"Where would you like to work and why?"

Legal ecology enterprise models for comparative study

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“Where would you like to work and why?”

Legal ecology enterprise models for comparative study

A Working Paper for the Department of Intercultural Communications and Management (IKL)

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Preface

This Working Paper for the Department of Intercultural Communications and Management (IKL) of Copenhagen Business School is being filed to record a path that combines educational concerns related to the European Undergraduate – Research Oriented Participatory Educational model of Copenhagen Business School with comparative industrial relations research stream concerned with labor law and contemporary enterprise ecology studies of employee participation in management prerogative.

As with the other Working Paper I am filing this year, I wish to note, with gratitude, the involvement of Maribel Blasco as one of the Department's "Educational Irregulars". She generously offered her time as an internal reader for this paper.

The paper was first composed in the fall of 2007. It was submitted to, and accepted at, the Management Education Division, for the 2008 Academy of Management Conference. Maribel attended the internal Asian Research Seminar presentation of this paper on 7 February 2008 as the IKL reader for later Working Paper submission. Her observations and suggestions were extremely helpful in planning for revisions of this paper for possible publication.

Abstract

The modern enterprise is everywhere recognized as an independent, enduring, legal person or entity. Yet, management education fails in fundamental aspects of its mission if the internal authority, information and resource prerogatives in the firm are presented as univocal - everywhere the same. A comparative legal ecology model, derived from industrial relations and taught in a Scandinavian business school, is introduced as a pedagogic tool to manifest these parameters, which structure the firm and come from a firm's national origins. Model parameters include employment security, labor unions and the degree of employee participation permitting (if any); a schematic is offered for the United States of America, Germany, Japan, Denmark, and the People's Republic of China - this last on a provisional basis. The models can account for the legal extent and nature of managerial prerogative, job security, and degree of information and resource transparency of any enterprise. The legal ecology of an enterprise can facilitate analysis of external firm behavior and performance domestically, in other national markets, or the international business environment. Understanding these legal ecology models serves as a complement and aid to study of the modern enterprise in reference to distinctions between national political economies. The employee participation parameter offers theoretical grounds for hypothesis testing of enterprise differences in orientation to short-term profits, emphasis on market share and other corporate strategies. The models appear to account for variance in the equitable distribution of enterprise gains – particularly the high executive compensation levels that persist almost exclusively in U.S. enterprises.

“Where would you like to work and why?”

Legal ecology enterprise models for comparative study

As educators in the related fields of management, economics, development, or corporate social responsibility (CSR), there are certain questions we should be able to ask about the nature of the modern enterprise. Of course, as instructors, we should also be able to help students gain understanding and insight into possible answers to these questions, which include:

- “What is an American (or other national) firm?”
- “How does this firm differ from a Japanese firm?”
- “Why do firms with different national origins function differently in different national settings no less than in transnational settings?”

And, of course, we should be able to help students to ask and frame possible answers to the most important employment question they will soon face as graduates: “What type of firm do you wish to work for – and why?”

Originally developed in the course of field work concerned with the existence and nature of Japan’s lifetime employment system, the comparative legal ecology model of the modern enterprise has been used in coursework at a Scandinavian business school, particularly its Asian Studies Program, to schematically depict critically important corporate parameters that define internal authority, information flow and resource prerogatives in the modern firm – and these in reference to the firm’s national industrial relations system of origin. As we shall see below, the parameters derive from explication of the “web of rules” governing employment relations in each national system, which is the object of study in the field of industrial relations (Dunlop, J. 1958;Kaufman, B. E. 2004).

The legal ecology schema sheds light on the internal legal make-up of a firm – its internal legal ecology or genetic structure. These parameters condition and influence firm behavior, to

differing degrees, both domestically as well as when a firm decides to move beyond its national borders. They should even impact enterprise function and performance in the international, transnational, and meta-national business environments (Doz, Y., Santos, J., & Williamson, P. 2001) Thus, the comparative legal ecology model of analysis can serve as a firm-specific tool that aids understanding of the modern firm in a manner consistent with and complementary to path dependent analyses of comparative political economies.

We begin with an explanation of the "web of rules (or 'working rules')" of employment relations." The "web of rules" is the object of interest – the dependent variable - in the field of industrial relations. We review aspects of this academic discipline essential for understanding the notion of firm-specific comparative legal ecology models. This section includes the rationale for our theoretical re-orienting of industrial relations – expressing the "web of rules" in terms of an ecological schematic that comparatively depicts distributions of authority, information access and flow, and resource access and control on a firm-specific basis. The rest of the paper proceeds as follows:

- Second, we will introduce the legal ecology model of the U.S. firm, because this is, in an important sense, chronologically and causally antecedent to the Japan case. It is also the easiest to understand.
- Third, we discuss the nature and function of Co-determination (die Mitbestimmung) and Works Councils (der Betriebsrat) as these are institutionalized in the German national industrial relations system and how they have been adapted in other national settings. This permits consideration of the legal ecology schema of the modern German enterprise.
- Fourth, we explore the working rules of the Japanese industrial relations system, focusing on the contributions made by the father of Japanese labor law: Suehiro Izutaro

(末弘巖太郎)[1]. This exploration allows explication of the legal ecology of the Japanese firm, which – we can and should note at the outset – is essentially based upon labor legislation that closely follows that of the American model. However, the ecology of the Japanese firm differs substantially its U.S. counterpart, because Japanese labor legislation was markedly transformed by legal interpretations, in case law and Central Labor Relations Commission recommendations, both firmly grounded in continental European approaches to labor law and practice.

- Fifth, having come to understand these three comparative models of the modern enterprise, we examine a small state model in the European Union – Denmark – and then move to a speculative discussion of the emerging legal ecology model of the Chinese firm.
- The paper concludes with a discussion of the implications of comparative legal ecology models. An important consideration will be the comparative use of these models to benchmark industrial democracy, and how the evidence clearly suggests progress in this democratic value does not come at the expense of industrial competitiveness. We will show how the Japan case exemplifies adaptive appropriation and consider the importance of functional equivalence in efforts to transform management practice from one ecological model to another. We will also suggest that the comparative legal ecology of the contemporary enterprise might serve as a benchmark for comparative industrial democracy measures and how these might relate to indicators of competitive success as the "civilizing process" of globalization continues.

As a contribution to the Management Education Division of the Academy of Management, this paper reports the use of comparative legal ecology models of the modern enterprise in

[1] Japanese names are given according to Japanese custom: surname followed by given name.

undergraduate level instruction. It was first taught in methods and content courses in an Asian Studies Program at a Scandinavian business school. More recently, these enterprise models have been used in a senior level undergraduate elective course titled, "Organizing International Business (OIB)". To remain firmly grounded in practical teaching plans and outcomes, the OIB learning objectives and course plan are presented in Appendix 1 and will be referred to when appropriate.[2]

2. Industrial Relations Method: Deriving the Legal Ecology Model of a Modern Enterprise

Industrial relations as a field of study holds the "web of rules governing employment relations" as its object of interest; in terms of research method, this "web of rules" is the dependent variable to be explained. These rules vary by nation, yielding national industrial relations systems. "Working rules" can also be analyzed at any number of other levels: industrial sector, region, even the shop floor or classroom.[3] Essentially, the web of rules comes into existence once the three primary actors in any industrial relations system find mutual assent to fundamental norms, allowing industrial chaos to yield to civil order. This is a first, basic, and essential step in what has been described as the "civilizing process" (Kristensen, P. H. 2005).

The three primary actors are employers (and their representatives), employees (and their representatives), and government (in its variety of representative functions). As a field, industrial relations arose from dissatisfaction with economics as a reliable and valid method. Thus, the field of industrial relations was, from the outset, interdisciplinary in scope. It draws upon an informed critique of economics, considered theoretically insufficient to adequately account for observed market functions and performance, as well as history, politics, sociology, studies of political economy, also law (the regulation of consent and power in society). Historically, industrial relations

[2] This is the elective course title. Many references in this paper are also found in the "Organizing International Business" course plan (Appendix 1). The education institution and instructors have been rendered anonymous.

[3] When the "web of rules" is first introduced in class, a discussion of how such an analysis might apply to the classroom circumstance is as entertaining as it is useful. Who is the employer and who is the employee in a university classroom consisting of students and instructor? How is authority, information, and other variables mediated in such a setting?

research method has tended to favor ‘mid-level’ studies: field work involving cases, sectors, and organized labor issues. Too, there is a fundamental assumption that the elaboration of these working rules follows the expansion of markets.

Study of international business makes abundantly clear that product and labor markets have now expanded to a global, international scale. Despite obvious processes of internationalization and globalization, political economists find renewed significance in the study of distinctions in political economies at the national level (Morgan, G., Whitely, R., & Moen, E. 2006). Whitley wrote that nation-states vary by type and this variance is associated with business systems and firm characteristics (Whitely, R. 2005b). He identified four ‘ideal’ state types, possible national examples of each are given in parentheses:

- Arm’s length (U.S.A.)
- Dominant developmental (Singapore)
- Business Corporatist (Japan)
- Inclusive Corporatist (Germany)

Within each ideal type, Whitley also offered characterizations of employment relations along the following parameters (p. 205):

Associated business system and firm characteristics / Employment relations	Arm’s length	Dominant developmental	Business corporatist	Inclusive corporatist
Authority sharing with skilled staff	Varies between sectors and firm types	Generally limited	Some in larger firms	Considerable in most firms
Long-term employer/employee commitments	Low	Some for managerial staff, limited otherwise	Considerable in larger firms, limited elsewhere	Considerable in most firms

Whitley notes that the nations approximating each of these ideal types may change over time. The Republic of Korea, for example, appears to have shifted from a dominant developmental model to something approaching a business corporatist state. In contrast, Germany and France may be shifting from inclusive corporatism to the more business corporatist type. However, recent news suggests such even fundamental presumptions about profit and wealth remain a much contested domain. French President Nicolas Sarkozy recently proposed a radical change corporate profit distributions in France. He said, "A system in which a third of the profits of a company would be for shareholders, a third for employees and a third for investment is a system ...that would have a certain coherence and logic" (2008)

Theorizing in respect to ideal types at the level of comparative political economies is an essential task in our contemporary world. It is also a task that leaves industrial relations specialists ever so slightly uneasy: ‘ideal types’ are never concrete instances – they succeed in eluding capture and measurement by social science methodology. More important, perhaps, is the lack of explanatory power according to state type for the comparative attributions made to firm specific differences: authority sharing and long-term employer/employee commitment. What causes these different relationships to come about? Are the long term employment commitments due to managerial altruism? Are they firm intrinsic or are there compelling externalities?

Thus, even with distinctive national systems of political economy, we remain outside the “black box” of that which constitutes the modern enterprise. While trans-national corporations have emerged and may yet be identified as being an “American” or ”German” firm, there is scant basis to explain what such distinctions mean, aside from historical attribution or the firm’s headquarters office address. Corporations are legal entities, endowed with the same rights that would be attributed to persons. Unlike individuals, corporations appear to have no specific, predictable demise. Instead, the modern enterprise persists insofar as profit permits. Given stable and enduring

assent from each of the three partners in a national industrial relations system, a certain degree of stasis can be expected. Dunlop's 1958 systemization of the field, Industrial Relations Systems, reflects the time period.

Yet, by the 1980s, a transformation in American industrial relations changed the postwar status quo, resulting in an expansion of managerial prerogative (Kochan, T. A., Katz, H. C., & McKersie, R. B. 1984;Kochan, T. A., Katz, H. C., & McKersie, R. B. 1986). The emphasis on "strategic choice" recast the nature of the American enterprise both domestically and in reference to U.S. enterprise strategies abroad. Ironically, one of the factors cited that prompted this change in U.S. managerial prerogative, leading management to work "outside" the postwar norms of the American system's accepted web of rules, was the strong impact of Japanese management success in value added exports – the "hollowing out" of U.S. manufacturing infrastructure. Due to these developments, the interplay of power and information within the legal entity of a given American firm invites an ecological analysis.[4] And, as the specified parameters reside in labor law, this model is not an "ideal type". Corporations (referred to as 'enterprises' in this paper) are recognized in law as legal entities; they are persons without physical being in the biological sense. Yet, like any nominal entity, they take in resources, transform matter, produce goods and waste, and seek to endure over time. Firms occupy a niche; the study of the birth, persistence, and failure of firms within a specific niche is an academic field that is known as organizational ecology (Hannan, M. T. & Freeman, J. H. 1989).

The term "legal ecology" appears in the title of a 2005 research paper dedicated to the study of ecosystem functions and the law (Rohlf, Daniel J., Dobkin, David S. October 2005). Our current interest in the phrase – the legal ecology of the modern enterprise – concerns the internal dynamics

[4] To be clear, it was the Japan case that first prompted the legal ecology schematization. Yet, the 'strategic choice' literature was known to the primary author. Along with the analysis of the Japanese 'web of rules' at the firm level, the dynamic changes in the U.S. system was suggestive of the need for a schematic depiction of comparative managerial prerogative and its institutional constraints.

– or ‘balancing’ - of the employer <> employee relationship within an individual firm as these are conditioned by external legal norms. The internal dynamics can be specified in respect to employment rules governing authority/power, information, and control of resources. As we shall see, the U.S. model is relatively simple and straightforward.

2.a The legal ecology of the American enterprise

The U.S. legal ecology model is offered first because it is the easiest to comprehend. Since the New Deal labor legislation of the Roosevelt administration and – significantly – the legal interpretations of the National Labor Relations Commission, workers may unionize. Unions may negotiate over wages and working conditions. The nature of the U.S. employment contract is “at will”: employer and employee are presumed equal parties to contract. Functionally, employment ‘at will’ permits the U.S. employer to dismiss for a good reason, a bad reason, or no reason at all.

Having noted this managerial prerogative, it is important to note (and this is always stressed and discussed in class) that U.S. federal law prohibits discriminatory employment practices in respect to religion, race, political party affiliation, sex, and, most recently, age. In addition, state legislation may further restrict ‘at will’ managerial prerogatives. Collective bargaining agreements additionally constrain U.S. managerial prerogative; these are negotiated between legally recognized employee representatives and employer representatives and reflect negotiated determinations about wages and working conditions.

The legal ecology of the U.S. firm is given in Figure 1. The solid black lines between management and employees depict the assumed conflicting nature of the underlying employment relationship between employer and (organized) employees. Apart from issues of wages and working conditions, there are no formal, institutionalized mechanisms to negotiate or discuss

matters regarding authority, power, or detailed information and/or policy regarding the enterprise. Insofar as employees are granted additional rights or discretionary powers - stock options or other forms of "employee empowerment" - these are strictly at the discretion of the employer: hence, the downward arrow to the right.[5]

It is important to note that the schematic does not intend to negate the prevalence or role of work teams in U.S. employment settings. As we shall see, these simply lack the institutionalized stature recognized in employee representative groups in other national settings.[6]

Figure 1 about here.

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3. The Legal Ecology of the German Enterprise: Just Cause, Legislated Co-determination and Works Councils

The legal ecology of the German enterprise follows the U.S. model in respect to labor union negotiation rights about wages and working conditions, even as to the presumption of fundamental conflict in respect to the aims of both parties. In one domain of contrast, employment contracts in Germany can only be abrogated given just cause. It is not legal for an employer to dismiss an employee for no reason or a bad reason. In another contrast, as Figure 2 makes clear, the German model (and, we note, the European Union works council model since 1994) obliges, by legislation, works councils in firms beyond a certain size. Works councils can be defined as, "institutionalized bodies for representative communication between a single employer (management) and the

[5] Readers familiar with the U.S. model may experience frustration at 'pointing out the obvious'. It will become apparent in the next sections how the legal ecology of a firm in different national settings can profoundly transform the internal dynamics of modern enterprise.

[6] Work groups and/or teams established by employer prerogative, by lacking extrinsic institutional support, do not possess adequate grounds to address issues such as executive compensation.

employees (workforce) of a single plant or enterprise" (Rogers, J. & Streeck, W. 1995) In addition, at the top level of a firm's governing board, proportional representation by elected representatives of employees is also obligatory by legislation. Taken together, Works Council and Board membership participation in the life of a German enterprise are referred to as "Co-determination" (die Mitbestimmung). The German Co-determination schematic of Figure 2 depicts a degree of transparency and participation in authority, information and resource control by the dotted lines that separate management and the Works Council, in contrast to the solid lines separating the union and management functions.

Figure 2 about here.

Co-determination in Germany has a history that has been traced to the 1848 Frankfurt National Assembly (Jackson, G. 2001). It is due to this particular history that Germany is the present focus of our current comparative analysis; the Japanese postwar legal ecology development is, as we shall soon see, based on the German case.

Before we look in more detail at the works council feature of co-determination, we should note that the European Union has adopted participation as an integral policy. In 2005, the European Trade Union Confederation (ETUC) reported the following on its website:

> The claim that co-determination is an alien concept in Europe does not stand up to scrutiny…. Even though the German arrangements regarding worker participation are more extensive than in other European countries, Hoffmann points out that this is far from equivalent to saying that other European countries have widespread co-determination-free areas. In fact 18 of the 25 EU Member States have binding rules governing co-determination, and in many cases their arrangements provide for an extensive workforce presence on companies' supervisory boards. In the new Member States company bodies are taking their

lead from German law, and in Slovenia - by law - companies employing more than 1,000 staff have to guarantee the workforce 50% participation (ETUC 8 A.D.).[7]

This development both recalls, and strengthens, an observation by Wolfgang Streeck in a 1995 text. He wrote of the "largely forgotten" process of "the almost universal establishment of works councils after 1945 in otherwise very different national contexts, as a integral part of a worldwide recasting of the political economy of capitalism" (Streeck, W. 1995)p. 313).

It will be useful to elaborate on the possible range and role of works councils, precisely because of their varied manifestations in different national settings. Works councils, briefly:

1. "represent all the workers at a given workplace, irrespective of their status as union members",
2. "represent the workforce of a specific plant or enterprise, not an industrial sector or a territorial area",
3. "are not 'company unions'",
4. being representative institutions, "differ from management policies encouraging individual workers to express their views and ideas, as well as new forms of work organization introduced to increase the "involvement" of workers",
5. enable "representative communication between employers and their workforces," which "may be of all possible kinds and may originate from either side",
6. "may (the usual case) or may not have legal status",
7. "structures vary widely across and within countries", and
8. "are not the same as worker representation on company boards of directors" (Rogers, J. et al. 1995), pp. 6-9).

[7] "Hoffmann" is Deputy General Secretary Reiner Hoffmann, speaking at an IG Metall conference on worker paritcpation held in Dortmund on 17 November 2004.

Rogers and Streeck specified three "ideal types" of works councils. First, paternalistic councils are those formed by employers or government. These permit worker representation only to the extent that the independent expression of worker interest is constrained, by prior intent. In this respect, there is a political dimension to their establishment. Second, consultative councils are primarily for economic purposes, unlike the politically constrained end envisioned with the paternalist type. Consultative councils are mainly for communications between management and workers to enhance firm competitiveness and, possibly, implement rewards systems. These councils supplement the firm's functional organization. And, third, representative councils "are typically established through collective agreements or legislation giving the entire workforce of a plant or enterprise (again, unionized or not) some form of institutionalized voice in relation to management" (p. 10). In contrast to consultative councils, representative councils are "part of a firm's political system" (p. 11).

Given the background on the U.S. enterprise legal ecology, and informed of the nature and function of co-determination and works councils in the German enterprise, we are now ready to turn our attention to the Japan case. It was in Japan, shortly after the end of World War II, that works councils were adapted from their German origins to resolve a political crisis within a devastated Asian nation.

4. The Legal Ecology of the Japanese Enterprise: Suehiro Jurisprudence – "Just Cause" through Case Law and Management Councils in Collective Bargaining Agreements

The initial design notion for the comparative legal ecologies of Japanese, U.S., and German firms first arose from a study of the institutionalized practice of lifetime employment in Japan (Tackney, C. T. 1995). Izutaro Suehiro, a legal and labor law specialist, was instrumental in the establishment of three postwar industrial relations practices: study and systemization of the role of case law as a pattern and norm generating legal resource – beginning long before World War II, the

subsequent ‘just cause’ case law restrictions on managerial dismissal prerogative – initially appearing, ironically, in dismissal efforts by Occupation forces against redundant Japanese employees, and the localization of employee participation prerogative (modeled on German works councils) within the postwar Japanese collective bargaining agreement.

Suehiro’s various contributions to Japanese legal studies are recognized – it is known as “Suehiro jurisprudence” (末弘法学). This phrase is well-known to many Japanese legal scholars, if the precise content of the term remains rather amorphous and difficult to signify. For present purposes, it is only necessary to keep in mind that Suehiro’s contributions to Japanese labor law, reviewed above, stand upon distinct, and distinctively Continental European, interpretations of labor law legislation. Again, it is with considerable irony that the Japanese postwar labor laws were essentially identical to the New Deal legislation of the United States of America.

Following legal interpretations extant in continental Europe, Suehiro jurisprudence presumes that the labor contract is inherently unequal; the hired worker is comparatively disadvantaged in comparison to the hiring employer. Accordingly, corrective measures should be taken by the courts, with appropriate norms becoming ‘codified’ through case law outcomes. As a means to overcome extremely antagonistic confrontations between Japanese employers and unionized workers in the aftermath of World War II, Suehiro was also instrumental in the crafting of a July 1946 Central Labor Relations Commission guideline that advocated creation of “Management Councils” (経営協議会, Keiei kyogikai). These were explicitly modeled on German works councils, but uniquely based in firm-specific collective bargaining agreements.

Due to case law decisions enforcing just cause as restriction upon managerial dismissal prerogative and the single document issued in July, 1946 by the newly formed Central Labor Relations Commission, the Japanese firm’s legal ecology is radically different from that of its U.S.

counterpart. The differences in degree of the legal interpretations given essentially similar legislation – by the Japanese courts and the Central Labor Relations Commission – resulted in a difference in kind concerning the emergent post-war legal ecology of the Japanese firm.[8]

The Japanese legal ecology of the firm is given in Figure 3. Note the similarity to the U.S. and German models in regard to the presence of labor unions, their right to negotiate over wages and working conditions, and the solid line depicting a fundamental conflict of interest between union and management.[9] As Japan's management councils arise from collective bargaining agreements, there is an obvious transparency of form and function between the labor union and the management council; this is depicted by the dotted line between them. In turn, the relationship between the management council and the management staff is also variable – and varied; again, this is depicted by a dotted line.

Figure 3 about here.

While German law and European Union directives tend to specify a minimum number of employees in a firm before works council representative functions are mandated, the Japanese have no such restriction. Data from a 1999 survey indicate that 41.1% of all Japanese firms surveyed have some form of management council, while 58.2% do not. Yet, 84.8% of unionized firms report

[8] For a thorough examination of Suehiro's adaptive appropriation of Weimar era German jurisprudence, see (Kettler, D. & Tackney, C. T. 1997).

[9] For the most part, Japanese labor unions are organized on an enterprise basis. Neither craft nor industrial unions predominate in Japan. Thus, Toyota (automobiles) and Okuma (machine tools), both firms located in Aichi Prefecture, have distinct and separate labor unions. In practice, as the legal ecology model we are describing makes clear, firm-specific information flows concerning wages and working conditions between and among Japanese labor unions in respect to type, regional affiliation, and national federation, are extremely high. The long-term employment arrangements ensure that proprietary information remains within a specific firm.

management councils; and 77.9% of firms having 5,000 or more employees report the presence of such councils (Ministry of Labor Policy Secretariat Survey Section 1999).

5. The Legal Ecology of Danish and Chinese Enterprises

We can now look at two other national cases in our study of comparative legal ecologies of the modern enterprise: Denmark and the People's Republic of China. Both nations, for very different reasons, show recent transformation in the formal arrangements of the legal ecologies in each nation's corporate enterprises. For Denmark, it will be valuable to see how this nation's historical enterprise ecology – in respect to the parameters of employment security, managerial prerogative, and employee participation – is undergoing change due to EU membership. The PRC enterprise, in turn, will be of interest due to the emerging norms of this nation – especially in light of its communist legacy.

First, we will consider Denmark. As in the Japan and German cases, Danish employment that continues beyond a specified time, or after completion of a specified task, "most often means that the contract of employment has changed into a normal contract of employment concluded for an indefinite period of time…" (Hasselbalch, O. 2005). The dismissal decision prerogative, on the grounds of right to manage, resides with the Danish employer. However, this right "has been limited to no small degree during the last decades by statues and not least by collective agreements which prescribe that a dismissal should be for a fair reason (Ibid., p. 162).

Denmark has a history of establishing of cooperative committees between employer and organized employees dating from 1936 (Ibid.). The most recently revised agreement was concluded in 1986, between peak employer and employee representative organizations – and the form of the cooperative committees that exist are similar for both public and private sectors.

In contrast, Denmark labor law does not have a works councils system. EU membership obliges Danish participation in EU directives, including the 22 May 1996 implementation of the EC Directive on European Works Councils. The Directive addresses "Community-scale" undertakings, which require that the undertaking:

1. "employs at least 1,000 employees in EU member states and EEA countries (excluding the United Kingdom); and
2. has establishments in at least two of the countries referred to in (1); and
3. employs at least 150 employees in each of at (l)east two of the countries referred to in (1)" (Ibid., p. 225).

Thus, on the one hand, the European Works Councils Directive, "marks a break in the UK and Denmark, from the national traditions of modelling the relations between employers and employee representatives solely on the basis of agreements concluded with trade unions (Knudsen and Bruun 1998:135)" (Stoop, S. 2004). On the other hand, the EU norms do not apply "where a collective agreement or other agreements contains obligations and rights which at least match the provisions of Directive 94/45" (Ibid. 224). Thus, the Danish enterprise legal ecology can be depicted as shown in Figure 4. In the Danish case, a change to EU works councils would mean – in practice – that committees formerly composed of both management and employee representatives would have to be reconstituted as strictly employee representative bodies; this is a shift from agreement-based policy to that of formal law. By 1998, there were six multinationals that had established European Works Councils in Denmark (Pedersini, R. 1998). Data from the European Trade Union Institute for Research, Health, and Education and Safety Research Department indicates that as of January 15, 2008, Denmark has 63 companies headquartered in Denmark and

covered by the EWC Directive. Of these, 26 have already established an EU works councils, while 37 have not. The compliance rate to date is, then, 41%. [10]

Figure 4 about here.

The People's Republic of China offers yet another interesting case for study of a firm-specific legal ecology that derives from a national political economy. In the instance, Chinese firms exist in an increasingly profit-driven market, while laden with a Chinese Communist centralized production legacy in a political environment where the Chinese Communist Party retains hegemony.

After decades of communist rule and directed reforms of state-owned enterprises, which resulted in massive loss of jobs, there have recently been substantial reforms in Chinese corporate governance and labor laws. The China Company Law was revised in 1993, and again in October 2005. This last reform came into effect on January 1, 2006. A new labor law came into force quite recently - January 1, 2008.

In general, there is sufficient evidence to identify the parameters of the legal ecology of the Chinese enterprise – insofar as these laws indicate suggested norms. Tam, in 1999, wrote that China's Company Law "has made provisions…for employee participation in the corporate governance of SOEs through representation on the supervisory board… this formalized participation reflects a line of thinking among Chinese policy makers that suggests some acceptance and recognition of the role of employees in the development of corporate governance" (Tam, O. K. 1999). The 2006 reform continued the role of Supervisory Board for solely state-owned enterprises,

[10] The author would like to thank Romuald Jogodzinki of the ETUI-REHS for very timely provision of this data. See the website: www.teui-rehs.org/research for additional information.

with the board needing one-third employee representation. More recent evidence indicates that the new Chinese labor law obliges cause for termination of contract, thus the PRC has taken a path on dismissals similar to that of Europe.[11] Accordingly, the legal ecology of the PRC firm is provisionally given in Figure 5.

Figure 5 about here.

Discussion

The comparative models of the legal ecology of the modern enterprise were initially developed to depict, in a simple schematic, the salient differences in labor law that substantially condition the character of Japanese, U.S., and German modern enterprises. This step was taken to account for the development of the lifetime employment system in Japan – and to do so in a manner that facilitates comparison and contrast according to standard social science method (Tackney, C. T. 2000;Tackney, C. T. 2001).

The author has reported on the use of these research findings to structure an undergraduate senior elective course titled, "Organizing International Business." Functionally, the comparative legal ecology enterprise models were introduced to complement a required course text on comparative political economy (Morgan, G. et al. 2006). The course was taught at a Scandinavian business school. Approximately one-third of the students attending this course were exchange students.

[11] That is, a bad reason or no reason would not constitute a reasonable cause for contract termination. See the blogsite: http://www.chinalawblog.com/2007/11/chinas_new_labor_law_its_a_hug.html . This site contains links to the text of the new labor law.

The comparative legal ecology models proved useful as a way to present to students the very different dynamics that exist in firms, arising from the legal frameworks found in their nation of origin. This suggests it is possible to effectively characterize firms not only according to economic theories: suppression of price mechanism or market failures, to mention but two approaches (Coase, R. 1937;Williamson, O. 1971).[12] The comparative models offer an interesting way to explore enterprise differences, based on national origins, and then examine their differing behavioral propensities when a firm expands to other national settings as well as in the international business environment. For undergraduate students, this appears to be a novel and successful way to introduce a range of complex notions important for industrial relations and comparative labor law. In classes with a large number of exchange students from various nations, a homework assignment with subsequent discussion of students' national enterprise legal ecology models offers a chance to explore national histories, path dependent developments, and future challenges.

There are a number of caveats to note in connection with the models proposed. First, these models have analytic merit on a general national level; firms that do not follow these norms certainly may be found. Put simply, it certainly remains possible for a U.S. firm to function in a manner resembling its Japanese and/or German counterparts: avoidance of dismissals, coupled with solicitation and reward for high levels of employee participation. Yet, even given such exceptional cases, the significance of these models are clear - 'just cause' or an employee participation approach to employment relations within a given U.S. firm must arise from strong dispositions for these practices within the specific management team and these must be sustained over a long period of time to be perceived as an enterprise norm.

Instead, the legal ecology conditions can be seen as functionally equivalent benchmarks for the successful adaptation of Japanese management practices to the U.S. (or potentially other)

[12] For further analysis of 'coodinated capitalism' at the level of comparative political economy, see (Streeck, W. & Yamamura, K. 2001;Yamamura, K. & Streeck, W. 2003).

national settings. This is because compelling external obligations upon management simply do not exist within the United States industrial relations system.

Second, these are analytical models; they do not attempt to capture the unethical or illegal behavioral propensities of managers (or employees) in any of the nations or firms studied. Third, the German enterprise ecology limits the upward potential of employee participation by carefully defined legislation. In contrast, the Japan case, by basing participation issues within collective bargaining agreements, shares no similar theoretical restriction on the potential for employee participation in the life of the enterprise.

Perhaps the most important observation to be made concerns the singularity of the U.S. legal ecology model. There was a period in the first Clinton administration when experimentation with Works Councils was formally discussed, even encouraged, by the then chair of the National Labor Relations Board (NLRB) and, subsequently, in Presidential Commission known as The Dunlop Commission on the Future of Worker-Management Relations (Dunlop Commission 1994;Gould IV, W. B. 1984;Gould IV, W. B. 1993).[13] The arrival of the Bush administration put an abrupt end to any momentum for even small scale experimentation in employee participation with NLRB oversight. It is worth noting that this flexible approach is something Japan's then fledgling Central Labor Relations Commission quickly and completely sanctioned in 1946, some five decades earlier.

As explicit and comparative indicators of industrial democracy in the workplace, the legal ecology models document that the U.S. variant lags far behind both German (now EU) and Japanese counterparts. The proxy measures for industrial democracy, to be clear, are 'just cause' dismissal constraint on managerial prerogative and employee participation opportunities, whether legislated Works Councils and Board Co-determination (in the German case), the outcome of cooperative agreements between peak employer-employee associations (in Denmark), or the

[13] For a critique of the Dunlop Commission Final Report, see (Troy, L. 1995), who nevertheless noted the employee participation recommendations constituted the only "forward looking" items in the Report.

outcome of collective bargaining agreements (Japan). If equity in profit distribution is also a measure of industrial democracy, then it would seem obvious that the extreme levels of executive compensation in U.S. firms, compared to executives in the E.U. or Japan (for example), are the causal outcome of the absence of employee participation in the information, power, and resource distributions in the contemporary U.S. enterprise.

Supporting the notion of American exceptionalism, recent research suggests that long-term multinational enterprise success in the international business environment may increasingly due to the creation and sustenance of "idiosyncratic firm-specific capabilities that result from managers and skilled workers contributing to organizational problem-solving and growth over a considerable period of time" (Whitely, R. 2005a). In terms of international competitiveness, the remarkable postwar success of both German and Japanese employee participatory models, along with their continued competitive strength – particularly in value added manufacturing - makes it difficult to sustain claims that future economic and competitive success in the U.S. case necessarily depends upon the exceptional degree of managerial prerogative that has persisted to this day. Indeed, any assertion that this exceptional level of American managerial prerogative is necessary to ensure U.S. competitive prowess in global markets must, instead, now justify such claims. As one example, we may consider Japan's postwar success in the automobile manufacturing sector – Toyota in particular - in contrast to the decades-long decline in General Motors, Ford, and Chrysler. Each of the major Japanese automobile manufacturers has active – sometimes quite contentious - management councils participation arrangements that have long operated within the national legal framework of 'just cause' employee security.

As the legal ecology modeling effort began in the context of field work in Japanese industrial relations, a few specialized comments may be appropriate before closing. The enterprise legal ecology model is a way to characterize the Japanese firm – and Japanese management

practices – in a manner empirically grounded in the historical principles of Suehiro jurisprudence. As Japanese unions are enterprise-based unions (企業別組合, kigyobetsu kumiai), and as just-cause norms, along with employee participation, are focused upon the success of a specific enterprise, the legal ecology analysis of such an enterprise appears to form an appropriate unit for social science research.

Furthermore, Japan's industrial relations literature suffers from two enduring English / Japanese translation difficulties. First, the phrase, "industrial relations" is understood in the English language to comprise three actors that constitute a system: employers, employees, and the government. In Japanese, industrial relations is translated as 労使関係 (roshi kankei). The first Chinese character represents 'labor'. The second character stands for use of capital. The last two characters are 'relations'. The function of government, more specifically the role of law, is conspicuously absent from the term. All too often, it also appears to have been completely overlooked in the research literature. Second, the object of industrial relations studies, the "web of rules governing employment relations," simply does not translate well from English to Japanese. In contrast, the legal ecology of the Japanese enterprise offers parameters of analysis that are properly comparative and well-suited to social science research.

As Kristensen observed, "capitalism may be seen as a truly formidable social innovation." (2005, p. 392). Yet, this innovation, "was institutionalized in highly different ways in different countries, each with its particular composition of former status groups and relations and balances…" (p. 393). The Japan case demonstrates extremely successful efforts at adaptive appropriation of foreign norms that facilitated national reconstruction and the elaboration of Japanese cultural propensities into a new realm: that of the modern workplace.[14] As the 'civilizing process' continues,

[14] For details of the postwar adaptive appropriate process in Japan, see (Kettler, D. et al. 1997).

perhaps the role and function of employee job security and participation will become notable benchmarks in the ecological analysis of the modern enterprise.

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Whitely, R. 2005b. How National are Business Systems? In G. W. R. &. M. E. Morgan (Ed.), *Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization*: 190-231. Oxford: Oxford University Press.

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Yamamura, K. & Streeck, W. 2003. *The End of Diversity? Prospects for German and Japanese Capitalism*. Ithaca: Cornell University Press.

Figure 1: The Legal Ecology of the U.S. Enterprise

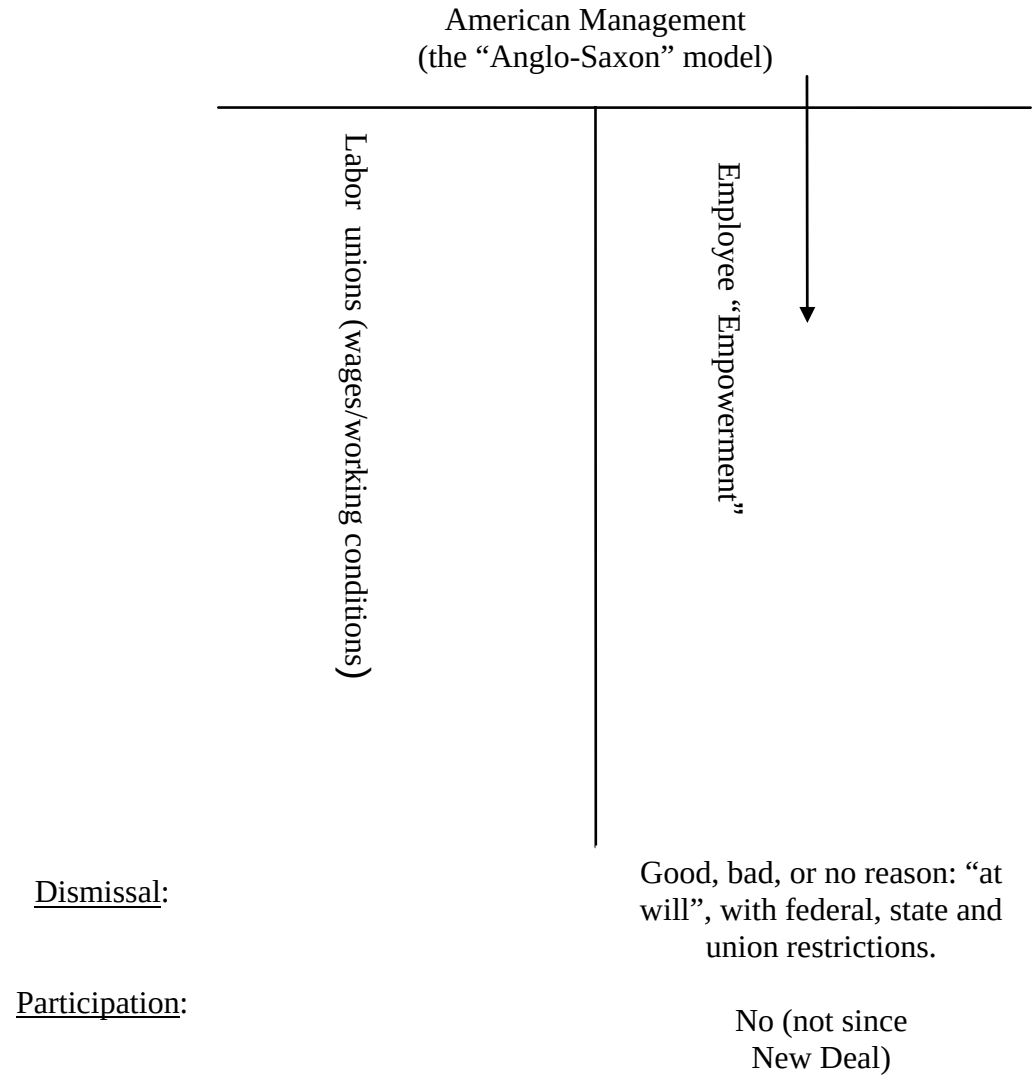
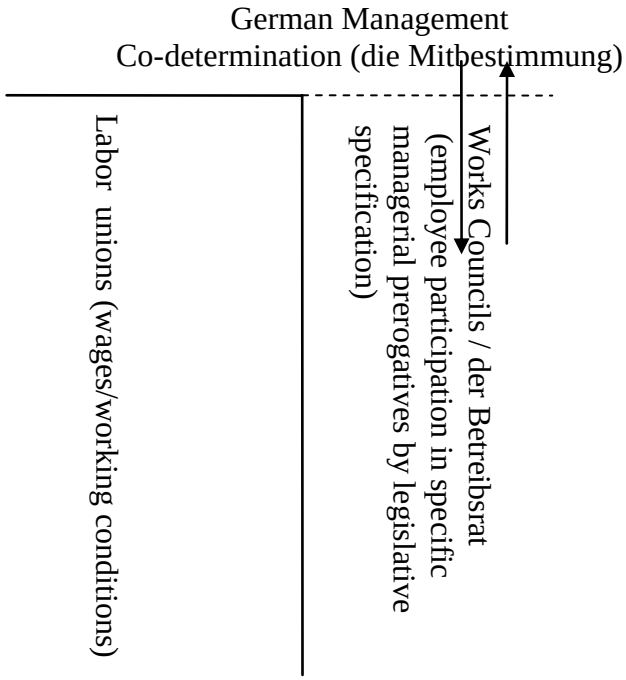
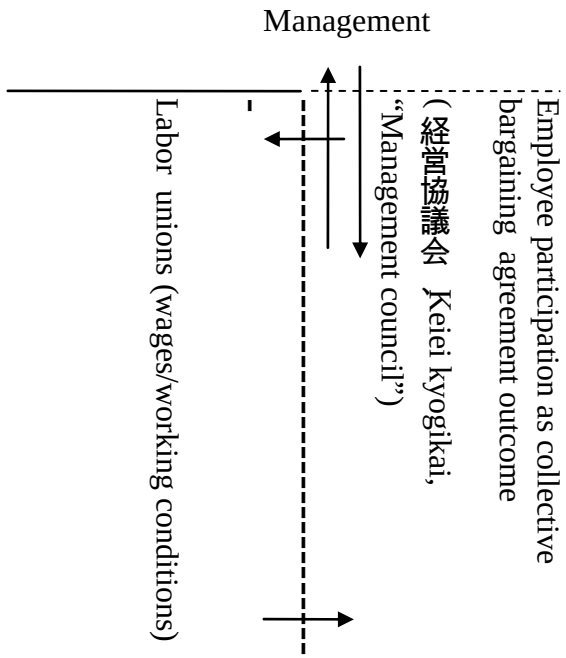


Figure 2: The Legal Ecology of the German Enterprise



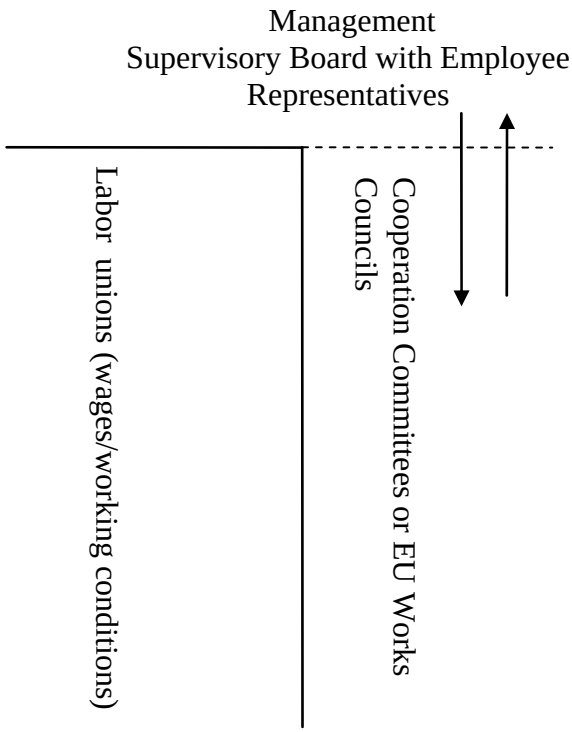
Dismissal:	Just cause (legislation)
Participation:	Yes (legislation)

Figure 3: The Legal Ecology of the Japanese Enterprise



Dismissal:	Just cause (case law)
Participation:	Yes (firm-specific collective bargaining outcomes): "Management Councils"

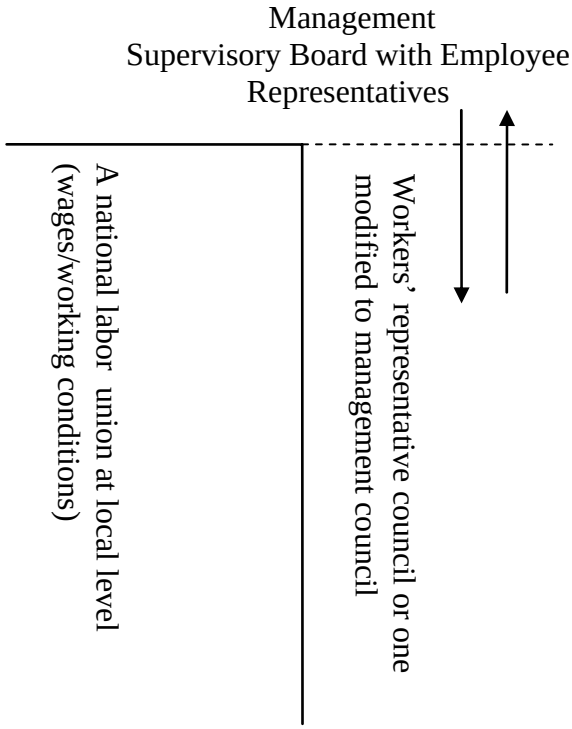
Figure 4: The Legal Ecology of the Danish Enterprise



Dismissal: Just cause (statute and collective bargaining)

Participation: Yes (cooperation committees or EU Works Councils)

Figure 5: The Legal Ecology of the Chinese Enterprise (a provisional assessment)



Dismissal: Just cause (according to the 2008 labor law)

Participation: Yes (Supervisory Board for SOEs, otherwise functionally indeterminate to date)

Appendix 1: Organizing International Business Course Plan

Business, Language, and Culture Year Three: Organizing International Business

Course content:

The course provides initial and essential background to international business: what it is, where the notion came from, and how the factors related to international business are changing modern business organization in light of globalization.

Through lecture, readings, class discussion, case work and other educational means, students will acquire knowledge of theories about international business and how these have evolved over time. Against this background we will explore the organization, structure, and communication implications that inhere within modern multinational corporations (MNCs). The next steps will be to examine internationalization strategies and issues of cross-border management, particularly concerning the management of innovation. Through the use of team case studies, students will be invited to actively apply and further refine the knowledge they have gained in the formulation of practical decisions aimed at achieving international business success.

Learning objectives:

At the end of the course students should be able to

a. describe the main historical themes of international management theory.
b. account for recent theoretical developments in the field, especially concerning the construct of “innovation” and its business management across international borders.
c. compare and contrast the theories in question and apply them on specific cases, drawing on lectures and discussions with managers active in the process of organizing international business.

Teaching methods

Class lectures and discussions will be related to a compendium and required text. Case study will, as stated above, offer opportunities for students to reflection upon and refine what they have learned through study - and this in team groups.

Examination

The oral-synopsis examination format will be used. The synopsis should be between 1 and 2 pages on a topic of the student’s choosing. It must be properly submitted to be admitted to the examination, which is individual and lasts 20 minutes. The synopsis itself is not evaluated as part of the oral examination grade.

Instructors:

Instuctor 1 (also Course Coordinator)

Instructor 2

Instructor 3

Instructor 4

Instructor 5

Required text: Morgan, G., Whitley, R., & Moen, E. (2006). Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization. Oxford: Oxford University Press.

Required Course Compendium: available in the bookstore.

Case exercises and case feedback: There are three Case exercises offered in the course. The first Case has preparatory material and is conducted completely in class; there is nothing to hand in to the instructor. Groups are randomly assigned for the Case. Subsequent case groupings are at will; groups should not exceed five students (accordingly to general principles for effective participation). The second and third Cases should be prepared in groups before the Case is held. For these two Cases, groups should submit a Microsoft Word (or other appropriate) file to the course Sitescape folder by midnight of the Case day of the course. The case analysis should not exceed three double-spaced pages. This will aid the instructor in Case analysis. Furthermore, each student group will have one opportunity for written feedback on their Case analysis. Please designate on the cover of the submission which Case submitted should receive such attention. NOTE: The procedures outlined in this paragraph are subject to change, based upon class size.

LESSON PLAN

Class 1: Course Overview and Comparative Legal Ecologies of the Firm/ Instructor 1

W36, 4 September 2007, Tuesday, 13:30 – 15:10, Room: TBA.

Morgan, G. (2005). Introduction: Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization. Chapter 1 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (Pp. 1-18). Oxford: Oxford University Press.

Tackney, Charles T. (2000). Changing Approaches to Employment Relations in Japan. Chapter 4 in G.J. Bamber, F. Park, C. Lee, P.K. Ross, and K. Broadbent (Eds.), Employment Relations in the Asia-Pacific (Pp. 64 – 79). London: Business Press.

Part I: The Internationalization Process

Class 2: The evolution of international business and internationalisation theories / Instructor 2

W37, 11 September 2007, Tuesday, 13:30 – 15:10, Room: TBA.

>Groups to be formalized for next week's Case exercise. The Case background and materials will be introduced and explained.

Deeg, R. (2005). Path Dependency, Institutional Complementarity, and Change in National Business Systems. Chapter 2 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 21-52). Oxford: Oxford University Press.

Griffin, R. and Pustay, M. (2005). Chapter 6, International Trade and Investment Theory. International Business - A Managerial Perspective. 4th edition. Prentice Hall, pp. 144- 175.

Dunning ,J. H. (2001). The Key Literature on IB Activities 1960-2000. In A.N. Rugman and T.L. Brewer (Eds.), The Oxford Handbook of International Business, pp. 36-68, Oxford: Oxford University Press.

Class 3: First Case: U.N. crisis intervention team practicum / Instructors 1 and 5

W38, 18 September 2007, Tuesday, 13:30 – 15:10, Room: TBA.

< Case materials are to be found on-line in the Course folder.>

Class 4: The internationalisation process and internationalisation modes: Export, Import, FDI, Joint-Ventures, Alliances, Mergers and Acquisitions / Instructor 2

W39, 25 September 2007, Tuesday, 13:30 – 15:10, Room: TBA.

Hancké, B, and M. Goyer (2005). Degrees of Freedom: Rethinking the Institutional Analysis of Economic Change. Chapter 3 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 53 – 77). Oxford: Oxford University Press.

Griffin, R. and Pustay, M. (2005). International Business - A Managerial Perspective. 4th edition. Prentice Hall. Chapter 12 & 13.

Björkman, I. & M. Forsgren (2000). Nordic International Business Research: A Review of its Development, International Studies of Management and Organization, Vol. 30, No. 1, pp. 6-25

Class 5: Second Case: Cochran S.A. / Instructor 1

W40, 2 October 2007, Tuesday, 13:30 – 15:10, Room: TBA.

Assignment: Read and solve the "Cochrane S.A." case at home. Hand in a maximum three pages summary of your solution in advance of the class.

Class 6: Internationalisation: How, why and where / Instructor 4

W41, 9 October 2007, Tuesday, 13:30 – 15:10, Room: TBA..

Whitley, R. (2005). How National are Business Systems? The Role of States and Complementary Institutions in Standardizing Systems of Economic Coordination and Control at the National Level. Chapter 8 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 191 - 231). Oxford: Oxford University Press.

Welch, L.S. & R.K. Luostarinen (1988). Internationalisation: Evolution of a Concept, Journal of General Management, 14(2): 34-55.

Whitelock, J (2002). Theories of Internationalisation and their Impact on Market Entry, International Marketing Review, 19(4): 342-347.

WEEK 42 No Classes

Part II: The Structure of International Business

Class 7: Guest Lecture 1: International Business Strategy and Cross-border Management / Program graduate

W43, 23 October 2007, Tuesday, 13:30 – 15:10, Room: TBA..

< Guest manager material to be available on-line in the Course folder.>

Class 8: International strategy and cross-border management / Instructor 3

W44, 30 October 2007, Tuesday, 13:30 – 15:10, Room: TBA.

Morgan, G., and S. Quack (2005). Internationalization and Capability Development in Professional Services Firms. Chapter 10 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 276 – 311). Oxford: Oxford University Press.

Bartlett, C. and Ghoshal, S. (1998), Managing Across Borders; The Transnational Solution. London: Random House, Chapters 1 (pp. 3-20) and 4 (pp. 65-81).

Rugman A. and Verbeke, A. (2003),'Strategies for Multinational Enterprises', Chapter 24 in David Faulkner and Andrew Campbell, The Oxford Handbook of Strategy. Volume II: Corporate Strategy, pp. 183-205.

WEEK 45 No Classes

Class 10: Organising and structuring the MNC / Instructor 1

W46, 13 November 2007, Tuesday, 13:30 – 15:10, Room: TBA.

Whitley, R. (2005). Developing Transnational Organizational Capabilities in Multinational Companies: Institutional Constraints on Authority Sharing and Careers in Six Types of MNC. Chapter 9 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 235 - 276). Oxford: Oxford University Press.

Hitt, M; Ireland, R. and Hoskisson, R. (2005) Ch. 11 in Strategic Management: Competitiveness and Globalization, Concepts and Cases. Thomson – South Western, Mason, Ohio.

Westney, E. (2003) Geography as a Design Variable. In Birkinshaw et al., The Future of the Multinational Company. Chicester: Wiley.

Class 9: International management of innovation / Instructor 3

W47, 19 November 2007, Monday, 14:25 – 16:05, TBA.

Moen, E. and K. Lilja (2005). Change in Coordinated Market Economies: The Case of Nokia and Finland. Chapter 12 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 352 - 379). Oxford: Oxford University Press.

Barlett, C., Ghoshal, S. Birkinshaw, J. (2003), 'Creating and Leveraging Knowledge: The Worldwide Learning Challenge', Chapter 5 in Christopher A. Barlett, Sumantra Ghoshal, and Julian Birkinshaw, Transnational Management: Text, Cases, and Readings in Cross-Border Management, 4th ed., Boston: McGraw-Hill, pp. 456-465.

Doz, Y, Santos, J. and Williamson, P. (2001), From Global to Metanational: How Companies Win in the Knowledge Economy, Chapters 1&2, pp. 1-52.

Class 11: Aesthetics in the Global Marketplace / Instructor 4

W47, 22 November 2007, Thursday 10:45 – 12:25, Room: TBA.

Kristensen, P.H. (2005). Modelling National Business Systems and the Civilizing Process. Chapter 13 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 383 - 414). Oxford: Oxford University Press.

Jenkins, R. (1992). Culture, Status and Distinction. Chapter 6 in Pierre Bourdieu (pp. 128-151). New York: Routledge.

Temporal, P. (2000).International Brand Acceptance in Asia. Chapter 9 in Branding in Asia. The Creation, Development, and Management of Asian Brands for the Global Market (pp. 225-243). New York: Wiley.

Temporal, P. (2000).International Brand Acceptance in Asia. Considerations for Asian Companies to Compete in the International and Global Markets. Chapter 10 in Branding in Asia. The Creation, Development, and Management of Asian Brands for the Global Market (pp. 245-249). New York: Wiley.

Considerations for Asian Companies to Compete in the International and Global Markets. Chapter 10 in 245-249

Boys Will Be Girls: Male Cosmetics and Beauty Mags Change Face of Youth (June 22, 1998). http://web-japan.org/trends98/honbun/ntj980619.html <This text will be available either through the Internet or copied to Sitescape.>.

Class 12: Third Case: PG in Japan / Instructor 1

W48, 27 November 2007, Tuesday, 13:30 – 15:10, Room: TBA.

Assignment: Read and solve the case "PG in Japan: The SK-II Globalization Project. Bartlett, Ghoshal, and Birkinshaw, pp. 466-484" at home. Hand in a maximum three pages summary of your solution in advance of the class.

Class 13: Organizing International Business Course Summation / Instructor 1

W49, 4 December 2007, Tuesday, 13:30 – 15:10, Room: TBA.

Herrigel, G. and V. Wittke (2005). Varieties of Vertical Disintegration: The Global Trend Toward Heterogeneous Supply Relations and the Reproduction of Difference in US and German Manufacturing. Chapter 11 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 312 - 351). Oxford: Oxford University Press.

Morgan, G. (2005). Institutional Complementarities, Path Dependency, and the Dynamics of Firms. Chapter 14 in G. Morgan, R. Whitley, and E. Moen (Eds.), Changing Capitalisms? Internationalization, Institutional Change, and Systems of Economic Organization (pp. 415 - 446). Oxford: Oxford University Press.