New Brunswick, Labour Relations Act, R.S.N.B. 1952, Ch. 124.

Newfoundland, Labour Relations Act, R.S.N. 1952, Ch. 258.

Nova Scotia, Trade Union Act, R.S.N.S. 1954, Ch. 295.

Ontario, Labour Relations Act, R.S.O. 1960, Ch. 202.

Prince Edward Island, Industrial Relations Act, R.S.P.E.I. 1962, Ch. 18.

Quebec, Labour Code, R.S.Q. 1964, Ch. 141.

Saskatchewan, Trade Union Act, R.S.S. 1953, Ch. 259.

Discussion——

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It occurs to me that the primary task of a commentator who has recently gained a slight acquaintanceship with the British system of industrial relations is to assure Mr. Fairweather's American audience that his thoughtful and absorbing paper is not an excursion into the domain of fiction, although it may be taken as strong supporting evidence that truth is stranger. For it is true that one twelfth of the British labor force is covered by a single set of negotiations and that, at least until recently, the substantive agreements issuing have been open-ended (as are most others). They are not systematically cast in written form; they are not enforceable at law; and they are not subject to final and binding interpretation by expert and impartial third parties. On the contrary, please note that employers sit in the chair in the last three steps on the road to York. In partial consequence of the foregoing, the employer is often unprotected from rank-and-file pressure and subject to continual bargaining, principally by shop stewards who are almost completely unrestrained by international authority.

I also agree with Mr. Fairweather's claims that such distinctions from American practice are associated with certain differences in performance in the areas of strike activity, wage increases, and productivity, although it is not obvious that such comparisons invariably cast the British system in a bad light.

The British system undoubtedly invites wildcat strikes. It has

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been estimated that unofficial strikes between 1960 and 1966 accounted for over 95 percent of all stoppages and about 60 percent of time lost through industrial disputes. On the other hand, the British have a good record of industrial peace. On an annual average between 1954 and 1963, they lost 297 days per 1,000 persons employed. This is in contrast to France with 329 days lost, Japan with 412, Italy with 818, and the United States with 1,048. I would be inclined to defend the proposition that the social performance of an industrial relations system with a high proportion of small, quickie strikes is likely to be inferior to a system with fewer and longer stoppages. But two cautionary comments are in order here. In the first place, the American system of "industrial common law" has certainly not immunized us from such symptoms of British Disease as local strikes over issues subject to local determination and membership repudiation of agreements reached at top levels.

In the second place, it is not evident by international standards that the British system is highly inflationary in its consequences. Between 1955 and 1964, hourly labor costs in the United Kingdom rose at an annual rate of about 6 percent, higher than in the United States, where the rise was 3½ to 4 percent, but much lower than in France or West Germany, where the rate of increase was in the neighborhood of 8½ to 9½ percent. Of course, much of the difference between the British and the American rates of increase was due to differences in the pressure of money demand in the two countries. But this suggests that much of this difference would be eliminated if and when the United States economy experiences anything like the low levels of unemployment that have long prevailed abroad. This suspicion is reinforced by American wage-price behavior in the past two years, although the latter has reflected the accelerated rate of increase in economic activity as well as the levels attained. And a comparison between Britain and the two continental countries suggests that the British system may be more amenable than more decentralized arrangements to so-called "guidepost" or "incomes" policies which are designed to moderate wage and price behavior. To the extent that bargaining through employer federations makes such policies more operational, the British have an obvious edge over the Americans, although some movement in the direction of more concerted em-

ployer bargaining might be discerned in this country in the recent past.

On the union side, however, one should hesitate to assign a net advantage to the British. To be effective in dissuading trade unionists from exerting their full bargaining power, incomes policy must rely on the soundness of three links in a chain of transmission: the link between the government in power and the central federation, the link between the federation and the national unions, and the link between the nationals and the local organizations. The first two links are stronger in Britain, especially when the Labour Party is in office. The bonds between the TUC and the Parliamentary Party, which the former regards as the political arm of the labor movement, are stronger than the ties that bind George Meany to LBJ. The influence of the TUC and its affiliates on bargaining matters is greater than the influence of the AFL-CIO, although in both cases formal authority is nonexistent. This is due in part to the broader concept of the labor movement in Britain and, consequently, the greater preoccupation of national officers with nonbargaining problems and, therefore, with TUC and even governmental affairs. It also reflects the smaller role assigned to the national unions in collective bargaining. Hence, British national officers sometimes appear to be a cross between a building trades president (although with fewer jurisdictional preoccupations) and Walter Reuther.

This is another way of saying that the authority of the nationals over the shop stewards, the third link in the chain of policy transmission, is much weaker in Britain than in the United States. This weakness is reflected in the famous "drift" of earnings over basic rates, and it is only the latter that can be effectively controlled by wage policy. Nevertheless, increases in earnings also reflect increases in centrally negotiated rates, so that support of the policy at the top levels need not be completely dissipated below. And the TUC has subscribed, however cautiously, to incomes policy; indeed, it is now trying to screen the wage claims of its own affiliates.

Britain's performance is poorest in the area of productivity and has resulted in high levels and rates of change in unit labor cost despite relatively restrained movements in money wages in the

recent past. I am inclined to join with Mr. Fairweather in assigning accountability to the British system of industrial relations, but not sole accountability. I agree further that the obligation to engage in round-the-year bargaining can contribute to inefficiency, but I question whether this aspect of British collective bargaining is primarily attributable to "lack of arbitration" or, even more, to absence of the "reserved-rights principle." In neither respect is contrast with American experience complete or conclusive. The American automobile contracts exempt disputes over production standards from arbitration and from guarantee against strikes within the contract period, but this has not prevented American automotive management from operating efficiently. Moreover, in accordance with a court ruling in the Jacobs case, employers in the United States have long been obliged "to bargain during the term of the agreement about matters within the scope of wages, hours, and working conditions which are not covered by the agreement." [1]

While "many American arbitrators . . . apply the so-called 'residual rights' theory when management takes unilateral action," unions have been able to negotiate prior restraints on the employer's allowable area of discretion. Such is the effect of the elaboration of fringe benefits and of the specification of other nonwage conditions of employment, and American collective agreements are typically spelled out in much greater substantive and procedural detail than are British agreements. While much of this difference can be explained without reference to arbitration and past practice, the difference in coverage does suggest that extension of the residual-rights principle in either country would result in greater union negotiating efforts to narrow the area of residual rights. Indeed, the same effect could occur as a result of unilateral managerial action, whether or not it had been taken under the legalistic doctrine. As Slichter, Healy, and Livernash put it,

> If management acts ruthlessly, unexpectedly, without consulting the union and without steps to alleviate hardship resulting from changes, union challenge can be expected. Some managers in the

[1] *Jacobs Mfg. Co.*, 94 NLRB 1214, 28 LRRM 1162 (1951), *enf'd*, 196 F.2d 680, 30 LRRM 2098 (2d Cir., 1952). The quotation is from David E. Feller, "The 'Fibreboard' Decision and Subcontracting: Two Views," *Arbitration Journal*, Vol. 19, No. 2, 1964, p. 72.

steel industry attribute the union's insistence on the controversial local-practice clause in the steel agreements to the abuse of managerial discretion in the past.[2]

The Steelworkers' local-practice clause prohibits any change in working conditions "which provide benefits that are in excess of or in addition to the benefits established by this Agreement," except "by mutual agreement" or as a result of a change (or the elimination) of "the basis for the existence of the local working condition," in which case the action is subject to review by arbitration (as the ultimate step in the grievance procedure). Contrasting this clause with the procedure for handling disputes arising out of production standards in the automobile industry in the United States suggests that restrictions on managerial initiative constitute part of a price paid by management for restrictions on the union's freedom to strike.

The restraints upon managerial initiative in the British engineering industry, to which Mr. Fairweather refers, resemble—although they exceed somewhat—the restraints imposed on the American basic steel industry in that the former also issue from an explicit provision in a written contract.[3] Since this contract makes no provision for arbitration, it can be argued that British management did not receive as large a quid for their quo as did

[2] S. H. Slichter, J. J. Healy, and E. R. Livernash, *The Impact of Collective Bargaining on Management* (Washington, D. C.: The Brookings Institution, 1960), p. 17.

[3] "When the Management contemplates alterations in recognized working conditions which do not involve a change in material, means or method, and would result in work currently done by one class of workpeople in future being done by another class of workpeople in the establishment, the Management shall give the workpeople directly concerned or their representatives in the Shop intimation of their intention, and afford an opportunity for discussion with a deputation of the workpeople concerned and/or their representatives in the Shop. In the event of no settlement being reached, the Procedure outlined in Section (2)—Provisions for Avoiding Disputes—shall be operated. The alterations concerned shall not be implemented until settlement has been reached or until the Procedure has been exhausted.

"Where a contemplated alteration involves a change in the material, means or method and may result in one class of workpeople being replaced by another in the establishment, the Management shall as soon as possible notify their proposals to the workpeople directly concerned and/or their representatives in the Shop in order that there may be consultation between the parties concerned with a view to reaching agreement. If agreement is not achieved the workers concerned may give notice of an apprehended dispute, in which case the Management will not operate the proposed change for seven working days. The matter may be dealt with in accordance with the Provisions for Avoiding Disputes, the change being without prejudice to either party in any discussions which may take place." *Agreement between Engineering Employers' Federation and the Trade Unions, Procedure—Manual Workers, June 1922 (Amended August 1955)*, Appendix C8.

the Americans. From the management viewpoint, it is the least desirable hybrid of the American automobile and steel provisions. But this suggests that international differences in the degree to which management is accorded freedom to make changes under collective bargaining are determined by differences in management's relative negotiating strength, more than the other way around.