

Labor Relations and Industrial Adjustment in Japan and the United States: A Comparative Analysis

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There is a specter haunting America—the specter of industrial decline. Among the most controversial of the proposed responses to this problem is the development and implementation of a national industrial policy.¹ Unfortunately, the current industrial policy debate is misdirected. Frequently, for example, discussion focuses on the need for a national industrial policy to counteract an imagined conspiracy of Japanese competition.² The decline of American industrial fortunes, however, is internally generated—a direct result of the misguided and shortsighted policies of politicians and corporate executives.

This article attempts to provide a conceptual framework for the creation of an effective American industrial policy. Sections I and II outline the nature and scope of the difficulties facing American industry. The discussion then proceeds to consider the major actors in industrial rela-

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1. In general, the term industrial policy suggests a consistent, coordinated, and industry-specific government policy designed to facilitate a nation's industrial growth. Although advocates differ as to the details, an underlying core of ideas is identifiable. These include: the restructuring of managerial and labor practices, the targeting of government aid to selected industries, the retraining of unemployed or underemployed workers and the rebuilding of the nation's infrastructure. See, e.g., LAWRENCE & DYER, *RENEWING AMERICAN INDUSTRY* (1983); MAGAZINER & REICH, *THE DECLINE AND RISE OF THE AMERICAN ECONOMY* (1982); Kantrow, *The Political Realities of Industrial Policy*, HARV. BUS. REV., Sept.-Oct. 1983, at 76; Badaracco & Yoffie, *Industrial Policy: It Can't Happen Here*, HARV. BUS. REV., Nov.-Dec., 1983, at 96; Blumenthal, *Drafting a Democratic Industrial Plan*, N.Y. Times, Aug. 28, 1983, § 6 (Magazine), at 30.

Arguably, of course, all government expenditures and tax policies act as *de facto* industrial policies which have different, often contradictory, impacts on specific industries. The most prominent of these is the present military procurement system. Government spending on defense can be said to injure the economy in two basic ways: [A] the enormous deficits generated by military spending preempt scarce technological and financial resources. [B] cost-plus defense contracts with their inevitable attendant cost overruns, tend to lower the over-all quality of industrial production. See DE GRASSE, *MILITARY EXPANSION, ECONOMIC DECLINE: THE IMPACT OF MILITARY SPENDING ON U.S. ECONOMIC PERFORMANCE* (1983); FALLOWS, *NATIONAL DEFENSE* (1981); Noah, *The Pentagon Press: Prisoners of Respectability*, WASH. MONTHLY, Sept. 1983, at 41.

2. See Y. Tsurumi, *The Japanese Conspiracy: A New Hoax on the American Public*, PAC. BASIN Q., Winter-Spring 1984, at 3.

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tions and the role they play in contributing to industrial decline (Sections III and IV). Finally, sections V and VI suggest ways in which the current situation might be remedied.

I. *The Scope of the Problem*

A brief review of American responses to the recent global recession will illustrate how a nation operating without an industrial policy reacts to economic pressures.

When the Reagan administration took office in January of 1981 the official unemployment rate stood at 7.4 percent.³ The rate of inflation for 1980 was 13 percent.⁴ No one doubted that the United States could reduce double digit inflation by permitting or even encouraging drastic increases in the level of unemployment, especially at a time when declining oil prices were easing inflationary pressures.⁵ The rate of inflation has fallen, but we have paid a high price. As late as January of 1984 the real rate of unemployment, including discouraged and underemployment workers, was close to 13 percent.⁶ The recent decline in official unemployment rates, while welcome, must not be allowed to obscure the very real suffering of hundreds of thousands of American workers. Nor can temporary drops in the rate of unemployment obviate the need for structural economic reform. In retrospect it is clear that the Reagan administration made a conscious decision to bring about a decline in the rate of inflation by decreasing the demands on goods and services through a drastic increase in the ranks of the unemployed. If this unfortunate consequence of economic "recovery" is not to be repeated, leaders in business, labor, government, and academia must learn from the events of 1979-1983. During that period one firm after another reduced its labor force in order to maintain short term financial health.⁷ The effects of such actions upon the economy were devastating.⁸ The traditional response to difficult economic times of shifting costs to workers

3. MONTHLY LAB. REV., Mar. 1981, at 87.

4. See *Inflation Fighters*, ECONOMIST, Dec. 27, 1980, at 19. For a discussion of the political impact of this inflation, see WHITE, AMERICA IN SEARCH OF ITSELF, Ch. 5, *The Great Inflation* (1982).

5. See *Can OPEC Control Itself*, NEWSWEEK, June 9, 1980, at 70; *OPEC's Woes Are Good News for Consumers*, U.S. NEWS & WORLD REP., Feb. 25, 1980, at 78.

6. The official rate of unemployment is a conservative figure as it does not include discouraged and underemployed workers.

7. See Gay & Hedlund, *The Labor Market in Recession and Recovery*, 69 FEDERAL RESERVE BULL. 477 (1983).

8. See R. Reich, *Victory over Victorian Reagan*, N.Y. Times, Apr. 18, 1984, at A31, col. 1. ("Using unemployment to win a temporary victory over inflation brought us the worst recession in the postwar history. Getting tough on the economy has not dealt with the underlying causes of our long-term economic problems, such as many firms' continuing infatuation with short-term performance and industry's poisoned relations with labor.")

and suppliers has weakened severely the competitive posture and growth potential of the U.S. economy.⁹

The severe Japanese competition facing many American firms, both domestically and internationally, has revealed the vulnerabilities of an industrial system that has grown complacent and aloof—an industrial system whose physical plant has, in many cases, become obsolete, and whose reputation for inventiveness has justifiably waned.¹⁰ Japanese competition only aggravates the shortcomings of present-day corporate management systems, business-government relations and management-labor relations.

To add to the difficulties facing American business, fundamental changes in the world economic and political environment have occurred. Historically, the United States has functioned more or less independently of global economic factors. The growing interdependence of the international economy,¹¹ however, has made the American economy increasingly sensitive and vulnerable to shortages of technology, capital, trained manpower, managerial skills and natural resources.¹² The technological revolution continues, but without the United States in the vanguard. Moreover, this nation continues to face a volatile, and often hostile, international political environment. More importantly, the U.S. must reorient itself to the continuing shift in the economic center of the world from the North Atlantic to the Pacific Basin region, or risk losing its preeminent position in the international trade and investment system.¹³ Finally, American labor relations have become too inflexible, and too bureaucratic to cope with these changes in the political and economic environment.¹⁴ Fundamental readjustments in industrial

9. For a historical perspective see MONTGOMERY, *BEYOND EQUALITY: LABOR AND THE RADICAL REPUBLICANS, 1862-1872* (1967); GUTMAN, *WORK, CULTURE & SOCIETY IN INDUSTRIALIZING AMERICA*, (1976); P. FONER, *HISTORY OF THE LABOR MOVEMENT IN THE UNITED STATES: THE INDUSTRIAL WORKERS OF THE WORLD, 1905-1917* (1973). E. FONER, *FREE LABOR, FREE SOIL, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* (1970).

10. See generally R. REICH, *THE NEXT AMERICAN FRONTIER* (1983); PETERS & WATERMAN, *IN SEARCH OF EXCELLENCE: LESSONS FROM AMERICA'S BEST-RUN COMPANIES* (1982).

11. See O'Brien, *The Effects on Major International Grain Exporters of U.S. Trade Sanctions to the Soviet Union, 1980-1981* (unpublished manuscript on file with the *Yale Law & Policy Review*—a study of the interdependence of the international grain trading system). See generally Y. TSURUMI, *MULTINATIONAL MANAGEMENT* (1977).

12. See R. REICH, *supra* note 10, at 121; Hayes & Abernathy, *Managing Our Way to Economic Decline*, HARV. BUS. REV. July-Aug. 1980, at 67.

13. Y. Tsurumi, *The Future of American Trade*, N.Y. Times, Jan 1, 1984, § 3 at 2, col. 3.

14. See e.g., Peters, *A Neoliberal's Manifesto*, WASH. MONTHLY, May 1983, at 8. ("In industry, our adversarial system has been a major factor in making our corporations less efficient than their foreign competition.")

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structures will require corresponding readjustments in employment structures.

Nowhere is the inadequacy of American corporate management more apparent than in the paradox of increasing Japanese investment in America at a time of increasing American investment abroad.¹⁵ While many American manufacturers are fleeing to foreign countries in search of lower wages, their Japanese competitors are coming in droves to the United States. Japanese high-tech companies manufacturing semi-conductors, machine tools and industrial robots have established operations in the United States. Other Japanese firms have taken over unionized plants, abandoned by their former owners as hopelessly unprofitable, and turned them around.¹⁶ Recently, Toyota announced plans to build cars in a former General Motors plant in Fremont, California.¹⁷ Ironically, in the face of this evidence that manufacturing industries can still prosper in America despite relatively high labor costs, American business continues its overseas expansion.

II. *The Atari Syndrome*

The phenomenon of capital flight is typified by the experience of the Atari Corporation. Atari, a subsidiary of Warner Communications, is a manufacturer of home video games and computers. In the early 1980's the company generated enormous profits.¹⁸ In February of 1983, however, Atari suddenly fired nearly two thousand American workers and moved its production operations to Taiwan. The move was designed to improve the company's profit margin by reducing labor costs.¹⁹ Ironically, just one year after the move, Atari posted a five hundred million dollar loss.²⁰

Atari, of course, was not the first American company to abandon its domestic manufacturing operations. It was merely one of the most visible. Since the 1960's, at the first sign of intensifying competition, Ameri-

15. See B. BLUESTONE & B. HARRISON, *THE DEINDUSTRIALIZATION OF AMERICA; PLANT CLOSINGS, COMMUNITY ABANDONMENT, AND THE DISMANTLING OF BASIC INDUSTRY* (1982).

16. See e.g., Calonijs, *Factory Magic—In a Plant in Memphis, Japanese Firm Shows How to Attain Quality*, Wall St. J., Apr. 29, 1983, at 1, col. 6.

17. See, Koten, *GM, Toyota Unveil U.S. Small Car Plan; Signing of Tentative Pact Due Thursday*, Wall St. J., Feb. 15, 1983, at 3, col.2. (Production will begin in late 1984).

18. See Bernstein, *Atari and the Video-Game Explosion*, FORTUNE, July 27, 1981, at 40. Profits rose from \$1 million in 1973 to \$160 million in 1981.

19. See Wall St. J., Feb. 23, 1983, at 6, col. 2. ("An Atari spokesman said the move was necessary to cope with rising costs and competition: Wages and taxes were important factors in the decision: 1,700 non-union workers were affected by the move.")

20. See Wall St. J., Feb. 16, 1984, at 4, col. 2. In the first three months of 1983 the company lost \$536.4 million.

can manufacturers have fled abroad. In order to meet projected profits, many American executives all too readily abandon employees, managers, engineers and suppliers, salvage their equipment and move familiar, often obsolescent, production processes to lower wage countries. To preserve their six-figure annual compensations, many chief executives are prepared to discharge assembly line workers and technicians—adding to bulging unemployment rolls and straining an already swollen federal budget. An incoherent tax structure that, in effect, encourages overseas investment has aided American industry in its exodus.²¹ The Atari mentality allows managers to shortsightedly maximize next quarter profits at the cost of longterm financial health. Unfortunately, this approach is entirely consistent with the underlying preconceptions of the nature of sound business management shared by many corporate executives.

Many American businessmen operate from the fundamentally mistaken belief that a viable industrial organization can be managed in the same manner as a financial portfolio. Their Japanese competitors suffer from no such misconception. When confronted with similar market competition they invariably move to salvage their human resources while at the same time seeking technical, not legal or accounting, solutions to their difficulties. If they must cut personnel costs, they cut their own salaries first.²² Japanese executives strive to lower costs and improve product design and quality by building flexibility into their production systems through automation and worker retraining.²³

In theory the Japanese success is open to duplication by American executives.²⁴ Any duplication, however, will require closer coordination of such presently disparate functions as research and development, manufacturing, and marketing, as well as a restructuring of internal corporate relations so as to encourage a cooperative environment in lieu of current competitive and confrontational attitudes.²⁵

Unfortunately, many American executives have long ignored these basic managerial responsibilities. Corporate leadership has come to mean the power to pit one profit or cost center against another. These executives are quick to take credit for their firm's financial successes,

21. See R. REICH, *supra* note 10, at 240.

22. Boyer, *How Japan Manages Declining Industries*, FORTUNE, Jan. 10, 1983, at 58; Y. Tsurumi, *How to Handle the Next Chrysler*, FORTUNE, June 16, 1980, at 87.

23. See Y. Tsurumi, *Managing Consumer and Industrial Marketing Systems in Japan*, SLOAN MGMT. REV., Fall 1982, at 41.

24. See generally Y. Tsurumi, *Two Models of Corporation and International Transfer of Technology*, COLUM. J. WORLD BUS., Summer 1979, at 43.

25. See Y. TSURUMI, *THE JAPANESE ARE COMING: A MULTINATIONAL INTERACTION OF FIRMS AND POLICIES* (1976).

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and just as quick to blame others, especially foreigners, for their failures. Production managers are kept under constant pressure to lower production costs within their own limited areas. As a result, one firm after another has taken the Atari route.

Had the American market remained static the operators of offshore production facilities might not have been placed at a disadvantage relative to their Japanese competitors. But the maturing market for consumer durables and industrial products continues to reflect dynamic changes in the public's tastes and requirements. The American market often shows sudden surges of growth when product innovations are added to what had been considered standardized product lines.²⁶

Isolated from the American market, many of the manufacturing systems that had been transferred abroad in the sixties and seventies proved too inflexible to cope with the dynamic shifts in market demand. For example, when the demand for integrated circuit chips shifted from 16K RAM to 64K RAM American suppliers failed to respond quickly. The resulting market void was rapidly filled by Japanese competitors.²⁷ In addition many American offshore IC manufacturers, located in Hong Kong, Taiwan, Mexico, Korea and other low-wage, low-skilled labor countries, were plagued with quality-control problems. Trumped in the marketplace by their Japanese competitors, American manufacturers turned to the courts and government for protection. There are presently several bills pending before Congress designed to protect American industries from foreign competition.²⁸ The IC chip fiasco demonstrates concretely how an obsessive concern with short-term profit maximization will injure a nation's economy.²⁹

A national industrial policy should be designed to assist the United States in attaining three objectives:

1. distributing industrial adjustment costs equitably among various interest groups and regions;

26. 10 million color TV sets were sold in 1973, 17 million in 1983. The increase was due mainly to the introduction of VCR's, video games and personal computers. See ELECTRONICS INDUSTRY ASS'N, SALES REPORT (1984).

27. See Bylinsky, *Japan's Ominous Chip Victory*, FORTUNE, Dec. 14, 1981, at 52.

28. See, e.g., H.R. 1234, 98th Cong., 1st Sess. (1983) (Fair Practices in Automotive Products Act—bill to establish domestic content requirements for motor vehicles sold or distributed in the United States); H.R. 1571, 98th Cong., 1st Sess. (1983) (Reciprocal Trade and Investment Act of 1983—bill to insure the continued expansion of reciprocal market opportunities in trade and investment for the United States).

29. See Schwartz, *Auto Import Quotas: A Case Study in Protectionism*, BUS. & SOC. REV., Fall 1981, at 65; Weil, *Anti-targeting as Bad for Trade as Smoot-Hawley Tariffs in 1930's*, N.Y. Times, Feb. 18, 1984 at A23, col. 2. Recently, Japanese manufacturers have become the targets of private antitrust suits alleging the "dumping" of products at prices below the cost of production. See, e.g., *In re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238 (3d Cir. 1983).

2. Improving the efficiency of the reallocation of physical, technological and human assets from declining to expanding sectors; and
3. preventing firms from abandoning productive operations in favor of legal maneuvers and accounting manipulations which yield few net social benefits.

These goals will not be realized, however, until profound changes are wrought in the way management and labor interact.

III. *The Executives*

Unfortunately, over the last thirty years short-sighted and unimaginative modes of thought have become common in American business and law schools, and hence, in corporate boardrooms. Business students are taught that the sole index of their professional competence is the degree to which they maximize their companies' quarterly profits. Law students too often are taught merely to facilitate, not to question, prevailing commercial practices and attitudes.³⁰ Interestingly, roughly two-thirds of the present chief executive officers of American corporations are lawyers, accountants, or advertising specialists by training.³¹

The problem is aggravated by the extreme mobility of the average corporate executive.³² Most executives move easily from one company to the next, seldom spending enough time with one company to familiarize themselves with its products, markets, or personnel. Very few executives have any direct experience in managing the international business of the firm.³³ It is not surprising that such executives seek financial, legal, and accounting solutions to the technical and industrial difficulties stemming from international competition.

In contrast, over two-thirds of Japanese firms are headed by chief executives who are engineers or scientists by training.³⁴ Most of the remainder have risen through the ranks of domestic and international sales. Many of them have been directly involved in the international

30. See Kennedy, *Cost-Benefit Analysis of Entitlement Problems: A Critique*, 33 STAN. L. REV. 387 (1981) (critique of law and economics jurisprudence).

31. See Y. Tsurumi, *U.S. Managers Often Technically Illiterate and Out of Touch*, Wash. Post, July 31, 1983, at D3, col. 4.

32. According to a survey by a firm which purchases the homes of transferred employees, 76.3 percent of executives transferred in 1980 would move again. Wall St. J., May 19, 1981, at 4, col. 3. See also R. REICH, *supra* note 10, at 163 (1983). "The average American holds ten different jobs before retirement . . . one-third to one-half of all U.S. managerial . . . workers leave their jobs each year. This is in marked contrast with . . . Japan where the average is 6 percent".

33. See R. REICH, *supra* note 10.

34. "More than 65 percent of all seats on the boards of Japanese companies are occupied by people trained as engineers." R. REICH, *supra* note 10, at 159-60 (1983).

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business of their firms.³⁵ Japanese executives' expert knowledge of their firms' employees, markets, products, and production processes, coupled with the advantages of continuity stemming from the Japanese tendency to stay affiliated with one company for extraordinary lengths of time, encourage real solutions to business problems.³⁶

Unfortunately, their American counterparts operate with no such advantages. American managers are taught to treat labor as a disposable direct cost instead of as an important human asset. Financial and legal control is emphasized at the expense of more effective management tools. Sociological jargon has displaced genuine understanding of the needs of fellow human beings. Not surprisingly, productivity has suffered.³⁷

Most American executives believe that they are in business to make money rather than to produce goods and services. In contrast, Japanese executives see their task as ensuring that their company becomes the world's most efficient producer of the product or service it offers. Once a company has become a world leader in its field, profits are certain to follow. But if short-term income maximization is the only goal the long-term profit potential of a company is jeopardized.

IV. *The Social Costs of Incompetence*

Nor can the human costs of an obsessive concern with short-term income maximization be ignored. In order to maintain profits at projected levels many American firms routinely lay off workers, employees, managers, and even engineers and research scientists.³⁸ Frequently, they will resort to shutting down unprofitable offices and factories.³⁹ Through this method, entire industries, such as steel and rubber, have been reduced to shells of their former selves.

Theoretically, laid-off workers are supported by a host of social welfare programs such as unemployment insurance, supplementary unemployment compensation benefits, trade readjustment allowances, welfare payments, social security assistance, and food stamps.⁴⁰ In real-

35. See Pucik, *Career Paths in Japanese Corporations*. (1983) (Unpublished Ph.D. Thesis available in Columbia University Graduate School of Business Library).

36. See R. Tsurumi & Y. Tsurumi, *A Closer Look at Japan's "Lifetime" Employment System*, PAC. BASIN Q., Fall 1982, at 5.

37. See *The Elusive Boom in Productivity*, N.Y. Times, Apr. 8, 1984, § 3, at 1, col. 6.

38. See, e.g., N.Y. Times, Apr. 19, 1984, at 1, col. 1 (discharge accompanying the decision of a New Hampshire utility not to complete construction of a nuclear generating facility).

39. See B. BLUESTONE & B. HARRISON, *CAPITAL AND COMMUNITIES: THE CAUSES AND CONSEQUENCES OF PRIVATE DISINVESTMENT* (1980).

40. See, e.g., Internal Revenue Code, 26 U.S.C. § 501(c)(17)(D)(i); (exempting from taxation trusts providing payments "... to an employee because of his involuntary separation

ity, the purpose of these programs is to maintain the unemployed and indigent at subsistence levels until they are once again employable. These programs are powerless to cope with the structurally unemployed whose job skills have become obsolete or who have been discharged because of their employer's short-sighted decision to abandon operations in the face of rising foreign competition.⁴¹ Thus, American income-maintenance schemes are incapable of effecting critically needed structural adjustment.

Nowhere is this failure more apparent than in the case of trade readjustment allowances. In 1962, as the price of labor's support of the Trade Expansion Act⁴² (a bill designed to reduce U.S. import restrictions), Congress created the Trade Adjustment Assistance program.⁴³ Unlike ordinary unemployment insurance which is clearly intended to help the unemployed survive cyclical economic downturns, adjustment assistance is designed to help workers, communities and firms adversely affected by increased imports. Workers displaced by imported products are assisted through retraining efforts, as well as through programs designed to aid them in the search for new employment and to defray the expenses of relocation necessitated by increased foreign competition. However, the record of expenditures from 1975 to 1981 indicates that the program failed to achieve its intended results. In fact, the record suggests that the program actually retarded employment and concomitant industrial adjustment.⁴⁴

The situation is in marked contrast with that of Japan where workers

from the employment of the employer . . . resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions . . .").

41. The term "structurally unemployed" is used most often to describe unemployment resulting from historical changes in the nature of a national economy. See ROBERTS' DICTIONARY OF INDUSTRIAL RELATIONS 516 (Revised ed. 1971).

42. 19 U.S.C. § 1801 et. seq., repealed by 19 U.S.C. § 2101 et. seq.

43. 19 U.S.C. § 1931 et. seq., repealed by 19 U.S.C. § 2271 et. seq.

44. By 1981, over 650,000 automobile workers, about 130,000 apparel workers, and 130,000 steel workers had been certified for assistance. The vast portion of expenditures, however, went merely to increase weekly unemployment benefits for permanently discharged workers. Relocation, search and retraining outlays showed minimal increases.

U.S. Trade Adjustment Assistance

(1976-80) (in millions of dollars)

	<u>Weekly Benefits</u>	<u>Relocation</u>	<u>Job Search</u>	<u>Job Training</u>
1976	69.9	.05	.01	.47
1977	150.8	.25	.03	.84
1978	258.3	.60	.16	4.04
1979	258.1	1.17	.31	6.36
1980	1,644.9	.61	.11	6.41

Source: Office of Trade Adjustment Assistance, U.S. Dep't of Labor, (1982).

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at both large and small concerns enjoy a greater degree of real job security than their American counterparts. Instead of laying off workers during cyclical economic downturns, many Japanese firms cope with business slumps by reducing cash outlays such as dividends, overtime premiums, executive salaries and bonuses, and only as a last resort, by cutting the wages of rank and file workers. Firms take advantage of idle time during recessions to retrain scientists, engineers, managers and workers. Instead of relying on government transfer payments, workers who would otherwise be unemployed become more efficient producers, held in reserve until the economy recovers.⁴⁵

Of course, some Japanese industries are the victims of profound structural changes in the market. For these industries, such as coal mining and shipbuilding, recovery does not seem likely. In these situations Japan's businesses and labor unions cooperate to "manage" the industry's decline so as to cause as few layoffs and permanent discharges of employees as possible. Typically, firms and unions will retrain workers for other jobs within their firms or for work elsewhere, if necessary. By helping workers move from declining to growing sectors of the economy such cooperation has facilitated structural adjustment and modernization of the economy.⁴⁶

Government assistance programs for declining industries support this adjustment process, but the primary burden of retraining and reallocating human resources is left to the private sector. The government expects and encourages private sector firms to absorb economic shocks by varying expenditures and profits rather than employment levels. It expects firms to lower labor costs by reducing overtime hours and moderating wage increases, and by increasing productivity through the elimination of excessively rigid work rules. Finally, the government expects industry to retain as many employees as possible for retraining and reassignment.

In support of these private sector efforts, the Japanese government offers extensive unemployment benefits and other income-maintenance payments. The government pays employment adjustment and training subsidies directly to employers and provides extensive assistance to private firms and labor unions who, in turn, assist displaced workers in their search for new employment.

In short, the emphasis of Japanese employment adjustment programs

45. See Kanabayashi, *Japan's Recession-Hit Companies Make Complex Arrangements to Avoid Layoffs*, Wall St. J., Feb. 17, 1983, at 34, col. 1; Y. Tsurumi, *Japan's Challenge to U.S.: Business and Industrial Policies*, COLUM. J. WORLD BUS., Summer 1982, at 87, 94.

46. See generally Boyer *supra* note 22.

is twofold. Private employers are urged, and even subsidized, to retain and retrain as many workers as possible. When firms are forced to discharge their employees, the government supplies prospective employers and employees with information and financial aid which will facilitate the reallocation of labor from declining to productive sectors of the economy.

V. *Labor-Management Cooperation*

Industrial revitalization in America will require a model of corporate behavior based on management and labor cooperation. Continued corporate productivity, growth and survival will henceforth be available only for a price: flexibility. Several American firms, notably Chrysler,⁴⁷ Eastern Airlines,⁴⁸ and Greyhound Bus⁴⁹ have already paid that price. In exchange for more flexible work rules and even temporary wage cuts, management has begun to share the responsibility for employee job security. The successes of formerly unprofitable companies after being taken over by employees through employee stock ownership plans⁵⁰ or outright buyouts⁵¹ have taught similar lessons. But even before such lessons were appropriated from Japanese companies, a handful of American concerns, among them IBM,⁵² Delta Airlines,⁵³ and Lincoln Electric⁵⁴ had shown that management commitment to the security and retraining of managers and employees is essential in developing a flexible corporate response to modern technological and marketing challenges. In short, management must reexamine its treatment of its most valuable product input: labor.

Too often management effectively shifts the cost of its errors, such as a misreading of market trends and international competition, to employees through layoffs and wage cuts. Human capital, rather than being treated as a disposable cost of production, must be considered a renewable asset. To this end, management needs to commit itself to the modernization of its workforce. It must retrain current employees for new tasks throughout their employment careers rather than entering periodi-

47. See Main, *Anatomy of An Auto Plant Rescue*, FORTUNE, Apr. 4, 1983, at 108.

48. See *Eastern's Revolutionary Treaty With its Unions*, BUS. WK., Dec. 26, 1983, at 22.

49. See e.g., *If Anyone Won the Strike, Greyhound Did*, BUS. WK., Dec. 19, 1983, at 39; *Greyhound Collides Head On With Its Union*, BUS. WK., Nov. 21, 1983, at 47.

50. See Rosen & Klein, *Job Creating Performance of Employee-Owned Firms*, MONTHLY LAB. REV., Aug. 1983, at 15.

51. See Gurdon, *Is Employee Ownership the Answer to Our Economic Woes?*, MGMT. REV., May 1982, at 8; Labich, *A Steel Town's Bid to Save Itself*, FORTUNE, Apr. 18, 1983, at 103.

52. See Huggins, *IBM's Retraining Success Based on Long-Term Manpower Planning*, MGMT. REV., Aug. 1983, at 29.

53. See *Airline Industry Update*, MONTHLY LAB. REV., Nov., 1983, at 72.

54. See Serrin, *The Way That Works at Lincoln*, N.Y. Times, Jan. 15, 1984, § 3, at 4, col. 3.

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cally the labor market to satisfy short-term requirements.⁵⁵ As specific jobs become obsolete because of strategic or technological changes, the employees holding those jobs should not be pushed aside and forgotten. Each worker must instead be aided and encouraged to develop as wide a range of expertise as possible throughout his or her employment career.

Job rotation should be practiced to a far greater extent. Necessary job rotations could be facilitated by reducing drastically the number of job categories within a plant. A United States auto assembly plant, for example, may include as many as twenty-four job categories—a Japanese auto plant may list as few as four. In addition to accomplishing the primary goal of broadening an employee's job skills, job rotation will improve employee morale and help to nurture a holistic perspective regarding the firm's business and competitive posture.

Every member of the firm needs to be made aware of where the company is headed and how well, or how badly, it is performing. Human resource management should not be considered an isolated task, but rather one aspect, albeit the most important, of corporate strategic planning. It needs to be understood and practiced at all levels of the firm.

Personal remuneration should consist of salary and wage benefits which are less closely-linked to particular job grades and categories. A substantial portion of employee compensation should instead be composed of profit-sharing bonuses tied to the firm's overall performance. Such bonuses will serve as production incentives with the increased flexibility of compensation packages cushioning the firm against hard economic times without inflicting the permanent damage produced by wage cuts.⁵⁶

Henceforth, management and labor should resort to meaningful arbitration rather than to explicitly adversarial resolution methods, methods which often lead to no resolution at all.⁵⁷ All parties involved—management, unions, arbitrators, and aggrieved individuals—must radically alter the established framework for addressing grievances.

Instead of relying on the traditional adversarial process to provide solutions to complex problems of personnel management parties need to resolve specific grievances in more creative and innovative ways. Grievances should be examined with an eye to determining how possible reso-

55. See Horton, *Training: A Key to Productivity Growth*, MGMT. REV., Sept. 1983, at 2.

56. See Hoerr, *Why Labor and Management are Both Buying Profit-Sharing*, BUS. WK., Jan. 10, 1983, at 84; Hoerr, *When Workers Share the Gains From Givebacks*, BUS. WK., June 28, 1982, at 45.

57. See generally B. BLUESTONE & B. HARRISON, *supra* note 15, at 133; Levitan & Johnson, *Labor and Management: The Illusion of Cooperation*, HARV. BUS. REV., Sept.-Oct. 1983, at 8; Scobel, *Business and Labor—From Adversaries to Allies*, HARV. BUS. REV., Nov.-Dec. 1982, at 129.

lutions will affect productivity and product quality, thus permitting unhindered introduction of new machines, work methods and products. If some workers must be displaced, retraining and reassignment should be the natural and expected next step. If the workforce must be reduced, attrition should take the place of unilateral or sporadic dismissals.

Arbitration works best, however, when all parties involved can assume that their current position is secure. Assumed continuity of relationships drastically reduces the need for costly, destructive litigation. Disputes arise only when participants are no longer interested in doing business together. American employers and employees can no longer afford to be so selective in their choice of business partners.

Some Americans believe that Japanese labor relations are inevitably harmonious and characterized by the avoidance of interpersonal conflicts. In truth, however, Japanese society is as conflict-ridden as American society.⁵⁸ The Japanese assume, however, that their business relations will continue indefinitely. Accordingly, they avoid jeopardizing important relationships by prematurely and unnecessarily litigating disputed matters. Instead, the Japanese generally choose to work out compromises and reconciliations so that existing business relationships will not be permanently damaged.⁵⁹

Adversarial relations between American management and labor obscure the real issue of employee job security. Desiring improved job protection for the rank and file, labor unions exacerbate the problem by seeking to protect members' interests with rigid, bureaucratic job descriptions, and inflexible bumping and layoff clauses based on employee seniority. Moreover, labor unions tend to approach even routine problems involving job assignments, overtime allocations and changes in work rules, through legalistic grievance procedures. As a result, management often determines that it is easier to shut down existing plants rather than try to resolve production problems.⁶⁰

New management-labor interactions must be created. What is needed is a network of frequent and extensive information exchanges.⁶¹ As discussed earlier, effective human resource management should strive

58. See Drucker, *Behind Japan's Success*, HARV. BUS. REV. Jan.-Feb. 1981, at 83. ("Adversary relations in Japan have historically been fiercer, fought more violently, and with less forgiveness or compassion than in the West.")

59. The continuity of inter-personal and inter-firm relations is the key to the flexible manufacturing systems and marketing success of Japan. See Y. Tsurumi, *supra* note 23.

60. See, e.g., *Big Steel VS. The USW: The Lines Harden*, BUS. WK., Jan. 30, 1984, at 84.

61. See, e.g., *Companies Widen Worker Role in Decisions*, N.Y. Times, Jan. 15, 1984, § 1, at 1, col. 3; Angrist, *Classless Capitalists*, FORBES, May 9, 1983, at 122 (detailing the decentralized work process at Gore & Associates, makers of Gore-Tex apparel).

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to see that all employees understand how corporate goals are being formulated, what those goals are, and how the firm is performing in both domestic and foreign markets. However, this type of informal information-sharing must be reinforced by a more formal mutual exchange between labor and management—one that is designed explicitly to develop and implement shared goals. Visible sharing of objectives will help prevent management from resorting to bureaucratic control methods which fail to inspire either managers or employees to attain stated corporate objectives.

Contrary to conventional wisdom, the Japanese style of management is not limited to non-union environments. In fact, there are a number of instances in which Japanese concerns acquired unionized, but unprofitable, American firms and turned them around by eliciting union cooperation.

In 1973, for example, Hitachi Metals acquired a special alloy plant in Edmore, Michigan. The plant, formerly owned and operated by General Electric, was organized by the United Automobile Workers (UAW). Because of a history of unnecessarily confrontational relations between General Electric and the UAW, the Edmore plant had one of the worst labor records of any GE plant. Hitachi Metals undertook to work with, not against, the union. When the plant faced severe economic hardships, Hitachi Metals did not decide unilaterally what had to be done. Instead, the Japanese managers opened the company's books to the union's members and asked them to vote on a 20 percent reduction in the workforce or across the board temporary wage cuts without layoffs. Union members voted overwhelmingly to accept wage cuts. The plant has since prospered.

In 1970 Sanyo of Japan took over a failing American electronics firm in Forrest City, Arkansas. The firm's workers were represented by the International Union of Electrical Workers. Soon after the purchase, the Japanese managers called a meeting of the union committee. They had two unusual requests to make. Management asked for union input on production methods and goals, and for the union's help in developing "a start-to-finish" quality control program which would guarantee that not a single defective television set would be shipped out of the factory. The former American management, in stark contrast, had never missed an opportunity to remind the union that plant policies were exclusively managerial prerogatives, while taking little notice of the fact that nearly 10 percent of the television sets shipped out of the plant were defective. The Sanyo plant has since doubled its productivity and reduced product

defect rates to below 2 percent. It has also tripled its workforce.⁶² As Sanyo learned, unionized workers are often well positioned to join in decisionmaking processes and quality control programs precisely because of the job protection provided by unionization.

VI. *Towards a Coherent Industrial Policy*

To begin to remedy the difficulties facing American industry I propose three immediate reforms:

First, when the federal government grants management and labor protection from foreign competition it should demand that they work to remedy the behavior which actually caused the loss of competitiveness. For example, the imposition of "voluntary" import quotas on Japanese automobiles is estimated to be costing the American consumer approximately five billion dollars a year.⁶³ But this subsidy has not corrected the underlying difficulties of the auto industry. Because the federal government failed to link trade protection to fundamental modifications in labor and management behavior, the industry has, for the most part, returned to its normal business practices.⁶⁴ The government should once again expose industry to the disciplines exacted by foreign competition. Measured exposure of American firms to international competition must be one of the staple tools of any national industrial policy.

Second, tax cuts, export subsidies, government procurements and all other forms of industry-specific governmental assistance need to be openly linked to ascertainable changes in corporate behavior, including (a) increased investment in research and development; (b) stable employment levels and worker retraining programs; and (c) acceptable export performance. Otherwise, more companies will follow the notorious example of U.S. Steel, which used the additional funds provided by tax benefits to acquire Marathon Oil rather than to modernize its steel plants.

Finally, the American labor movement must join progressive elements of management in demanding that Congress curb hostile takeovers of corporations. Some economists argue that hostile takeovers facilitate the reallocation of assets from declining to expanding sectors.⁶⁵ Others

62. See Bilik, *What Japanese Firms in the U.S. Think of Labor: A Case in Point*, N.Y. Times, Feb. 11, 1982, at 434, col. 3.

63. See Wayne, *The Irony and Impact of Auto Import Quotas: The Consumers are the Losers*, N.Y. Times, Apr. 8, 1984, § 3, at 12, col. 6.

64. See *Chrysler's Earnings A Record*, N.Y. Times, Apr. 19, 1984, at D1, col. 6.

65. See generally Dewey, *Mergers and Cartels: Some Reservations about Policy*, 51 AM. ECON. REV. 255 (1961).

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argue that such acquisitions serve to penalize inefficient management.⁶⁶ What is certain, however, is that the constant fear of an unwelcome tender offer encourages an obsession with quarterly earnings, often to the exclusion of all other concerns. Ignored in the rush to litigation accompanying hostile tender offers is the effect of the takeover on the company's employment posture, or on worker morale, loyalty, and productivity.

The precarious environment engendered by the recent wave of hostile mergers and acquisitions makes it difficult for the corporate executive to engage in vital long-range planning. Incredibly, existing tax laws and banking practices are, in effect, subsidizing the current wave of corporate acquisitions.⁶⁷

This article, drawing upon the experience of Japan, has tried to suggest ways in which the long and painful industrial decline of the United States might be halted and reversed. The initial step in this process must surely be the recognition that there is something seriously wrong with our inability to manage the profound changes occurring in the industrial structure of the country. Not surprisingly, I have emphasized the critical role corporate management plays in the creation and resolution of industrial problems. That this nation's current economic difficulties are capable of resolution admits of no doubt. That the current generation of business executives is equal to the challenge is far less certain.

A final note: because the majority of today's executives are trained in the nation's business and law schools, today's management failures must lead to a general reexamination of business and legal education in the United States. Only by correcting the attitudes of future corporate executives can we hope to reform American business.⁶⁸

66. See Manne, *Mergers and the Market for Corporate Control*, 73 J. POL. ECON. 110 (1965) (possibility of takeover provides the only assurance of competitive efficiency among managers); but compare Scherer, *No Boon in the Merger Boom*, BUS. & SOC. REV., Winter 1979-80, at 17 (empirical evidence suggest that firms with good management and above average profitability are actually the most attractive candidates for takeover).

67. See Bronfman, *End the Tax Subsidies for Corporate Mergers*, N.Y. Times, Sept. 29, 1982 at A27, col. 1.

68. See generally Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW, at 40 (D. Kairys ed. 1982); Margolick, *The Trouble with America's Law Schools*, N.Y. Times, May 22, 1983, § 6 (Magazine), at 21.