Guest Editorial

Reflections on Industrial Relations

1. Aims and Backgrounds

In this essay I will discuss systems for industrial relations (IR) and scholarship concerning IR. The approach is analytical, yet without the rigorous discipline of a treatise. Consequently, the aim is not to provide anything even remotely like a comprehensive survey of existing literature and theory or of all outstanding issues but to discuss some matters that seem of particular interest. The tone is sometimes a little playful, intertwined here and there with opinions that might strike the reader as provocative or irreverent, but the purpose is nevertheless quite serious.

An IR-system is defined as a set of arrangements together forming the labour market, its organisation and way of functioning and the ideas underlying these arrangements. The system is looked upon as a subsystem in society, along with other subsystems, such as the political, economic, cultural, educational and social relations ones. I will not argue that there is necessarily anything systematic about an IR-system if 'systematic' is supposed to mean that the IR-system has to be ordered, consistent, harmonic or based on rational planning. It is a system only in the sense that it does exist and that it is composed of a set of arrangements.

I will not argue that there are fixed borderlines between the IR-system and other systems in society. Indeed the close relationship between different sectors of society will de demonstrated. I will argue, however, that '(N)o industrial relations system can be understood without an appreciation of its historical origin'.[1] The reason is that its rules are 'originating in the depth of history'.[2]

To some extent the essay is based on the notion that it is justified to talk about 'national models' for industrial relations. This notion is increasingly criticised, for example in a recent survey by a group of scholars at MIT. 'Much of traditional comparative industrial relations theory rests on the premise that there exist different 'national models' of industrial relations, each associated

1. Schregle, J, *Comparative industrial relations: pitfalls and potentials*, 120 International Labour Review, 1981, p 24.

2. Kahn-Freund, O, *Pacta Sunt Servanda - A Principle and Its Limits*, 48 Tulane Law Review, 1974, p 894.

with distinct institutional arrangements governing employment relations within national borders', these scholars say. They argue that 'it is now evident that comparative employment relations research must move away from conceptualising and comparing national systems if it is to explain the systematic variations that are found within countries and the patterns common to many countries'.[3] I agree with these statements, yet I will argue that is justified to talk about 'national models'.

The reason is that labour market regulation is often divided into three parts, collective labour law, individual employment law and the law of the working environment. (The latter of these three will not be discussed in this essay.) Here it is not justified to talk about 'national models'. Technical standards prevail and these know no national borders. Quite another matter is that institutional arrangements for the supervision of work environment rules differ considerably from country to country. These differences are the offspring of the way the labour market is policed generally, i.e., the way in which the stakeholders interact within the IR-system at large. That aspect is part and parcel of the collective regulation of the labour market.

The overall regulatory system of the labour market is what is here referred to as collective labour law. This system is concerned with the actors, or stakeholders, within the system, their interaction and the power structures within which they operate. It is in this area that the notion of 'national models' is justified.

Arrangements governing individual employment relations are in-between these two other areas. As the MIT-study points out, experience shows the existence of 'patterns common to many countries'. To the extent that such is the case it obviously makes no sense to talk about 'national models' and I will certainly not argue that the MIT-study is incorrect. Its findings are corroborated by many other studies.[4]

However, this does not at all mean that individual employment regulation does not differ between countries in ways that reflect national characteristics and idiosyncrasies. Indeed, the very fact that 18th century British common law on the employment relationship still dominates completely legal employment regulation in the USA vividly illustrates that. One example is employment protection, which does not exist in the USA but it very much indeed exists in - say - Japan or the Nordic countries (partly with the exception of Denmark which has no comprehensive statute on employment protection). Why is that so? This will be briefly discussed later in this essay.[5] Suffice it to say here that it is

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3. Locke, R, Kochan, T, & Piore, M, *Reconceptualizing comparative industrial relations: Lessons from international research*, 134 International Labour Review, 1995, p 139, at 140 and 159.

4. See e.g., Bamber, G, & Lansbury, R, *International and Comparative Industrial Relations. A Study of Industrialised Market Economies* (Routledge, UK, and Allen & Unwin, Australia, 2nd edition 1993).

5. See Figure 3 and comments on it in paragraph 2.2. For a recent, thoughtful discussion of this theme see Summers, Clyde W, *Worker Dislocation: Who Bears The Burden? A Comparative Study of Social Values in Five Countries*, 70 Notre Dame Law Review, 1995, 1033.

much more likely that the absence of such protection in the USA is caused by something that can loosely be called a 'national model' rather than by something else, say production methods (since these are anyhow the same in the USA, in Japan and in the Nordic countries) or corporate ownership structures (since they also are rather similar in these three areas of the world in the sense that private ownership prevails).

But the true realm of the 'national model' notion is that of collective labour regulation, i.e., the meta-level for regulation. This essay is primarily concerned with that level but will move freely to the intermediate level of individual employment as well.

While supporting the usefulness of discussing IR-systems in terms of 'national models', in particular when dealing with the meta-level, in this essay I will stress factors such as attitudes, perceptions and motivations as building blocks along with institutional factors.

I will not discuss here one of the hottest issues in comparative industrial relations discussions, i.e., the convergence theory. Differences between countries at the meta-level are still so enormously manifold and so perplexing that they defy simple explanations. Since that is so, theoretical discussions on whether systems will converge, or are converging, do not seem fruitful. Tendencies, if any, towards what might look like convergence may simply be coincidental and caused by other factors than convergence in the core sense of the word.

2. Industrial Relations - Actors, Attitudes and Ingredients

2.1 The Actors

It is common to state that the IR-system is an interplay between three actors, employers, employees and society. On closer look these three actors are composed of many elements.

The employer side is not composed of single employers only. Employer groupings also exist. Such groupings are often formalised into employer organisations. The Nordic countries are prime examples of this since employer organisations play an important role and most employers of any size are organised. The USA represents the other extreme. There are no employer organisations and there never were. American employers have chosen to face the employee side on their own. In Japan industry-wide employer organisations exist and are federated into a national organisation, the *Nikkeiren*. But the *Nikkeiren* differs in such profound a way from its Nordic counterparts that it is debatable whether it can be labelled an employer organisation in the European context; *Nikkeiren* does not bargain, it does not enter into any agreements with the employees, it does not supervise the implementation of any collective agreements, it has nothing whatsoever to do with wage policies in member firms, it plays no role in employer industrial actions and it offers no *ad hoc* counselling or assistance to member firms in concrete situations.

Likewise, the employee side is composed not just of individual employees but of groupings as well. All employees with a specific sector of the economy or even the nation as a whole can be represented by organisations. The Nordic

countries stand out in this respect. In Sweden three labour federations represent the vast majority of the employee community, organising blue collar employees, white collar employees and professionals respectively. Being an employee is virtually tantamount to being a member of a labour union.

The organising rate on both sides in the labour market in the Nordic countries in general and Sweden in particular is unique in the world. On an 'organising spectrum' from zero per cent to one hundred per cent Sweden is close to the one extreme and the USA to the other. The USA knows no employer organisations. Employees are unionised only marginally and the unionisation continues to fall (despite small increases in total union membership in recent years). The unionisation rate in the private sector is down to around 10 per cent. In Sweden, on the other hand, the unionisation rate is still rising, albeit only very marginally, but that is no surprise given that the overall unionisation rate hovers around 90 per cent of the working population. Japan offers an altogether different picture. Employers face their employees alone. Though often enough as members of an employer organisation they neither ask for or are offered any assistance from that organisation. Employees in big companies are overwhelmingly unionised but these unions are enterprise based and their loyalties are primarily directed towards that enterprise. Union and enterprise form a symbiotic entity, as it were.

When analysing the IR-system in the USA it seems appropriate to distinguish between at least eight independent actors or stakeholders: employers, employer groupings, employees, job seekers, union members, unions, society ('the government') and finally the public at large. Both society and the public at large act in different roles that should be distinguished when discussing the USA, i.e., the society as legislator, executive and judiciary and the public at large as consumers, producers (e.g., investors or potential entrepreneurs) and the final holders of political power. In that way it is equally appropriate to talk about a total of twelve actors. Federal US labour law cannot be properly understood without considering the interplay between all these stakeholders. Federal regulation displays an intricate yet also deliberate and carefully considered balancing of competing interests between them. Of course, the balancing between the three branches of government has nothing to do with the IR-system *per se* but it very much influences the system since experience shows that these branches have never pursued a consistent policy in IR matters (with the possible exception of the World War II years). The US is unique in two senses here. First, no other country has recognised so many actors/stakeholders as the USA. Second, the balancing is done with greater determination and preciseness in the USA than anywhere else. US society ('the three branches of government') has intervened in the IR-system to a degree unparalleled anywhere else.

Japan and Sweden present sharp contrasts. It can be said that only two actors have been recognised in post-war Japan: the public at large as consumers, on the one hand and everybody else, on the other hand! An alliance between capital and the government emerged fairly soon after the war. Labour joined after the first fifteen tumultuous years to form a grand alliance between the three. The main features of this grand alliance have been notions such as the preponderance of economic growth and the concomitant necessity to subject conflicts between capital, labour and party politics to the needs of the economy.

It was everyone against the consumer! The coalition still exists but is much less fermented than during the long boom years of the Japanese economy.

The Nordic 'actor's model' is primarily an interplay between three parties, the employer community, the employee community and society. For example, Nordic labour law does not to any noticeable degree regulate the relationship between unions and their members. By and large the interests of unions and their members are considered to be identical thus effectively eliminating any need for regulation or for balancing of competing interests. The same is true on the employer side.

Perhaps the most interesting aspect is the role played by the public at large. The implications are profound when, as in the USA, the system allows for the public at large to participate in the IR-system in three distinct roles. By extension, society as a whole is affected in a decisive way. If the public at large in its role as consumer is considered the likely result is that disruptions in the free flow of goods and services are looked upon with suspicion. In turn, this might lead to attitudes amenable to restrict rights to resort to industrial actions. This is what has happened in the USA. Even more importantly this attitude tends to counteract anti-competitive tendencies in the markets, be that between employers, between employees or between employers and employees action in unison. US labour law is heavily influenced by such considerations. Generally, consumer orientation would thus also favour small scale operations and decentralisation within the IR-system. Yet again, the USA provides ample testimony.

The public at large can also be singled out as producers, i.e., as potential investors and/or entrepreneurs. At least from a European perspective, and certainly from a Nordic one, the initial question must be whether there is any justification at all for considering the public at large as producers? It is difficult to answer the question in the abstract. Only concrete demonstrations of the practical implications of the issue will justify the question. In the USA *the* situation in this respect seems to be the extent to which industrial actions shall be tolerated. Of particular significance is the issue whether industrial actions involving third party neutrals can be tolerated. The focal question revolves around neutral employers, i.e., employers who are neither parties to a conflict nor in a position to directly solve the underlying dispute. Should the actions involving them be allowed?

Obviously there is no straight-out answer to this question. It is a matter of striking a balance between competing interests. Will the balance be influenced if the public at large as producers is taken into account? The answer is obvious. The willingness to start new companies will obviously suffer if neutral employers can be hit by industrial actions. If there is an interest in society to safeguard the interests of the public at large as investors and/or producers an environment for business should be created that reduces the risk for them to incur losses due to developments that they cannot control. Society cannot eliminate the calamities of nature but to a large extent it can prevent innocent employers - e.g., neutral employers - from industrial actions. In the USA there is a strong concern for the interests of members of society to have the opportunity to start a business. 'Business is the business of America', is a

well-known slogan coined by president Calvin Coolidge.[6] In Sweden, by contrast, the corresponding concern is much less strong. It may even sound odd to talk about 'legitimate interests of members of the public at large to start a business of their own'. Given all this it can come as no surprise that the balance stuck in the two countries reflect these differences. Secondary actions against neutral employers are illegal in the USA but perfectly legal in Sweden!

The public at large as the final political power holders in society (*homo politicus*) can also be considered as a stakeholder. This is so in an indirect way in all democratic societies since all public power rests with the citizens. But citizens can also be allowed to act directly as one of the prime stakeholders in the IR-system. Such is the case in the USA. Any citizen can bring action to have an alleged infringement of federal labour law investigated by the appropriate authority (i.e., the NLRB). The right to bring an action reflects that the structure of federal (collective) labour law and the balances struck by it are considered matters of concern to every citizen to such an extent that everyone is entitled to intervene on his or her own initiative. Federal (collective) labour law is part and parcel of 'the law of citizenship'. The relationship between the two prime opposing parties in the labour market is not a private one under their exclusive dominion. In that sense there simply is no 'freedom of the labour market parties'. The reason for giving citizens a direct role within the IR-system is that dealings by the labour market parties greatly affect the functioning of the market. In turn, the market is central to society so it is only fair that citizens should have a right to interfere directly. 'Collective labour law is too important to entrust to the labour market parties alone!'[7] Indeed, there is a deep divide between the USA and the Nordic countries!

Society is also an actor in the IR-system. One obvious reason is that the society is both a big employer and a big buyer, in both instances often the single biggest. In these capacities society automatically becomes an actor in the IR-system, directly as an employer and indirectly as a buyer (say by means of stipulations in public procurement contracts). But when discussing society as an actor in the IR-system attention is generally focused elsewhere, namely on society as government, i.e., as executive, as legislator and as judiciary.

In many countries an observer does not have to look closely into the division of power between the three branches of government. The Nordic countries attest to that. The executive and the legislative branches are intimately linked. Though independent, the courts are governed by extensive legislation and they are very deferential to values underlying it. In some other countries the observer cannot overlook the existence of the three branches and their internal struggle. The USA, of course, provides the prime example. The labour market is one of the arenas where the three have met and clashed ever since the establishment of the union. Their confrontation in the labour market is not primarily concerned with labour regulation *per se*. It is concerned with the

6. 1925, before The American Society of Newspaper Editors. See e.g., John Bartlett, Familiar Quotations (Justin Kaplan ed., 16th ed 1992).

7. Metamorphosing the French expression: 'La guerre est chose trop sérieuse pour être confié aux militaires!' The French expression is usually attributed to Georges Clemenceau but Maurice de Telleyrand is often quoted as the true originator.

balance between the three branches as actors in the greater balancing structure of the political realm at large. In the USA 'society' as an actor in the IR-system is very much indeed a catchword for three distinct actors. That is the reason why it is justified to talk about no less than twelve independent actors within the IR-system of the USA.

2.2 Attitudes

Just as stakeholders differ in various countries so do attitudes among stakeholders. All actors have opinions about themselves and about the other stakeholders. Thoughts concerning their own places, their own roles and their own identities as well as about those of all other actors. Attitudes in all these respects can oscillate between widely separated poles. Put together these attitudes are of fundamental importance.

A Milky Way separates the way employers and employees communicate in different societies. Consider a spectrum of 'labour market behaviour' where the extremes are, on the one hand, familiarity, mutual consideration and loyalty, mutual wish to entertain long-term relations coupled with feelings of community of interests, and, on the other extreme, a businesslike attitude, stressing strict adherence to contractual reciprocal rights and obligations, mutual wish to be independent and to deal at arms length coupled with a notion of basic equality. America would station itself at the one extreme and Japan at the other with the Nordic countries somewhere in-between, but certainly closer to Japan than to the USA.

A few figures to illustrate. They pinpoint attitudes among employers.

Figure 1:1 Employer behaviour towards unions

a) dictatorial, b) paternal, c) business-like, d) participative, e) ideological.

Figure 1:2 Employer attitudes towards unions

a) contempt, b) adversity, c) acceptance, d) cooperation.

Figure 1:3 Employer attitudes towards the relationship between their enterprise and the employee community

a) 'my boat'-attitude	'this is my business so if you don't like it then get out'
b) 'shared boat'-attitude	'this business is like a boat that we sail together so don't rock it'
c) 'our boat'-attitude	'this business is our own common enterprise so let us all join in efforts to better it'

What would prevailing attitudes be among employers in Japan, the Nordic countries and in the USA? It probably would be accurate to say that something from all these alternatives is present. However, certain exceptions would be needed. Swedish employers would not at all embrace alternatives a) in Figures 1:1 - 2, and only slightly alternative a) in Figure 1:3. Japanese employers, for their part, might want to take exception totally from alternative e) in Figure 1:1 and on the whole not adhere to alternative a) in Figure 1:3. Attitudes among US employers would not at all embrace attitude c) in Figure 1:3 and only reluctantly attitude d) in Figures 1:1-2. A better way to present employer attitudes might be to summarise them as follows in Table 1.

Table 1 Anatomy of employer attitudes

	Figure 1:1	Figure 1:2	Figure 1:3
Japan	a + d (sic!)	a + d (sic!)	c
Sweden	c - d	c - d	b
USA	c	b	a

The employer communities in the three countries differ sharply. It is even somewhat misleading to use the same terms, e.g., 'employers', 'management' or 'company', since the terms represent very different realities. Such differences have a profound influence on the entire IR-system.

Perhaps the 'boat-test' in Figure 1:3 offers the best illustration. The test might seem too oversimplified to have any meaning. It certainly is simplified but it is at the same time most elucidating. Tremendous differences exist between the extremes here, Japan and the USA.

In Japan, it is often said, many of the biggest companies *de facto* belong to the employees rather than to the shareholders. In the USA shareholders do indeed own the company and act accordingly. Legally speaking differences between the two countries are insignificant. Company law is fairly similar and based on the principle of ownership supremacy in both countries. Labour legislation in Japan does not in any way emphasise employee interests as superior to that of shareholders. However, a formal approach only obscures reality here. Actual life, as mirrored in day to day realities, in case law and in existing agreements in the labour market, clearly expresses the differing approaches.

Japanese realities can be illustrated in many ways, e.g., prevalent patterns of company ownership with intricate nets of cross-ownership. But to illustrate I shall instead choose the composition of company boards and the loyalties of company board members. Several features stand out. First, Japanese company boards are composed primarily of career employees in the company. Outsiders are few and even so most often represent close allies, e.g., the company's main bank or its insurance company. The career employees have started at the bottom of the career ladder and worked their way upwards. The younger of them may still work full time as top line managers. In the vast majority of companies the CEO is a career employee as well. The idea to hire a top executive from

outside, much less the CEO, is more or less taboo. A new CEO is usually *de facto* selected by the exiting CEO, who - in turn - often becomes the Chairman of the Board. In other words, the board of a Japanese company is 'like a council of elders of the enterprise community'.[8] Another factor that works in this direction is the fact that board members tend to be rather numerous, perhaps some thirty or even forty.

And this is no innovation. In fact, 'this system of regular career paths for all employees was well established among large Japanese companies, both public and private, before World War II.'[9] Obviously managers and board members are heavily influenced by the fact that they have spent most of their entire working life within the company and that their fellow managers and co-workers have done so as well. Emotionally, the company belongs to the employee community. This feeling is strengthened by the fact that main shareholders usually take a long-term view of their holdings and are not interested primarily in short term return but in maintaining an ongoing business relationship. Shares in Japanese companies are akin to preferential shares in Western companies, i.e., shares with financially fixed returns. Good relations to shareholders or concerns about share prices are not of much concern to Japanese managers.

But it does not end here. Many managers as well as board members have a past as union officials. Indeed, 'the appointment of a former union official to a company's board of directors is regarded as a normal progression in Japan's industrial relations system'.[10] There is nothing surprising in this from the point of view of an 'our boat company'-model. After all, those elected to serve as union officials 'generally possess high leadership potential'.[11] In turn this means that 'the corporate structure of large Japanese companies is akin to 'quasi employee-managed firms' where the interests of employees are well represented.'[12] Araki even goes so far as to say that 'it appears that

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8. Dore, Ronald, *Taking Japan Seriously. A Confucian Perspective on Leading Economic Issues* (Stanford University Press, 1987), p 110.

9. Shirai, T, editor, *Contemporary Industrial Relations in Japan* (University of Wisconsin Press, 1983), p 373.

10. Shirai, *ibidem.*

11. Takezawa, S, *Japan Work Ways 1960-1976-1990* (Japan Institute of Labour, 1995), p 22. See also Sugeno, K, & Suwa, Y, *Three Faces of Enterprise Unions: The Status of Unions in Contemporary Japan* (Japan International Labor Law Forum, JILL Forum Paper No. 6, February 1996). At page p 30 *et seq.* (Note deleted) Sugeno & Suwa write: 'Union officers are officially elected by union members, but they are in actuality selected by incumbent union executives in close coordination with management under long-term leave arrangements. Chosen for their competence, experience and leadership, they develop managerial expertise during their term of office and are qualified to become senior managers at the expiration of their term, after which they resume career paths in the firm'.

12. Kuwahara, Y, *Industrial Relations in Japan*, *in* Bamber & Lansbury, *op. cit.* note 4, p 232. Cf. generally also Kuwahara, Y, *Industrial Relations System in Japan. A New Interpretation* (Japanese Industrial Relations Series number 16, JIL, 1989, ISBN 4-538-74016-0) and Sugeno, K, & Suwa, K, *Introduction to Japanese Industrial Relations: A Legal Perspective* (Japan International Labor Law Forum, JILL Forum Paper No. 1, March 1994), section

labor-management relations in Japanese enterprises are the relations between present union members and former union members'.[13]

Yet another feature stands out. Company directors rarely own shares in the company. Financial instruments like options have come into existence only in the very recent past. This means that company directors and board members in most instances have no investment interests in the company. Their financial interest in the well-being of the company has little to do with the fortunes of the company at the stock exchange but is often linked to its internal performance in terms of market performance and profitability. Management is the first group to see their salaries reduced in times of financial distress.

The USA represents the opposite extreme in all the respects now highlighted. The 'my boat'-attitude completely dominates, legally, attitudinally and in real life.

The Nordic countries are in-between, closer to Japan than to the USA at the attitudinal level. However, company boards in Sweden are composed mostly of outsiders. It is very uncommon for there to be more than one career company employee on the board. That person will invariably be the CEO. In turn, (s)he is often a career employee but just as often a person brought in from the outside, there being no qualms to do so from a cultural, personnel morale or business point of view. The employee community is entitled to seat representatives on most company boards. All other board members are recruited form outside. They will often represent stakeholders such as the main bank or an important business partner. Important shareholders will be represented. Even union-elected board members must take overall responsibility if they are to enjoy credibility. The total number of board members rarely exceeds ten.

Although not a top priority, good relations with the shareholding and the investment banking communities are important factors for top managers. The company is seen to belong to shareholders though no one denies that employees are important stakeholders. However, even the suggestion that companies listed at the stock exchange are *de facto* owned by or at least ruled by the employee community would seem quite odd in the Swedish context.

The Swedish vista is neatly summarised, I think, by referring to the 'shared boat'-notion. Swedish employers often use this metaphor or the equally popular metaphor of employers and employees sitting on the same branch of a tree, making it a simple matter of survival for both that neither cuts down the branch.

Figures 1:1-3 have been highlighted from the employer perspective. However, they can be used with equal justification to highlight attitudes among the other actors within the IR-system. For example, unions in the USA have always supported free enterprise and private ownership. Capitalism as a system

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Two:I. Statistical evidence to prove these two characteristics abound. See e.g., Araki, T, *Joint Consultation in Japan*, 15 Comparative Labor Law Journal, 1994, p 153. Araki quotes statistics showing that 91 % of all full-time directors were promoted from within the firm. Further, he quotes statistics saying that 16.2 % of executive board members had previously been enterprise union leaders. For more detailed discussions of the composition of Japanese management, company boards and participation of former union officials see e.g., Clark, R, *The Japanese Company* (Yale University Press, 1979).

13. Araki, *op. cit.* previous note, p 154.

has never been questioned. The absence of employee representatives on company boards is easily understandable from that perspective as is the fact that unions have never seriously worked for board representation. True, exceptions exist but they invariably concern extreme situations, e.g., where the survival of the company is at stake. The capitalist 'my boat'-attitude prevails even among unions!

Unions in the various countries have different backgrounds with regard to factors such as political and religious affiliations, behaviour towards employers, ways to organise employees and internal decision making structures. These traditions reach far back into the history of the unions and they still shape their behaviour. Figures 2:1-4 present some attitudinal tests referring to the employee/union side.

Figure 2:1. What is a union, its function?

a) a union is a voice for those who do not have a voice, b) a union is an organisation for those who prefer collective representation to individual representation, c) a union is an *alter ego* of the enterprise with the role of being the company's alternative personality.

Figure 2:2. What is a union, its common bond?

a) a union is an organisation for people with a common attribute, e.g., a skill or an ideology, b) a union is an organisation to take labour out of competition, c) a union is an organisation for people with a common frame, e.g., an enterprise.

Figure 2:3 What is the relationship between unions and their members?

a) unions shall take care of their members' best interests, b) unions shall present their members' views, c) unions shall harmonise members' views and management views.

Figure 2:4 What attitudes do union officers have towards their union work?

a) union work is a vocation, a kind of secular priesthood, b) union work is a job among others, offering a career inside 'the union business', c) union work is an exercise in cooperation with management and a training for management positions.

How should unions be classified along these alternatives? It might be pertinent to say that unions in all countries and their officers answer to all these alternatives to some extent. There is something to that but not very much. From the perspective of Japanese, Nordic and US unions several exceptions would have to be made. Nordic unions and their officers do not at all answer to alternatives c) in Figures 2:1 and 2:4 and only slightly to alternatives b) in Figures 2:2 and 2:4. Japanese unions and their officers, on the other hand, only slightly answer to alternatives b) in Figure 2:1, a) in Figure 2:2 and b) in Figure 2:4. US unions would not at all subscribe to attitude c) in Figures 2:1

and 3-4 or attitude a) in Figure 2:4, nor would they much favour attitude a) in Figure 2:1 and c) in Figure 2:3.

A more accurate classification should focus on the features that mainly characterise unions and their officers. An attempt to do so is offered in Table 2.

Table 2 Anatomy of Japanese, Swedish and American unions

	Figure 2:1	Figure 2:2	Figure 2:3	Figure 2:4
Japan	c	c	c	c
Sweden	a	a	a	a
USA	b	b	b	b

Again differences are considerable. They have profound implications for the entire IR-system.

Closely related to the 'boat test' in Figure 1:3 is the attitudinal test in Figure 2:4. Swedish union officials - particularly in blue collar unions - see themselves as people with a mission, if not even as downright missionaries. Their gospel, as it were, is to serve the employee community. Some historical comments to clarify. The blue collar union movement in Sweden was formed late in the 19th century. At that time workers had lost contact with the established religion in Sweden, i.e., the Protestant Church. They lived in a spiritual void. The nascent socialist movement and its concomitant labour unions offered a vision of life that was built on notions such as solidarity among humans, brotherly love, concern for others, equality and a fair share for everyone according to her/his needs. Those values closely resemble central Christian values. Union campaigners and officials proclaimed them at the time and they still do. Union campaigners effectively functioned as a kind of secular priesthood and they still do. Unions were and still are communities of men and women striving to better their lots in life by working together inspired by these ideals and values. There is an unbroken line of thinking between the unionists of yore and today. It is certainly true that the semi-religious fervour is less pronounced in unions today when poverty exists no more and everyone, comparatively speaking, is affluent, but the spirit is still there.

White collar unionism is much younger in the Nordic countries as is professional unionism. There is considerably less of a religious undertone in unionism here. But it is still true that unionism here as well is considered a noble activity in unselfish pursuit of a fuller and more dignified life for members. Career thinking might be somewhat more prevalent but only marginally so.

Returning to Figure 2:4 this all means that the a) alternative is *very* strong, indeed dominating. Elements of the b) alternative certainly exist as well. Unions do provide a career ladder. Traditionally the most coveted position in Sweden for a working class person has been to ascend to the helm of the federation of blue collar unions, the LO. But it is a fact that so far all who have done so have come from deep down, from the anonymous 'masses' of the rank and file. They have little formal training and they have risen because of their dedication and

skill. Contacts or hard elbows count for little. Once there they belong to the inner circles of power in Swedish society but at least until very recently they have been very moderately paid and enjoyed no considerable fringe benefits. Any tendencies on their part to forget their roots or who they represent are quickly and resolutely quelled. No one stays at the helm of a federation or a national union for a long period of time, much unlike their counterparts in many other European countries, not to mention the USA where tenures stretching into several decades are not all uncommon.[14] Attitudes and realities are miles apart.

Another difference of paramount importance regards direct versus indirect union democracy, i.e., direct member participation by means of membership votes and referenda. Are members to vote about important matters or can they be decided in some other way? If so, by who, e.g., by *ad hoc* elected representatives or union office holders? When shall a vote be called, can members call a vote, is the vote mandatory, is the result binding upon union representatives, etc.? All the alternatives in Figures 2:1-4 are of interest here but Figure 2:3 is probably the most revealing. The extremes here seem to be alternatives a) and b), ranging from union activism as the leaders of union members to union responsiveness as the loudspeaker of union members, the amplifier of members' voices, as it were. Obviously alternative b) points in the direction of direct democracy whereas alternative a) does not, or at least not very much. Small surprise, then, that Swedish union democracy is overwhelmingly indirect whereas American unionism is based on direct democracy with mandatory and binding membership votes as a standard feature. This is reflected in existing statutes. US law contains detailed rules on membership votes. Such votes are considered to be of such importance in society that they can be conducted by public authorities. In the Nordic countries, on the other hand, no statutory rules exist at all in these respects. Japanese law here is based on American law but since this body of law was imposed on Japan rather than an outgrow of indigenous traditions it is not surprising that membership votes - though rather common - are not really binding upon union officials and fulfil functions that differ radically from American models. In Japan the addressee of votes is the employer rather than the union leadership.

Unionism in the Nordic countries is characterised by little intra-union strife and, generally speaking, by satisfaction on the part of members with their union leaders. The opposite is true in the USA. All studies reveal that there is a wide gap in member's satisfaction between Sweden and the USA. Based on the findings of Figure 2:3 that might seem unlikely. Direct democracy should generate more satisfaction among the rank and file with their representatives than the indirect democracy of the Nordic countries. Figures 2:1 and 2:4 provide the explanation, in particular Figure 2:4. If union officials consider themselves to be people with a mission, as trustees charged with a noble and honourable task (justice, equality, the interests of the little guy) and in addition to that also *de facto* function in such a spirit, in that case members will have

14. Consider e.g., the 40 odd year tenure of Samuel Gompers, who remained president of the AFL until his death in 1924 at age 74, or of a president of the stevedores' union, who retired in 1987 at age 86 after having served as president of the union for 25 years and of its local in New York for 50 years! Nothing similar is even conceivable in the Nordic countries.

great confidence in the representatives. If, on the other hand, alternative b) is strong, even prevalent, a built-in source of conflict of interests exists between union officials and their members. The risk of a gap between members and their representatives always looms at the horizon and that seems to be the main reason why extensive legislation in the US is needed to prevent such gaps to occur. The Nordic countries live in blissful want of such rules.

Readers might wonder about alternatives b) in the figures. Attitudes a) and c) are compatible with each other so the pictures of Japan and the Nordic countries do not present any problems in terms of compatibility. However, the same does not seem to hold true with regard to attitude b), which is said here to characterise American unionism. Attitude b) in Figure 2:3 gives rise to direct democracy and a concomitant reduction of influence for union leaders. How can this be combined with attitude b) in Figure 2:4 - which indicates that union officials pursue their functions in a comparatively more independent and selfish way (than the other two alternatives in the same figure)? Yet is seems to be a fact that American unionism is best characterised by attitude b) in all the figures. Perhaps attitude b) in Figure 2:4 - business unionism in its most original sense - is the one most deeply ingrained in American collective consciousness. In my opinion an internal conflict exists here. This conflict is probably one of the main reasons why unionism has never become a truly genuine popular movement in the USA.

Figures 2:1-4 demonstrate that differences between countries are enormous. If additional countries were introduced complexity would continue to increase. Coupled with the equally fundamental differences found in Figures 1:1-3 the observer is faced with radically diverging social realities.

Consider attitudes towards the company (Figure 1:3) and towards union work (Figure 2:1-4). Japanese attitudes here are wide apart from American or Nordic ones. It is often said that 'unions do not exist in Japan!' True, the word 'labour union' exists, *rôdô kumiai*, and, equally true, lots of organisations call themselves *rôdô kumiai* and perceive themselves as such. These unions actively recruit members at the enterprise, albeit usually facing little difficulty in doing so because once a union has been established at the enterprise every regular employee is supposed to become a member. They are legally separate from the enterprises. A great number of laws, institutions and arrangements are based on the idea that labour unions exist. They raise issues that management cannot raise by itself or at least not in the same way. They often express alternative opinions that sometimes differ sharply from current managerial thinking. They arrange demonstrations and collective refusals to work. They sue enterprises. They have had a tremendous impact on Japanese life since the war, for example in democratising labour life and introducing equality among different categories of employees. All this is true. It is also true that they work inside and in close cooperation with the enterprise. They often maintain offices at enterprise premises (in many instances receiving assistance from the enterprise to an extent that is illegal as transgressing the borderline between independent bodies with - in principle - opposing interests).

Are these Japanese bodies unions? The question is 'What *is* a labour union?' The answer, as seen from the perspective of Figures 1 and 2, is that unions are very varying creatures that escape simple characterisations.[15]

2.3 The Ingredients

What are the ingredients of an IR-system? Succinctly stated they are the norms and customs concerning conditions of work, the procedures for arriving at these and the underlying 'spirit'.

Norms and customs are legal or non-legal. Strong preferences for business-like practices in the labour market will give rise to more legal norms. Such, consequently, is the case in the USA (cf Figure 1). The familiaristic ideal professed in Japan results in fewer formal legal rules.[16] Countries where there is little community of interests between the employer and the employee parties produce more formal rules than in countries where the opposite is true. Again, Japan and the USA provide prime examples. The number of formal, legal rules in the USA is mind-boggling and so is the frequency with which they are invoked.

Thus both the number of formal rules and their character will differ from country to country. The same is true with regard to who provides the norms. Under most IR-systems employers enjoy far-reaching authority to provide norms. However, countries differ considerably in this respect as well. The authority enjoyed by a non-unionised employer in the USA dramatically dwarfs that of any employer, unionised or not, in Japan or in the Nordic countries. What ultimately decides the authority of employers to unilaterally establish norms are the attitudes among all the stakeholders concerned regarding alternatives such as those listed in Figure 1:3. The legal rules of authority only mirror such deeper values.

Each IR-system is distinguished by the type, density and origin of its norms. Of even greater importance for its distinctiveness is the 'spirit' that permeates the actors, the 'ideology' of the system. Ideology here means the opinion that each actor has about its own role and place within the system and about the roles and places of all the other actors. Attitudes such as those listed in Figures 1, 2 and 3 illustrate opinions regarding roles and places.

Vast differences between countries are due to different 'spirits' rather than the contents of norms when seen isolated. Every student of comparative labour relations has seen that norms in different countries often are rather similar when studied apart. For instance: both the USA and Sweden subject employers to an obligation to bargain with the established union before making important decisions regarding labour conditions at the place of work. The rules came into existence at different periods of time, the US rules originating in the 1930s whereas the Swedish rules are of recent origin, dating back to 1976 only.

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15. For a recent, thoughtful discussion of this question from a Japanese perspective see Sugeno & Suwa, *op. cit.* note 11.

16. It is true that the number of statutory rules in Japan is rather extensive. To a great extent this is due to the American influence after the war. However, many of the most important rules are non-statutory, founded on custom or case law, e.g., employment protection law.

However, the rules are astoundingly similar. To a great extent the Swedish rules look like copies of the American. Still, the Swedish rules owe nothing at all to their American predecessors. Also, the American rules function in a way that differs sharply from the Swedish rules. In Sweden prevailing attitudes greatly favour employee participation in matters concerning their work situation. In the USA there is no similar community of values. The rules are the same, the 'spirit' is different and so, consequently, is the outcome.

2.4 Concerns of Industrial Relations

The prime concern of any IR-system is to arrive at rules and arrangements that enable labour and capital to meet and work together.

One aspect of that meeting is that IR-systems are concerned with business competitiveness. A well functioning IR-system will be beneficial to cost levels and efficiency in business and by extension on the competitiveness of companies. Japan is a prime example. But the opposite is true as well. By and large, the sector of the US economy that is strictly regulated by federal labour law testifies to that.

From another aspect IR-systems are concerned with quality of life and life patterns. Most of us spend a considerable part of our lifetime at our places of work so labour conditions greatly influence the content of our lives. The tremendous impact of labour conditions can nowhere be better studied than at Japanese places of work where a 'lifetime employment' system is practised. Some 25 per cent of the working population in Japan are 'lifetimers'. These, mostly male, *sarariman* are hired directly upon graduation from school (high school, college or university) and are expected to spend some 30 to 35 years with the same company until they retire in their late fifties.[17] The *quid pro quo* for uninterrupted employment is a quasi total commitment to the company on the part of *sarariman*. It is 'a continuous personal relationship' based on 'a relationship of trust'[18] that 'goes beyond the mere exchange of labor and wages'.[19] Company and employee become more or less a unity, the company being a social family. Reception into this community has profound consequences for the individual. The company community will mark the life situation of *sarariman* just as much as, or indeed even more than, anything else in life, private family included. The borderline between work and private life is blurred, if not completely eliminated. Instead of being a business-like

17. This means that employment is not for 'lifetime' since most *sarariman* neither want nor are financially able to afford to retire from working life entirely upon retirement from their 'lifetime company'. See generally Sugeno, K, & Suwa, K, *The Internal Labour Market and Its Legal Adjustment* (Japan International Labor Law Forum, JILL Forum Paper No. 4, March 1995).

18. Sugeno, K, *Japanese Labor Law* (translated by Leo Kanowitz, University of Washington Press, 1992), p 65.

19. Hanami, T, *Labor Relations in Japan Today* (Kodansha & John Martin Publishing Ltd, 1979/80), p 28.

contractual relationship, which is the rule in the American context, it is a status-relationship based on (fictional) kinship, a *kintract,* as it were![20]

From yet another angle IR-systems are concerned with power and the exercise of power. When talking about 'national systems' it is the power aspect that mostly comes to mind and justifies the notion of 'national systems'. Countries differ in the extent that the power aspect is emphasised and the extent to which power in the labour market influences the power structure in society at large. In countries with strong socialist political traditions the power aspect plays a more prominent role. Western Europe amply testifies to that, the Nordic countries eminently so. In the USA, where no socialist movement of any real significance ever developed, industrial relations are discussed less from the power angle than from their impact on the freedom of the market and on basic notions on equal rights, fairness and fair play. Consequently illegal behaviour by employers and/or unions are classified as ***unfair labor practices***.

3. THE IDEAL SYSTEM - DOES IT EXIST?

It is common parlance that an efficient and well-functioning IR-system is beneficial to business and to national competitiveness. Several factors are advanced to explain the amazing post-war economic upswing of Japan, e.g., its high level of education and high saving rates with concomitant easy access to cheap capital for investment. A well-functioning labour market is also customarily referred to. Conversely it seems obvious that the decline of many basic industries in the USA in the 1970s and 1980s is related to an IR-system that is not suited to the country.[21]

The obvious question then is whether there are ideal systems. If some norms, customs or patterns of behaviour are superior to others then, obviously, the better ones should be used. Is it possible to distinguish between 'good - better - best' or 'good - bad'?

Classifications like 'good - bad' or 'good - better - best' do not enjoy much credibility. All languages contain proverbs to the effect that what some like, others dislike, what some find correct, others find incorrect. 'One man's truth, is another man's lie', to quote a familiar English expression. Blaise Pascal coined the expression: 'Vérité au-decà des Pyrénées, erreur au delà'.[22] In other words, there is reason for caution here.

Indeed, there is no such thing as an ideal system. There are many reasons for this. One is the following. The IR-system is part and parcel of society at large and thus part of an environment composed of several subsystems. These subsystems must all be in harmony with each other. This means that, in

20. The term was probably coined by Francis Hsu. See e.g., Dale, P N, *The Myth of Japanese Uniqueness* (Routledge 1986), p 44 and 106.

21. See e.g., Fahlbeck, R, *The Demise of Collective Bargaining in the USA: Reflections on the Un-American Character of American Labor Law*, 15 Berkeley Journal of Employment and Labour Law, 1994, 307.

22. Pascal, *Pensées* (Édition Tourneur-Anziue, 1969), 59.

particular in the short run, there is not much room in any given society for other arrangements than those already existing. Changes in one system that do not harmonise with the structure of other systems are doomed if they are not strong enough to change the other systems. On a giant scale we have all been witnessing this in the USA. Federal labour law, introduced in the 1930s with strong support by the executive and the legislative (and eventually also by the judiciary), established a new regime for industrial relations. That system was never accepted by other systems in US society. It is not surprising that it is going under. The contrary would be surprising.[23]

Experience also demonstrates that radically different systems work perfectly well and have promoted economic progress. Japan and the Nordic countries exemplify that. The IR-systems in these two parts of the world are quite different but they have at least one common trait, i.e., they have both greatly contributed to the economic success of these regions.

Experience further demonstrates that an arrangement or custom that works in one environment does not necessarily work in another. For instance: in the Nordic countries a multitude of labour market organisations and strife between them is considered to be detrimental to economic progress in general and to employee aspirations in particular ('united we prevail, disunited we fail'). This scepticism is probably justified as far as the Nordic countries are concerned. It probably helps to explain why, in the Nordic countries, there has never been any true competition between labour unions to organise the same employees. The existence of a minority union, competing with the established union, invariably creates a very acrimonious atmosphere that seems to be inimical to the entire IR-system. The minority union is like an irritant object in an oyster. The system does everything in its power to isolate and neutralise the presence of this alien object, as it were. In Japan, on the other hand, the situation looks quite different. A multitude of organisations exist and organisational patterns have changed rapidly and profoundly since the war, at local, industry-wide and national level. Splinter unions are frequently formed, often with the help of the employer. Splinter unions often prevail over the old union, forcing that union to dissolve. But the Japanese IR-system seems to need these splinter unions. They seem not to pose any threat to the viability of the system. Indeed they seem to serve as safety-valves for the system and thus are entitled to protection by the system. They allow the parties to continue a cooperative relationship not burdened by the acrimony of past struggles. The splinter union, though organising the very same employees, thus serves as Phoenix!

How can one explain this difference between the Nordic countries and Japan? In order to find the explanation for Japanese acceptance of splinter unions it seems necessary to look at psychological mechanisms in Japanese social fabric to change established patterns and to lay conflicts at rest. It seems to be difficult in Japan to achieve such results within established structures with a given set-up of loyalties. Once a new organisation has come into existence new loyalties can be created without the embarrassment of ever having to formally discontinue the old ones. They just wither away. Such psychological mechanisms do not exist in the Nordic countries for conflict resolution.

23. Cf. Fahlbeck, *op. cit.* note 21, for an analysis.

Yet another way of illustrating that there is no such thing as an ideal system is the following. The conceivable number of arrangements and combinations of arrangements within IR-systems seems virtually limitless. Experience shows that virtually 'everything' has been tried in some country at some time or other and worked. Let me illustrate by referring to an experience dating some ten years back. *One* theme for an international exercise in comparative labour law dealt with who is to provide the rules for employment conditions in the labour market, the labour market parties (e.g., by means of collective agreements) or society (e.g., by means of statutes)? Some twenty national reports were submitted. In great detail they all described the genesis of employment rules in their country. Countries differed considerably; 'everything' existed. However, what struck me most was that all the authors, explicitly or implicitly, seemed eager to express that the way their country produced employment rules was the best conceivable! Perhaps I should not have been surprised. 'Ubi patria, ibi bene', 'My home, my country!'[24]

Is this relativism tantamount to *panta rei*, everything floats? Everything is as good as everything else? It does not matter what is chosen? The answer is both affirmative and negative. On the affirmative side it seems true to state that 'everything is as good as everything else', the 'everything floats', that 'it does not matter what is chosen'. Pretty well all arrangements, seen apart, seem to be good enough. This, at least, is the impression one gains from studying countries of the Western type with basically free market economies and private ownership. The negative answer means that everything is not as good as everything else. On the contrary, only a few arrangements are realistic. This answer is also correct. Decisive here is that in any given country only a limited number of options are available due to restrictions imposed by other arrangements in that country. Only arrangements that can live in harmony with prevailing social fabric will survive while alien transplants are rejected.[25]

4. The Study of Comparative Industrial Relations

4.1 Utility and Pleasures of Comparative Studies

Nothing is more pleasurable than the comparative method when studying industrial relations. Furthermore, that method also promises several additional advantages. Here are three.

The first additional advantage is that of getting to understand your own country better by studying some other country or two. The second is that you stand a good chance of becoming less nationalistic. The third is that you open

24. For a summary of this exercise see Fahlbeck, R, *Collective Agreements - A Crossroad Between Public Law and Private Law* (Acta Societatis Juridicae Lundensis, No 95, 1987, ISBN 91-544-1931-X). Abridged versions were published in 8 Comparative Labor Law Journal, 1987, and in 2 International Journal of Comparative Labour Law and Industrial Relations, 1986.

25. Cf. generally Kahn-Freund O, *On Uses and Misuses of Comparative Law*, The Modern Law Review, volume 37, 1974.

up to new horizons, new worlds of thoughts, conceptions, ways of thinking and opinions. Some voices to illustrate.

'The path of comparative law seems an unduly long and tortuous one to reach self-awareness. Do we really need to study another labor system to ask searching questions of our own?' Yes, Clyde Summers asserts, and he continues in this way. 'Most of us are bound by unconscious premises and have difficulty envisioning what we have not seen. When we have known only one labor system we are captives of its purported premises and their claimed consequences. We cannot easily imagine that essential parts might be otherwise; we do not see many of the questions worth asking. Studying another system is particularly useful for those of us whose imagination is limited and whose mind shrinks from being bold'.[26] There is nothing new here, of course. For example, some two hundred years earlier German national poet Johann Wolfgang von Goethe reached the same conclusion during his travels in Italy: 'Das Bekannte wird neu durch unerwartete Bezüge, und erregt, mit neuen Gegenständen verknüpft, Aufmerksamkeit, Nachdenken und Urteil'.[27] The second advantage is that of being offered the chance of ridding oneself of nationalism. The notion 'my country - right or wrong' becomes rather difficult to entertain when confronted with radically different, yet successful, ways of doing things than one believed one was the best at doing oneself. Particularly humbling is the realisation that other have the temerity of believing that they are indeed superior to oneself. The international study referred above (footnote 30) is particularly revealing. Sir Otto Kahn-Freund rightly tells us that 'If one's environment never changes ... one tends to assume that an institution, a practice, a tradition is inevitable and universal, whilst in fact it may be the outcome of the specific social, historical or geographical conditions of the country in which one ... lives'.[28]

The third aspect concerns the excitement and enrichment of seeing new worlds opening up. Comparative study, one observer rightly tells us, 'is like escaping from prison into the open air'.[29] '(L)ike the itinerant craftsmen of old' the scholar is treated to 'some spiritual Wanderjahre.'[30]

Ronald Dore has this to tell us:[31]

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26. *Comparisons in Labor Law: Sweden and the United States*, Svensk Juristtidning, 1983, p 615. Also published in 7 Industrial Relations Law Journal 1985. It must be added, however, that Summers most definitely does not belong to those whose 'imagination is limited and whose mind shrinks from being bold'. See also Summers in *op. cit.* note 5, p 1062.

27. Quoted from Schregle, J, *Überlegungen zur internationalen Vergleichung im Arbeitsrecht*, In Memoriam Sir Otto Kahn-Freund (Beck'sche Verlagsbuchhandlung, München, 1980), p 675.

28. Labour Relations. Heritage and Adjustment (Oxford University Press, 1979), p 2. See also, e.g., Summers, *op. cit.* note 5, p 1072.

29. Lawson, F H, *Comparative Law, Selected Essays*, Volume I (Amsterdam, 1977), p 73.

30. *Op. cit.* previous note, p 68.

31. Dore, *op. cit.* note 13, pp 4, 6 and 7.

> 'All learning - all science - proceeds by comparison. There is no better way of learning how societies in general work than being studying, and living, in a country very different from one's own, observing the differences, asking why, watching one's own reactions, learning to look a little wide-eyed at things that one has always taken for granted. There is danger, too, in learning from comparisons. One can easily end up with over-emphasised contrasts, with all-or-nothing national stereotypes. Comparisons, if they are done properly, take you from the black and white world of either/or to the greyer ambiguities of more or less.'

To summarise:

> 'All things considered, there are only two kinds of men in the world - those who stay at home and those who do not. The second are the more interesting.'[32]

4.2 On Causes and Effects

Above I argued that the intellectually most interesting and challenging aspect of IR-research is concerned with asking *Why*-questions. Two illustrations were offered, union membership rates and the degree of centralisation of union organisation. In both these respects it was argued that it seems reasonable to believe that answers to the *Why*-questions can be found in other systems in the society studied. However, the further question as to what is cause and what is effect arises. Is the IR-system perhaps the prime mover? Are centralised union structures a reflection of centralised structures elsewhere in society or is it the opposite? It is the chicken and the egg question, to which I would answer:

Firstly. The IR-system as we know it is of recent origin. It emerged as a result of industrialisation. There certainly was a system for labour and management regulation before industrialisation but when we talk about IR-systems today we think about something that emerged as a result of industrialisation. This system is partly rooted in pre-industrial systems but is to a great extent a creation of industrialism. As such it is a young system, much younger than most other subsystems. This would mean that the IR-system primarily is a debtor, not a creditor.

Secondly. The most interesting aspect when answering the *Why*-questions is not to establish paternity but to find building material for answers and to understand. From that perspective paternity is important but not decisive.

Thirdly. There is every reason to believe that similar features in different subsystems in society play a double role, helping both to foster and to preserve the same features in other subsystems. A centralised bargaining system in the labour market may have emerged together with a centralised system for ownership of industry in an environment where political power traditionally has been centralised. Once this has happened these structures will support each

32. Rudyard Kipling, quoted from Donald Richie, *The Honorable Visitors* (Tuttle, 1994), p 88.

other. It does not matter too much from this perspective which system is the prime motivator and mover.

4.3 On the Risky Business of Comparative Research

The first and most elementary risk is that the scholar simply gets the facts incorrectly. This risk is much smaller today than even in the recent past thanks to the existence of comprehensive international encyclopaedias. Another risk is that the scholar in his or her search for relevant and appropriate scholarly material from the country under study does not find the best sources. The quality of scholarship varies enormously and the comparativist who hits upon the less reliable sources can easily be lead astray or at least confused. Everyone familiar with American scholarship in the industrial relations field knows that an enormous number of articles on virtually any subject of importance exists. Only a few of these really count, however, and can safely be relied upon.

A third risk is much more sensitive, yet also elusive. 'The bane of 'comparative' law is the spurious attempt to compare the incomparable; and labour law suffers more than most at the international level from this vice'.[33] Phenomena and institutions may carry the same name yet be radically different in various respects. One obvious example is that of *labour courts*. Many countries have an institution with that designation. This is by far no guarantee that it is meaningful to compare them. The Swedish Labour Court, for example, is a court of law, confined to traditional legal interpretative work, whereas the Irish Labour Court is a mediation body. Designations do not matter, functions do.

A fourth risk raises even more difficult obstacles. Here we are concerned with the meaning of words. The fallacy is to believe that the same word carries the same meaning in different countries. The meaning of words is conditioned by their social and cultural context only. Words have no intrinsic meaning. There is no such thing as a meaning *per se* of words. The context of words differs from country to country and so do their meaning to the people in different countries. To exemplify let me point at the word(s) *trade union* (or *labour union*). The associations that this word gives in various countries differ considerably. Figure 2 offers alternative meanings. Table 2 demonstrates that the word *trade union* (and its equivalents in other languages) gives rise to radically different associations among people in Japan, the Nordic countries and the USA. Without considering these linguistic and associative aspects the scholar engaged in comparative research risks misunderstanding basic aspects, perhaps *the* most basic aspects.[34]

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33. Lord Wedderburn, *Discrimination in the Right to Organise and the Right to Be a Non-Unionist*. Schmidt, editor, Discrimination in Employment (Almqvist & Wiksell International, Sweden, 1978), p 459.

34. Cf. Bamber & Lansbury, *op. cit.* note 4, p 5, and Schregle, *op. cit.* note 1, p 26. I have discussed such linguistic aspects and their implications in a book in Swedish on American industrial relations; Fahlbeck, R, *Industrial Relations i USA. Ett porträtt av 'the Land of the Free'* (Acta Societatis Juridicae Lundensis, no 102, 1988, ISBN 91-544-2021-0), p 223 and 226 *et seq.*

A fifth risk-factor must also be mentioned. Anyone who gets immersed in comparative research faces the risk of losing intimate feeling for and contact with his or her country of origin. The risk is real enough. However, only a scholar with an intimate understanding of at least one system can properly appreciate the intricacies of another. Germany scholar Bernhard Grossfeld sounds the alarm in the following way, and quite appropriately so in my opinion, when talking about the comparative scholar: 'He rates as an expert in foreign law when he is at home and as an expert in German law when he is abroad'.[35] In other words there is the risk that the comparativist ends up knowing not very much about anything!

In the final run the most daunting challenge when conducting comparative research is to understand an alien reality. The risk one faces here is to misunderstand an alien reality, to fail to properly appreciate a reality based on other values and thus proceeding from other points of departure. Those who suffer from one of the many varieties of the '*ism*-disease' are most afflicted but no one remains unaffected.

4.4 Is Meaningful Comparative Industrial Relations Research Feasible?

According to the German professor emeritus and retired ILO-expert Johannes Schregle:

> 'In the final analysis, industrial relations can be understood and explained only as an offshoot of all the characteristic features of a given society - economic and legal, political and cultural, rational and irrational. Therefore, anybody who attempts to understand the industrial relations system of another country needs to acquire a knowledge and understanding of all the above characteristics of that country. The famous 'Book of Tea', published at the beginning of this century, in which Kakuzo Okakura explains Japanese values and patterns of behaviour to the Western world, naturally does not explain present-day Japanese labour relations but the book is nevertheless a must for anyone attempting to understand industrial relations in Japan. Goethe, of course, does not describe or analyse German labour relations, but without a knowledge of Goethe's writing a non-German cannot expect to fully grasp what is behind 'co-determination''. [36]

Well now, what is this? Will you not be able to grasp German *Mitbestimmung* without understanding Goethe? Will you not be able to grasp Japanese industrial relations without understanding the art of preparing and serving tea? Does not the German professor here impose requirements that are unrealistic and unreasonable? Does he not indeed impose conditions that serve no purposeful meaning?

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35. Grossfeld, B, *The Strength and Weakness of Comparative Law* (Clarendon Press, 1990), p 4. The German version says: 'Der oder jener Kollege werde bei uns als Kenner des ausländischen, im Ausland als Kenner des deutschen Rechts geschätzt'. *Macht und Ohnmacht der Rechtsvergleichung* (Tübingen, 1984), p 19.

36. Schregle, *op. cit.* note 1, p 28.

No, he does not. At the same time such requirements submit the industrial relations comparativist to nearly insurmountable obstacles. Some ten years ago I ventured this opinion (though I have still to live up to it):

> 'An industrial relations comparativist must ... be a polyhistor of sorts! Without a sound understanding of the political power structure of the society under examination the industrial relations comparativist is more likely than not to go astray. Furthermore, since economic domination of men by other men appears to be ubiquitous regardless of political system, familiarity with the religious and moral values of the societies under scrutiny - their spiritual history and status, as it were - seems to be of paramount importance.' [37]

In other words: it is difficult to conduct comparative research on industrial relations since one seems to be expected to understand the foreign country studied in all respects. However, difficulties differ according to the level of abstraction chosen. Detailed rules are often astonishingly similar in different countries so studying them is completely different from studying at the overall level. I usually conceptualise a three-level approach: the grass-root level, the tree-top level and the eagle's level, i.e., low, medium and high level of abstraction. Meaning the same, I sometimes alternatively refer to the surface level, the rose-root level and the deep subsoil water level. Research is as justified at all three levels but methods are results are radically different.

At grass-root level traditional methods can be used, e.g., in the legal field the well-known dogmatic method. The area studied is limited. It is possible to understand and survey it, subject to 'only' the first risk mentioned above. There is little or no need for knowledge or understanding about political, cultural or other characteristics of the country studied. At tree top/rose-root level a more analytical approach is necessary. The size of the area studied increases. Contours tend to become less detailed. The object of the study must be seen in its environment. There is no need for extensive surveys since the area studied is relatively limited after all. Knowledge about surrounding areas becomes more important but can be obtained without too much trouble. At the eagle/subsoil water level the perspective is widened, sometimes covering vast areas, perhaps an entire labour market. The task is to map and analyse this area, this system, and its components from an overriding perspective. Much like the ecologist, the industrial relations scholar here looks for structures and balances within an eco-system.

It is at this overriding level that the daunting difficulties present themselves. It is when engaged in this kind of study that the scholar needs to be familiar with Goethe if Germany is studied or the 'Way of the Tea' when Japan is examined. At the same time, it is at this level that the dangers are the greatest. The ambitions are high and so are the stakes. Pretentious and pointless generalities lure.

Indeed, daunting difficulties arise even if the task is the inverted and seemingly more modest one of presenting one's own national system to a

37. Fahlbeck, R, *East is East and West is West? The Swedish Model for Industrial Relations* (Acta Societatis Juridicae Lundensis, no 73, 1984, ISBN 91-544-1701-5), p 35.

foreign readership. Tadashi Hanami has written an analytical introduction to industrial relations in his own country, Japan. It proved less than easy. 'The second problem which caught my attention while writing this book is one which is more elusive and at the same time more fundamental to comparative studies in general. I began to appreciate more and more the overwhelming difficulty of comparative studies and the reasons why the researcher is often driven to desperation and tempted to give up altogether'.[38]

Some ten years ago I was engaged in an overriding project on labour and industrial relations law in the USA. The book finally produced fails to live up to my dreams. However, at the time when I was in the midst of the project I harboured the following feelings:

> 'The field of comparative studies in labour law and industrial relations is rich in pleasures and pitfalls, nature being very bountiful in both respects. Challenges are as numerous as dandelions in June. Once in an inaugural lecture a newly appointed professor described the hardships and uncertainties connected with writing a dissertation in his particular discipline. Jokingly - but with some poorly subdued seriousness as well - he answered by stating: 'Don't do it!' the hypothetical question of an equally hypothetical student as to whether he (the professor) would recommend him (the student) to start writing a dissertation. Is such a piece of advice called for with a student venturing into comparative law? On balance, I most affirmatively say No. Rewards are more delicious here than elsewhere, making the toil and trouble worthwhile. But it takes quite a person to do it! Stubbornness, endurance and curiosity are needed in considerable measure. So are humility and sensitivity'.[39]

Today? No change of opinion, only less assertiveness and more humility.

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38. Hanami, *op. cit.* note 19, p 15.

39. Fahlbeck, *op. cit.* note 37, p 34 *et seq.*