THE WORKER DISLOCATION DILEMMA IN THE UNITED STATES AND GREAT BRITAIN: CONTRASTING LEGAL APPROACHES

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CONTENTS

I. INTRODUCTION ............................................................. 286

II. BACKGROUND: NATIONAL DISSIMILARITIES ARE CONTROLLING ......................................................... 287

III. THE BRITISH RESPONSE: A COMPREHENSIVE LEGISLATIVE INITIATIVE ...................................................... 290

   A. The Evolution of Redundancy Law ................................. 290
       1. Redundancy Payment Requirement ............................. 292
       2. Additional Employee Rights .................................... 292
       3. Redundancy Consultation Requirement ...................... 293

IV. THE UNITED STATES RESPONSE: COMBINED PUBLIC AND PRIVATE INITIATIVES ........................................ 295

   A. Efforts for Comprehensive National Legislation Fail ............................................................. 295
   B. The NLRA, Public Policy, and Common Law Factors ......................................................................... 296
   C. Ad Hoc Legislative Assistance ........................................ 298
   D. Private Sector Initiatives .............................................. 299

V. SOME CONSTRUCTIVE COMPARISONS ........................................ 303

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I. INTRODUCTION

The wrenching economic readjustments which many of the western industrial nations are experiencing have brought the problem of worker dislocation1 to the fore. Both the extent and potential seriousness of the effects of unemployment are gaining recognition.2 Beyond the direct impact on the worker and his family, the local economy and community fabric can be seriously undermined, while society as a whole loses goods or services produced by the worker and, as a result, must bear a significant portion of the burden of supporting him.

The approach to worker dislocation in Great Britain stands in sharp contrast to that found in the United States. Each country’s response has evolved independently over time, and a present-day comparison can identify certain experiences from which each might benefit.

This Article provides an overview of the basic approaches to worker dislocation adopted in Great Britain and the United States, emphasizing their respective legal underpinnings. To do this, the factors which help to explain why the response in each country has been so dissimilar is addressed first. Next, the response in the United Kingdom is outlined, followed by that in the United States. The major elements of each are then compared and contrasted. The Article then concludes with observations on how each response might learn from the other.

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1 The term “worker dislocation” is used in the same sense as the British term “redundancy” as defined and utilized in British statutes for many years. See, e.g., Redundancy Payments Act, 1965, ch. 6, § 1(2). The term refers to those situations where it becomes necessary to terminate an employee because economic conditions no longer require the services provided.

2 In the United States alone, a respectable body of literature has formed over the last fifteen years which explores and identifies many of the deleterious side-effects of large-scale worker dislocation. The most comprehensive effort to date has been B. Bluestone & B. Harrison, Capital and Communities: The Causes and Consequences of Private Disinvestment (1980). See also Rhine, Business Closings and Their Effects on Employees - The Need for New Remedies, 35 LABOR L.J. 368 (1984); Kay & Griffin, Plant Closures: Assessing The Victim’s Remedies, 19 WILLAMETTE L. REV. 199 (1983).
II. BACKGROUND: NATIONAL DISSIMILARITIES ARE CONTROLLING

Although Great Britain and the United States are linked by common language, custom, and heritage, independent experience and developments in the two countries have produced divergent approaches to worker dislocation. Both by choice and by necessity, Great Britain has responded to change in ways significantly different from the United States. The major external forces of global demographics, politics, and economics, as well as inexorable technological advances have all left their distinctive impression on the island nation of Britain, as they have on the United States.

This impression is particularly evident in some of the dissimilarities between the industrial relations systems which have evolved in each country. For example, trade unionism, which took root much earlier in Britain, has been a greater destabilizing force in British industrial relations than has its counterpart in the United States. The powerful British labor movement has also come to play a direct role in the political process since the formation of the Labour Party at the turn of the century. In contrast, organized labor in the United States has traditionally undertaken to exercise its national political muscle indirectly through major established political parties.

The British experience helps explain the somewhat piecemeal and phlegmatic statutory intervention by Parliament into industrial relations over the last century. Five Royal Commissions have been established to examine British industrial relations at different periods in recent history. Britain witnessed the enactment and repeal of a series of national labor reforms through the middle 1970's and has

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4 The AFL-CIO, among other unions, endorsed and supported a candidate for the Democratic Party nomination for President early in the campaign in 1984. This attempt to influence the Party's candidate selection process was a departure from recent tradition and may signal a trend toward an increasingly direct political role by organized labor in the United States.

5 The first was formed in 1867, the most recent in 1965. The latest, known as the Donovan Commission, conducted for the first time a broad, in-depth examination of British industrial relations and recommended comprehensive reform measures. Lowry, Bartlett & Heinsz, supra note 3, at 16.
seen this again under the Thatcher government. By comparison, statutory intervention in the United States, while requiring some readjustment and balancing over time, can be fairly characterized as having evolved in a more deliberate fashion, due largely to early efforts to establish a basic and comprehensive national labor program.

An additional background factor is the context within which labor demands are treated in each country. It has been posited that the United States has traditionally nurtured a separation between the realm of government and politics on the one hand, and the realm of business and economics on the other. Arguably, this division has confined the practice of American industrial relations primarily to the economic arena rather than the field of politics. This result stands in sharp contrast to the British tradition of strong labor participation in the nation’s political process. One observer has characterized the American system as a form of “business unionism” because of the extent to which labor issues are viewed as being primarily economic. Such markedly contrasting perspectives suggest that divergent solutions to industrial problems between the two countries should be expected.

A number of unrelated factors with a more direct impact on displaced worker policy in both countries should also be noted. In contrast to the United States, the British have moved considerably further toward recognition of a societal right to work in their jurisprudence. English courts have now begun to provide protection

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* See generally B. Cooper & A. Bartlett, Industrial Relations — A Study in Conflict (1976).


* Abundant literature exists on this and related areas. See A. Cox, Law and the National Labor Policy (1960) (American view), and J. Grunfeld, Trade Unions and the Individual in English Law (1960) (English View).
for the worker under various circumstances when that right is denied. The same attitude has also been evident in the judicial expectation that the British employer assume partial responsibility for meeting the needs of the displaced employee.

The most recent Royal Commission to examine British industrial relations, known widely as the "Donovan Commission," identified a system of informal relations between local branches of national unions and their counterparts in factory management in trade unions in the United Kingdom. The Commission reported that unlike in the United States, a formal system of industry-wide bargaining has also remained in place which often conflicts with and impedes operational agreements at the local level, and vice versa. Some commentators point out that the contractual enforceability of labor agreements and the growing acceptance of labor arbitration in the United States are additional points of departure between the two systems.

A final factor that can assist in understanding the British and United States approaches to economic dislocation is the divergence of underlying economic conditions in each country. There is evidence, for example, that unemployment as a percentage of the labor force in Britain has considerably exceeded that of other western nations, including the United States, in recent years and has remained high. In addition, of roughly three million unemployed in the United Kingdom, over one million, or more than a third, have not worked for three or more years. The United States economy, on the other hand, has shown a dramatic drop in unemployment over the same period. Of United States workers unemployed in declining industries, apparently only three percent had not worked for eight or more weeks.

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11 Napier, Judicial Attitudes Toward The Employment Relationship, 6 INDUS. L.J. 1 (1977).
12 Those urging a similar approach in the United States have long argued that employers have traditionally failed to meet their responsibility toward displaced workers. Employer attitudes on this question have begun to shift. See generally infra notes 83-100 and accompanying text.
14 Id. at 35-38.
15 See Lowry, Bartlett & Heinsz, supra note 3, at 23-26.
A greater extent of the employee dislocation in Britain, therefore, may be structural when compared with that in the United States. Also, the job-generating boom attributable to the mid-sized, growth company sector of the American economy has relieved worker dislocation in the United States in recent years.19

III. THE BRITISH RESPONSE: A COMPREHENSIVE LEGISLATIVE INITIATIVE

As early as 1965, concern about economically driven worker displacement in Britain began to be translated into national policy. Trade unions, working through the Labour Party, were able to keep this concern high on the British national agenda for a number of years. As a result, a national legislative remedy has evolved through a series of parliamentary acts.

A. The Evolution of Redundancy Law

By adopting the term "redundancy"20 to define that specific segment of worker dislocation attributable to adverse economic considerations, the British have been able to circumscribe the dislocation debate. Noteworthy is that the British decision to afford the problem of redundancy dislocation special statutory treatment was made against an existing array of relatively generous statutory worker benefits in the nature of a social security program generally, and unemployment payments specifically.21

Beginning with the Redundancy Payments Act of 1965, the British initiative to combat redundancy dislocation has gradually evolved through a succession of legislative enactments.22 In broad outline, the Redundancy Payments Act provided for a lump sum payment for any employee with two years' standing dismissed for redundancy. The amount of the payment varied according to the employee's age

19 The evidence so far indicates that very little of the resurgence in employment has been attributable to the revitalization of declining industries in either country. See Drucker, Why American's Got So Many Jobs, Wall. St. J., Jan. 24, 1984, at 32, col. 3. It has recently been reported that over the last decade the European Community lost two million jobs while the United States added 20 million jobs to its workforce. For a more detailed comparison, see Wayne, America's Astounding Job Machine, N.Y. Times, June 17, 1984, § 3, at 1, col. 2.

20 See supra note 1.

21 The unemployed worker might also qualify for a substantial decrease in monthly rent, if residing in public housing. See Newman, supra note 17, at 1.

and time on the job. This payment was to be borne solely by industry contributions (no government or employee contributions were required), with the added benefit that worker redundancy payments did not bar worker recipients from also claiming earnings-related unemployment benefits under existing law.23

Parliamentary acts in the labor field over the next eight years only tangentially affected redundancy provisions. Following an interim period of Conservative Party rule beginning in 1970, which saw enactment of a range of trade union constraints under the Industrial Relations Act of 1971, the Labour Party resumed control of the British Government in 1974.24 A three stage program to revamp Britain’s labor relations law was immediately instituted. First, the Industrial Relations Act of 1971 was replaced by the Trade Union and Labour Relations Act of 1974.25 The Employment Protection Act of 1975 then extended worker and trade union rights.26 The third stage, which called for enactment of a statutory means of increasing worker participation in management decisions, was not achieved.27 The most significant development in redundancy law in recent years occurred in 1978 with the enactment of the Employment Protection (Consolidation) Act.28 This Act provides the statutory umbrella under which modern British redundancy law has been consolidated.


The consolidated Act is a multifaceted statute which, as applied, brings numerous factors to bear on the employment relationship within the British industrial relations system.29 Three components of the Act impact most clearly on the specific problem of redundancy dislocation. These are found in the statutory call for: (1) redundancy lump sum payments; (2) additional employee rights against the em-

23 Id. at 7.
24 Lowry, Bartlett & Heinz, supra note 3, at 18-20.
25 Trade Union and Labour Relations Act, 1974, ch. 52.
26 Employment Protection Act, 1975, ch. 71.
28 Employment Protection (Consolidation) Act, 1978, ch. 44.
29 The establishment of an Advisory Conciliation and Arbitration Service created under Part I of the 1975 Act has, for example, been carried out.
ployer; and (3) mandatory consultation between employer and union in redundancy situations.  

1. **Redundancy Payment Requirement**

The Employment Production Act mandates a lump sum payment for redundancy victims to complement the existing legislative safety net of benefits for the unemployed. The payments are borne by industry. The policy origins behind this requirement are rooted in the early recognition of the growing obsolescence of much of British industry in the early 1960's and its inefficient utilization of manpower. The redundancy payment was meant to lessen worker resistance to economic dislocation and mitigate the consequences of such change. The redundancy payment, however, is not considered to be in the nature of unemployment compensation. The closest counterpart in American practice would most probably be the "severance pay" concept.

2. **Additional Employee Rights**

The Consolidation Act also embraces the substantive rights vested in employees by Part II of the earlier Employment Protection Act of 1975. When drafted, however, the Consolidation Act sought to address problems of a broader scope than redundancy related unemployment, inasmuch as the new rights were to vest irrespective of the condition of the economy or the financial situation of the employer. Although not specifically directed at redundancy dismissals, they nonetheless inure to the benefit of one dismissed under such circumstances, and therefore become a factor which must be considered.

Among other things, Part II of the 1975 Act gives to the dismissed employee the legal right to minimum prenotification periods based on length of continuous employment, as well as paid time off (in the case of redundancy dismissals) for making arrangements for future

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31 Employment Protection Act, 1975, ch. 71, § 81.
32 PARKER, THOMAS, ELLIS & MCCARTHY, EFFECTS OF THE REDUNDANCY PAYMENTS ACT, at 3 & 7 (1971); see also GRUNFELD, supra note 22, at 1-7.
34 Employment Protection Act, 1975, ch. 71, §§ 22-88.
35 Four weeks to two years of continuous employment entitles the employee to a week's notice prior to termination. For every additional year of continuous employment up to twelve, the employee becomes entitled to an additional week. Employment Protection (Consolidation) Act, 1978, ch. 44, § 49.
training or employment; greater priority over competing creditors for back pay and other benefits should an employer become insolvent; and the right to request written reasons for dismissal from the employer.

While they may appear to be a catch-all for transforming a number of disparate and particularized labor grievances into legally protected rights, these diverse benefits carry an underlying policy rationale. Fearing further labor unrest due to apprehensions associated with increased plant closings, Parliament concluded that workers needed additional protections against such contingencies. These rights, aimed primarily at the deleterious effects of dislocation, were intended to mitigate worker fears and thereby contribute to industrial relations stability.

3. Redundancy Consultation Requirement

The third statutory component impacting redundancy dislocation in Britain is the specific redundancy procedure first mandated under Part IV of the Employment Protection Act of 1975. In painstaking detail, the statute sets forth a rigid process to be followed by the employer and the trade unions in redundancy situations.

In brief, the consultation requirements shift the burden of initiative between the parties throughout the process. First, the employer must put forward a plan to trade union representatives for implementing the proposed closure. The burden then shifts to the union(s) to consider the employer's plan and to react in the form of suggested modifications and counterproposals. Responsibility then shifts back to the employer to either accept the union alternatives or to reject them and state the reasons therefor.

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36 Id. § 31.
38 Id. § 70.
39 Ognibene, supra note 27, at 205.
41 Employers faced with "special circumstances" need not consult with the unions, but rather must "take all steps towards compliance with that requirement [consultation] as are reasonably practicable in those circumstances." Id. § 99(8). The general criteria for meeting the "special circumstances" requirement are: (1) the existence of special circumstances, (2) that make compliance not reasonably practicable, (3) where all steps reasonably practicable toward compliance are taken by the employer. See Clarks of Hove, Ltd. v. Bakers' Union, 1 W.L.R. 1207, 1214 (C.A. 1978), cited in Ognibene, supra note 27, at 218.
42 Employment Protection Act, 1975, ch. 71 §§ 99(5).
43 Id. § 99(7)(a).
44 Id. § 99(7)(b).
Alternatively, the Advisory, Conciliation and Arbitration Service may be utilized to bring about conciliation. At any point in the process, employer redundancy decisions are subject to a union’s right to appeal to an industrial tribunal on the basis of the employer’s alleged failure to consult.

To ensure that the consultation process is sufficiently probative, the employer’s initial plan must include specific categories of information. Likewise, to ensure sufficient time to implement the consultation procedures and prepare for the dislocation, the statute entreats the employer to commence consultation “at the earliest possible opportunity.” Statutes mandate minimum prenotification periods, however, according to the size and timing of the proposed layoffs. Consultation must begin at least sixty days prior to the first dismissal where ten to a hundred employees stand to be terminated, and ninety days prior to situations where more than a hundred dismissals are contemplated within a three month period.

The policy behind this statutory foray into labor-management relations is not to usurp the management prerogative of making the final decision to close a facility. It is, rather, a two-tier policy approach premised on the notion that the employer’s decision to close can be reversed. This strategy is couched in statutory language that requires the employer to explore alternatives to the shutdown before implementing it. Should the closure decision stand, the policy objectives of the statute would seem twofold: (1) to minimize the conflict between employer and union, and (2) to cushion the harmful economic effects of the dislocation on the worker.

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45 Id. §§ 1-6.
46 Id. § 101(1). There is evidence, however, that in practice this may be more illusory than real. See Ognibene, supra note 27, at 214.
47 Employment Protection Act, 1975, ch. 71, § 99(5) requires that the employer disclose:
   (a) the reasons for his proposals;
   (b) the numbers and descriptions of employees whom it is proposing to dismiss as redundant;
   (c) the total number of employees of any such description employed by the employer at the establishment in question;
   (d) the proposed method of selecting the employees who may be dismissed; and
   (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect.
48 Id. §§ 99(3).
49 Id. §§ 99(3)(a) & (b).
50 Id. § 99.
51 Id.
In sum, the British response to the problem of redundancy dislocation has interestingly come largely from the highest level of government and assumed the form of national legislation. This legislation institutes the underlying policy goal of serving "to lubricate the old joints of British industry while they undergo rejuvenation." To do so, great reliance is placed on an extension of economic security to redundancy victims in the form of lump-sum payments from industry, the extension of employment-related statutory rights to the working man and his union, and a mandatory consultation procedure to be implemented by both labor and management when redundancy decisions must be made.

IV. THE UNITED STATES RESPONSE: COMBINED PUBLIC AND PRIVATE INITIATIVES

By comparison, the problems of economic dislocation in the United States have encountered a less accommodating governmental response. Interestingly, however, a diverse and energetic response from the private sector has compensated for government's reaction. A tradition of labor mobility skepticism toward market intervention, concern over the erosion of traditional management prerogatives, and the political impotence of organized labor are some of the factors which have combined to temper the governmental response to worker dislocation in the United States.

A. Efforts for Comprehensive National Legislation Fail

A concerted effort to gain legislative relief for dislocated workers in the United States began in the early 1970's. The effort was undertaken primarily by an alliance of special interest groups led by some of the country's largest labor organizations. The alliance's organizing and lobbying efforts have since been directed at both the federal and state levels of government. As a result, comprehensive legislative proposals have appeared in every term of Congress since 1974. These proposals characteristically contain provisions for em-

52 GRUNFELD, supra note 22, at 6.
53 This effort is chronicled in BLUESTONE & HARRISON, supra note 2, at 257 et seq., and assessed in Millsapah, The Campaign for Plant Closing Laws in the United States: An Assessment, 5 CORP. L. REV. 291 (1982).
54 These include the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), the United Steelworkers of America (USA), and the Association of Machinists and Aerospace Workers (IMA).
55 For examples, see Arnold, Existing and Proposed Regulation of Business Dislocations, 57 U. DET. J. URB. L. 209 (1980).
ployer prenotification, federal regulatory intervention, employee benefits assistance, forms of support for local governments, employer assistance, and employee buyout procedures and support. Despite lively debate in numerous hearings, a political consensus sufficient to enact such proposals has not formed.

Likewise, similar proposals have appeared in numerous state legislatures, but the same fate has thus far befallen these initiatives; no comprehensive proposals have, as yet, made their way into state law. The fierce competition for industry and jobs among the states in the United States has been a particularly formidable obstacle to the passage of such laws since it is generally perceived that such laws would create a disincentive to attracting and retaining business in jurisdictions where enacted. Very recently, some local municipalities have enacted various forms of plant closing restrictions under severe pressure from large-scale shutdowns within their jurisdictions. Although the constitutionality of such laws is still being tested, it appears unlikely that such measures at this level of government can survive constitutional and other challenges. Comprehensive plant closing restrictions have yet to be successfully codified at any level in the United States, and the prevailing political climate coupled with the economic competition among jurisdictions suggest that the situation will remain unchanged for the foreseeable future.

B. The NLRA, Public Policy, and Common Law Factors

The struggle for legal relief from the hardship of worker dislocation in the United States has not been confined to securing a legislative remedy. Judicial relief has also been pursued with great tenacity and imagination through litigation. The theoretical underpinnings for such litigation have been based on the National Labor Relations Act

56 Id. at 229.
57 Id. at 209; see also BLUESTONE & HARRISON, supra note 2.
58 This phenomenon and its effects are analyzed in R. McKENZIE, FUGITIVE INDUSTRY: THE ECONOMICS AND POLITICS OF DEINDUSTRIALIZATION (1984).
60 The constitutional complications are outlined in Millspaugh, State and Local Plant Closings Laws Face Constitutional Hurdles, 1984 DET. C. L. REV. 615.
61 R. McKENZIE, RESTRICTIONS ON BUSINESS MOBILITY: A STUDY ON POLITICAL RHETORIC AND ECONOMIC REALITY (1979).
(NLRA) as amended, various common law principles, and public policy arguments.

The provisions of the NLRA, taken together, constitute the controlling, comprehensive statement of United States labor policy. The basic provisions of this legislation create worker rights as to concerted action, mandate good-faith collective bargaining over specific subjects of mutual concern to labor and management, identify and prohibit enumerated unfair labor practices, and establish a tribunal (the National Labor Relations Board) through which its policies and provisions are to be developed and enforced. Relief from worker dislocation under the terms of this Act has been sought primarily on the theories that the employer's closure constitutes anti-union discrimination or is a proper subject for mandatory bargaining. Primarily because of the formidable problems of proof as to the former and the judicial inclination to preserve management prerogatives as to the latter, judicial response to NLRA arguments has been cool.

Judicial relief has also been sought under a number of common law principles with considerable ingenuity. It has been argued, for example, that jobs require court protection because they become a "vested right," because they become an implied contract right in the context of a collective bargaining agreement, or because over time, they become a property right accruing to the community whose residents provided them. To date, such appeals have failed to move the American judiciary.

The same must be said for the public policy argument that under the Supreme Court holding in *Munn v. Illinois*, a court is empowered to restrain a corporation affecting the public interest from taking steps injurious to the community. Concluding that the *Munn v.*
Illinois doctrine spoke to legislative rather than judicial power, this argument has been rejected by the judiciary.\textsuperscript{72} The advocates of some form of legal relief from the effects of worker dislocation cannot be heartened by the judicial response to their overturns to date.

\section*{C. Ad Hoc Legislative Assistance}

In its United States setting, the severity of the worker dislocation problem is ameliorated by legislation bestowing a host of worker benefits not predicated specifically on economic dislocation. This indirect legislative support consists of an aggregate of innumerable public welfare and unemployment related programs of general application which provide forms of relief in dislocation situations.\textsuperscript{73} This elaborate social safety net is comprised of programs emanating from governmental units at all levels—federal, state, and municipal.\textsuperscript{74} Responsibility for funding and administering these programs is fractured through a complex of relationships among different levels of government and the programs themselves. The unemployment compensation system, for example, is the product of an elaborate authority-sharing relationship between the Federal Government and each individual state. This awkward and cumbersome duality permeates the system from its legal underpinnings and funding to its administration.\textsuperscript{75} In the United States today, on an average, an idled worker is entitled to six months of unemployment benefits.\textsuperscript{76} Legislation of general application such as that establishing the unemployment compensation program can also unquestionably provide important assistance in specific instances of economic dislocation.

A second category of legislative assistance found in the United States consists of those statutes promulgated in direct recognition of the problem of labor dislocation but which address only specific aspects of the broader problem.\textsuperscript{77} Illustrative of this group\textsuperscript{78} would

\begin{itemize}
\item \textsuperscript{72} 631 F.2d at 1281-82.
\item \textsuperscript{73} T. Meenaghan, \textit{Social Policy and Social Welfare: Structure and Applications} (1980).
\item \textsuperscript{74} \textit{Id.} For an early comparison between the United States and British welfare systems, see M. Bruce, \textit{The Coming of The Welfare State} (1966).
\item \textsuperscript{75} Becker, \textit{Unemployment Insurance: An Evaluation} (1981).
\item \textsuperscript{76} Sease, \textit{Shutting Down: Closing of a Steel Mill Hits Workers in U.S. With Little Warning}, Wall St. J., Sept. 23, 1980, at 1, col. 6.
\item \textsuperscript{77} For a discussion of various federal, state, and local government programs of this nature, see W. Kolberg, \textit{The Dislocated Worker} (1983). See also Office of Management and Budget, \textit{1982 Catalog of Federal Domestic Assistance} (1982).
\item \textsuperscript{78} It has been estimated by the Business Roundtable that the United States Government alone has some twenty-two separate displaced worker programs. \textit{See id.} at 73.
\end{itemize}
be such legislation as the Trade Adjustment Act of 1974\textsuperscript{79} and the recent Job Training Partnership Act.\textsuperscript{80}

In response to the worker disruption resulting from foreign competition in certain domestic industries in the early 1970's, Congress provided impact assistance through the Trade Adjustment Act. This Act authorized up to a year of supplemental cash benefits for workers displaced by competition from abroad.\textsuperscript{81} Shunning comprehensive relief which would address the full range of economic problems associated with this phenomenon, the scope of this statute is confined to dislocation directly attributable to foreign competition and relies unrealistically on the one-dimensional remedy of cash payments to the idled workforce.

The Job Training Partnership Act is a further example of such legislation. Although enacted in response to worker dislocation, it impacts only after the fact and is primarily confined to assisting with the functions of worker retraining and reemployment.\textsuperscript{82} As the statutory enactments relating to various separate aspects of economic dislocation mount, the American legislative preference for a piecemeal approach to worker dislocation becomes apparent.

\textbf{D. Private Sector Initiatives}

One contribution toward meeting the problems of worker displacement which has yet to be fully appreciated is the impact of private initiatives which have appeared in the United States in recent years. Dramatic and frequent plant shutdowns on a scale previously unknown in the United States have triggered a seemingly endless and diverse array of private sector self-help initiatives. Encompassing mainly those individuals and organizations touched by the problem, the willingness and determination of these groups to confront the problems themselves has blunted the deleterious impact of economic dislocation in communities throughout the country. For purposes of analysis, this private sector effort divides into two categories: those


\textsuperscript{82} Subchapter III of the Act, however, also authorizes federal funding to plan and design services generally for displaced workers, and to create a National Commission For Employment Policy. See 29 U.S.C. §§ 1651-1658 (1982 & Supp. II 1984).
activities aided by government either through sponsorship or funding, and those efforts which are solely private and voluntary.

Government sponsorship of private efforts to ameliorate worker dislocation in the United States has emanated from all levels of government in recent years. Commissions for the study or coordination of dislocation activities such as the National Commission for Employment Policy\textsuperscript{3} at the federal level and numerous panels sponsored by states or municipalities have appeared.\textsuperscript{84} All species of conferences, workshops, and demonstration projects have been utilized to plan, analyze, and provide information on various aspects of the problem. A plethora of recent training and coordinating activities provided to those individuals and organizations seeking to combat the effects of dislocation has been underwritten by government funding.\textsuperscript{85}

One of the best illustrations of this mixed public and private sector initiative is the National Conference on the Dislocated Worker, coordinated annually by the National Alliance of Business.\textsuperscript{86} The Conference is co-sponsored by some nineteen prestigious public and private organizations, such as the National Governors' Conference, the United Auto Workers, the Departments of Labor, Commerce, and Housing, and the United States Chamber of Commerce. The conference brings together leading authorities in an attempt to advance proposals to combat and manage workforce dislocation.\textsuperscript{87} This conference serves as the primary mechanism for providing the unifying functions of information exchange and program coordination on behalf of a national movement which has otherwise been characterized by its spontaneity and fragmentation.

Emerging from this expanded public/private collaboration is an increasingly seasoned and experienced approach to managing this problem;\textsuperscript{88} patterns and habits of cooperation among diverse orga-

\textsuperscript{84} Umbrella committees are a common vehicle with which to mobilize and coordinate support at both the state and local levels. See Kolberg, supra note 77.
\textsuperscript{87} Much of the record of the 1983 conference has been reported in Kolberg, supra note 77.
\textsuperscript{88} See generally National Alliance of Business, supra note 85.
izational elements and resources are being formed. A rich repository of knowledge and experience is accumulating upon which present and future efforts can draw.

Beyond contributions from government supported private undertakings, a significant record of assistance has also emanated from private initiatives without government involvement. A proliferation of self-help techniques and programs undertaken by both labor and management have emerged to head off or soften the impact of terminations. Some have been cooperative efforts, while others have been unilateral. In the absence of plant closing relief from either legislation or the courts, collective bargaining has become an important mechanism through which labor and management can address the problem. Increasingly sophisticated forms of job protection are being experimented with in American labor relations practice, such as the "guaranteed income stream" concept which surfaced in recent United Auto Worker negotiations with Ford and General Motors.

Beyond formal contractual concessions for assistance derived from collective bargaining, part of the burden of dealing with the dislocation problem is often shouldered by regional business or labor organizations, private foundations, or even academic institutions. The sophistication and complexity which private initiatives often assume in the United States is illustrated by the recent response to worker dislocation in St. Louis, Missouri. A group of private organizations, including the Labor Management Committee, the regional Chamber of Commerce, the local labor council, and the St. Louis Community College, combined to form the Metropolitan Re-Em-

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9 Public funds and leadership have so permeated the private worker dislocation movement in the United States in recent years that this distinction is becoming blurred.


91 Veteran workers are guaranteed a job either at another of the employer's U.S. plants or with another company near the worker's home. Failing this, workers receive continued payments at 50-75 percent of their previous pay scale until they reach retirement age. Buss, Lifetime Job Guarantees in Auto Contracts, Wall. St. J., Apr. 18, 1983, at 29, col. 4.

92 All of these initiatives, separately and in various combinations, are discussed and illustrated in KOLBERG, supra note 77.

93 This case example is outlined in Maguire, The Spirit of Partnership in St. Louis, in KOLBERG, supra note 77, at 91-95.
ployment Project, obtaining start-up funds from the Federal Government. Shortly thereafter, seeking greater flexibility, the project refused further government assistance and began raising its own funds primarily through chief executive officers of major companies headquartered in the area. The project, now truly private, is successfully providing worker assistance at numerous locations throughout the community in the form of job shops, outplacement counseling, conferences, and the like.

The circle of private, voluntary initiatives has also expanded to meet a number of less visible needs of the idled worker and his family. The financial burdens associated with maintaining medical and life insurance coverage, securing necessary legal and medical assistance, and meeting rent, home mortgage, and automobile loan payments are ongoing and can quickly become unmanageable. There are many recorded instances of private assistance being extended to blunt the impact of burdens such as these. This assistance has included unilateral financial aid by the company or the union, funds from both jointly, or funds raised by private organizations from private sources. Nor is it uncommon for hospitals, lawyers, and lenders themselves to provide their services or products at no cost, reduced cost, or on a deferred payment basis.

The realm of private initiatives is also producing some noteworthy efforts to prevent worker displacement from occurring in the first place. Work reassignment within the same firm, work-sharing arrangements, and early retirement programs are examples of some of the initiatives in this category. Worker buyout programs in lieu of closings have also increased, as have union and community public relations campaigns to reverse closure decisions or to block the construction of competitive new plants.

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94 Id.
95 See chapters III, IV, and VII of Kolberg, supra note 77.
97 Carlough, Stabilization in the Sheet Metal Industry, in Kolberg, supra note 77, at 48-50.
98 This concept entails reducing the workload of all in order to avoid laying off any particular member(s) of the workforce. The state of California has enacted the concept into a statute. See Sanders, Rethinking Established Programs, in Kolberg, supra note 77, at 82-83.
100 The Steelworkers Union has recently fought construction of a small finishing
V. SOME CONSTRUCTIVE COMPARISONS

The contours of the British and United States responses to worker dislocation differ significantly. It remains now to explore constructive comparisons between the two. In doing so, however, the peculiar domestic context which has shaped the forms and texture of each nations's response must be kept in mind. As has been noted, many of the differences in the industrial relations experiences of the two nations account for their divergent approaches.

A. The Approach

The United States and British responses to the labor dislocation dilemma can be fairly compared as to general approach, specific policy objectives, legislative strategy, and domestic impact. Paramount to the British approach has been an underlying policy consensus on the issue of worker displacement, allowing for its translation into law. The two prominent features of the British response are that it is national in origin and scope, and that it addresses worker displacement specifically and comprehensively.

In contrast, the drive for a legislative consensus on the question in the United States has been derailed by free market and management prerogative preferences at the national level. It has also been hobbled by interstate job competition and constitutional complications associated with legislative initiatives at state and local levels of government. Consequently, a comprehensive statutory focus on the problems of economic worker dislocation does not exist today in the United States. Instead, a patchwork of uncoordinated, piecemeal legislative enactments have appeared at various levels of government. The federal establishment has concerned itself with that segment of dislocation attributable to foreign competition and seems content with the stop-gap measure of interim worker support payments. Assistance for dislocation irrespective of its causes has taken the form of support for a joint business and government effort in the areas of retraining and re-employment. At the same time, a handful of state and local

mill in Cleveland, Ohio, believing it would use foreign steel and hire non-union workers. The Steelworkers Dig In Against A Cleveland Minimill, Business Week, Jan. 23, 1984, at 37.


governments have enacted limited measures such as mandatory pre-notification periods and severance payment requirements.\textsuperscript{103}

\textbf{B. Policy Objectives}

In terms of formulating national objectives with respect to dislocation policy, the British have set an ambitious agenda and spoken with one voice; in contrast, the United States has set a modest public agenda and speaks with many voices. It is clear from the debates in Parliament and subsequent scholarly analysis that the British response has been in pursuit of three specific objectives: (1) to mitigate the impact of dislocation on the worker; (2) to reduce the threat of labor-management hostilities; and (3) to force critical scrutiny of the closure decision.\textsuperscript{104} Each objective is in turn couched in terms of supporting the larger purpose of expediting the modernization of Britain's industrial base.

Since there has been no comparable national policy cohesiveness or rationale in the United States, it is tempting to conclude that the Federal Government has failed contemporary United States society in meeting this problem. In fact, the merits of a comprehensive Federal Government role in worker dislocation policy have, and continue to be, vigorously debated.\textsuperscript{105} Thus far however, the policy preference in the United States has been precisely to avoid the type of response adopted in the United Kingdom. Rather than elevating the problem to the highest policy levels of government and fashioning a comprehensive national legislative remedy, the choice has been to seek accommodations and solutions within the framework of existing public and private institutional arrangements and free market forces.

\textbf{C. Legislative Strategy}

On examination of legislative strategy, a comparison between the British and United States preferences can also be instructive. By American standards of the 1980's, the British legislative remedy seems

\textsuperscript{103} The exception is the plant closing ordinance enacted in the spring of 1983 by the City of Pittsburgh, Pennsylvania, which was notably comprehensive. \textit{See supra} note 59. As suggested earlier, such statutes at the state and local levels confront constitutional, among other, barriers in the United States. The Pittsburgh ordinance was declared unenforceable. \textit{See Millspaugh, supra} note 60.

\textsuperscript{104} \textit{See Grunfeld, supra} note 22; \textit{Parker, et. al., supra} note 32 and accompanying text.

\textsuperscript{105} The case against intrusive federal involvement is best summarized in R. McKenzie, \textit{Displaced Workers: A Role for the Federal Government?} (Heritage Foundation Background Paper 1984).
excessive and heavyhanded. The array of employee rights added by the Employee Protective Act of 1975 unquestionably skewed the existing labor-management equilibrium and inhibited industry's ability to deal efficiently with workforce changes. The awkward and detailed consultation procedures mandated under the 1975 Act imposed a rigid format upon both companies and unions from which good faith accommodations were difficult to achieve. Such provisions illustrate the deep statutory intrusions into certain industrial relations situations and related market forces inherent in the British legislative approach.

If a legislative strategy for worker dislocation can be associated with the United States response, it must be deduced from the congressional intent behind the National Labor Relations Act. With rare and narrow exceptions, economically motivated, unilateral displacement decisions made in good faith are consistent with national labor law in the United States. Since displacement decisions remain essentially beyond the reach of the national Labor Relations Act, the Act cannot be said to contain a statement of legislative policy on the issue. The absence of worker displacement provisions in the nation's primary labor statute can be viewed instead as further evidence of a preference for avoiding large-scale, formal, institutionalized, Federal Government undertakings in this area.

Unlike the British statutes, the United States enactments do not intervene to such an extent that those processes and forces which would normally control the formation and implementation of a dislocation decision are overridden or preempted. Unlike the British strategy, statutes in the United States are essentially passive, avoiding challenges to, and scrutiny of, the closure decision in the first instance. The primary intent behind the occasional prenotification requirements found in state statutes, for example, is to allow time for the planning and preparation necessary to minimize the harmful effects of closure on the displaced employee. Other occasional state

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106 For example, the United States Supreme Court has stated that a decision to contract out work, presently being performed in-house, that would result in job loss was subject to mandatory bargaining under the NLRA. Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964).

107 That is, national labor law as the courts have interpreted congressional intent in enacting the National Labor Relations Act as amended. See Millspaugh, supra note 62.

108 For a discussion of these statutes and their provisions, see Arnold, supra note 47, at 216-299, and Millspaugh, supra note 60, at 618-21.

109 Proposals for prenotification requirements at both the federal and state levels
statutory provisions such as severance benefits and the like are clearly export factors — measures designed to ameliorate the subsequent hardships rather than challenge the closure decision itself.

D. Domestic Impact

A final basis for comparison examines the manner in which various elements of each nation's approach to worker dislocation can be expected to impact the constituencies involved. As for principals, that is the institutional forces of organized labor and management, and the impact on relations as understood and practiced between them, the responses of Britain and the United States stand in stark contrast. The British initiative places its main reliance on the statutory addition of numerous worker employment related protections coupled with the imposition of a consultation procedure on management. In effect, the British approach prescribes the relationship between management and labor in the redundancy situation by law. The United States response, by comparison, evidences little inclination to overhaul the labor-management relationship in order to combat the exigencies of economic displacement. Prenotification requirements scattered about in state and local jurisdictions can perhaps be viewed as disruptive of the relationship to a degree, but certainly pale against the cumulative effect of the British measures. The United States solution is sought in a combined public and private effort which has seen the private sector seize much of the initiative and contribute heavily at the local level on a case by case basis.

The impact of efforts in both nations on principals themselves differs only in degree. Labor and unions are clear beneficiaries of enhanced legal protections, financial assistance, and input in the displacement decision. Industry and management, on the other hand, bear the primary burden. The enormity of fixed costs alone, in addition to the various payments and guarantee provisions of the British statutes, caused Parliament considerable concern when debating enactment of the measures. Moreover, the expanded employee rights and consultation procedures under the British regime


110 Ognibene, supra note 27, at 208-09. For some early cost figures, see GRUNFELD, supra note 22, at 7-9.
can only take effect at the expense of a range of managerial prerogatives.\footnote{As Mr. Albert Booth stated when presenting this section of the legislation to Parliament, "[t]he Bill is proposing to change our law from legal support for management by managerial prerogative to legal support for management by consultation." See Ognibene, \textit{supra} note 27, at 211.}

A renewed judicial sensitivity toward management prerogatives based on the need for confidentiality, speed, and flexibility in worker dislocation situations has appeared recently in the writings of the United States Supreme Court.\footnote{Although discussed in the context of whether or not bargaining should be required, the point remains the same. In \textit{First National Maintenance Corp. v. NLRB}, 452 U.S. 666, 683 (1981), the Court noted that management "may face significant tax or securities consequences that hinge on confidentiality, the timing of a plant closing, or a reorganization of the corporate structure. The publicity incident to [bargaining] may injure the possibility of a successful transition or increase the economic damage to the business."} As presently designed, however, the statutes in both countries encroach on traditional management prerogatives, although to differing degrees. Measures in both countries also impose financial obligations toward the displaced worker on either the employer (in the United States) or the industry (in the United Kingdom).

Because the United States legislative response to worker dislocation is neither comprehensive nor nationwide, not all industrial operations are affected. The statutory effect on industry therefore is not uniform, but is rather a function of the geographic jurisdiction of the statute as well as the rigor of its provisions. Identical operations within the same company can fall under closure restrictions in one jurisdiction and escape them in another. Although such statutes are considerably less severe than the British counterparts, they are generally perceived as detrimental to a healthy business climate. For this reason, the presence of worker displacement statutes in the United States has begun to influence decisions on whether to locate or maintain business operations in some areas.\footnote{See generally R. McKenzie, \textit{supra} note 61, and R. McKenzie, \textit{Plant Closings: Public or Private Choices?} (1982).}

\section{VI. Conclusions}

The United States and Great Britain have adopted markedly different approaches to the dilemma of worker dislocation. Although sharing a common legal heritage, time and history have fostered deep dissimilarities evidenced in the respective countries' labor movements, industrial relations practices, and fundamental economic, political,
and social preferences. These differences account in part for their divergent responses.

The British response of broad, national legislation through a series of enactments in the 1970's, directly and comprehensively addressed its redundancy problem by the insertion of specific worker rights, industry redundancy payment requirements, and mandatory union-management consultation procedures into British law. The United States, on the other hand, has chosen to limit the role of the Federal Government to cash assistance to the worker displaced by foreign competition, and financial assistance in the form of education and training funds in support of a broad, joint public and private response tailored to specific local needs. A small number of state governments also have intervened statutorily in response to business dislocations. Such initiatives have implemented relatively narrow remedies which commonly include a prenotification requirement prior to plant closure and/or severence benefits for the displaced worker.

These societal responses to a common problem differ distinctly in approach, policy, legislative strategy and impact. Each has strengths as well as shortcomings. The British response has been direct and comprehensive, emanating from the top levels of government. By comparison, the United States response can be characterized accurately as piecemeal and uncoordinated, coming partially from the multiple levels of government and partially from the private sector. The strong, multifaceted private sector response to the worker, his family, and the community affected by job losses has made a remarkable contribution to the United States approach.

The gamble inherent in the United States response is whether the slack left by the government’s limited role would be taken up elsewhere. There is evidence that this is indeed the case. The civic response evidenced by the private sector role seems to be an encouragingly comprehensive and effective supplement to the government’s participation. Likewise, the workers (or unions) themselves are beginning to accept a measure of responsibility by bringing problems to the negotiating table to seek solutions through bargaining. Thus, the consultation between industry and labor over worker dislocation mandated by the British legislation is being widely practiced in the United States without statutory compulsion within the accommodative framework of the United States industrial relations system.

Ample history and rationale supports the appropriateness of each country’s response to worker dislocation. To a larger degree, each is a reflection of its nation’s power structure, established industrial relations practice, and underlying value system. The British have
pursued a comprehensive governmental solution in deference to the economic security of the worker. In contrast, the United States has pursued a joint public/private sector solution in deference to the maintainance of economic efficiency and the integrity of its industrial relations processes.