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TIP: Another Weapon in the Class War Waged against Workers

H.J. Glasbeek *

Introduction

As an interested participant in the Workshop on Tax-Based Incomes Policies, I would like to add a few comments by way of contribution to the discussion. In effect, my remarks will take up the train of thought set in motion by the presentation made by Stephen Jelly. Jelly pointed out that:

Controls are simply one, albeit highly visible, aspect of a general economic and legislative assault on workers and the bargaining process. Government and the corporate sector are fully cognizant of this fact, and exploit it by employing the spectre of controls to draw attention away from equally or more repressive aspects of its overall, co-ordinated policy of restraint.¹

Prior to that, Jelly's presentation had gone some length to demonstrate how: (a) government had consciously adopted expansionary or restraining economic policies to combat the problem of the moment, inflation sometimes, unemployment at others; (b) by 1975, the Canadian government had adopted, as part of its ongoing determination to redistribute income from labour to capital, wages' and prices' controls because the traditional monetary and fiscal policies were not doing the job; (c) monetarism developed to counter the inflationary spiral which has manifested itself, despite increasing unemployment.

Jelly goes on to argue that the brunt of inflation dampening will fall on workers as idle capacity and unemployment is created by severe restrictions in money supplies. He sees this as part of the persistent effort by a capitalistic State's government to permit capital accumulation at the expense of workers' incomes. Naturally, he is not very interested in wage control mechanics. He notes that tax-based incomes policies would be just one variant of the means used by the State to achieve its goals. To support this, he notes the other means used by government to redistribute income from labourers to capitalists, e.g., manipulating income taxation levels by direct or indirect methods, reducing transfer payment systems, decreasing the scope of benefits' schemes, directly restraining the wage demands of the employees under its controls, weakening the bargaining position of private sector employees. He indicates how successful these methods are proving by pointing to the decline in labour's share of income.²

What Jelly does, then, is to place the debate about TIP in its historical and political setting. In doing so, he departs from the approach taken by the other participants, with the exception of Weldon who seems to share Jelly's viewpoint but, in the particular paper given, largely confines himself to an evaluation of the economic justifications for and administrative feasibility of a TIP system. I, like Jelly, believe that the most fruitful assessment of such control mechanisms as TIP is one which seeks to locate them in the framework of political struggles. What follows are some comments which complement the Jelly paper.

To disregard the political thrust behind policy instruments such as collective bargaining and incomes policies is to study economics in a vacuum. Only professional economists can afford that. Workers cannot.

I will try to show that incomes policies are offered by their theoretical proponents, in good faith, as incidental tools in the quest for a better economic condition, but that they will, as a matter of practical politics, very likely be aimed at restricting wage earners' opportunities to retain (let alone improve) their share of the nation's wealth. I will argue that the known historic use of incomes policies in this manner better explains the politicians' ready acceptance of incomes policies than

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2. Id., and Weldon, “Incomes Policies in Canada: Programmes without Theory or Purpose,” Canadian Taxation (this issue).

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the persuasiveness of economists' arguments which are used by politicians in public debate as justifying their support for incomes policies. The argument that the repression of workers may be the most significant rationale for a proposal such as TIP will gain further strength if it can be shown that, politically, this is an aim that is pursued consistently by the adoption of a number of different policy instruments. Thus: if TIP is to be characterized as one tool amongst many by which to contain workers' demands, a labour lawyer like me might contribute usefully by cataloguing the various legal tools governments have used, over time, to negate workers' aspirations to obtain a greater share of income. I do not mean to list all the devices used by government to control the distribution of income. I will merely point to the ones directly aimed at confining workers' bargaining strength. This will lead me to the speculation that labour's frenzied efforts to resist the imposition of TIP is to be characterized as one tool amongst many by which to contain workers' demands, a labour lawyer like me might contribute usefully by cataloguing the various legal tools governments have used, over time, to negate workers' aspirations to obtain a greater share of income. I do not mean to list all the devices used by government to control the distribution of income. I will merely point to the ones directly aimed at confining workers' bargaining strength. This will lead me to the speculation that labour's frenzied efforts to resist the imposition of direct wage controls may lead it into Herculean battles which leave it so enfeebled that it is in no condition to take on the struggle to cut the many less visible fetters which bind it and repress it. Indeed, labour, having fought against AIBS, TIPS, etc., is, understandably enough, likely to rest on its laurels if it succeeds even partially in such fights, believing then that it will have retained its right to free bargaining and, thus, its opportunity to attain a better economic deal. From this perspective, even good faith economic arguments which give politicians the opportunity to introduce any form of incomes policy are likely to cause the perpetration of a vicious fraud on workers.

Inflation as a Justification for an Incomes Policy

In public debate, it is assumed that inflation is an evil which must be eradicated and that incomes' policies may be warranted to achieve this aim. While this may be crystal clear to purveyors of popular economic wisdom, others may be a little mystified by the assumption that inflation is a source of such great concern that it justifies an attack on market operation. Inflation has distributional effects, in as much as it does not affect everyone in the economy in the same way. While there can be no question that this is unfair, particularly to persons on fixed incomes, it does not seem, in principle, much harsher than many other such undesirable distributional effects associated with the operation of a market economy. For instance, imperfections in market structure, even if they do not fall foul of existing law because of the legal system's pre-occupation with overt conspiracy rather than market evolution, will very likely have an uneven distributional effect by irrationally moving income from some consumers to some producers. Environmental pollution may shift the cost of production, quite haphazardly, from the polluters to consumers, other producers or the public at large. The same is true of, say, discrimination on the basis of sex: if an employer can pay female labour less than males employed by competitors because of the non-applicability of equal pay/anti-discriminatory law to his enterprise, unwanted distributional effects may occur. That is, if distributional effects arising out of market operations are undesirable because the market operates imperfectly or contrary to normative social policy objectives, inflation can be seen to be but one such undesirable phenomenon amongst many. In as much as an incomes policy may be described as an attempt to control price levels (that is, the value at which economic transactions take place) by means of direct government intervention with contractual rate-setting in respect of prices and wages, a question does arise as to why inflation warrants such drastic intervention whereas other redistribution phenomena do not. After all, redistribution as a result of inflation is not to be equated with an overall economic loss. By itself, the uneven distributional effect of inflation merely means that for everyone who loses there must be a winner. The overall economic output will not necessarily be affected. This is to be contrasted sharply with the effect of a recession. Government intervention with market processes would be much more easily justifiable if used to overcome the loss of economic output in a recession than if used to rectify the aberrant market results in a growth economy. It is pertinent to note here that the governmental tools used to overcome a recession ought not to be the same as the ones used to control the uneven redistribution of income caused by inflation.

Inflation may, of course, have adverse consequences other than uneven redistributional effects. But none seem to require the drastic interference with the
market which an incomes policy represents. Arguably if
the rate of future inflation is unpredictable, this plays
havoc with long-term contract bargaining. That is, that
optimum condition for free market operation — full in-
formation for market actors — will become even more
difficult to attain than it is usually. But, again, by itself,
this is not such a grave consequence that it merits direct
government intervention in price setting. After all, full
information is hardly ever available to market partici-
pants, even where inflation is not a factor. Further, the
argument is highly theoretical. The evil posited is that a
new difficulty of great dimension may be created by in-
flation. Yet, while it is true that if prices have to be set
for very long periods such as, say, 5 years or more, un-
predictability of the inflation rate may pose a serious
difficulty, it is not likely that insuperable problems will
be created for shorter term contracts. Furthermore, the
rate has not been that unpredictable and, in any event, it
is not impossible for contracting parties to allow for an
adjustment-in-price mechanism to take care of sudden,
unexpected changes in costs. The increasing insertion of
COLA clauses in collective agreements are manifesta-
tions of this ability. Again then, we find a rather shaky
basis for the kind of overriding concern with inflation
that would justify the edifice of an incomes policy.

... incomes policies are offered ... as incidental tools in the quest for a better
economic condition, but they will,
as a matter of practical politics, very
likely be aimed at restricting wage
earners' opportunities to retain (let
alone improve) their share of the na-
tion's wealth.

More persuasive, perhaps, is that the uneven
redistributional effects create distortions in the
economy. Because inflation affects different sectors and
actors at different times, the nature of economic activity
might be affected. Given, however, that inflation does
not affect the overall economic output, this again ought
not to be such a serious consequence as to attract
government intervention of a massive kind.

Perhaps the most serious potential for harm which
inflation has is that it will have an effect on the trade
position of a country because the inflation rate in
economies of trading partners might be of a different
magnitude. If the currency exchange rate of a country is
fixed in accord with some international standard, then
an increase in inflation over that of trading partners will
cause the cost of exports to go up and make the higher
inflation country less competitive. If the currency ex-
change rate is adjustable from time to time, there will be
a gradual decline in exports, leading to a devaluation in
the currency rate, a return to stability, then a slow
decline, etc. If the currency exchange rate is allowed to
move freely, the inflation rate will not affect the import-
export balance. If the currency exchange rate is not set
by some external standard but kept relatively fixed by a
central bank's intervention, the inflation rate will, if it
exceeds that of trading partners, make exports less com-
petitive. This is Canada's present position. Thus, in as
much as our inflation rate has undesirable trading con-
sequences this is so because of the role the Bank of
Canada plays in our economy. Inflation as such is not
the direct cause of these difficulties. It is, then, an argu-
ment of dubious validity to assert that the normative
policy of intervention with currency rates makes infla-
tion dangerous and, therefore, requires further govern-
mental intervention, in particular an incomes policy
aimed at containing the relatively lesser evil of inflation.
If export/import balances are a serious concern, it
might be useful to focus more on the nature of currency
exchange rate manipulation, it being a more direct cause
of the difficulty sought to be cured than inflation.

In sum, our present inflationary situation does not,
either in principle or in logic, cry out for government in-
terference with the market by the introduction of in-
comes policies. I assume that incomes policies are
heavy-handed interventions from the point of view of
those who favour the free enterprise economic model.
For others, like Jelly, Weldon and me, incomes policies
are yet another form of attack on the economic well-
being of workers and are, therefore, not welcome. From
either perspective, a better case than presently exists has
to be made out that our inflationary circumstances war-
rants the imposition of any incomes policy.

Stagflation as a Justification for
an Incomes Policy

The argument seems to be that a new direction
must be given to the economy because not only do we
have a comparatively high rate of inflation, but we are

5. It must be acknowledged that it may not be within one country's
control to determine effectively its currency exchange rate policy
and that, therefore, inflation control must look very appealing.
But localized inflation control, not being a direct attack on either
imported inflation or internationally created currency problems,
is likely to be ineffective. Satisfactory international currency
agreements and willingness to modify the domestic currency
value would be more useful when attacking the currency pro-
blem.

6. This general commentary is a summary of well-known
arguments opposing wage and price controls as a means to curb
inflation. Their standing as well-established theoretical con-
structs can be measured by the fact that when the Canadian
Labour Congress submitted, as an appendix to its factum in the
Anti-Inflation Reference (1976), 68 D.L.R. (3) 452 (S.C.C.) (in
which the constitutionality of the anti-inflation legislation was tested),
the opinion of Richard G. Lipsey, who expounded the arguments sum-
marized in the text, 38 Canadian economists indicated their sup-
port for the Lipsey opinion; see Additional Materials of the
Canadian Labour Congress, 21 May 1976. For a description of
the process, see Hogg "Proof of Facts in Constitutional Cases,"
26 University of Toronto Law J. 386 (1976).
also experiencing unemployment and show every indication of being in the midst of a prolonged recessoratory economic period. The trade-off between inflation and unemployment had been taken for granted until recently. It was assumed that rising prices meant more employment opportunities and that deflation meant increases in unemployment. By careful governmental monetary and fiscal manipulation (that is, the application of Keynesian economic theory) an acceptable level of inflation and employment could be reached. There was no need to fear cataclysmic imbalances. But, by the 1970s distortions appeared; both inflation and unemployment increased. I have neither the expertise nor the ability to offer a detailed analysis of this phenomenon. But, clearly, some factors underlying its development include: (a) the decision made by the U.S. government that it could both finance its Viet Nam adventures by printing money and keep its vision of a Great Society alive — the so-called guns and butter policy of the Johnson Presidency; (b) the collapse of the currency exchange rate system, the Bretton-Woods System, in 1970, leading to an abandonment of an adjustable-peg system which, as was noted earlier, permitted trading partners to have differing inflation rates without great impact on their relative trading positions, provided that exchange controls and occasional devaluations were made part of official policy; (c) the ensuing role played by the Central Bank in maintaining a particular currency rate; and (d) the opec “crisis”.7

... collective bargaining is integral to trade unionism which is, in turn, the working class' response to exploitation and oppression. Incomes policies undermine trade unionism.

The resulting economic problem has given rise to two main responses. The predominant one is monetarism. Crudely, the premise underlying this response is that our economic difficulties are due to the government's insouciant response to extraordinary political/economic situations by increasing the money supply to such an extent that it outstrips, by far, the level of productivity. The purpose of this strategy, then, is to restrain the creation of the money supply and to return to a state where the predominant economic force is as untrammelled a private sector market as we can politically tolerate. There is thus a rejection of the Keynesian doctrines of monetary and fiscal manipulation of the economy. As part of this revisionism, the argument is often made that all unnecessary expenditures by government should be halted. Potentially this hits at the government's welfare expenditures.

Let me pause and note what this prescription does not, as a matter of logic, require: it does not require the introduction of any kind of incomes policy. Indeed, the essence of the reasoning is that inflation is not due to imperfect price setting in the market but, rather, is the result of government interference with the market. As Professor Laidler points out in his presentation, wage earners are victims of inflation, just like all other market actors, not causes of it. Logic, therefore, dictates the position he takes: incomes policies, apart from their administrative problems, would be counterproductive to the monetarism which he espouses.8

But there are problems with monetarist theory. For one thing, it takes a while for it to work. That is, once imposed, it takes some time before market equilibrium is restored which, if left alone, leads to growth, a balance between supply and demand (a relatively non-inflationary state), and near full use of productive capacity (a relatively low unemployment rate). Initially, then, monetarism requires discipline to reduce economic activity. This, in turn, can be expected to discipline the work force by causing unemployment. This will have the additional advantage of lowering the public expectation of an ever-increasing wage and price spiral. This expectation is itself a cause of inflation and, unless dampened, would make the task of monetarism even more difficult.

The harshness of the monetarist remedy often arouses the compassion of some monetarists, or at least they admit political difficulties. It has led some of them to argue that if some of the discipline (read: lowering of inflation expectation) can be imposed in other ways, implementation of monetarist policies can be made more gradual, less nasty.8 It is in this context that Bodkin argues for a TIP scheme. He expects a TIP scheme to have little effect on inflation, but nonetheless worth trying:

On the benefits side, the reduction in the short-run-trade-off curve may well be modest; however, if the program is successful, the acceleration of the past decade can be reduced without such a large increase in unemployment that straight monetary discipline would have entailed.8

Here, then, is an articulation justifying a form of in-

7. The list is one made up of items most commonly found in popular discussion. It is not exhaustive. To take but one example, inflation could, in part, at least be attributed to the public's impatience with static distributional patterns, giving rise to the so-called endless spiral of rising expectations.


9. Wilton, “Is there a Case for Wage-Price Controls,” Canadian Taxation (in this issue) and authorities cited there.

10. Bodkin, “The Challenge of Inflation and Unemployment in Canada during the 1980s: Would a Tax-Based Incomes Policy Help?” Canadian Public Policy 204,212 (1981). Note here that the main thrust is not the actual reduction of inflation, but the dampening of expectations. Lipsey, supra note 6, did a survey of the literature on incomes policies and discovered that, on the whole, researchers found only insignificant downward changes in the inflation rate attributable to incomes policies, varying from zero to two percentage points, with some very rare exceptions. See paras. 68-91 of the Appendix to the CLC Factum. It is easy to see why monetarists who favour TIPs are very modest about their likely effectiveness.
comes policy (which Bodkin thinks benign), born not from logic but from a monetarist 'chicken soup' argument: monetarism is probably good for you but it hurts; it may hurt less if its aims — reduction in income and income aspiration — are achieved, in part, in some other way. An incomes policy, like chicken soup, cannot, in this context, do any more harm then monetarism will do, and it may help.

The other economic plan to deal with stagflation justifies more directly the introduction of incomes policies. It is put forward by economists to whom David Crane refers as post-Keynesians. These people, Crane summarizes, accept the fact that the Keynesian economics of the immediate past will no longer ensure economic health. But they part company with the monetarists on both ideological and political grounds. They do not share the monetarists' vision that something approaching an ideal-type market system can ever exist. Certainly, they would argue that it does not exist now. From there, they would, as Galbraith does, argue that the effect of monetarism is unpredictable: how much of a reduction in money supply leads to a particular quantum reduction in economic activity? And, when such a reduction takes place, will it occur evenly throughout all sectors of the economy? Just to focus the difficulties, note that if the supply of money is diminished, businesses which have to borrow in an on-going way are likely to be more heavily affected than others. The present slump in the housing sector may well be an illustration of this. Some businesses, by contrast, may well be able to self-finance to a considerable extent and thus not be disciplined directly by the reduction of the money supply. Further, these doubters of the monetarist faith do not believe in the existence of a free market but rather that some sectors of the economy are oligoplastic or, in Galbraithian terms, part of the planned economy. In this sector, increases in labour costs can, so the reasoning goes, be passed on easily to other producers and consumers because of these firms' ability to administer prices. Consequently, monetarist policy by itself will not discipline these sectors of the economy sufficiently or, better put, the needed re-adjustment will not come as the result of even-handed treatment.

What the "post-Keynesians" and the monetarists do share, however, is the belief that the inflation we have must be dampened. Their remedies follow logically from their stance. They want to create an atmosphere in which it becomes accepted that pain will have to be inflicted. To help create a consensus for such sacrifices, it is necessary to make it clear that the sacrifices will be shared equitably. Thus, an incomes policy in the form of price administration which prevents distortion by dominant firms and their unionized workforce suggests itself as a tool because it can also be designed to dampen inflation. But, once again, by itself this will not cure the problem; there is to be restraint, but this will, even in their compassionate scheme, lead to hardship. Accordingly they favour retaining government expenditures which maintain public services such as health and education and support programmes such as unemployment and welfare assistance. To make this feasible, they would attack the malfunctioning of the market. That is, rather than start from the precept that, if the heavy and profligate hand of government were removed, truly free enterprise would be restored and, therefore, economic well-being ensured, the assumption is that the market must be restructured because its harmful imperfections are not self-correcting. An industrial plan or strategy is recommended. In addition, it is recognized that full employment and material well-being for all is still a long way off and that, therefore, the government is to continue its support for the have-nots, that is, the safety net is to remain in place. Finally, this brand of policy makers seems to be divided on whether or not the central bank ought to keep the currency rate at a particular level.

Incomes policy, then, is to be part of a restructuring of the economy. Once again, it is assumed that the present circumstances must not be allowed to persist. The multi-faceted remedy includes an incomes policy, but note that it is there, in part, to make sacrifice and hurt equitable.

Income Policies: One Component of a General Policy of Worker Restraint

Given the good faith of the theorists whose programmes would include an incomes policy of some kind, is it seemly to suggest that these incomes policies are much more likely to be implemented as instruments of worker oppression than as devices aimed at bringing the economy around for the eventual and enduring good of all? The argument in support of this stance falls into three parts. First, a hortatory argument about the politics and nature of recent incomes policies will be

11. Crane, "Stagflation and the Economic Crisis," in D. Crane, ed., Beyond the Monetarists, Post-Keynesian Alternatives to Rampant Inflation, Low Growth and High Unemployment (Ottawa: Canadian Institute for Economic Policy, 1981), p.1. The occasion for the paper was a conference where the debate took place between those who saw themselves as monetarists and others, whom Crane and the Conference Organizers called post-Keynesians. Although I accept Professor Weldon's rebuke that the expression post-Keynesian is not very precise (note 2), I use the expression as Crane used it, viz., to gather together, under one heading, a large variety of views which can be seen to be a category which may be juxtaposed to monetarism. But not all the "post-Keynesians" participating in the Conference agreed with the overall strategy which I attribute to them in the text. For instance, Tarshis, "The Canadian Economy in an International Setting," id., p. 26, would cut taxes, reduce some regulation and change the exchange rates, by way of remedy. And, of course, Professor Weldon who commented on the paper delivered by Weintraub at the Conference, did not think an incomes policy an appropriate mechanism to treat our economic ills (at p.78). The above text then is to be understood as being an idealized version of the dominant economic trend opposing monetarism. It is not the only form of opposition, but I believe Crane to be accurate in his assessment of its prominence in current public policy debate.


13. See, for examples, Tarshis, supra note 11.
made. Second, a very brief historical sketch of the nature of incomes policies. Third, an argument to the effect that, despite widely-held public views to the contrary, wage earners are already subject to externally imposed income restraining mechanisms of a very fettering kind.

A. The hortative

Here the argument offered is that, whatever the academic arguments for an incomes policy, they are unlikely to yield the results sought. Indeed, these goals may not be sought by the decision-makers who implement the policies. They may be after different game, while using the weapons provided by the economists. Very generally, economists have provided two kinds of theoretical justifications for an incomes policy.

1. The monetarists who support an incomes policy do so to help soften the effect of their macroeconomic policy and to help dampen inflationary expectations. As noted earlier, it is clear that one of the aims is to decrease economic activity and, therefore, anything which works towards that, is a blow to workers’ aspirations. But, even if one accepts as fact the expression of faith that stringent monetarism will bring the economy around, there is a question about the time frame which will be required to bring about this success. Theoretically, the rationale for an incomes policy will disappear when free enterprise is in equilibrium again. What does this mean for the incomes policy instrument at its point of implementation? If, as the argument runs, it is to be instituted, in part, to dampen the inflationary expectation of wage demanders, how will it do this if people know the programme is only a temporary one? Is there to be an indication that the temporary period will be a long one, perhaps, forever? In this context, note that Weintraub, one of the architects of the particular incomes policy instrument under discussion — TIP — thinks it should remain in place for ever. It is plausible that, if it is meant to be temporary, an incomes policy may not have the desired effect of dampening the inflationary expectation, because demands which can be passed on will escalate as soon as controls are removed. If, alternatively, the incomes policy is introduced on the basis that it will remain in place forever, its effect on inflationary rate expectations might be just what is hoped for by the monetarist-cum-incomes policy proponents, but the raison d'être for its creation, viz., to help abolish the need for all interference with the market in due course, such as incomes policies, would be eliminated. In view of these arguments, it is not unreasonable to suggest that wise politicians who understand these difficulties may have other reasons to introduce an incomes policy than those offered by this brand of monetarists, even though in public they might rely on the theoretical arguments so readily made available.

Let me explore this possibility by a brief reference to the AIB experience. As recounted by Wilton, the AIB legislation had, as its given rationale, the notion that the inflation rate expectation had to be lowered. The legislation did, in fact, succeed in restraining wage increases. It had alarmingly little effect, however, on the rate of inflation. This came about because there were no effective price controls on food and energy. (Nor, may it be added, were there adequate controls over high-earning sectors of self-employed professionals). That is, whatever the rhetoric used, the effect of the AIB legislation was to repress workers' economic hopes. Skeptics might, therefore, argue with some force that the bottom line result was the aim, and the reasons given for the programme’s creation were nought but handy window dressing. Might the same not be true of the new incomes policies which are being considered? To give this question a little more bite, consider the incomes policy under review, a tax-based incomes policy.

In logic, there is no reason why it should not apply to prices as well as wages. Thus, it should be possible to avoid the situation which arose under the AIB and, by controlling both prices and wages, achieve the twin objectives of an equitable sharing of restraint (short-term pain) and a lowering of the inflationary rate expectations. But Okun, one of the most persuasive proponents of TIP schemes, warned that political reality would not permit anything like an ideal-type TIP to be put into place. One matter that politicians will have to consider, of course, is administrative efficiency. There is no dearth of expert opinion to the effect that to include...

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15. Wilton, supra note 9, and Crowley, “Income Controls, Collective Bargaining and Unions,” Canadian Taxation (this issue) both note that there was no explosion in wage demands after AIB ended. But this may be due to a variety of factors, including the success of the programme. There is only a logical connection between an incomes control policy and reduced inflationary expectations, if all other things (such as foreign trade conditions, level of competition and political continuity) stay constant. And, even if there is no wage explosion after removal of temporary controls, if inflation has not actually been diminished because of the exclusion of major prices from control (such as food, energy, as happened in the AIB period), the inflationary expectation will not be diminished; see Wilton, supra note 9.
16. Note here that the list of economists who favour permanent incomes policies is headed by Galbraith, an avowed anti-monetarist, and Kaldor and Harrod, economists who believe that central banks have lost control over the money supply and therefore favour direct, permanent and severe economic regulation by government; see Lipsey, Appendix to CLC Factum, supra note 6, paras. 70-72.
17. Wilton, supra note 9.
prices in a TIP scheme would complicate its administration unduly. The difficulties with gauging a price increase apparently outweigh those of calculating wage rate increases by a great deal.\(^9\) If such opinions are given sway, the created TIP scheme is likely to be applicable only to the wage sector. Bodkin, in his argument in support of a reward-based TIP, recognizes the political difficulty: it will be hard to convince workers of the equity of a restraint programme, instituted for the good of all, which only applies to them. He therefore suggests that prices should also be brought within the scope of the TIP scheme and he offers some means for doing this. But, at the same time, he acknowledges that such efforts could never include all prices. He notes, for example, that prices of exported goods should not be controlled in a scheme aimed at the domestic inflation rate. He writes:

Indeed, it may be argued that it is in a country's national interest to receive the highest prices that it can extract for its exports, regardless of the degree of competitiveness of the markets in which these goods and services are sold.\(^2\)

In a similar vein, it might well be deemed to be in the national interest to exclude some domestic prices from the scope of a TIP scheme; such as the AIB legislation permitted in respect of food and energy. The upshot, once again, would be a system of control primarily aimed at wage earners' income in the name of theories which, in good faith and logic, require the opposite. If, as is the thesis of this paper, this is precisely why politicians favour incomes policies, labour should rightly be suspicious of economic theories which favour incomes policies as incidental instruments in the battle to achieve utopian goals. The tail is likely to wag the dog to death.

Here I would like to make two anecdotal points which strike me as being revelatory of the dangers (for workers) lurking in these neutral-sounding proposals for incomes' policies. Donner and Peters favour a TIP scheme which would punish corporations that permitted socially unacceptable wage increases. The reasoning underlying this is to stiffen the employers' backbone when bargaining.\(^3\) Weintraub also argues for this and has defended his point of view by pointing out that TIPS are not anti-union, nor anti-business, but merely anti-inflationary by inhibiting collective bargaining.\(^2\) To labour unions which have fought desperately for their collective bargaining rights and which believe that only their existence has given workers a tenuous stake in this economic society, these arguments must sound a little disingenuous. To anti-working class politicians, the thinking and phraseology of these respected theorists must sound very attractive.\(^2\)

The possibility of incomes policies becoming worker oppression devices is very real, no matter what motivates their theoretical proponents. By contrast, the likelihood of such incomes policies achieving their theoretical supporters' aims are slim.

2. If incomes policies are implemented on the strength of the arguments put forward by post-Keynesians, similar protestations can be made. In the first instance, it must be remembered that the incomes policy instrument is meant to be part of a total package. This programme includes an industrial strategy or plan. By this is meant some deliberate restructuring of the market, bolstering potential growth areas and excising inefficient sectors. The notion that such deliberate centralized planning is to occur must present the theoreticians with some intellectual anxiety. After all, one of the basic arguments opposing the introduction of incomes policies is that they cause misallocation of resources. This problem is accentuated if the intervention with market forces is directly allocative, a bureaucratic spelling out of which market activity is desirable and which is not. There will be reservations amongst the policy makers; there will be real difficulties.\(^2\) Above all, the development of an industrial strategy will take time. Devising an incomes policy, however, is a relatively easy matter. Are the politicians likely to wait for the industrial strategy to be put into place? The question seems rhetorical. Politicians will claim that they are engaged in overall industrial planning and that integral to this is an arrest to inflation. That is, that part of the package which can be implemented immediately will be, with the politicians in a position to claim that they are acting on the advice of the proponents of the package.

In such circumstances the incomes policy would be effective before the rest of the package. The sacrifice would already be made, but the overall goals sought to be achieved by the total programme might be no nearer. Now, if the incomes policy instrument chosen is a TIP scheme, then the argument in the foregoing section about the likely narrowness of its scope, becomes very significant. If the TIP scheme, as is probable, is mainly aimed at restricting wage earners' demands, then the sacrifice will, in the absence of any other concrete programme, not only be inequitable, but also futile. Yet, politicians, like a conglomerate Pontius Pilate, might very well argue that they are actively seeking to bring the

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19. Weintraub, supra note 14, p. 76, makes this point. In addition, he argues that price levels, being reflective of productivity and labour costs, will not need to be controlled if labour costs are. See also Hunsiker, “Tax-Based Incomes Policy as an Alternative to Wage and Price Controls,” 14 University of Michigan J. of Law Reform 267, 276-77 (1980-81).


22. Weintraub, supra note 14, p. 75.

23. Donner & Peters, supra note 21, recognize that a TIP scheme may appear anti-labour and caution that it ought to be accompanied by a policy stimulating job creation.

24. As well as the indicated difficulties, there are many others perceived by believers in our existing political economy. E.g., the danger to the body politic of centralization of decision-making of this kind, the adjustments to be made in respect of foreign competition (should Canada and US combine to oppose Japan?), the difficulties of Canada's regional imbalances, the imponderables of how changeover from an era of reliance on non-renewable resources to one of renewable sources ought to be made, the impact of the industrial strategy on Third and Fourth World nations, etc. For a summarizing discussion see Crane, ed., supra note 11, chs. 7 & 8.
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The economy around. What more could they do, they will ask, but think hard about the very difficult task of industrial planning and make an honest attempt at restraining unconscionable wage demands by powerful unions? This is not a fanciful notion of the political process. After all, a rational politician would find it quite difficult to eliminate an industry which, although inefficient, employs a great number of persons directly and indirectly. Such decisions are best left to the anarchy of the market. Indeed, it is reasonably comfortable to.. .

B. A sketch of incomes policies over the eons

Crowley notes the persistence of incomes policies over recent times. He concludes that this indicates that it is probable that incomes policies of some sort are here to stay. He is right. Indeed, there is more evidence of the frequent resort to legislative and other incomes policies than he cites. The list is very long. There are 3 stages of development to note. Two will be dealt with in this section, the other in the next section.

Weldon began his paper with a reference to the infamous 1349 Ordinance of Labourers, which became the Statute of Labourers in 1351. Let us commence there.

1. As everyone knows, the Statute of Labourers was the legislative response to the terrible catastrophe known as the Black Death. The plague cut the population of England in half, from an estimated 3 to 4 million to 1½ to 2 million people. Outbreaks of the plague beleaguered England until 1369. Not surprisingly, the price of food increased as wage earners asked for increases in rates for their scarce services. Note that the situation was considered chronic even though in that feudal time there were comparatively few persons who worked for wages. The Statute of Labourers required all persons who worked for wages to work for any master who commanded them. They were to do the work at wages set by local justices (the forerunner of the AIB administrators or TIP controllers). They could not leave their master without permission. The penalty was severe: their forehead would be branded with the letter "F", for fugitive. Any master who enticed away a worker from another master was criminally responsible, as was any master who paid a worker a higher rate than the justices had decreed.

This, then, was a rather savage wage control system. But, lest this be shrugged aside as symbolic of a barbaric and pre-capitalist time, it ought to be noted that at least this income policy was introduced at a time when there was a dire shortage of labour. Our proposals to force workers to make sacrifices comes at a time when there is a surplus of labour.

Although everyone seems to know about the Statute of Labourers, hardly anyone seems to know of the fact that statutes of this kind were passed with monotonous regularity until 1562. For instance, in 1389, during Richard II's reign, there was a shortage of corn. Prices went up and, with them, upward pressure on wages was felt. The statutory response was to control the price of corn and to continue to set wages in the same way as the much more traumatic period of the Black Death had dictated. As this is not an attempt at a legal historical analysis, but rather a sketch to support the argument that incomes policies have a very long history, the next stopping place is the very famous Statute of Apprentices of 1562. This time, a conflation of reasons gave rise to the legislation. Henry VIII had suppressed the monasteries and taken much of their land. Large numbers of workers were released into the community. Workers were there to be exploited. Simultaneously, the craft guilds had sufficient influence to ask for regulation ensuring their autonomy and economic security. Indeed, the prescriptions they obtained about the permissible ratio of number of apprentices to journeymen and the rates to be paid to such apprentices gave the legislation its name. At the same time, however, the statute, like its predecessors of the previous two centuries, required that workers' wages were to be set by justices of the peace. It spelt out in great detail the number of hours to be worked and the length of service that had to be given. Given the different manpower situation to the days of the plagues, workers did not have to work for anyone who asked them, but once employed could not leave for at least 12 months, nor could an employer dismiss them before such a period had elapsed.

At this stage, then, there had been a pattern of direct imposition of controls over workers' income for over 200 years. It might be argued that these incomes-cum-manpower policies are not to be equated with our modern day versions because they were created at a time when the notions of free market enterprise with its dogma that a worker, like all other market actors, is an individual whose voluntary decision to buy or sell must be deemed to be that of a sovereign unit, were non-existent. Hence incomes policies were not interferences with a free market economy and did not require the same kind of justification they do to-day. Thus, just

25. Much easier for politicians is to give particularized grants to favoured firms, tax advantages for exports, localized investment, research and development, and the like. The ad hoc nature of such programmes is endemic as they usually arise out of reactions to particular situations.


27. Supra note 2.

28. (1349), 23 Edw. 3.

29. (1351), 25 Edw. 3, St. 2.

30. Laboures' Wages, etc. (1389), 13 Ric. c. 8. For other statutes, see Laboures' Act, 34 Edw. 3, c. 9-11 (1361); Laboures' Act, 42 Edw. 3, c. 6 (1368); Laboures' Act, 4 Hen. 4, c. 14 (1402); Laboures' Act, 7 Hen. 4, c. 17 (1405); Wages' Act, 2 Hen. 5 St. 2, c. 2 (1414); Laboures' Act, 2, Hen. 6, c. 18 (1423); Laboures' Act, 3 Hen. 6, c. 1 (1424); Wages of Artificers, 6 Hen. 6, c. 3 (1427); Laboures' Act, 8 Hen. 6, c. 8 (1429); Wages of Laboures, etc., 4 Hen. 8, c. 5 (1512); Artificers and Laboures Act, 6 Hen. 8, c. 3 (1514); Journeymen Act, 3 & 4 Edw. 6, c. 22 (1549).

31. Statute of Artificers, 5 Eliz. 1, c. 4 (1562).
because modern incomes policies take a form analogous to that of those described does not indicate that they would have the same spirit underlying them to-day. My riposte is two-fold. First, I note again that the incomes policies adopted the same administrative form as many of our modern instruments: a regulation of income to be overseen by neutral administrators. Second, while they were primarily addressed at controlling the rates of pay and availability of labour, they also required employers to comply with certain obligations in respect of both wages and prices. Thus, for whatever reason, the deci-
mation-makers of the day saw a need for some apparent evenhandedness in the design of their instruments. And, in a similar vein, I would point out that whatever rationale was given for the programmes (lack of labour, too much labour, shortages of commodities leading to high prices), their orientation seemed to be, in fact, unidirectional: the workers, as opposed to masters, were to be the most inhibited, the ones to make most of the sacrifice which the national interest required to be made. The bottom line of the 18th scheme, then, was attained by incomes policies devised in pre-capitalist times. Is such a coincidence to be ignored?

2. The Statute of Apprentices became a thorn in the economic body almost as soon as it had been enacted. Through the seventeenth and eighteenth century new modes of production developed at a tremendous pace. The craft guilds lost their importance. Workers migrated to the cities. The new enterprises no longer corresponded to the masters of earlier days. With an abundance of workers becoming available to them as the old relationships withered away, they favoured individual bargaining for wages over the rate-setting provided for by legislation. The economic reality was such that the use of the Statute of Apprentices in respect of the fixation of wages diminished sharply. By 1776 Adam Smith wrote that the fixation of wages by justices of the peace had fallen into disuse entirely. 32

Thus, it appears that the legislative incomes policy disappeared with the advent of capitalism. But does this mean that there was, in fact, no incomes policy which, as usual, oppressed workers? After all, it is not necessary to have a legislative instrument to have a legal programme. What occurred here is that at the point of time when the legislative scheme restricting workers demands was, in effect, giving workers more than they could obtain by unrestricted demand, they were given the ‘freedom’ to make their demand untrammelled by statutory prescription. The courts came to be the administrators of the new incomes policy. Legal philosophers and political economists have hailed the legal revolution from status (represented in our context by the Statute of Apprentices) to contract (represented in our context by the judicial recognition of freedom to contract for wages); 33 no longer would individuals’ rights and duties stem from their position, but rather they would arise from their merit, skill and luck, as reflected in their bargaining stance. Whatever the philosophical merits of the argument, what is notable here is that the new utopia brought severe hardship to workers. That is, the restraint of workers by statutory means had been removed, but only in a context which ensured greater constriction of their ability to obtain a larger share of the pie. If you will, here is an illustration of the phenomenon that when a direct instrument of restraint is not necessary because workers are confined by other means, it will be removed. A very strong inference to the effect that, whatever the reasons given for their creation, incomes policies are only seen as useful to restrain workers’ aspirations, is thus raised.

To underscore the point, it is pertinent to note that, throughout the eighteenth and nineteenth centuries, workers struggled desperately to have the Statute of Apprentices applied to them. There are records of workers celebrating because they were successful in getting justices of the peace to set their wage rates, rather than leave them to the vagaries of free contracting about their working conditions. There are instances of workers’ associations instituting criminal prosecutions to have the Statute of Apprentices enforced. And there were endless number of petitions presented to Parliament to have it ensure the enforcement of the Statute. 34 None of this worked: apparently the new economic forces were too strong. The courts which, in my interpretation, were given the task of replacing the legislative restraining instruments did so positively. Thus, in 1811 a court which had been asked by workers to force justices of the peace to meet to set rates, ruled that while the Statute of Apprentices did require justices of the peace to meet it did not specifically obligate them to set rates in any particular instance. It therefore directed the justices to meet and left it to their discretion as to whether or not they should fix wage rates. 35 Note here that one of the contributory factors to the desuetude of the Statute of Apprentices was the fact that its chief administrators, justices of the peace, were largely culled from the class which stood to gain most from its abandonment.

The argument that the demise of the Statute of Apprentices as a control instrument was, at least, in part due to the fact that a more efficient control scheme over workers was made available by developments in the common law instituted by a willing and innovative judiciary is supported by another well-known aspect of the Industrial Revolution.

However fine a ring 'freedom to bargain' has to our modern ears, it has been seen that workers of the eighteenth and nineteenth centuries were not enamoured of this liberating precept. More important than their efforts to keep the Statute of Apprentices alive was their natural reaction to individual bargaining. They were getting creamed and, therefore, sought to collectivize their efforts. They formed trade unions. The legal system's conversion to individualistic contract notions led both the legislature and the judiciary to outlaw all collective actions, especially those of workers. This story is well known. Statutes forbade combinations. As workers' oppression grew they risked corporal punishment and deportation in order to combine. The legislature, more responsive to this mass movement than the judiciary, gradually removed its fetters. The judiciary stubbornly refused to do so. Imaginative readings were given by it to statutes which apparently gave collective activity some protection, rendering the protection nugatory. Trade union bargaining activity was continuously harassed. It eventually came to be accepted, but only to some extent. What does this mean in the context of the argument being made here?

First, it is interesting to point out for the sake of those who would dismiss the pre-capitalist developments as irrelevant that in the nineteenth century battles the courts used a legal off-shoot of the 1349 Black Death legislation as one of their most powerful tools in their repression of trade unions. The tort of inducing breaches of contract is a direct descendant of the fourteenth century statute's criminal prohibition against one master enticing another master's worker away. That is, the instrument used to coerce and restrain workers during the feudal period was reborn in the springtime of capitalism. Note that in both periods the tool was used to restrain workers who might be a scarce (and therefore costly) commodity, even though the reasons for the scarcity were different.

Second, judges, unlike legislatures, cannot have different rules for different classes in respect of the same situation. The common law derives much of its legitimacy from its claim to being administered by neutral judges bound by rules of universal application. Yet, in their attacks on collective action, the courts treated concerted activities by enterprisers (which had not attracted any protective legislation) with kindness, finding ways to condone them. In contrast, they had no apparent difficulty overriding statutory protections when smashing directly analogous workers' combinations. Once again, then, there is evidence that, once it was recognized that workers could be restrained more effectively by forcing them to bargain as individuals rather than by fixing their wage rates, the courts took up the burden to compel them to bargain individually with some relish. To fail to recognize that this normative judicial rule-making acted as an effective wage control system would be to bury one's head in the sands of legal mystification. To hear some experts who support modern incomes policies blandly announce that they are not anti-union, but merely anti-collective bargaining, sounds hollow from the historical perspective just offered: unionism is collective bargaining!

Third, it may be remarked that what the courts did had nothing to do with public policy. Rather, their anti-collectivist approach was part of a larger picture in which they, as an institution, were responding to social changes and that this approach became distorted when dealing with trade unions because they were members of a class which could not accept the notion of workers as sovereign individuals and, thus, in a general anti-collectivist climate, twisted the law to give vent to their personal and classes biases. This explanation is currently still popular. Yet it is unsatisfactory. Remember that courts used old causes of action and invented new ones with which to whip trade unions. While it is true that legislation was passed from time to time to overcome difficulties created for trade unions and collective bargaining by the courts, the legislature never used its power to liberate collective bargaining from interference by individual rights' supporting courts. The help given to trade unions in respect of collective bargaining was always in the form of providing immunities from the courts' great excesses. At no stage were the politicians so at odds with the courts' attempts at restraining workers' demands that they felt moved to end these attempts.


37. Classically, the tort is committed when A, under contract with B, is induced by C to leave B, in breach of her or his contract to B, to join C. Note that workers prevailing on employees not to continue to sell their labour unless certain conditions are met will commit this tort. That is, a call for a strike is made legally actionable and therefore, preventable. This weapon, in modified form, remains available to employers.

38. See the famous trilogy of cases: Mogul Steamship Company v. McGregor, Gow & Company, [1892] A.C. 25 (H.L.) which made it permissible for employers to combine to further their trade interests; Allen v. Flood, [1898] A.C. 1 (H.L.) and Quinn v. Leatham, [1901] A.C. 495 (H.L.) which made it an unlawful act for workers to combine to further their economic interests. It was not until 1942 that the House of Lords recognized that workers and their trade unions might have legitimate interests they could pursue by combination; Crofter Hand Woven Harris Tweed Co. v. Veitch, [1942] A.C. 435. Note that at that time workers needed to be appeased. In any event, other legal restraints were soon invented. See Wedderburn, supra note 35.


40. It takes the form of stating that courts are anti-union because they are anti-collectivist and do not understand the great changes in the world arising out of trade unionism. Frequently, it is argued, this blindness leads to incoherent doctrine. See, eg., Finkelman, "The Law of Picketing in Canada," 2 University of Toronto Law J. 67 (1937-39); Archbars, "Tort Liability for Strikes in Canada," 38 Canadian Bar Review 346 (1960); Beauty, "Secondary Boycotts: A Functional Analysis," 52 Canadian Bar Review 388 (1974); I. Christie, Liability of Strikers in the Law of Torts (Kingston: I.R.C., Queen's University, 1967). However incoherent the judicial reasoning is (and it is), note that the outcome is always the same: repression of workers' combinations. Lack of understanding could not achieve this; focused bias might. Bias supported by public approbation certainly would.

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Their policy was to bend with the political times, but never to enunciate, let alone to implement, a clearly stated public policy of free collective bargaining for the unions. This is as true today as it was in 1875. The significance of this will be taken up in the next section.

In sum, incomes policies can take various guises. But no matter what form they took — direct coercive restraints or relatively passive, even apparently permissive, legislative action combined with repressive judicial controls — the bottom line was oppression of workers. But there were always, as there are to-day, good public policy rationalia for the introduction of the repressive measures. Would it thus not be foolish for labour as a class not to be mistrustful of the new-fangled incomes policies offered on the basis that, for the good of all, our economic direction must be changed?

C. Some existing legislative restraints on free collective bargaining

In this final section devoted to showing that the tradition of public policy is to constrain workers' demands and that, therefore incomes policies ought to be viewed as just one more overt attempt to further this policy, the focus will be on other contemporary legal instruments artificially inhibiting workers' chances of economic advancement, that is, legal devices restraining workers' demands.

It has already been noted that the only realistic means with which workers can combat the dominance that ownership of the means of production gives employers in the bargaining game is collective action. The acceptance of collective bargaining as a legitimate mode of settling working conditions is a recognition of this fact, a recognition which, it has been seen, did not come without bitter struggle. Collective bargaining can be characterized as being contrary to the notions of the ideal-type market economy in as much as it permits the creation of monopoly over labour, one of the commodities to be bought and sold in a free enterprise society. This 'imperfection' is justified on the basis that, without it, injustice would result. This adjustment having been made, the parties are to be left free to operate in the traditional market-mode. This line of argument has engendered a belief that workers have been handed a boon which enables them to look after themselves very well. Indeed, the argument is often heard that they have been given too much market power by this legal artifice, causing distortion in allocation of resources and inflation. The truth is a long way from this. When it became politically impossible to stop workers from using collective action, the political adaptation was typical. A scheme was created whereby the illusion of lack of restraint was created, but serious restraints were put on the use of power. Indeed, once it was acknowledged that trade unions would be formed so that workers could press their demands in concert, whether or not this was legal, the best that could be done by decision-makers interested in ensuring that the workers' share of market proceeds be kept to a minimum was to control the form and scope of collective bargaining so that it would not yield results dramatically different from those obtained under a more favourable situation. They have been remarkably successful. Collective bargaining in Canada is far from free. Space does not permit anything more than an itemization of the fetters which exist, but this should give a feeling for the 'unfree' nature of collective bargaining.

1. Collective bargaining legislation permits concerted action by workers only in the context of the particular employee for whom they work. If collective bargaining is seen as a market imperfection, one can readily see the reason for this restriction: permission for workers to coalesce over a wider area would be too great an imperfection, an over-correction of the hardship caused to workers when forced to bargain as individuals. What must not be permitted, it seems, is to give workers real power. The 'One Big Union' is a real danger. The question that must be asked, however, is whether the limitation of bargaining rights to one employer at a time will redress the balance sufficiently to overcome the acknowledged weakness of workers. Consider two situations.

It is a commonplace to think of the Steelworkers Union as a mighty economic force. If all its members could act in concert vis-a-vis any employer anywhere who employed any of their members, the union's bargaining strength might truly be great. But, is it obvious that the 10,000 workers who are represented 'by' the Steelworkers Union local at Inco have anything like the economic power of their employer? Has the right to 'free collective bargaining' really created a countervailing force which adequately redresses the imbalance in economic wherewithal, even allowing for the fact that the local union will be helped by the administrative expertise of the central offices of the union? Or, take the recent unsavoury happenings at Radio Shack in Barrie, Ontario. There the employer practised ugly deeds of illegal skulduggery against its employees. It sought to stop a union from forming. It used informers, infiltrators, agents provocateur. It delayed bargaining. It invoked the law. It sought to prevent any of its members from being able to act in concert vis-a-vis any employer anywhere who employed any of its members. In so doing, it was acting in concert with its employer, by inference, and perhaps even at the employer's behest.

41. In 1875, there was legislation making trade unions immune from criminal prosecutions, provided that they acted in a particular context (a trade dispute as defined), in a particular way (as described), Conspiracy and Protection of Property Act 1875, 38 & 39 Vict. c. 86. Ironically the form of our allegedly most liberating statute, the British Columbia Labour Code, S.B.C. 1973 (2nd. session) c. 122, is the same: unions are immune from judicial decision-making, provided that their conduct falls within the four corners of a labour dispute as defined by the Code and is of the kind described therein.

42. The particular form of collective bargaining we have was copied from the U.S. model. There it had been introduced, in part, to enable workers make sufficient headway to help increase aggregate demand. But it was not intended that it should do more than that. In Canada, the introduction of the collective bargaining schemes we have came with the need to appease labour during World War II. Thereafter, the 'gift' was limited in its ambit.

43. De facto industry-wide bargaining does take place, for instance, in the automobile industry. But this hardly threatens employers. Ironically, note that where legislation — the explicit statement of public policy permits it, it does so because industry-wide bargaining helps employers, as in the construction industry in Ontario or the railways in British Columbia.
mensely powerful union, the Steelworkers, had to beg for help from the Ontario Labour Relations Board. A contract was eventually reached, with no great certainty that the union will be able to exact another one. The size of the union was of little help to the workers because of the nature of the 'free' collective bargaining permitted by legislation. As an aside, note that the employer, an individual, was not in any way prohibited in getting assistance from its parent company. This, of course, looks evenhanded because the Steelworkers' central office could provide the local members with administrative and economic assistance. But, apart from the fact that the parent company could give greater financial assistance than the union, note that the employer could always close its operation, provided it did so for 'business reasons'. Is the right of workers to quit and take another job a power of the same magnitude?

If our form of collective bargaining as a whole might be seen as sufficient to redress the ghastly imbalance of market power between capitalists and workers, it will only be fortuitous if in any one case something approaching parity in bargaining power will be the result of the legislative system's machinery. That is, the nature of 'free' collective bargaining is to give the minimum of power to unavoidable workers' combinations.

2. Inherent in the 'one employer - local union' model of collective bargaining is the proposition that the union cannot deploy its forces so as to put pressure on the employer's trading partners to break commercial ties with it. The only exception (and it is narrow) to this rule that secondary boycotts are not to be permitted, arises where the interests of the secondary boycott target and the primary employer are so intertwined that they are deemed to be allies. Not only does the legislation not expressly permit such "secondary" activity but it also falls foul of the common law rules developed by the nineteenth century judiciary, as complemented by innovative court decisions of this century, indeed of this decade.

Once again, then, the right to economically pressure an employer is a diluted one. Whether one thinks this right or wrong is of little importance. What is significant is that, quite arbitrarily (in the sense that one cannot know whether in any one particular case the limitation on union power is justified on the basis that the weakness of the workers concerned has been overcome sufficiently to satisfy our public sense of fairness), the scope of collective bargaining is restricted, with the inevitable result that the outcome of negotiations will be more favourable to employers than it would have been if collective bargaining had been truly 'free'.

3. While a trade union may use its ultimate economic weapon, a concerted withdrawal of labour, it cannot prevent the employer from continuing its operation. This, admittedly, makes good market sense. The trade union will want to persuade other persons from helping the employer. In the name of another social value — freedom of speech — it may inform other people about its view of the dispute in order to enlist their support. But it is not permitted to do more than that; in particular, in most jurisdictions it cannot stop scab labour from doing the work of its members who are on strike.

Again, note the fortuity of these provisions. In some cases, they will not help employers; in others they may. That is, once again there is no a priori reasoning why the cut-off line on potential union bargaining power should be at one point rather than another. Indeed, this is shown by the fact that in some jurisdictions employers are prohibited from using scab labour. The explanation may be offered that the cut-off line is a compromise between free market principles and the need to bolster collective workers' activity, but note that the compromise reached in the majority of jurisdictions is at the point least favourable to workers. Again, in as much as the limitation has an overall effect on outcomes, the hope is that the results obtained by 'free' collective action will deviate as little as possible from that obtainable in the absence of combinations.

4. The collective bargaining legislation legitimates strike activity by workers, but not all the time. Strikes are only permitted after long periods of notice have elapsed. In the case where no agreement exists, a ministry must, after good faith negotiation attempts fail, be given notice of impasse. Then, the parties must meet with external conciliators/mediators. If no agreement ensues, a further time period must be allowed to pass by before a strike can legally take place. Where an agreement exists, the agreement must first have terminated before any of these steps can be set into motion. This brief summary indicates that the union may not be in a position to use its most powerful tool when it would be most effective. Indeed, the opposite may well be true: as the procedural requirements make the timing of a strike highly predictable, it is often feasible for an employer to arrange its affairs (by stockpiling, planning alternate supply mechanisms with competitors, etc.) so as to minimize the impact of strike action.

Note also that workers may not strike during the life of a collective agreement. The argument is that the parties have established their mutual rights and obligations for a given time and that disputes about them are merely questions of interpretation and adjudication, that is, not proper subjects of economic warfare. This prohibition on strikes may adversely affect workers if conditions change during the life of the agreement. Because of this, cost-of-living clauses have become more common in negotiated agreements. But changes due to technology, slow-downs in the economy (e.g., less overtime available, lay-offs, shortened work week, etc.) are very difficult to argue about when the most ef-

44. United Steelworkers of America v. Radio Shack 80 C.L.L.C. 16,003 (C.A. Ont.). Another example is the recent Irwin Toys' strike in Toronto, where the Steelworkers have, so far, been unsuccessful in obtaining a contract which would give the largely female workforce wage rates slightly above the statutory minimum wage level.

45. The highlight decision is Horses of Woodstock Ltd. v. Goldstein (1963), 38 D.L.R. (2d) 449 (Ont. C.A.) in which, in effect, all secondary boycotts were held to be illegal at common law.

46. For example, Quebec.
ficient tool of persuasion — the strike — is not available. Note again how much power to alter conditions during the agreement is left to the employer. While it is true that this power can be curtailed by effective bargaining, remember how hamstrung unions are and that whatever is not bargained for remains within the realm of the employers' prerogative. In the final analysis, if the employer decides to close down for economic reasons there is nothing in the legislation or in the collective agreement to stop it. The only worker-equivalent of this is the individual worker's right to give up her/his job during the collective agreement. The scales are not evenly balanced. Once again, the rules have been devised so that collective action has as little impact as possible over and above that made by individual bargaining.

5. The collective bargaining legislation's apparent desire to keep negotiated work conditions as close to those as a true individualistic market would render is further reflected in the selection of the appropriate bargaining unit. As noted, workers are only allowed concerted activity vis-a-vis their particular employer. But, an employer's enterprise may have a variety of kinds of employees working in different departments. Should all employees be allowed to participate in collective bargaining? If so, should they be allowed to pool their strength in one union? Such questions are left to be determined by the labour relations' boards. Their rulings will obviously have an effect on the bargaining strength of the unit chosen. Over time the boards have developed rules of thumb which they seem to apply as if by rote to the many situations which they are asked to handle. This gives the process a bureaucratic, neutral look. But the criteria developed by the boards manifest a recognition that the employer's prerogative of management is paramount. For instance, a bargaining unit should permit workers who have a community of interest to coalesce. Community of interest is defined by reference to such matters as the nature of the work performed, the existing conditions of employment, the administrative structure under which work is done, and the physical arrangement in which work is done. All these matters are within the control of the employer. Moreover, other factors taken into account are whether certification of a particular group will permit efficient management and will be economically rational.

Boards do, however, have some regard for likely union strength. It is recognized that, for the legislative scheme to work, on-going trade unionism must be facilitated. Therefore, in defining the bargaining unit, the board should have regard to this consideration while at the same time, difficult though it be, "[A] structure is needed which is conducive to voluntary settlements without strikes and will minimize the disruptive effects of the latter when they do occur."*47 Nothing could be plainer: unions, yes, power, no, or, at least, as little as possible. Note, as well, that boards, while wanting to ensure that units do not get so large that they could cause serious disruptions, do not want them so small (merely to accommodate diverging views and "minor" differences in job interests) that an employer will have to deal with a multiplicity of unions. This may result in an unnecessary fragmentation or atomizations of the employees. Thus an employer faced with the possibility of lengthy, protracted and expensive bargaining and the further possibility of jurisdictional disputes among multiple bargaining groups represented by one or more trade unions may find it impossible to carry on a viable and meaningful collective bargaining relationship... in those circumstances the Board will find the unit proposed inappropriate...*75

Given the very difficult task of balancing competing interests (and according the boards which act in good faith all the sympathy one can muster) the bottom line, once again, is that lines drawn to curtail collective bargaining are drawn where they are most likely to ensure that employers, obliged to put up with unionism, will be as little affected as possible.

6. If collective bargaining, even as constrained as it is, can enhance workers' bargaining positions, then its effect would be greater the more people participated in it. But the legislative schemes systematically remove huge numbers of workers from their scope. Typically, but not universally, domestic servants and agricultural workers are not permitted to collectively bargain. Public servants are often excluded, as are police and fire brigade employees. Frequently, such people are allowed to form trade unions, but are denied the right to strike, or, if they are permitted to use the strike weapon, the matters about which they can bargain are severely restricted. There are obviously a variety of justifications for these exclusions. But note that they are varied and not overly persuasive. Justifications used are the distinctions between the essential and non-essential nature of services and between private and public employers. These distinctions are not so clear-cut as one might think, especially the former. For instance, in Ontario, orderlies, cooks, cleaners, etc., in hospitals funded by

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48. The Canadian Union of Public Employees, (applicants) and The Board of Education for the City of Toronto (respondent) and Group of Employees (objectors), [1970] O.L.R.B. Rep. 430, 435-36 (Ont.) per O.B. Shime.
the provincial government may not strike, but garbage collectors working for municipalities may. Is there not a plausible argument to be made that a garbage collectors' strike presents the greater danger to public health? The spurious distinction between essential and non-essential service gives rise to this difficulty. This is not the place to analyse this issue in detail. What is to be noted is that the exclusions are not self-explanatory. Indeed, the scope of exclusion seems considerably larger than it has to be if protection of the public at large is the common denominator justifying the many exclusions. This can be seen by the fact that the scope varies from jurisdiction, without causing great variations in the social fabric, public convenience or safety. If drawing the line around permissible free collective bargaining is a relatively arbitrary matter, the creation of exclusions can be seen, in part, as an attempt to weaken the overall economic power of the working class. In Canada, where so many workers who are commonly treated as mainstream members of the work force in other industrialized countries are put outside the scope of legitimate collective bargaining, this argument is very persuasive.

7. In as much as collective bargaining is permitted, it will inevitably lead to hardship. For instance, a legal strike is likely to become most effective when the employer finds it difficult to meet its legal obligations, its bills, or begins to lose sections of its market to competitors. Often, however, the interruption to production or service is such that other persons as well as the employer feel the effects. In those circumstances, the government sometimes will pass legislation, forcing the strikers to go back to work. The argument is that the innocent public should not have to pay the price of free collective bargaining. Note the integration of this form of argument with the 'one employer — one local union' structure of collective bargaining.

While one can concede that there may be priorities more important than the exercise of collective bargaining rights, there are aspects of this ad hoc legislative method of dealing with labour disputes which strongly suggest the real purpose of collective bargaining, as sanctified by legislation. Such legislative intervention comes when the public is hurt. As there is no strike in which third persons will not be affected, the concern is usually with those cases in which the employer renders services to the public, on behalf of a level of government, e.g., transport, medical, educational services. In these kinds of cases, however, the only direct power the right to strike gives is to hurt the consumers of the services. They are the ones to whom the employer is accountable, the employer in the illustrations used not having an economic stake in the rendering of its services but only a political responsibility to consumers. That is, the right to strike is removed at precisely the moment in time when it is likely to work. To underscore this, the impasse, and thereby the hurt to the innocent public, could be ended just as easily by legislatively forcing the employer to resume the rendering of services by offering the workers exactly what they are demanding. After all, if the service is so essential, then the market requires that the right price be paid. If this be thought a little extreme, consider the issue this way. When strikers are ordered back to work, they are usually ordered back on the basis that they will work under the conditions provided for by the lapsed collective agreement, which they have legitimately refused to have continue. Alternatively, the back-to-work legislation may provide that the last rejected offer by the employer be made the basis of the renewed working relations. Workers are thus compelled to accept conditions which the 'free' collective bargaining scheme gave them a right to reject, until an arbitrator imposes new conditions. Why not have the employer pay the rates demanded by workers which it, in the proper exercise of its 'free' collective bargaining rights refused to do, until an arbitrator imposes new conditions?

The bias is clear. Collective bargaining is a right which had to be given. But, it is given so that it will have as little impact as possible. Where the impact is likely to be great and it is politically easy to fabricate a reason for doing so, the right will be taken away without ceremony. The aim remains the same: to control the workers' share of the pie.

8. The restriction of collective bargaining to the 'one employer — union local' context is a clear revelation that 'free' collective bargaining is seen as being about economic issues. Trade unions are, in part, political organizations, yet their real power — the exercise of collective pressure, the right to strike — cannot effectively be used in the political sphere even though it is recognized that conditions of work are largely governed by other factors than the state of a particular sector of the market. The rate of currency exchange, the monetary supply, government expenditures, protectionist policies, etc., all play a role. If workers wish to
influence such policies can they use their right to combine? The legal answer is that they may lobby, just like any other interest group. They may not, however, strike. They may not use the only real weapon they have. Assume a system of wage controls is imposed by the government, supported by the mass of employers. The trade unions seek to destroy this policy, apparently advantageous to their adversaries. They cannot strike, because each group of employees will be illegally striking its particular employer. The famous Day of Protest in respect of the AIB legislation illustrates this point.51

This need not be belaboured. Collective bargaining legislation is not meant to give workers real power over their income. It is a permitted imperfection in the idealized individualist market economic model, one which has been forced on government by the working class and has been negated as much as possible. The proof is in the pudding. Jelly refers to the fact that wages declined substantially as a proportion of national income between 1970-1980.52 Given that this decade was unusual, perhaps because of the AIB period, note that the Report of Task Force on Labour Relations found that between 1949-1967 the workers' share of the net domestic product had remained remarkably constant.53 In addition, note that economists have found it very difficult to make out a case that collective bargaining has had any long range impact on change in the ratio between labour earnings and corporate profits.54 Be that as it may, if, on the whole, wage earners' share of income is constant, then if collective bargainers have obtained advantages it may only be at the expense of other people, many of whom are purposely excluded from 'free' collective bargaining.

Taking the picture as a whole it seems unquestionable that public policy has had at least one constant lode star, viz., containment of wage labour's demands as much as the political context allowed. The introduction of any kind of incomes policy must therefore be viewed as yet another instrument in this policy of containment, no matter how it is disguised.

Additional Dangers of an Incomes Policy for Workers' Collectivism

Having painted a picture of a struggle in which workers are in perpetual motion merely to stand still, the question arises as to why a further instrument of wage control should be attacked so vehemently. After all, its additional effect on wage repression would not, in relative terms, be so great. Several points may be made.

First, whatever the relative negative effect on wage rates in the context of a variety of oppressive policies and instruments, there will be an absolute negative effect.

Second, collective bargaining is integral to trade unionism which is, in turn, the working class' response to exploitation and oppression. Incomes policies undermine trade unionism. Once an incomes policy is in place, there is very little to bargain about and, therefore, very little for a trade union to do. True, the union still has a role to play in organizing the permitted package. True, it still has a function as an administrator of the collective agreement. But what makes a trade union a dynamic force, one which focusses the never-ending struggle between investors and workers over the share of the outcome of the enterprise and control of the enterprise itself, is the possibility of harnessing the workers' power. This only has meaning when the right to strike, to act collectively in the most telling way of all, can be invoked. Although theoretically this may still be available under an incomes policy's regime, it is not an easy matter to get workers to engage in a painful strike when economic gains cannot be used as an enticement. The notion that workers can be educated into striking over safety and health issues (absent a cataclysmic event) is fanciful.55

51. It is no mere chance which made the unions use the term "Day of Protest" rather than "General Strike." Employers immediately saw how the law could be used to inhibit workers and many actions were threatened and some brought. The actions could, theoretically, have been obtained by a labour relations board to cease and desist from conduct breaching the statute or a collective agreement, obtaining the right to protest for such illegal conduct, bringing an action for damages arising out of the breach of the collective agreement, bringing actions for conspiracy, inducing breaches of contract, etc., or submitting such a matter to an arbitrator by way of a grievance for damages or disciplining of employees for not abiding by the agreement. All of these tactics were used. The Day of Protest is often described as a failure by the union movement to motivate workers to protest, as a sign of a lack of solidarity and class consciousness. Given the legal framework of "free' collective bargaining, the fact that many workers did not work on the Day of Protest is remarkable. Note that labour relations boards were more sensitive to the fact that the use of the law might alert workers to their lack of power and they sought to avoid the difficulties created by the general strike. In British Columbia the Board argued that, as there was no labour dispute as defined by the Code, it had no jurisdiction to deal with the dispute. But this left the workers at the mercy of the common law remedies of which there were many. See British Columbia Hydro and Power Authority, [1976] 2 Can. L.R.B. 410 at supra note 40, 41.

52. Supra note 1.


54. Lewis, Unionism and Relative Wages in the United States (1963), found a 10 to 15 per cent relative gain attributable to unionization. But others are not so sanguine. Gunderson found there to be conflicting evidence as to whether there was any gain at all, see Labour Market Economics (Toronto: McGraw-Hill Ryerson, 1980), p. 317; so also did Chamberlain, Labor (Toronto: McGraw-Hill, 1958); Pelchins, The Economics of Labour (Toronto: McGraw-Hill, 1965), found some positive effect, but not much.

55. The argument made is more persuasive if the incomes policy is a permanent one, rather than a temporary one such as AIB was. Note here that the Crowley paper, supra note 15 concentrated on the effects of a temporary incomes policy on collective bargaining. Further, the reasoning that collective bargaining was not affected seriously depended on the notion that, if collective bargaining continued between particular participants as before, no adverse effect had occurred. This ignores the workers' need to have larger and more trade unions and more militant trade unions.
In addition, the union, having been robbed of its raison d’etre — orchestrating workers’ activities around increasing pay packets — is tempted to take up a role as bureaucratic administrator. This tendency will be enhanced by a new feeling of empathy with the employer. As the wage package (contrast its structure) is not in issue, it is likely that a much greater ambience of collaboration will ensue than otherwise would exist. Thus, Reid reports that during the AIB period, 70 per cent of wage increases submitted to the AIB were at or below the arithmetic legislative guidelines. What were trade unions doing? The presumption must be that they were, reluctantly perhaps, doing a lot of agreeing with management. To justify their existence, trade unions are, if the incomes restraints last for any length of time, likely to emphasize their roles as managers of discontent. For those who see in militant trade unionism the only bulwark against worker oppression, this is a dangerous development.

Third, it is extremely difficult for trade unions to expand membership when they cannot offer the promise of economic improvement. In as much as expanding the coverage of collective bargaining would help the general workers’ cause, yet another blow is struck by the imposition of an incomes policy.

Fourth, incomes policies act as Trojan horses. The dangers to workers and trade unions are so great that, when they are imposed, a great deal of energy and organization is put into having them removed. This precious waste of resource is a real loss. Worse, however, is the fact that trade unions and workers are forced to fight for the toehold on survival they have, viz., the very limited form of collective bargaining they have been given. Unsurprisingly, therefore, they come to think of this as something truly valuable. They come to be fooled into thinking it is “free” collective bargaining, rather than to recognize it to be a carefully adapted scheme of restraint. It is in this framework that forces which, on the face of it, ought to welcome a rational economic planning instrument are moved to oppose it, to argue for a retention of existing bastardized market precepts.

Summary

1. The present inflation rate, by itself, does not warrant the imposition of an incomes policy.

2. Stagflation may justify such a policy. If it comes as part of a monetarist policy, it is likely only to soften the worst aspects of inevitable hardship. Its effect on dampening inflation rate expectations is, at best, uncertain. If it is offered as an integral part of an industrial strategy plus welfare net package, it is likely to be the only part of the package implemented pro tanto and, therefore, likely to cause workers to sacrifice immediately, other sectors maybe never.

3. Whatever the reasons given for imposing incomes policies, there is abundant evidence to indicate that they act primarily as instruments of worker restraint for the benefit of the employer class. Further, there is persuasive evidence that, whatever the reasons given for the imposition of incomes policies, they are part of a general policy to restrain workers’ earnings for the benefit of the employer class.

4. To disregard the political thrust behind policy instruments such as collective bargaining and incomes policies is to study economics in a vacuum. Only professional economists can afford that. Workers cannot.

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57. That is, to help the employer administer the agreement and to concentrate on workers’ individual grievances. Although often this latter is seen as a challenge to management, it is a form of shared control over the workers’ environment which, in the end, may suit the employer admirably. For a seminal argument to this effect, see R. Edwards, Contested Terrain (New York: Basic books, 1979).
58. Thus Weiler argues that trade unions have been in the vanguard of the movement to regulate society, to put ceilings on rents, to protect consumers and the environment. Therefore, he says, “[i]t behooves them to proclaim that the world of free collective bargaining is sacrosanct.” See P. Weiler, Reconcilable Differences (Agincourt, Ont.: Carswell, 1980), p. 254. This misses the point that collective bargaining is not free and that, to regulate under the scheme, there is about as much regulation as can be tolerated. There is, indeed, a better argument as to why trade unions should support incomes policies. Such policies demonstrate that the restriction on workers’ earning power is not solely due to an unchallengeable abstraction, the market, but that the supposedly neutral State is willing to interfere at the behest of the capitalist class. See Clark, “Introduction: The Raison D’Etat of Trade Unionism,” in Clark & Clements, (eds.) Trade Unions under Capitalism (London: Fontana-Collins, 1977) pp. 19-20. But this is an idealized political argument, one which one does not have the right to ask workers to support by sacrificing themselves now. Only those who pretend to support trade unions, but who really believe in their containment, would make righteous comments about the presumptuousness of workers who object to this particular form of regulation.