

—The development of conspiracy law—

Mass Struggle and 'Conspiracy' 1848-1890

The Chartist movement in Britain effectively ended in 1848. Increasingly the English working class, and particularly the skilled sections, turned their attention back to 'pure' trade unionism. The concern with 'political' agitation in the main began and ended with the securing of legal changes in trade union rights. The struggle for the right to organise effectively against the employer was, however, still bitter; still an openly class question that demonstrated the nature of the state.

In 1851, nine members of the National Society of United Trades were arrested during a dispute following the sacking of a union representative at a tin-plate factory. During the strike that followed, scab labour was brought in from France. The Trade Unionists were found guilty of "conspiracy to force or induce workers to depart from their employment". In a similar trial in the same year, Duffield and two other Trade Unionists were arrested after striking for higher pay and were found guilty of conspiracy. Judge Erle later remarked that "the force acquired by combination is incalculably greater than the sum of powers so transferred to the union by each individual." (True, of course, - that is the purpose of combining against the immense strength of the employers.) Erle declared that a worker had a right to withdraw his labour, but not to instigate others so to do. This would constitute a conspiracy.

In 1859 the government conceded certain 'rights' of 'peaceful persuasion' in the "Molestation of Workmen Act". The limitation of such statutory (passed by Parliament) law was soon apparent.

A number of members of the Tailors Union were convicted in 1867 after instigating other workers to strike and posting pickets. The Judge, Bramwell, defended the verdict on the basis of Common law (law handed down by Judges through examples which set a precedent).

"By the common law, liberty of a man's mind and will, how he should bestow himself and his means, his talents and his industry is as much the subject of the law's protection as is that of his body. Therefore if two or more persons agree to co-operate against that liberty of thought and freedom of will they are guilty of conspiracy."

THE REVOLUTIONARY MOVEMENT IN IRELAND

Up to the end of the 1840s Ireland had seethed with struggle, culminating in the 1848 rising. The famine, and the ruination of the bulk of the population, the mass emigrations were capped in 1849 by the "Encumbered Estates Act", which made it even easier for landlords to evict the tenant farmer. Charles Duffy, the only Young Ireland leader left at liberty in Ireland, organised the Tenants Rights League.

After its collapse in the mid-50s it was superseded by the 'Phoenix' - a secret society built mainly from still-existing Repeal clubs, which soon merged with the then newly developing organisation of Irish exiles in the

USA, the Fenian Brotherhood - an open organisation which also served as a cover for the underground Irish Republican Brotherhood. The movement was a revolutionary national one, appealing mainly to workers, and with an agrarian reform political base.

In 1863 the "Irish People" was launched - a paper that acted as a major

FREE THE BRADFORD 12 !

The trial of the Bradford 12 begins on April 26. The conspiracy charges against these Asian youth, as part of the state's racist reaction to the uprisings of last Summer, make this a major political trial. Mass pickets will assemble outside Leeds Crown Court on that day. On April 3rd there will be a national demonstration in Leeds. South London Support Group is organising a Public meeting on March 3rd, and street meetings on 13th and 20th March. Other activities are being organised in many areas around the country. For full details of all events contact Southall Rights. Phone: 01-843-0904.

organiser of the Fenian Movement.

In 1865 Luby, O'Leary, Kickham and Rossa, the main organisers of the "Irish People" were arrested and charged with conspiracy. The evidence was that they had repeatedly stated that their aim was an Independent republic and that no other means but armed struggle could attain this aim. No evidence showed that they had actively prepared for such a rising. None was needed. Three of them were sentenced to 17 years' penal servitude. Rossa got life.

Two years later came the abortive 1867 uprising. After its failure many trials took place.

In a number of these trials the Common law development of the conspiracy charge as a political weapon of the state continued to be refined for use against those against whom no direct charges could be brought. McCafferty was arrested, one month before the uprising. Evidence of the rebellion was used against his despite his being in prison at the time. Meany, who had been in the United States throughout the period was prosecuted in the same way. The rule that the actions of one person can be used as evidence against others - not allowed in other trials - was reinforced. Both were found guilty. 1868 saw Mulcahy and 19 others charged with aiding the Fenian 'conspiracy' or 'conspiring to make war'. "So far as proof goes", the judge said, "conspiracy is generally a matter of inference" and "the very plot is an act in itself."

In 1870, the Fenians' Arms Organiser in England, Michael Davitt, was found guilty of conspiracy and sentenced to 15 years. Davitt was also a close collaborator of Tom Mann, Ben Tillet,

John Burns and others who worked to build the unskilled workers general union in Britain, between 1889 and 1891.

CRIMINAL LAW AMMENDMENT ACT

1871 saw, in Britain, the Criminal Law Amendment Act. Following four years after the Reform Act which gave the vote to most skilled sections of the working class, the new act relieved unions from prosecution over acts of 'restraint of Trade' (i.e. strikes), which previously were held to limit the employers 'freedom to bargain'. The Act still maintained it as an offence to 'molest or obstruct' with the aim of persuasion to strike, or to force the master to alter his mode of carrying on his business. The courts promptly showed their 'independence' by claiming that this did not effect 'common law'. Judge Brett, in 1872, found a group of London gas-workers guilty of conspiracy to strike in a struggle to reduce their hours from 80 a week. The workers "did definitely agree to force the gas company to conduct its business contrary to its own will," Brett declared. The one year sentence given to the workers led to widespread struggle, and was then commuted to four months. In 1875 the government was pressured into producing the "Conspiracy and Protection of Property Act", which excluded trade disputes from criminal liability.

Section 3 stated that an act of contemplation of, or in furtherance of, a trade dispute was not a conspiracy if such an act was not a crime if committed by one person.

Section 7 however still maintained penal clauses on picketing, against violence, threats, intimidation, molestation and obstruction; it thus did nothing to stop the use of the law against workers faced with scab labour being used when they were in dispute. On this basis seven Trade Unionists were found guilty in the "Bauld" case just one year later of "conspiring to compel workmen to quit their employment". Conspiracy charges were thus still used against people who are not actually accused of any act of assault or obstruction.

However, from this time, criminal conspiracy charges were rarely used in industrial disputes. Politics, however, is another matter.

During the 19th Century Marx and Engels consistently supported the Trade Union movement, but also pointed out its limitations: "The Trade Unions are helpless in the face of the major factors influencing the economy" commented Engels in the "Condition of the Working Class in England in 1844". And later in 1879:

"For many years past the English working class movement has confined itself within a narrow circle of strikes for higher wages and shorter hours ... The Trade Unions in their Charters actually bar all political action on principal and in this way they stop