CHAPTER SEVEN:

THE THATCHER AND REAGAN LABOR LAW PROJECTS

IN COMPARATIVE PERSPECTIVE

Introduction

My main objective in this chapter involves comparing the roles played by the Thatcher and Reagan collective labor law projects in the crises of British and U. S. unions, respectively, during the 1980s. Building on evidence from the six case studies presented in Chapters Five and Six, I conclude that the two state projects had very different effects on the ability of unions to conduct effective strikes in each country. I specifically maintain that: 1) the Thatcher administration's legislative restructuring of industrial relations became increasingly detrimental to union strike effectiveness as the decade progressed, thus exacerbating the crisis experienced by the British organized labor movement; and 2) the Reagan administration's interpretive alteration of an existing statutory framework had a much less significant impact on union strike effectiveness, and was thus less important to the crisis of organized labor in the United States.

Strikes, Labor Law, and the Thatcher and Reagan Administrations

First, let me briefly reiterate my findings from Chapters Five and Six. Recall that in those chapters I examined six strikes, three each from Great Britain and the United States, which had occurred during the latter part of the 1980s. In each of the six cases, I paid specific attention to the impact of selected aspects of the collective labor law projects of the Thatcher and Reagan administrations on the course and outcome of strikes in their respective countries. A condensed restatement here of findings that were dispersed in Chapters Five and Six will be useful both as a refresher and as a launching pad for the comparative analysis that follows.

Labor Law and Strikes in the 1980s

I begin with a summary of the three case studies on strikes in Great Britain presented in Chapter Five. Recall that my analysis of the 1984-85 conflict between the National Union of Mineworkers (NUM) and British Coal (formerly the National Coal Board), lead me to conclude that the impact of the Thatcher administration's new labor legislation was minimal in terms of influencing the general conduct and outcome of

the dispute. The legal actions that had the greatest effect, the 'rule book cases' initiated by NUM members against their own union for failing to hold a national ballot, were based on contract law from the pre-Thatcher era. I did find, however, that the new labor laws were quite effective when resorted to by employers during the miners' strike. For example, provisions of the Employment Acts of 1980 and 1982 which banned secondary picketing and made unions libel for damages, respectively, allowed two coal transport companies to have mass picketing stopped outside their plants and eventually led to the sequestration of South Wales NUM assets. But such employer-initiated proceedings were extremely rare, and thus on balance I concluded that the Thatcher administration's labor laws did not play that significant a role in the 1984-85 miners' strike.[222]

I found that the impact of the Thatcher administration's labor legislation was much more significant in the 1986-87 strike by the National Graphical Association (NGA) against Rupert Murdoch's News International (NI). The greater salience of the new labor laws in this dispute was at least partially attributable to Murdoch's involvement, an employer who was quite willing to strategically use the law as a weapon for industrial conflict. Recall from Chapter Five that NI lawyers had been

[222] In the next section I address possible reasons why the primary employer in the miners' strike, the Thatcher government itself, may have been reticent to use the same legal weapons it provided for British employers.

working on legal traps to snare the NGA and other print unions more than one year before the strike began. While the machinations regarding the strike dismissal notices were based on contract law from the pre-Thatcher era, the establishment of phony "shadow companies" by NI, designed to pressure the NGA into illegal secondary action, was done with Section 17 of the Employment Act of 1980 specifically in mind.

More important for the outcome of the Wapping strike were the High Court injunctions, issued in July 1986 against the NGA and other print unions, that limited the number of pickets at NI facilities to six. This limitation on union picketing was legally grounded in the Code of Practice on Picketing that accompanied the Employment Act of 1980, a restriction that had been incorporated into common law doctrine in Thomas and others v. NUM (South Wales Area) and others (1985 I.R.L.R 136)[223] at the end of the 1984-85 miners' strike. The July injunctions ultimately laid the ground for what I called 'management's pivotal and final salvo' in January of 1987. The massive one-year anniversary march outside of Wapping on January 24, 1987, during which over 12,000 print workers and supporters clashed violently with police, clearly put the print unions in contempt of the High Court orders. Murdoch and NI lawyers gave union leaders two choices: either end the dispute at

[223] I will hereafter simply refer to this as the "Thomas case".

Wapping, in which case no contempt charges would be filed by the company; or continue the strike, in which case contempt charges would be filed, with large fines and asset sequestration likely resulting. As I described, the NGA and other print unions were compelled to take the former option, and thus Murdoch and NI emerged victorious in this industrial conflict.

I found that the Thatcher administration's collective labor law project played an even more significant role in the 1988 strike by the National Union of Seamen (NUS) against the Peninsular and Oriental Steam Navigation Company (P&O). Indeed, as I argued in Chapter Five, the NUS-P&O conflict could be viewed 'as an exemplar case of what the Thatcher administration had hoped to accomplish with its legislative restructuring of British industrial relations'. The most decisive legal impact involved Justice Davies' questionable sequestration order in May 1988. Recall that NUS assets had initially been sequestrated by the High Court on the basis of illegal secondary action, as defined in Section 17 of the Employment Act of 1980, against the Sealink Company. When the illegal secondary action was over, Davies continued the sequestration on the grounds that, based on his interpretation of the Thomas case, the NUS was engaged in unlawful picketing against P&O in Dover by having more than six pickets present. Ultimately, the sequestration was continued throughout the summer of 1988, and after the threat of more

large fines from Justice Davies, the national NUS withdrew its support of the Dover branch union and effectively ended the strike.

I now turn to a brief summary of my findings from the three case studies on union strikes in the United States. With respect to the 1986-87 conflict between the United Steel Workers of America (USWA) and the USX Corporation, I concluded that the collective labor law project of the Reagan administration had 'no measurable impact'. Specifically, I found that the National Labor Relations Board (NLRB) had not issued any significant rulings affecting the dispute, and that the Dotson Board's 'case reversals' pertaining to strike activity were of no relevance to legal proceedings in various local, state, and federal courts. In addition, I uncovered no evidence of there being a 'PATCO effect',[224] since USX management never threatened or used striker replacements. Indeed, only one line of legal activity could be said to have played a significant role in the national steel 'strike/lockout' of 1986-87, and that involved the strategic use of state unemployment compensation laws by the USWA.

In my view, the influence of the Reagan administration's collective labor law project was more salient in the 1987 sympathy strike by the United Food and Commercial Workers (UFCW) against John Morrell and

[224] Recall from Chapter Four that I use this term to refer to the increasing use of replacement workers by employers in the years that followed Reagan's firing of thousands of air traffic controllers in 1981.

Company. I asserted in Chapter Six that Morrell's use of replacement workers might be attributed, in part at least, to the PATCO effect, since replacement workers had not been used in Sioux Falls where the strike occurred in over fifty years. The NLRB's decision that the UFCW sympathy strike was an "economic strike", which meant that the strikers could be permanently replaced, also reflected the impact of the Reagan administration's labor law project.

In terms of the conduct and outcome of the 1987 sympathy strike, however, the use of replacement workers was not the primary legal setback for the union. In the federal courts, one jury declared the sympathy actions by the UFCW "illegal" and another ruled that the union pay Morrell nearly twenty-five million dollars in punitive damages. At the local level, injunctions that limited the number of pickets to twenty-five thwarted early UFCW efforts to keep replacement workers outside of Morrell's largest facility. Overall, as I argued in Chapter Six, these two legal defeats were equally important, if not more so, than the Reagan administration's collective labor law project in hampering and hurting union objectives.

With respect to the third case study from the United States, the 1989-90 conflict between the United Mine Workers of America (UMWA) and the Pittston Coal Group, I found that the Reagan labor law project did not have a significant impact on the course and outcome of this

union strike. Specifically, my analysis revealed that the Dotson Board's case reversals were of no relevance to the various state and federal legal actions that took place throughout the dispute. In addition, the NLRB's ruling that the conflict was an unfair labor practice strike represented an important victory for striking mineworkers, since Pittston would not be able to permanently replace them. And though the use of replacement workers by Pittston might be viewed as reflecting the PATCO effect, the use of civil disobedience and mass picketing by the UMWA minimized its significance by effectively preventing the production and transportation of coal by replacements.

The Coal Strikes

Let me begin this section by stating that I am fully aware of the limitations which "small-N" sociological research places on efforts at scientific generalization (e. g. Goldthorpe, 1997: 5-9). Three cases from each country provide very meager foundations on which to construct an inclusive argument about the effects of labor law on all, or even most, strikes in Great Britain and/or the United States during the 1980s. More importantly, given this study's theoretical orientation and methodological structure, it should be evident that traditional scientific

generalization is not one of my primary goals. Having said all of this, however, I will now make some broad statements about the general role that the Thatcher and Reagan labor law projects, respectively, played in the crises of British and U. S. unions during the 1980s.[225]

In this regard, I think it is useful to look more closely at the two different coal strikes presented in this research. It might be presumed that I am primarily doing so because of the many similarities between the two cases. Specifically, the coal industries of both countries are clearly comparable in terms of such things as technological development, labor traditions, and market pressures. In effect, I could in a sense try to assess, or "control", for the impact that these other variables might have had on the relationship between labor law and strike effectiveness analyzed in the previous two chapters.

But my interest in comparing the two coal strikes stems not from their similarities but from their differences. Recall that I concluded in Chapter Five that the outcome of the NUM strike against British Coal in 1984-85 represented a decisive defeat for the union. In contrast, I concluded in Chapter Six that the UMWA's strike against Pittston Coal Group could be deemed a victory, admittedly a qualified one, for the

[225] Recall from Chapter Three that in this research the more specific relationship of labor law and union strike effectiveness serves as an indicator, or operationalization, of the broader problem concerning the role of politics in union crises. Again, I realize the tenuous nature of any generalizations based on such a design.

union. As I will now argue, I feel that embedded within each of these particular episodes of industrial conflict lay the more general stories of labor law, the state, and union decline in Great Britain and the United States during the 1980s.

The 1984-85 British miners' strike represented the inaugural unveiling of the Thatcher administration's collective labor law project. I know this is a curious statement, given that in my discussion of this dispute above, as well as in Chapter Five, I stated that the Thatcher administration's labor legislation generally played a minimal role in shaping the conduct and outcome of the year-long conflict. This is certainly true. Only a handful of employers initiated legal actions based on provisions in the new legislation, and these were to have relatively no wider impact on the overall dynamic of the strike.

However, this sparse use of the new legislation does not mean that the collective labor law project of the Thatcher administration did not have important implications for the dispute. Ample evidence suggests that the Thatcher government's confrontation with coal miners was to a large degree orchestrated, both for the purpose of highlighting how the new labor laws could be used by employers, and "for the opportunity to swing public sentiment toward [the administration's economic] policies" (Ghilarducci, 1986: 116-117). Some observers (e. g. Ghilarducci, 1986; Winterton and Winterton, 1989: 146-151), for example, point to the

Conservative Party's "Ridely Report", a policy paper circulated in 1978, as the original battle plan for the Thatcher administration's assault on organized labor in general, and unionized mineworkers in particular.

The Ridely Report advised that as the Thatcher government tries to privatize nationalized industries, a move in line with the administration's broader neo-liberal monetarist accumulation strategy, a major industrial conflict with organized labor is likely. It further predicted that "the most likely battleground will be the coal industry" (quoted in Winterton and Winterton, 1989: 146), and suggestions on how the government could prepare for such a confrontation were offered. In fact, the Thatcher administration's anticipated showdown with the NUM nearly occurred in early 1981, when British Coal announced it might close as many as fifty collieries. However, the Conservative-led government was not yet ready for a national coal strike, and the administration backed down by promising that the pit closures would not occur (Winterton and Winterton, 1989: 55).

The Thatcher government was ready to take on union coal miners in early 1984. Much of what I have defined as the "core" of the Thatcher labor law project was already in place. The Employment Acts of 1980 and 1982 were established law, and the Trade Union Act of 1984, not taking effect until September of that year, was winding its way through Parliament and had placed the issue of union ballots on the public

agenda. In addition, the recommendations of the Ridley Report had been taken to heart, for the administration was prepared in terms of coal stockpiles and an elaborate policing plan to control picketing.

In this light, the fact that the NUM suffered a decisive defeat in the 1984-85 conflict is not that remarkable. What might be surprising, however, is how little the Thatcher administration actually relied on the new labor laws to bring about the miners' downfall. As the primary employer to the dispute, in the guise of British Coal, and as an employer affected by illegal secondary actions, in the guise of British Steel for example, the Thatcher government could have resorted to the courts on numerous occasions. Yet the administration did so only once, at the beginning of the strike, in response to mass picketing by the Yorkshire NUM.

I feel that there are two reasons why the Thatcher administration refrained from using the new labor laws against the NUM in the 1984-85 conflict. First, the labor legislation was a weapon that the government simply did not need. Internal divisions within the union, reflected in the 'rulebook cases' and the back-to-work movement, along with the government's success at controlling public opinion and at using criminal law for policing the picket lines, had insured that the strike was going the Thatcher administration's way. Secondly, and more important, the government was fearful of politicizing the dispute. The Thatcher

administration feared "that continued recourse to the courts would only serve to unite...striking miners" and ultimately recast the strike as being primarily over the new labor legislation (Benedictus, 1985: 177). This type of conflict did not bode well for Conservative governments, as the experiences of the early 1970s demonstrated. In particular, two national coal strikes in 1972 and 1974, largely spurred by the sweeping Industrial Relations Act of 1971, were pivotal factors in bringing about the downfall of the Conservative-led Heath government in 1974 (e. g. Taylor, 1984: 254-258).

But this did not mean that others could not resort to the new labor laws. A constant refrain from the Thatcher administration, in keeping with its neo-liberal conception of the state's role in economic and industrial affairs, was "that the use of the legislation was up to individual employers" (Fosh and Littler, 1985b: 9). Indeed, as I have mentioned, a few individual employers did take advantage of the government's labor legislation during the 1984-85 coal strike, notably the two coal transport companies that sought legal actions against the South Wales NUM. Importantly, they did so with great effect at curbing union strike solidarity.

Even more significant are the lessons learned by other employers with respect to the Thatcher administration's decisive defeat of the NUM. While the 1984-85 conflict served to debut the capabilities that the new

labor laws had for curbing union power, not until later in the decade did many British employers begin to realize these potentials. Rupert Murdoch's machinations surrounding the use of the new labor laws in the 1986-87 Wapping dispute were described in detail in Chapter Five. I concluded then that the new legislation was much more significant a factor in the print unions' defeat than it was in that of the miners. By the time of the NUS strike against P & O Ferries in 1988, the relevance of the new labor laws and their negative impact on union strike activity had increased even further.

Indeed, based on the data that I have presented in this research, I would argue that the effects of the Thatcher labor law project on union strike effectiveness accumulated or increased as the decade progressed. Howell (1995-96: 18) takes a similar position, noting that the "Conservative legislation appears to have had a greater impact upon the weakening of trade unions as the 1980s went on." One reason for this cumulative effect, as already mentioned, is that it took time for various employers to become aware of the legislation's efficacy in controlling union strike activity. Another is that the legal regulation of unions become stricter as the 1980s progressed. This was in part the product of additional legislation in 1988 and 1990, as well as a consequence of the eventual incorporation of the new labor laws into common law doctrine. For example, the coal strike's Thomas case, which established six pickets

as a reasonable legal number, became an important precedent for legal actions that greatly hindered both the NGA in the Wapping dispute and the NUS in the conflict with P&O.

Extrapolating from their particular impact on union strike effectiveness, I would contend that the Thatcher administration's collective labor law policies were important factors in the crisis experienced by the British organized labor movement during the 1980s. This is not to say that the new labor laws were the sole cause of the crisis, for they clearly were not. A variety of Conservative economic and social policies, along with broader structural changes in labor markets and industrial production, were likewise relevant. But the Thatcher administration's collective labor law project also played an integral part in the crisis and that should not be underestimated. Indeed, I feel that the relatively successful manipulation of labor law by the state to undermine organized labor is an important dimension that differentiates the crisis of organized labor in Great Britain from union decline in other capitalist democracies during the 1980s.

Of course, the Reagan administration also attempted to politically manipulate the practice of labor law. But I would argue that, compared to the Thatcher administration's labor law project, the Reagan administration's project was less successful in achieving the desired impact. Specifically, the effects of the Reagan administration's collective

labor law policies were, as they pertained to strike effectiveness in particular and, I would argue, to the crisis of the U. S. organized labor movement more generally, both less relevant and more ambiguous. To illustrate this point, I return to the other coal strike covered in this research, the 1989-90 conflict between the UMWA and Pittston Coal. Like the British miners' dispute of 1984-85 did for the case of Great Britain, I feel that the Pittston strike fundamentally captures or encapsulates the broader story of politics and the crisis of U. S. unions in the 1980s.

It is my opinion that one of the most revealing features of the Pittston strike with respect to labor law and unions in the United States is the UMWA's strategic success in simultaneously working "within" and "outside" the law. Recall from Chapter Six that after the existing contract expired in early 1988, union leaders delayed going out on strike against the company for over a year. This unprecedented move, at least in terms of union tradition, was designed with an eye toward the future status of replacement workers, which Pittston was likely to use given the PATCO effect and the industrial relations climate of the 1980s. The union had filed unfair labor practice (ULP) charges against the company and delayed the walkout for fourteen months until the NLRB notified the UMWA that the company would indeed be charged with ULP violations. By waiting until the dispute was legally converted into a ULP, rather

than an economic, strike, union leaders had guaranteed that striking miners could only be temporarily, and not permanently, replaced.[226]

However, when the law did not work to the UMWA's advantage, whether at the local or federal level, it was essentially ignored. Injunctions issued in Virginia to prevent strikers from impeding the movement of Pittston's replacement workers and coal trucks had no demonstrable effect, despite the accumulation of millions of dollars in fines. And when a federal judge issued a similar injunction, at the behest of the NLRB, the imposition of fines and the imprisonment of three union leaders only increased union militancy, sparking wildcat strikes involving over 45,000 miners in ten different states. The UMWA took great legal risks in occupying the Moss 3 coal preparation plant as well.

Why did the union feel compelled to take these risks? I feel that one reason why UMWA leaders were at times willing at to work outside or against the law stems from the strategic importance of preventing the mining, processing and transportation of coal by Pittston. Keeping Pittston at the bargaining table, and ultimately keeping the labor force of the company unionized, was predicated on mitigating the impact of

---

[226] The USWA also exhibited a similar degree of savvy with respect to working within the law in its 1986-87 dispute with USX. I specifically refer to the legal maneuvers by the union in relationship to state unemployment laws on employer "lockouts" versus union "strikes".

replacement workers and cutting into corporate profits. In retrospect, given that the union achieved a somewhat favorable contract and a 'symbolic victory' in the dispute, one would have to conclude that the strategy worked.

Of course, in addition to the effects on production that working outside the law had for union objectives, it also positively influenced striker solidarity. Indeed, as I originally maintained in Chapter Six, the Reagan administration's collective labor law project may ultimately have had the unintended consequence of aiding the union's cause. By politicizing the strike, union leaders were able to maintain rank-and-file solidarity and generate widespread community support. The targeting of local, state, and federal labor laws as unjust and biased toward the interests of employers, as UMWA President Trumka frequently did throughout the conflict, was one means for this politicization. The pro-management prejudices of the NLRB, widely acknowledged throughout the 1980s and receiving official verification in the House Subcommittee on Labor-Management Relations report issued in the summer of 1989 (House Subcommittee on Labor-Management Relations, 1989), made this task all the easier.

In sum, I feel that the Pittston coal strike provides insight into the overall impact of the Reagan administration's collective labor law project on union strike effectiveness in particular and the crisis of organized

labor in the United States during the 1980s more generally. While there was some evidence of the PATCO effect, the consequences of the use of replacement workers were essentially nullified by illegal mass picketing. The NLRB's case reversals regarding union activity were not significant either, a finding that was reiterated in the other two U. S. strikes I examined as well. Indeed, if anything, the politicization of labor law throughout the 1980s, a consequence of the brashness of the Reagan project itself, worked to the advantage of the UMWA by mobilizing labor and community solidarity.[227] Overall, then, I maintain that the collective labor law policies of the Reagan administration were not a very significant or integral factor in the crisis of U. S. unions.

Conclusion

I concluded in the previous section that whereas the Thatcher administration's collective labor law project played a fundamental role in the crisis of British unions, that of the Reagan administration was less

[227] Along these same lines, I should also mention that as the political biases of the NLRB become more salient during the 1980s, some unions began to skirt the NLRB election process and develop innovative strategies for organizing workers "outside" the existing labor law framework. The UFCW in particular was able to achieve "remarkable organizing success" throughout the 1980s by avoiding the NLRB (Daily Labor Report, 17 February 1987; also see Markowitz, 1998).

integral to the crisis of U. S. unions. In this regard, the Thatcher state project might be deemed more "successful" when contrasted with that of the Reagan administration. More specifically, in Great Britain, a state-directed legal offensive, helped to produce a marked and precipitous decline in union power, at least with respect to the ability to conduct effective strikes. The effects of this project appear to have accumulated as the decade progressed, thus exacerbating and expanding the scope of the crisis of British unions in the latter part of the 1980s.

In the United States, a politically-centered effort to legally curtail union power also occurred. The effects of this project, however, were ultimately less significant for union crisis. In particular, at least in terms of the cases examined here, I found that the Reagan labor law project played no significant or decisive role in curtailing strike effectiveness. Nor did it have any cumulative effect as the 1980s progressed. Indeed, I have even argued that the politicization of the NLRB may have had the unintended consequence of fostering striker solidarity in some instances.

Overall, then, I maintain that the organized labor movements of Great Britain and the United States were experiencing two separate, or qualitatively distinct union crises during the 1980s. The political manipulation of labor law was a central factor in union decline in the former country but not in the latter. An important question thus

becomes: Why did the two labor law projects, convergent in both their neo-liberal character and their objective to undermine the power of organized labor, diverge in terms of their impact on the crises of British and U. S. unions during the 1980s? I will attempt to provide some tentative and speculative answers to this question in Chapter Eight.