Economic Significance of British Labor Law Reform

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Introduction

Over the past generation the British disease of relatively low economic growth and low labor productivity, accompanied by relatively high inflation and unemployment, has become so obvious that no economist would want to deny its existence. For British economists, and indeed for all British people who take even a superficial interest in economics, international comparisons of living standards have become profoundly embarrassing. As Pollard (1982, p. 2) recently wrote, "The statistics confirm the national consciousness of a staggering relative decline, such as would have been considered utterly unbelievable only a little over thirty years ago." The figures in Table 1 are among many that could be cited to validate Pollard's comment.

Given Britain's abysmal productivity in manufacturing industry by 1980, it is not surprising that the country's average share in world exports of manufactures fell from 20.5 percent during the years 1951–55 to 9.1 percent for the years 1973–77, while over the same period West Germany's share increased from 13.1 to 21.1 percent and Japan's from 4.4 to 14.2 percent (Pollard, p. 12). Thus it became commonplace to talk of the deindustrialization of the British economy, which in the 19th century had been renowned as the workshop of the world.

There is no disagreement about the existence of the productivity problem, but there is fundamental disagreement about the remedy. For example, Brown (1979) argued that the right medicine for the British disease was to persevere with policies that had already been

Cato Journal, Vol. 6, No. 3 (Winter 1987).

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TABLE 1

OUTPUT PER EMPLOYED WORKER-YEAR IN 1980
(THOUSANDS OF 1973 U.S. DOLLARS)

Country	Manufacturing	Services
USA	16.8[a]	14.7[b]
Netherlands	16.0	12.1[b]
Japan	14.5	10.2[b]
West Germany	13.8	12.6
France	12.8	12.8
Belgium	12.2	12.6[b]
Italy	10.4	10.9
UK	6.8	8.7

[a]Includes mining and quarrying.
[b]1979.
SOURCE: Roy (1982).

tried, including the discredited national plan of 1966, consultations in the National Economic Development Office, and "an incomes policy which really works." In marked contrast were those who felt that in a number of areas, including that of labor relations, some change, not to say radical change, was necessary. Allen (1976) and Pratten (1976) expressed a relatively cautious view of the need for management to devote more time to labor relations to achieve better cooperation between management and the work force and to improve labor productivity. Hayek (1980, p. 64) was more forthright in calling for reform of the law when he wrote, "All I can say with conviction is that, so long as general opinion makes it politically impossible to deprive the trade unions of their coercive powers, an economic recovery of Great Britain is also impossible." In the same vein Minford (1983, p. 7) has called for the elimination of all legal immunities for trade unions. And Rowley (1984, p. 1135) has argued that those immunities were the primary cause of labor turbulence over the past 20 years, which has led to "a relatively low rate of investment in British industry and a correspondingly low rate of productivity growth."

At the general elections of 1979 and 1983 Hayek's condition was fulfilled. On each occasion a Conservative government—pledged to limit trade union coercion—was returned to office, and the pledge was kept in the shape of the Employment Acts of 1980 and 1982 and the Trade Union Act of 1984. But what exactly did these acts provide? Have they led to an improvement in labor relations and labor productivity in Britain? And if so, are these reforms sufficient to bring about the regeneration of the British economy? The purpose of this article is to attempt to answer these questions.

Trade Union Immunities and Coercion

The Trade Disputes Act of 1906 gave virtually complete legal immunity from tort to trade unions in all circumstances, and legal immunity to their officials when acting "in contemplation or furtherance of a trade dispute." To all intents and purposes Parliament put trade unions and their officials above the civil law. The great constitutional lawyer A. V. Dicey (1914, p. xlvi) wrote of Section 4 of the 1906 act that "it makes a trade union a privileged body exempted from the ordinary law of the land. No such privileged body has ever before been deliberately created by an English Parliament." This situation was temporarily modified by the Conservative Industrial Relations Act of 1971, but the immunities were reintroduced and even strengthened by the Labour government's Trade Union and Labour Relations Act of 1974 and its Amendment Act of 1976. By 1979 the decision of the House of Lords in the case of *Express Newspapers* v. *McShane* confirmed that trade unions and their officials had the right to spread a strike to parties quite unconnected with the original dispute without fear of redress whenever they thought that such secondary action would help their cause. In addition, where employers had agreed to a closed shop, union officials could force existing employees to join a named union under threat of dismissal without compensation. Thus the coercive powers, which in Hayek's view made an economic recovery impossible, could be (and were) used either against employers or employees, both union members and nonmembers. Members could be compelled to do the union's bidding, while nonmembers could be forced to join.

The Closed Shop

The power of union officials over their members is derived partly from the closed shop. Between 1964 and 1978 the number of employees in Britain covered by the closed shop grew from at least 3.8 million to at least 5.2 million. Following the introduction in 1971 of the right not to be dismissed except in certain clearly defined circumstances, the Trade Union and Labour Relations Act of 1974 and its Amendment Act of 1976 provided that dismissal for nonmembership of a designated union was fair whenever a closed shop (technically a union membership agreement) existed, unless a genuine religious objection could be proved. Faced with the choice between joining a union or dismissal in the period 1975–80, most employees chose to join a union; but hundreds refused and were duly dismissed without compensation. In the absence of legal redress in Britain, three former employees of British Rail took their case to the European Court at Strasbourg, and in 1981 the court ruled that their dismissal contra-

vened Article 11 of the European Convention on Human Rights and that the British government was liable for substantial costs and compensation.

Responsibility for the spread of the closed shop and its abuse is usually pinned on the trade unions, but it needs to be remembered that a closed shop cannot be introduced or enforced without the agreement of the employer. During the 1970s many employers followed the example of British Rail and agreed to make union membership compulsory without any reference to the views of their employees, arguing that it was convenient to negotiate with union officials who could (supposedly) speak for the entire work force. This situation has been transformed by the government elected in 1979, so that in 1985 Employment Minister Peter Bottomley was able to tell Parliament, "The monopolistic hold of the closed shop has been broken." How was this effected? And is the minister's claim justified?

As mentioned above, in 1979 dismissal for nonmembership in a union where a closed shop existed was always fair unless a genuine religious objection could be proved. That situation has now been reversed by the relevant sections of the Employment Acts of 1980 and 1982; dismissal for nonmembership is now always *unfair* unless a closed shop has been approved in a secret ballot among the relevant employees by a majority of either 80 percent of those entitled to vote or 85 percent of those who voted. Of course it is difficult to achieve such a majority. But there is another, more significant reason why so few successful elections have been held. Since 1980 the official policy of the Trades Union Congress (TUC), to which all the major unions are affiliated, has been to boycott secret ballots of every kind which are required by the new legislation. Consequently only a handful of elections have been held and only a few thousand employees are now formally covered by agreements stipulating that dismissal for nonmembership of a trade union is fair.

This development was highlighted by the Bristol Tugboatmen's case, in which an industrial tribunal at Bristol in May 1985 unanimously decided that three tugmen were unfairly dismissed by Cory King Towage Ltd. for not being members of the Transport and General Workers Union and that the compensation to which they were entitled would have to be paid by the union. It seems that this will amount to at least £20,000 each, and the implications of this expensive lesson will not be lost on the Transport and General Workers and other major British unions. In the future they will be much more wary about putting pressure on an employer, through a threatened or actual strike, to dismiss nonunionists. A trade union does not enjoy paying substantial compensation to a deliberate nonmember.

But will not many companies continue to enforce the closed shop informally? Can the change in the law break down a custom which in some industries—for example, printing—has been effective for 50 years or more? Certainly life will still be difficult, not to say very unpleasant, for the nonunionist in some occupations. But the evidence suggests that these will quickly become a small and dwindling minority. The biggest closed shops in 1980 were in the state sector and covered all who worked in the railway, water, electricity, gas, and coal mining industries as well as the Post Office and British Telecom—a total of well over a million employees. Early in 1985 the boards of these corporations informed the relevant unions that the closed shop had become unenforceable, and in June 1985 the board of British Rail made it plain that it was no longer a party to the union membership agreement. In other words, union membership is once again a matter of personal choice for every employee of British Rail. Such a complete reversal of policy on this issue by a major employer indicates the effectiveness of the carefully thought out reforms of the Employment Act of 1982, backed as they are by substantial compensation for infringement of the law. As far as the closed shop is concerned, events have disproved the argument that the custom and practice of labor relations cannot be affected by a change in the law. But is the same true of legal immunities for trade unions? This is the fundamental issue.

Trade Union Legal Immunities

As has already been described, in 1979 following the decision in the case of *Express Newspapers* v. *McShane* the trade unions and their officials were virtually untouchable in a court of civil law. That situation has been radically changed by the legislation of 1980–84. The Employment Act of 1980 curbed union immunities in two ways: immunity was removed from those organizing or taking part in secondary picketing; and immunity was removed from those organizing certain secondary industrial action, including strikes.

Neither of these reforms affected the immunities of trade unions in any way. Rather, they were directed at pickets and union officials, and therefore any damages awarded by the courts for illegal action were likely to be negligible. The failure of the Industrial Relations Act of 1971 had led many members of the government, including Prime Minister Thatcher, to favor a step-by-step approach to trade union law reform, and in 1979 it was widely thought that if the law were changed overnight to allow employers to take trade unions to court it could not be enforced. The government strategy was wisely based on allowing each change to take root before attempting more radical measures. Following this pattern the Employment Act of 1982

made it possible for an employer to seek damages up to a limit of £10,000 from a small union to £250,000 from a large one. However, most employers are mainly concerned with carrying on their business, so they will normally seek an interlocutory injunction against a union (that is, an order to desist from picketing or strike action) if it is acting unlawfully. If an injunction is granted and the union defies it, it becomes guilty of the serious offense of contempt of court, and there is no limit to the fines that may be imposed.

At the same time the act narrowed the definition of a "trade dispute" to disputes between workers and their own employer and made it plain that politically motivated strikes were excluded. This meant that union officials had to consider carefully the motive for their action. If it were politically inspired, they could find themselves and their unions in serious legal trouble. Unions still had legal immunity when their members were engaged in a strike against their own employer for better wages or conditions of work. But if the strike involved unlawful (secondary) picketing, or if it were far removed from the original dispute or being used to impose union membership or recognition requirements on another employer, then an employer could seek an injunction and/or damages against the union.

The Trade Union Act of 1984 took one further significant step to curb trade union immunities. Section 10 provides that immunities are only available to unions that have held a secret ballot among those members who will be called on to strike or to take other industrial action and have received a majority vote in favor of a strike or other action. In other words, the power to decide in favor of industrial action has been transferred from union officials to the members concerned. Although numerous private opinion polls have regularly shown a large majority of trade union members to be in favor of this reform, the official policy of the TUC has been one of total opposition. But by June 1985 this antidemocracy policy was beginning to crumble as a number of unions, including the National Union of Railwaymen, which had previously opposed secret ballots among the members, decided to accept prestrike ballots as a normal arrangement. This change of policy may have been partly prompted by the defeat of the National Union of Mineworkers (NUM) in March 1985, after the senior officials of that union had denied their members the opportunity to vote, although the union's rules provided for a ballot before a national strike.

Use of the Reformed Law, 1983–85

British trade unions and their officials still have certain legal immunities, but they are conditional on a majority vote in favor of a

strike in a prestrike ballot; also, they are only available where there is a genuine trade dispute and a strike is conducted in accordance with the criteria laid down in the Employment Acts of 1980 and 1982. But are employers using the new legislation, and if so, is it proving effective? The short answer to these questions is "yes." The short answer, however, is not an adequate answer. It is necessary to consider some of the instances between 1983 and 1985 in which the new laws have been used more or less successfully and one instance in which the employer could have used the legislation and deliberately refrained from doing so.[1]

Messenger Newspapers Ltd. v. *National Graphical Association*

The first major dispute to test the restriction on trade union immunities introduced by the Employment Act of 1982 occurred at Warrington, Lancashire, late in 1983. Eddy Shah, chairman of the Stockport Messenger Group, a chain providing free weekly newspapers, decided to employ some nonunion labor at his printing plant. This move was vigorously opposed by the National Graphical Association (NGA), a union that is dedicated to the closed shop and includes practically all of the skilled print workers in Britain. Shah dismissed six employees (all members of the NGA) who opposed his new policy, and they were quickly joined on the picket lines outside his factory by many other NGA members determined to prevent the printing and distribution of Shah's newspapers. This action, deliberately organized by the union, was in open defiance of Section 16 of the Employment Act of 1980, which specifically limited legal picketing to an employee's own place of work.

Shah duly sought injunctions against the NGA to stop the mass picketing and to prevent the union from bringing pressure on advertisers to withdraw from the Messenger papers. Both injunctions were granted on November 14, 1983, but the unlawful action continued and on November 17 the union was fined £50,000 for contempt of the injunctions by the Manchester Crown Court. On November 22 the NGA national council decided not to pay the fine, and mass picketing with occasional violence continued at the Warrington plant.

Three days later the High Court fined the NGA a further £100,000 and ordered the sequestration (confiscation by court officials) of £175,000 from the union. On the same day the NGA decided on a two-day stoppage in Fleet Street and the Newspaper Publishers

[1]The main sources of information for the industrial disputes referred to in the remainder of this section were press reports in the *Financial Times*, *The Times*, and the *Daily Telegraph*; and the chronicle of the *British Journal of Industrial Relations* from March 1984 to March 1985.

Association threatened to sue for damages. Subsequently seven national newspapers were granted a High Court injunction banning a repetition of the stoppage that had prevented publication of national papers on November 26 and 27.

Talks took place between Shah and the NGA, but these came to a halt on December 9 when the union was fined a further £525,000 in the High Court. The NGA threatened a further one-day national newspaper strike, but this was subsequently called off in the face of injunctions sought by several newspapers. On January 18, 1984, the union's national council decided to accept defeat and to purge its contempt of court in order to unfreeze its assets (of about £10 million), which had been frozen since November. The council's decision proved that the new legislation could be completely effective. The implications of this case are profound because newspaper printing has long been one of the most backward and unproductive industries in the British economy, partly because of the resistance of the NGA and its fellow union SOGAT (Society of Graphical and Allied Trades) to the introduction of new technology and sensible manning arrangements. These unions have long been regarded as among the toughest and most restrictive in Britain. Very soon after his legal victory Mr. Shah began to plan for the publication of a new national daily newspaper using all the latest technology, and it is widely believed that he was the catalyst who brought about the long overdue modernization of the national newspaper industry.

As early as 1962 it became well known that Britain's national newspapers, which regularly denounced other firms and industries for poor productivity, were themselves seriously overmanned. Using a firm of management consultants, the Royal Commission on the Press—which published its final report in 1962—established that four national daily newspapers had 53 percent more staff on the production and distribution side than was required. Criticism was made of trade union insistence on overmanning, but this was followed by the remark that "the ultimate responsibility for all excess costs must rest with management." Moreover, a specific comment was made about "the lack of a really senior Management Representative actually present and in control when the paper is produced" (i.e., between 6 p.m. and midnight). Little or nothing was done about this scandal until the imminent appearance of Mr. Shah on the national newspaper scene. The full extent of the scandal was revealed only in January 1986. When the 5,300 production and ancillary workers producing four national newspapers in central London for News International went on strike, the proprietor, Mr. Rupert Murdoch, sacked them all. He then hired a replacement labor force of 1,300 to

produce the same newspapers in a new technology plant at Wapping, East London.

The ensuing dispute between News International and SOGAT, the main union involved, has been extremely bitter both at Wapping, where it quickly became clear that the high fences and barbed wire surrounding the new plant were essential to keep the pickets at bay, and in the courts, where SOGAT's entire financial assets of many millions of pounds were sequestrated for its defiance of a High Court order to stop blocking the wholesale distribution of the company's papers. In June 1986 Mr. Murdoch offered the unions most of his Grays Inn Road print plant and £50 million to settle the dispute, but this offer was rejected in a ballot by the dismissed print workers, so that the dispute was still unresolved in September.

Meanwhile, Mr. Shah's new national daily paper *Today* was launched in March 1986, using all new technology, and other national newspapers were modernizing apace, including the *Daily Mirror* and the *Daily Express*, where the excessive labor forces were substantially pruned. For example, at the *Daily Express* between November 1985 and September 1986, a 38 percent reduction in the work force was negotiated. The 2,500 redundancies cost about £65 million but should produce annual savings of £50 million. Thus it could safely be said in 1986 that after a generation or more of very low productivity, Britian's national newspapers were at last being manned in a more sensible way.

The National Coal Strike, March 1984–March 1985

The ostensible cause of the national coal strike, which lasted from March 1984 to March 1985, was the proposal by the National Coal Board (NCB) to reduce output over the financial year 1984–85 by 4 million tons, with a loss of 20,000 jobs. From the beginning of the strike several areas, including Nottinghamshire, continued to work after a ballot had shown a large majority of these men opposed to a strike. There was illegal mass picketing by miners from Yorkshire and elsewhere, and on March 14 the High Court granted an injunction to the NCB ordering the Yorkshire area of the National Union of Mineworkers to stop organizing flying pickets and to withdraw instructions to its members to picket. The picketing continued but on March 19 the NCB sought and was granted an indefinite adjournment of its contempt of court application against the Yorkshire area of the NUM. Thus throughout the lengthy dispute the NCB was unwilling to follow Eddy Shah's example and to use the new legislation against illegal mass picketing. The reason for this policy, and for the unwillingness of the government to instruct Ian McGregor,

chairman of the NCB, to use the civil law against the NUM, has still not been explained.

However, legal action was taken against the NUM, both under the new legislation and under the common law. In April 1984 Read Transport Ltd. secured an injunction against the NUM South Wales area to stop secondary picketing outside its depot on the grounds that the picketing was unlawful under the Trade Union and Labour Relations Act of 1974, as amended by the 1980 act, and that the union, through its agents, was committing the tort of inducing Read to break its commercial contracts. The union continued the picketing and in July the High Court imposed a fine of £50,000 for contempt and a subsequent order for seizure of the funds. By mid-August the sequestrators had taken control of £707,000 and the union backed down. The many other private road haulers used by the British Steel Corporation (BSC) and the National Coal Board (to take coal to power stations) did not thereafter find any need to go to court. On the other hand, the big public sector organizations (BSC, NCB, and British Rail) who at various times had good legal grounds for an injunction for unlawful picketing and boycotts did not pursue their rights.

Also, in August two Yorkshire miners, Messrs. Taylor and Foulstone, brought a High Court action against the NUM claiming that the strike was unofficial because no prestrike election had been held and that the democratic processes in their union had become "totally paralyzed." In September Justice Nichols ruled that the Yorkshire area strike should not be called "official," and in a separate case brought by three Derbyshire miners he ruled that the strike in that area was unlawful. A month later, when the union had taken no notice of his rulings, he fined the NUM £200,000 and the president of the union £1,000. The president's fine was paid anonymously, but the High Court ordered the seizure of all NUM national assets after the union had failed to pay its fine. The sequestrators found themselves engaged in lengthy negotiations with banks in Dublin and Luxembourg, as the president had anticipated legal action against the NUM and had secretly moved most of the funds abroad.

In the case of this strike, legal action was not obviously a main cause of its conclusion. By January 1985 the trickle of striking miners returning to work became a stream, and by February the stream had become a flood. In March the NUM called off the strike and claimed victory for the union, while everyone else saw the return to work as a sign of defeat.

The Three Disputes of March–May 1985

Section 10 of the Trade Union Act of 1984, which removes legal immunities from unions when a prestrike election has not shown a

majority in favor of a strike, was tested three times in quick succession between late March and mid-May 1985 and was found to be exceedingly effective.

Early in March 1985 the national executive of the Civil and Public Services Association (CPSA), a major civil service union, threatened a one-day strike on April 1, and further action if necessary, in support of their pay claim. Following the threat, the Treasury (as the employer of the civil servants) applied for a High Court order against the union on March 25, and on the following day the executive of the CPSA decided to poll its membership about the proposed strike. Three days later the government raised the pay offer from 4 percent to 4.4 percent, and on April 11 the result of the ballot was disclosed. Members of the union had voted against strike action by a majority of 460 out of 90,600 votes cast. On April 23 the pay offer was raised to 4.9 percent and by then all talk of strike action by the CPSA had ceased.

At almost the same time as the CPSA dispute it seemed as though the national postal service might come to a halt. By March 1985 the Post Office was pressing vigorously for substantial changes in working practices, including the introduction of new letter-sorting equipment and the recruitment of many part-time employees. On March 13 it seemed that deadlock had been reached when the Union of Communication Workers informed the Post Office that key sections of the package of reforms of working practices would not be accepted, and the Post Office stressed that, regardless of the agreement, the reforms would be implemented in April and would boost individual income by 5–10 percent. When further talks broke down, 800 of the staff at the Mount Pleasant sorting office in London (the largest in Britain) walked out on April 2 in defiance of a High Court injunction banning the union's action because no prestrike vote had been held. However, on the following day the union ordered its members to return to work and talks with management were resumed.

The Post Office made modest concessions and on April 6 what was described by both parties as "an historic agreement" was signed. This 50-page document provided for the unimpeded use of new technology, a more reliable postal service through the better distribution of manpower, and savings estimated at £180 million. The staff were promised no compulsory layoffs, a one-hour reduction in the work week, and a share in the cost savings that could mean additional bonuses of £7 to £14 a week. In other words it seems that the use of the law, with the possibility of substantial fines for the union, was a crucial factor in the union's decision to sign a model agreement that would lead to higher productivity, lower costs, higher pay, and a better postal service for the customer.

By mid-May 1985 another dispute was threatening, which could have had unpleasant consequences for millions of Londoners and a large number of visitors to the capital. London Regional Transport (LRT) had stated its intention to withdraw the 1984 pay and productivity award of 7.5 percent from 7,000 staff because of their refusal to cooperate with the extension of one-man trains on the underground. Drivers of one-man trains can earn up to £30 more in an average week. Most of the staff belong to the National Union of Railwaymen, and the NUR called a strike for May 2. Following the strike call, LRT was granted an injunction against the union on the grounds that the strike had not been approved in a prestrike vote. The strike went ahead, but it was poorly supported and London Regional Transport was able to operate a reduced service in all areas. On the following day, NUR leaders voted to suspend the strike, publicly admitting that the legal action had deterred some railwaymen from joining the strike. Subsequently, Dr. Tony Ridley, head of LRT, stated that it would not be proceeding against the union and confirmed that the introduction of more one-man trains would not entail compulsory layoffs.

The Threatened Dispute on the Railways, August 1985

For several years the British Railways Board, which controls a subsidized monopoly industry, had been trying to persuade the National Union of Railwaymen that guards were unnecessary on most freight and short-distance passenger trains, and some driver-only trains had been introduced. In the summer of 1985, however, the matter came to a head, with the NUR refusing to permit the introduction of more driver-only trains and British Rail insisting the new arrangements had to be accepted. The guards were promised that the new trains would be phased in gradually and that no guards would be laid off involuntarily. In August guards in Scotland and Wales went on strike as a protest against the new manning arrangements, and after refusing to return to work, despite an ultimatum from management, 251 guards were dismissed. The NUR threatened to bring all of the 11,000 guards out on strike, and British Rail made it plain that if that happened it would shut the whole railway system down.

The NUR, however, decided to keep within the law by holding a prestrike vote among the guards; the union, management, and independent observers confidently expected that this would show a large majority favored a strike. In a ballot in which 84 percent of the guards voted, a majority of 52 percent voted against strike action. Three weeks after this surprising result the NUR agreed to take guards off

some trains and indicated that the union would be willing to discuss future productivity deals through existing negotiating machinery. The five-year logjam on productivity improvements for Britain's railways had been well and truly broken.

Effects of the Reformed Law

The pattern of events in the Stockport Messenger dispute, the three disputes of March–May 1985, and the British Rail dispute indicates clearly that the new curbs on trade union immunities can be extremely effective in stopping illegal action and in making trade union officials pay heed to the views of their members. But that is not to suggest that the law will always be effective in preventing disputes. Strikes about pay and conditions of work are still perfectly legitimate where they have been approved in a secret ballot by the employees concerned. Clearly the attitude of ordinary union members is now crucial and their attitude will depend on a number of factors, including the reasonableness of the employer and the state of the economy, especially the levels of inflation and unemployment. The law is an important factor, but it is certainly not the only factor.

The "historic agreement" eventually reached between the Post Office and the Union of Communication Workers in April 1985 was clearly the result of many months, if not years, of careful planning by a management determined to reduce costs (especially labor costs) and to improve services without jeopardizing the position of its existing employees. There is a very important lesson to be learned from this kind of creative negotiation, and unless the lesson is taken to heart there will be no cure for the British disease. It is a lesson that some are slow to learn because, as Artus (1984) has pointed out, labor costs in Britain (as well as France and Germany) are still too high. Recently there has been much talk but not enough action, although a partial remedy for this problem was clearly spelled out more than 20 years ago.

The Fawley Productivity Agreements

It was in 1964 that the case study by Allan Flanders of management and collective bargaining, *The Fawley Productivity Agreements*, was published. In 1960 the Esso refinery at Fawley was the scene of an unprecedented departure from conventional collective bargaining. The company offered its employees large increases in wage rates in return for their trade unions' consent to specific changes in working practices, including a drastic reduction in overtime, some relaxation of job demarcations, and the redeployment of craftsmen's mates.

The laudable aim was to raise productivity and distribute its benefits without causing an inflationary rise in costs. This aim was largely achieved. Flanders estimated that "the two year increase in productivity was a little less than one half" (that is, 45–50 percent). But the most important part of his classic study was not concerned with the details of the negotiations at Fawley, interesting as they were. It might fairly be claimed that chapter 6, entitled "Lessons of Wider Application," is one of the most significant comments that has been written on the poor state of British labor relations, and the consequent low labor productivity, since the Second World War.

The fundamental problem at Fawley was underemployment, and the corollary of underemployment is, of course, low labor productivity. The chief symptom of underemployment at Fawley was excessive overtime, and the question Flanders posed and answered in his concluding chapter was simply, "Who was responsible for the excessive overtime?" There was no doubt in Flanders's mind about the answer: "The responsibility for reducing it [overtime] rests on the same authority that has been responsible for its growth, namely management" (p. 228). He went on to say that "what makes the [Fawley] experiment stand out in the post-war industrial scene is that, whether or not management found the best ways of changing restrictive practices, *it did not evade its responsibility for making the attempt* and the attempt was not made in vain" (p. 238, emphasis added).

Finally, in section 4 of chapter 6 Flanders considered the "Roots of Management Irresponsibility" and argued persuasively that those roots were to be found in management itself. He said that the slowness of British managers to innovate in the field of labor relations could be explained by the fact that most of them preferred to have as little as possible to do with labor relations and normally delegated them to a personnel manager or department. And he concluded that most senior British managers were distinctly underqualified in terms of education and experience for their job. This view was recently confirmed by Crockett and Elias (1984), who found that 52 percent of a sample of 2,637 British managers had no qualifications at all and only 3 percent were university graduates.

Is there, then, a conflict between Flanders's view of widespread management irresponsibility in British business and Hayek's insistence on the need to reduce or eliminate trade union immunities? Not necessarily. Hayek has argued that radical changes in trade union law are a *necessary* condition for economic recovery in Britain. Nowhere has he argued that reform of the law is a *sufficient* condition for economic recovery, or that it will guarantee, of itself, a British

economic miracle. But in the resolution of the Post Office dispute in April 1985 we can see just what could be achieved in the economy as a whole if intelligent, fair-minded, and determined managers were prepared, when the occasion demanded, to use a reformed law to achieve their aims. And in that and other disputes (especially the Stockport Messenger dispute) it can be seen that Hayek was quite right. If the unions had not to some extent been deprived of their coercive powers, through a reduction in their legal immunities, the employers could not have resisted them as they did.

It is, then, reasonable to argue that a substantial improvement in the quality of British managers—especially line managers involved in labor relations—is one of the preconditions for the regeneration of the British economy and at the same time to insist that this must go hand in hand with a reform of trade union and labor law. It may even be that obsolete labor laws have contributed to the poor quality of management by demoralizing existing managers and deterring potential managers of ability from entering what they have seen as an industrial jungle dominated by militant trade unionists. However, it is not the purpose of this paper to examine proposals to improve the quality of British managers, desirable though such an improvement may be. Rather, in the concluding section, the emphasis will be on what now needs to be done by managers and government, following the labor law reforms of 1980–84, to assist the regeneration of the British economy.

Conclusion

Lessons for Managers

Perhaps the clearest lesson to be drawn from the labor disputes analyzed above is that management firmness, expressed in a willingness to use a reformed law, often helps to produce a satisfactory settlement. In particular Section 10 of the Trade Union Act of 1984, which removes immunity from trade unions that call out their members on strike without a secret prestrike vote, has enabled managers to insist on the right of individual employees to express a personal view about the desirability of strike action. Certainly there is no guarantee that a prestrike vote will produce a vote against strike action. But if managers are willing to use the reformed law against trade unions that flout it, it fully disposes of the argument that a strike has been concocted by a handful of politically motivated agitators.

Nevertheless, it would be extremely foolish to assume that the law is the ultimate answer to labor relations problems in Britain. In their recent study of 23 successful British companies, Goldsmith and Clut-

terbuck (1984, p. 59) wrote that each of those companies "extracts far more from its employees in terms of personal commitment, dedicated hard work and involvement than the typical British company would think possible," and they went on to show how the companies obtained such devotion from their employees. Until the typical British firm follows the example of these exceptional companies and deliberately pays more attention to achieving a much higher level of employee commitment, there will be no general improvement in the performance of the British economy. The appropriate use of a reformed labor law on its own is not enough.

Lessons for Government

Following the failure of the Industrial Relations Act of 1971, the quite illogical argument that the reform of British trade union law was impossible was sometimes put forward and too readily accepted. Recent events have shown the fallacy of this argument. It is, therefore, sad and surprising that the government now seems determined to call a halt to its program of labor law reform instead of capitalizing on its success.

The three acts of 1980, 1982, and 1984 all amend the legislation of the previous Labour government. Thus the statute law is now in an extremely complex, not to say unintelligible, state. There is an urgent need for a consolidating act or acts that would simplify and amend the law. In the 1970s, and especially in the winter of 1978–79, Britain suffered from disputes in several essential monopoly public services. Employees in those services have behaved more responsibly in recent years, but the freedom to strike in these services, following a ballot in favor of such action, might be said to encourage irresponsible behavior. In fact in 1983 the Conservative government promised in their election manifesto (p. 12) to "consult further about the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity." That promise has yet to be kept.

At the same time, Section 1 of the Employment Protection Act of 1975 charges the state Conciliation and Arbitration Service (ACAS) with the duty "of encouraging the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery." The British government has given open or tacit support to the extension of collective bargaining since the final report of the Whitley Committee in 1918, but the generally poor state of labor relations and low labor productivity suggest that the policy has failed. Surely it is time for the state to adopt a neutral stance toward collective bargaining and to allow firms to adopt whatever

labor relations policies they judge to be in their best interests, while protecting the employee's right to join a trade union or not. A reduction of immunity for unions in essential services and the adoption of a neutral stance by the state toward collective bargaining are just two of the reforms that are still desirable.

When he pointed out the need for radical rethinking about the rule of law in the field of labor Hayek (1960, p. 268) wrote, "The acquisition of privilege by the unions has nowhere been as spectacular as in Britain." The long overdue reforms of 1980–84 have helped to bring the British economy back from the brink of disaster. It would indeed be tragic if the debate about labor law reform were now regarded as closed. Instead the recent reforms should be seen as the basis from which Hayek's (1960, p. 284) ideal—"the strict prevention of all coercion except in the enforcement of general abstract rules equally applicable to all"—can be achieved. If that were to be done, a genuine British economic miracle would surely be probable rather than possible.

References

Allen, G. C. *The British Disease.* Hobart Paper 67. London: Institute of Economic Affairs, 1976.

Artus, Jacques R. "The Disequilibrium Real Wage Rate Hypothesis: An Empirical Evaluation." *IMF Staff Papers* 31 (June 1984): 249–302.

Brown, A. J. "Inflation and the British Sickness." *Economic Journal* 89 (March 1979): 1–12.

Crockett, Geoffrey, and Elias, Peter. "British Managers: A Study of Their Education, Training, Mobility and Earnings." *British Journal of Industrial Relations* 22 (March 1984): 34–46.

Dicey, A. V. *Lectures on the Relation between Law and Public Opinion in the Nineteenth Century.* 2d ed. London: Macmillan, 1914.

Flanders, Allan. *The Fawley Productivity Agreements.* London: Faber and Faber, 1964.

Goldsmith, Walter, and Clutterbuck, David. *The Winning Streak.* London: Weidenfeld and Nicolson, 1984.

Hayek, F. A. *The Constitution of Liberty.* London: Routledge and Kegan Paul, 1960.

Hayek, F. A. *1980s Unemployment and the Unions.* Hobart Paper 87. London: Institute of Economic Affairs, 1980.

Minford, Patrick. *Unemployment, Cause and Cure.* Oxford: Martin Robertson, 1983.

Pollard, Sidney. *The Wasting of the British Economy.* London: Croom Helm, 1982.

Pratten, C. F. *Labour Productivity Differentials within International Companies.* Cambridge: Cambridge University Press, 1976.

Rowley, Charles K. "Towards a Political Economy of British Labor Law." *University of Chicago Law Review* 51 (Fall 1984): 1135–60.

Roy, A. D. "Labour Productivity in 1980: An International Comparison." *National Institute Economic Review* 101 (August 1982): 26–37.
Royal Commission on the Press 1961–1962. *Report*. Cmnd. 1811. London: H.M.S.O., 1962.