A Theology of the Workplace:

Adaptive Appropriation in Japanese Labor Law and the Roman Catholic Social Question

A paper presented at the June 2012 Lonergan Workshop of Boston College, afternoon Economics Session

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In this paper we examine factors governing employment relation at the level of comparative national industrial relations systems. In addition, we do so in light of Church teaching on the social question. As such, this is an early exploration of a *theology of the workplace* research domain or academic field. Functionally, a *theology of the workplace specifies institutional and institutionalized features that variously enable or constrain managerial prerogative and employee participation within worksite, firm, organization, sector, region, or national political economy in light of religious doctrine.*

Three steps comprise the paper's structure First, I review the grounds for a works council notion of employee participation in managerial prerogative as this is evidenced in Catholic social teaching (CST). This will include a description of what such institutional features of the workplace are and why they exist. Second, I will review how such participation, accompanied by just cause dismissal protections, was adaptively appropriated from Weimar era German labor law and industrial relations to the post-World War II Japanese industrial relations setting. Third, given this analysis, and within a comparative framework, I will then take up the functional theological question of who is actually living the Gospel message in history and consider how *cultural cognition*, as a legal construct, may help account for observed patterns of national variance in attitudes towards the workplace as a contemporary contested domain, and as this variance can be observed in the United States of American and Japan.

While this paper deals with comparative employment relations history, the issues directly concern current global economics crises. Both nationally and internationally, employee participation in managerial prerogative and the nature and role of managerial prerogative itself have become issues of concern. Notably, in the United States of America, these issues appear to divide a populace along increasingly conflictual fault lines. A few examples will suffice:

- In a December 2011 New York Times column, Thomas L. Friedman wrote of our present age as yet another of "those great unravelings," when long established states and norms cease to exist. Prior periods were characterized by war, whether hot or cold. What distinguishes this unraveling, he claims, is that the various nation states, "have been pulled down from within - without warning" (Friedman, 2011). For him, globalization and information technology have been the merged drivers prompting the evident movements for democratization. Furthermore, he wrote of a "democratization of expectations" pervading market practices. This, he reported, is particularly noticed by corporate chief executive officers (CEO). They see a heightened perception of expectations in customers and employees regarding corporate behavior.
- Friedman's global perspective on rising participatory expectations stands in sharp contrast to a troubling caution reported the same week in the same newspaper by William Gould IV. The former Chair of the U.S. National Labor Relations Board (NLRB) pointed to ideological forces at work in the U.S., which threaten the end of collective bargaining in the very nation that championed such rights as a bulwark of democracy in postwar Germany and Japan. Gould noted the ongoing lack of appointments to the NLRB, due to ideological disagreements between the Democratic

and Republican parties about suitable candidates. Without appointees, he wrote, the U.S. faced the probable consequential absence of a quorum and, "American workers will, on New Year's Day, effectively lose their right to be represented by a union" (Gould IV, 2011).

- This past year has also seen the state of Wisconsin pass legislation effectively curtailing collective bargaining rights for public sector state employees, only to be followed by a recall election petition by 500,000 citizens against the Governor and Deputy who proposed and signed this legislation. The location and degree of strife is unprecedented and profoundly ironic. This is the American state that was home to the Wisconsin school of labor relations and the 'father of American labor law,' John R. Commons.
- In a more radical step, if in a right-to-work state, Arizona is considering legislation to completely eliminate collective bargaining for public sector employees, even though 80% of police opt for union representation. One of the bill's creators, Nick Dranias, noted that public sector compensation in the state runs 6% higher than comparable private sector rates. He went on to say, "You're in government to serve. And if you get paid reasonably, that's nice, but the moment you feel the need to organize collectively and create laws like collective-bargaining laws that give you special privileges to negotiate and extract compensation not seen in the private sector, you've gone too far." (Robbins, 2012)
- In contrast, across the Atlantic Ocean, U.K. Deputy Minister Nick Clegg proposed tax incentives that will foster "John Lewis economy" forms of worker ownership (Zoe, 2012),
- In a development of remarkable contrast between new IT social participation trends and managerial prerogative, Facebook, the global leader in on-line social networking, appears set for an Initial Public Offering (IPO) of stock this year. Mark Zuckerberg will own approximately 28% of the firm following the IPO, but percentages are deceiving. A study of the stock structure indicates, "When it goes public, Facebook will be conducting an experiment in corporate dictatorship nearly without precedent for such a large and high-profile company" (Yglesias, 2012). Due to the nature of exemptions accompanying its particular status as a "controlled company," the firm will reserve the right to avoid both independent directors and an independent compensation committee. For those who follow IT public offerings, the extent of this control is evident by way of contrast: not even Bill Gates controlled as much of Microsoft when it went public.

At a minimum, U.S industrial relations has seen a steady shift against notions of economic democracy as these reside in traditional organized labor. Indeed, it must appear lamentable to a generation of labor activists and labor relations mediators that the entire New Deal, post-World War II fabric of American industrial relations has frayed to an increasingly unrestricted degree of managerial prerogative, beginning with the "strategic choice" era of American management prerogative as it was exercised from the 1980s (Kochan, Katz, & McKersie, 1986). Any deployment of so-called participation schemes in the U.S. has, with rare exceptions, increasingly been at the behest of exclusively retained managerial prerogative. Profit shares – as one useful proxy for actual and authentic “participation” – only trend toward

increased executive compensation.

Kochan, et al., characterized this as a pattern of "strategic choice" on the part of American management. They documented steps taken by American management to systematically undermine the employment rules long presumed over several decades of seeming stability in the U.S. political economy. Unionization of work sites was resisted, even by illegal practices. Labor union agreements were willingly abrogated, fines notwithstanding. Manufacturing sites were shifted to right to work states or abroad or such moves threatened. All of these were clear and compelling evidence that the U.S. pattern of stable labor relations had ended (Dunlop, 1958, 1993).

Ironically, for the study we are about to commence, Kochen et al. cited increased competition from Japanese manufacturers as one of the primary causes compelling U.S. management to make these strategic choices. That the nature of Japanese management success might have been due to a completely different, more inclusive form of labor relations was a lesson of profound irony that appears to have been utterly lost upon U.S. management, no less than their union and government counterparts – and this for reasons never adequately explained. We will soon look to recent work in cognitional studies for a possible answer.

In sum, while the U.S. champions politicial democracy at home and abroad, economic democracy is a different matter. Yes, some lessons were learned, centering on manufacturing processes: Just-in-time production, kaizen, zero defects. Yet, a fundamental gap remained between the manner of management in the Japan context and that of the United States (Halberstam, 1986); this gap is particularly evident when Japanese management practices are introduced to the U.S. They may result in profound improvements in human resource management, bordering on workplace re-evangelization (Tackney, 2009). Alternatively, they may result in ever more extreme exploitation of the employee (Graham, 1995; Milkman, 1991). At issue, as we shall see, is the set of institutional, national employment relations parameters that regulate employee participation forums, on the one hand, and unconditioned managerial prerogative, on the other.

The shift Kochen et al. first observed in the 1980s has taken a more radical turn. As noted, we are now witness to direct assaults on the very legal fabric of labor organizations and collective bargaining, private as well as public sector, this last at state legislatures in Wisconsin, Illinois, Indiana, and elsewhere (Hogler & Henle, 2011). Against the background of steady loss of U.S. union membership, Hogler and Henle observed, "the result of union decline for most American workers is an ongoing decay of the institutional foundations of economic stability" (p. 137).[1] At the other end of the employment relations spectrum in the U.S. stands the astronomical increase in wage differentials between the average worker and executive (Moyers, 2006). This trend also began in the 1980s; 2006 figures indicate an American

[1] U.S. unionization rates have steadily declined from a post-World War II high of about 28% of employed workers in 1954 to 11.9% in 2010 (http://digitalcommons.ilr.cornell.edu/cgi, http://www.bls.gov/news.release/union2.nr0.htm). In Japan, peak unionization after World War II of around 55% has declined to 18.1% in 2007 (http://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/07/kekka.html).

executive compensation differential 487 times that of the average American worker. Comparable differentials for other developed nations reveal the extreme disparity of the U.S. case: Japan (11 times), Germany (12), France (15), and the United Kingdom (executive salary at 22 times that of the average worker) (ibid.).

To account for domestic U.S. polarization in public policy risk propensities among the electorate, U.S. legal scholars have lately taken up study of *cultural cognition* as a concept capable of explaining observed variance in election outcomes (Kahan, Dan M., 2006, 2011; Kahan, Dan M., Slovic, Braman, & Gastil, 2006). The basic premise for legal studies of this concept is that cultural commitments come prior to factual knowledge in respect to political issues. Kahan wrote, "cultural commitments operate as a kind of heuristic in the rational processing of information on public policy matters" (2006, p. 149). Hogler and Henle (op cit.) applied this concept to the contemporary attack on U.S. public sector unions. They disaggregated anti – union sentiment into cultural cognition patterns on a four-item scalar that plots hierarchy – egalitarian against individualism – communitarian variance. In post-Civil War American culture, the authors noted that right to work activists, "depended on political ideas involving free markets, race, individual autonomy, distrust of outsiders, and insularity" (p. 138). They traced this cultural cognitional 'set' or anticipatory heuristic through the 1980 election of Ronald Reagan to contemporary Tea Party and current anti – union state legislature activists. They found, in effect, "Right to work metastasized from its origins in the South and spread to its present dimensions by promoting American values to citizens in a competitive economic environment created by differential labor markets" (p.139).

It is against this background of the contested domain in contemporary employment relations that we take up study of a theology of the workplace. The goal is bring together a history of empirical research into institutional features regulating managerial prerogative and employee participation, as found in industrial and employment relations studies with correlative developments in Roman Catholic teaching on the social question or "the question of the worker" as evidenced in Papal encyclicals and other documents. This should enable derivative of testable norms for optimization of employment circumstances in respect to sustainable enterprise market performance, employee participation in the life of the enterprise, and a better understanding of the proper exercise of managerial prerogative in light of CST. As we shall see in the Methods section that follows, the opening for a theology of workplace suggested itself in light of reflection on post-World War II developments in Japanese labor law and industrial relations.

The emerging legal studies literature on cultural cognition adds yet another dimension to a theology of the workplace research effort. Those familiar with the epistemology and theological method developed by Bernard J.F. Lonergan will immediately recognize parallels (Lonergan, 1973, 1992). Lonergan's insight-based critical realism may offer epistemological grounds for more in-depth analysis of such cognitional structure and help in how to devise more effective legal strategies in light of the legal findings to date.

2. Method

Given the contemporary challenge, this paper will proceed in three sections. The goal is to conduct a valid and reliable exploration of a theology of the workplace. First, we establish the grounds for just cause dismissal protection and employee participation in works council as part of CST, by explaining and situating these notions within an emerging study of the theology of social grace. Second, we will summarily review how works councils were adaptively appropriated to the post-World War II setting of 1946 Japan, from their German origins. Third, we will raise the functional, theological question: Who is actually living the Gospel in history? In this section we will introduce some options as they present themselves for labor organization in the U.S. setting, which is the exceptional, and thus comparatively most intriguing, national system.

Culture is our methodological grounding in theology and later bridge to the field of industrial relations, particularly in regard to customs as given in culture and their legal significance. Bernard J.F. Lonergan defined theology in these terms; "A theology mediates between a cultural matrix and the significance and role of a religion within that matrix" (Lonergan, 1973, p. xi). As Lonergan wrote, culture "is the set of meanings and values that informs a way of life" (ibid.).

Doran has elaborated this point further, noting that theology, "in its entirety exercises a mutual self-mediation between that 'current effective totality' and the meanings constitutive of the Christian church" (Doran, 2005, p. 57). More generally, Doran wrote, "The church is, or should be, and willy-nilly has always been, a learning church, a church whose own constitutive meaning is, within the limits imposed by truly dogmatic meanings, changed by interaction with various cultural matrices" (ibid.)

The May 14, 1891 encyclical by Pope Leo XII, *Rerum Novarum ("New Things")* (hereafter, *RN*) marks the historical starting point of Roman Catholic teaching on the worker question (Leo XIII, 1891). It has long been characterized as the *Magna Carta* of Catholic social teaching (Murphy, 2010). In *Centisimus Annus (CA)*, John Paul II indicated the societal range opened by this text, and later Catholic social teaching. He wrote,

> In this way, Pope Leo XIII, in the footsteps of his Predecessors, created a lasting paradigm for the Church. The Church, in fact, has something to say about specific human situations, both individual and communal, national and international. She formulates a genuine doctrine for these situations, a *corpus* which enables her to analyze social realities, to make judgments about them and to indicate directions to be taken for the just resolution of the problems involved (John Paul II, 1991, p. 4).

This is the CST corpus we will look to in the dialectical process to follow. The first operation will establish the correlative CST basis for just cause dismissal protection and works councils as categories in employment relations. The second will recount the establishment of just cause and the adaptive appropriation of German works councils to the postwar Japanese industrial relation system. Both features contribute to employee "participation" in the life of the modern enterprise.

The first operation begins with a deliberate search of encyclicals that appear to touch upon the worker

questions as presented in the literature. The concrete methodological steps to this end were straightforward. In addition to reading all of the possibly relevant encyclicals available, word searches on specific terms were conducted as a second check. Taken together, these steps ensured reasonable coverage of the Roman Catholic CST corpus on the subject of the worker question. National level CST was not taken up, as this second-level analytical step is beyond the current research scope. For common text referencing, encyclical quotations will cite the numbered paragraph (P:x, not page: p.x) as these are provided in the Vatican web-site encyclical database.

This method will explore correlations between developments in economic democracy and advances in CST reflection and advocacy. In terms of the goals of a theology of the workplace study, this paper takes up how concepts of just cause and formalized employee participation, such as works councils, stand as emerging, resonate features of the "good of order" present in the teaching corpus of Church encyclicals, on the one hand, and, on the other, concretely instantiated within national industrial relations systems, particularly post-war Japan. As described in Method in Theology, the notion of the good of order, "has a basis in institutions but is a product of much more, of all the skill and know-how, all the industry and resourcefulness, all the ambition and fellow-feeling of a while people, adapting to each change of circumstance, meeting each new emergency, struggling against every tendency to disorder" (Lonergan, 1973, pp. 49-50).

3.1: Grounding of the Works Councils notion of participation in Catholic Social Thought

Our first step into the data concerns two related concepts that will guide or direct our CST inqury. These concepts are just cause in dismissal protection, which restricts managerial prerogative against dismissal for no reason or a bad reason. The second and more important institutional parameter is a formalized employee participation in the life of the firm above and beyond labor unions and the issues of wages and working conditions. This is a principle begun in Germany, through works councils and co-determination, for firms above a certain size. We will fully explore these terms below. Suffice at the outset to note that these principles of just cause and employee participation legislative standards are now common throughout the European Union, including the United Kingdom, and – as we shall see – particularly and uniquely so in Japan. In contrast, works councils remain illegal in the U.S. And, in respect to the German variant of works councils, these are considered too complicated for direct appropriation to the Canadian employment relations system, according to archived Labour Party information (Labour, 2011).

A few words to further explain the nature of employee participation seem important – the Church corpus we will explore later in this section presumes knowledge of a range of such participation schemes. Works councils, long a feature of German and, more recently, EU employment relations, are institutionalized bodies for representation and communication between a single employer (management) and the employees (workforce) of a single plant or enterprise (Rogers & Streeck, 1995). In addition, at the top level of an enterprise governing board, proportional representation by

elected representatives of employees is obligatory by German and EU legislation. Taken together, works council (der Betriebsrat) and corporate board representation of employees in the life of a German enterprise are referred to as "Co-determination" (die Mitbestimmung). Co-determination in Germany as a legislated form of worker participation has a history that has been traced to the 1848 Frankfurt National Assembly (Jackson, Streeck, & Yamamura, 2001). Irrespective of their German origins, this form of employee participation can be found throughout the world. Streeck reminds us of the "largely forgotten" process of "the almost universal establishment of works councils after 1945 in otherwise very different national contexts, as a integral part of a worldwide recasting of the political economy of capitalism" (Streeck, 1995, p. 313).

There is a range in possible roles found in works councils covering their varied manifestations in different national settings. These can be summarized; works councils, briefly:

- represent all the workers at a given workplace, irrespective of their status as union members.
- represent the workforce of a specific plant or enterprise, not an industrial sector or a territorial area.
- are not 'company unions.'
- differ from management policies encouraging individual workers to express their views and ideas, as well as new forms of work organization introduced to increase the "involvement" of workers.
- facilitate representative communication between employers and their workforces, which may be of all possible kinds and may originate from either side.
- may (in the usual case) or may not have legal status.
- structures vary widely across and within countries.
- are not the same as worker representation on company boards of directors (Rogers & Streeck, 1995).

The study of works councils and the web of rules governing employment relations is taken up in the field of industrial and employment relations (Dunlop, 1958, 1993; Kaufman, 2004). The field is interdisciplinary in scope, with labor law and other legal considerations having long been of interest (Commons, 1968). Working rules vary by nation, yielding national industrial relations systems. The three primary actors in any given national system are employers (and their representatives), employees (and their representatives), and government (in its variety of representative functions). Functionally, a web of rules comes into existence once the three primary actors assent to fundamental norms and allow civil and employment chaos to yield to a certain degree of civil order: the "civilizing process" (Kristensen, 2005). These working rules can also be analyzed at any number of other levels: industrial sector, region, firm, organization – even a religious organization – or the shop floor.

Against this background, it is possible to envision study of a theology of the workplace once CST is brought to bear on industrial relations analysis. Such a discipline would *specify the institutional and institutionalized features that variously enable or constrain managerial prerogative and employee participation within worksite, firm, organization,*

sector, region, or national political economy in light of religious doctrine. More generally, a theology of the workplace includes study of constraints or motivational features that may impact other enterprise stakeholders as well as their reciprocal relations. Thus, a theology of the workplace can encompass the entire range of observable business enterprise or organizational performance outcomes as these may be assessed in respect to religious teachings from Christian or other religious sources.

A theology of the workplace can be differentiated from "management spirituality" or the "spirituality of the workplace," although the fields are related and complementary (Giacalone & Jurkiewicz, 2003). The theology of the workplace endeavor is also distinct from "Christian economic ethics" (Martin, 2008). Heroic or servant leadership, while of interest, is not a key focus, as institutional parameters conditioning leadership and participation become the salient empirical variables (Greenleaf, 2002; Lowney, 2003). A theology of the workplace steps back from personal or managerial spirituality, economic ethics, and leadership analysis, looking instead at the patterns of employment relations in history and across cultures as emergent, probabilistic outcomes and examines these as empirical data.

From these historical observations, a theology of the workplace takes up CST in a dialectical analysis, seeking trends that evidence enhanced authenticity in the observed institutional parameters that condition employment relations. In other words, the concern is with specification of institutional or institutionalized features in a given political economy and how these impact the structuring of the workplace to facilitate or inhibit authentic human employment circumstances. In Method in Theology, Lonergan wrote, "Authenticity can be shown to generate progress, unauthenticity to bring about decline, while the problem of overcoming decline provides an introduction to religion" (Lonergan, 1973, p. 288).

Insofar as this form of investigation approaches speculative inquiry, a theology of the workplace may have a role to play in contemporary systematic theology. Systematics deal with, as Doran cites Lonergan, 'what church doctrines could possibly mean' (Doran, 2005, p. 10). Four emphases characterize systematics. First, systematic theology takes up "the hypothetical, imperfect, analogical, obscure, and gradually developing understanding of the mysteries of faith" (ibid., p. 7). A second emphasis concerns "those mysteries of faith that have been defined in the church's dogmatic pronouncements" (ibid., p.9). A third emphasis "is that systematic understanding should proceed as much as possible according to what Lonergan, following Aquinas, calls the *ordo disciplinae* or *ordo doctrinae*, the order of learning or teaching" (ibid.). Finally, there is the "crucial importance of making the move in systematic from description to explanation, and of doing so on the level of one's own time" (ibid., p. 11).

Insofar as "A theology mediates between a cultural matrix and the significance and role of a religion within that matrix" (Lonergan, 1973, p. xi), a theology of the workplace explores the dialectic between history and doctrinal teaching. As Lonergan wrote, we will be thinking of culture empirically; "It is the set of meanings and values that informs a way of life" (ibid.). Religion, as the encounter of human beings with divinity, exists within and reciprocally

informs culture. Opening the empirical grounds for a possible theology of the workplace in his 1968, *Theology in its new Context*, Lonergan wrote: “Religion is concerned with man’s relations to God and his fellow man, so that any deepening of enriching of our apprehension of man possesses religious significance and relevance” (Longeran, 1974, p. 60). He recognized empirical method as a “new conceptual apparatus” that “has come to stay” (ibid.); “Without denying human nature, it adds the quite distinctive category of man as a historical being. Without repudiating the analysis of man into body and soul, it adds the richer and more concrete apprehension of man as incarnate subject” (ibid., pp. 60-1).

Doran advanced this position in Theology and the Dialectics of History by first noting that “*the question of the situation*” presents a critically important source of contemporary theologizing (Doran, 1990). He wrote, “the situation which a theology addresses is as much a source of theology as are the data provided by the Christian tradition” (ibid., p. 8). In the concrete instance of this research, it was a particular historical “situation” that initially suggested the possibility of a theology of the workplace (Tackney, 1995). Japan’s post-World War II industrial relations history manifests a remarkable adaptive appropriation of German labor jurisprudence to essentially U.S. style labor legislation (Kettler & Tackney, 1997). As Japan's labor law scholars were entirely responsible for this development, theological speculation on its implications suggested a pattern of "self-evangelization" of the workplace by Japanese citizen scholars, many of whom were not practicing Christians. They were, however, very aware of what they were engaged in. Reflection on this historical development resulted in the first steps of this theological investigation. And, to that end, we now turn to a review of CST on the social question, seeking correlative support for just cause and works council forms of employee participation as CST "leading indicators" of institutional authenticity in the workplace.

3.2: CST on Just Cause and Works Council Employee Participation

Rerum Novarum (*RN*) marks the beginning of Church teaching on the revolutionary changes evident in society in the latter part of the 1800's due to industrialization (Leo XIII, 1891). Leo XIII wrote, "That the spirit of revolutionary change, which has long been disturbing the nations of the world, should have passed beyond the sphere of politics and made its influence felt in the cognate sphere of practical economics is not surprising" (P, first, not numbered). He first affirmed the right of private property within the context of national laws, writing, "God has granted the earth to mankind in general, but not in the sense that all without distinction can deal with it as they like, but rather that no part of it was assigned to any one in particular, and that the limits of private possession have been left to be fixed by man's own industry and by the laws of individual races." (P:8). While "the earth, even though apportioned among private owners, ceases not thereby to minister to the needs of all," Leo found in this "further proof that private ownership is in accordance with the law of nature" (ibid.).

Leo XIII presented a natural law basis for capital and labor to dwell together within a state; "Mutual agreement results in the beauty of good order" (P:19). And he identified the efficacy of Christian institutions for preventing

industrial strife. Religion is particularly useful in reminding both parties "especially of the obligations of justice" (ibid.). Public authority is expected to intervene in the event any class is unduly afflicted. He sought clear enactments to protect private property. Given the damage caused by long-term strike actions, he wrote, "The laws should forestall and prevent such troubles from arising; they should lend their influence and authority to the removal in good time of the causes which lead to conflicts between employers and employed" (P:39). Among these issues is the matter of wages. It was claimed that wages are determined by free consent, he observed. Following this logic, once paid, the employer's responsibilities have ended. In contrast, Leo XIII stated, "To this kind of argument a fair-minded man will not easily or entirely assent; it is not complete, for there are important considerations which it leaves out of account altogether" (P:44).

To explain these considerations, Leo XII offered a reflection on the nature of human labor. It is first of all personal, with one's labor power "bound up with the personality and is the exclusive property of him who acts, and further, was given to him for his advantage" (ibid.). A living wage, including that sufficient to support a family, is the proper goal of the wage contract. In this way, the notion of justice resounds throughout the document, although nothing explicitly is stated in respect to just cause obligations for dimissal. Instead, we learn that ownership of the product of one's labor power justly resides in the worker; "he makes his own that portion of nature's field which he cultivates - that portion on which he leaves, as it were, the impress of his personality; and it cannot but be just that he should possess that portion as his very own, and have a right to hold it without any one being justified in violating that right" (P: 9).

Connected to the recognition of organized labor is the potential recognition of worker participation in this first CST. It is, to be clear, not explicit at the level of anything resembling works councils or co-determination. At P: 44, Leo XIII affirmed the right of employer and working man to enter into agreement freely, particularly in respect to wages. Yet, in addition to observing "a dictate of natural justice more imperious and ancient than any bargain between man and man" (P: 45), which obliges a wage sufficient to "support a frugal and well-behaved wage-earner," Leo XIII observed that there is a need for the state to enable boards or societies to ensure the labor contract not compel work under extreme conditions.

In *Quadragesimo Anno (QA)* in 1931, Pius XI noted that employers and workers themselves were thought able to accomplish much working together (Pius XI, 1931). He wrote, "First place among these institutions must be assigned to associations that embrace either workers alone or workers and employers together" (P: 29). This statement marks the first clear CST reference to some form of join consultation in respect to proper enterprise governance. Pius XI observed that the wealth of nations derives from the labor of workers. Against this, "Property, that is, 'capital,' has undoubtedly long been able to appropriate too much to itself. Whatever was produced, whatever returns accrued, capital claimed for itself, hardly leaving to the worker enough to restore and renew his strength" (P: 54). The corrective to this should include some modification of the employment contract. This would be to a "partnership-contract, as is already being

done in various ways and with no small advantage to workers and owners. Workers and other employees thus become sharers in ownership or management or participate in some fashion in the profits received" (P: 65). To this end, the state is called to reform institutions: "Let, then, both workers and employers strive with united strength and counsel to overcome the difficulties and obstacles and let a wise provision on the part of public authority aid them in so salutary a work" (P: 73).

By 1961, John XXIII praised *RN* in the encyclical *Mater et Magistra (MM)* because it, "opened out new horizons for the activity of the universal Church" (John XXIII, 1961, p. 8). Among these, "It also suggests new and vital criteria by which men can judge the magnitude of the social question as it presents itself today, and decide on the course of action they must take" (P: 9). Compensation cannot solely be a market function. Instead, "It must be determined by the laws of justice and equity" (P: 18). John XXIII noted the extent to which Catholics and others responded to the appeal contained in *RN* by "reducing these principles into practice" (P: 25). He touched upon the legacy *QA*,concurring with Pius XII, "it is advisable in the present circumstances that the wage-contract be somewhat modified by applying to it elements taken from the contract of partnership, so that "wage-earners and other employees participate in the ownership or the management, or in some way share in the profits." (P: 32). Further in *MM*, John XXIII introduced the theme of "Sharing Ownership," which takes up employee participation in the most explicit manner. This text, given below, was the most detailed set of principles to date in CST history;

> We must notice in this connection the system of self-financing adopted in many countries by large, or comparatively large firms. Because these companies are financing replacement and plant expansion out of their own profits, they grow at a very rapid rate. In such cases We believe that the workers should be allocated shares in the firms for which they work, especially when they are paid no more than a minimum wage. ...Experience suggests many ways in which the demands of justice can be satisfied. Not to mention other ways, it is especially desirable today that workers gradually come to share in the ownership of their company, by ways and in the manner that seem most suitable. For today, even more than in the time of Our Predecessor, "every effort must be made that at least in future a just share only of the fruits of production be permitted to accumulate in the hands of the wealthy, and that an ample sufficiency be supplied to the workers." (P: 75, 77).

The encyclical returned to the theme of employee participation a few pages later,

> We, no less than Our predecessors, are convinced that employees are justified in wishing to participate in the activity of the industrial concern for which they work. It is not, of course, possible to lay down hard and fast rules regarding the manner of such participation, for this must depend upon prevailing conditions, which vary from firm to firm and are frequently subject to rapid and substantial alteration. But We have no doubt as to the need for giving workers an active part in the business of the company for which they work—be it a private or a public one (P: 91).

Through these steps, labor unrest would subside, intra-firm loyalty would increase, and thus, with workers experiencing greater voice, an accord with human nature will result, consistent with recent progress in economics, society, as well as politics. John XXIII invited public authorities to enable these steps for the sake of private enterprise, "entrusting to it, wherever possible, the continuation of economic development (P: 152).

Catholic teaching on employee participation in the enterprise took a more explicit turn in the Vatican II document, "Pastoral Constitution on the Church in the Modern World" (*Gaudium et Spes GES*) issued by Paul VI on

December 7, 1965 (Paul VI, 1965). Under a section titled "Co-Responsibility in Enterprise and in the Economic System as a Whole," this Vatican II text noted that individuals who associate in business are free, autonomous, and created in the image of God. Accordingly,

> with attention to the functions of each—owners or employers, management or labor—and without doing harm to the necessary unity of management, the active sharing of all in the administration and profits of these enterprises in ways to be properly determined is to be promoted. Since more often, however, decisions concerning economic and social conditions, on which the future lot of the workers and of their children depends, are made not within the business itself but by institutions on a higher level, the workers themselves should have a share also in determining these conditions—in person or through freely elected delegates (P: 68).

Pope John Paul II issued the encyclical *Laborem exercens* (*LE*) in 1981, on the 90th anniversary of *RN* (John Paul II, 1981). This is the most detailed Roman Catholic analysis of "the social question" on many levels. It deals with the Church's understanding of the very nature of work, on the preeminent role and significance of labor, of the long-standing opposition between capital and labor, and even for specification of appropriate norms in respect to the social organization of labor. John Paul II wrote that the Church has a duty to address the issue of work because of its human value and factual relation to the moral order. This envisions a spirituality of work through which individuals may come closer to God and friendship with Christ. Work is itself "a participation in God's activity," and through this, citing Vatican Council II, "even "*the most ordinary everyday activities,"* constitute good acts that contribute to society (P: 23).

John Paul II observed that human beings "are called to work" (P: 1) as a distinguishing human characteristic. Work is the key to understanding the social question. He wrote, "And if the solution - or rather the gradual solution - of the social question, which keeps coming up and becomes ever more complex, must be sought in the direction of 'making life more human', then the key, namely human work, acquires fundamental and decisive importance" (P: 3).

Work is a "transitive" activity; it begins with the human subject and extends objectively outward, presupposing "a specific dominion by man over 'the earth'" (P: 4). Work in the objective, externalized, or material sense resulted in agriculture and agricultural organization. Later, machines, technology, and other objective artifacts and outcomes of the work process emerged. Despite mechanization, "the original industrialization that gave rise to what is called the worker question and the subsequent industrial and post-industrial changes show in an eloquent manner that, even in the age of ever more mechanized "work", *the proper subject of work continues to be man*"" (P: 5).

Forms of work have changed in the years since *RN* and various manifestations of worker solidarity have also arisen in response to oppression. Efforts to resolve the worker question resulted in "various forms of neo-capitalism or collectivism" (P: 8). Due to ongoing dangers of "proletarianization," education of the working class has merit. And, "For this reason, *there must be continued study of the subject of work* and of the subject's living conditions" (ibid.).

Three value spheres are associated with work: personal, family, and that of the greater society. These are "*important for human work* in its subjective dimension" (P:10). In fact, it is this subjective dimension of work that takes precedence over its objective dimensions, due to the giveness of the human subject at work. Technological advances can

be a valued aid to work, and even of the human worker immersed in advanced techological processes. But this is so, "on condition that the objective dimension of work does not gain the upper hand over the subjective dimension, depriving man of his dignity and inalienable rights or reducing them" (ibid.).

The third section of *LE* is titled, "Conflict between labour and capital in the present phase of history". This section presents the encyclical "...conviction of *the priority of human labour over* what in the course of time we have grown accustomed to calling *capital"* (P: 12). In effect, "Everything contained in the concept of capital in the strict sense is only a collection of things. Man, as the subject of work, and independently of the work that he does-man alone is a person. This truth has important and decisive consequences" (P:13). Thus, capital and labor are inseparable. In addition, the former is a label for what is essentially the historical legacy of objective products that exist only because of labor. Accordingly, the individuals that exist "behind" these concepts – capital and labor - ought not have any essential opposition to each other: capital's objective distinction has been dissolved to reveal its more appropriate apprehension as the legacy of labor.

The import of these considerations concerns the normative assessment of labor systems. Under the topic of "Econominism and Materialism," John Paul II declared that capital cannot be separated from labor in light of the preceding analysis. Thus,

> A labour system can be right, in the sense of being in conformity with the very essence of the issue, and in the sense of being intrinsically true and also morally legitimate, if in its very basis *it overcomes the opposition between labour and capital* through an effort at being shaped in accordance with the principle put forward above: the principle of the substantial and real priority of labour, of the subjectivity of human labour and its effective participation in the whole production process, independently of the nature of the services provided by the worker (P: 13).

While circumstances throughout the world have vastly changed since *RN*, erroneous attributions to the primacy of capital can still reappear, depending upon the premises from which social analysis begins. John Paul II offered one clear solution to this danger, "The only chance there seems to be for radically overcoming this error is through adequate changes both in theory and in practice, changes *in line with* the definite *conviction of the primacy* of the person over things, and of human *labour over capital* as a whole collection of means of production" (ibid.).

The encyclical then takea up the matter of adequate changes, under a section titled, "14. Work and Ownership." First, the long-standing affirmation of the right to private property was renewed. This was, however, with the strong caveat that such ownership was never to be understood as grounds for social conflict with labor. To be precise, John Paul II clearly stated that ownership of the means of production, for example, "cannot be *possessed against labour*, they cannot even be *possessed for possession's sake*" (P: 14). He continued, "the only legitimate title to their possession-whether in the form of private ownership or in the form of public or collective ownership-is *that they should serve labour,* and thus, by serving labour, that they should make possible the achievement of the first principle of this order, namely, the universal destination of goods and the right to common use of them" (P: 14). Following this logic, John

Paul II noted that it not possible to exclude the "*socialization*" of certain means of production.

The effort in this encyclical was to confirm Church teaching that places human work at the center, as a matter of priority, and "thereby, man's character as a *subject* in social life and, especially, in the dynamic *structure of the whole economic process" (P: 14).* And, from this point of view, Pope John Paul II wrote, "the position of "rigid" capitalism continues to remain unacceptable, namely the position that defends the exclusive right to private ownership of the means of production as an untouchable "dogma" of economic life" (P: 14).

Noting the long history of proposals regarding joint-ownership of the means of work that have been put forth throughout Catholic teaching on the social question, he continued: "Whether these various proposals can or cannot be applied concretely, it is clear that recognition of the proper position of labour and the worker in the production process demands various adaptations in the sphere of the right to ownership of the means of production" (P: 14). John Paul II wrote, "Thus, *the principle of the priority of labour* over capital is a postulate of the order of social morality" (P: 15). In this order, "Labour is in a sense inseparable from capital; in no way does it accept the antinomy, that is to say, the separation and opposition with regard to the means of production that has weighed upon human life in recent centuries as a result of merely economic premises" (ibid.).

At the level of employment relations analysis, *LE* distinguished between the direct and the indirect employer. While the direct employer is the one involved in committing to the explicit employment contract, the indirect employer is no less important, particularly given the call for revision of the 'rigid' notions of capitalism that are found throughout the world. The indirect employer "includes both persons and institutions of various kinds, and also collective labour contracts and the *principles* of conduct which are laid down by these persons and institutions and which determine the whole socioeconomic *system* or are its result. The concept of "indirect employer" thus refers to many different elements" (P: 17). *LE* noted, "When it is a question of establishing an *ethically correct labour policy,* all these influences must be kept in mind. A policy is correct when the objective rights of the worker are fully respected" (ibid.).

The text then takes up the implications of relationships between states, and of states at different levels of development. Lest a vicious downward spiral of ever-broader exploitation of low wage manufacturing sites govern economic trends, the encyclical then observed,

> The attainment of the worker's rights cannot however be doomed to be merely a result of economic systems which on a larger or smaller scale are guided chiefly by the criterion of maximum profit. On the contrary, it is respect for the objective rights of the worker-every kind of worker: manual or intellectual, industrial or agricultural, etc.-that must constitute *the adequate and fundamental criterion* for shaping the whole economy, both on the level of the individual society and State and within the whole of the world economic policy and of the systems of international relationships that derive from it (ibid.).

Consistent with the overall tone of the encyclical, John Paul II considered union "voice," even when critical, as part of the nature of human work. He wrote,

> It is characteristic of work that it first and foremost unites people. In this consists its social power: the power to build a community. In the final analysis, both those who work and those who manage the means of production

> or who own them must in some way be united in this community. *In the light of this fundamental structure* of all work-in the light of the fact that, in the final analysis, labour and capital are indispensable components of the process of production in any social system-it is clear that, even if it is because of their work needs that people unite to secure their rights, their union remains a constructive factor of *social order* and *solidarity,* and it is impossible to ignore it (ibid.).

By the 100th anniversary of *RN*, the Church corpus had developed through the various encyclicals we have examined. Pope John Paul II continued to develop Church teaching on the worker question in his encyclical *Centesimus annus* (*CN*) (John Paul II, 1991). The intent was to look back at the principles of *RN*, look around at contemporary "new things," and then look to the future. The look back involved recognition that *RN* was composed in the midst of a continuing historical process. Revolution was in the air, yet, "the Pope was very much aware that *peace is built on the foundation of justice*" (P: 5). The reflection continued,

> In this way, Pope Leo XIII, in the footsteps of his Predecessors, created a lasting paradigm for the Church. The Church, in fact, has something to say about specific human situations, both individual and communal, national and international. She formulates a genuine doctrine for these situations, a *corpus* which enables her to analyze social realities, to make judgments about them and to indicate directions to be taken for the just resolution of the problems involved (ibid.)

The word "participation" occurs seven times, while "just" appears 31 times. We will take up participation first, because John Paul II's articulation is exceptional in clarity and subsumes many aspects of the use of justice. Participation first appears in a review of steps taken in states to aid the worker, noting the strong role played to this end by the workers themselves. The Encyclical then stated, "Here we should remember the numerous efforts to which Christians made a notable contribution in establishing producers', consumers' and credit cooperatives, in promoting general education and professional training, in experimenting with various forms of participation in the life of the work-place and in the life of society in general" (P: 16). Participation next appears in reference to the various efforts made since *RN* to engage the worker in the Third World, including trade unions, cooperatives, and associations.

The year 1989 was singled out due to its decisive manifestation of collaboration between the Church and worker associations in Eastern and Central Europe. These developments, "have worldwide importance because they have positive and negative consequences which concern the whole human family. These consequences are not mechanistic or fatalistic in character, but rather are opportunities for human freedom to cooperate with the merciful plan of God who acts within history (P:26). The Church has no specific models to present; these being real and effective only when they arise "within the framework of different historical situations, through the efforts of all those who responsibly confront concrete problems in all their social, economic, political and cultural aspects, as these interact with one another" (P: 43). The Church, because and despite this observation, nevertheless, "offers her social teaching as an *indispensable and ideal orientation*, a teaching which, as already mentioned, recognizes the positive value of the market and of enterprise, but which at the same time points out that these need to be oriented towards the common good" (ibid.). This is a teaching that, "recognizes the legitimacy of workers' efforts to obtain full respect for their dignity and to gain broader areas of participation in the life of industrial enterprises so that, while cooperating with others and under the

direction of others, they can in a certain sense "work for themselves" through the exercise of their intelligence and freedom" (ibid.). He continued, "To achieve these goals there is still need for a broad associated workers' movement, directed towards the liberation and promotion of the whole person" (ibid.).

In this respect, it is helpful to note an earlier passage on the changing nature of ownership. John Paul II wrote, "there exists another form of ownership which is becoming no less important than land: *the possession of know-how, technology and skill.* The wealth of the industrialized nations is based much more on this kind of ownership than on natural resources" (P: 32). The encyclical explained that this results in a "community of work" for which "*initiative and entrepreneurial ability* becomes increasingly evident and decisive" (ibid.). This "makes possible the creation of ever more extensive *working communities* which can be relied upon to transform man's natural and human environments" (ibid.). Yet, as dislocations in the Third World preclude such developments, the Pope observed,

> what is being proposed as an alternative is not the socialist system, which in fact turns out to be State capitalism, but rather *a society of free work, of enterprise and of participation (Italics are by John Paul II).* Such a society is not directed against the market, but demands that the market be appropriately controlled by the forces of society and by the State, so as to guarantee that the basic needs of the whole of society are satisfied (P: 35).

Profit is recognized as having a legitimate role, but only when other "human and moral factors must also be considered which, in the long term, are at least equally important for the life of a business" (P: 35). Amongst such factors, the encyclical introduced the concept of "ecology" – specifically "human ecology" and the "social ecology" of work; "too little effort is made to *safeguard the moral conditions for an authentic "human ecology""* (P: 38). The encyclical continued,

> he is also conditioned by the social structure in which he lives, by the education he has received and by his environment. These elements can either help or hinder his living in accordance with the truth. The decisions which create a human environment can give rise to specific structures of sin which impede the full realization of those who are in any way oppressed by them. To destroy such structures and replace them with more authentic forms of living in community is a task which demands courage and patience (P: 38).

While the first human ecological structure is the family, the market comes in for critique in light of the principles associated with social ecology. John Paul II wrote, "Here we find a new limit on the market: there are collective and qualitative needs which cannot be satisfied by market mechanisms. There are important human needs which escape its logic. There are goods which by their very nature cannot and must not be bought or sold" (P:40). Central among these needs is the effort to preserve meaning in life, or prevent its loss – identified as alienation. There is, for example, the alienation of work;

> when it is organized so as to ensure maximum returns and profits with no concern whether the worker, through his own labour, grows or diminishes as a person, either through increased sharing in a genuinely supportive community or through increased isolation in a maze of relationships marked by destructive competitiveness and estrangement, in which he is considered only a means and not an end (P: 41).

Reflecting on the struggles against Communism, John Paul II wrote, "Exploitation, at least in the forms analyzed and described by Karl Marx, has been overcome in Western society. Alienation, however, has not..." (ibid.).

The apparent triumph of capitalism over the historical manifestations of society that claimed to be communistic is not quite what it seems; "But if by "capitalism" is meant a system in which freedom in the economic sector is not circumscribed within a strong juridical framework which places it at the service of human freedom in its totality, and which sees it as a particular aspect of that freedom, the core of which is ethical and religious, then the reply is certainly negative" (P: 42).

Authentic models will themselves arise within given historical situations. These are to be judged in recognition of "the legitimacy of workers' efforts to obtain full respect for their dignity and to gain broader areas of participation in the life of industrial enterprises so that, while cooperating with others and under the direction of others, they can in a certain sense "work for themselves" through the exercise of their intelligence and freedom" (P:43). The integral development of the person through work promotes productivity and work efficiency, "even though it may weaken consolidated power structures" (ibid.). The section concluded with the observation that a business is not only a "society of capital goods," but is also a "society of persons". While ownership of the means of production is legitimate when serving useful work, John Paul II wrote that it becomes illegitimate,

> when it is not utilized or when it serves to impede the work of others, in an effort to gain a profit which is not the result of the overall expansion of work and the wealth of society, but rather is the result of curbing them or of illicit exploitation, speculation or the breaking of solidarity among working people. Ownership of this kind has no justification, and represents an abuse in the sight of God and man (P: 43).

In the 2009 Encylical letter *Caritas in Veritate* (*CiV*), Pope Benedict XVI took up the theme of human development in respect to the virtue of charity (Benedict XVI, 2009). The recurring Church corpus on the need for just actions permeates the text, although no specific reference is to be found to just cause restriction of managerial dismissal prerogative. There are, in contrast, a number of interesting general references to the matter of worker participation, although particular forms of works councils are not discussed.

> First, recalling Paul VI's *Populorum Progressio*, Benedict's summarized the prior pontiff's vision:
>
> Paul VI had an *articulated vision of development*. He understood the term to indicate the goal of rescuing peoples, first and foremost, from hunger, deprivation, endemic diseases and illiteracy. From the economic point of view, this meant their active participation, on equal terms, in the international economic process; from the social point of view, it meant their evolution into educated societies marked by solidarity; from the political point of view, it meant the consolidation of democratic regimes capable of ensuring freedom and peace (P: 21).

Participation elsewhere in the text concerns calls for greater political inclusion and the inclusion of peoples in the civil life given in diverse societies. The counterpoint, when the logic of state and monopolistic power coincide to exclude others, results inappropriately in a diminishment of civil participation. More generally, the text laments the greater obstacles faced by worker associations. Benedict wrote,

> The repeated calls issued within the Church's social doctrine, beginning with *Rerum Novarum,* for the promotion of workers' associations that can defend their rights must therefore be honoured today even more than in the past, as a prompt and far-sighted response to the urgent need for new forms of cooperation at the international level, as well as the local level (P: 25).

Benedict takes up the principle of subsidiarity as an effective approach to the governance of the globalization

processes. He wrote,

> A particular manifestation of charity and a guiding criterion for fraternal cooperation between believers and non-believers is undoubtedly the *principle of subsidiarity*, an expression of inalienable human freedom. Subsidiarity is first and foremost a form of assistance to the human person via the autonomy of intermediate bodies. Such assistance is offered when individuals or groups are unable to accomplish something on their own, and it is always designed to achieve their emancipation, because it fosters freedom and participation through assumption of responsibility. Subsidiarity respects personal dignity by recognizing in the person a subject who is always capable of giving something to others. By considering reciprocity as the heart of what it is to be a human being, subsidiarity is the most effective antidote against any form of all-encompassing welfare state (P: 57).[2]

This principle Benedict linked to the principle of solidarity, "since the former without the latter gives way to social privatism, while the latter without the former gives way to paternalist social assistance that is demeaning to those in need" (P: 58). At a general level of analysis, Benedict took up economic insight in relation to the concept of culture. He wrote,

> Economic science tells us that structural insecurity generates anti-productive attitudes wasteful of human resources, inasmuch as workers tend to adapt passively to automatic mechanisms, rather than to release creativity. On this point too, there is a convergence between economic science and moral evaluation. *Human costs always include economic costs*, and economic dysfunctions always involve human costs.
>
> It should be remembered that the reduction of cultures to the technological dimension, even if it favours short-term profits, in the long term impedes reciprocal enrichment and the dynamics of cooperation. It is important to distinguish between short- and long-term economic or sociological considerations (P: 38).

Next, the encyclical calls for a "*profoundly new way of understanding business enterprise" (P: 40).* This is due to the disappearance of old models and emergence of new, promising approaches. Outsourcing is cited as a factor that weakens corporate responsibility to stakeholders, "namely the workers, the suppliers, the consumers, the natural environment and broader society — in favour of the shareholders, who are not tied to a specific geographical area and who therefore enjoy extraordinary mobility" (P: 40). In addition, "there is nevertheless a growing conviction that *business management cannot concern itself only with the interests of the proprietors, but must also assume responsibility for all the other stakeholders who contribute to the life of the business*: the workers, the clients, the suppliers of various elements of production, the community of reference" (ibid.).

Benedict pursues this stated goal with a critical observation, "In recent years a new cosmopolitan class of *managers* has emerged, who are often answerable only to the shareholders generally consisting of anonymous funds which *de facto* determine their remuneration" (P: 40). Yet, given that globalization is causing business enterprises to encompass an ever-increasing range of values, Benedict noted that business activity inevitably has human significance; "It is present in all work, understood as a personal action, an "*actus personae*", which is why every worker should have the chance to make his contribution knowing that in some way "he is working 'for himself'" (P: 41). In no uncertain

[2]An endnote in the document refers one to *Quadragesimo Anno*, *Centesimus Annus*, and then the Cathecism of the Catholic Church, where, at Item 1883, the principle of subsidarity is defined:"Socialization also presents dangers. Excessive intervention by the state can threaten personal freedom and initiative. the teaching of the Church has elaborated the principle of subsidiarity, according to which "a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good" (1883.)

terms, then, structured employee participation in the life of the business enterprise or organization is sanctioned by CST, for theological, no less than the authentically normative economic, grounds of good business sense.

Having established that CST advocates not only just cause in employment contracts, but also the additional participation of employees in managerial prerogative through structured forums such as works councils, we next take up the particular emergent cultural pattern of post-World War II Japanese employment relations. In doing so, it will be useful to keep in mind the similarities of Japanese and U.S. labor legisation. And that, in the U.S., the industrial and employment relations system follows an "at will" employment contract interpretation, with management prerogative permitting dismissals for good, bad, or no reason – discrimination, collective bargaining, or state law restrictions notwithstading. Furthermore, works council forms of employee participation in the U.S. have never been permitted. While the Canadian case also has no works council participatory mechanism, just cause dismissal protections obtain.

3.3: The Adaptive Appropriation of Works Councils from Germany to Japan

As noted in the introduction, Canada's Labour party considered the German works council structure too complicated for local adaptation. For this reason, among many others, the Japan case is all the more interesting. Beginning with the end of the Pacific War and the passage of U.S. New Deal-style labor legislation as part of the democratization process of Japan, Japan and the United States developed distinct employment relations systems very quickly, with implications that would only come to realization for the U.S. in the strategic choice literature earlier cited about the breakdown of U.S. employment relations patterns in the 1980s.

U.S. national labor legislation includes the Norris-LaGuardia Act (1932), the National Labor Relations Act (1935, “the Wagner Act”), and the Taft-Hartley Act (1947, “the Labor-Management Relations Act”). Major Japanese labor legislation includes the Trade Union Law (1946), the Labor Standards Law (1947), and the Labor Relations Adjustment Law (1947). The Japanese laws are derived from U.S. New Deal labor legislation (Tackney, 1995).[3]

To understand Japan's process of postwar works council adaptive appropriation, we note that in the U.S., the National Labor Relations Board (NLRB) functions an outcome of New Deal labor reforms; it is paralleled in Japan by the Central Labor Relations Commission, established by the Trade Union Law. Japan's Trade Union Law was enacted by the Japanese Diet even before the postwar Constitution was established. The Supreme Command Allied Powers (SCAP) point was simple and clear: successful democracy *needs* organized labor.

In brief, postwar employer dismissals absent just cause were systematically overturned by Japan's courts, right from the very outset of the postwar circumstances (Kettler & Tackney, 1997; Tackney, 1995). The justices took on a European interpretation of the employment contract, one in which the fundamental and comparative weakness of the

[3] A review of literature on Japan’s lifetime employment system is given in Tackney, 1995 and updated in Tackney 2001, 2009.

employee is recognized. To this day, dismissals in Japan absent a just cause are, when contested, found to be invalid (Tackney, 2001). Faced with increasing levels of labor strife and the appropriation of entire enterprise function by organization labor in the first year of Pacific War's end, the Ministry of Labor petitioned the newly formed Central Labor Relations Commission to propose guidelines that would help overcome the postwar stalemate between enterprise owners. The owners, unaccustomed to the newly legitimized labor unions, often simply refused to negotiate with Japan's newly recognized labor unions, and the labor unions engaged in "production control" actions that essentially assumed the means of production until management was willing to talk.

This CLRC document, issued July 17, 1946, remains the controlling administrative guidance on the issue, *Central Labor Relations Commission Guidelines for Management Participation Forums* (Tackney, 1995). Japan's courts, over the ensuing decades, have elaborated extensive norms regarding the role that can be played by these forums – called *management councils* in Japanese - in the life of an enterprise. The key point in the development of such forums, for this theology of the workplace investigation, is that they are grounded in the collective bargaining agreement of Japanese firms. Unlike historically German and EU works councils, there is no legislative specification in respect to minimum conditions or functional task. Significantly, there is also no restriction on the potential involvement of representative employees in respect to managerial prerogative. All such matters are to be determined by good faith negotiations and specified within the collective bargaining agreement (See Appendix 1 for the entire text.).

Japan's Ministry of Labor – the Ministry of Health, Labor, and Welfare since 2001 – has conducted large-scale surveys of labor-management "communications" about every four or five years since 1972 (Tackney, 2002).[4] The latest survey is from 2009, reporting on data collected the prior year. The survey is national in scale, targeting 16 industrial sectors, and sampled 5,500 enterprise sites from amongst the national population of firms (Ministry of Labor Policy Secretariat Survey, 2010). The survey also includes an appropriately random survey of about 6,500 workers. Response rates were, 65.3% for enterprises and 61.7% for workers. The stated purpose of the survey is "to clarify the conditions of consciousness, etc., for workers and enterprise side in respect to the method and utility conditions, etc., of measurement of mutual understanding of the sense of labor-management relations." In reporting this data, it should be kept in mind that Japan's employment relations system localizes management councils in collective bargaining agreements, but places no particular obligation on specified council topical items – these are unique to each agreement.

Data from the 2009 survey described in the Methods section indicate some 75% of firms with 5,000 or more employees in 2009 reported management councils (80% in 2004) (Ministry of Labor Policy Secretariat Survey, 2010). For shop-floor consultation meetings, the figures for the same firm scale were 69% (72% in 2004). For both forms of consultation, these figures steadily drop off as firm size decreases, as may be expected – smaller firms would require fewer formal consultative structure.

[4] The survey series is only available in Japanese.

In 2009, unionized enterprises have management councils 83% of the time in contrast to 20% of non-unionized firms. Overall, 93.5% of firms with 5,000 or more employees reported "labor-management communications" to be "important". The variance between unionized and non-unionized firms indicated that 95% of unionized firms held labor-management communications to be important; this figure for non-unionized firms was 84%.

The following list summarizes the items taken up in management council among all firms reporting their presence in 2009. This is particularly salient because of the collective-bargaining specific nature of topical issues, which makes generalizations difficult without such enterprise-specific surveys.

	Mutual assent	Cooperation	Hearing Explanation		Not an item
Management plans	4.6%	11.4	6.3	51.7	26
Prod., sales, etc.	4.2	15.7	7.8	40.2	32.4
Firm organization, etc.	5.6	12.3	8.6	40.5	33
Rationalization (equip)	5.2	14.1	9.0	25.8	45.9[5]

Approximately 15% of firms reporting management councils report operations over a range of topics in which explicit co-determination (approx. 5%) or pro-active engagement of employees is normative. The range of topics include: temporary lay-offs, personnel reductions, dismissals, retirement, job scope enlargement, re-hire, working hours, vacation, parental leave, wages, bonuses, overtime rates, and pensions. The percentage for each item exceeds 50% of all management council firms if a less engaged "cooperation" dynamic is included.[6] Historically, the current survey data reflects little change over the past five survey periods, which occur at five year intervals.

To facilitate comparison between national systems, we can chart the presence or absence of just cause, labor organization, and different forms employee participation in management or works councils according to the figures given in Appendix 2. The U.S. case is visually and functionally the least complicated. Historically, Japan's lifetime employment practice, regulated as it is through case law, represents a unique development in the field of industrial relations. In order to characterize this practice in a matter appropriate to the social sciences, the two defining features of this system - just case and employee participation – can be 'extracted' and cast in diagram form in a manner that specifies the employment ecology of a Japanese organization. This construct - the employment ecology of the modern enterprise – diagrams the dynamics of an enterprise internal ecology in respect to employment rules that recognize labor unions, preserve just cause dismissal restrictions to managerial prerogative, and permit some form of representative

[5] It would be important to note for this item that Japanese case law functionally precludes rationalization dismissals simply due to manufacturing process rationalizations. Thus, "rationalization" in the Japanese sense has a completely different meaning than that found in 'at will' employment legal cultures.

[6] Again, for matters touching on dismissals due to persistently poor firm performance, Japanese case law severely restricts targeted dismissals of the workforce, having firmly decided over many decades that poor enterprise performance is firstly due to poor management. Reduction in executive compensation in Japanese firms is the first expected step prior to redundancy dismissals. Consultation with the management councils and good faith effort to solicit consent from those to be dismissed are additional case law expectations. See Kettler and Tackney, 1995.

works council that can deal with employment issues above and beyond U.S. labor law notions of wages and working conditions.

The comparative employment ecology parameters that can be derived from these parameters permit international comparative analysis of Japan's working rules of industrial relations (Dunlop, 1993). Their schematic derivation is simple; first, Japanese labor legislation follows of the U.S.

Thus, Figure 1(a) depicts the U.S. employment ecology of the enterprise with solid lines depicting the fundamentally adversarial relations between management and labor unions. "Empowerment" is, if present at all outside of negotiations over wages and working conditions, granted strictly and solely at managerial prerogative.

Insert Figures 1(a-c) about here.

Japanese interpretation by the courts of their post-World War II labor legislation diverged markedly from the U.S. The U.S. employment ecology enterprise model is characterized by "employment at will," along with a complete absence of organized employee participation in managerial prerogative. As noted in Figure 1(c), Japanese enterprise unions include first-line supervisors, "just cause" is a strict obligation in managerial prerogative. And, distinctively, employee participation in a wide range of managerial prerogative occurs according to norms established within the context of each collective bargaining agreement of each and every enterprise union.

The origins of Japan's "management councils" (keiei kyogikai) are clarified by Figure 1(b), the German model. This is because judicial interpretation of postwar Japanese labor legislation looked to German and European jurisprudence for alternative conceptions to define the postwar Japanese employment relationship. In the German case, just cause dismissal protections are combined with both Works Councils (das Betreibsrat) at the factory unit level, and Co-determination (die Mitbestimmung) at the Board level (Streeck & Yamamura, 2001).

Thus, where solid lines suggest "traditional" American adversarial relations, the dotted lines evident in the Japanese and German Figures indicate degrees of power, information, and even – possibly – personnel transferability and role transparency. The greater prevalence of dotted lines in the Japan model signifies a marked potentiality for employee participation in managerial prerogative and vice versa (arrows indicating the direction of influence).

4: The Functional and Theological Question: Who is Actually Living the Gospel in History? Options Ahead

A theology of the workplace study may be characterized as an effort to actualize what John XXIII observed of believers and peoples of good will in respect to the groundbreaking *RN* encyclical, it simply reflects the effort of "reducing these principles into practice." (John XXIII, 1961). We can see from the study that the Japan case, historically the most recent employment ecology arrangement, emerges as also the most reflective of economic democracy norms. It is also more correlative to CST in respect to employee dismissal protection and participatory inclusion in the life of the enterprise. This manifestation of the good of order stands as an interesting empirical issue for theological reflection

in regard to nations nominally considered Christian states, or – perhaps more accurately phrased – nations with substantial proportions of population at least nominally professing to be Christian.

Cultural cognition studies offer a useful means to better understand the apparent cultural oversight that has bedeviled U.S. industrial relations. Management practices throughout the strategic choice era failed to grasp the more inclusive nature of Japanese management practice. Instead, the particular cultural mindset of one thread in the U.S. experience took the upper hand, with strategic choices pursued that hold authentic competitive advantage resides only in ever more exclusive managerial prerogative. This research suggests another path is not only available, but arguably necessary on grounds of CST as well as the competitive advantage of the modern enterprise.

John Paul II, in both *LE* and *CN*, may offer grounds for hope in respect to the loss of class solidarity and strategic choice efforts of management in the U.S. context. And the cultural cognition studies perhaps point the way to future steps. If the strife of prior eras arose from a misapprehension of the real nature of labor-capital oppposition, as John Paul II suggested, then perhaps the loss of class solidarity in advanced democratic states, such as the U.S., may indicate deepening as to the fundamental nature of political democracy and its necessary economic democratic underpinnings.

As such, CST emphasis on the centrality of labor and proprietary, participatory rights of employees – to their labor product – suggests *due process grounds* in the apportionment of surplus value may offer legal means of interest. On the one hand, participation in ownership risk, which certainly resides in management councils, would suggest a need to revisit Dunlop Commission proposals for experimentation in employee representation (Commission, 1994). The very successful Japanese approach to management council grounding of participation in collective bargaining agreements offers a flexible, adaptive model suitable for the North American experience of both Canada and the U.S. Indeed, the intrinsic competitive advantages of this model suggest such an initiative need not only come from organized labor. Firms with management staff and shareholders, who may see point of such experimentation from a different wellspring of U.S. cultural cognition, may well serve as an inspiration for change.

A second *due process* appeal through labor organizing legal strategy may be found in efforts to recognize excessive executive compensation as an abuse of managerial prerogative. In some respects, this would resemble the clawback legal actions taking place at present. However, the goal would be proactive, with intent to establish guiding precedent within the repertoire of cultural understanding available. In the U.S. case, there is already a deep appreciation for the need of employee participation in managerial prerogative. John R. Commons, known as the father of U.S. labor relations and founder of the "Wisconsin School," wrote, "In some concerns…even the wage earners, organized or unorganized, have a compelling voice in determining the direction and extent of management" (Commons, 1968, p. 368). Certainly this notion needs further work as a proactive legal recovery of alternative cultural cognitions, but *due process* concerns about the manner in which an enterprise functions and how the populace benefits from commerce

should remain an open and vibrant topic in advanced post-industrial societies.

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Appendix 2. Central Labor Relations Commission Guidelines for Management Participation Forums

(Issued, July 17, 1946)

(Tojo, 1949. Original in Japanese, this author's translation.)

The establishment of management participation forums is recommended by determining suitable terms in collectively bargained agreements according to the specific characteristics of each enterprise. This is because conformity to a forcibly determined set of one-sided regulations can easily give rise to structures uselessly created which do not adequately demonstrate the original function of such forums. Moreover, if we consider the various bargaining disputes, given the actual circumstances of management participation forums now being established and the different aspects of management participation forum establishment, there are points thatspecifically need to be considered in establishing management participation forums now. Providing reference material to facilitate reflection on these problems for those generally involved to enable logical commentary will help avoid one-sided, useless argumentation. At the same time, no small contribution will be made by adequately demonstrating the essential function of management participation forums. This guide is based upon the present condition of management participation forums along with that of current collective labor contracts. It is also aimed at qualitative improvement in the practical utility of future collective agreements and the gradual development of the range of items that should be dealt with through the function of management participation forums.

The following commentary is based upon the standard of the ordinary publicly held (stock) firm. However, adequate attention is also given the respective features of non-private, managed enterprises, such as the national railways, as there is a rough resemblance in principles.

1. The essence of management participation forums

Management participation forums are based on the spirit of industrial democracy. As workers actively participate in the management of labor, it is a permanent participation forum established through collective bargaining between the labor union and the employer. Different from a simple round-table conference or an inquiry session, representatives of the employer and labor union meet as equal forum members. Both sides assume the duty of planning for implementation of items that are decision outcomes. However, in establishing management participation forums, there is no change in official duty and competence of enterprise executive for general direction of overall management. Simply that what was hitherto despotically decided and implemented by the executive will instead become the assumption of a duty to implement decisions specifically made by the management participation forums.

Moreover, for publicly held corporations stock may be given to workers so they may attend the general shareholders meeting. An individual recommended by the labor union may become a member of the board of directors. These and other methods of worker participation are conceivable, but they are completely different from management participation forums. Management participation forums premise to the utmost that the management executive and labor union stand together; these forums are institutions that recognize continuing management participation by the worker.

2. The establishment of management participation forums

Management participation forums are established through collective agreements between employers and labor unions. Accordingly, if an employer one-sidedly established a mechanism to permit worker participation in management without relying on a collective agreement, this mechanism would not be a management participation forum.

3. The constitution of management participation forums

Management participation forums are constituted by representatives of management and workers as defined by a collective agreement:

- The number of members may be determined by option through the collective agreement. It is not necessary that the employer and labor sides always have the same number. When faced with a difficult problem, a one to one opposition will in the end develop. For multiple problems decisions will not be able to be made as stated in the postscript.
- The executive officials are free in terms of how many will be put forth to represent the employer. However, to further progress in harmony in the forum, it is desirable that the president, managing director and plant chief attend of their own responsibility. Otherwise, after something has been decided in the management forum, the board may reject it. This would, in turn, easily give rise to friction with the labor union.
- Forum representatives of labor are to be decided according to independent, formal procedures. Interference in their selection by the employer will not be permitted. The representative(s) of the labor side should have the confidence of the entire labor union. These individuals should necessarily have complete representative competence. If possible, those things that the representatives obtained unanimity about should be, in the same way, followed by the labor union so that all labor union members are so constrained.
- Adding a third party representative is to be determined as an option of the collective agreement. For example, for public transportation enterprise functions which directly relate to daily life of the public, there are many good

occasions where it would be good to include a third party public representative.

4. The authority of management participation forums

The authority of the management participation forum, that is, the degree to which workers are permitted to participate in management, is something suitably specified in collective bargaining according to the characteristics of each enterprise. The nature of the firm and the actual power of the labor union involved logically provide one self-certain range of limit. Current law provides no legal enforcement to that specified limit. If we consider actual examples:

- Issues for participation are, most ordinarily, working hours, wages and the manner of wage payment according to legal standards. In addition, other issues may involve those elated to appropriate working conditions, labor welfare, improvement of labor productivity, regulation of the intensity of work, and other issues related to the preservation of labor power. Principally, items for discussion also concern those related to the profit of the actual workers, such as practices of worker health and welfare, issues dealing with materials distribution, productivity measurement documents and necessary work documents for such activities. There is no legal understanding extant regarding the limitations of management participation forums in respect of their authority arising from their nature.
- Personnel standards related to worker hiring, dismissal and other matters, such as work organization, are not infrequently considered to be management participation issues concretely involving participation in actual personnel matters. However, actual participation in personnel matters may, conversely, easily give rise to a variety of negative effects. Thus, to instead obtain labor union understanding, a degree of room for objection would seem good to allow and define in advance within the collective agreement.
- It is not a legal violation of forum structure to include issues like profit distributions, directors and other company executive personnel matters in management participation forums. However, to prevent problems from arising in regard to the firm's articles of incorporation, these rules should be included therein. Otherwise there is a danger that a problem may arise afterward in regard to invalid restraint of the general shareholders' meeting under the law.
- In the event of a dispute, this should necessarily be discussed within the management participation forum and a solution found. Otherwise, it is desirable to have preventive means in place through clause articles that insure disputes between both sides do not occur.

In addition to the preceding points, other items for participation forums include detailed manifestation of accounting details of the firm, this in order to obtain worker understanding. This will have no small role in preventing disputes and sustaining labor relations harmony.

5. The character of management participation forums

A management participation forum is not a simply round-table meeting [kondankai]. Opinions about participation forum issues should be stated without alienation by both labor and employer sides to facilitate understanding. This is the mission of these forums. Accordingly:

- Forum resolutions should, by custom, be reached in unanimity. Even if resolution methods are set by agreement that involve rules applied to complex decisions, these are not usually of practical effect. If the opinion of participants on both sides divides over a major issue, it will not matter how many the number of participants are, the result will be a one-to-one opposition and participation forum solutions will naturally not obtain.
- Accordingly, for such instances of opposition, it will be good to have established clauses in advance for third party mediation, arbitration or final arbitration.
- The effective force of forum resolutions should be understood as being identical to the effect of collective agreements. Participants share a common obligation to work for the actualization of such resolutions. In the event, a certain resolution requires shareholder action or approval, there should be no procrastination. In the absence of shareholder action, the firm will only be all the more legally constrained. In practice, the effort of those representing the firm in the management participation forum can generate acceptable proposals based on reflection over actual company circumstances. Accordingly, harmonious solutions to these issues are expected. It is unreasonable to wait for legally binding resolutions: appropriate provisions ought to be previously included in the firm's articles of incorporation. Without exception, legal issues inherently contain paths to a resolution.

Figures 1(a-c): Comparative Employment Ecology Models of the Enterprise (U.S., Germany, and Japan)