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"Welfare for Human Harmony" -- Japanese Labor  
Welfare in Law and Practice, 1947-1985.

Scott NORTH

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## "Welfare for Human Harmony" -- Japanese Labor Welfare in Law and Practice, 1947-1985.

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### Why is Labor Welfare Law Important?

Explanations for Japan's post World War II success have included economic variables such as fixed and favorable exchange rates between the yen and the dollar (Nakamura 1981, 39 and 237), social variables such as high levels of education and technical expertise (Prestowitz 1988), political variables such as government coordination and control of economic development (Johnson 1982), and most famously, harmonious employment relations. Seniority wages, enterprise unions, and so-called lifetime employment are commonly cited special characteristics of the Japanese employment system. Although less heralded, corporate labor welfare also played a substantial role in mediating relations between workers and capital. It contributed to Japan's postwar competitiveness by legitimating a variegated distribution of concessions and benefits. It was a component part of the mechanism by which the short-term gains of some workers obscured the long-term losses of the working class as a whole.

My purpose in this paper is to explore labor welfare in law and practice and to analyze its role in Japan's remarkable post-war success. What various consequences were produced by the changing constellation of labor welfare benefits during the period from 1947-1985? Today there is much talk of how changes in the economy are making it necessary for Japanese firms to restructure the Japanese employment system. In the story of Japanese labor welfare, we can see that this process of restructuring (also known as rationalization) actually began long ago.

This paper will argue that the manipulation of labor welfare, corporate labor welfare in particular, was representative of practices responsible for the unmaking of the Japanese working class. Furthermore, this process was well advanced before the oil shocks that are widely assumed to have been the reason for the end of Japan's rapid, post World War II economic growth. Seen in this light, the restructuring of labor welfare was the prototype for current restructuring practices. The way corporate labor welfare was used to secure workers' loyalty was a clue to employers' collective intentions and collectivist

actions. The idea that there was a halcyon era of long-term employment with full benefits for all, is a "way we never were" notion.

Understanding the role of corporate labor welfare in creating the structure of competition and system of human relations in the workplace opens a window on the material basis of harmony between capital and labor in postwar Japanese culture and society. We must then also question whether or not this harmony was the product of coercion. That is, should the training classes, company trips, sports teams, language lessons, food and education allowances, housing and other elements of corporate labor welfare programs be seen as manifestations of corporate familial care or as thinly veiled mechanisms of corporate control over workers' private lives?

I shall begin by outlining the three categories of labor welfare in Japan and comparing them to the US and other Western nations to show that, in Japan, proportionately more labor welfare was corporate. Corporate labor welfare did not come "free." It was in exchange for loyalty. Thus, corporate welfare benefits were visible manifestations of a well-recognized bargain between companies and workers. This bargain was unequal. It was not available to all workers and was manipulated consciously by employers. Thus it was a dual structure of social control, a system for rewarding or punishing workers for their commitment or lack thereof. Companies could use labor welfare to manufacture worker consent. Manipulation of this sort strikes Western observers as borderline unlawful. But how it felt to Japanese workers is also very important. The concluding section takes up the question of coercion, discussing it in the context of the Japanese legal consciousness of that time.

### Three Categories of Postwar Japanese Labor Welfare: Public, Private, and Corporate

The distinction between labor welfare, which is concerned with employees' working conditions, and social welfare, which is concerned with the standard of living of the general population, has long been blurred in Japan and continues to grow progressively more so (Hanami 1985, 32). In addition, in the realm of labor welfare there is also confusion caused by the blurring of voluntary and mandatory categories of welfare provision. Below, I bring into sharp focus three categories of labor welfare: 1) that which is mandated by law, administered by bureaucrats, and which sets ground rules for relations between individual workers and management (public labor welfare); 2) that which is run by unions for the private benefit of their members (private labor welfare); and 3) that which is administered by companies, within which there are both legally mandated

and discretionary categories of benefits (corporate labor welfare).<sup>0</sup>

### **Public Labor Welfare**

Comprehensive public labor welfare law was created by fiat during the US occupation of Japan following World War II. In the prewar period, legal schemes for the provision of labor welfare were limited to government employees and workers in industries deemed strategically important to Japan's drive to modernize (Vogel 1979, 190).

In the wake of defeat, Japan lay in ruins. The country could not feed itself and was without prospects. Demobilized soldiers swelled the ranks of the unemployed and homeless. The government's plan for rebuilding the nation was called "priority production." It involved subsidizing key industries, such as coal mining and transportation. There was fierce competition for jobs in these industries because, in addition to wages paid in nearly worthless currency, the subsidies made it possible for their employers to provide them with valuable food and shelter. These subsidized industries were consequently able to attract the best and brightest employees and keep them, a circumstance that meant that money invested in training and maintaining workers in those industries was an investment in higher productivity (Shimokawa 1990, Ch 1).

In 1947, American prodding induced the Japanese government to establish the Labor Standards Act (LSA). Prewar managers were able to exercise their authority without restraint. The LSA was envisioned as a way to limit the "unimpeded exercise of authority" and put an end to abusive labor practices, which particularly injured women and children but disenfranchised and treated men as raw materials as well (Gordon 1988, 428; Shimokawa 1990, 36-37). America's aim was the establishment of workplace democracy strong enough to prevent a return to management coercion that, in American eyes, had been a factor in Japanese militarism.

The LSA regulated all aspects of working life. It set minimum standards for working hours, wages, and leave, established insurance and injury compensation schemes, and provided a framework for resolving disputes between labor and capital. The provisions of the law applied to all workers irrespective of labor union membership (Sugeno 1992). Because it was based on guarantees enshrined in the Constitution, the LSA should have been a strong law for the protection of workers' interests.<sup>1</sup> However, the uncertain mechanism for implementing the law, its limited scope in actual application, and weak enforcement provisions allowed a multiplicity of interpretations and limited its power to stop illegal labor practices.

As with many Japanese statutes, the LSA controlled behavior more through voluntary agreements and moral suasion than through formal legal sanctions.<sup>2</sup> Legal informality

worked against workers.<sup>iii</sup> For example, although workers could report violations of the LSA to the Labor Standards Office (LSO) having jurisdiction in a particular area, there was no provision in the law for cease and desist injunctions by the government. Enforcement required a lengthy investigation in which the firm had a nominal duty to cooperate. Firms could and did fail to produce documents requested by the LSO without fear of punishment. The small number of highly overworked inspectors rarely used their police powers to seize evidence unless the matter was a criminal case (Renrakukai 1989, 59-60).<sup>iv</sup>

Furthermore, application of the LSA varied by company size. For example, LSA articles 89 and 90 stipulated that in companies continuously employing ten or more employees, the employer must solicit the opinion of the employees or their union representative when making work rules. The rules, which regulate the hours of work, recess, holidays, vacations, payment of wages, retirement disciplinary action, sanitation, accident compensation, and so on must be posted in the workplace (Fukui 1973, 13-14). But a sizable minority of private sector Japanese workers were employed in enterprises with less than 10 employees (Chalmers 1989, 102). These workers were thus excluded from the provisions of public labor welfare law and simultaneously deprived of the Constitutional right to working conditions fixed by law.

The LSA also failed workers in larger enterprises. One special work rule, Article 36 of the LSA, required labor's representative to agree with management on the amount of overtime to be worked. The agreement must be filed at the LSO. The contents of these agreements stipulated the maximum number of overtime hours that could be worked weekly and monthly during the year for which the agreement was valid. However, these Article 36 agreements contained an escape clause that allowed management to legally direct workers to put in overtime beyond the agreed limits when management deemed it necessary for the "efficient functioning" of the enterprise (Sugeno 1992, 231-235).<sup>v</sup> Japan's enterprise-based unions signed these Article 36 agreements because the union leadership was often a rubber stamp for company policy.<sup>vi</sup>

The other major component of public labor welfare was the Industrial Health and Safety Law (ISHL). Like the LSA, which originally contained the ISHL's core provisions, implementation of the ISHL depended on voluntary agreements between workers and employers. It became separate from the LSA in 1972, in the wake of many horrific accidents that occurred during Japan's sudden rush toward advanced industrial status. Although the ISHL mandated a "comfortable" work environment and the protection of workers from the health hazards of modern industry, it too was dependent on the good will of firms for compliance. Penal sanctions mirrored those of the LSA and were limited to flagrant

violations of the law that resulted in death or serious injury. Sanctions could only be assessed against natural persons and the same overworked LSO/LSB inspectors who enforced the LSA were also charged with enforcing the ISHL.

Workplace safety and worker health were the objects of the law. To this end, the employer was required to appoint a general safety and health director for each workplace employing more than 50 people. This director must be a ranking official who controlled the execution of the undertaking. A safety supervisor, an expert in the scientific fields germane to the enterprise, and a health supervisor, who must be a doctor, were also required if the enterprise employed more than 50 workers. If the number was between 10 and 50, only a doctor was required (Sugeno 1992, 284-293).

The law, however, required nothing of firms employing less than 10 full-time workers, meaning that a sizable minority of Japan's private sector workers were again left out.<sup>vii</sup> Working in a larger firm, however, did not guarantee that working conditions and worker welfare would be better. According to Tsujimura Ichiro, professor of Social Welfare at Doshisha University, health and safety directors often existed on paper but seldom made actual checks of the workplace. Should a death or injury occur, doctors employed to monitor workplace safety were reluctant to implicate working conditions as causes, for it might implicate the doctor or open him to charges of negligence (Miyano 1990, 79-80). No special training existed for either the doctors or the safety and health directors.

ISHL effectiveness depended on the safety committee, which was made up of workers themselves. In firms with strong unions, especially those in dangerous industries such as chemicals, metals, or dock working, these committees actually performed mandated periodic checks of the workplace and reported hazards to the safety supervisor and the general safety and health director. However, this ideal state of affairs was only infrequently realized. Workers were generally too busy for weekly patrols. At the infrequent safety committee meetings, worker reports were welcome, but management controlled the funds required to implement safety improvements. The high corporate rank of the general health and safety director inhibited full worker participation and initiative, resulting in a marked tendency to leave health and safety affairs to the management. Furthermore, workers found it difficult to make the commitment of time and energy necessary to study the thousands of regulations that comprised the ISHL, nor did they have the detailed knowledge of labor medicine, labor psychology, human engineering, chemistry, economics, and other subjects that might have enabled them to show management how safety improvements would benefit the firm.

In sum, Japan's public labor welfare policy was established through legislation on the

basis of constitutional principles in the wake of World War II. The Labor Standards Act and Industrial Safety and Health Law mandated the establishment of standards and procedures, which, on the surface, were well-suited for the promotion of reasonable and safe working conditions. Appearances notwithstanding, this legislative structure could not support the delivery of constitutional guarantees. Peculiarities of implementation, particularly the selective application of the law according to company size, resulted in the denial of those guarantees to many individual workers in small enterprises. This gap between large and small firms was fundamental to the establishment of a two-tiered labor market and thus the division of the working class. Nevertheless, even in the larger enterprises subject to the law, lax enforcement mechanisms and empty sanctions deprived workers of legal protection against employer whims. The LSA was more a facade than a foundation, the sort of law the Japanese refer to as a *zaruhou*, so full of loopholes that it resembles a sieve.

### **Private Labor Welfare**

Public labor welfare is only one of the three types of Japanese labor welfare. The second type is private labor welfare. Recognition of the need for worker-financed and operated organs of labor welfare grew out of the experience of strikes in the prewar and immediate postwar period (Tsujimura 10/19/93). Although it is much diminished from its peak in the 1960s, it maintains a tenuous existence to the present. Private labor welfare was based on the British model of labor organization in which union workers pooled their resources to protect each other through mutual aid. In Japan, worker funded banks, food co-ops, clinics, and schools were seen as a way to escape the cycle of employer domination and invest workers' resources for the benefit of the workers.

Many of the remaining organs of private labor welfare have had to become public to survive. For example, there are food co-ops that live on as supermarkets. The decline of the labor movement and the establishment of competing public institutions rendered alternative health, education, and financial organs unable to compete, although workers' credit unions are still common and in some metropolitan areas there are still "labor schools" devoted to raising working class consciousness. Likewise, health and legal professionals cooperate in "safety centers," which provide education about the LSA and ISHL and give legal help in filing claims to redress workers' complaints. Health and legal professionals on the Japanese left still see health and safety issues as fertile ground upon which to organize workers of all classes, however their strategy of using litigation to gain recognition of their claims tends to alienate people who otherwise might be drawn to support such causes.<sup>viii</sup>



The aims of private labor welfare were stability for workers and their families, enhancement of workers' cultural life, and health maintenance (Tsujimura 1983, 138). For a time, in the decade following the war, unions were able to more than hold their own. Union membership soared and union influence increased as a seller's market for labor developed due to the procurement demands of the US military during the Korean conflict and the public works projects necessary for rebuilding Japan's infrastructure and industrial capacity.

The decline of private labor welfare began with America's "reverse course" in 1948. With China on the verge of falling to Mao's communists, America withdrew support for the Japanese union movement, which it had backed as a vehicle for democratization. Without this support, latent divisions in the labor movement became open. Consequently, the labor movement split into communist and socialist factions. Both factions were dealt a blow in 1951 when legislation prohibiting strikes by public employees was passed (Gordon 1988). However, even prior to that, management had made strides toward regaining prewar-style, absolute control over the workplace. Corporate control of labor welfare was a vital part of that effort.

### **Corporate Labor Welfare**

Both conservative business leaders and leftist academics agree that corporate labor welfare was an indispensable tool for promoting worker dependence on the firm and thus enhancing corporate control of labor. I shall address the questions of coercion later. Here my goal is to explain the historical development and composition of corporate labor welfare.

Corporate labor welfare was divided into two parts. One part was comprised of benefits that corporations were legally mandated to provide. These included national health insurance, pension plans, (un)employment insurance, workers' compensation insurance, and child care allowances. These basic social insurance programs were administered by firms and the costs were borne jointly by employers and employees.

The other part consisted of benefits that firms provided at their discretion. These consisted of six categories: 1) housing and housing allowances (subsidized residences for single workers and families, financial assistance to workers who wished to buy homes, including low interest loans and special savings plans); medical treatment and supplementary health insurance plans (hospitals, clinics, pharmacies, diagnostic and convalescent facilities, including illness prevention programs, periodic physical examinations, and facilities for hot baths); mutual aid funds, congratulations and condolence funds, group life insurance; 4) living assistance (meals, dining facilities, food subsidies, company

stores, cooperative purchase associations, work clothing, transportation to and from work, parking, child care, pediatric nurses, child care loans, nursery schools, family assistance, and marriage counseling); 5) cultural, educational, and recreational facilities (libraries, gyms, sports grounds, pools, meeting halls, vacation property at the beach or mountains, company trips, sports events, lectures, company culture festivals); and 6) others, such as legally mandated welfare payments to employees and asset building through corporate pension, stock, and savings plans (Tsujimura 1983).

This extensive list shows that the range of discretionary programs was very wide, reflecting the extent to which corporate labor welfare dominated the Japanese conception of labor welfare. There was hardly an area of human life that was not covered. Things that Westerners might consider part of private life or social welfare fell into the corporate labor welfare category in Japan.

However, not every employee at every firm could take advantage of all these benefits. Allocation of benefits was based on individual attributes such as age, sex, need, seniority, and other factors, including periodic personnel evaluations. Moreover, not only did the range of benefits vary by employee, it also varied between firms. Large companies were historically twice as generous in providing corporate labor welfare benefits as the law required (Vogel 1979, 191). Ministry of Labour statistics from 1980 showed large firms providing many more unmandated benefits. In terms of expenditure per employee's average monthly salary, where the unmandated welfare spending of firms with 5000 or more employees equaled 100, expenditures at firms with 1000-4999 employees were 66.3, in firms with 300-999 employees 48.5, in firms employing 100-299 workers 37.2, and in the smallest firms covered by the survey, 30-99 employees, the comparative percentage of discretionary benefit provision was 31.7 (Tsujimura 1983, 139). This gap persisted into the 1990s, with the largest firms spending 50 percent more on voluntarily provided benefits than firms of less than 500 employees (Tokyo Shokokaigisho 1993, 9).

These figures probably understated the qualitative gap in corporate labor welfare provision between large and small firms. Ministry of Labour statistics on workplace issues were often gathered by self-administered questionnaires, which companies returned voluntarily. This produced distortions. For example, if a question asked about recreational facilities or libraries, a firm with its own baseball field and a 10,000 volume collection would certainly be correct in answering "yes," but a smaller company owning only a ping pong table and a shelf of trade journals was equally likely to answer in the affirmative. Thus aggregate figures hid significant differences between individual firms behind a misleading image of uniformity. In addition, the Ministry did not generally

gather data from firms employing less than 10 (and in many cases, less than 30) full-time workers.

The gap between larger and smaller firms was an outgrowth of the evolution of Japanese corporate society.<sup>ix</sup> In the prewar period, public and private labor welfare were very small in scale and workers were at the mercy of employer's paternalistic benevolence. Under the postwar constitution and labor laws, labor gained the right to organize. This brought about a realignment of power between labor and management. Labor began to make demands. Under the American-led movement for democratization and famine-like conditions, the union movement rose up to demand that companies provide job security and guarantee minimum living standards. As the economy grew, they demanded that pensions, bonuses, allowances for families, and wages be paid in cash rather than scrip or in kind, and that housing, food, relaxation time, and hygienic working conditions be provided. In addition, workers demanded a voice in the management of workplace operations.

Stunned by labor's newly found confidence, employers temporarily yielded on many of these issues. However, under no circumstances would they allow corporate labor welfare benefits to become part of the negotiations. Companies, especially larger ones, realized collectively that their survival depended on improving productivity. That meant controlling both the cost of labor and production. These twin goals could be accomplished by retaining the allocation of labor welfare benefits as a non-negotiable right of management.

Leaving labor welfare largely in the hands of corporations had the following outcomes. First, the do-it-yourself approach to labor welfare saved corporations from having to pay the taxes that would have accompanied the creation of government programs. Moreover, funds used for labor welfare were tax exempt, so investments in worker welfare were a way of plowing profit back into the enterprise, setting the stage for future corporate growth. Second, leaving the provision of labor benefits to corporations eased government's burden, which was heavy in the postwar period. Third, as a *de facto* part of the wage structure, corporate labor welfare functioned as a shock absorber during downturns in the economic cycle. Fourth, corporate control of labor welfare allowed companies to use those benefits as a tool for recruiting and keeping good employees, lowering costs by cutting turnover and providing subtle levers with which to motivate workers.

As concessions from the employer, corporate labor welfare benefits proved to be powerful tools for promoting successive rationalizations of production from the 1950s through the 1980s, while at the same time suppressing dissent and union activity. In the absence of competing public programs of benefit provision, corporate control of labor

welfare gave large companies, with the largest unions, the greatest influence over their workforces. As the range of benefits grew over the years, so did firms' skill in using them as management tools for manufacturing worker consent to the goals of the organization.

Employer coordination on the policy of manipulating corporate labor welfare also helped strengthen the unity of big employers as a class. In 1955, Nikkeiren, the Japan Federation of Employers, whose members included the presidents of Japan's most powerful corporations, announced a program of modernization that included plant investment, technology improvements, restricting labor union activity to individual firms and full-time employees, merit evaluations, QC (quality control), ZD (zero defects), and other small group and self-monitored activities. They also carried out a complete review of corporate welfare.

As a result of the foregoing review, in 1957 Nikkieren promulgated a policy of "comprehensive wages," which aimed to generate increased returns of loyalty and productivity from corporate labor welfare benefits. Welfare payments to workers would henceforth be thought of as investments. For example, instead of giving workers company housing, they would be given housing loans at low interest rates. Because the loans were contingent upon continued employment, firms could use these loans to retain their hold over workers, while reducing outlays for company housing.

By 1959, there was an evident trend toward removing all working conditions from the realm of corporate labor welfare, while continuing to shift the bulk of living expenses to workers. In 1965 Nikkeiren announced additional changes in corporate labor welfare, openly saying that the measures were labor management policies that were expected to improve efficiency and help employees become more effective in achieving corporate goals. The ideological umbrella for these policies was the notion of the firm as a family. At the same time, however, corporations began opening their hospitals, recreational, and other facilities to the local public in a conscious effort to avert calls for expanding public welfare, which threatened to re-impose upon employers the economic burden they were shedding by shifting worker welfare costs onto workers.

The government cooperated, pursuing a neo-liberal policy of leaving most labor welfare to employers. Because there were low levels of public and private labor welfare benefits, workers came to think of labor welfare as synonymous with corporate labor welfare. Under propaganda slogans such as "Realizing Welfare for Human Harmony,"<sup>10</sup> workers were induced to spend their evenings polishing their jobs skills in quality improvement workshops or their days off preparing for company culture festivals. They were encouraged to think of these activities as job benefits, which provided opportunities to reaffirm their commitment to human harmony in the firm.

The largest and most important categories of labor welfare benefits were pensions and retirement bonuses. The latter were often used as collateral for loans on land and homes. Receiving a retirement bonus was contingent upon continuous employment with a single firm, meaning that many workers were mortgaged to their companies and therefore could not refuse or resist company demands. Had workers been able to transfer pensions and retirement bonuses, and had there been greater labor mobility among full-time salaried workers, corporate labor welfare would have been a much less potent tool for imposing corporate discipline on the 20 percent of workers who had "lifetime employment." This labor elite formed the sharp edge of the wedge that kept the working class divided into core and periphery (Chalmers 1989).

This division into core and periphery had two dimensions. The first was corporate size: employment in large firms came with extensive labor welfare benefits and in smaller firms employment came with progressively fewer benefits. The second was location within the enterprise: regular, full-time employment brought far more compensation and benefits than non-regular types of employment, although working hours and duties were often very similar. Together these two divisions formed the primary basis for social hierarchy in postwar Japan. Entering and staying with a large firm required a commitment not only from the worker but also from his (only rarely did this apply to women) parents.<sup>xi</sup> The struggle to win a permanent job at the top of the employment pyramid began with primary school. It continued after employment, as workers sought to demonstrate superior commitment in order to avoid transfer to affiliated subcontractors (*shukkou*), where benefits were proportionally reduced. Variable provision of corporate labor welfare benefits by company size or worker status thus played a part in shaping the structure of competition in Japanese society as a whole.

A pair of seminal articles by Sumida Yutaka, professor at Shizuoka University, measured historical changes in corporate labor welfare and their effects on the working class. The first (Sumida 1955) was entitled, "How Corporate Welfare Facilities Should Be Understood." It opened with a review of the period of monopoly capitalism in the United States and England, noting that in the 1920s US employers began to provide insurance, education, company unions, recreation facilities, and other services to their workers. The aims were to boost efficiency, cut turnover, attract good workers, advertise the firm, eliminate strikes and discontent, dull the pain of low wages, avert calls for state regulations, snuff the union movement, and take advantage of investment tax credits. In Sumida's analysis, Japanese employers learned from Western history that the establishment of corporate labor welfare was the cheapest, most certain way for business to harness labor and prevent the establishment of competing public or private labor welfare.

In his analysis, Sumida cited the profit motive. Taking advantage of human needs and the social tendencies of humanity, capitalist labor welfare, when it invaded all aspects of life, assumed the guise of benevolence that countered the effects of low wages. But in reality, it was a way to escape paying taxes on some profit by investing some portion of profit back into the enterprise as labor welfare, which then paid dividends through increased productivity. Sumida concluded that Japan's unions, which were still strong in 1955, could negotiate to dissolve the ties between corporations and labor welfare and demand instead the expansion of public labor welfare.

Twenty years later, Sumida (1975) wrote a second article entitled, "Changes in the Character of Conflict over Corporate Welfare Facilities." In this piece, he emphasized not direct union action, but the Labor Standards Act and the Industrial Safety and Health Law as the primary tools in the struggle. As Sumida now saw it, labor should use these statutes to compel the equalization of labor welfare benefits between companies of different sizes. The change in tactics he recommended in the second article showed that union power had declined as a result of the Nikkeiren approach, in which corporate labor welfare was used to draw workers ever more tightly into the corporate orbit without exciting their resistance. Although Sumida's article did not mention the oil crisis of 1973, the massive restructuring of the Japanese economy that the crisis provoked was already underway as he wrote. It would prove conclusively that the dynamic societal competition for jobs, in part engendered by the unequal distribution of corporate labor welfare benefits, was of greater value in helping Japan adapt to adverse economic conditions than legislation intended to spread labor welfare benefits more evenly.

By 1982 it was clear that labor welfare was a tool of capital rather than a tool of labor. In that year, Nikkeiren published a plan for using corporate labor welfare to maintain productivity, while mitigating the problems of a rapidly aging society. The plan noted that although corporate labor welfare was an indirect means of labor management, it was the single most important factor for improving the effectiveness of more direct methods. The plan listed seven specific benefits of corporate labor welfare: 1) increased trust and unity between the firm and its members; 2) investment immune to inflation, with significant tax advantages; 3) economy of scale thanks to the lower costs of doing things as a group; 4) centralized control of funds for efficient allocation; 5) rationalization during times of crisis made possible by joining with public and private labor welfare schemes; 6) stabilization of relations between labor and management; 7) corporate labor welfare benefits are easier to adjust than wages, but have the same result for the firm (Nikkeiren 1982, 25-27).

By 1985, then, capital's immediate postwar refusal to negotiate with workers about

labor welfare had proved to be a key episode in structuring labor market competition between workers and in moderating conflict between workers and employers. For workers, the blurred distinction between mandatory and voluntary corporate labor welfare benefits, the latter generally awarded according to subjective criteria that were outside the law and therefore could not be challenged, represented a dual rule structure. Capital played on the ambiguous links between the two categories to promote obedience and commitment to the enterprise. Corporate dominance of labor welfare created both the possibility of employer control through ever more detailed and refined categories of deviance and a ladder of social achievement that beckoned workers to strive to improve their individual life chances. Corporate labor welfare was thus a dual structure of social control that shaped the character of the Japanese labor movement and the social norms of Japanese society.

### Was Labor Welfare Coercive? Perspectives on Japanese Law and Legal Consciousness

Should the conscious manipulation of labor welfare by corporations and business leaders be considered coercive and counter to the spirit and the letter of the LSA and other labor laws? It might be easy to think so, and yet before we conclude in the affirmative, we need also to consider other interpretations. Anthropologists of the cross-cultural study of law and social control emphasize the need to treat legal systems as integral with historical and social life (Nader 1965, 17-18). The whole question of how law should function, indeed, what we should consider to be law, requires a hermeneutic and cross-cultural appreciation of law as a manifestation of the local imagination and the interpretive power of collective cultural resources (Geertz 1983, Ch. 8).

A true picture of labor welfare law and its coercive potential must therefore reflect the socially constructed nature of both facts and law. These values are not fixed in either time or space, but always and everywhere are under negotiation as people bargain to bring meaning into their lives.

#### **Perspectives on Japanese Law**

Domestic perspectives on Japanese law during the period covered by this analysis emphasized cultural factors as important in generating the harmony and consensus for which Japan became famous. Japanese were said to have a distinctive legal consciousness, which preferred to seek harmonious resolution of disputes through extra-judicial, informal means, which also saved time and money. In this conception, standards of

"universal justice" were part of an alien moral tradition (Kawashima 1967). Such awards as might be forthcoming from litigation were seldom enough to compensate damage to one's reputation: it was considered selfish to ruin an otherwise harmonious relationship by insisting on one's own interests. Disputes were to be washed away, the better to improve relations. The proof of this thesis was the paucity of lawyers, whose numbers were in proportion to the demand for their services (Kawashima 1963, 41-50).

This domestic perspective depicted the Japanese as having an innate distaste for law, seeing it as an instrument used by the state to impose its will on the people. The imported term for individual rights (*kenri*) represented an unfamiliar and somewhat contemptible, Western abstraction. The foundation of Japanese motives was not rights or a priori reasoning, but considerations of duty and emotion (Noda 1976, 159-166).

Foreign scholars saw Japanese law in a different light. In their view, the courts were seen as unwilling and unable to risk ruling in the absence of a clear consensus favoring a judicial decision because the legal system lacked the resources to enforce unpopular settlements (Bryant 1988).<sup>xii</sup> The domestic view of Japanese as nonlitigious due to culture was refuted by historical statistics, which showed Japanese to be moderately litigious. The high costs and length of time required for legal action in a system with so few lawyers and courts, as well as the social costs of suits and effectiveness of mediated settlements, which raised uncertainty about the efficacy of judicial remedies, was offered as a structural counterargument to the cultural thesis (Haley 1982, 1988, 1991). Furthermore, the legal process was said to be subordinated to "bureaucratic informalism," which sought to transfer disputes from the courts to informal, particularistic mechanisms under the aegis of various bureaucracies as a way of restricting access to the courts and preserving a larger role for the bureaucracy in the shaping of social change (Upham 1987).

In these two perspectives on Japanese law two patterns appeared. One was of a system based on harmony and consensus that rejected universalistic rules as a Western imposition. In this version, use of the law constituted a distasteful behavior that threatened the destruction of "the particularistic web of relationships that animates Japanese society" (Upham 1987 207).

The other pattern was one based on power relationships in which informal bureaucratic control sought to trump judicial decisions and deny the courts a role in social change. Furthermore, the size of the legal profession was regulated by bureaucratic control of the budget for Japan's only law school. With access to the judicial system thus constrained, the law could play but a small role in structuring Japanese society.



## Conclusion: Consensus Reality

As employer control over the workplace grew stronger and corporate welfare benefits were gradually reduced to cut costs, the portions of corporate labor welfare that remained were increasingly those that cost little and made the greatest demands on employees to devote personal time to corporate goals. Workers, it was found, would do almost anything to retain housing loans. This degree of corporate involvement in employees' lives seemed to have a high potential for coercion.

Japanese workers in the period from 1947 to 1985 took less than half their allotted paid holidays each year and they worked many hours of unpaid overtime. Where once they did such things as part of a bargain, in which devotion to the firm was in exchange for the benefits the firm provided, over time these originally "benign innovations came to mask the most coercive of practices." (Cohen 1985-69-70). Corporate labor welfare, which began as curative and comforting, became a technology of power, helping blur the distinction between employment and incarceration (Foucault 1979, 308).

Japanese workers, labor union leaders, academics, and social movement activists of this period were keenly aware that corporate labor welfare represented the subversion of the principle of individual freedom. Yoshio Sugimoto, a critic of the Japanese employment system, called the practices of corporate labor welfare part of the "manipulative basis of consensus" (Sugimoto 1986). In the view of critics, corporate labor welfare signified the institutionalization of informal control, a net of strictures comprised of surveillance, recordkeeping, categorization, and evaluation that pitted workers against each other and made them compete for benefits that should be their by right. For these critics, the failure to establish viable public labor welfare represented the state's purposeful neglect of its constitutional responsibilities (Article 25) to place the individual's right to life, liberty, and happiness above all else (Pan Asian 1982, 98). This neglect highlighted the commanding influence of the business class and the relative impotence of the working class.

Clearly there were structural barriers to using the courts to make companies and the government live up to the letter and spirit of the Constitution. And there were also cultural predispositions against it as well. Japanese workers may have been slowly coerced into consenting to the declining-benefits-for-increasing-loyalty bargain, but they also acquiesced.

They acquiesced in part because of ignorance and in part because of inertia. As noted above, the distinction between mandated and unmandated labor welfare benefits was a

difficult one that many workers failed to make. Likewise, the concepts of democratic equality, while established after a fashion in the political sphere, were slow to gain more than a foothold elsewhere in Japanese social life (Rohlen 1974, 59).

Japanese workers accepted company influence over their time and their private lives as conditions of group membership. Many willingly believed and wanted to keep believing that their companies were fictive families, for it was as members of corporate groups that they gained membership in the larger society. Within the hierarchical structure of their companies, workers found reciprocity, the fellowship of shared destiny, and harmony, three principles they believed to be essential for social stability (Haitani 1990, 239).

Employment in Japan, then, was not a simple contractual relationship, but an initiation into an imagined community where unity was created by discourses that employed a liturgy of ritual, tradition, and myth (Hall 1992, 292-293). Membership benefits, be they those of diminishing corporate labor welfare, or intangibles, such as friendship, pride of place in the community, self-esteem, and identity, were contingent upon accepting the values of the group, which one demonstrated through wholehearted participation in the group's activities. These groups were intensely particularistic so the group itself became the "general sanctioning authority in an adult individual's life." (Bayley 1978, 24-40).

Within this context, there was no place for Western law. Companies were like households in which conflict was not expected (Hanami 1984, 112-116). Dispute resolution was informal, without recourse to formal procedures or universal norms (Hanami 1985, 64). Given these conditions, it was the absence of formal law that was desirable, an ideal that was realized in the sphere of corporate labor welfare.

We are all "acculturated to domination." (Matsuda 1991, 1397) Our knowledge and the language we use to express it, determines our conceptions of the world. Japanese corporate labor welfare in the period from 1947 to the start of the bubble economy in 1985 became an increasing empty promise. The decline in benefits could be seen as betrayal, but the consensus among most workers, their way of "imagining the real" (Geertz 1983, 173), was that changes in corporate labor welfare were a manifestation of the natural order, one that made collective survival possible. To mount legal challenges to the deficiencies of the LSA and other manifestations of that order in court would be the same as challenging the whole orthodox structure of postwar working life. To do that would open the door to utter uncertainty. Current changes in the Japanese employment system reflect the long-term consequences of both workers' and employers' consensus realities.

## Notes

- 0 These distinctions are similar to those drawn by Japanese scholars. See for example Ito (1991), Mitsuzuka (1983), Sumida (1955, 1975), and Tsujimura (1983). Although public welfare benefits such as health care and pensions are established by law, overseen by the central government bureaucracy, and available to all residents of Japan, whether employed or not, in the main, receiving these benefits is perceived as contingent upon employment and so they are treated as aspects of the corporate welfare system.
- i Article 27 of the Constitution of Japan declares, "Standards for wages, hours, rest and other working conditions shall be fixed by law." (Pan Asian 1982, 100. Official English translation) The spirit of this clause is that the government, through legislation, bears responsibility for worker well-being in the workplace.
- ii See Upham (1987, 208-209) for a list of such statutes.
- iii Although I keep to the past tense in this summary, the LSA and its enforcement and implementation are little changed today, in spite of some recent revisions to the law.
- iv The Labor Standards Bureaus (LSB), organs with broader jurisdiction than the LSO, are charged with carrying out actual field investigations. There are about 2400 LSB inspectors nationwide. In 1982, 84,836 cases were brought to them, of which 1,025 were eventually turned over to the public prosecutor, resulting in 741 convictions (Ueyanagi 1990, 87).
- v Note also that unreported and unpaid overtime called "service overtime" is common in Japanese firms of all sizes, especially in white-collar jobs where workers do not punch a time clock. Service overtime is illegal, but the Ministry of Labour's commitment to reducing overtime hours has been questioned. When guidelines for overtime were revised in 1986, the Ministry requested that employers not exceed 450 hours of overtime per year, although that was more than the average number of overtime hours at that time (Ueyanagi 1990, 84-87; *Ekonomisuto* 1993).
- vi The docility of Japanese unions is distinctive and well known. Union leaders conduct themselves with restraint during their tenure because they can move up into lower levels of management. Their mandate comes less from fellow workers than from the firm (Ben-Ari 1990, Cole 1971, Rohlen 1974, Wolfren 1989). Kerns (1983) reported that Toyota had not lost a single day to labor strife in more than 30 years.
- vii In the late 1980s, 42% of workers in the private sector were employed in firms with less than 10 full-time workers. (Chalmers 1989, 102).
- viii For more on the problems of using litigation as a tool for social change in Japan, see Upham (1987), Lewis (1980), McKean (1980), and Reich (1984).
- ix The following historical account relies on Mitsuzuka (1983, 116-125) and Tsujimura (1983, 153). A related account of the postwar restructuring of labor-capital relations and of Nikkeiren's creation of an employer's movement to counter the labor movement can be found in Shimokawa (1990, Ch. 10 and 12).
- x As Noam Chomsky has noted, effective propaganda is both ambiguous and impossible to disagree with. Who could argue that "Realizing Welfare for Human Harmony" is not

desirable? Who can really even say what it means? At the same time, such propaganda diverts attention from the question, "Do you agree with our policy?" which is the one we are not allowed to ask.

- xi Corporate labor welfare was thus a key element in the "sex-gender system" that reinforced masculine domination in Japanese society. Wives and mothers were more likely to use scarce family resources to help sons than daughters, for entry to the higher ranks of the corporate pyramid was all but closed to women (Brinton 1993).
- xii Lacking the sanction of contempt of court, Japanese civil courts are powerless to enforce their decisions unless they initiate proceedings in the overloaded criminal justice system.

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## "Welfare for Human Harmony"

- Japanese Labor Welfare in Law and Practice, 1947-1985.

Scott NORTH

This paper explores the role of labor welfare law and practice in Japan's economic and social success between 1947 and 1985. It describes the three categories of public, private, and corporate labor welfare, emphasizing the paramount role of corporate labor welfare in mediating relations between labor and capital. In the absence of public welfare provision, corporate labor welfare became a cornerstone of the material basis upon which Japan's famously harmonious labor relations were founded. At the same time, corporate provision of welfare benefits legitimated employer intrusions into employees' private lives and provided employers with a valuable tool for controlling costs and boosting employee effort. Between 1947 and 1985 corporate labor welfare was consciously manipulated to undermine the labor movement. Nevertheless, the potentially coercive aspects of corporate labor welfare appear much less sinister when seen from the perspective of the Japanese legal consciousness of that time.