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# Book Review

# Book Review

## JAPAN'S RESHAPING OF AMERICAN LABOR LAW. By William B. Gould. MIT Press 1984.

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Professor William Gould of Stanford Law School has provided timely and important clarifications of many popular misconceptions and stereotypes regarding Japanese labor relations. In *Japan's Reshaping of American Labor Law*,[1] Professor Gould conducts a valuable, informed comparative study of the evolution of Japanese labor law and of the current state of labor relations in Japan and the United States. Already a leading labor law scholar,[2] Professor Gould developed this book as the result of repeated visits as a law professor at leading Japanese law schools in the mid-seventies. Professor Gould unmasks the many myths surrounding labor relations in both nations, emphasizing the major distinctions and similarities between the two systems. His ultimate objective is to enhance labor relations understanding and practice by drawing upon the respective strengths of both countries.

Although it is a comparative study rather than a comprehensive presentation of Japanese labor law,[3] the book first provides an incisive synopsis of Japan's social and legal culture. Informed apprecia-

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1. W. GOULD, JAPAN'S RESHAPING OF AMERICAN LABOR LAW (1984). *See also* Gould, *Labor Law in Japan and the United States: A Comparative Perspective*, 6 INDUS. REL. L.J. 1 (1984).

2. Earlier books by Professor Gould are: BLACK WORKERS IN WHITE UNIONS: JOB DISCRIMINATION IN THE UNITED STATES (1977) and A PRIMER ON AMERICAN LABOR LAW (1982). His earlier articles include: *Black Power in the Unions: The Impact Upon Collective Bargaining Relationships*, 79 YALE L.J. 46 (1969); *Labor Arbitration of Grievances Involving Racial Discrimination*, 118 U. PA. L. REV. 40 (1969); *Long Deep Drive to Collective Bargaining: Of Players, Owners, Brawls, and Strikes*, 31 CASE W. RES. L. REV. 685 (1981); *Multinational Corporations and Multinational Unions: Myths, Reality and the Law*, 10 INT'L LAW. 655 (1976); *On Labor Injunctions Pending Arbitration: Recasting* Buffalo Forge, 30 STAN. L. REV. 533 (1978); *On Labor Injunctions, Unions, and the Judges: The* Boys Markets *Case*, 1970 SUP. CT. REV. 215; *The Question of Union Activity on Company Property*, 18 VAND. L. REV. 73 (1964); *Racial Equality in Jobs and Unions, Collective Bargaining, and the Burger Court*, 68 MICH. L. REV. 237 (1969); *Taft-Hartley Comes to Great Britain: Observations on the Industrial Relations Act of 1971*, 81 YALE L.J. 1421 (1972).

3. "[T]his is a book that attempts to use the law to explain and compare industrial

tion of Japanese labor relations must begin with an understanding of Japan's general legal culture and the social values that underlie that culture.

Contrary to popular notions, Japan is a litigious society, and its legal system suffers from administrative delays. "In some respects, the Japanese legal system seems almost 'Dickensish,' with its protracted delays that spawn litigation covering decades—a deficiency which is enormous even by American standards."[4] This situation is strikingly similar to the delays afflicting complex litigation in American courts. There are, however, obvious differences in the two legal systems. The United States, with twice the population of Japan, has forty times as many lawyers.[5] This disproportionality in the number of attorneys, however, is only symptomatic and not a cause of fundamental differences between the two systems. Japanese mores manifest themselves in a less adversarial and more cooperative legal system; "this reflects Japan's preference for a society in which law is subordinate to human considerations."[6]

Professor Gould initiates his comparative analysis with an historical and conceptual overview of Japan's modern labor law. Ironically, given the current cries that we must emulate it, Japanese labor law was derived largely from the American legal reform model of the New Deal. It developed during the postwar military occupation under the supervision of General Douglas MacArthur. But the Japanese attitude toward the role of law has directly influenced the development of Japanese labor relations law and practice; "the Japanese unions do not have the same deep-rooted distrust of the judiciary that has long characterized their American and British brethren."[7] The Japanese judiciary is far more likely to become directly involved in mediation and conciliation of disputes. While this is not universally welcomed in Japan, the courts and the government are much more intimately and pervasively involved in labor relations than are such institutions in the United States. In part, judicial intervention is engendered by the relative scarcity of lawyers in Japan.[8]

The nonadversarial nature of the socio-legal culture in Japan

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relations systems rather than to provide a detailed analysis of Japanese law as such . . . ." W. GOULD, *supra* note 1, at xiv.

4. *Id.* at xv.

5. Japan has 15,000 lawyers; there are more than 500,000 lawyers in the United States. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at xvi.

contributes significantly to a markedly more cooperative labor relations environment than exists here. Contrary to the stereotype, however, Japan is not a labor relations utopia. Older employees in Japan are susceptible to direct employer pressure to terminate employment[9] and are without the express statutory protections against age discrimination in employment that exist in the United States.[10] The occurrence of age and sex discrimination "are only some of the more obvious manifestations of the 'trouble in paradise' " in Japan's labor relations.[11] "A 'work ethic' is still dominant, yet boredom and discontent are voiced by some workers."[12] This situation is compounded by Japan's history of occasionally quite serious labor violence.[13] The general spirit of flexibility and nonadversarial labor relations in Japan should not be mistakenly equated with labor passivity and utter acquiescence, for "the cases make clear that the Japanese can be more rambunctious than it frequently appears from afar."[14]

After this overview, Professor Gould examines respective labor organization, administrative processes, unfair practices, and remedies, devoting special attention to the importance of job security. He highlights some remarkable similarities between Japan and the United States in public sector labor relations.[15] He then looks to

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9. "[T]he shift [in Japan] is toward simply denying wage increases to workers who are beyond their mid-40s." *Id.* at 104.

10. *See generally* Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 (1983). In addition to the federal law, most states have analogous state statutes prohibiting age discrimination.

11. Professor Gould expressly states: "I have never been in a country where so many people complained about employment conditions and future job prospects as in Japan." W. GOULD, *supra* note 1, at 108.

12. *Id.* at xvii.

13. *Id.* at 124-26.

14. *Id.* at 151.

15. *Id.* at 152-61. Japan, following the United States' model, has uniformly barred public sector strike activity as illegal. Concomitantly, Japanese law provides for alternative methods, such as arbitration, to settle public sector disputes. Professor Gould summarizes:

> The American influence in Japan has clearly been more pervasive in the public sector than in the private. The United States and Japan are somewhat out of step with other industrialized countries in their insistence on a prohibition of the strike weapon for all employees in the public sector.
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> [O]ne problem is shared by both countries' public-sector labor movements: the taxpayers' revolt. This has reduced budgets and threatened job security in both nations, and the result has been a more beleaguered public-employee labor movement.

*Id.* at 160-61.

private sector labor relations to investigate the major structural distinction between the two countries: the distinction between craft and enterprise unions.

American unions historically have been organized by craft, an organization that bridges individual company boundaries. Large unions, such as the Teamsters and United Auto Workers Union, thus represent employees in thousands of companies. Japanese workers, in contrast, are organized primarily within their individual companies. Enterprise unionism has engendered more flexible labor relations in Japan; wage rates[16] and job transferability are much more malleable, and inter-union jurisdictional disputes are virtually nonexistent.[17] While company dominated unions are legally prohibited in both countries, "the Japanese do not draw negative inferences from the words 'company union'."[18] In the United States, company unions are usually met with disestablishment by the NLRB; there is, however, no comparable practical remedy in Japan.[19] Another key difference is that in Japan there are no rigid distinctions between the rank and file and first-level management.[20] Among top Japanese corporate management, former union leaders are well represented.[21] This pattern blurs the line between union and management.

Operating within the bounds of the individual enterprise, Japanese labor relations are much more insular. The Japanese enterprise unions lack the overt political coordination and objectives of large American craft unions that span entire industries and deal with many employers. Union political action committees to assist national political candidates are therefore thoroughly unfamiliar to the Japanese.[22] Accompanying this insularity is a pervasive paternalism. Paternalistic practices that permeate Japanese labor relations would be offensive to American labor and would constitute employer unfair labor practices in the United States under section 8(a)(2) of the NLRA.[23] Insularity and paternalism in Japanese labor relations

16. " '[C]oncession bargaining' is built into the bargaining system; wages can swing up or down as much as 30 percent a year." *Id.* at 7.

17. *Id.* at 3.

18. *Id.* at 83.

19. *Id.* at 84. "[T]he prevailing view is that such an order would be ineffective and impracticable inasmuch as the existence of the union is a matter to be decided by the union itself." *Id.*

20. *Id.* at 4-5.

21. *Id.*

22. *Id.* at 8-9.

23. Section 8(a)(2) of the National Labor Relations Act, 29 U.S.C. § 158(a) (1983), provides in pertinent part: "It shall be an unfair labor practice for an employer—. . .

have, however, been conducive to job security there. Japanese workers are much less likely to be laid off during economic downturns, since worksharing, reduced hours, and pay reductions are used as alternatives to enable retention of employees during periods of economic adversity.

The Japanese corporate willingness to avoid layoffs undoubtedly has been strengthened by Japanese judicial doctrine that imposes a just cause requirement on management. The limitation on the Japanese employer's ability to terminate employees extends to protect nonunionized employees. Employee status in Japan is thus not at all similar to that in the United States, where only a minority of jurisdictions have eroded the traditional "employment at will" doctrine.[24] Since Japanese employees have relatively greater job security than Americans, the Japanese rank and file tends to be more compliant than the rank and file here. In fact, Japanese workers occasionally urge the union leadership to accept very modest labor contracts.[25]

Strikes in Japan, although not uncommon, are generally of short duration,[26] and Japanese auto companies have been virtually strike-free.[27] Another difference in labor relations is that arbitration to resolve disputes is resorted to rarely; it is regarded as inherently adversarial and thus inimical to the fundamental tenets of Japanese

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(2) to dominate or interfere with the formation or administration of any labor organization or to contribute financial or other support of it." Some of the important scholarly commentary regarding § 8(a)(2) include: Note, *Collective Bargaining as an Industrial System: An Argument Against Judicial Revision of Section 8(a)(2) of the National Labor Relations Act*, 96 HARV. L. REV. 1664 (1983); Note, *New Standards For Domination and Support Under Section 8(a)(2)*, 82 YALE L.J. 510 (1973); Note, *Worker Ownership and Section 8(a)(2) of the National Labor Relations Act*, 91 YALE L.J. 615 (1982).

24. W. GOULD, *supra* note 1, at 106-13.

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> The rank and file are likely to be tugging at the sleeves of the union leaders in Tokyo, advising them that they (the leaders), who are far away from the economic problems of individual firms, should exercise more restraint. Japanese workers, being company-oriented as their unions are, are more concerned about the real prospect of job losses if the union becomes too strident or undisciplined. That most certainly is a lesson of the 1978 negotiations in which Japanese workers in the private sector . . . knowingly accepted an actual reduction in their standard of living.

*Id.* at 15.

26. Strikes are generally perceived as less effective in Japan "because of the organizational framework of unions. Being organized along enterprise lines, unions are unable to exert control over labor beyond the enterprise, and thus management finds it easier to employ strikebreakers." *Id.* at 143.

27. *Id.* at 13.

labor relations.[28]

Differences in labor practices are deeply rooted in the sociology of the countries. The law likewise underlies some differences. Although modern Japanese labor relations rest on statutes enacted during the American occupation[29] and are based on analogous American statutes, there are constitutional provisions affecting labor relations that have no American counterpart.[30] Moreover, despite the shared roots, there are now significant differences in the statutory schemes of the two countries. For example, Japanese employers may more readily refuse to bargain, if they have "fair and appropriate reason,"[31] than may their American counterparts, who are constrained by section 8(a)(5) of the NLRA. On the other side, Japanese labor law contains no provisions proscribing unfair union labor practices.[32]

Professor Gould discusses a number of other legal differences beween the two systems and then devotes several chapters to comparing administrative procedures and remedies in labor law. Japan's Labor Relations Commissions (LRC) are the rough counterparts to the National Labor Relations Board. The NLRB's caseload is, however, over thirty times as great as that of the LRCs, a burden that seems to increase inexorably. In Japan, there is no equivalent of the labor preemption doctrine;[33] unfair labor practice

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28. *Id.* at 12. "In the last several years, only 4 out of 110 cases have gone to mediation, and none to arbitration." *Id.* at 44.

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> 'Until 1946, Japanese labor law did not exist at all in any meaningful sense. . . . Within 20 months of the beginning of Japan's occupation, more than 5 million men and women have been enrolled as members in 17,000 unions whose formation have [sic] been encouraged, and where protection have been assured, by the occupying forces.'

*Id.* at 23 (citation omitted).

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> Article 28 [of the Japanese Constitution] states that "the right of workers to organize and to bargain and act collectively is guaranteed." . . . Article 27 states: "All people shall have the right and the obligation to work. Standards for wages, hours, rest and other working conditions shall be fixed by law. Children shall not be exploited."

*Id.* at 30-31 (citations omitted).

31. *Id.* at 38-39, 117-20. In contrast, section 8(a)(5) of the National Labor Relations Act, 29 U.S.C. § 158(a) (1983), provides, in pertinent part: "It shall be an unfair labor practice for an employer—. . . (5) to refuse to bargain collectively with the representatives of his employees . . . ."

32. In the United States, the National Labor Relations Act (Wagner Act) of 1935, ch. 372, 49 Stat. 452 (1935), provided only for employer unfair labor practices. The 1947 Amendments to the NLRA, ch. 120, 61 Stat. 140 (1947), via the Labor Management Relations Act (Taft-Hartley Act), proscribed union unfair labor practices.

33. The labor preemption doctrine is grounded in the classic case, San Diego Bldg.

litigation can thus be initiated directly in the courts. This direct litigation alternative, one that is largely unavailable in the United States, partially accounts for the substantially lower LRC case load. This lower case load and the more cooperative nature of Japanese labor relations enable the LRCs to work directly on settlement possibilities with management and labor.[34] If one of the parties proves recalcitrant and is deliberately impeding settlement, the LRC can often step into the negotiation breach and act as a quasi-surrogate for the obstructionist party.[35] Despite these comparative administrative advantages, the Japanese system is becoming more litigious, with many more labor disputes recently being taken directly to the courts.[36] The volume of cases being filed with the LRCs is also increasing. The result is that the cumulative process is perhaps even more seriously backlogged than that in the United States.[37]

The remedies delivered by the two systems also differ. While the NLRB issues broad orders, those of the LRCs are specifically tailored to address the immediate issue in dispute.[38] The Japanese are far less likely to mandate the posting of notices or public apologies as remedies for unfair practices, nor is contempt a sanction for noncompliance.[39] These adversarial-based remedies and sanctions are inherently antithetical to the Japanese system.

Another striking difference related to remedies, one that flows from the cooperative context of Japanese labor relations, is the Japanese willingness to comply with LRC interim relief pending appeal. Japanese employers are likely to comply with interlocutory injunctive relief and will even pay LRC-ordered damages while appealing the LRC decision to the courts. "This contrasts substantially with the American situation, where such provisions of NLRB orders as reinstatement and back pay are rarely provided while an appeal is pending."[40]

Professor Gould's assessment of the difference in remedies in

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Trades Council v. Garmon, 359 U.S. 236 (1959). Labor activity arguably prohibited or protected by the NLRA, 29 U.S.C. §§ 157, 158 (1983), is within the exclusive jurisdiction of the NLRB. Unfortunately, the doctrine has been significantly eroded during the past quarter century. However, the Board still generally has exclusive jurisdiction over labor activity clearly within the scope of NLRA provisions and courts cannot have concurrent jurisdiction.

34. W. GOULD, *supra* note 1, at 53-55.
35. *Id.* at 57.
36. *Id.* at 61.
37. *Id.* at 58, 71.
38. *Id.* at 66.
39. *Id.* at 67-68.
40. *Id.* at 87.

the two countries pointedly indicts many of the remedial provisions of American labor law. He posits that NLRB equitable relief of reinstatement and back pay is often grossly inadequate, and advocates many of the measures that would have been provided by the Labor Reform Bill of 1977.[41] Professor Gould argues that compensatory and punitive damages are often warranted, but are unavailable under current law. Additionally, he asserts that, in American decisions, back remedies are often substantially offset by interim earnings.[42] The Labor Reform Bill would have improved available remedies. Under this legislation, employees, for example, could have been awarded double damages or double back pay for employer unfair labor practices in organizational campaigns. Damages in lieu of wages could have been assessed, if the employer thwarted collective bargaining by refusing to negotiate a contract with a new union. And Board orders would have been made virtually self-enforcing. Beyond arguing that these measures would correct obvious deficiences in our system, Professor Gould forcefully maintains that there are many other palpable inadequacies that must be addressed by labor law reform in the United States.[43]

American equitable remedies are broad, but often both insufficient and inefficient. Since it is impossible to remake American labor law by restructuring American sociology, the more immediate and attainable objective should be statutory labor law reform, to provide more meaningful remedies and protections. Since voluntary employer cooperation is unlikely absent statutory compulsion, legal changes are the key to improved labor relations in the United States. As Professor Gould cogently summarizes:

> The theme that cuts through the two countries' treatment of the remedy problem is that the American approach seems insufficiently attuned to the no-fault characteristics of industrial relations. The Japanese approach . . . is strong evidence of concern and care for a relationship that is designed to be lasting and harmonious.
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> What is in order for the United States is a better blend of

41. H.R. 8410, 95th Cong., 1st Sess. (1977). The bill was passed by the House in October, 1977, but was sabotoged by the procedural maneuvers of its opponents in the Senate. The bill "did not receive consideration on its merits before the Senate because of the inability of its supporters to obtain cloture against a filibuster." W. GOULD, *supra* note 1, at 77.

42. *Id.* at 75-81.

43. "If anything, the major deficiency with the Labor Reform Bill is that its remedies may not be effective enough." *Id.* at 77.

> effective remedies, firmly in support of the public policy promoting self-organization, with a sensitivity toward formulating particularized orders that take account of the labor-management relationship.[44]

Professor Gould moves from examining particular practices to a broader discussion of labor relations. He utilizes a chapter regarding the Japanese emphasis on job security to illustrate how American labor is still perceived as a dehumanized commodity by many corporate employers and how the system legitimates that view. This corporate view has, according to Professor Gould, been reinforced by the Supreme Court, in decisions that, for example, free employers from the prior duty to bargain with unions over such core decisions as whether to partially terminate business operations.[45] Thus, American employees can be summarily terminated en masse without any prior discussion with the union. Professor Gould argues that judicial endorsement of this phenomenon has sabotaged meaningful bargaining. Lack of legal restraints over management allows sophisticated employers to implement corporate policies that fundamentally and adversely affect vital employee interests.[46] This bleak prognosis is exemplified by the judicial endorsement of labor contract rejection in bankruptcy in the period since Professor Gould's book appeared. On February 22, 1984, the Supreme Court ruled that the debtor in possession, in the process of business reorganization under the Bankruptcy Code,[47] could abrogate unilaterally a collective bargaining agreement without first bargaining with the union and without securing prior bankruptcy court approval.[48] Fortunately, Congress responded by passing remedial legislation[49] to prohibit the most egregiously offensive elements of *NLRB v. Bildisco*.[50] Although this immediate threat to labor has been con-

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44. *Id.* at 92-93.

45. *See, e.g.*, First Nat'l Maintenance Corp. v. NLRB, 452 U.S. 666 (1981).

46. W. GOULD, *supra* note 1, at 102.

47. Current version at 11 U.S.C. §§ 101-151, 302 (1984).

48. NLRB v. Bildisco & Bildisco, 104 S. Ct. 1188 (1984). For comprehensive analysis of the *Bildisco* decision as the illegitimate but fully predictable progeny of the *First National Maintenance* opinion in 1981, see Gregory, *Labor Contract Rejection in Bankruptcy: The Supreme Court's Attack on Labor*, 25 B.C.L. REV. 539 (1984).

49. The Bankruptcy Amendments and Federal Judgeship Act of 1984 was passed by Congress on June 29, 1984, after four months of intensive lobbying by organized labor. This period was also marked by heated disagreement between the House and the Senate. Passage of the compromise bill was finally engineered by joint conferees and signed by the President on July 10, 1984. For a discussion of these changes see Gregory, *Legal Developments Since* NLRB v. Bildisco*: Partial Resolution of Problems Surrounding Labor Contract Rejection in Bankruptcy*, 62 U. DENVER L. REV. (forthcoming 1985).

50. 104 S. Ct. 1188 (1984).

tained, the structural imbalance persists in labor relations.[51] Professor Gould states that "real problem solving is avoided by employers who view the firm simply as their own property and characterize its internal affairs as none of the concern of the union and the workers. Such antediluvian thinking hardly comports with what should constitute corporate responsibility to workers and the public."[52]

Professor Gould argues that one first step to counter this situation would be to follow the Japanese practice and initiate greater voluntary sharing of information with the union, and, in turn, to foster employer willingness to bargain with the union over fundamental decisions.[53] As a *quid pro quo*, unions would be more likely to make responsible contract concessions to financially imperiled employers.[54] But unless and until American labor relations adopt the Japanese emphasis on cooperation and open, shared information and decision making, collective bargaining in the United States will remain crippled. In the absence of comprehensive case law or statutory reform, however, tentative, incremental steps by proactive unions and enlightened employees toward more informed labor relations are the best hope for the future.

American labor law was the source for modern Japanese labor law, born only after World War II and under the aegis of the American military occupation. Despite its largely derivative statutory framework, Japanese labor relations has thoroughly independent underpinnings in Japanese social and legal culture. Although based on an American model, Japanese labor relations pursued a different course. It is futile and foolish for American corporations to attempt facile, wholesale adoption of Japanese labor relations techniques.[55] Japanese labor methodologies will simply not fit wholesale onto the American experience, and Japanese paternalism would only exacerbate the adversarial tensions in the American system. American labor law should, however, follow the pattern established by the Japanese in their postwar economic development—studying foreign

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51. The notorious *First National Maintenance* and *Bildisco* decisions, have, in turn, spawned significant developments in the case law of the National Labor Relations Board. Many of the decisions of the Reagan NLRB during 1984 have reversed established lines of case law and Board precedent. For a comprehensive critical analysis of these recent NLRB decisions, see Gregory & Mak, *Significant Decisions of the NLRB, 1984: The Reagan Board's "Celebration" of the 50th Anniversary of the National Labor Relations Act*, 18 CONN. L. REV. (forthcoming 1985).

52. W. GOULD, *supra* note 1, at 102.

53. *Id.* at 103.

54. *Id.*

55. "It is, therefore, obvious that the United States cannot emulate or transfer Japanese practices and institutions." *Id.* at 162.

technologies and institutions, and modifying them for local use.[56]

American labor law and labor relations is not about to abandon the adversarial model overnight, but developing labor-management cooperation, while simultaneously avoiding paternalism, should be the goal. Professor Gould maintains that unions can play a key role in this process. Concomitantly, Congress must unencumber the NLRB adminstrative process, following the model of Japan's LRCs. By beginning to conciliate and mediate between the parties, the NLRB could substantially mitigate adversarial tensions and hostile attitudes. Ultimately, the most destablizing decisions, such as *First National Maintenance*, must be overruled. Otherwise it will be very difficult to inspire real trust and cooperation between labor and management. As part of this labor law reform package, Professor Gould also argues that American courts should administer the *coup de grace* to the arcane employment at will doctrine. He maintains that statutory law and case law should follow the Japanese model and impose a just cause limitation on the employer's ability to discharge.[57]

Although stressing the problems in American labor law, Professor Gould's important comparative study also effectively debunks the popular myth that Japan has achieved labor relations utopia. His analysis shows that Japan certainly has its share of labor difficulties, and that Japan can also learn from American labor relations. Professor Gould avoids a futile attempt to strike a perfect balance between the relative merits of Japanese and American labor relations, but maintains that we now probably have more to learn from the Japanese than they from us. By carefully refining and adapting the strengths of the Japanese system, we can avoid its pitfalls.

Professor Gould makes an unabashed plea for the merits of comprehensive labor law reform legislation, building on the model of the unsuccessful 1977 proposed legislation. He remains true to his labor union roots.[58] While his viewpoint is decidedly left of center, he avoids the sweeping diatribes against liberal labor law that characterize the work of radical leftist labor scholars.[59] His

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56. *Id.*

57. As Professor Gould expressly notes, Professor Summers is the principal academic architect advocating universal statutory just cause limitations on the employer's ability to discharge. *See generally* Summers, *Individual Protection Against Unjust Dismissal: Time For A Statute*, 62 VA. L. REV. 481 (1976); Summers, *The Rights of Individual Workers*, 52 FORDHAM L. REV. 1082 (1984).

58. Early in his career, Professor Gould was Assistant General Counsel to the United Auto Workers Union.

59. The book most commonly identified with critical labor scholarship is J. ATLESON,

work presents an incisive liberal critique of the many serious weaknesses of labor relations law in the United States, but this is not a wholesale, indiscriminate indictment. Professor Gould's position is that the underlying labor relations law structure remains sound, but the original statutory mechanisms have become increasingly inadequate.[60] Judicial attitudes, too closely aligned with the interests of management and owners, have gravely distorted the labor-management equilibrium. The answer is not wholesale abandonment, but, rather, thoughtful reform of our statutory and case law and, ultimately, of the attitudes of labor and management.

Professor Gould has not attempted to solve definitively all of the problems in contemporary labor relations law and practice of both countries. Instead, he offers an important agenda for future careful study. There are some weakensses in the work, especially if one regards the author's pro-labor, liberal stance as a weakness. There is also one key analytical omission. Professor Gould never directly pursues examination of the stereotype of Japan's lower labor costs. At the outset of the study, he simply refers to "the undying myth of 'cheap labor' as the cause of Japan's success"[61] without addressing how or whether wage structure affects the functioning of the Japanese system.

Another deficiency is that, although Professor Gould suggests what should be done to move from an adversarial to a more cooperative system, he does not fully explain how the dangers of paternalism can be avoided. Moreover, the book does not fully explain why management should voluntarily renounce its current domination of labor, a domination that has been thoroughly endorsed by case law. While the book offers some intriguing rationales for employer initiatives to restore labor-management parity, it does not sufficiently deal with the very complex process of attitudinal change. Professor Gould admits that we seem destined to be bound by the adversarial model for the foreseeable future. The paradox is that fundamental attitudinal evolution to the cooperative, nonadversarial model seems imperative and yet almost impossible.

There has been very little comparative labor law scholarship fo-

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VALUES AND ASSUMPTIONS IN AMERICAN LABOR LAW (1983). *See* Gregory, Book Review, 62 TEX. L. REV. 389 (1983); *see also* S. ARONOWITZ, WORKING CLASS HERO: A NEW STRATEGY FOR LABOR (1983); Gregory, Book Review, 37 VAND. L. REV. 1269 (1984). The premier critical labor scholar from the radical left is Professor Karl Klare. *See generally* Klare, *supra* p. 731.

60. *See generally*, Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769 (1983).

61. W. GOULD, *supra* note 1, at xiv.

cusing on the United States and Japan. Professor Gould has made a major worthwhile contribution to the regrettably scarce literature. The book's many accomplishments significantly outweigh its shortcomings. Professor Gould shatters much of the naivete with which Americans have previously viewed Japanese labor relations, by exposing the weaknesses and examining the strengths of both systems. His work shows that carefully refined adoptions of the Japanese system, rather than wholesale adoption, is the key to positive development in American labor law. In this age of inextricably interwoven world markets, *Japan's Reshaping of American Labor Law* is a powerful blow against the isolationism, protectionism, and provincialism that has too often afflicted both the United States and Japan. Professor Gould offers a thoughtful agenda for future action.