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The Reform of British Industrial Relations : The Donovan Report and the Labour Government's Policy Proposals
La réforme des relations industrielles en Grande Bretagne

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Résumé de l'article

Le système de négociation collective volontaire britannique ainsi que le rôle du mouvement syndical dans la société contemporaine ont été extrêmement critiqués depuis le milieu des années 1950. Dans la décennie suivante, alors que les problèmes économiques britanniques devenaient de plus en plus sérieux, ce mouvement de critique s'est accru pour finalement amener, en 1964, le gouvernement travailliste, nouvellement au pouvoir, à former la « Royal Commission on Trade Unions and Employers' Associations » sous la présidence du juge Donovan. Son mandat expliquait qu'il devait étudier le système britannique de relations industrielles. Pour faire suite à la publication du rapport de cette commission en juin 1968, le gouvernement travailliste présenta au Parlement, en janvier 1969, un Livre Blanc sur ses projets de réforme pour le système de relations industrielles.

Dans un premier temps, nous tenterons une revue critique des principales recommandations et conclusions de la Commission en insistant sur trois champs spécifiques de problèmes : la réforme de la négociation collective, son extension à l'industrie britannique et la protection des droits à l'individu tant employé qu'employeur. Dans un second temps, nous espérons pouvoir présenter une évaluation globale de ce rapport ainsi qu'une revue des projets de réforme du gouvernement travailliste et de l'opposition conservatrice.

LA RÉFORME DE LA NÉGOCIATION COLLECTIVE

Le but principal du rapport Donovan est d'examiner les défauts du présent système britannique de négociation collective et de proposer des réformes. En plus d'être d'accord avec le système de négociation collective volontaire, Lord Donovan propose qu'il soit étendu à toute l'industrie britannique. Il critique cependant très fortement le système traditionnel de négociation à l'échelle de l'industrie et note l'existence d'un système informel de négociations locales créé par le comportement des syndicats, des associations d'employeurs, des cadres, des délégués de département et des travailleurs.

La Commission réclame la fin de ce conflit entre cette prétendue négociation au niveau de l'industrie et la réalité des relations industrielles. Plus spécifiquement, elle propose l'adoption d'un système de négociations collectives décentralisées, impliquant la signature d'ententes compréhensives au niveau de la compagnie ou de la firme.

LE RÔLE DES POLITIQUES GOUVERNEMENTALES

L'approche de la Commission pour réaliser cette réforme de la négociation collective se résume en une revue publique des pratiques et procédures actuelles et ce afin de faire des recommandations sur les changements à apporter. À cette fin, la Commission propose une nouvelle loi des relations industrielles qui exigerait que toute firme de cinq mille employés ou plus enregistre ses conventions collectives au « Department of Employment and Productivity » et qui établirait une Commission permanente de relations industrielles (CIR). Le CIR serait chargé d'enquêter sur les cas que le gouvernement lui transmettrait au sujet de la non-reconnaissance de syndicats, du manque de certains accords à respecter les minima établis et d'autres problèmes de relations industrielles. Vu que cette approche encourage une réforme volontaire des relations du travail, la Commission ne donne pas force de loi aux recommandations du CIR.

LE REJET DES SANCTIONS LÉGALES

Faisant suite à de nombreux débats internes et à la publication d'un rapport minoritaire, la Commission rejette l'idée de transformer la convention collective en contrats à obligations légales. La raison principale de cette objection est que,selon eux, la cause réelle du problème officieux de la grève en Grande-Bretagne se retrouve dans les méthodes actuelles de négociations collectives et surtout dans les méthodes de négociations locales caractérisées par l'absence de procédures claires et rapides de règlement des conflits. En plus, les conventions à force légale ne seraient pas une contribution valable à l'atteinte des réformes dont ce pays a besoin.

QUELQUES REMARQUES SUR LA RÉFORME DE LA NÉGOCIATION COLLECTIVE

Nous croyons que, d'une façon générale, les recommandations de la Commission sont pertinentes. La tendance à un système décentralisé de négociation collective est appropriée autant pour des raisons pratiques que pragmatiques. De plus son argumentation contre les conventions à force légale est justifiable. Néanmoins, l'approche essentiellement volontaire de la Commission aux réformes à entreprendre signifie que les changements aux procédures de négociation collective seront nécessairement lents et fragmentaires. À cet effet, la Commission se trompe en considérant la présente signification de la négociation sur la productivité comme preuve que les syndicats et les patrons vont entreprendre les réformes d'une façon volontaire. Cette erreur est due au fait que la Commission n'a pas réalisé les exigences de cette approche pour les parties. En plus, la Commission sous-estime les conséquences de certaines de ses recommandations encourageant une plus grande utilisation de négociations locales inflationnistes et chaotiques et, d'une façon générale, ignore, dans son rapport, les problèmes posés par la négociation collective dans le secteur public.

L'EXTENTION DE LA NEGOCIATION COLLECTIVE

La Commission appuie fortement l'extension de la négociation collective à l'industrie britannique en proposant la suppression de plusieurs obstacles traditionnels à la reconnaissance syndicale, barrières qui ont été importantes surtout dans le domaine de l'organisation des cols blancs. Elle recommande, en premier lieu, que le droit au membership syndical soit positivement protégé par la loi. Elle propose ensuite d'adopter certains changements dans le système des « Wages council » afin d'encourager la négociation collective libre : en cas de refus de reconnaissance syndicale par la partie patronale, le gouvernement aura le pouvoir de référer le cas au CIR pour examen et rapport. Suivant sa philosophie de réforme volontaire, la Commission ne recommande pas que les propositions du CIR aient force de loi. Cependant, lorsqu'un employeur persiste à refuser de reconnaître un syndicat ou ne négocie pas réellement, le gouvernement peut permettre au syndicat concerné d'avoir recours à l'arbitrage unilatéral par l'« Industrial Court ».

Ces recommandations auront probablement de très grandes implications sur le système britannique de relations industrielles. Notre divergence de vue avec les membres de la Commission n'a pas comme cause certaines recommandations spécifiques, mais plutôt la valeur de l'orientation qu'elles donnent pour le développement de la politique gouvernementale en ce domaine.

La Commission était consciente des difficultés pratiques d'application de critères spécifiques pour la reconnaissance syndicale et nous croyons qu'elle est correcte en proposant au CIR d'adopter une approche très flexible. Néanmoins, une des grandes faiblesses du rapport est de n'avoir pas inclus une évaluation générale des différents principes et critères de reconnaissance. En plus, on peut reprocher à la Commission de ne pas avoir proposé que les fonctions du CIR soient utilisées dans le but de réaliser une structure syndicale plus rationnelle au niveau de l'entreprise. En dernier lieu, en permettant au syndicat l'utilisation d'arbitrage unilatéral en cas de refus de négociation réelle, la Commission ne définit pas la façon de déterminer si un employeur négocie de « bonne foi » ou non.

LA PROTECTION DES DROITS DES SYNDIQUÉS ET DES EMPLOYÉS

La Commission recommande également que les droits des syndiqués devraient être protégés de la façon suivante : en cas d'injustice criante, les individus devraient avoir le droit de faire appel à un tribunal indépendant ayant les pouvoirs de rendre une sentence sur la compensation à verser ou sur d'autres moyens susceptibles de punir l'employeur en cause. En plus, on exigerait des syndicats d'enregistrer certains règlements chez le « Chief Registrar of Trade Union and Employers' Associations ». Les employés individuels auront également droit d'appel sur les congédiements injustes devant les « Industrial Tribunals » dont on est censé étendre la juridiction au point qu'ils puissent s'occuper de ces cas ainsi que tout conflit (à l'exception des conflits collectifs et de ceux qui peuvent provenir des accidents du travail) entre employeurs et employés.

Même si on fit peu de publicité autour de ces recommandations lors de la publication du rapport, elles auront probablement une grande influence sur les relations industrielles britanniques. Cependant, avant de proposer que les tribunaux industriels actuels soient transformés en cours de travail à plusieurs utilités, une évaluation détaillée de la façon dont opère ces tribunaux et un regard sur les expériences étrangères à ce sujet sembleraient avoir été nécessaires. La Commission ne fait pas une telle évaluation dans son rapport.

UNE ÉVALUATION GÉNÉRALE

En dépit d'un certain nombre de faiblesses, le rapport de la Commission royale est une contribution importante au débat sur la politique gouvernementale et sur les réformes à apporter au système de relations industrielles britanniques. Ses recommandations aboutissent à un changement significatif dans l'approche britannique traditionnellement volontaire aux relations du travail. En plus, son appui à un système plus décentralisé de négociation collective donne une approbation publique à la réorientation structurelle de la négociation collective depuis longtemps prônée par plusieurs académiciens en relations industrielles. Cependant, le succès de ses recommandations dépend en partie de l'approche empruntée par le CIR et plus particulièrement sur la volonté des syndicats et des employeurs britanniques à prendre part à la réforme volontaire. En guise d'observation générale, disons que la Commission a sous-estimé le degré de satisfaction conservatrice face au système actuel de négociation collective. Cela signifie qu'on peut s'attendre, dans les prochaines années, à une approche lente et fragmentaire à la réforme.

LA RÉPONSE DU GOUVERNEMENT TRAVAILLISTE : LE LIVRE BLANC DE MME CASTLE

Après plus de six mois de discussion, le gouvernement travailliste présenta, en janvier dernier, devant le Parlement, un Livre Blanc contenant ses recommandations sur la réforme en relations industrielles. À part quelques exceptions mineures, le Livre Blanc endossait entièrement les recommandations de la Commission et s'engageait à les transcrire dans la loi dans un avenir rapproché. Ceci marque une étape importante dans la politique gouvernementale en ce sens que le Livre Blanc signale la fin de l'approche britannique libérale traditionnelle aux relations industrielles en faisant l'hypothèse que l'Etat a un rôle important à jouer dans la régulation des relations industrielles.

Le Livre Blanc va plus loin que la Commission sur trois points principaux. Il propose d'abord que le CIR ait le pouvoir d'émettre des recommandations dont l'application est obligatoire, avec sanctions financières, dans les cas impliquant des conflits intersyndicaux de reconnaissance. En second lieu, il recommande que le gouvernement ait des pouvoirs spéciaux suffisants pour exiger des syndicats la tenue d'un vote de grève et le respect d'une pause dite de conciliation en cas de conflit grave. Finalement, il propose d'établir un « Trade Union Development Scheme » afin de permettre aux syndicats d'obtenir des subventions pour moderniser leurs structures et leurs organisations.

Les recommandations anti-grève ont provoqué une grande controverse dans le parti travailliste. En plus, les syndicats s'y sont opposés et les employeurs ainsi que l'opposition conservatrice les ont qualifiées d'inadéquates. Nous croyons que ces propositions ajoutent à l'arsenal d'armes gouvernementales nécessaires au traitement des conflits industriels. Cependant elles ne nient aucunement l'appui que donne le Livre Blanc à la réforme volontaire des relations industrielles.

En dernière analyse, les points forts et les points faibles du Livre Blanc sont ceux du rapport Donovan. En résumé, on peut faire la même conclusion générale : les seules recommandations du gouvernement vont probablement fournir un modeste encouragement au rythme et à l'étendue de la réforme des relations industrielles. À ce sujet, il serait intéressant de noter que la nomination de M. George Woodcock, secrétaire du T.U.C., au poste de président du CIR appuie notre conclusion. En effet, M. Woodcock est un tenant de l'approche évolutionniste à la réforme des relations industrielles.

En conclusion, le champ est encore ouvert pour une plus grande intervention législative en relations industrielles. Vu le déclin dans la popularité du gouvernement travailliste, on devrait tenir compte de la politique de l'opposition conservatrice en matière de réforme des relations industrielles. Dans un document daté d'avril 1968, les conservateurs proposent un nouveau cadre législatif aux relations industrielles, incluant des lois plus restrictives quant à l'utilisation de la grève et prévoyant que les conventions aient force de loi. Une déclaration récente des conservateurs trahit leur désir de traduire leurs recommandations dans la loi s'ils obtiennent une majorité parlementaire aux prochaines élections.

Il ne peut y avoir de réponse définitive à la question de savoir si la publication du rapport Donovan et du Livre Blanc du parti travailliste marque la fin du débat sur la politique gouvernementale en matière de relations industrielles. L'avenir politique du parti travailliste et le bon vouloir des syndicats et des employeurs à entreprendre les réformes d'une façon volontaire; voilà ce qui fournira une réponse à notre question dans quelques années. Nous croyons cependant qu'il faut s'attendre, en Angleterre, à une plus grande intervention en relations industrielles dans les cinq prochaines années.

The Reform of British Industrial Relations:

The Donovan Report and the Labour Government's Policy Proposals

Robert F. Banks

Against a background of recurrent economic crisis in the 1960s pressures have developed to reform Britain's traditional industrial relations system. During the last two years the report of The Royal Commission on Trade Unions and Employers' Associations and a subsequent Labour Government White Paper included significant recommandations which are likely to change the character of the traditional system. Nevertheless both documents support an essentially voluntary approach to the reform of collective bargaining and reject the transformation of collective agreements into legally binding contracts. However, as a result both of growing public support for additional reforms and the improvement in the Conservative Opposition's political fortunes, plus doubts about the capacity of British unions and management to improve collective bargaining procedures voluntarily, the author suggests that further Government intervention in industrial relations is a strong possibility in the next few years.

Introduction

The 1960s have been a crisis decade for Great Britain. The main component of crisis has been essentially economic as the Labour

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* Royal Commission on Trade Unions and Employers' Association, *Report,* London, Her Majesty's Stationery Office, Juin 1968, 346 pages.

Government, like its Conservative predecessor, has been caught in the grip of severe and persistent balance of payments deficits — the combined result of a post-war history of inflationary price rises and lagging growth rates. However, while these economic difficulties have been the most visible signs of Britain's malaise in the 1960s, they are only one of many problems : the necessity to adjust to the loss of a colonial empire, the grave costs involved in maintening her role as a world banker and the need to accept a markedly reduced status in the arena of international power politics. Moreover, the combined effect of these circumstances have, in turn, raised serious doubts about the capacity of Britain's traditional social and economic institutions to adapt to this harsh new domestic and international environment.

The field of industrial relations provides one good example of this challenge to the capacity of traditional social institutions. Since the mid-1950s Britain's voluntary collective bargaining system and the role of the labor movement in contemporary society have been subjected to extensive criticism. This criticism grew more persistent in the 1960s as Britain's economic problems became more serious and intractible. As a result many observers both within and outside the world of work argued that the inflationary consequences of free collective bargaining, the inability of unwillingness of unions and management to establish effective means of encouraging a more rapid rate of technological advance as well as coping with its attendant problems and a rising incidence of disruptive plant level industrial disputes were all important factors in Britain's deepening economic malaise. In addition, Britain's industrial relations' problems also have become grist for the political mill. In the 1960s the Conservatives have made the reform of industrial relations and the trade unions a major theme in their electoral campaigns. And even in the Labour Party similar pressures have built up, partly as a result of its attempt to become a social democratic party supported by a broad-based electorate, but more specifically because of the realization that the reform of industrial relations is a necessary prerequisite for Britain's economic survival.

It was against this background that demands grow for a general review and reassessment of the British system of industrial relations. The move in this direction was further encouraged by several High Court decisions in the early 1960s which challenged traditional legal opinion

on the extent of legal protection which unions enjoyed under the law. [1] As a result late in 1964 the newly-elected Labour Government utilized a respected and time-honored approach in British politics for dealing with contentious public issues : it established a Royal Commission on trade unions and employers' associations to conduct a searching examination of British indutrial relations and to make recommendations for reform, including changes in labor law. [2]

As is usual with Royal Commissions its membership was broad-based and representative of the major interests involved. Its twelve members included two trade unions and four management representatives, three industrial relations experts, plus three individuals, including the chairman, Lord Donovan, a High Court judge, who can be counted as independent public members. Moreover, also in line with normal practice the commission conducted its internal deliberations in private with a large amount of time taken up with the consideration of written evidence submitted by interested parties and the hearing of oral evidence, usually in public, from university industrial relations experts and representatives of the unions, management and relevant government departments. These sources of information were supplemented by the work of the commission's small research staff which conducted its own inquiries and commissioned a number of study papers by outside experts on key problems of industrial relations. Finally, after laboring for some three and one-half years and examining written evidence from some 430 organizations, groups and individuals, plus hearing oral evidence from some 78 similar sources, the commission published its long awaired report in June 1968.

The main conclusions of the commission's report, which support with a limited number of important exceptions Britain's traditional voluntary approach to industrial relations, are both unexceptional and largely predictable. Moreover, its proposed solutions are in accordance with the expected direction of change in British industrial relations which probably would have occurred in any event over the next few years. Furthermore, in view of both the composition of the commission's membership and the

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[1] For a discussion of these cases see Olga L. Aikin, « Legal Perspectives » in B.C. Roberts (ed.) *Industrial Relations,* Methuen, London, 1968, pp. 229-30, 237-39.

[2] The Royal Commission on Trade Unions and Employers' Association, 1965-68, H.M.S.O., London, Cmnd. 3623, 1968. In the following discussion reference to the commission's view or position on a particular issue always refers to its majority report, unless explicitly stated otherwise. The numbers inserted after quotations in the text refer to paragraph numbers in the report.

strength of Britain's historic tradition of voluntary industrial relations it is hard to believe that anything more than the commission's hopeful compromise could have emerged in any event.

Specifically, I find little to quarrel with in general about the report's conclusions; I am somewhat sympathetic to the commission's philosophy and approach and I find many of its recommendations admirable. I do believe, however, that the expected impact of the commission's cautious proposals for the reform of collective bargaining are far too optimistic in the light of the experience of British industrial relations in the last few years. Modest support for this view is provided by the Labour Government whose recent industrial relations White Paper goes further than the commission's report in proposing limited restraints on the right to strike. Moreover, if a Conservative Government is returned at the next General Election the commission's defense of an essentially voluntary collective bargaining system is likely to be rejected and replaced by a more legalistic policy toward industrial relations.

The purpose of this article is : first, to critically review the Royal Commission's main recommendations and conclusions which focus on three specific problem areas : the reform of collective bargaining, its extension in British industry and the protection of the rights of individuals either as employees or union members. [3] Second, it hopes to provide an overall evaluation of the Royal Commission report, together with an assessment of both the Labour Government's and Conservative Opposition's recent proposals for the reform of industrial relations.

The Reform of Collective Bargaining

The major focus of the Donovan report is an examination of the inadequacies of Britain's collective bargaining system and recommendations for its reform. Either directly or indirectly eight of the report's fifteen substantive chapters deal with this issue. Moreover, the commission's review of labor law also is largely addressed to the problems of collective bargaining for one whole chapter examines the possible contribution that the legal enforcement of collective agreements can make to improving industrial relations. The commission's approach in this section of the report is best discussed in a systematic review of its views on the role of collective bargaining in British industry, the appropriate

[3] The report also includes some important proposals for changes in labor law and recommendations on industrial training as well as extensive factual information on the institutional framework of the British system of industrial relations.

basis for its reform and what kind of role public policy should play in achieving this reform within the context of the contemporary industrial relations system.

The most important general conclusion of the report is that in principle a largely voluntary system of collective bargaining is still relevant to Britain's contemporary economic and social circumstances. As the commission observes, « properly conducted, collective bargaining is the most effective means of giving workers the right to representation in decisions affecting their working lives, a right which is or should be the prerogative of every worker in a democratic society, (para. 212). » This central theme clearly identifies the report as a lineal decendent of previous public inquiries into British industrial relations — the Royal Commission of 1891, the Whitley Committee of 1917 and the Balfour Committee of 1926.

However, the report's support of collective bargaining goes one step further than the views of these past inquiries; it argues that public policy should declare collective bargaining as a positive right of all workers in British industry. Thus, as discussed in more detail below, the commission specifically proposes that collective bargaining should be extended in British industry through the establishment of procedures which would require employers to recognize unions. Alternatively, the report is also explicitly or implicitly unenthusiastic about such institutional arrangements as the wages council system, joint consultation and workers' participation in management, which in its opinion cannot be effective substitutes for voluntary collective bargaining.

However, a second important theme of the report is the commission's sharp distinction between its strong support for collective bargaining in principle and its detailed criticisms of Britain's traditional bargaining institutions in practice. It argues that, « Britain has two systems of industrial relations. The one is the formal system embodied in the official institutions. The other is the informal system created by the actual behavior of trade unions and employers' associations, of managers, shop stewards and workers, (para. 46). » The report acknowledges that other countries also have both formal and informal systems of industrial relations. « But in Britain (more than elsewhere) the informal system is often at odds with the formal system, (para. 52). » And in the commission's view, Britain's industrial relations problems stem from this conflict between systems or more accurately from the basic irrelevance of traditional institutions and procedures to contemporary industrial relations problems.

The extent of this irrelevance is documented by the commission's comparison of descriptive models of the two systems. The keystone of the formal system, or more accurately those collective bargaining procedures which were established during the First World War or in the inter-war period, is the industrywide collective agreement. Its dominance determines other significant assumed characteristics of the formal system. In theory, all important bargaining decisions are made by the national unions and industrywide employers' associations, while plant level labor relations are exclusively concerned with the interpretation and application of the national agreement. In addition, it is also assumed that under the formal system plant managers retain a wide degree of unilateral decision-making authority in labor relations, while the role of the shop steward is limited to policing the national agreement, collecting membership subscriptions and providing a personal link between the union and its membership. One important additional characteristic of the formal system is the Government's neutral role in the collective bargaining process : state conciliation and arbitration services are normally provided only at the request of both parties and as a last resort; wage bargaining in the public sector follows the pattern set in private employment; and the minimum wage system is supposed to encourage the establishment of voluntary collective bargaining procedures in poorly organized industries.

The commission freely admits that this simplistic model of the formal system never really operated precisely this way. Nevertheless, it was a close approximation to reality in the heavy unemployment of the inter-war period. However the report's detailed review of Britain's post-war industrial relations shows at least six fundamental ways in which the formal system of industrywide bargaining has been transformed, modified and outmoded by the emergence of an informal system of plant bargaining, which, in turn, supports the commission's important general conclusions that « the practices of the formal system have become increasingly empty, while . . . the informal system (has) come to exert an ever greater influence on the conduct of industrial relations . . . ; that the two systems conflict; and that the informal system cannot be forced to comply with the formal system, » (para. 154).

1. Industrywide agreements no longer provide an accurate guide to the character of plant level labor relations, either substantively or procedurally. Wage drift is pervasive in many industries as large gaps have opened up between basic wage rates and earnings which are largely the result of local bargaining in a full employment environment. Moreover, industrywide dispute settlement procedures

also have become ineffective either as a result of delays because of growing caseloads or more simply because they have been ignored; British industry has experienced a rising incidence of unofficial and unconstitutional strikes over local issues not covered by industrywide agreements, (paras. 57-64).

2. These developments indicate that key collective bargaining decisions have shifted from the industry level to the factory. Moreover, the commission points out three prominent unsatisfactory characteristics of contemporary workplace bargaining : it is largely informal because of the prevalence of unwritten understandings jointly agreed by plant managers and shop stewards or custom and practice determined unilaterally by work groups; it is largely fragmented because different groups get pay increases at different times which result in competitive wage adjustements and disorderly pay structures; and it is largely autonomous because it is not effectively controlled by the national unions or employer's associations, (paras. 65-69).

3. The growth of workplace bargaining has challenged the role of the national employers' associations, which today still have an important role in collective bargaining only because industrywide agreements exist and they are necessary to negotiate them. Apart from this function, however, they have played a negative and defensive role in industrial relations : « From 1914 until very recently every important innovation in industrial relations which has not been the work of the unions came from the Government or from individual companies, » (paras. 75-82).

4. The diminished status of employers' associations is largely a result of the willingness of individual firms in a full employment environment to bargain locally on a variety of issues. Moreover, such local negotiations are often haphazard and un-coordinated because many firms have not established a personnel function at all, while in others this function has a low status in the management hierarchy or it was established only after the firm already had acquired disorderly pay structures and un-coordinated personnel practices, (paras. 83-95).

5. Management acceptance of local bargaining, together with full employment, has inflated the power of industrial work groups. Work group solidarity also has enhanced the position of the shop steward in the plant. In the main, the commission argues that the steward plays a vital role in a complex and un-coordinated bargaining situation. « It is often wide of the mark to describe [them] as 'trouble-makers.' Trouble is [often] thrust on them. In circumstances of this kind they may be striving to bring some order into a chaotic situation, and management may rely heavily on their efforts to do so ... For the most part the steward is viewed by others, and views himself as an accepted, reasonable and even moderating influence; more of a lubricant than an irritant, » (paras. 96-110.)

> 6. Finally, the commission observes that to a major extent while the « trade unions have also been as guilty as employers' associations of sustaining the façade of industrywide bargaining, » it is not so much that the unions have lost power as there has been a downward shift of authority within them. In this regard the multi-union character of the British labor movement has strengthened work group independence in the plant in several ways. First, many trade union branches consist of small groups of members from a of different factories. As a result the branch is divorced from the real business of the union at the place of work, but it nevertheless remains the official means of contact between the union and its members. Secondly full-time officers cannot easily keep in touch with small groups of members scattered over scores of factories. Thirdly, the several unions in a factory have to work together and in many plants shop stewards have formed multi-union committees. However, as a result of their extra-constitutional status, these committees are not easily made responsible to formal trade union structure outside the factory. (paras. 111-122).

Based on this review the commission argues that any effective reform of collective bargaining must end the conflict between what it calls « the pretense of industrywide bargaining and the realities of industrial relations » and it specifically proposes a move to a formally decentralized bargaining system, involving the negotiation of comprehensive company or plant agreements. The commission believes that only within a bargaining framework of this kind will it be possible to establish comprehensive, equitable and efficient pay structures, negotiations adequately covering issues such as restrictive practices, redundancy or employee discipline, effective grievance and dispute settlement procedures or agreements on the role and status of the shop steward in the plant.

This analysis raises the question of to what extent can both sides of industry be expected to comply with these recommendations for a comprehensive system of factory or companywide agreements. Although in recent years there is some evidence of voluntary reform, a basically negative answer to this question is found in the commission's important conclusion that a majority of both sides of industry are satisfied with the current arrangements for industrywide bargaining, supplemented by informal plant negotiations. And this satisfaction reflects three impressive advantages of the present system which are usually claimed for a voluntary industrial relations system in comparison to a system supported by legal sanctions. The first of these is that :

> « they are comfortable arrangements. They do not demand [that] officials of employers' associations [must] enforce decisions upon their members who are also their masters... (moreover) busy full-

> time officers [do not have to be] called in to deal with trivial details within the factory... [finally] managers have considerable freedom to run their own industrial relations affairs... [and] shop stewards enjoy considerable autonomy. » (para. 127).
>
> « Secondly, the arrangements are flexible. They enable managers and stewards to circumvent rules and procedures which might otherwise get in their way... » (para. 128).

Finally, the traditional system gives the parties complete responsibility for reaching agreements which they consider fair and reasonable.

> « a very high degree of self-government in industry is provided... managers and stewards have considerable freedom from outside interference (and) work groups are given scope to follow their own customs and to take their own decisions. » (para. 129).

However, since the report has already demonstrated that the defects of the traditional system heavily outweigh its benefits, the fact that unions and management are resistant to change makes it clear that new public policy initiatives are necessary to achieve reform of collective bargaining. And in turn, an acceptance of this view means that the commission must decide what specific policy approach it should recommend.

The Role of Public Policy

This issue is central to the commission's deliberations for it involves the wider question of whether Britain's traditional voluntary approach to collective bargaining should remain or be amended to allow a greater intervention of the law. Although not without extensive debate and a monority report on this issue, a majority of the commission reject an extensive use of legal sanctions in its program for the reform of collective bargaining. [4] Instead, its approach is essentially the same as that proposed by Allan Flanders of Oxford University, who argued that collective bargaining should be subjected « to a process of vigorous inquiry, making the parties answerable for their decisions, reviewing them in the light of agreed national policy and presenting practical recommendations for desirable reforms. » Or as Flanders quotes the Webbs' succint, almost half century old statement of this approach : the injection of the public interest

[4] In his minority report (at pp. 300-302) Mr. Andrew Shonfield, director of studies at London's Royal Institute of International Affairs, argues the case for collective agreements in the form of contracts.

into private decision-making through a « full and continuous application of the principles of measurement and publicity. » [5]

To implement these principles, the commission recommends two instruments of reform. First, the introduction of an Industrial Relations Act, which would require all companies in the public and private sector, with the exception of the Civil Service, with 5000 or more employees to register collective agreements with the Department of Employment and Productivity (the old Ministry of Labour with expanded functions and a new title). The purpose of this act is two-fold : to emphasize the fact that the primary responsibility for the conduct of industrial relations rests with the board of directors of each particular company, thus downgrading the bargaining functions of the national employers' associations and to encourage the negotiation of factory of company agreements which comprehensively cover the key substantive and procedural issues of the employment relationship.

The commission expects that in the first instance many industrywide agreements would be registered by individual companies. However, since many of these agreements are silent on the very key issues which the commission argues should be covered, it intends that initiatives by the Department of Employment and Productivity or the new Industrial Relations Commission (see below) would result in their modification or in the negotiation of supplementary plant or company agreements. Companies also would be required to report in two other specific instances : when they were unable to reach agreement with the unions on a particular matter or did not recognize a union and therefore had no agreements to register. In this latter instance a company would be required to show that its employees were unwilling either to join or be represented by trade unions.

Secondly, the Industrial Relations Act would establish a permanent Industrial Relations Commission (CIR) made up of full-time and part-time members with its own administrative and reseach staff which would investigate cases referred to it by the Secretary of State for Employment and Productivity concerning the non-recognition of unions, the failure of

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[5] Allan Flanders, *Collective Bargaining : Prescription for Change,* Faber and Faber, London, 1967, p. 59. This is the published version of Mr. Flanders' evidence to the Royal Commission.

a company to negotiate an agreement because of union opposition or cases in which the company's agreements fall short of a reasonable standard. [6] The report emphasizes that the IRC's main function will not be an arbitrator in particular disputes — although it is likely it would propose settlements in appropriate circumstances — but that of making recommendations to achieve a general reform of industrial relations in the long run. In this regard, the commission sees the CIR as the appropriate body to carry out inquiries into the general state of industrial relations in a particular industry or firm rather than entrusting such investigations to ad hoc government appointed committees, the method employed in recent years, for example, in labor relations inquiries in the docks and shipping industry.

In short, the commission sees the basic impetus to a reform of industrial relations coming from the pressures of investigation and publicity generated by the reporting requirements of the new Act and the CIR's specific inquiries. Therefore, in line with this general philosophy it proposes no sanctions against unions or companies who reject the recommendations of the CIR, although companies which failed to register its agreements or to report that it has no agreements and why would be liable to monetary penalties.

The Rejection of Legal Sanctions

The commission's rejection of a legalistic industrial relations system is almost exclusively based on its analysis of what contribution the transformation of collective agreements into legally binding contracts could make to solving the problem of unofficial strikes. [7] This proposal was

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[6] The commission recommends (at para. 182) that companies should use the following criteria in reviewing their industrial relations practices; whether: comprehensive and authoritative collective bargaining procedures at company and plant level had been agreed with the relevant unions : redundancy agreements, joint grievance and disciplinary procedures (including in the final instance appeals procedures) had been introduced; regular joint discussions on measures to promote safety at work were held; and appropriate agreements had been negotiated concerning the role, functions, and status of shop stewards as workplace representatives.

[7] In the seventh chapter of the report the commission provides an excellent review of strike trends which shows that Britain has experienced a rising incidence of industrial disputes since the war, of which on an annual basis in recent years 95 per cent were not officially sanctioned by the unions. The commission proposes no new procedures for dealing with official strikes, although (at paras. 439 and 448) it recommends that the Government have the option of using the IRC or ad hoc inquiries to investigate labor relations problem areas and that state industrial relations officers be given the duty of obtaining the full facts about unofficial strikes.

strongly supported by the central employers' body, the Confederation of British Industry and although in a slightly different form, by the powerful Engineering Employers' Federation, (*i.e.* legally binding procedure agreements rather than substantive contracts), while being resolutely opposed by the Trades Union Congress and the labor movement generally. Moreover, this issue provoked an extensive debate and discussion within the commission itself, with no final agreement being reached until immediately prior to the preparation of its final draft report early in 1968. [8]

The commission's approach to this question is essentially pragmatic as it argues that legally binding contracts on their own are both impractical and irrelevant as a solution to Britain's unofficial strike problem. In addition, it implicitly incorporates the philosophic view that the law is not an appropriate instrument for an effective reform of industrial relations, if it seeks to change union-management behavior simply through a process of direct coercion.

Specifically, the commission's argument can be summarized in three basic observations. First, it points out that at the present time under current law all strikers are liable to court proceedings if they engage in strike action without giving appropriate notice to their employers; moreover, current law also does not prevent the parties from voluntarily agreeing between themselves that collective agreements should be legally binding. However, in practice most employers have been unwilling to institute legal proceedings for breach of contract for fear of damaging their relations with their employees, while in the second instance the parties themselves have decided that collective bargaining should remain outside the law to provide the maximum degree of flexibility and adaptability.

Secondly, with regard to the practicality of applying legal sanctions either against unions or individual workers involved in illegal strikes the commission argues that the chaotic and highly flexible character of workplace negotiations would pose substantial difficulties. For example, since most strikes are short stoppages involving a small number of workers and are the result of what the commission calls « the willingness of work groups to take action without regard to the procedure of collective bargaining, « it would be difficult to hold unions responsible for actions over

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[8] For a glimpse of the commission's internal politics see « How George Woodcock Won on Points, » *The Observer* (London), June 16, 1968.

which they had no control. Moreover, the threat of sanctions against individual strikers is likely to be ineffective in preventing strikes; as supporting evidence, the commission cites the large number of strikes which occurred between 1941 and 1951 in spite of the existence of the National Arbitration Order, which allowed for criminal proceedings against strikes initiated by the state. [9]

Thirdly, and most important the commission simply argues that the introduction of legally binding agreements has no relevance to the real cause of unofficial strikes in British industry. This is not to be found in the main in « the desire on the part of a minority to make trouble and the irresponsibility or weakness of others, » but « our present methods of collective bargaining and especially our methods of workplace bargaining... (with) the absence of speedy, clear and effective disputes procedures, » (para. 475). The report goes on to assert that :

> « until this defect is remedied, all attempts to make agreements legally binding are bound to defeat themselves. One of the principal objects of the factory and company agreements... will be to develop joint procedures for the rapid and equitable settlement of grievances. This is what is lacking at present, and this is the indispensable condition for reducing the number of unofficial and unconstitutional strikes. To make the present procedure agreements legally enforceable would be at variance both with our analysis of the causes of the evil and with our proposals for a remedy. It would direct attention from the underlying causes to the symptoms of the disease and might indeed delay or even frustrate the cure we recommend. It might perpetuate the existing procedures instead of replacing them by clear and effective methods of dispute settlement which at present do not exist. (para. 475). »

In spite of its reasoned opposition to legally binding agreements, the commission does not make a once and for all rejection of legal sanctions. It observes that if its proposals for the reform of collective bargaining do not lead to a considerable reduction in unofficial strikes, « then it may be necessary to reconsider the desirability and practicability of giving some legal support to procedure agreements. » (para. 476). However, in

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[9] The commission also rejects (at paras. 489-499) proposals for the use of « automatic » sanctions in strike in breach of procedure, *i.e.* in the event of involvement in such strikes employees automatically would break their continuity of employment which, among other things, would adversely affect their eligibility for redundancy compensation. However, the commission argues that in reality such sanctions would not be automatic for they would have to be instituted and administered by the affected employer.

line with its general philosophy, the commission proposes that such a step be taken only after its recommendations have had a reasonable time to take effect. Moreover, it argues that legally binding contracts should be introduced as an ad hoc measure of last resort and for a limited period in only those cases in which it was demonstrated that in spite of the existence of an agreed disputes procedure, unconstitutional strikes continued to be a serious problem; that the employer concerned was prepared to use the sanctions made available to him; and that the enforcement of agreements was likely to result in a diminution of strike activity, (see paras. 511-16).

The Reform of Collective Bargaining : Some Observations

What, then can be said about the commission's proposals for the reform of collective bargaining ? In the first place, its argument in support of a decentralized bargaining system has merit for both pragmatic and practical reasons. The drift toward informal plant bargaining which has occurred since the Second World War will unquestionably continue in the future; the relevant issue is not the suppression of plant bargaining, but its reform. Moreover, the report's heavy emphasis on the need for greater management involvement in and responsibility for industrial relations is well-placed. In the final analysis, the capacity of British management in coming to grips with key problems such as demoralized plant wage structures, unofficial strikes and inefficient manpower utilization will determine to a large degree the future quality of the United Kingdom's industrial relations.

Secondly, on balance the commission's arguments against legal sanctions are persuasive. It can be argued that its consideration of this issue mainly with reference to the problems of unofficial strikes is a one-sided approach. For example, legally binding agreements could encourage to those employers who otherwise might be unwilling to take the necessary reform initiatives as well as to force the unions to face up to their inadequate control of plant negotiations. Nevertheless, the commission's detailed review of the difficulties of enforcement shows that on balance, they outweigh the hypothetical advantages of legally binding agreements.

The commission's support for a formally decentralized bargaining system not backed up either by legally binding agreements or IRC empowered to make recommendations supported by legal sanctions has an important implication, however. This is that the reform of collective bargaining inevitably will be slow and piecemeal for apart from pressure

exerted on the parties by the Department of Employment and Productivity and the proposed Industrial Relations Commission, the establishment of effective local bargaining procedures depends on the willingness of unions and management to take the appropriate initiatives voluntarily. And, although recently there have been some encouraging signs of reform, on the whole both sides of industry have been unwilling to face up to the challenge of workplace bargaining.

In spite of this, the commission remains optimistic about the possible extent and place of the reform of collective bargaining resulting from its recommendations. However, it is my view that not only is this optimism misplaced, but that the commission does not take into account some of the possible undesirable consequences of its proposals. For example, the commission's support for public investigation unsupported by legal sanctions as an appropriate reform mechanism appears to depend on its assumptions that « the shortcomings of our existing industrial . . . relations are primarily due to the widespread ignorance about the most sensible and effective methods of conducting industrial relations and to the very considerable obstacles to the use of sensible and effective methods contained in our present system of industrial relations » (para. 204). Yet this hopeful notion of reform by persuasion and publicity clearly contradicts the commission's earlier conclusion (paras. 128-130) that a majority of both sides of industry are satisfied with the current collective bargaining system for understandable, if not praiseworthy, reasons.

However, this optimism does not simply flow from the commission's naive belief that the reform of collective bargaining will be achieved by a miraculous change in union and management attitudes. It is clearly aware that comprehensive company or factory agreements will be negotiated only when it is in the interest of both sides of industry to do so. But repeatedly in its chapter on the reform of collective bargaining the commission argues that the growing importance of productivity bargaining in British industry is significant evidence of the extent to which reform can be achieved by voluntary means. [10] In particular, it specifically

[10] Productivity bargaining refers to those negotiations in which employers have granted substantial improvements in pay and working conditions in exchange for various changes in work rules and practices. For a discussion of its current significance in Britain see Ken Jones and John Golding, Productivity Bargaining, Fabian Research Series, No. 257, London, 1966 and the Royal Commission's Research Paper No. 4, 1. *Productivity Bargaining;* 2. *Restrictive Labour Practices,* London, H.M.S.O., 1967.

observes that the experience of productivity bargaining may be a powerful force in changing union attitudes toward comprehensive factory agreements.

> « of course, the transformation [of collective bargaining] would not take place if the [unions] refused to have anything to do with comprehensive factory agreements, but the experience of productivity bargaining suggests that most of them will not do so. The benefits are too persuasive. Some may try to hold out, but they could not indefinitely resist the example of success elsewhere and pressure from their members and other unions, » (para. 173).

There is no doubt that productivity bargaining has made a dramatic contribution to the reform of collective bargaining in certain instances. (Elsewhere in the report (at paras. 312-317) the commission stresses the important contribution productivity bargaining can make to the eradication of restrictive practices and it correctly rejects Mr. Andrew Shonfield's proposal for a restrictive practices tribunal backed up by legal sanctions.) But in this particular chapter of the report, the commission superficially discusses the caracter of productivity bargaining without taking account of its features which are likely to limit the extent of its general applicability. [11] However, actual reviews of this experience indicates that productivity bargaining makes heavy demands on both unions and management, meaning that such negotiations are rarely undertaken unless both parties believe that their benefits will outweigh the heavy costs in terms of money, time, internal organizational pressures and pre-bargaining preparations. It is by no means clear that a substantial number of firms have the capacity or the willingness to make the necessary committment or that in a majority of instances, particularly from the union's point of view, the benefits are greater than the costs.

In addition, the commission's heavy emphasis on productivity bargaining ignores the fact that in many cases this type of negotiation may be impossible or only have limited applicability. Yet under tight labor market conditions plant bargaining will nevertheless occur, based on the traditional arguments of wage comparability, labor shortages, cost of living and company profitability. And there is nothing in the commission's recommendations to prevent these negotiations from being conducted with the same chaotic, inflationary consequences experienced in the past.

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[11] However in the chapter on « The Efficient Use of Manpower » (at paras. 318-329) the commission provides more balanced discussion of productivity bargaining.

Moreover, in this regard two of the commission's other recommendations may unintentially encourage a continuation of local negotiations of this traditional variety. First, the recommendation that all firms with less than 5,000 employees initially be excluded from the scope of the proposed Industrial Relations Act may result in an undesirable balkanization of the bargaining system. For even on the assumption that comprehensive company agreements will be negotiated by many of the larger firms, presumably the smaller excluded employers will continue to be covered by national agreements, supplemented by informal plant bargains. And the coexistence of both kinds of employer in the same labor market may well produce a situation in which the smaller employers will be forced to accept inflationary pay settlements as a result of the wage leadership of their large-scale competitors. Secondly, the commission's recommendations for union recognition, which are discussed below, are likely to result in a substantial growth of white-collar unionization, particularly in the jurisdiction of two of Britain's most dynamic unions — The Draughtsman's and Allied Technician's Association and the Association of Scientific, Technical and Managerial Staffs. Since both these unions are noted for their agressive strategies of plant bargaining, based on intra- and interfirm pay comparisons, a growth in their strength is also likely to contribute to inflationary wage pressures.

In short, while the commission's proposals will clearly encourage some reform of collective bargaining, assuming that the Government and the CIR adopts an aggressive investigatory posture, in the final analysis any widespread reform depends on the acceptance by both sides of industry of the desirability of a formally decentralized bargaining system. But it is evidence of widespread support of this kind which is specifically lacking at the present time.

Finally, several brief comments must be made about the scope of the commission's review of the collective bargaining system. Although this is never stated explicitly in the report, the analysis focuses exclusively on bargaining in the private sector and particularly on the bargaining experience of the auto industry and the metal trades. Although this emphasis is understandable in view of the unsatisfactory industrial relations record of these industries, it means that any detailed discussion of collective bargaining in the public sector, either in the nationalized industries or in the Civil Service is excluded.

The commission's silence on this issue poses several questions. For example, are its proposals for decentralized bargaining applicable to the nationalized industries, which are included in the scope of the proposed

Industrial Relations Act, in the same way as to private industry ? Moreover, does the commission's exclusion of bargaining procedures in the Civil Service from the scope of the Act mean that their effectiveness is accepted without question ? Probably not, for recently it has been argued that Civil Service bargaining procedures operate both to limit the scope for improvements in manpower utilization and to encourage the spread of inflationary wage pressures across the economy. [12] A confrontation of these issues at a minimum would require a general review of the Civil Service system of « fair comparisons » in wage bargaining and the extent to which productivity negotiations could be coordinated with these procedures. All these issues are complex and difficult, but their exclusion by a commission given the time, ressources and charge to make a comprehensive review of collective bargaining is hard to understand.

The Extension of Collective Bargaining

The second major group of the commission's policy recommendations are designed to achieve an extension of collective bargaining in British industry. This goal, which logically flows from the commission's general support for collective bargaining, is to be attained largely through the removal of barriers to union recognition.

As the report points out, although since the end of the nineteenth century the British Government has adopted a positive attitude toward union recognition, as a result of its support of voluntary collective bargaining as a socially desirable public policy, it « has taken little positive action to encourage workers to join unions or to protect them from retaliatory action by their employers » (para. 213). And this is in spite of the fact that the British Government has ratified the two relevant conventions of the International Labor Organization which concern the freedom of association of employees and their right to organize and bargain collectively. However, with the concurrence of the British labor movement, legislation providing for the legal enforcement of these rights has never been introduced on the grounds that the unions have been able to effectively expand organizational strength by their own efforts.

Therefore, with the exception of the public sector, neither the law nor public policy prevents an employer from deliberately obstructing his employees' freedom of association by acts of individual discrimination or

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[12] For example, in the various reports of the National Board for Prices and Incomes. In particular in NBPI Report No. 18, *Pay of Industrial Civil Servants* Cmnd. 3034, H.M.S.O., London, 1966.

various policies limiting union recognition. [13] But, the commission argues that there is current evidence indicating the significance of such activities in British industry ; in recent years a growing number of strikes have occured over union recognition and about 30 percent of all disputes in which government industrial relations officers conciliate concern this issue. More important, however, is the fact that the organizational future of the British labor movement, as in most other western industrial countries, depends on its ability to recruit white-collar workers. But although there has been a dramatic absolute increase in the number of white-collar unionists since the war, an overall decline of unionization in the whole labor force has occurred because these gains have not offset the large membership losses which have been the result of employment contractions in traditional centers of union strength. In addition, although 30 percent of all white-collar workers are currently in unions, there is only a 12 percent density of unionization in private manufacturing employment, as the bulk of white collar members are found in the public sector.

In responding to the implication of these union membership trends, the commission bluntly rejects as « increasingly unrealistic and out of date » (para. 221) employers' views that union membership is inappropriate or undesirable for white collar workers. It also argues that employer attitudes and policies on the issue of union recognition for this group of employees has been and is a key variable influencing their willingness to become union members.

In a summary of its view, the commission argues that (para. 224):

> « There is a new dilemma for public policy. Collective bargaining is recognized as the best way of conducting industrial relations and as depending on strong trade union organization. The proportion of employees who are organized has however been declining. Employment is increasing in areas which have proved difficult to organize, so that the effect of obstacles to the development and recognition of unions in these areas is assuming greater importance for the future of collective bargaining. The evidence is that if these obstacles are to be surmounted more effective means of dealing with problems of trade union recognition are needed. »

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[13] In the public sector the nationalized industries have a statutory duty to bargain with unions representing their employees. Moreover, the Government's own employees are encouraged to join the appropriate union and their wages and conditions are determined through collective bargaining. Finally, Government contractors are obliged to recognize the freedom of their employees to join unions and must provide wages and conditions no less favorable than those negotiated in the relevant collective agreements in their industry.

The commission makes four specific proposals to deal with this problem. The first two relate specifically to the freedom of association of individual employees, while the others concern the issue of union recognition and the extension of collective bargaining. First, the commission proposes that the right of union membership should be positively protected under the law : no employer should be able to require as a condition of employment that an employee should not belong to a union (the police and armed forces are the only exceptions to this recommendation). Secondly, no friendly society (any voluntary benefit organization) should be allowed to stipulate in its rules that union members be excluded from membership or from receiving full benefits. (This recommendation is specifically directed at the Foreman and Staff Mutual Benefit Society which provides a variety of social benefits to more than 60,000 members employed in supervisory and similar grades in the shipbuilding and engineering industries. The society which bars unionists from membership, was claimed to have been a significant anti-union influence by the white collar unions in these industries).

Of the other two recommendations, the first concerns modifications in the wages council system to encourage the growth of voluntary collective bargaining, while the second has the potential of being one of the commission's most significant recommendations. [14] This is the proposal that the Industrial Relations Commission should be empowered to investigate cases referred to it by the Minister of Productivity and Employment involving union recognition, including recognition disputes between unions. In line with its general philosophy of legal abstention, the report does not propose any penalties against either party for rejecting the CIR's recommendations, although, as in the case of legally binding agreements, it admits that the question of sanctions would have to be reviewed in light of experience.

However, later in the report the commission does propose a modified form of sanctions against employers in recognition disputes. In certain circumstances unions would be granted the right of compulsory unilateral arbitration — an arrangement under which it could take an employer

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[14] The commission (at paras. 262-266) makes four recommendations for changes in the wages council minimum wage system to encourage its replacement by voluntary collective bargaining. The most important of these proposals are that the Government be empowered to consider the abolition of a wages council at the request only of the union or unions in the industry concerned and that firms in which effective voluntary negotiating procedures exist may be exempted from the jurisdiction of the wages council at the individual or joint request of the parties involved.

to arbitration by the Industrial Court without prior joint agreement. In particular, the commission envisages that this power could be granted (para. 273):

> « First, where the employer rejects a recommendation of the (Industrial Relations) Commission to grant recognition... (for) this will give (the union) at least a foothold and may encourage the employer to change his mind. Secondly, even where the employer accepts a recommendation to grant recognition... he may be able to exploit the position to reduce bargaining to a mockery. Thirdly, the commission's investigations may reveal circumstances of this kind even in industries in which unions are already formally recognized. Here again it should be empowered to recommend unilateral arbitration. »

However, the commission intends that union access to unilateral arbitration would be granted on an ad hoc and selective basis, and only after an investigation by the CIR, which would have taken into account the views of the affected employer. Moreover, the investigation would have to demonstrate that access to unilateral arbitration would « contribute to the growth or maintenance of sound collective bargaining, » (para. 274).

The commission's recommendations in the field of union recognition are in line with its general philosophy of encouraging the reform and extension of collective bargaining. Nevertheless, they are radical proposals for the leading employers bodies — the Confederation of British Industry and the powerful Engineering Employers' Federation — were opposed to government involvement in this area. However, a number of employers' groups, Britain's larger unions and the TUC were in favor of recognition legislation, although not all these groups supported the commissions specific reconmmendations. [15] Moreover, it is likely that the implementation of these recommendations will encourage a significant growth in trade union merbership, particularly in the field of white collar employment. However, it remains to be seen if they will result in an overall rise in unionization in the labor force as a whole.

Space limitations require that comments will be directed only to the report's recommendations on union recognition. Here my quarrel is not with the principle involved in the recommendations, but with the quality of the guidance the commission provides for the development of public policy in this area. For since the report only contains four

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[15] See the discussion of these issues in George Sayers Bain, *Trade Union Growth and Recognition,* Royal Commission on Trade Union and Employers' Association, Research Paper 6, London, H.M.S.O., 1967, pp. 99-101.

paragraphs which discusses the role of the CIR in union recognition cases, it offers few guideposts for dealing with the difficult issues posed by its recommendations.

However, little reflection is needed to outline some of these issues. For example, under what circumstances would the Minister refer a case to the tribunal ? Automatically in all cases in which a firm indicated it had no collective agreements covering either all or particular groups of its employees ? At the request of the union or unions concerned, or as the report implies, only in those cases in which disputes over union recognition actually occured ? Secondly, there is the issue of which union or unions should be accorded recognition rights which in turn pose other thorny questions : the degree of membership support required, the scope of the unit in which recognition is accorded and the extent to which an employer's interests should be taken into account, if at all, in deciding whether a particular union should be able to represent a particular group of employees. Finally, there is the question of whether sanctions should be applied against either of the parties who refuse to have the case considered by the IRC or reject its findings.

The commission is clearly aware of all of these issues. [16] As already pointed out, it accepts the possibility of reconsidering the question of legal sanctions in light of the tribunal's experience. But even in the short run it is probable that some kind of protection would have to be given to an employer against strike action by the losing union in an inter-union recognition dispute. On the other issues such as the representedness of unions or the scope of the bargaining unit the report is purposively silent. This is not only because these are controversial questions, but also to give the IRC the maximum degree of flexibility in devoloping appropriate principles based on its case experience. There is much to be said in favor of the evolution of principles in a case-by-case approach, instead of the introduction of rigid principles or criteria at the outset. Yet an acceptance of this principle surely does not preclude any general discussion of the advantages and disadvantages of various principles and criteria which could give guidance to the tribunal in its work.

Another criticism of the commission's recommendations is that no attempt is made to explore the possibility of the tribunal's role as a rationalizer of Britain's complex union structure. Indeed, the commission argues specifically that any fundamental change in union structure must

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[16] Bain, *op. cit.*, pp. 82-92.

be made within the labor movement. And with regard to this issue the report proposes that one method of reform would be for the Trades Union Congress to adopt the principle of « one union for one grade of work within one factory (para. 691). » The application of this principle could be established through TUC sponsored joint agreements designating one union as representative of one grade of workers in a plant as well as by TUC intervention into inter-union recognition disputes to determine which of the competing unions should be granted exclusive jurisdiction rights.

It is doubtful whether the TUC would be willing to intervene extensively into this controversial area, but the commission is right to assume that any fundamental reform of union structure must come from the labor movement. Yet a willingness to apply the « one union for one grade of work » principle by the CIR in recognition disputes could encourage a more simplified union structure, particularly in previously unorganized white collar jurisdictions. And this would be true even if the CIR only decides a small number of cases and the principle could not be applied unambiguously in all circumstances.

Finally, the commission's recommendation that unions be given access to unilateral arbitration in certain circumstances must be critically examined. Again the report provides little guidance on the development of public policy. Obviously in those cases in which an employer rejects a recommendation by the commission to recognize a particular union it would be possible to determine quite easily whether access to unilateral arbitration should be granted. However, it is also envisaged that such access also could be granted in cases in which unions are recognized in the firm, but the employer is able « to exploit the position to reduce bargaining to a mockery,», (para. 273). Clearly, in its investigation of these cases the CIR must have some criteria to determine whether or not this is so, or, in North American terminology, it will have to decide whether an employer is « bargaining in good faith. » And it is precisely on the issue of applying this principle in practice that the commission's report should have given some guidance to the CIR.

In conclusion, one can be sympathetic to the commission's dilemma in making controversial recommendations in the field of union recognition, while not wishing to raise the thorny practical issues connected with their application. Moreover, it is right not to lay down rigid criteria or guidelines which might create problems for the CIR. Yet surely some discussion of the policy implications of its recommendations can be

justified in view of the controversial nature of the issue of union recognition. And the fact that this is not provided is clearly a major shortcoming of the report.

Protecting the Rights of Union Members and Employees

Finally, the commission's third group of major recommendations — those concerning the protection of the rights of individuals both as union members and employees — must be briefly examined. Although these particular recommendations did not receive extensive public attention following the report's publication, in the long run they are likely to have a significant impact on the British industrial relations system.

Union membership rights was an important topic on the commission's agenda for several reasons. In the first place, the law relating to internal union affairs had not been systematically examined for almost a century. In addition, in recent years the public had become concerned about this issue as a result of several prominent court cases involving union electoral malpractices and other unjust abuses of union power. [17] Moreover, the commission itself argued that since its recommendations in the area of collective bargaining and union recognition would serve to strengthen union power, a review of the extent to which union membership rights were protected was imperative.

The commission's approach to this issue is carefully balanced to take account both of union requirements as social institutions and individual membership rights. For example, it observes that currently there is no evidence of any widespread abuse of union power, and after a detailed consideration of the arguments on both sides, it rejects any blanket prohibition of the closed shop (see paras. 588-602). Nevertheless, the commission does accept the need for a change in public policy to adequately safeguard union membership rights.

Specifically, it proposes two instruments of reform. First, all unions should be required to up-date, amend or clarify their internal rules and procedures, particularly with respect to the following issues : admission and disciplinary procedures, disputes between a union and a member, general union elections and the election and authority of shop stewards.

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[17] The most famous of these cases involved electoral malpractices in the Electrical Trades Union. Court action resulted in the removal of the union's communist leadership. See. C.H. Rolph, *All Those in Favour ? The E.T.U. Trial* Andre Deutsch, London, 1962.

The extent to which union rules met an acceptable standard on these issues would be determined by a newly established Chief Registrar of Trade Unions and Employers Associations, who would carry out these new duties in addition to the limited trade union functions previously performed by the Chief Registrar of Friendly Societies. The Registrar's power in this regard stems from another commission recommendation that all unions (and employers' associations) be required to register and be granted corporate status under the law.

Secondly, the commission accepts the « view (that) the connection between membership of a trade union and employees' livelihoods means that trade unions cannot be regarded simply as voluntary clubs from the member's point of view ». (para. 630). Therefore, it recommends the establishment of an independent review body to which any union member would have a right of complaint in the last resort.

The proposed independent review body would have three members — a lawyer as chairman and two trade unionists appointed by the Minister of Employment and Productivity — and full powers to call witnesses and obtain evidence in its deliberations. This tribunal would be empowered to deal with four kinds of cases : 1) those involving an unfair imposition of penalties which amount to a substantial injustice as well as instances of membership expulsion or admission refusals; 2) cases based on a breach of union rules or a violation of the principles of natural justice; 3) electoral malpractices or complaints raised with respect to the laws concerning union amalgamations or the political contributions of union members; and 4) disputes between the Registrar and a union over whether its rules comply with the law. [18] In cases of arbitrary expulsion, membership admission refusals or the imposition of unjust penalties, the review body would be empowered to award compensation to a successful appellant against the offending union in various amounts up to a limit of two years pay calculated at a rate of 40 pounds per week. Finally, the review body's decisions are to be final and binding with appeals to the High Court allowable only on points of law.

Although the commission intends that the review body will be a mechanism providing for the rapid resolution of these cases, it does not envisage that it will be the only procedure to deal with complaints. In fact, heavy emphasis is placed on the desirability of settling cases before

[18] The commission was particularly concerned with the abuse of power in closed shop situations and in union elections. As a result the report spells out in detail those specific circumstances in closed shops in which union members should have a right of appeal and the procedure to be followed in cases of suspected electoral malpractice.

they reach the review body. For example, all appellants are to exhaust their unions' internal appeal procedures, subject to a time limit of three months, before their complaints can be heard by the tribunal. In addition, all complaints are to be addressed initially to the Registrar who is to seek to promote satisfactory voluntary settlements. Finally, the review body will restrict access to its agenda by considering only those cases involving « substantial injustice » and by refusing not to hear more than one complaint submitted by any one appellant, unless, on the merits of the case, another hearing is considered justified.

The protection of employee rights in industry is the subject of the commission's final important recommendation. In particular, the report recommends safeguards for workers against unfair dismissal through the introduction of legislation providing individuals the right of appeal to an independent tripartite tribunal.

This proposal must be seen in the context of the gradual, but significant change in public policy on the issue of employee security in industry which has occurred in Britain since the early 1960s. Before then voluntary collective bargaining was favored over a legislative approach, but as a matter of fact specific issues such as sick pay, pensions, dismissals and redundancy notices and compensation were neither generally not adequately covered by collective agreements. However, in 1963 and 1965 respectively the Contracts of Employment and Redundancy Payments Acts were introduced to provide by statute minimum periods of notice and payments to redundant workers, geared to age and length of service. Moreover, in 1964 the Labour Government announced its acceptance of the ILO's 1963 Recommendation of Termination of Employment and the Minister of Labour's tripartite National Joint Advisory Council set up a committee to study the question of unfair dismissals and dismissal procedures.

This committee's report concluded that although most employees received substantially more protection against unfair dismissal than the minimal safeguards provided under the common law, adequate dismissal procedures existed mainly in larger firms and that it was the exception, rather than the rule, that an employee had a final right of appeal to a joint union-management body or an independent tribunal. [19] Moreover, the report indicated as an important measure of the ineffectiveness of current procedures was that a significant number of strikes had occurred over dismissals in recent years. The committee recommended that the « immediate program should be to encourage the development and extension of satisfactory voluntary procedures. » But at the same time it

[19] *Dismissals Procedures,* H.M.S.O., London, 1967.

concluded that there were « strong arguments against the introduction at an early date of legislation to provide for statutory machinery (on dismissals). » Members of the full NJAC approved the report's general recommendations, but the TUC argued in favor of legislation guaranteeing a statutory right of appeal, a view which was rejected by the CBI.

The Royal Commission's consideration of this issue is an extension of these earlier deliberations. However, the commission (at paras. 533-539) strongly rejects the NJAC report's objections to legislation on employee dismissals. In addition, it goes on to argue that legislation had several positive advantages : namely, to extend the implementation and raise the standard of dismissal procedures generally across British industry; to safeguard employees in the event of employer retaliation against union members; and to offer an opportunity for appeals against dismissal decisions to an external and independent third party.

In short, the commission recommends the introduction of legislation which would stipulate (following the ILO Recommendation) that all dismissals would be invalid unless they occurred as a result of a reason « connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. » (para. 545). Reasons for dismissal such as union membership or activities, race, color, sex, marital status, religious or political opinion, national extraction or social origin would be deemed unfair, with the involved employer or employee respectively being required to justify the reasons for the dismissal or to indicate any special grounds on which it could be held to be unfair. [20]

Under the proposal virtually all employees would have the right of immediate appeal, or no later than within five working days of the dismissal, to one of a number of tripartite industrial tribunals which would sit on a regular basis in the major industrial centers of the country. In the event of an unfair dismissal being proved the tribunal could grant the appellent various amounts of compensation up to a limit of two years pay calculated at a rate of 40 pounds per week as primary relief, with the possibility of reinstatement as a secondary remedy if this was acceptable to both parties. Finally, the tribunal's decisions would be final and

[20] The commission also proposes that employees who are dismissed because of the imposition of a formal closed shop agreement or as a result of pressure by their workmates should have the right of appeal against their employer on the grounds of unfair dismissal. However, a five member minority of the commission, including Lord Donovan, opposed this recommendation and proposed instead that in these cases complaints should be lodged against the union with any compensation paid by the union and not the employer.

binding, with appeals allowed to the High Court only on points of law. (Elsewhere in the report in conjunction with the above recommendations, the commission proposes that the industrial tribunals which were established to hear appeals under the Redundancy Payment Act be expended into multi-purpose labor tribunals whose jurisdiction would be, with the exception of court action involving claims for damages arising out of accidents at work, « all disputes arising between employers and employees from their contracts of employment or from any statutory claims they may have against each other in their capacity as employers and employees, » (para. 573). However, excluded from this jurisdiction would be collective disputes between unions or groups of employees and management or employers' associations which should be resolved through collective bargaining. [21]

Finally, two other features of the commission's recommendations should be noted. First, heavy emphasis is placed on the importance of the tribunals' conciliatory functions in dismissal cases with the hope that these procedures will provide a reasonable and quick settlement of disputes on a voluntary basis. Secondly, the report proposes that the Minister of Productivity and Employment, following an investigation by the IRC, be empowered to exempt satisfactory voluntary dismissal procedures from the scope of the statutory machinery. However, no voluntary procedure would be exempted unless (para. 560):

> (i) « it is provided for by collective agreement between parties to collective bargaining arrangements and enables joint or independent decisions on dismissals to be reached; and
>
> (ii) it either enables such decisions to be reached before dismissal takes effect (thus effectively safeguarding the employee against the risk of unfair dismissal) or provides for compensation on conditions no less favorable than those laid down in the statute as an alternative to reinstatement in the event of a dismissal which has taken place being found to be unfair. »

In my opinion, the legislative implementation of these recommendations will make an important contribution to public policy in industrial relations. As has already been pointed out, studies of trade union government in Great Britain provide little evidence of any widespread abuse of

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[21] The commission recommends (paras. 579-580) that the labor tribunals should have exclusive jurisdiction over cases concerning redundancy pay and unfair dismissals, while in all other matters the plaintiff should have the option of instituting proceedings before the labor tribunal or in the ordinary courts. However, except in extremely complex cases or those involving trial by jury the commission clearly intends that most complaints will be heard by the labor tribunals.

union power. However, for those kinds of circumstances in which infringements of union membership rights have occurred, the commission's recommendations provide ample opportunities for the redress of injustice, assuming that the Registrar strictly applies the suggested standards for union rules and internal procedures and individual members are willing to use the appeals machinery. In addition, the commission's support for legislation establishing independent appeals machinery for employee dismissals also is justified since voluntary efforts to institute adequate procedures have not been effective in the past and are unlikely to result in their widespread introduction in the future.

These recommendations also provide clear examples of two important principles of the commission's operating philosophy. First, its view that the law has a relevant role to play in industrial relations, but only in those cases in which it can be reasonably expected to be upheld and applied effectively. Secondly, there is the principle that even in the context of greater legal intervention, the encouragement of self-government in industry and within the labor movement should be given high priority. This notion is exemplified specifically in the commission's proposals to allow adequate jointly established dismissals procedures to be exempted from the jurisdiction of the statutory appeals machinery and that cases concerning membership rights and the problems of union government should be considered by a separate tribunal apart from the proposed Industrial Relations Commission, on which only union representatives would sit, in addition to a lawyer as chairman who would represent the public interest. In its application of these principles, the commission is seeking to eradicate the defects of an entirely voluntary industrial relations system without at the same time compromising its traditional advantages.

An acceptance of their relevance in principle does not preclude a critical review of the quality of guidance the commission provides for the introduction of these new policies, however. In particular, the recommendation that the existing industrial tribunals be transformed into multipurpose labor tribunals with jurisdiction over « all disputes arising between employers and employees from their contracts of employment » raises some interesting questions. For if this recommendation is adopted, Great Britain will have a full-fledged labor tribunal system, whose emergence is the result of a series of piecemeal legislative and administrative social policy decisions on a variety of specific issues.

The report does provide a clear and perspective description of the proposed functions, character and jurisdiction of the tribunals, but it does not discuss in any detail the administrative implications of an extend-

ed labor tribunal system, apart from noting that it will probably require additional tribunal chairman trained both in the law and industrial relations and suggesting that « it may be necessary for (the tribunals) to give priority to the hearing of dismissal cases in view of their special urgency, » (para. 548). However, since the existing industrial tribunals have been in operation for several years, a detailed analysis of their proceedings would have been valuable in determining their capacity to undertake the proposed additional functions. Important information could have been provided on such issues as the caseload of the tribunals, the length of time it takes a case to get on the docket or be decided, the number of cases appealed to the courts on points of law and the effect this has on the time required for their final resolution, the tribunal's experience with different kinds of cases, *e.g.* training levy appeals as compared to redundancy payments cases and whether, in circumstances where relevant, the operating approach of the tribunals has limited or encouraged the flexibility necessary for the informal conciliation of disputes.

Moreover, a detailed review of foreign experience with labor tribunals also would have been useful. For example, while the commission heard evidence about the French labor courts, a more detailed study of this heavily-utilized dispute settlement system, although constituted differently and only specifically relevant to France's industrial relations system, could have provided insights into the necessary prerequisites for an effective system of informal conciliation as well as into the question whether separate industry tribunals might make a useful contribution to an effective handling of cases which originate in different industrial circumstances. [22] In short, while agreeing with the commission's recommendations in principle, its failure to collect and analyze all relevant empirical data relating to the effective administrative operation of a labor tribunal system is another important shortcoming of the report.

A General Evaluation

Following this detailed review, what assessment can be made of the report as a whole ? As already indicated the report does have various shortcomings, some of which are inherent in the procedures utilized by all Royal Commissions. For example, the inordinate length of time which was required for the report's completion is not only a result of the breadth

[22] See. Minutes of Evidence 66, witness : G.H. Camerlynck, Professor at the Faculty of Law and Economic Sciences, University of Paris, Royal Commission on Trade Unions and Employer's Associations, H.M.S.O., London, 1967.

and complexity of the commission's task, but also because of the heavy commitments or its membership in their regular occupations, *i.e.* to pick out only two members at random, Lord Robens is chairman of the National Coal Board and Mr. George Woodcock is general secretary of the Trades Union Congress. Moreover, the adversary character of the commission's membership composition meant that compromise retaining the characteristics of Britain's traditional industrial relations system was an inevitable ingredient of its deliberations. Finally, in spite of the commission's exhaustive compilation of evidence and the general excellence of the study papers produced or commissioned by its research staff, there are some important gaps in the report's analysis. For example, the commission's neglect of collective bargaining in the public sector, its limited discussion of productivity bargaining (at least in its chapter on the reform of collective bargaining) and the failure to provide adequate empirical evidence relevant to the administration of the proposed labor tribunal system are some issues that can be singled out in this respect. However, even after taking all these criticisms into account, there is no doubt that this comprehensive and detailed survey does focus on the key problems of British industrial relations and that the report itself, in addition to the commission's research papers and published evidence provides excellent source materials for current and future students of Great Britain's industrial relations system.

Moreover, the commission's report represents an important milestone in the public review of British industrial relations in at least two respects. First, in conjunction with its strong defense of collective bargaining in principle, the commission's recommendations for a comprehensive system of decentralized plant or companywide agreements gives public approval to a structural reorientation of collective bargaining which for at least a decade has had the support of many industrial relations academics. And in view of the nature of Britain's main labor problems — demoralized wage structures and payments systems, a high incidence of plant level industrial conflict and an extensive degree of inefficient manpower utilization — this is clearly a sensible direction for the reform of collective bargaining, not withstanding some pitfalls in this approach. [23] Moreover,

[23] A decentralized bargaining system would clearly pose difficulties for the effective development of a national incomes policy. For although the commission argues that plant agreements could reduce inflationary pressures by achieving a closer link between pay and productivity, its proposed decentralized bargaining structures would seriously limit the possibility that the central labor market institutions — the TUC and CBI — could achieve the power and authority necessary for their effective involvement in a national incomes policy.

this recommendation points up another important consideration, previously obscured by the traditional system of industrywide bargaining — that company management must face up to its responsibility for the effective development of its own industrial relations policies. Secondly, in spite of the commission's rejection of legally binding contracts, the report recommends significant changes in Britain's traditional voluntary approach to industrial relations. Legislative innovations are proposed to regulate internal unions affairs and to grant employees the right of appeal against unfair dismissal. In addition, legislation and quasi-legislative approaches also are recommended to guarantee workers the right to organize and bargain collectively. Finally, and most important, the recommendations requiring the registration of collective agreements and providing for the scrutiny of industrial relations practices by an independent Industrial Relations Commission guarantees that the consequences of voluntary collective bargaining will be subject to public review.

In the final analysis, however, the relevance of the report must be judged by the extent to which its recommendations are likely to contribute to the urgently needed reform of Britain's collective bargaining institutions and procedures. Two considerations are relevant in this respect. First, the possible nature and extent of any reform of collective bargaining partly depends on what kind of body the proposed Industrial Relations Commission turns out to be. In turn, this will be determined partly by the kind of role the government conceives for the commission since the CIR will only be able to investigate those cases referred to it by the Minister of Employment and Productivity. Equally important, however, will be the commission's conception of its own role which will be greatly influenced by the quality of its chairman and general membership. The experience of the National Board for Prices and Incomes (NBPI), the review body set up in 1965 to administer the Labour Government's prices and incomes policy, is instructive in this respect. Although like the proposed Industrial Relations Commission, the NBPI is not empowered to issue legally binding recommendations, it is generally agreed to have been a highly successful review body. Partly its success can be attributed to favorable public opinion and support from the labor movement at the time of its establishment, but more particularly it is the result of the toughmindedness and critical judgement of its chairman and certain key board members as well as the general excellence of its research and administrative staff. [24] After more than four years of almost continuous economic crisis the public is likely

[24] See Robert B. McKersie, « The British Board for Prices and Incomes, » *Industrial Relations*, Vol. 6, No. 3, May 1967, pp. 267-84.

to be unmoved by or even cynical about the establishment of the new industrial relations review body, but even if this is to the government's decisions as to its chairman and membership will have a considerable influence on the IRC's role in the reform of collective bargaining.

Secondly, and by far the most important consideration for any widespread reform of collective bargaining, is the extent to which both British unions and management voluntarily accept the commission's assumption that a formal system of plant bargaining has substantial advantages and as a result will be prepared to make the necessary institutional changes to bring this about. The commission emphasizes the recent experience of productivity bargaining as evidence of the extent to which voluntary reform is possible and it looks to the efforts of the Ministry of Employment and Productivity and the IRC to encourage new approaches to collective bargaining in British industry generally. It is unquestionable that an implementation of the report's recommendations will encourage some degree of the changes needed in British collective bargaining, but it is also my belief that the commission's hopeful pragmatic approach greatly underestimates the degree of conservative satisfaction with the current system and the powerful institutional barriers to its reform.

In addition, in my view, the commission's optimism also is based on a far too limited evaluation of the real costs of the institutional changes required to establish plant bargaining on an effective basis. As other writers have pointed out, together with its support for localized negotiations, the commission argues the case for an increased number of union officials, the integration of shop stewards into the machinery of union government and the extension of training at all levels of the union hierarchy, but it never really evaluates the overall resource implications of a decentralized bargaining system for the unions or faces up to the union's obvious difficulties of finding adequate finances for this purpose. Moreover, the report is almost totally silent on the specific implications of a decentralized bargaining system for management apart from its critical review of management's current personnel policies and of their overreliance on employer's associations in the industrial relations field. Nevertheless, comprehensive plant negotiations will demand far-reaching changes in the personnel management function, requiring imagination, committment, and substantial resources, [25] Therefore based on all these considerations, a piecemeal and slow reform of collective bargaining is

[25] See, for example, D. J. Robertson, "The Implications of the Proposed New Look in Industrial Relations," *The British Journal of Industrial Relations,* Vol. VI, No. 3, November, 1968, pp. 293-95.

the only safe prediction that can be made about possible developments in the next few years and it is questionable if this will be adequate in view of the dire circumstances of the British economy.

The Labour Government's Response: Mrs. Castle's White Paper

The Donovan report had received a cool reception when it was published in June 1968. The Trades Union Congress cautiously welcomed the report, the Confederation of British Industry described it as « disappointing » and one unabashed critic, the influential *Economist* magazine, dismissed the report as « one to forget. ». Nevertheless, the report was welcomed by Mrs. Barbara Castle, the Labour Administration's Secretary of State for Employment and Productivity, as « valuable and constructive » as she committed the Government to the reform of industrial relations, including proposals for new legislation, as soon as possible after consultations with the Trades Union Congress and the Confederation of British Industry. Therefore, whatever its initial reception, the publication of the Donovan report and the translation of its major recommendations into law will certainly mark a significant turning point in evolution of the British system of industrial relations.

In January 1969 after more than six months exhaustive discussions with the TUC and CBI and extensive debates within the Labour Administration, Mrs. Castle presented a White Paper to Parliament which outlined the Government's policy for the reform of industrial relations. [26] For the purpose of evaluation the Government's proposals will be divided into two groups : first, those which more-or-less faithfully follow the views of the Donovan report; and secondly, those more contentious proposals which go beyond the Royal Commission's recommendations, especially those which propose modest limitations on the right to strike.

No more than a cursory reading of the White Paper is required to determine that the Government completely accepts the Royal Commission's basic philosophy and its diagnosis of and prescriptions for Britain's industrial relations problems. This can be seen in a review of the White Paper's major propositions and arguments. First, it agrees with the Donovan report that while at its best the present system of industrial relations works well, it still has « serious (general) deficiencies — both from the point of view of the community and the individual employee »

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[26] *In Place of Strife : A Policy for Industrial Relations*, Cmnd. 3888, H.M.S.O., London, January, 1969. The numbers inserted after quotations in the text refer to paragraph numbers in the White Paper.

(para. 13). Secondly, the White Paper follows the Royal Commission's distinction between formal and informal systems of collective bargaining, agreeing that « in practice an increasing amount of bargaining and an increasing proportion of the wage packet is settled outside the 'formal system' by informal understandings and arrangements between shop stewards and managers or foremen at workplace level » (para. 20). And it then goes on to argue that this concentration on informality creates serious problems such as : the lack of clear principles to settle shop floor grievances and comprehensive, mutually agreed procedures whose absence encourages arbitrary behavior by management and wildcat strikes (paras. 20 and 22). Finally, and « most important of all the disparity between the formal system and the realities of shop floor life is often not fully appreciated or even understood by senior management in the companies where it occurs, « while . . . » on the union side many national leaders continue to uphold the assumptions of increasingly ineffectual industry-wide negotiating structures » (para. 23).

Thirdly, although the White Paper expresses doubts about the relevance of such arrangements in all industries, it agrees with the Royal Commission's view that « the best way forward will often be the negotiation of formal, comprehensive and authoritative company or factory agreements » (para. 27). In addition, it singles out management as the major source of initiatives for change and it accepts the Donovan report's principles for satisfactory company or factory agreements, (see footnote six above). Fourthly, the Government completely accepts Donovan's general arguments against making collective agreements legally enforceable contracts, although it proposes changes in the law to remove any impediments « to the legal observance of collective agreements negotiated between employers or employers' associations and trade unions by any method freely decided upon by the two parties » (paras. 42-46). Finally, the Government's policy statement unequivocably signals — and in stronger terms than stated by the Royal Commission — an end to Britain's traditional laissez faire approach to industrial relations for the White Paper's philosophy assumes that the state has a direct and major part to play in regulating industrial relations. In short, for the first time it introduces as a generalized principle, the concept that in industrial relations both sides of industry have responsibilities to the community at large, (see Paras. 5-9).

In applying these principles to achieve a concrete reform of industrial relations, the White Paper then goes on to propose the introduction of new industrial relations legislation which will include *inter alia* nine major

groups of recommendations, all of which closely follow the Royal Commission's report : [27]

1. The establishment of a Commission on Industrial Relations (CIR) with a full-time chairman and members. The CIR will be charged with the task of improving and extending effective industrial relations procedures in British industry and to make reports on references to it by the Secretary of State for Employment and Productivity concerning particular industrial problems such as union demands for recognition, the reform of trade union structure or the lack of satisfactory agreements or procedures in a particular industry or section of an industry. However, the CIR will not be empowered to issue legally binding recommendations since it is intended to be « a disseminator of good (industrial relations) practice and a focus for reform by example » (para. 37).

2. The introduction of initially voluntary, but ultimately statutory requirements that compagnies with 5000 or more employees register substantive and procedural agreements, plus arrangements for consultation concerning matters not covered by negotiations with the Department of Employment and Productivity. In appropriate cases smaller firms will be asked for information about their agreements. Special attention will be paid to firms with « nil » returns and those with seriously inadequate procedural agreements.

3. The White Paper accepts the need for the extension of trade unionism and collective bargaining in British industry. This goal is to be achieved through recommendations in this and the next two sections. In the first place, the principle that no employer has the right to prevent or obstruct an employee from belonging to a trade union will be guaranteed under the law. Moreover, no Friendly Society will be allowed to have rules debarring trade unionists from membership. Employees will also have redress under the law if they are dismissed on account of trade union membership.

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[27] The White Paper does include a variety of other recommendations, many of which deal with technical points of law. Nevertheless, among other significant recommendations were : proposals that employers be legally required to disclose relevant information to unions in the course of consultation or negotiations, plus favorable support for experiments in worker representation on the boards of companies with a possible view to considering legislation for such arrangements if this proves desirable. However, as is the case generally in the White Paper, the Government follows the Donovan report in emphasizing that a general reform of collective bargaining is the best approach for dealing with restrictive labor practices and improvements in industrial training. In fact, the Government rejects only two of the Royal Commission's recommendations : that trade unions should be given corporate status (paras. 111); and that the legal protection for inducing breaches of contract as provided under the Trades Disputes Acts of 1906 and 1965 should be limited to registered trade unions or those individuals acting on their behalf, thus making unofficial strikers liable under the law (para. 88).

4. In disputes in which an employer refuses to recognize a union, recognizes some unions, but not others or recognizes, but refuses to negotiate with a union, the Government will be legally empowered to refer such cases to the CIR for investigation and a report. If the union is appropriate and can establish that it has reasonable support as determined in a ballot or through other procedures, the CIR will be expected to favor recognition. In cases in which an employer refuses to recognize a union even after a recommendation by the CIR or recognizes a union, but refuses to bargain genuinely with it, the Secretary of State for Employment and Productivity will be empowered to issue an Order requiring that the employer recognize and/or negotiate with the union. After this, if the employer continues his opposition, the union will be granted the right of unilateral arbitration before the Industrial Court, whose awards will be legally binding. [28]
5. In inter-union disputes over recognition the Government proposes that the CIR will bring pressure to bear on the unions involved to reach a settlement. If these efforts fail, the Government will ask the TUC to resolve the dispute, but if a settlement is not possible within a reasonable time, the case will be formally referred to the CIR which in certain circumstances may have to recommend that only a certain union be recognized. In these cases the Government expects that all parties concerned will accept the CIR's recommendations, but if they do not, the Secretary of State for Employment and Productivity will be empowered to issue an Order to give effect to the CIR's recommendations. An employer or union which then refused to honor the CIR's recommendations would be liable to financial penalties. [29]

[28] It should be noted that like the Donovan report the White Paper fails to provide the CIR with detailed guidance on how to determine whether a union is appropriate or has established reasonable support. Moreover, the Government's proposals to allow unions' access to unilateral arbitration in cases in which it has obtained recognition, but the employer concerned refuses to bargain genuinely raise the same difficult questions as the Royal Commission's similar recommendations. Either the Secretary of State for Employment and Productivity will have to decide whether an employer is « bargaining in good faith » or it may be assumed that such a failure simply exists in all cases in which a refusal to negotiate occurs. If the latter approach is adopted, then the Industrial Court will have the burden of both determining whether the employer is « bargaining in good faith » as well as the acceptible range of bargainable issues. And this could, indeed, result in a dramatic change in the Industrial Court's traditional function as a dispute settlement tribunal.

[29] In this proposal the Government obviously is looking to the TUC to play a much more positive role in settling inter-union disputes than it has undertaken in the past. However, the TUC's reluctance to take a positive position in the current serious white collar inter-union recognition dispute in the steel industry raises some doubts about the general effectiveness of its role in this capacity. Nevertheless, the White Paper does go further than the Donovan report in recommending in the final analysis an imposed settlement of inter-union recognition disputes by the CIR, whose recommendations ultimately could be supported by financial penalties.

6. The establishment of a new Industrial Board whose jurisdiction would be : cases arising out of refusals to honor Government Orders giving effect to CIR recommendations in inter-union recognition disputes and, as indicated below, cases concerning complaints against trade unions by individuals, the registration of trade unions, or « conciliation pauses » and strike ballots. The membership of the Board will be made up of individuals selected from the employer and employee panels of the tripartite Industrial Court and it will sit under the chairmanship of the Court's President or one of its independent legal members; however, the precise composition of the Board's membership will depend on the nature of the case under review (see section nine below). The Board will be empowered to impose financial penalties on an employer, union or individual striker. However, attachment of earnings, not imprisonment, will be the ultimate sanction applied in the event of default of payment or failure to obey an Order by the Secretary of State for Employment and Productivity.
7. Statutory machinery will be established to safeguard workers against unfair dismissal. The Industrial Relations Bill will provide that dismissal is justified only if there is a valid reason for it connected with the capacity or conduct of the employee or based on the operational requirements of the firm; in the absence of such valid reasons dismissals will be considered unfair. Employees who consider themselves to have been unfairly dismissed, including those individuals who are discharged for refusing to join a union in a closed shop situation, will have the right of complaint to the currently operative Industrial Tribunals. The White Paper accepts the Royal Commission's view that these tribunals should be empowered to hear dismissal cases and that their ultimate jurisdiction should be expanded to cover all legal disputes (except for those about accidents at work) arising from individual contracts of employment and statutory claims between employers and employees. Compensation or reinstatement may be awarded by the Tribunals in the event of an unfair dismissal being proved. However, the specific form of the statutory procedures and the extent to which voluntary dismissal procedures may be exempted from them will be the subject of further discussions between the Government and both sides of industry.
8. A new post — a Registrar of Trade Unions and Employers' Associations — will be established. Trade unions will be required to have rules governing certain matters (*e.g.* admissions, discipline, disputes between the union and its members, elections, strike ballots and the apointment and functions of shop stewards) and to register, together with all employers associations, with the new Registrar within a prescribed period. Refusals to introduce appropriate rules within a reasonable time period or to register will lay a trade union open to financial penalties assessed by the Industrial Board (see section six above). The Registrar will have the right to challenge union rules and to deny registration if the

specified subjects are not adequately covered. Unions and employers' associations will have the right of appeal to the Industrial Court against the Registrar's decision not to register them.

9. Safeguards for union members will be introduced. Complaints against trade unions by individuals who have no access to, or have exhausted their union's internal appeal procedures will be considered initially by the Registrar of Trade Unions and Employers' Associations who will seek to promote amicable settlements. However, complaints of unfair or arbitrary action by trade unions resulting in substantial injustice may be ultimately referred to the Industrial Board (see section six above). If the complaints are found to be justified, the Board will be empowered to award damages or to require an individual's admission to or reinstatement in a union. In cases of this kind the Board's membership will be composed of a legal independent member of the Industrial Court as chairman and two members of the employees panel of the Court.

The reaction of the TUC and CBI to these proposals was predictable largely because their responses closely followed the propositions developed in their evidence submitted to the Royal Commission and in discussions with the Government during the last half of 1968. Both organizations agreed with the proposed role of the CIR as a body which would seek to reform industrial relations not by issuing legally binding recommendations, but by voluntary methods of persuasion and good example. Moreover, they jointly agreed that negotiating procedures were in drastic need of reform, although both bodies expressed misgivings that an extreme decentralization of collective bargaining might not be the best policy in all industries. In line with these views and as a modest first step toward voluntary reform, late in 1968 the TUC and CBI jointly agreed to undertake a critical evaluation of collective bargaining procedures on an industry by industry basis; and in January 1969 the TUC announced its own intentions to establish new national joint bargaining councils in various industries which on the union side would be serviced by secretariates of full-time officials and teams of trade union « trouble-shooters » to assist individual unions in setting up organizational and procedural arrangements for effective local negotiations.

Fundamental disagreements between the two organizations remained, however. In particular, the CBI reiterated its view that the Government had passed up an excellent opportunity to achieve an effective reform of industrial relations by not making collective agreements legally enforceable contracts. For its part, the TUC reaffirmed its resolute opposition to such proposals on the grounds that they were both « impractical and undesirable. » Moreover, in line with its general support for a voluntary approach

to reform, the TUC also pressed strongly for arrangements under which it, rather than an independent review body, would be the institution which would consider individual members' grievances against their unions. As noted above, this approach was not adopted in the White Paper, but it is likely that the TUC will continue to pressure the Government to change its mind on this issue prior to the actual submission of the proposals for new industrial relations legislation to Parliament. [30]

The most controversial element in the White Paper, of course, was the extent to which the Labour Government was prepared to go further that the Royal Commission's recommendations, in particular its proposals for limitations on the right to strike in certain circumstances. While the White Paper firmly rejects the introduction of legally enforceable labor contracts as a general solution to Britain's strike problems, the Wilson Administration in general and Mrs. Barbara Castle in particular have accepted the view that strikes, especially those occurring without prior use of existing dispute settlement procedures, must not be allowed to impose unlimited serious costs on an increasingly interdependent economy which relies heavily on foreign trade. And during the Autumn of 1968 support for this view was dramatically provided by a potentially disastrous national engineering strike which was called — off at the last minute and a series of serious unofficial strikes in the export important automobile industry, plus increasingly strident demands by the Conservative Opposition that the Government introduce restrictions on the right to strike and growing evidence that the general public as well as trade union members would support a tougher line with the unions, including anti-strike legislation. [31]

Therefore, late in 1968 with strong support from both the Prime Minister and the Chancellor of the Exchequer, Mrs. Castle recommended the introduction of new legislation, supported by financial penalties, which would empower the Government to require unions to conduct strike ballots or agree to « conciliation pauses » in cases where major official or serious

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[30] See *The Financial Times,* October 11 and 24, 1968; November 7 and 8, 1968; and January 13, 1969.

[31] For example, see *The Observer* (London), December 1, 1968 for proposals by Mr. Edward Heath, Leader of the Conservative Opposition, that a 90 day cooling-off period be instituted for industrial disputes, that inter-union disputes be declared illegal and that collective agreements be made into legally binding contracts. Moreover, in *The Sunday Times* (of London) for January 5, 1969, the results of an independent Opinion Research Centre survey of trade union members were published which appeared to show substantial support for restrictive labor legislation, including the introduction of legally binding contracts.

unofficial strikes were threatened. In spite of this high ranking ministerial support, these proposals met vigorous opposition in a series of lengthy cabinet meetings which were conducted against a background of rumblings of discontent among and threatened opposition by back bench trade union and left-wing Labour MPs. [32] While the appearance of these proposals as agreed Government policy in the White Paper is clearly a victory for Mrs. Castle, the timing of the introduction of this controversial legislation remains a key and as yet unresolved issue facing the Government. If as appears likely, its introduction is postponed to the next parliamentary session, the next six months may provide opportunities for a more effective opposition to the proposals to be formed within the Party and in any event with the necessity to hold a General Election no later than 1971, the Government may then have second thoughts about antagonizing the unions, its major source of campaign finance.

With regard to strikes, the White Paper specifically makes three general recommendations. First, a more active dispute settlement role is proposed for the conciliation officers of the Department of Employment and Productivity. Conciliation officers will be directed to be more ready to intervene in industrial disputes without waiting for the invitation of the parties, especially in cases in which existing procedures are defective and are likely to hinder, rather than encourage a settlement. Moreover, in various disputes where appropriate the Government proposes to appoint independent chairmen to existing negotiating structures and to have conciliation officers singly or jointly with management and union representatives conduct informal investigations into disputes to avert strikes and to promote settlements. All of these approaches are to be exercised flexibly so as not to prevent the effective operation of voluntary procedures (paras. 83-85).

Secondly, in response to Britain's serious problem of unofficial and unconstitutional strikes which occur in breach of procedure and without the official authorization of the unions concerned, the Government proposes to grant the Secretary of State for Employment and Productivity reserve discretionary powers to introduce a « conciliation pause » in strikes of this kind which are likely to have serious consequences. These powers would only be used after normal conciliations procedures had failed and

[32] One leading senior ministerial opponent of the proposals was the Home Secretary, Mr. James Callaghan, who Whitehall observers suggested among other reasons was fearful of the negative impact of the anti-strike legislation on Party morale as well as on the willingness of the unions to make increased contributions to the Labour Party's coffers, an issue which as Party treasurer he is directly concerned.

in the event of a strike occuring as a result of a change in work practices which had not been preceded by appropriate notice and consultation, the Management concerned will be required to withdraw the new arrangements and preserve the statu quo as a precondition to securing a return to work. However, in spite of additional ministry initiatives to reach a settlement, including special investigations in instances in which current procedures prove to be inadequate, if the strike went ahead, then the Secretary of State would be empowered to issue an Order requiring a return to work, a ban on further industrial action for 28 days and a restoration of the statu quo concerning all terms and conditions of employment which existed prior to the dispute. If either party failed to comply with the Order, they would be liable to financial penalties imposed at the discretion of the Industrial Board. Although after the expiration of the « conciliation pause » strikes or lock-outs could take place, the Government expects the TUC and the unions involved to use their best initiatives to guarantee compliance with the Orders and to see that procedures are followed (paras. 93-96).

Finally, in situations in which major official strikes are threatened the Government proposes to empower the Secretary of State to persuade the unions involved to conduct a ballot of their memberships before strike action is taken. Moreover, a strike ballot will be required at the discretion of the Secretary of State in cases in which the unions refuse to agree to this request and industrial action is considered to pose a serious threat to the economy or the public interest. However, apart from giving approval to the form of the question to be put to the vote, the Secretary of State will not intervene in the ballot which will be conducted according to the rules of the unions concerned as approved by the Registrar of Trade Unions and Employers' Associations. The White Paper takes pains to point out that the object of these recommendations « will not be to place a prohibition on such strikes, but to help ensure that before strikes of this importance take place the union members themselves are convinced that they are right to go on strike. » (paras. 97-98).

If last July's reception of the Donovan report was « cool, » then the response to the Government's anti-strike proposals must be termed as « frigid. » The TUC strongly reiterated its traditional opposition to strike legislation in any form and in this it was joined by the powerful Transport and General Workers' Union. On the other hand, both the CBI and the Conservative Opposition attacked the White Paper as having « failed miserably » to deal with the problem of unofficial strikes. Moreover, a common view in many circles was that in seeking to modify both

the unions and her opponents in the Labour Party, Mrs. Castle had at the same time managed to antagonize the proponents of voluntary industrial relations reform, while not going far enough to satisfy those groups who had pressed for more far-reaching legislative changes.

In my opinion, a more balanced evaluation of the White Paper's anti-strike proposals is that while providing the Government with a more flexible arsenal of weapons to deal with industrial disputes, they do not fundamentally go beyond the Donovan report's support for an essentially voluntary approach to the reform of industrial relations. This is because it is likely that these new procedures may only have limited applicability. For example, the strike ballot proposal may have some use in bringing rank and file membership opinion to bear on their national leadership or in providing union officials with a way out of misguided strike situations, but in general as the Government itself realizes, foreign experience with such procedures has not been overwhelmingly successful. In the United States, for example, in most cases strike ballot requirements have served merely to encourage a more militant posture by the rank and file and to force the national union leadership into inflexible bargaining positions. Moreover, since Britain's major strike problem is with unofficial plant level stoppages, a procedure only dealing with national official strikes will necessarily be of limited use.

The introduction of « conciliation pauses » to deal with unofficial strikes in breach of procedure also poses a number of problems. In many instances workers will already be on strike before the procedure can be invoked and in some cases the Government will have to be prepared to face up to the fact that financial penalties may have to be assessed against a significant number of determined strikers. Moreover, since the final decision to use both of the proposed procedures rests with the Secretary of State for Employment and Productivity, substantial political pressures not to put them into effect are likely to become a regular ingredient of negotiations between the unions and the Government. In the final analysis, therefore, while these proposals mark a significant change in public policy toward industrial disputes, it is unlikely that they will fundamentally alter the character of Britain's traditional voluntary system.

The White Paper goes beyond the Royal Commission's recommendations in one other important respect. This is with regard to the reform of trade union structure and organization. Like the Donovan report the Government accepts the need for far-reaching reforms, including union amalgamations, an increased number of full-time officials, improved finances and better internal communications. In particular, the White

Paper focuses on the need to eradicate the disadvantages of multi-unionism through the unions' acceptance of « the criterion of one union for one grade of work within a factory » wherever possible and the establishment of official joint union councils at the workplace level (para. 69). It also emphasizes that the basic reforms must come from the unions themselves, but indicates that the CIR will be receiving references on problems of trade union structure and organization.

Beyond this, however, the White Paper argues that the Royal Commission does not go far enough in its recommendations for the modernization of the labor movement. Therefore, it proposes the establishment of a Trade Union Development Scheme through which public funds would be provided under the auspices of the CIR to directly assist unions who apply for grants justifiable purposes including, for example, an expansion of training or research activities, the employment of management consultants or assistance in union mergers. The Government also goes on to make a general committment to provide additional resources both directly and indirectly for an expansion of industrial relations training and education for union and management officials at all levels (paras. 71-78).

This is, indeed, an imaginative, if somewhat bizarre proposal. Nevertheless, while the idea of a Trade Union Development Scheme carries with it a faint order of a corporate state mentality, despite the Government's assurances that the scheme would be both limited and voluntary with no attempts to use it to influence union bargaining policies, the White Paper — far more realistically than the Royal Commission — does face up to the resource implications of a comprehensive system of plant bargaining. However, while the existence of such a scheme, together with CIR and other Government initiatives, cannot help but to speed up the pace of trade union reform, the major initiatives still must come from within the labor movement. And the extent to which the unions respond to this challenge, as the TUC's cool reception to the Trade Union Development Scheme makes clear, will depend on much more than the general availability of adequate finance alone, but also on their willingness to accept the need for structural reform and to put new programs and policies into effect. [33]

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[33] The TUC's immediate reaction to the Trade Union Development scheme was to argue that « experience gives no ground for believing that financial problems are a significant obstacle to amalgamation or that trade unionists are unwilling to recognize the need to increase contributions where executives can show that this is needed to improve such services as training, education and research. » See *The Financial Time,* January 18, 1969.

In the final analysis, however, I would argue that neither of the Government's new proposals negate its overwhelming acceptance of the Royal Commission's philosophy and approach to industrial relations reform. As a result, the White Paper's general strong points and weaknesses are the same as those of the Royal Commission's report. And since the Donovan report has already been evaluated in detail, there is no use in reviewing them again. In short, the same general conclusion must be reached : the impact of the Government's proposals alone is likely to provide only a modest encouragement to the pace and extent of industrial relations reform.

However, as noted earlier the membership and operating philosophy of the CIR, which together with the publication of the White Paper the Government established as a Royal Commission to enable it to begin work immediately, are likely to be crucial variables, in its ultimate impact as an agent of industrial relations reform. In this regard the Government's appointment, although not without some reported misgivings, of Mr. George Woodcock, the general secretary of the TUC, as the CIR's full-time chairman, together with the selection of Mr. Allan Flanders of Nuffield College, Oxford; Mr. Leslie Blakeman, the Industrial Relations Director of the Ford Motor Company; and Mr. Will Paynter, the ex-communist retired general secretary of the National Union of Mineworkers as full-time members are likely to have important consequences for the commission's operating philosophy and approach. While all the appointees are generally respected for their knowledge in the field of industrial relations, it is well known that, in particular, both Mr. Woodcock and Mr. Flanders strongly hold the view that effective collective bargaining reforms can only be achieved by voluntary methods of persuasion and good example. An unless their on-the-job experience leads them to abandon this view, the efforts of these two key members of the commission are likely to produce important, but generally evolutionary and long run reforms in British collective bargaining practices and procedures.

In conclusion, it should be noted that further legislative intervention in British industrial relations is by no means a closed option in spite of the Labour Administration's general rejection of legally binding agreements. As already pointed out, the Royal Commission itself repeatedly issued Cassandralike warnings in its report that the introduction of legally binding agreements may be necessary if reform cannot be achieved by voluntary means and based on its approach to the strike problem adopted in its White Paper, the Labour Administration may in time come around to this view itself. Moreover, with Labour's political popularity decidedly

on the wane, it is important to take account of the Conservative Opposition's policy position on industrial relations reform. In a policy document issued in April 1968 the Conservatives accept in much the same way as the Royal Commission the need for strong unions and effective collective bargaining, but argue that these changes can only be achieved within a new legislative framework, which would include, *inter alia,* legally binding agreements, restrictions on strike action of certain kinds, particularly on strikes which would seriously damage the economy and a more vigorous approach to the eradication of restrictive practices and the achievement of improved manpower utilization. [34] And during the last year the Conservatives have made it clear that they have every intention of translating their proposals into law if they are returned as Her Majesty's Government in the next General Election.

There can now be no answer to the question of whether the publication of the Donovan report and Mrs. Castle's White Paper marks the end to the public policy debate over British industrial relations or whether they are merely a prelude to new proposals and additional reforms. Only the experience of the next few years will provide an answer to this question; and this is likely to depend on the outcome of a variety of future imponderables : Britain's short-term economic situation, the Labour Party's view of the importance of industrial relations reform as an electoral issue together with its political fortunes in the next General Election and, most important, the willingness of British unions and management to voluntarily face up to the need for a drastic reform of collective bargaining. However, in this writer's opinion the Donovan report and Labour's White Paper are only a beginning with further Government intervention in industrial relations in the next five years a strong likelihood.

LA RÉFORME DES RELATIONS INDUSTRIELLES EN GRANDE BRETAGNE

Le système de négociation collective volontaire britannique ainsi que le rôle du mouvement syndical dans la société contemporaine ont été extrêmement critiqués depuis le milieu des années 1950. Dans la décennie suivante, alors que les problèmes économiques britanniques devenaient de plus en plus sérieux, ce mouvement de critique s'est accrû pour finalement amener, en 1964, le gouvernement

[34] See the Conservative Political Centre, *Fair Deal at Work : The Conservative Approach to Modern Industrial Relations,* London, April 1968. The proposals for union recognition and for dealing with national emergency disputes are very similar to the approaches provided in the United States under the Wagner and Taft-Hartley Acts.

travailliste, nouvellement au pouvoir, à former la « Royal Commission on Trade Unions and Employers' Associations » sous la présidence du juge Donovan. Son mandat expliquait qu'il devait étudier le système britannique de relations industrielles. Pour faire suite à la publication du rapport de cette commission en juin 1968, le gouvernement travailliste présenta au Parlement, en janvier 1969, un Livre Blanc sur ses projets de réforme pour le système de relations industrielles.

Dans un premier temps, nous tenterons une revue critique des principales recommandations et conclusions de la Commission en insistant sur trois champs spécifiques de problèmes : la réforme de la négociation collective, son extension à l'industrie britannique et la protection des droits à l'individu tant employé qu'employeur. Dans un second temps, nous espérons pouvoir présenter une évaluation globale de ce rapport ainsi qu'une revue des projets de réforme du gouvernement travailliste et de l'opposition conservatrice.

LA RÉFORME DE LA NÉGOCIATION COLLECTIVE

Le but principal du rapport Donovan est d'examiner les défauts du présent système britannique de négociation collective et de proposer des réformes. En plus d'être d'accord avec le système de négociation collective volontaire, Lord Donovan propose qu'il soit étendu à toute l'industrie britannique. Il critique cependant très fortement le système traditionnel de négociation à l'échelle de l'industrie et note l'existence d'un système informel de négociations locales créé par le comportement des syndicats, des associations d'employeurs, des cadres, des délégués de département et des travailleurs.

La Commission réclame la fin de ce conflit entre cette prétendue négociation au niveau de l'industrie et la réalité des relations industrielles. Plus spécifiquement, elle propose l'adoption d'un système de négociations collectives décentralisées, impliquant la signature d'ententes compréhensives au niveau de la compagnie ou de la firme.

LE RÔLE DES POLITIQUES GOUVERNEMENTALES

L'approche de la Commission pour réaliser cette réforme de la négociation collective se résume en une revue publique des pratiques et procédures actuelles et ce afin de faire des recommandations sur les changements à apporter. À cette fin, la Commission propose une nouvelle loi des relations industrielles qui exigerait que toute firme de cinq mille employés ou plus enregistre ses conventions collectives au « Department of Employment and Productivity » et qui établirait une Commission permanente de relations industrielles (CIR). Le CIR serait chargé d'enquêter sur les cas que le gouvernement lui transmettrait au sujet de la non-reconnaissance de syndicats, du manque de certains accords à respecter les minima établis et d'autres problèmes de relations industrielles. Vu que cette approche encourage une réforme volontaire des relations du travail, la Commission ne donne pas force de loi aux recommandations du CIR.

LE REJET DES SANCTIONS LÉGALES

Faisant suite à de nombreux débats internes et à la publication d'un rapport minoritaire, la Commission rejette l'idée de transformer la convention collective en contrats à obligations légales. La raison principale de cette objection est que,

selon eux, la cause réelle du problème officieux de la grève en Grande-Bretagne se retrouve dans les méthodes actuelles de négociations collectives et surtout dans les méthodes de négociations locales caractérisées par l'absence de procédures claires et rapides de règlement des conflits. En plus, les conventions à force légale ne seraient pas une contribution valable à l'atteinte des réformes dont ce pays a besoin.

QUELQUES REMARQUES SUR LA RÉFORME DE LA NÉGOCIATION COLLECTIVE

Nous croyons que, d'une façon générale, les recommandations de la Commission sont pertinentes. La tendance à un système décentralisé de négociation collective est appropriée autant pour des raisons pratiques que pragmatiques. De plus son argumentation contre les conventions à force légale est justifiable. Néanmoins, l'approche essentiellement volontaire de la Commission aux réformes à entreprendre signifie que les changements aux procédures de négociation collective seront nécessairement lents et fragmentaires. À cet effet, la Commission se trompe en considérant la présente signification de la négociation sur la productivité comme preuve que les syndicats et les patrons vont entreprendre les réformes d'une façon volontaire. Cette erreur est due au fait que la Commission n'a pas réalisé les exigences de cette approche pour les parties. En plus, la Commission sous-estime les conséquences de certaines de ses recommandations encourageant une plus grande utilisation de négociations locales inflationnistes et chaotiques et, d'une façon générale, ignore, dans son rapport, les problèmes posés par la négociation collective dans le secteur public.

L'EXTENTION DE LA NÉGOCIATION COLLECTIVE

La Commission appuie fortement l'extension de la négociation collective à l'industrie britannique en proposant la suppression de plusieurs obstacles traditionnels à la reconnaissance syndicale, barrières qui ont été importantes surtout dans le domaine de l'organisation des cols blancs. Elle recommande, en premier lieu, que le droit au membership syndical soit positivement protégé par la loi. Elle propose ensuite d'adopter certains changements dans le système des « Wages council » afin d'encourager la négociation collective libre : en cas de refus de reconnaissance syndicale par la partie patronale, le gouvernement aura le pouvoir de référer le cas au CIR pour examen et rapport. Suivant sa philosophie de réforme volontaire, la Commission ne recommande pas que les propositions du CIR aient force de loi. Cependant, lorsqu'un employeur persiste à refuser de reconnaître un syndicat ou ne négocie pas réellement, le gouvernement peut permettre au syndicat concerné d'avoir recours à l'arbitrage unilatéral par l'« Industrial Court ».

Ces recommandations auront probablement de très grandes implications sur le système britannique de relations industrielles. Notre divergence de vue avec les membres de la Commission n'a pas comme cause certaines recommandations spécifiques, mais plutôt la valeur de l'orientation qu'elles donnent pour développement de la politique gouvernementale en ce domaine.

La Commission était consciente des difficultés pratiques d'application de critères spécifiques pour la reconnaissance syndicale et nous croyons qu'elle est correcte en proposant au CIR d'adopter une approche très flexible. Néanmoins, une des grandes faiblesses du rapport est de n'avoir pas inclus une évaluation générale

des différents principes et critères de reconnaissance. En plus, on peut reprocher à la Commission de ne pas avoir proposé que les fonctions du CIR soient utilisées dans le but de réaliser une structure syndicale plus rationnelle au niveau de l'entreprise. En dernier lieu, en permettant au syndicat l'utilisation d'arbitrage unilatéral en cas de refus de négociation réelle, la Commission ne définit pas la façon de déterminer si un employeur négocie de « bonne foi » ou non.

LA PROTECTION DES DROITS DES SYNDIQUÉS ET DES EMPLOYÉS

La Commission recommande également que les droits des syndiqués devraient être protégés de la façon suivante : en cas d'injustice criante, les individus devraient avoir le droit de faire appel à un tribunal indépendant ayant les pouvoirs de rendre une sentence sur la compensation à verser ou sur d'autres moyens susceptibles de punir l'employeur en cause. En plus, on exigerait des syndicats d'enregistrer certains règlements chez le « Chief Registrar of Trade Union and Employers' Associations ». Les employés individuels auront également droit d'appel sur les congédiements injustes devant les « Industrial Tribunals » dont on est censé étendre la juridiction au point qu'ils puissent s'occuper de ces cas ainsi que tout conflit (à l'exception des conflits collectifs et de ceux qui peuvent provenir des accidents du travail) entre employeurs et employés.

Même si on fit peu de publicité autour de ces recommandations lors de la publication du rapport, elles auront probablement une grande influence sur les relations industrielles britanniques. Cependant, avant de proposer que les tribunaux industriels actuels soient transformés en cours de travail à plusieurs utilités, une évaluation détaillée de la façon dont opère ces tribunaux et un regard sur les expériences étrangères à ce sujet sembleraient avoir été nécessaires. La Commission ne fait pas une telle évaluation dans son rapport.

UNE ÉVALUATION GÉNÉRALE

En dépit d'un certain nombre de faiblesses, le rapport de la Commission royale est une contribution importante au débat sur la politique gouvernementale et sur les réformes à apporter au système de relations industrielles britanniques. Ses recommandations aboutissent à un changement significatif dans l'approche britannique traditionnellement volontaire aux relations du travail. En plus, son appui à un système plus décentralisé de négociation collective donne une approbation publique à la réorientation structurelle de la négociation collective depuis longtemps prônée par plusieurs académiciens en relations industrielles. Cependant, le succès de ses recommandations dépend en partie de l'approche empruntée par le CIR et plus particulièrement sur la volonté des syndicats et des employeurs britanniques à prendre part à la réforme volontaire. En guise d'observation générale, disons que la Commission a sous-estimé le degré de satisfaction conservatrice face au système actuel de négociation collective. Cela signifie qu'on peut s'attendre, dans les prochaines années, à une approche lente et fragmentaire à la réforme.

LA RÉPONSE DU GOUVERNEMENT TRAVAILLISTE : LE LIVRE BLANC DE MME CASTLE

Après plus de six mois de discussion, le gouvernement travailliste présenta, en janvier denier, devant le Parlement, un Livre Blanc contenant ses recommandations sur la réforme en relations industrielles. À part quelques exceptions mineures, le

Livre Blanc endossait entièrement les recommandations de la Commission et s'engageait à les transcrire dans la loi dans un avenir rapproché. Ceci marque une étape importante dans la politique gouvernementale en ce sens que le Livre Blanc signale la fin de l'approche britannique libérale traditionnelle aux relations industrielles en faisant l'hypothèse que l'État a un rôle important à jouer dans la régulation des relations industrielles.

Le Livre Blanc va plus loin que la Commission sur trois points principaux. Il propose d'abord que le CIR ait le pouvoir d'émettre des recommandations dont l'application est obligatoire, avec sanctions financières, dans les cas impliquant des conflits intersyndicaux de reconnaissance. En second lieu, il recommande que le gouvernement ait des pouvoirs spéciaux suffisants pour exiger des syndicats la tenue d'un vote de grève et le respect d'une pause dite de conciliation en cas de conflit grave. Finalement, il propose d'établir un « Trade Union Development Scheme » afin de permettre aux syndicats d'obtenir des subventions pour moderniser leurs structures et leurs organisations.

Les recommandations anti-grève ont provoqué une grande controverse dans le parti travailliste. En plus, les syndicats s'y sont opposés et les employeurs ainsi que l'opposition conservatrice les ont qualifiées d'inadéquates. Nous croyons que ces propositions ajoutent à l'arsenal d'armes gouvernementales nécessaires au traitement des conflits industriels. Cependant elles ne nient aucunement l'appui que donne le Livre Blanc à la réforme volontaire des relations industrielles.

En dernière analyse, les points forts et les points faibles du Livre Blanc sont ceux du rapport Donovan. En résumé, on peut faire la même conclusion générale : les seules recommandations du gouvernement vont probablement fournir un modeste encouragement au rythme et à l'étendue de la réforme des relations industrielles. À ce sujet, il serait intéressant de noter que la nomination de M. George Woodcock, secrétaire du T.U.C., au poste de président du CIR appuie notre conclusion. En effet, M. Woodcock est un tenant de l'approche évolutionniste à la réforme des relations industrielles.

En conclusion, le champ est encore ouvert pour une plus grande intervention législative en relations industrielles. Vu le déclin dans la popularité du gouvernement travailliste, on devrait tenir compte de la politique de l'opposition conservatrice en matière de réforme des relations industrielles. Dans un document daté d'avril 1968, les conservateurs proposent un nouveau cadre législatif aux relations industrielles, incluant des lois plus restrictives quant à l'utilisation de la grève et prévoyant que les conventions aient force de loi. Une déclaration récente des conservateurs trahit leur désir de traduire leurs recommandations dans la loi s'ils obtiennent une majorité parlementaire aux prochaines élections.

Il ne peut y avoir de réponse définitive à la question de savoir si la publication du rapport Donovan et du Livre Blanc du parti travailliste marque la fin du débat sur la politique gouvernementale en matière de relations industrielles. L'avenir politique du parti travailliste et le bon vouloir des syndicats et des employeurs à entreprendre les réformes d'une façon volontaire; voilà ce qui fournira une réponse à notre question dans quelques années. Nous croyons cependant qu'il faut s'attendre, en Angleterre, à une plus grande intervention en relations industrielles dans les cinq prochaines années.