarious responsibility.
12. *Fair Deal at Work,* op. cit.
13. *In Place of Strife: A Policy for Industrial Relations* (London, HMSO 1969).
14. The guide-lines of the Conservative government of the early eighties is a case in point. So also was the response of the Irish Minister for Finance in April 1983 when certain large insurance companies appeared to breach the government guide-lines, where the government threatened to impose levies or apply price limits unless their view was recognised (*Sunday Tribune,* 8 May 1983).
15. *Trade Unions in Ireland* op. cit. p.543.
16. S.I. No. 188 1980: Civil Service Superannuation Regulations 1980 Art. 5 Amending s.3 of Superannuation Act 1887. The effect of those regulations was made retrospective to 1 June 1973.
17. Trade Disputes (Amendment) Act 1982.
18. Irish Congress of Trade Unions: *Annual Report* 1970, op. cit.22
19. Perhaps there is one further point we might refer to briefly. This concerns a difficulty the government experiences not so much in its own direct employment area but in the areas in which it exercises considerable but indirect influence, such as state companies, local authorities and so forth. Where the government's role is clear and explicit, and in particular were it is represented at the negotiations, then no great problem exists as far as its legitimacy is concerned (although the difficulties of management might be very great) but where its hand is concealed, where a state company, for example, purports to be acting independently, purports to evaluate as it thinks best the government's position and its own, then where an overriding government influence is widely suspected, considerable tension can follow and this was particularly evident among state companies in the latter part of the 1970s.
20. We see it in the legislation of 1871 and 1906 (and more recently in the Employment Protection Act 1975) where the position of the workers was deliberately strengthened presumably on the grounds that they should be permitted to gain a more commanding position. On the other hand, in more recent times we have seen an attempt to strengthen the position of the employers, in the proposals in the Irish Report of the Commission on Industrial Relations regarding the limits of legitimate industrial action and in MrTebbit's 1982 Employment Act which greatly constrains the scope of trade union immunities. These are indeed analogous to the general rules of the market, both in the anxiety about market dominance and also in the anxiety about the general interest which could be affected in a variety of ways.
21. The 1971 Industrial Relations Act in the United Kingdom, as we have seen, introduced the notion of specific offences in a very substantial way by establishing a system of unfair industrial practices, the breach of which could result in an industrial tribunal excluding the union from registration. The Trade Union and Labour Relations Act of 1974 swept all this away but nonetheless, there is much Conservative devotion to the idea, and we see echoes of it once again in the Employment Act of 1980 under which the government issued a statutory code of practice on picketing, the provisions of which are admissible in evidence in proceedings before a court, industrial tribunal or the CAC, and which 'shall be taken into account in determining that question'. The 1972 Employment Act and the proposals of Mr Tebbit of January 1983 set out to restrict further the immunities which the law confers on trade unions, increasing therefore the scope of sanction, while the 1982 Act, as well, in repealing section 14 of the Trade Union and Labour Relations Act, permits a trade union to be sued in its own name for injunction and damages and its funds made amenable for that purpose, where it is established that it has engaged in unlawful industrial action.

22. *Report of the Committee of Inquiry on Industrial Democracy* (London, HMSO 1977), Cmnd 6706.
23. *Educational Company of Ireland v. Fitzpatrick* [1961] I.R. 345.
24. *Meskell v. CIE* [1973] I.R.
25. See also Trade Union and Labour Relations Act 1974 Sch.I as amended by Trade Union and Labour Relations (Amendment) Act 1976.
26. Trade Union and Labour Relations Act 1974, 5. See also Employment Protection Act 1975.
27. Op. cit., Chapter 12.
28. Weekes, op. cit.
29 *Donovan Commission,* op. cit., paras 751-800; also reservations pp.380, 289.
30. A one-time general secretary of the TUC.
31. *Donovan Commission,* op. cit., para 804.
32. *In Place of Strife,* op. cit., para 109.
33. *Fair Deal at Work,* op. cit., p.19, and for some exceptions to the general exclusion, p.24.
34. In March 1971 a general conference of the TUC adopted a resolution to the effect that all unions affiliated to the TUC should be advised not to register, a policy which was pursued with some vigour.
35. Bryn Perrins, op. cit., (95). Under the 1975 Act the function passed to the Certification Officer, to whom also was given the function of issuing certificates of independence.
36. See supra.
37. *The Decade of Upheaval,* op. cit., Chapter Four.
38. Idem, Chapter Six.

NOTES TO CHAPTER FIVE

1. John Dunlop, *Industrial Relations Systems,* (New York 1958).
2. In this part of the discussion I have relied heavily on Peter Brosnan and Pat Walsh, *The New Zealand Industrial Reations System: A Case of Too Much Law?* (as yet unpublished).
3. Johannes Schregle, 'Comparative industrial relations: pitfalls and potential' in *International Labour Review,* 120, 1, (Geneva 1981).

Charles McCarthy, MA, PhD, Barrister-at-Law, is Professor of Industrial Relations at Trinity College Dublin, Head of the School of Business and Administrative Studies and Dean of the Faculty of Economics and Social Studies. He is also a member of the Restrictive Practices Commission and Chairman of the Board of the Abbey Theatre. He has wide experience as a conciliator and arbitrator in industrial disputes and was at one time President of the Irish Congress of Trade Unions. He has written widely on industrial relations questions and also on the law on restrictive practices.

Also from Irish Academic Press

ECONOMISTS AND THE IRISH ECONOMY

Antoin Murphy, Editor

This book is based on a lecture series marking the 150th anniversary of the Chair of Political Economy at Trinity College Dublin, one of the oldest in the British Isles.

Contents include: *Antoin E. Murphy*: Mountifort Longfield's appointment to the chair of political economy in Trinity College, Dublin, 1832; *L. M. Cullen*: Landlords, bankers and merchants: the early Irish banking world, 1700-1820; *Antoin E. Murphy*: Richard Cantillon – an Irish banker in Paris; *Cormack Ó Gráda*: Malthus and the pre-famine economy; *T. A. Boylan and T. P. Foley*: John Elliot Cairnes, John Stuart Mill and Ireland: some problems for political economy; *R. D. Collison Black*: The Irish dissenters and nineteenth-century political economy; *Ronan Fanning*: Economists and governments: Ireland 1922-52; *Sir John Hicks*: Francis Ysidro Edgeworth.

INDUSTRIAL RELATIONS IN 19th CENTURY BRITAIN

Philip S. Bagwell

From the rich main stream of parliamentary documentation (republished in a 44-volume section of the IUP series of British Parliamentary Papers) and the mass of published work on these subjects, Professor Bagwell provides a critical appraisal of sources and research on: recognition of unions, conciliation and arbitration, causes and treatment of unemployment, workmen's compensation etc.

AN IRISH COMMUNE

THE EXPERIMENT AT RALAHINE, COUNTY CLARE 1831-1833

Edward Thomas Craig

In 1831, John Scott Vandeleur, an Irish landlord, began to apply the communistic ideas of Robert Owen on his estate in County Clare. Two years later Ireland's first commune came to an abrupt full stop, bringing to an end 'an extraordinary social experiment, a drama so poignant with quiet heroism and tragedy that it resembles a nineteenth century Russian novel'.