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INDUSTRIAL DISPUTES AND THE LAW IN SPAIN

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ABSTRACT

Strike activity in Spain is unusually high compared to most other developed countries and, moreover, it has remained at a high level for the last decade, whilst strike rates have been falling in most other countries. One possible explanation for this poor strikes record is Spanish labour law with respect to industrial disputes which may be too permissive, or have remained permissive whilst other countries have tightened their legislative frameworks. By investigating the comparative strike record and comparative strike law across Europe, it is clear that neither of the above scenarios holds true. Spanish law is neither particularly permissive, nor has it become more permissive relative to other countries which suggests that, given some caveats, Spanish strikes law cannot be held responsible for the poor strike record. Some tentative assessment of other possible explanations is made using industry data on strikes, collective bargaining coverage and levels, union representation and the proportion of fixed-term contract workers. Taken together these results are indicative of a role for non-legal industrial or labour market institutions in explaining strikes. There is clearly, though, a crying need for more micro industrial relations data sets to properly test the influence of both exogenous and endogenous factors in explaining strikes.

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INDUSTRIAL DISPUTES AND THE LAW IN SPAIN

Simon Milner

1. Introduction

The high level of Spanish strike activity over the last fifteen years sits uneasily with the decline in activity almost everywhere else in the EU and the OECD. Days lost per thousand employees in employment was higher than in every OECD country apart from Greece over the decade 1983 to 1992 (Bird, 1993). Furthermore, in 1992 the rate of working days lost due to strikes in Spain, 688 per thousand employees, was more than three times the rate of the next most strike ridden country (Ireland with 220 days). Therefore both the high average level of activity in recent years and the lack of any declining trend combine to make Spain stand out in Europe on this key measure of industrial relations performance.

There are a number of possible explanations for the relatively high and apparently stable level of strike activity in Spain, and this paper concentrates on one of those - the role of strike law. This is partly driven by the fact that in the UK, the country with the steepest fall in strike activity in the 1980s and early 1990s, many commentators have emphasised the importance of changes in disputes law for contributing to the decline in strike activity (*inter alia* McConnell and Takla, 1990; Ingram *et al*, 1993). It seems sensible therefore to investigate to what extent the very different picture of activity in Spain over the same period is due to the influence of strike law.

After presenting evidence on Spanish strike activity over two decades, Section 2 provides a comparative picture of strike activity in other large EU countries. Information on other forms of collective dispute in Spain are also presented and discussed in this section, but unfortunately adequate comparative data are somewhat lacking in this area. Section 3 begins with an explanation of why it is impossible to judge the impact of Spanish strike law by analysing strikes data from Spain alone - since there have been insufficient changes in the law over the period in question. Having stated the case for comparative analysis and established some hypotheses about comparative strike laws and strike activity, Section 3 proceeds with information on strike laws across the EU, comparing each system with Spain's. Comparative analysis suggests that Spanish strike law can explain little of the high level of strike activity in Spain, although there are some rather important caveats which are also discussed in Section 4. In light of this conclusion, Section 5 examines economic strike theories and uses regression analysis of industry strikes data to suggest what might explain high strike incidence in Spain. The principal conclusion of this section is that proper analysis of the Spanish strike record requires more comprehensive micro data. Section 6 briefly discusses the proposed changes to Spanish strikes law currently being muted by the government - considering whether or not they are likely to reduce strike activity in the future. Finally, Section 7 provides some conclusions.

2. Labour Disputes in Spain and International Comparisons

a. Introduction

One of the few measures of industrial relations outcomes collected in every industrialised country is on strike activity *viz* the number of stoppages, the number of workers involved in strikes and the number of working days lost. Various authors have amassed information on the definition of strikes, their measurement, the

collection of data and specific limitations of official data in each country when making international comparisons (*inter alia* Creigh, 1989). Compared to many other OECD countries Spanish strikes data are reasonably comprehensive in two ways: there are no limitations on criteria for inclusion of stoppages in the statistics; and parties involved in strikes are compelled to notify the relevant labour authorities that a strike has taken or is taking place. By comparison in the UK, for example, strikes involving less than 10 workers or lasting less than a day are excluded (unless total days lost exceed 100) and collection is less exhaustive than in Spain with no obligatory notification requirement. These measurement differences are likely to bias upwards differences in the number of stoppages recorded but may only marginally affect the difference in working days lost since the UK restrictions and those in other countries will mainly exclude short, small strikes.

b. Strike activity in Spain

Strike activity at the aggregate level in Spain is summarised in Table 1 and Figures 1 to 3. Key features include: the explosion in strike activity, however measured, after the death of Franco in 1975 after quite low levels of activity in the early 1970s; a peak of activity in 1979 on three measures (number of stoppages and number of stoppages and working days lost per thousand employees in employment); fluctuation around a high average level in the 1980s/early 1990s including two general strikes in 1988 and 1992. The particularly important feature of the strike record in the 1980s/early 1990s is that there have been no signs of a trend fall in activity. Even if the general strikes had not occurred in 1988 and 1992 the series would still not have shown a trend decline.

c. Dispute activity in Spain

The Spanish labour authorities also collect data on other forms of collective disputes-conciliation, mediation and labour court cases. The time series for these data are compared to those on stoppages in Figure 4 for the period 1981-1992. The picture is one of remarkable stability in relative usage. The use of collective conciliation and the labour courts (the latter only for "rights" - contract interpretation - disputes) has generally stayed above the level of strikes throughout the period with collective conciliation the most common means of pursuing a dispute. However, the success rate of conciliation - measured as the proportion of cases resulting in settlement - has been very low, in many years less than 10% (Table 2). This compares to an ACAS[1] success rate in the UK of 80-90% in recent years (ACAS Annual Reports, various years). The explanation for this probably lies in the different procedural rules which determine that parties in Spain must go through conciliation in order to access the labour court system (see Section 3). This option does not exist in the UK so parties taking disputes to ACAS are less likely to be going through the motions in order to access a higher and more heavyweight authority. This whole area is potentially fruitful for further research both within Spain and from a comparative perspective.

d. International comparisons

The impression of a `strike problem' in Spain is graphically illustrated by comparing the record on working days lost per thousand employees to the record for 4 other large European economies. The time series are shown in Figures 5 and 6.

Figure 6 is particularly illustrative, showing comparative activity in Spain in groups of years over the 1970-1992 period against the strike records for the UK, France, Italy and West Germany. Up to 1975 the Spanish record was better than the average of these four countries but it has been worse in every year since. Particularly noticeable is that whilst on average for the rest of these economies strike activity has declined every year since 1984, in Spain there have been both rises and falls in activity. The only OECD country with a worse strike record in recent years is Greece. Figure 5 shows that whilst the fall in strike activity in Britain has been impressive, this rather pales by the extent of the fall in Italy over a similar period. Note that West Germany and France have the lowest levels of strike activity among these five countries for most of the period.

One note of caution in interpreting these data concerns indexing the working days lost simply by employees in employment. In the UK most strikers are union members, therefore the decline in working days lost on a per employee basis also reflects the decline in union membership as well as a decline in the propensity of union members to take strike action. One way to take account of that is to index the data by union membership rather than employment (as in Milner and Metcalf, 1993). However, for other countries the union membership index may be inappropriate. Many strikers are not union members in Spain, for example those taking part in the general strikes, therefore a more appropriate index might be the number of employees covered by collective bargaining. This would probably be an appropriate index for West German data as well. However, in France and possibly also in Italy, it does not appear that striking is restricted to either only union members or only those covered by bargaining. This may in large part be due to the legal frameworks (see Section 3) which provide a constitutional right to strike and to organise strikes for all workers whether or not they are union members or indeed are covered by a union.

3. Strike Law in EU Countries

a. Comparative strike patterns and labour law

The improvement in the UK's ranking on strike activity within the OECD at the same time as a build up of anti-union legislation not matched elsewhere is consistent with the proposition that changes in labour law explain some of the decline in strike activity. Turning to Spain there are number of hypotheses which could link the relatively high level of strike activity and differences in labour law across Europe:

Hypothesis 1: Spanish strike law remained unchanged over the period whilst in other countries the law on strikes has been tightened-up;

Hypothesis 2: Spanish strike law became more relaxed whilst in other countries it was unchanged or made more stringent;

Hypothesis 3: Spanish strike law is generally more permissive than other countries' laws.

If any of these hypotheses can be backed up with evidence on the relative levels of and changes in strike law permissiveness across Europe, then strike law could well be an important explanation for the relatively high level of strike activity in Spain.

However, if none can be substantiated, this would instead suggest that Spanish strike law is not an important explanation for the relatively high level of activity in the 1980s and 1990s. It should be emphasised though that such a finding would not rule out the possibility that future changes in Spanish strike law could reduce the level of strike activity.

b. Spanish strike law

The main provisions of Spanish law on disputes were established in the 1977 Legislative Decree on Strikes (included in the 1978 Constitution) and amended in some areas by the 1981 Decision of the Constitutional Court. Although the relevant labour authorities play important administrative roles in each region, the laws on disputes are identical across the nation.

The drafters of the new law on industrial disputes rejected the compulsory arbitration-based system in place under Franco in favour of a broadly defined strike-based system. Arbitration is still available, as are other forms of non-strike resolution procedures such as conciliation and mediation, but there is no compulsory mechanism triggered in the event of a labour dispute.

Spanish labour law delineates to some extent between disputes concerning rights (the interpretation of an existing contract) and those over interests (the substantive or procedural terms of a new contract). The key difference concerns the role of conciliation and the labour courts. For rights disputes, parties must use conciliation in order to gain access to the labour courts. For interest disputes parties can use conciliation but cannot then go on to the jurisdiction of the labour courts which are deemed not to be competent in such matters. However, for both interest and rights disputes the law currently states that if parties wish to avail themselves of conciliation they must give up their right to take strike action. This is clearly sensible for rights disputes since should conciliation fail, the parties can progress to a higher authority in the guise of the labour courts. However, it seems rather unsatisfactory in the case of interest disputes since the parties have no final procedure which they can turn to in the event of the failure of conciliation. It seems probable that this rule rather stifles the role of conciliation in interest disputes.[2]

The Spanish Constitution recognises an individual employee's right to strike - ie their contract of employment is suspended rather than broken in the event of strike action. A striking worker or indeed group of striking workers cannot be sacked while taking part in a legal strike as defined below. Their contract of employment is suspended but they are not entitled to unemployment benefit, nor can their dependents claim social security benefits. During a strike an employer is prohibited from employing anyone who did not work for the firm before the dispute. The 1985 ILO report on Spain states that employers are not averse to sacking the ringleaders of strikes - but generally do so sufficiently far from the end of the strike to prevent direct association by the labour authorities.

There are, however, some restrictions on this general right to strike, both procedural (regulations stipulating the conduct of the strike) and substantive (causes of and types of action).

Procedural Limits:

.strike decision: There are three legal methods of calling strike action: agreement reached by majority decision at a joint meeting of worker representatives; by secret vote of the workers; and by agreement of the unions involved in the establishment, firm or industry. Therefore a key feature of the Spanish scene is that works councils as well as unions are empowered to call strike action.

.notice period: Five days advance notice must be given to the employer affected by the action (ten days in the public sector).

.strike committee: A strike committee from the affected plant consisting of a maximum of 12 workers must be elected. This committee participates in union, administrative or legal action taken to settle the conflict. It is also charged with guaranteeing the provision of minimum services, though these are not defined in current statute law.

Substantive Limits:

.**non-strike action**: Any non-strike action such as go slows or work to rules are deemed to be `unwarranted' (ILO, 1985) which presumably means illegal. The ILO mission also reported that cases of non-strike action were infrequent but that even when they did occur the illegality did not always lead to legal action. Similarly to the UK (Milner, 1993a) there are no official data on the incidence of non-strike action in Spain.

.**political and sympathy strikes**: Any strike motivated by political reasons or for any other purpose unconnected with the occupational interests of the workers concerned was deemed to be illegal in the original decree of 1977 but the Constitutional Court partly overturned this to permit sympathy and secondary action.

.**essential services**: As well as restrictions on the rights of certain public employees' right to strike (police, armed services, merchant navy), there is a general provision in the Constitution for the State to intervene in strikes to impose binding arbitration on the parties to ensure provision of essential services to the public or protect the national economy. There are also specific conditions for the exercise of strike action in public hospitals and railways.

.**strikes over current contracts**: As in the US and some other EU countries (see below), strikes which are intended to overturn the provisions of valid collective agreements are illegal - although strikes concerning the interpretation of existing agreements are valid after the Constitutional Court's decision of 1981. For a strike over differences in interpretation to be illegal the collective agreement must contain a clause (a `no-strike clause') to this effect.

.**picketing**: During a strike, pickets may attempt to peaceably induce other workers to keep away from their workplace but no coercion or violence can be used. If the workers attempt to occupy their workplace as an extra form of protest, this is also deemed to be illegal.

.**sanctions**: There do not appear to be clear rules detailing available sanctions for employers against illegal strikers or their representatives. However, this is one aspect of the proposals to change statute strike law put forward by the government in 1992 and discussed in Section 6.

.**lock-outs**: Lock-outs are lawful in certain situations[3] but are unusual.

The key features of Spanish strike law can therefore be characterised as: constitutionally protected right to strike in `legal' strikes for individual workers and to organise strikes for unions and works councils; and some limitations on what constitutes a `legal' strike. Non-legal action includes: non-strike action, political strikes, strikes falling foul of procedural rules, strikes after or during conciliation, strikes to change current contracts and strikes by certain categories of workers.

c. Comparison with other EU countries

With the notable exception of Britain and Ireland there have been no major legislative changes concerning industrial action in the 12 EU countries over the 1980s. The key features of the legal framework operating in each country are summarised in Appendix B. They can be grouped under three headings (taken from Betten, 1985):

i. The right to strike is a constitutional right of the worker and there are few limitations on that right: The most important countries to fall under this particularly permissive ethos are France and Italy. In both, workers have a constitutionally guaranteed right to strike - their contract of employment is suspended during a strike - "within the law regulating it [the right to strike]". However, although no statute law has been passed in either country to regulate this right, various judicial precedents have restricted rights in an *ad hoc* way. There are no procedural rules in either country which, if flouted, make a strike illegal except in the public sector where notification periods are mandatory for some groups. Non-strike industrial action appears to be illegal and similar rules apply to the legality of political and sympathy strikes. The key distinguishing feature of the two systems is that the right to take and organise action is expressly that of the individual, irrespective of the role of unions.

Belgium also appears to fall into this category since there is "... almost complete freedom to engage in industrial warfare by the industrial parties," (Blanpain, 1990). Contracts of employment are suspended during a strike and both employees and unions have the right to organise strikes. Non-strike action and political strikes are illegal but sympathy strikes are lawful. There is no statutory position concerning strikes in essential services but there is a provision that a joint committee of the employers and trade unions involved in a dispute must determine both what services are to be maintained and how they are to be maintained during the strike. It seems that Luxembourg also fits into this category although the main source on labour law and industrial relations in Luxembourg has a very sketchy description of the law in this area (Schintgen 1990).

ii. The right to organise a strike lies with trade unions (or similar), the right to participate in those strikes is a right of workers: Spain, (West) Germany, Portugal, the Netherlands and Greece all fall into this category where there is a right to

participate in union organised strikes. In a similar way to the above category the contract of employment is suspended during a strike rather than terminated. There are some marked differences in the definition of a legal strike within this broad category.

In Germany the proportionality principle dominates matters. Legal strikes are those that: respect the peace obligation during the contract period; are preceded by a secret ballot; are `fair' - do not aim to destroy the firm; and are the weapon of last resort - *ultima ratio*. This means that non-strike action is illegal (contravenes peace obligation), as are political strikes and that sympathy strikes are only permissable in very narrow circumstances. In terms of essential services, although there are no statutory definitions of these, the proportionality principle would suggest that these have to be kept running in the event of a strike. German strike law is rather peculiar, however, in permitting so-called `warning strikes' of short duration during contract negotiations which in theory would contravene the proportionality principle. There has been a recent example of such a strike in the engineering industry (Financial Times, 1.2.94).

Portugal has a slightly more permissive strike law compared to Spain. In both countries unions and works councils (called worker assemblies in Portugal) can call strikes, but in Portugal strikes called by the latter are only legal if preceded by a secret ballot of the relevant workers. However, political and sympathy strikes are legal in Portugal and lock-outs are prohibited. Moreover, the legal position of non-strike action is unclear whereas in Spain it is clearly illegal.

The legal position of strikes in the Netherlands is rather ambiguous since there has been no statute law on the issue. A mixture of judicial precedents and strike bills (not enacted) provide some rather fuzzy rules. These are summarised by Rood (1993) as that strikes are unlawful if they are: contrary to statute law; contrary to the collective agreement; contrary to existing norms between the employer and union(s); or manifestly unreasonable towards the employer. Although not laid down by precedent this suggests that non-strike action, most sympathy strikes and political strikes would be unlawful. There are no special rules for essential service workers but presumably the legality of a strike could be challenged on the grounds of reasonableness towards the employer because of the lack of readily available substitutes.

Workers in Greece have a constitutionally protected right to participate in union organised strikes - "wild-cat" or unofficial strikes are illegal - with the provisos of 24 hours notification and the maintenance of `minimum services' during the strike. The legal status of non-strike action, political strikes, sympathy strikes and picketing are unclear.

The one important caveat about including Spain in this category is that there does appear to be provision for workers to organise strikes outside the union or works council system if a majority of the workers concerned vote in a secret ballot to take action. Although there appear to be no published data on the relative use of different means of calling a strike it seems unlikely that there will be sufficient organisation among workers to conduct a ballot on taking strike action in the absence of unions, worker representatives or a works council.

iii. There is no right to strike, but if they keep within certain rules, trade unions and workers organising and/or participating in a strike enjoy a series of immunities from penal and/or civil sanctions: The immunities based system of

strike law is confined to the UK and Ireland among the EU economies. Individuals have no right to strike in the sense stipulated elsewhere - a strike always involves a breach of the employment contract such that the employee can be dismissed without recourse to redundancy or unfair dismissal. In the case of Britain, previous laws which attempted to prevent victimisation of strike leaders, through selective sackings of strikers, have been weakened.

Instead the strike laws turn on the concept of immunity from civil action (for inducement of breach of contract) for organisers of `legal' strikes who may be unions, their officials or someone completely unconnected with any union. The most significant regulations are those determining what constitutes a `legal' strike. Although slightly less stringent in Ireland the main substantive and procedural rules are as follows:

Substantive

·**the golden formula**: Any industrial action must be `in contemplation or furtherance of a trade dispute' to obtain immunity from civil action. The scope of this so-called `golden formula' was cut back in the 1980s through successive acts to exclude action over political issues, closed shops, sympathy or secondary action, inter-worker disputes, union recognition and activities of own employer outside the UK.

·**limited immunity**: Between 1974 and 1982 trade unions `enjoyed' a blanket immunity from civil action for organising industrial action if the action was covered by the golden formula. Since the 1982 Employment Act there has been rather ill-defined limited immunity such that action which comes within the golden formula and does not fall foul of procedural rules (see below) may still be subject to action for the torts of conspiracy or interference or indeed other judge-discovered torts in the future. This has added an extra level of uncertainty into the question of what constitutes an unlawful strike.

·**strike breaking**: Until 1988 it was legal for a union to discipline or even expel a member who refused to take part in a lawful strike - subject to certain procedural stipulations. However, since the 1988 Employment Act the union cannot take any action against such members - even if the action receives overwhelming support in a pre-strike ballot.

·**essential services**: Although the government has promulgated the possibility of extending a ban on strikes in essential services at various times over the last fifteen years the law remains ostensibly unchanged in this area. For two groups of workers -the police and the armed services - strikes are a criminal offence. There is also some debate about the legal status of industrial action by communications workers and prison officers. Some other public service workers have *de facto* virtually given up their right to strike in return for systems of pay determination which appear to protect their interests. These include firefighters, nurses and school teachers. In Ireland it is a criminal offence for gas and electricity workers to take industrial action.

Procedural

·**compulsory postal ballots**: The most well-known change in British labour law in the 1980s was probably the new rules concerning compulsory pre-strike ballots first introduced in the 1984 Trade Union Act. The regulations have since been tightened concerning constituencies balloted, separate majorities in each workplace affected and location of the ballot (whereas from 1984 to 1988 workplace ballots were permitted, since the 1988 Employment Act all ballots must be postal). Statute law also stipulates that the ballot paper must inform employees that taking part in action would breach their employment contract and that the results of any ballot are only valid for 28 days after the result - ie action must take place within 28 days to retain any immunity.

·**notification**: As a result of the 1993 Trade Union Reform and Employment Rights Act organisers of industrial action must notify the employer of an intention to ballot on industrial action at least seven days beforehand.

·**unofficial action**: In order to escape liability for unlawful unofficial action (for example an unballoted, wildcat strike) there are various rules that union leaders must comply with concerning condemnation of the action. These rules were tightened up in the 1990 Employment Act.

The principle means of preventing `illegal' industrial action available to employers (and union members and members of the public) is through injunctions, which are often *ex parte* (the defendant need not be present). There are extensive remedies available for employers should action deemed to be illegal by the courts take place, including large fines for contempt of court or sequestration of union funds and other assets. There have been some well-publicised examples of such remedies being used in major 1980s disputes in coal mining, newspaper printing and ferries (Elgar and Simpson, 1993, p.75).

·**the hybrid**: Denmark has something of a hybrid arrangement such that it does not fit easily into any of the three groups set out above. Briefly whilst there is said to be a general right to strike except during the period of a collective agreement (similar to Germany), a contract of employment is terminated should a strike take place (similar to UK and Ireland). However, the latter regulation can be overridden by a collective agreement term stipulating that a strike results in the suspension of the individual contract. According to Jacobsen (1988) most collective agreements include such a clause. A further unusual provision, which fits better with the Franco-Italian model is that the right to organise a strike is not confined to a trade union, despite the stipulation concerning intracontractual action.

d. Conclusion

Comparison of EU countries' strike laws suggest two conclusions about Spanish legal strictures on strikes. First, Spain's laws are not particularly permissive compared to the majority of EU states. The provision of a right to strike such that contracts of employment are suspended rather than terminated during action is common. The procedural and substantive rules appear to be very much in line with what we might call the middling group on a permissiveness scale - with France and Italy at the high end and Britain and Ireland at the other.

Second, compared to a number of states Spanish strike law appears on paper to be relatively clear - there is not enormous scope for confusion about what constitutes legal and illegal action. The one exception concerns the rules governing the provision of minimum services which appear to be somewhat vague. However, in a number of other EU countries the definition of a legal strike appears to shift with each important court case, presumably creating uncertainty among unions and employers alike. There is of course something to be said for having uncertainty in legal parameters in that it may discourage risk averse parties from taking industrial action, particularly if unions are more risk averse than employers.

4. Strike Laws and Comparative Strike Activity

Recapping our hypotheses concerning the influence of strike laws on relative strike activity, there is no strong case for arguing that strike law in Spain can explain the relatively high level of action (measured as days lost per thousand employees) compared to other EU countries since the early 1980s.

Hypothesis 1: Spanish strike law has remained unchanged whilst in other countries the law on strikes has been tightened-up; Apart from the UK and Ireland no other countries in the EU have tightened up their strike laws in either procedural or substantive terms during the period in question. Therefore the fact that Spanish strike law has remained fundamentally unchanged since the late 1970s is not particularly unusual compared to the rest of continental Europe. We find no support for this hypothesis.

Hypothesis 2: Spanish strike law has been relaxed whilst in other countries it has been unchanged or made more stringent; Given the absence of change in Spain and most other EU countries, this hypothesis can also be rejected. There has been no relaxation in Spanish statute law on strikes.

Hypothesis 3: Spanish strike law is generally more permissive than other countries' laws; Although a strong argument that comparative labour law explained a large part of relative strike activity would require that either hypotheses 1 or 2 were supported by evidence of changes in law, in the absence of such evidence a more moderate argument could rest on the general permissiveness of Spanish labour law compared to other countries. This argument would have to cope with two features of the comparative strike series in Figure 6: first the higher strike incidence of Spain compared to UK, Germany and France from the mid-1980s; and secondly, the reversal in ranking of Spain and Italy around the early to mid-1980s. In order to be internally consistent two conditions would have to be met:

> **a.** Spanish strike law from the mid-1970s was more permissive than that in Germany, the UK and France and;
>
> **b.** although Italian law did not change in the early to mid- 1980s, there must have been some reduction in workers' willingness to contravene strike laws which are generally less permissive than those in Spain.

The facts fit these conditions in regard to Germany and the UK but do not for France and particularly Italy. French and Italian strike laws are considerably more permissive than those in Spain, yet both countries have had respectively better and improving strike records compared to Spain since the mid-1970s. Therefore it would be difficult to sustain an argument that the general permissiveness of Spanish labour law was an important explanation for the relatively poor strikes performance of Spain since the early 1980s.

In rejecting all three of the potential links between comparative strike laws and strike activity in the 1980s, two important caveats concerning such simple analysis of strike laws and strike incidence across these countries should be emphasised. First, and probably of most significance, concerns the sanctions available to employers in the event of illegal strike activity and the degree of law enforcement. It may well be that although on paper Spanish strikes law looks about average in the EU on a pro-labour scale, because strike laws are unenforced by the State or sanctions available against strikes are relatively ineffectual or employers are reluctant to use available sanctions, even if the latter have the potential to stop action, then the legal environment may *de facto* be rather permissive. These issues would certainly warrant further investigation, perhaps particularly concentrating on sectors where strike rates are unusually high.

Second, a more thorough analysis of the impact of strike laws would require controls for other factors associated with strike activity including *inter alia* unemployment, political party in government, macroeconomic volatility, union membership and organisation. However there are probably too few years of comparable strike activity data to warrant a more rigorous analysis and it would be difficult to construct valid instruments to measure the impact of the level of and changes in the permissiveness of strike laws. Moreover, as Section 5 explains, there is general dissatisfaction in the strikes literature with macro analyses of strike activity.

5. What <u>does</u> Explain High Strike Incidence in Spain?

Although failing to reject the null-hypothesis is a useful and interesting finding, it does rather leave a major question unanswered -what does explain the high level of strikes in Spain? This section discusses strike theories, some empirical evidence on strike incidence and analyses the recent pattern of inter-industry strike activity in Spain to try to provide some pointers towards answering this fundamental question.

There are a welter of theoretical, empirical and anecdotal studies within industrial relations on strikes. All the constituent disciplines with a foothold in industrial relations (economics, sociology, psychology, Marxism etc) have propagated a number of competing explanatory theories. We examine the hypotheses of economic theories and briefly review the evidence on these, before making inferences about their relevance for Spain. One rather tentative conclusion is that whereas strike laws appear to explain little of Spain's poor strike record, other aspects of Spain's labour laws may play a more significant, though indirect, role in the way that they influence industrial relations institutions.

a. Theories

Economists find explaining strikes a real problem because they are so evidently pareto-inefficient. Providing that the two parties are relatively well informed about

each others reservation position in the event of a strike, they are rational and risk averse, then a strike should always be avoided by mutually beneficial concessionary bargaining. In such a world, strikes should not happen. That they do take place, rather frequently in some firms, industries and countries, is known as the Hicks Paradox - after his early discussion of this irrational behaviour (Hicks, 1932). He concluded that strikes must be the result of faulty negotiations - ie mistakes which one would expect to be fairly rapidly corrected (strikes should be short) and be randomly distributed. Since Hicks's work, various US economists have developed more sophisticated explanations for this still relatively irrational activity. More detailed summaries of these theories can be found in Babcock and Olson (1992) and Milner (1993b). All the theories are relatively abstract in formulation, such that it is rather difficult to both test them and differentiate between them when using real world strikes data.

Three of the theories revolve around the concept of one or the other party failing to correctly predict the outcome of a potential strike. In a sense, they are attempting to develop Hicks's mistake-based theory by suggesting possible non-random determinants of mistakes:

·**asymmetric information:** If the assumption of perfect information is dropped in favour of the more realistic assumption of some degree of private or asymmetric information then two possible explanations for strikes emerge: workers are not fully-informed about the employer's ability to pay, and assuming that they believe profits are higher than reported, strike with the aim of capturing some undisclosed rent; the employer is not fully-informed about how militant the workforce are, regarding their claim. In the event of the latter, an employer may believe that he is calling the workers' bluff by refusing to concede at the threat of a strike.

·**principal-agent problems:** These theories (starting with Ashenfelter and Johnson's seminal 1969 paper), revolve around the recognition that more than two parties have a stake in collective bargaining, and that their interests and objectives are not necessarily just to reach a fair settlement. Ashenfelter and Johnson particularly emphasised the relationship between union leaders and the rank and file, in situations where the latter rely on the former for an assessment of the employer's likely concession curve in the event of a strike. If the members think that their agent, the negotiator, is shirking in negotiations and misrepresenting the employer's position, then they may push for strike action to audit the negotiator.

Although not explicitly put forward as a separate theory, there is every reason to expect that principal-agent problems on management's side may also lead to strikes. For example workplace management may be anxious to impress higher level management in a large organisation, by toughing out a strike rather than negotiating to prevent it. There have certainly been examples of such strikes in the UK public sector, where management appears to have deliberately provoked strike action in order to impress government ministers. The ongoing 1994 dispute between Railtrack and the main transport union, the RMT, seems to be a very good example of such a strike.

·**over-optimism:** Even if the parties are fully informed and there are no principal-agent difficulties, strikes could still occur because one or both parties are over-optimistic about their prospects of victory in the dispute. Evidence on negotiators

assessing the same information set in a self-serving biased way has been gleaned from various laboratory studies of dispute incidence in the US (see Milner, 1993b, for details).

Two other theories have also been developed by economists to explain strikes, based respectively on joint costs and risk aversion. Reder and Neumann (1980) argued that the incidence of strikes should be considered within the context of industrial relations institutions. Their joint cost theory turns on the following line of reasoning: strikes are prevented by the establishment of protocols or bargaining rules such as union recognition, well-developed collective bargaining, internal (to the firm) and external dispute procedures such as access to conciliation or arbitration bodies; rules cost time and effort to develop and therefore parties will only use these resources if the potential joint costs of a strike are relatively high; therefore strikes are more likely to occur when the potential joint costs of a strike are low or where parties have had insufficient time to develop bargaining rules. This theory has some common ground with institutional strike theories[4] in suggesting that bargaining rules, such as the provision of conciliation, help to prevent strikes. Finally there is always the possibility that strikes occur because parties are not risk averse - they are prepared to take a gamble in an uncertain situation.

Whilst the logic behind some of these theories is more credible and some have more anecdotal support than others, they have all proved to be notoriously difficult to test with real world data. The main problem lies in the abstract nature of the mechanisms - asymmetric information, principal-agent problems, over-optimistic bargainers and the like - which are not easily measurable in any direct sense. Instead, researchers have been forced to use observable proxy variables. Examples include using relative wages from the previous settlement to proxy a principal-agent problem on the workers' side - lower relative wages at *t-1* might suggest a shirking negotiator, and therefore a higher strike probability at *t*.

To some extent the use of proxy variables is not unusual in trying to test economic theories, however, it becomes more of a problem when different theories make the same prediction on an individual proxy variable. Whether or not the null hypothesis is rejected in this context, it is impossible to differentiate between the alternative theories. For example all five theories would probably predict a negative association between the occurrence of a strike at *t-1* and the probability of one at *t*. The mechanism behind this result would range from: previous strike improved the information set; to no need to audit agents so soon after a strike; to realistic expectations imposed by strike; to protocols developed to prevent reoccurrence of a strike; to gambling tendency scaled down by strike experience.

b. Evidence

Until relatively recently empirical analysis of the incidence of strikes mainly made use of aggregate data either by country or in some cases by industry. Most of these studies were conducted in something akin to a theoretical vacuum - Kennan (1986) describes this as "measurement without theory". With the advent of more scientific strike theories from the late 1960s, empirical researchers have increasingly concentrated on using micro data to specifically test one or more of these theories. Card (1990) and Kennan (1986) provide the best resumés of the empirical strikes

literature, which is reviewed here largely from the perspective of trying to understand the Spanish experience.

i. Macro studies: Recent examples of macro studies include single country aggregate time series analysis (eg Kaufman, 1982 on US manufacturing, 1900-1977), comparison of individual country regressions (Beggs and Chapman, 1987; Paldam and Pederson, 1982), and regressions using multi-country pooled data (Creigh, 1986). These studies follow a standard formula with a so-called "theory" section of impressionistic hypotheses on factors influencing worker propensities to strike (employers' willingness to take a strike or propensity to concede in the face of a strike threat are rarely considered). These factors are then cajoled into a set of often poorly measured proxy variables. Regression reports are then reported which appear to fit the hypotheses, sometimes rather too closely for comfort.

On the surface these studies present a relatively consistent picture of a negative association between unemployment levels and strikes (though Creigh argues that this breaks down in the 1970s and 1980s). Inflation appears to be positively associated with strike activity in all studies which report it (lagged inflation in Kaufman's study). Finally on wages, two of these studies find a significant, positive association between wages and strike activity. The impact of various political variables, like Roosevelt's New Deal in Kaufman's study, are typically examined by the use of simple time dummies. Following these examples, we would measure the impact of Spanish strike laws by using aggregate strikes data and including a dummy for the provision of a right to strike in the 1978 Constitution. This would clearly be an extremely blunt measure of the impact of strike laws, since there were a host of other political, economic and social changes in motion at this time, which might explain the upsurge in strike activity.

Not surprisingly these and previous studies have come in for a great deal of criticism (Wheeler, 1984; and Kennan, 1986, are particularly strong critics) for a number of reasons: theory and analysis are on different levels which cannot easily be connected; results are unstable and more detailed work on individual countries suggest sloppy measurement of economic variables; the measures of non-economic variables are not construct valid (ie they are generally just time dummies); any result can be rationalised, therefore the studies are rather unscientific; case studies and/or micro analysis tells us more about the determinants of strikes. In reply to these points, Kaufman and Paldam and Pederson acknowledge some of the difficulties, but argue that some of these criticisms could apply to any comparative area of study in industrial relations, not just the analysis of strikes. Either way, it is clear that the academic community has turned its collective back on macro studies of strikes in favour of micro analysis using bargaining group, workplace or firm level data. This work has been principally conducted in the US and Canada, but more recently studies using UK and Australian data have also emerged.

ii. Micro studies: Card (1990) summarises the main findings of the US and Canadian empirical literature on strike incidence using micro data as: systematic evidence that higher unemployment reduces strike probabilities; less agreement on the influence of industry-level demand conditions; and general agreement that previous real wages are negatively associated with current strike incidence. Partly because of difficulties alluded to above regarding proxy variables, Card does not

conclude that the weight of evidence supports any one of the economic strike theories or indeed rejects outright any of the theories. Disgruntled with the inherent difficulties of testing economic dispute theories with real world data, some US researchers have turned to the social science laboratory to gauge the relationship between the failure of negotiations and principal-agent problems, asymmetric information, over-optimism and risk aversion. Milner (1993b) reviews and critiques these studies.

With the advent of the Workplace Industrial Relations Surveys in the UK and Australia (WIRS and AWIRS respectively) and the availability of a large database on strikes over pay in UK manufacturing (the CBI Pay Databank), a number of studies have recently emerged from these two countries to complement the North American literature. The studies are a hybrid of styles - some quite similar to the macro studies format (Blanchflower and Cubbin, 1986, using WIRS80; Dawkins and Wooden, 1993, using AWIRS90) and some more scientific in trying to test economic theories (Booth and Cressy, 1990, using WIRS84; Ingram *et al*, 1993, using the CBI data).

There are few consistent findings across the four studies, perhaps unsurprisingly, with plant size, union density (though not observed in the CBI data) and multiple unionism which are all positively associated with strike activity. Without a doubt the Ingram *et al* study is the most useful despite its restriction to manufacturing, because unlike the others it is not a one shot cross-section but has a useful panel element. The researchers were able to observe the previous bargaining experience of the bargaining pair - for example whether or not there were strikes in previous periods and the relative wage outcomes from earlier settlements. Because of the time series element, the study is also able to examine the impact of changes in industrial action law on strike incidence, with the finding that the growing hostility of these laws over the 1980s is significantly associated with lower strike incidence, all else equal. These data have also been used to examine the determinants of the tactics of industrial actions for the first time, since the survey also records the incidence of non-strike action such as overtime bans, works to rule and go slows (Milner, 1994).

Despite the richness of the WIRS and AWIRS data in terms of workplace industrial relations institutions, and the CBI data in terms of a large sample observed over many bargaining rounds, the authors of these studies have been unable to come to strong conclusions about the credibility of any one of the economic strike theories. Ingram *et al* concluded that they find evidence "both for and against" each of the three strike theories they examined, and that:

> *"As on many industrial relations questions, an eclectic approach - drawing from each theory - may prove the most illuminating."* (p.715)

Given the mish-mash of evidence from North America and the less voluminous literature elsewhere, it would be difficult to argue with this statement.

c. Relevance to Spain

Given the breadth of theories and debates about both how to test the theories and the value of existing evidence, it is rather difficult to arrive at definite conclusions about the implications of economic strike theories for Spain. Proper analysis would require a number of micro studies investigating the determinants of strikes in individual plants or workplaces in different industries, regions and time periods. In the absence of such a body of evidence, we are forced to speculate about

what might explain the recent poor Spanish strike record. Although rather alot of the emphasis of economic strike theories are unsurprisingly on the influence of macroeconomic variables, in policy terms we might be rather more interested in the impact of industrial relations institutions since they are probably more easily reformed.

A number of different industrial relations features stand out as possible contributors to the high strike record. These are considered in the context of the different economic strike theories.

·**worker representatives and their constituents**: Principal-agent problems are more likely in an environment in which workers' agents cannot readily be audited, which does appear to be the case in Spain because of the quadrennial election system for worker representatives. There is also a possibility that this representation system engenders asymmetries of information in that employers must find it very difficult to accurately judge the militancy of workers who only display that militancy by their votes for particular candidates in four yearly elections. A case could also be made for over-optimism causing strikes as worker representatives, eager to be re-elected, raise worker expectations to unjustifiably high levels which only a strike defeat can rationalise. So even if empirical evidence was found for an association between the worker representation system and strike activity, this would be consistent with any one of three theories.

·**the multi-level collective bargaining system**: The multi-agent, multi-level collective bargaining system is likely to exacerbate principal-agent problems. Especially in the years of national pacts (up to 1987), the Spanish system of national union representation, industry level, firm level and in some cases workplace level representation probably engenders principal-agent problems. The greater the number of representational levels, the more likely that workers will believe that at least one of their representatives is shirking in negotiations with their own employer, a group of employers or the government. Cases of striking to test the negotiator's estimate of the employers' ability to pay are more likely in such an environment.

·**absence of adequate voluntary dispute resolution procedures**: Given the assumption of joint-cost theory that bargaining protocols help to prevent strikes, one explanation for the high level of strikes in Spain might be the failure to develop a national system of voluntary dispute resolution procedures in addition to the State-run conciliation service. The restriction of labour courts to the resolution of rights disputes, combined with the distrust of a State-controlled arbitration service, may play a role in explaining Spain's strike problem. The obvious test of this proposition must be to examine the performance of the new voluntary arrangements established in the Basque Country in 1991 (European Industrial Relations Review, (EIRR), 1991). If strike rates have fallen, *ceteris paribus*, relative to the rest of the country, then this would provide some substantive support to this proposition.

·**multiple unionism**: A particularly important feature of the Spanish collective bargaining system is the presence of multiple unionism at most bargaining points - because of the proportional representation basis of the worker representative electoral system. If the unions were bargaining separately with the employer(s), then there would be strong grounds for arguing that because of asymmetric information about what share of the employers' rents each union can capture for its members, strikes

are more likely. There is some evidence for this proposition from UK data (see above). However, in situations where the unions bargain jointly with the employer(s), this effect appears to be mollified. The latter - single table bargaining - appears to be the norm in Spain (although this is more of a stylised than a substantiated fact), so the impact of multiple unionism on strike propensities may be curtailed, though this obviously warrants further investigation.

·**fixed-term contracts**: The growth of employment on fixed-term contracts is without doubt, the most important change in the Spanish labour market in the last decade, and therefore its possible implications for strike activity should be analysed. Whilst the layman's view would probably be that fixed-term contracts should reduce strike activity because of the reduced power of the workers, none of the strike theories would arrive at such a conclusion. The relative power resources of workers and employers does not feature in any of the economic strike theories. If anything, asymmetric information theory might predict a positive association between fixed-term contracts and the likelihood of strikes because of the indirect influence of job tenure. Both union and management representatives in bargaining environments with a high proportion of workers on short contracts may find it difficult to assess the militancy of those workers, compared to environments with most workers on permanent contracts and with relatively long job tenures. None of the economic theories would accord with the layman's view of a negative association between fixed-term contracts and strike activity.

This list of institutions and hypotheses is open to Kennan's critique of the theoretical sections of macro-based papers, but at very least it provides some link between these abstract theories and the Spanish experience.

d. Analysis of inter-industry strike activity in Spain

In the absence of publicly available micro data on strike incidence, industry strikes data for the period 1986 to 1992 are analysed to attempt to establish some preliminary evidence on the determinants of strikes. It is a well established fact in virtually all countries which collect strikes data that certain industries are substantially more strike prone than others. In Spain's case, data on days lost per thousand employees reported in Table 3 confirm this. Coal extraction with an average of over 7 days lost through strike action per employee per year is, as is typical elsewhere, the most strike ridden industry, followed by mineral extraction and the railways. Very low strike rates are found in distribution, business services, footwear and clothing, rubber and plastics and instrument engineering.

Table 4 presents the results of a simple regression analysis of inter-industry strike activity. Independent variables include the extent of collective bargaining coverage, a measure of bargaining decentralisation, the proportion of employees on fixed-term contracts and the composition of worker representatives in the industry (from the 1990 worker representative election results). The dependent variable is the log of days lost per thousand employees.

Although there are some important worries about endogeneity in the data (non-observed variables jointly determining independent and dependent variables), the results are certainly interesting and offer some pointers to the high level of strike activity in Spain. Collective bargaining institutions in terms of coverage, levels and

composition of representatives are significantly associated with the level of strike activity. Some of the results are rather as expected such as the positive association with collective bargaining coverage, and the negative relationship with the proportion of non-union worker representatives in the industry. A dichotomous variable on whether or not more than 50% of workers are affected by firm-level agreements is negatively associated with strike activity, significantly so when industry dummies are included. The proportion of worker representatives from Unión General de Trabajadores (UGT) slates shows a strongly negative result, whereas the proportion of Comisiones Obreras (CCOO) representatives is positively associated with days lost (although the coefficient becomes non-significant once industry dummies are included).

Bearing in mind concerns about endogeneity which might suggest that unobserved forces, like workforce characteristics, are associated with, say, high bargaining coverage and high strike incidence, these results are still of some value. The high and sustained level of bargaining coverage in Spain, combined with the continuing dominance of multi-employer bargaining may play a part in explaining the high level of strike activity. The negative coefficient on the decentralised bargaining dummy is consistent with the multi-agent, multi-level asymmetric information hypothesis outlined above. The associations with the composition of worker representatives, combined with the relative stability in the voting shares of the main unions since 1980, suggests that union objectives and inter-union politics may have had some influence on the Spanish strike record. These areas clearly warrant further investigation.

Of especial interest is the result on the proportion of workers who are employed on a fixed-term contract in each industry, which produces a significant negative coefficient. The higher the proportion of fixed-term contract workers, the lower is predicted strike activity. The coefficient remains significant (though only just) when industry dummies are included (column II), and when both industry and year dummies are included in the equation (column III). As explained above, this result would not have been predicted by any of the strike theories, and if anything runs counter to the intuition of asymmetric information theory.

The result may be because of a direct causal link - permanent workers have a greater propensity to strike because they are permanent, holding all else equal - but an indirect link is perhaps more likely. An indirect link could be associated with either the different composition of permanent and fixed-term employees or the different composition of firms using a high proportion of fixed-term workers compared to those using relatively few. Possible workforce composition effects include age, gender and occupation with permanent workers tending to be older, disproportionately male and in manual occupations who are (for some reason) more predisposed to strike. Firm composition effects might be plant size and growth rates with small plants employing disproportionately more temporary workers and faster growing plants also favouring fixed-term contracts. The positive association between plant size and strike incidence is one of the few "facts" about strikes, but the link between employment growth and strikes is not clearly established. It is unfortunate that the data analysed in Table 4 only start in 1986, since it would be interesting to investigate whether or not inter-industry strike patterns were different before and after the spread of fixed-term contracts from 1984.

Whilst this result on fixed-term contracts is fascinating and certainly warrants further analysis, it does little to explain the high level of Spanish strike activity even into the late 1980s. If anything, it makes the sustained high level of activity harder to explain since the proportion of fixed-term workers in employment increased apace in the late 1980s to reach almost 30%, at the same time as strike activity per employee remained high. This result can only really be explained by a greater propensity on the part of permanent workers to go on strike, which compensated for the change in employment composition towards workers apparently significantly less disposed to strike. Any contract-forms-based explanation of strike activity in Spain would have to rationalise such behaviour.

Because of the restricted number of independent variables used in equation I of Table 4, industry dummies are included in the further two equations to test the possible role of unobserved industry level divergence. The data produce results which would probably be more or less replicated in all developed countries. The default or omitted industry is other services, which includes many public services. Therefore all coefficients report strike activity probabilities compared to that in other services. Industries positively associated with strike activity include energy and water supply (which includes coal mining), metal goods and engineering, construction and transport and communication (the latter of course incorporating the railways). Less strike prone industries are distribution and banking, insurance and finance. While on the surface these results might seem rather obvious, it is clear that we need more comprehensive micro data to discover what is driving these inter-industry strike differentials, given that we have controlled for some industry characteristics which might influence the level of strike activity.

6. Proposed Changes in Spanish Strike Law

Although the main conclusion of this paper is that Spanish strike law probably plays little role in explaining the high level of strike activity in Spain compared to most other EU countries, this does not necessarily imply that reform of strike law will have negligible impact on strike incidence. Even though the 1978 Constitution's provision of a right to strike was predicated on the assumption that another statute would more clearly define the boundaries of that right, it is only in recent years that serious proposals have come forward from policy makers for such legislation. These proposals and their possible implications for strike activity are discussed below.

a. The proposals

After nearly six months of debate and negotiations between the Minister of Labour and the leaders of the UGT and CCOO, an agreement was reached in November/December 1992 on a proposal for a new strike law (EIRR, 1992a and 1992b). Because of the general election in 1993 this bill was put on ice for a period. The main provisions concern new rules over strikes in essential services which are defined in the bill as health, defence, public security, transport and funeral services:

·Any strike in these sectors will be subject to a `minimum service provision' which appeared to exist already under the 1978 Constitution, but perhaps was less clearly directed to essential services.
·Trade unions and employers will have to negotiate what constitutes minimum service provision for each services. If such negotiations fail the issue will be

submitted to mediation and ultimately central or regional government dictat. Any strike which violates the minimum service provision will be illegal.

·The public sector strike notification period of 10 days will be extended to designated essential services - which presumably includes some private sector providers.

·Failure to fulfil minimum service provision may result in dismissal.

Other clauses of the bill also stipulate that strikes which subvert "constitutional order", violate notice periods, or are targeted at "strategic sectors" of companies will be illegal. The most important focus of the legislation is therefore on these designated essential services. The government must believe that a minimum service provision will reduce the impact of strikes by such workers and therefore presumably reduce the chances of such strikes occurring at all.

b. Will these new regulations have a marked effect on Spain's poor strike record?

This turns on two factors: whether or not the regulations will reduce the level of strike activity in the sectors for which this is principally designed - the essential service industries, and how poor the relative strike records of these industries are, compared to other industries (and of course their relative employment size). Answering the latter question is obviously more straightforward than answering the first.

The industries of particular relevance to this proposed legislation are transport (71 to 76), defence and public security (91 and 99, which also includes public administration) and health (94). The only one of these sectors which seems particularly strike prone is transport and particularly the railways. None of the other two groupings show a particularly high level of strike activity. Therefore the data suggest that even if the new strike law actually succeeds in changing behaviour within the targeted industries, this would still make a relatively minor dent in the overall Spanish picture. The success of the law in reducing strike activity in the targeted industries will depend on three factors: the willingness of unions to flout the law; the degree of sanctions available to employers against such flouting (which will obviously have a direct influence on the degree of flouting); the willingness of employers to use whatever sanctions are available against unions and workers in breach of it. The government may also have to consider the provision of a *quid pro quo* in the form of an independent conciliation and arbitration service along the lines of ACAS.

7. Conclusions

Spanish strikes law does not appear to explain the high level of strikes in Spain compared to the other large EU countries during the 1980s and early 1990s. Spanish law is not particularly permissive compared to Germany and particularly France and Italy, though both procedural and substantive rules are less stringent than those in Britain. This conclusion prompts two important questions: if not strikes law, what can explain the high level of strike activity in Spain? and could more fundamental changes in Spanish strike law reduce strike activity?

On the first question, strike theories and the range of results from empirical studies provide a welter of possible culprits on whom to pin the blame. These include macroeconomic factors, political variables, union membership and organisation, the lack of interest arbitration facilities, other labour laws on worker

representation, works councils and fixed-term contracts. Simple regression analysis of inter-industry data for a seven year period suggest important roles for the collective bargaining system, union objectives, inter-union rivalry and fixed-term contracts. However, there also appear to be substantial industry fixed-effects which require more micro based studies to explain. Most of the interesting work in the disputes arena is now on micro data anyway, and this seems to be the obvious next step for Spanish research, especially if collective bargaining becomes more decentralised. The experiment with conflict settlement in the Basque Country also merits research interest, to establish whether or not the negotiation of a central agreement on voluntary dispute settlement procedures from 1991 promoted the reduction of strike activity compared to other regions without such apparatus.

Given the British experience it is tempting to argue that toughening up Spanish strike laws will reduce strike activity. Possible reforms would include: permitting non-strike action; compulsory strike ballots - ie removing the right of union leaders and works councils to call strikes; increasing sanctions available to employers in the event of an illegal strike; cooling-off periods; and compulsory conciliation or arbitration. Some of these reforms, especially compulsory arbitration, would be politically unfeasible because they are too reminiscent of Franco's restrictions on strikes. Compulsory strike ballots could be proposed as a means to increase union democracy and might well lead to reduced strike activity if they provide accurate information on the strength of feeling among workers about particular issues. Permitting non-strike action might provide a lower cost means of expressing dissatisfaction compared to the strike. However, the most fundamental difference between the UK and Spain is that unions were on the decline in the UK (in numerical and organisational terms) at the same time as the introduction of anti-strike legislation. By comparison, union power in terms of bargaining coverage looks unassailable in Spain, therefore it is unlikely that changes in strike laws, however far-reaching, will have a particularly significant effect on strike activity.

ENDNOTES

*I am grateful to Manual Arellano, Samuel Bentolila, Juan Dolado, Juan Jimeno, David Metcalf and Gustavo Nombela for comments on an earlier draft.

1. The Advisory, Conciliation and Arbitration Service, a statutory body, established in 1974.

2. According to some sources the local labour inspectors play an informal conciliation role in disputes in their areas. There appear to be no published data on their activities, so we are unable to pass comment on their influence on strike activity.

3. There are three circumstances under which a lock out may be legal: if there is a clear danger of damage to goods or persons; if there is an illegal occupation of the employer's premises or there is likely to be one; and, rather cryptically, if there are irregularities that have a "deep" affect on the production process (Guia Laboral, 1993).

4. This school of thought, as its name suggests, emphasises the importance of collective bargaining institutions as determinants of inter-industry and inter-country differences in strike activity. Adherents include Clegg (1976) and Durcan *et al* (1983).

APPENDIX A

Disputes data

1. Strike Activity in Spain: Table 1 and Figures 1 to 4.

Sources:

Stoppages and workers involved

1980-92: Ministerio de Trabajo y de la Seguridad Social, Boletín de Estadísticas Laborales, HUE-1.
1976-79: Miguelez and Prieto (1991), Cuadro 1A Anexo Estadístico.
1970-75: Miguelez and Prieto (1991), Cuadro 1B Anexo Estadístico.

Days lost

1980-92: Ministerio de Trabajo y de la Seguridad Social, Boletín de Estadísticas Laborales, HUE-1.
1976-79: Miguelez and Prieto (1991), Cuadro 1A Anexo Estadístico.
1970-75: Days lost per 1000 employees taken from Creigh (1989), Table 9.3.

Employees in employment

1976-92: Ministerio de Trabajo y de la Seguridad Social, Boletín de Estadísticas Laborales, EPA-13.

Notes:

a. Strikes data for Catalonia are excluded for the years 1983-85, and those for the Basque Country are excluded for the years 1986-89.

b. There are significant discrepancies between the official series on stoppages and workers involved (reported here from 1976 onwards) and the continuation of the 1970-75 series which is that collected by the CEOE (employers' organisation). For example in 1988 (the last reported year of the CEOE series) 2823 stoppages were recorded with over 8m workers involved, compared to the official series of 1193 stoppages involving 6.7m workers. Unfortunately the CEOE series as reported in Miguelez and Prieto does not include data on days lost (it actually has hours lost).

c. There are also discrepancies between the official figures on days lost per 1000 employees (reported from 1976) and the continuation of the 1970-75 series which is taken from Creigh (1989), but of a much smaller magnitude than those between the CEOE and official data. For example, for 1984 Creigh reports 890 days lost per 1000 employees whereas the official Spanish data put the figure at 871. Creigh refers to an unpublished paper for his sources in this period which means that it is not immediately obvious why the discrepancies arise. It is probably because of revisions made to the official figures not included in Creigh's data.

2. Non-Strike Collective Disputes: Table 2 and Figure 4

Sources:

All data are drawn from Ministerio de Trabajo y de la Seguridad Social, Boletín de Estadísticas Laborales. Specific tables are:

Conciliation cases	MAC-1
Mediation cases	MAC-1

Labour court cases AJS-1

Notes:
a. Basque Country data on conciliation and mediation cases are not included in the totals for 1986-1990. Basque Country mediation cases are also excluded from the 1991 total.
b. The failure of conciliation rate in Table 2 calculated as the sum of categories "Sin avenencia" (no agreement), "Intentados sin efecto" (one party did not appear at the hearing) and "Otras causas" (problems in communication of the hearing dates etc) in MAC-1, divided by the total number of cases.

3. Days Lost Data for UK, France, Italy and Germany: Figures 5 and 6

Sources:
1970-84 Creigh (1989), Table 9.3.
1985-92 Bird (1993), Table 1.

4. Days Lost per 1000 Employees by Industry in Spain 1986-1992: Tables 3 and 4

Sources:
Days lost
Ministerio de Trabajo y de la Seguridad Social, Boletín de Estadísticas Laborales, HUE-6.
Employees
Ministerio de Trabajo y de la Seguridad Social, Boletín de Estadísticas Laborales, EPA-16.

Notes:
a. Days lost data for 1986-89 do not include the Basque Country, whereas industry employees in employment data do include it.
b. Days lost data do not include days lost through general strikes.

5. Independent Variables by Industry for Regression Analysis, Table 4

Sources:
Collective bargaining coverage and levels
Ministerio de Trabajo y de la Seguridad Social, Boletín de Estadísticas Laborales, CON-15 and CON-18.
Proportion of employees on fixed-term contracts
Supplied by Juan Jimeno, FEDEA.
Worker representatives (1990 election)
Supplied by Juan Jimeno, FEDEA.

APPENDIX B

Strike Law in 12 EU Countries

1. Belgium

General principles:	"... almost complete freedom to engage in industrial warfare by the social partners..." ie very high level of autonomy from legal interference.
Right to strike for individual workers:	Employment contract is merely suspended during strike.
Right to organise strike action:	Not confined to trade unions.
Procedural rules applied to strikes:	None, though parties often impose their own through peace obligations and dispute procedures.
Sympathy strikes:	Lawful.
Political strikes:	Unlawful.
Non-strike industrial action:	Unlawful.
Picketing:	Lawful, if peaceful.
Dispute procedures:	Nothing compulsory.
Lock-out:	Lawful but unusual.
Essential services:	No statutory position but joint committee of employers and TUs must determine what services to be maintained in event of strike and how they are maintained.
Date of information:	1990.
Source:	Blanpain, R., in Blanpain, R., (ed), *International Encyclopedia.*

2. Denmark

General principles:	General right to strike **except** during period of collective agreement.
Right to strike for individual workers:	Contract of employment is terminated. But many collective agreements stipulate suspension rather than termination.
Right to organise strike action:	Not confined to trade union, any group of more than 1 worker can organise industrial action.

Procedural rules applied to strikes:	Notice period is same as would apply to termination of contract unless collective agreement states otherwise (and many do).

Denmark continued

Sympathy strikes:	Lawful.
Political strikes:	Unlawful but minimal sanctions apply.
Non-strike industrial action:	Apparently lawful.
Picketing:	Not clear.
Dispute procedures:	Not mentioned.
Lock-out:	Not mentioned.
Essential services:	Do not appear to be treated differently.
Date of information:	1988.
Source:	Jacobsen, P., in Blanpain, R., (ed), *International Encyclopedia.*

3. France

General principles:	Constitutionally guaranteed right to strike in pursuit of `occupational or professional aims'.
Right to strike for individual workers:	Employment contracts are merely suspended during a strike.
Right to organise strike action:	Conferred on both individuals and unions.
Procedural rules applied to strikes:	Notification period only in public sector.
Sympathy strikes:	Unclear position. Some attempt to delineate internal and external (to enterprise) sympathy action.
Political strikes:	Unlawful unless in occupational or professional interests.
Non-strike industrial action:	Unlawful.
Picketing:	Legal, if peaceful.
Dispute procedures:	Voluntary conciliation provided but no obligation to use. No compulsory arbitration. No peace obligations in collective agreements, therefore intra-contractual strikes are permitted.
Lock-out:	Apparently unlawful.
Essential services:	Do not appear to be any special rules for essential services.
Date of information:	1987.
Sources:	Betten, L. (1985), Despax, M and Rojot, J. in Blanpain, R., (ed), *International Encyclopedia.*

4. Germany

General principles:	Strikes only lawful when complementary to collective bargaining. Notion of `proportionality' - strikes must: respect peace obligation; be preceded by secret ballot; be `fair' (not aim to destroy firm); and be weapon of last resort (aka *ultima ratio*). Exception made for `warning strikes'.
Right to strike for individual workers:	Contract of employment is suspended.
Right to organise strike action:	Held only by licensed trade union taking part in collective bargaining.
Procedural rules applied to strikes:	Secret ballot. Peace obligation means that any dispute procedures in collective agreement must be exhausted.
Sympathy strikes:	Permissable in very narrow circumstances.
Political strikes:	Unlawful.
Non-strike industrial action:	Not mentioned. Probably unlawful because of peace obligation during contract.
Picketing:	Not mentioned.
Dispute procedures:	Not prescribed by law but parties encouraged to have procedures in collective agreements.
Lock-out:	Not mentioned.
Essential services:	Have to be kept running because of proportionality principle. No statutory rules on definition of `essential services'.
Date of information:	1986 (therefore information is for old West Germany).
Sources:	Betten, L. (1985), Weiss, M. in Blanpain, R., (ed), *International Encyclopedia.*

5. Great Britain

General principles:	Immunities based system. Individuals have no `right to strike', instead protection from civil tort action provided for organisers of strikes (individuals and/or unions). Immunity only maintained by adherence to extensive procedural rules for strikes over `trade disputes' ie between workers and their own employer at least mainly related to industrial relations issues.
Right to strike for individual workers:	None. Striking worker can be dismissed without compensation. Previous restrictions preventing victimisation of strike leaders now relaxed.

Right to organise strike action:	Held by both individuals and trade unions for certain types of strikes if strict rules are followed. Illegal wild-cat strikes (eg unballoted) must be condemned by union leaders or union may be sued. Employers, union members and consumers can take civil action against strike organisers for illegal strikes.
Procedural rules applied to strikes:	Compulsory pre-strike postal ballots. Employer to be notified 7 days before ballot takes place. Wording of ballot paper must conform to statute.
Sympathy strikes:	Unlawful, as are strikes in pursuit of a closed shop or over disputes between workers.
Political strikes:	Unlawful.
Non-strike industrial action:	Covered by same rules as strikes, ie lawful within certain strictly defined rules.
Picketing:	Lawful if at own place of work and peaceful. Code of Practice recommends maximum of 6 pickets per entrance.
Dispute procedures:	Provided through statutory body (ACAS). Extensive use of collective conciliation. Little use of mediation and arbitration. NB: dispute procedures in collective agreements do not constitute peace obligation (as in other EU countries) because collective agreements are not legally binding.
Lock-out:	Lawful but unusual.
Essential services:	Criminal offence for armed forces and police. Some ambiguity over communications workers and prison officers.
Date of information:	1993.
Source:	Simpson, R., (1993).

6. Greece

General principles:	Constitutionally protected right to strike. Minimum services have to be maintained during a strike.
Right to strike for individual workers:	Employment contract suspended during strike.
Right to organise strike action:	Held by trade unions only. Wild-cat strikes are illegal.
Procedural rules applied to strikes:	24 hours notification period, 4 days for some public sector workers.
Sympathy strikes:	Apparently restricted to unions in multi-national companies - may mean multi-plant.
Political strikes:	Not mentioned.
Non-strike industrial action:	Not mentioned.
Picketing:	Not mentioned.
Dispute procedures:	Voluntary conciliation available. Apparently leads to compulsory arbitration.
Lock-out:	Not mentioned.
Essential services:	Security forces banned from striking. Limitations for other public sector groups - civil servants, health workers, communications.
Date of information:	1990.
Source:	Koniaris, T. in Blanpain, R., (ed), *International Encyclopedia.*

7. Ireland

General principles:	Very similar to Great Britain ie immunities from civil tort action for unions organising action. Strikes permitted within certain rules.
Right to strike for individual workers:	Contract of employment is terminated.
Right to organise strike action:	Not restricted to trade unions but must be a trade dispute and abide by the `golden formula'.
Procedural rules applied to strikes:	Secret ballots compulsory after 1990 Industrial Relations Act. Notice must be similar length to that required to terminate contracts ordinarily. At least one week prevents employer obtaining *ex parte* injunction.
Sympathy strikes:	Probably unlawful.
Political strikes:	Probably unlawful.
Non-strike industrial action:	Not mentioned. Presumably covered by same provisions as strikes.
Picketing:	Not mentioned. Presumably same as GB.
Dispute procedures:	Provided through Labour Relations Commission. Provision for ministerial referral of disputes affecting public interest.
Lock-out:	Presumably same as GB.
Essential services:	Strikes are a criminal offence for gas and electricity workers. Police and armed forces cannot join unions or take industrial action.
Date of information:	1991.
Source:	Redmond, M. in Blanpain, R., (ed), *International Encyclopedia.*

8. Italy

General principles:	Constitutionally guaranteed right to strike "within law regulating it". But no statute law has defined the limits of this right.
Right to strike for individual workers:	Contract of employment only suspended during strike.
Right to organise strike action:	Not restricted to unions.
Procedural rules applied to strikes:	Only in public sector (see Essential services)
Sympathy strikes:	Permitted if a common interest exists.
Political strikes:	No longer completely illegal but cannot be designed to "subvert the constitutional order".
Non-strike industrial action:	Tends to be regarded as illegal by the courts though with some controversy.
Picketing:	Lawful if peaceful.
Dispute procedures:	Nothing in law but increasing use of conciliation included in collective agreement.
Lock-out:	Apparently unlawful.
Essential services:	Police and armed forces cannot strike. Since Act in 1990 a notification period of 10 days required and minimum services to be maintained.
Date of information:	1991.
Sources:	Betten, L. (1985), Treu, T. in Blanpain, R., (ed), *International Encyclopedia.*

9. Luxembourg

General principles:	A general right to strike, no other details provided.
Right to strike for individual workers:	Not mentioned but presumably the contract of employment is suspended.
Right to organise strike action:	Presumably not restricted to unions.
Procedural rules applied to strikes:	Apparently none.
Sympathy strikes:	Apparently lawful.
Political strikes:	Apparently lawful.
Non-strike industrial action:	Not mentioned.
Picketing:	Presumably lawful.
Dispute procedures:	Not mentioned.
Lock-out:	Not mentioned.
Essential services:	Not mentioned, presumably no special provisions.
Date of information:	1990.
Source:	Schintgen, R. in Blanpain, R., (ed), *International Encyclopedia.*

10. The Netherlands

General principles:	Legal position of strikes is unclear. Mixture of court cases and legislative bills (not acts) provide some `rules' - strike unlawful if: contrary to statute law; contrary to collective agreement; contrary to existing norms between union and employer; it is manifestly unreasonable towards the employer.
Right to strike for individual workers:	Employment contract suspended during strike.
Right to organise strike action:	Held only by trade unions. Wild-cat strikes are illegal.
Procedural rules applied to strikes:	Not clear but presumably strikes are only lawful when contracts are renegotiated.
Sympathy strikes:	Not clear.
Political strikes:	Not clear.
Non-strike industrial action:	Not clear but presumably unlawful.
Picketing:	Not mentioned.
Dispute procedures:	No formal dispute procedures supported by the state.
Lock-out:	Not mentioned.
Essential services:	Not clear.
Date of information:	1993.
Source:	Rood, M. in Blanpain, R. (ed), *International Encyclopedia.*

11. Portugal

General principles:	Right to strike is safeguarded in broad terms such that common law cannot restrict that right.
Right to strike for individual workers:	Employment contract is suspended during strike.
Right to organise strike action:	Held by both unions and worker assemblies (works councils?).
Procedural rules applied to strikes:	For workers assemblies to call strike, must have conducted secret ballot of majority of workers in the enterprise with a majority supporting action.
Sympathy strikes:	Lawful.
Political strikes:	Lawful.
Non-strike industrial action:	Unclear.
Picketing:	Lawful, if peaceful.
Dispute procedures:	Some use of state provided conciliation but little use of either mediation or arbitration.
Lock-out:	Prohibited.
Essential services:	During any strike workers and unions have to perform essential services - not clear how these are defined.
Date of information:	1988.
Source:	Pinto, M. in Blanpain, R., (ed)., *International Encyclopedia.*

12. Spain

General principles:	Constitutionally protected right to strike.
Right to strike for individual workers:	Contract of employment is suspended during strike.
Right to organise strike action:	Held by unions and works councils / workers' representatives.
Procedural rules applied to strikes:	Five days advance notice to employer, 10 days in public sector. Compulsory strike committee which must guarantee the provision of services for the security and maintenance of the company during the strike.
Sympathy strikes:	Apparently permissable after 1981 Constitutional Court ruling.
Political strikes:	Unlawful.
Non-strike industrial action:	Unlawful.
Picketing:	Lawful, if peaceful.
Dispute procedures:	Provision for collective conciliation, mediation and arbitration for interest and rights disputes. Labour courts for rights disputes only. State can sanction compulsory arbitration for disputes affecting public interest.
Lock-out:	Lawful in certain situations.
Essential services:	Security forces and merchant navy prohibited from striking. Hospital and railway staff have restricted rights.
Date of information:	Up to 1992.
Sources:	Guia Laboral (1993), ILO (1985), McElrath (1989).

TABLE 1

Strike Activity in Spain 1970-1992

Year	Stoppages	Workers involved (000s)	Days lost per 1000 employees
1970	817	366	137
1971	601	267	107
1972	688	305	70
1973	811	441	125
1974	1193	626	199
1975	855	556	205
1976	1568	3639	1438
1977	1194	2956	1882
1978	1128	3864	1341
1979	2680	5713	2253
1980	1365	1170	777
1981	1307	1126	660
1982	1225	875	361
1983	1451	1484	575
1984	1498	2242	871
1985	1092	1511	446
1986	914	858	298
1987	1497	1881	630
1988	1193	6692 (1895)	1394 (819)
1989	1047	1382	415
1990	1231	864	263
1991	1552	1945	472
1992	1296	5170 (1679)	688 (447)

Notes: Numbers in brackets are excluding workers involved and days lost in 1988 and 1992 general strikes.

Sources: see Appendix A.

TABLE 2

Collective Conciliation in Spain 1981-1992

Year	Number of cases	Agreement reached	No agreement	% failure
1981	2505	163	2342	93.5
1982	2247	103	2144	95.4
1983	3235	193	3042	94.0
1984	2266	114	2152	95.0
1985	1779	127	1652	92.9
1986	1488	130	1358	91.3
1987	1691	174	1517	89.7
1988	1871	197	1674	89.5
1989	1912	213	1699	88.9
1990	1686	202	1484	88.0
1991	2456	218	2238	91.1
1992	1909	145	1764	92.4

Notes and Sources: see Appendix A.

TABLE 3
Days Lost per 1000 Employees by Industry: Spain 1986-1992
(average of annual figures over period)

Industry	SIC Order	Days lost per 1000 employees
Agriculture and horticulture	1-3	268.0
Forestry and hunting	4,5	41.0
Fishing	6	400.6
Coal extraction	11	7577.9
Extraction of mineral oils	12-14	2107.2
Electricity, gas and water	15,16	119.5
Extraction and preparation of metalliferous ores	21,23	583.6
Metal manufacturing	22	1247.2
Manufacture of non-metallic minerals	24	92.2
Chemical industry	25	313.5
Manufacture of metal goods n.e.s.	31	1201.7
Mechanical engineering	32	127.9
Manufacture of office machinery and electronic goods	33,35	172.5
Manufacture of electrical goods	34	540.0
Manufacture of motor vehicles and parts	36	808.0
Shipbuilding and other vehicles	37,38	433.0
Instrument engineering	39	40.4
Food, drink and tobacco	41,42	268.9
Textile industry	43	783.9
Manufacture of leather and leather goods	44	267.2
Footwear and clothing	45	34.6
Timber and wooden furniture	46	703.7
Paper, printing and publishing	47	530.8
Rubber and plastics	48	39.2
Other manufacturing industries	49	450.3
Construction	50	842.5

TABLE 3 continued

Industry	SIC Order	Days lost per 1000 employees
Wholesale distribution, scrap	61-63	36.1
Retail distribution	64	39.7
Restaurants, cafes and hotels	65,66	184.9
Repairs	67	104.9
Railways	71	1475.7
Other inland transport	72	665.4
Sea and air transport	73,74	541.0
Supporting services to transport	75,76	678.3
Banking and finance, real estate	81-83	256.3
Business services, renting	84-86	38.3
Public administration and defence	91,99	215.8
Sanitary services	92	1120.2
Education	93	510.4
Health services	94	1081.1
Recreational and cultural services	95,96	135.6
Personal services	97	19.6
Domestic services	98	3.8

Sources: see Appendix A.

TABLE 4
Regression Analysis of Spanish Industry Strikes Data 1986-1992

Variables		I	II	III
Collective bargaining coverage		1.604***	1.720***	1.789***
		(0.296)	(0.296)	(0.301)
More than 50% of workers affected by firm-level agreements		0.258	-0.712**	-0.713**
		(0.304)	(0.356)	(0.358)
Proportion of employees on fixed-term contracts		-3.465***	-1.889*	-3.124**
		(0.877)	(1.014)	(1.468)
Proportion of worker representatives:	UGT	-5.411***	-6.216***	-5.265***
		(1.594)	(1.646)	(1.791)
	CCOO	2.791**	0.371	0.538
		(1.333)	(1.641)	(1.646)
	CIG	7.617	10.910	9.228
		(1.140)	(6.861)	(6.980)
	Non-union	-13.747***	-14.116***	-13.217***
		(3.851)	(4.231)	(4.286)
Agriculture, forestry and fishing			-0.322	-0.134
			(0.466)	(0.504)
Energy and water supply			1.775***	1.534***
			(0.505)	(0.529)
Extraction of minerals, metal manufacture, chemicals			0.390	0.284
			(0.362)	(0.369)
Metal goods, engineering and vehicles			0.915**	0.833**
			(0.381)	(0.383)
Other manufacturing industries			0.204	0.165
			(0.337)	(0.337)
Construction			1.067*	1.282*
			(0.637)	(0.666)
Distribution, hotels and catering, repairs			-0.895**	-0.906**
			(0.369)	(0.368)
Transport and communication			1.081***	0.934**
			(0.397)	(0.408)
Banking, insurance and finance			-1.381***	-1.419***
			(0.480)	(0.479)
Year dummies		No	No	Yes
Constant		6.502***	7.159***	7.254***
		(0.908)	(0.929)	(0.943)

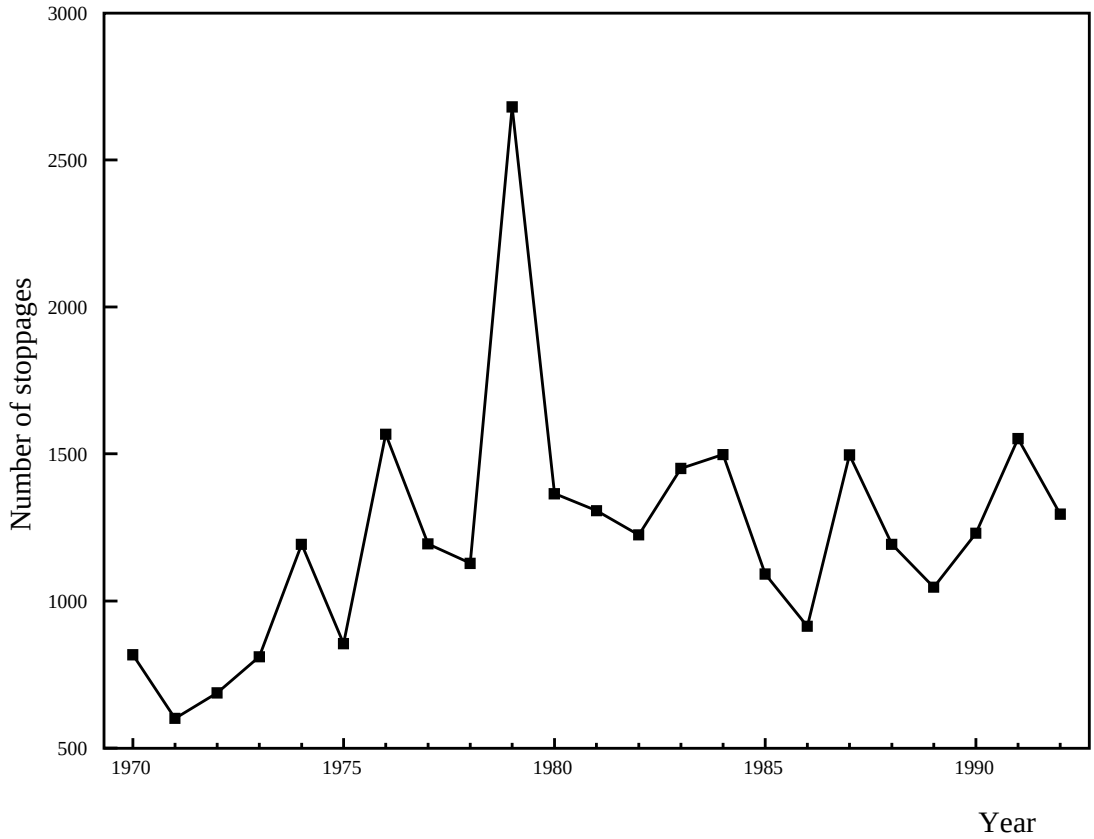
Diagnostics	I	II	III
n	290	290	290
F	15.94	11.61	8.86
Prob F	0.000	0.000	0.000
Adjusted R^2	0.266	0.370	0.375

Notes:
1. Dependent variable is log of days lost due to strikes per thousand employees in employment. Note that days lost due to general strikes are excluded from the data.
2. Fixed term contracts: there are no disaggregated numbers for 1986, therefore 1987's data are used for 1986 observations.
3. Worker representatives data are for the 1990 elections only.
4. Default category for industry dummies is SIC 9 = Other services.
5. Significant at *** 1%, ** 5%, *10%.

Sources: see Appendix A.

FIGURE 1

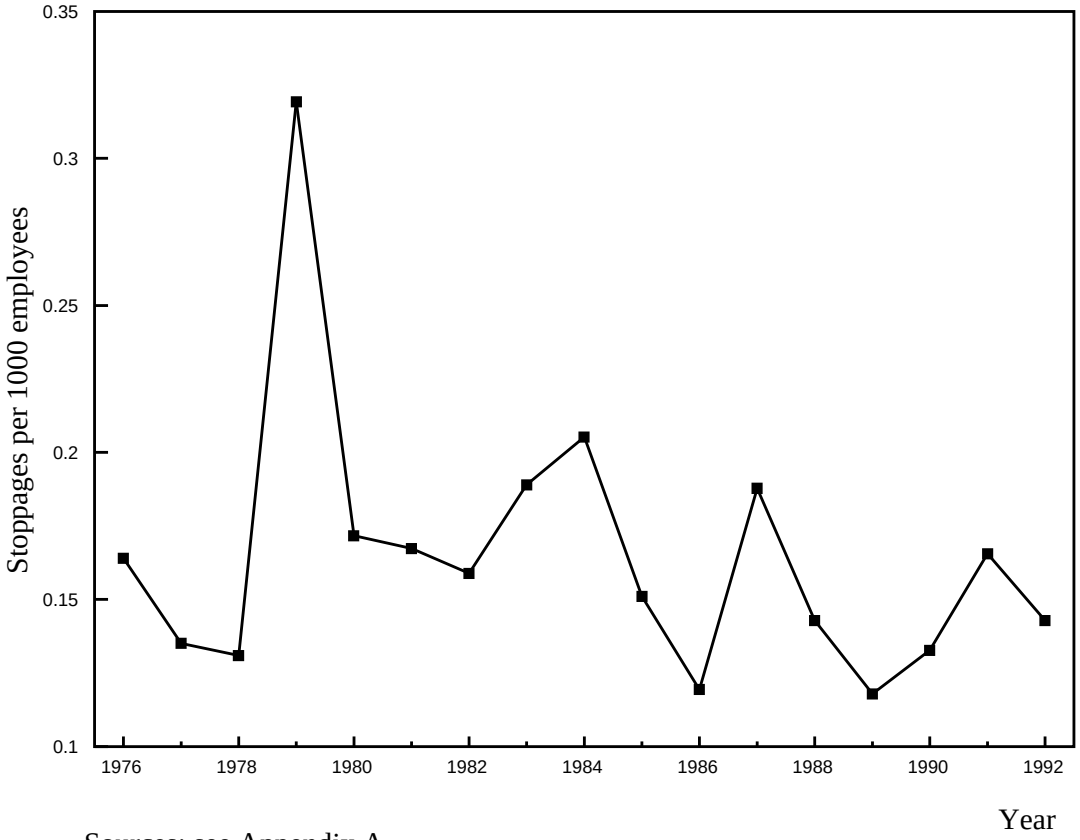
Stoppages in Spain 1970-1992



Source: see Appendix A.

FIGURE 2

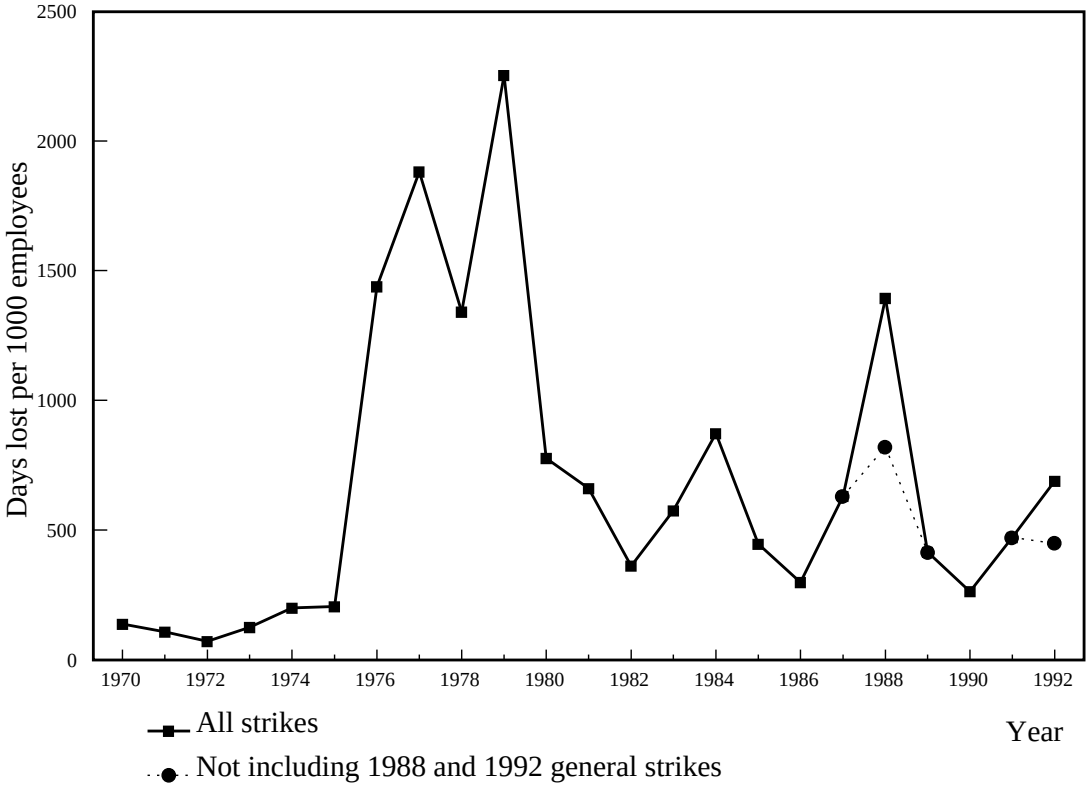
Stoppages per 1000 Employees: Spain 1976-1992



Sources: see Appendix A.

FIGURE 3

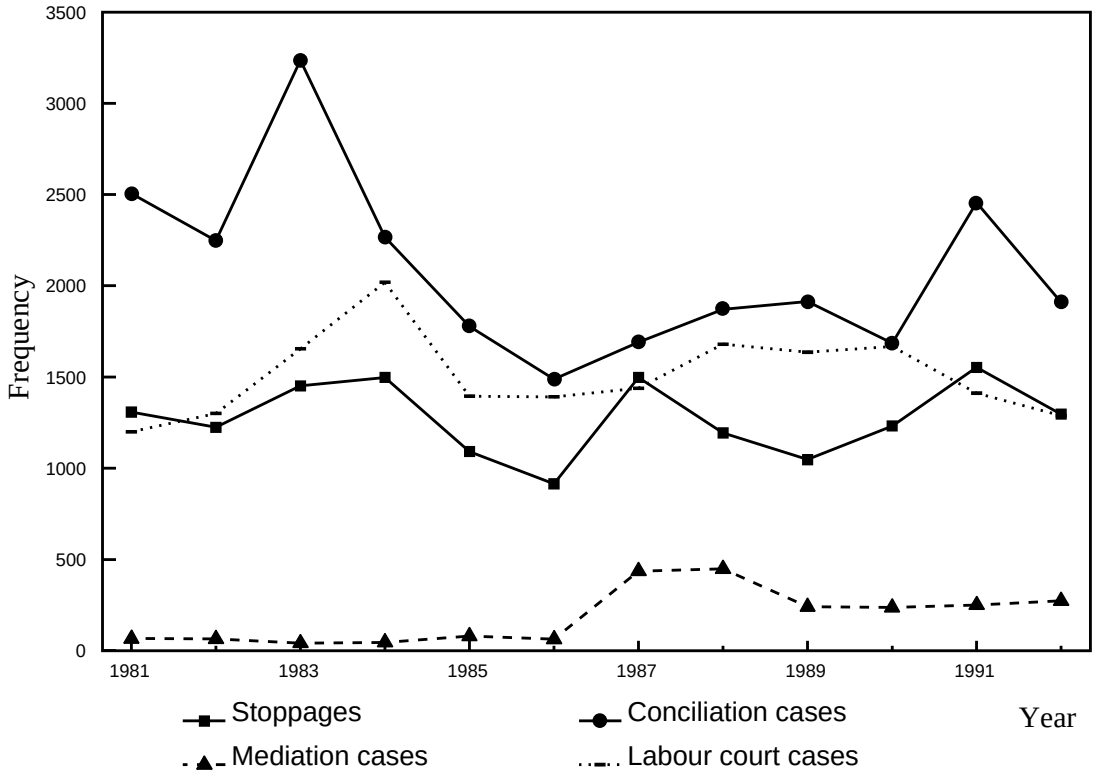
Days Lost per 1000 Employees in Spain: 1970-1992



Sources: see Appendix A.

FIGURE 4

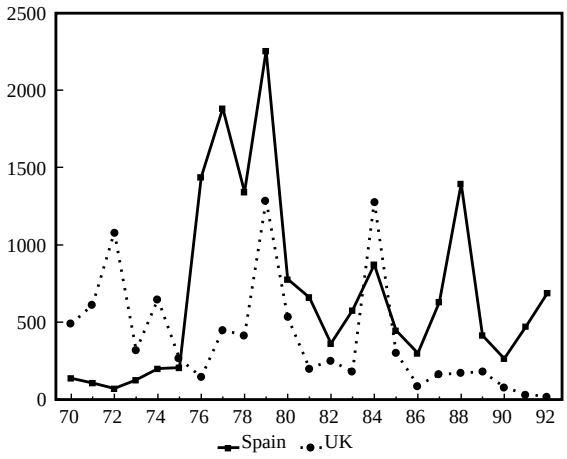
Collective Disputes in Spain 1981-1992

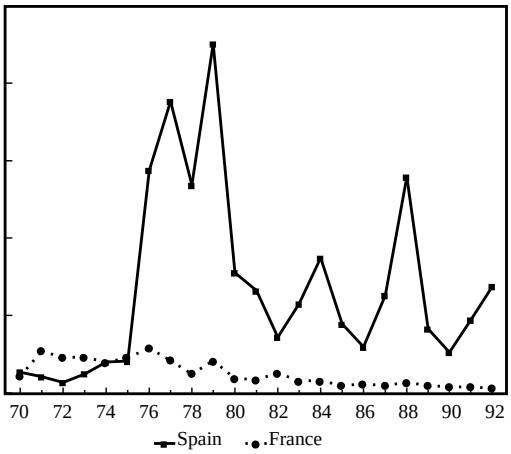


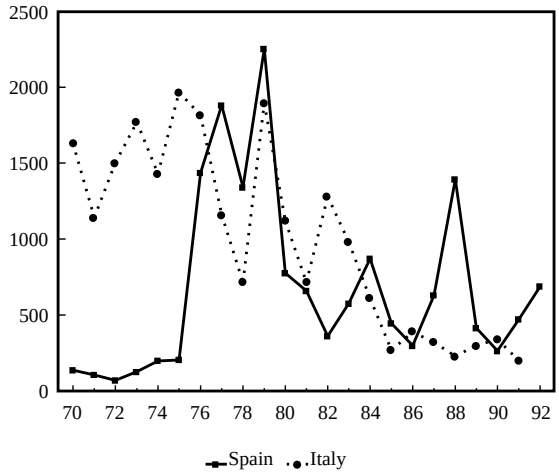
Sources: see Appendix A.

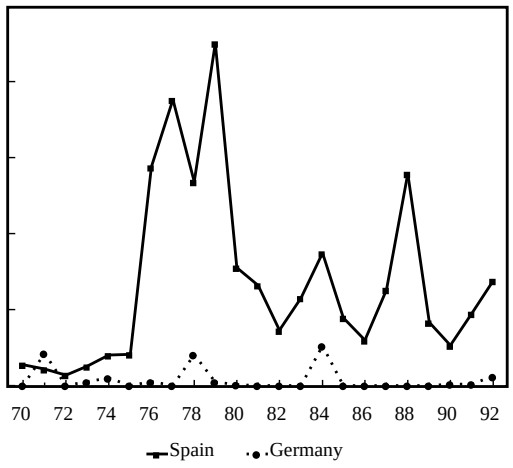
FIGURE 5

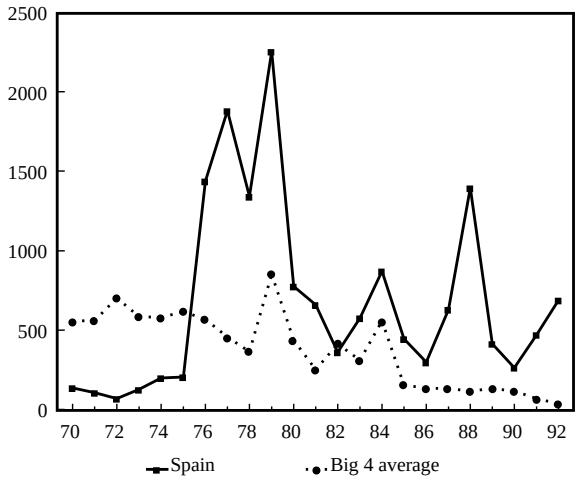
Days Lost per 1000 Employees in 5 EU Countries: 1970-1992









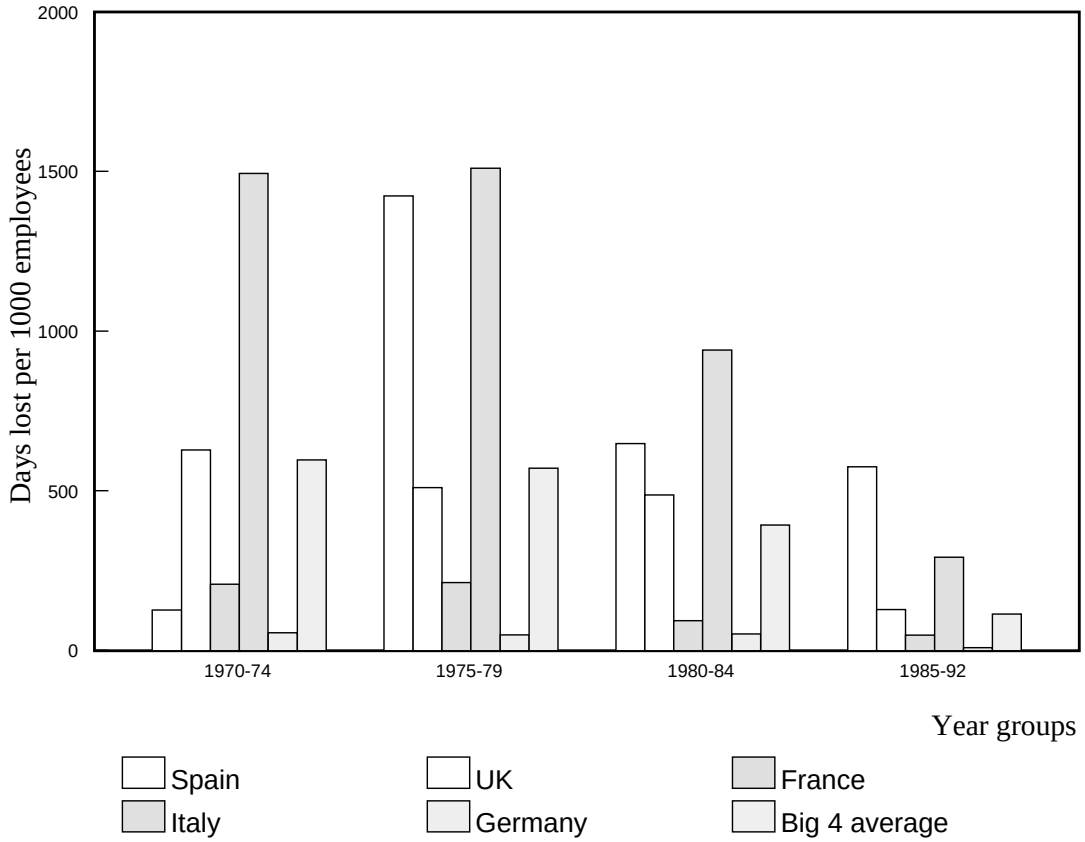


Notes:

X-axes: Year
Y-axes: Days lost per 1000 employees

Sources: see Appendix A.

FIGURE 6
Days Lost per 1000 Employees in 5 EU Countries: 1970-1992
(annual averages within each period, unweighted)



Sources: see Appendix A.

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