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Stevedores x Legal status, laws, etc. x Netherlands
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HOW MUCH DOES LAW MATTER? LABOR LAW, COMPETITION, AND WATERFRONT LABOR RELATIONS IN ROTTERDAM AND U.S. PORTS

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American labor law, it often has been observed, encourages a more legalistic and contentious relationship between management and labor than does labor law in European countries. But do legal differences produce significant differences in economic outcomes? In both The Netherlands and the U.S., law has played a significant role in rationalizing the hiring of dock labor and providing workers greater security. However, American longshoremen have captured a larger share of the productivity gains flowing from the mechanization of cargo-handling than have Dutch dockworkers. Container terminals in Rotterdam are more efficient and less costly to users, largely because of constraints imposed by American longshore unions. The variation in outcomes is due partly to differences in labor law in the two nations. Perhaps more causally significant, however, are geographical and political differences, which expose Dutch dockworkers to greater competition from ports in other nations. Moreover, international competition, intensified by the worldwide technological revolution in transportation, seems likely to impel cross-national convergence in many spheres, levelling differences in law or legally-produced outcomes.

I. DO CROSS-NATIONAL DIFFERENCES IN LAW MATTER? *

Modern legal systems are shaped by a basic political struggle. One side wants government to encourage economic efficiency and growth through economic incentives and free markets. The other demands more governmental regulation of (or compensation for) the economic losses, inequalities, environmental hazards, and social disruptions that flow from what Schumpeter called the "creative destruction" of capitalism.

In this political battle, law is used both as weapon and shield. The proponents of efficiency demand legal systems that protect property rights, enforce contracts, prosecute fraud, prevent cartels, and limit tax and regulatory obligations that might stifle entrepreneurial activity. They invoke legal traditions to resist incursions on economic liberties and the autonomy of private enterprise. The proponents of security, on the other hand, demand legal regulation of pollution, physical hazards, and exploitative employment practices, along with laws that provide subsidies or protections for workers, farmers and industries whose livelihoods are threatened by competition. They invoke a newer legal rhetoric of human rights, equality, and social justice to extend welfare and regulatory laws.

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If law is an important medium for the political struggle over economic and social policy, legal traditions in each nation may have an independent effect on the way in which the contest between efficiency and security is played out. In the United States, for example, a rather distinctive "legal style" has emerged (Kagan, 1988). Whether regulating school principals or polluters, police or pesticides, the United States tends to differ from other polities: generally speaking, it uses more tightly-worded and detailed legal rules; more formal, adversarial, lawyer-dominated and costly regulation-making and adjudicatory procedures; more severe monetary penalties. American judges more often scrutinize and overrule the decisions of governmental and business entities. There is more political conflict about the legitimacy of existinglaws, procedures and judicial doctrines. [1] To be sure, informal, negotiated settlements statistically outnumber formal, adversarial actions in American legal and regulatory processes (Galanter, 1983). But they occur within and are affected by the

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1. For some illustrative comparative studies, see Badaracco (1985) on occupational health regulation in German, France, England, Japan and the U.S.; Bayley (1976) on regulation of police in Japan and the U.S.; Braithwaite (1985) on regulation of coal mine safety in several countries; Day & Klein (1987) on nursing home regulation in Great Britain and U.S.; Jasanoff (1986) on regulation of carcinogens in several countries; Kelman (1981) on occupational safety regulation in Sweden and the U.S.; Kirp (1979) on racial desegregation in British and American schools; Kirp (1982) on regulation of education for handicapped children, U.K. and U.S.; Langbein (1985) on civil litigation methods in West Germany and the U.S.; Lundqvist (1980) on air pollution regulation in Sweden and the U.S.; Quam et al (1987) on medical malpractice litigation in Great Britain and the U.S.; Vogel (1986) on environmental regulation in Great Britain and the U.S.

bargaining endowments (Mnookin & Kornhauser, 1979) provided by the formal legal system -- a system that from a comparative, macroscopic standpoint seems distinctively legalistic, adversarial and contentious.

Labor relations -- the focus of this paper -- are no exception. Robert Flanagan (1987:3) recently observed:

> "Under the NLRA [National Labor Relations Act] union organizing is to an important extent a legal process with an intricate set of rules (established over the years by the NLRB) governing almost every aspect of conduct by unions and employers as they seek to influence how workers vote on the question of unionization.... The result has been a level of regulatory activity and litigiousness in labor relations that is without parallel in the rest of the world."

Comparing the U.S. to European nations, Derek Bok concluded that American law creates a more adversarial relationship between labor and management. Unions and management, he noted, each view current law as "a body of rules which one side has succeeded in enacting at the expense of the other," to be resisted or exploited for immediate advantage. (Bok, 1971:1449).

But how much do such differences in national "styles of law" really matter? One possible answer is "Less than one might think." Comparative studies often conclude that although the American regulatory style is more legalistic and adversarial than England's or Sweden's, the regulatory standards end up about the same or the regulatory results ultimately produced are not very different (Badaracco, 1985; Kelman,1981; Vogel, 1986). After all, one might argue, modern, industrialized democracies share both

scientific information about risks and basic conceptions of justice; thus the goals of regulatory controls are likely to be roughly similar. At the same time, in democratic industrialized nations, the institutions subject to legal control, public or private, share basic economic imperatives; if they are to perform their social functions, legal controls must be compatible with those imperatives. Hence the "null hypothesis': regardless of national differences in legal methods, demands for economic competitiveness and efficiency will produce least rough convergence in outcomes.

On the other hand, the "competitive convergence" hypothesis would seem to hold only where markets are competitive and the "transaction costs" associated with formally amending or informally readjusting and evading economically inefficient legal measures are relatively low. In practice, markets, especially international markets, are riddled with both natural and politically-generated imperfections. Many laws and regulations are explicitly designed to limit competition, both domestic and international. The political forces that got those rules into place fiercely resist their evasion or reformulation. In opposition to the competitive convergence hypothesis, therefore, one might advance the "law matters" hypothesis: when one nation, through law, imposes a higher implicit "tax" on an activity by subjecting it to costly obligations, liability rules, adjudicatory mechanisms and regulatory standards, that activity will be carried out differently than in countries where the law establishes weaker

constraints and or a different set of incentives. In sum, law will have distinctive distributional and efficiency-related consequences.

On the face of things, the **law matters** hypothesis seems more plausible than its more audacious **competitive convergence** adversary. It is unlikely that legal differences will have **no** effect, certainly in the short run, but probably even in the long run. Nevertheless, in an increasingly competitive world, the economic dynamic implicit in the competitive convergence hypothesis cannot be dismissed. In virtually every nation, existing legal and regulatory processes that arguably produce economically inefficient results come under sharp attack. Those who are disadvantaged by disputable laws and legal costs employ both political "voice" and trans-national "exit" to find more legally attractive niches. Those who interpret and administer the laws are not unaware of these pressures. Hence just how much legal differences actually matter, and under what circumstances they do, is always an empirical question.

One way of pursuing that question is to undertake case studies of similar social processes, or legal responses to similar social problems, in different nations. This paper compares the legal response of two nations, the U.S. and The Netherlands, to the conflict that historically characterized labor relations in major commercial seaports. It also compares adaptions in Rotterdam and American West Coast ports to dramatic technological changes in seaport operations. The paper first describes the extent to which

the struggle to bring order to the port in these two nations produced different social and economic outcomes, and then discusses the extent to which such differences can be attributed to variations in law (as opposed to variations in economic or geographical factors).[2]

II. DISORDER IN THE PORT

Through the 18th, 19th and much of the 20th Century, dockworkers in Rotterdam and San Francisco, London and New York, Marseilles and Bombay, had similar complaints about their lot -- intermittent work and earnings, punishing productivity quotas, high injury rates, and an often corrupt process of work assignment (Miller, 1969). These unhappy conditions were rooted in the **casualism** that characterized the longshore labor market. Typically, many small stevedoring firms -- enterprises that loaded and unloaded ships -- were scattered among the many docks in a large harbor. A single firm might work several ships, or none at all, on a given day, for the volume and pace of shipping varied by weather conditions and by fluctuations in trade volume for different commodities. No single firm could afford to provide regular employment to dockworkers through foul weather and fair. Yet when ships were in port, shipping companies were willing to

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2. In addition to usual academic and governmental publications, the research underlying this account is based on unstructured interviews with scores of officials in port authorities, shipping and stevedoring companies, maritime consulting firms, and labor unions in the U.S. and in The Netherlands, as well as regular reading of Pacific Shipper, Containerization International and several other trade publications.

pay well for rapid loading and unloading. Thus hourly wages for dockworkers typically were rather high, so as to attract sufficient numbers of workers to the port to handle peak demands (Phillips & Whiteside, 1985:6). Each morning, clumps of workers assembled at the different piers, in hopes of being hired for a few days of intensive, remunerative work. But overall, the available dock labor force tended to be larger than necessary to meet peak demand, and much larger than average demand. Hence chronic underemployment was pervasive. Most dockworkers' average annual earnings were low. (Hartman, 1969:25-26; Hobsbawm, 1964:209; Lis, 1986:36). The intermittent nature of employment drove men into debt and into drink.

Once employed, dockworkers stayed on an already onerous job to the point of exhaustion, knowing that employers, pushed by shipping companies to get the loaded and under way as quickly as possible, were always ready to replace a resting worker with a fresh man from the waiting crowd. Disabling injuries were very frequent. With a surplus of hungry men to choose from at the morning "shape up," the hiring boss often was a target for bribery. Conversely, he commonly extorted kickbacks from men he agreed to take on. In Shanghai, dockworkers were expected to make large donations to the stevedore who hired them (Ch'en Kang, 1977). In New York, and probably in other ports where it was less well documented, pilfered cargo created a currency for such payments. In many ports, the lucrative possibilities for controlling access to jobs led organized criminal elements to seize control of stevedoring firms or dockworker unions and to use

ungentle methods to retain that power (on New York, see Bell, 1962; on Melbourne, Morris, 1983). Similarly, ethnic and racial groups often clashed in the struggle to gain priority at particular piers (on New York, see Kimeldorf, 1988; on New Orleans, Northrup,1942).

For dockworkers, the logical remedy for the insecurity and ills of casual employment was to create a cartel, limiting the number of workers at a particular set of docks -- that is, to establish a closed shop, whether by coercion (as in the case of tough gangs of ethnically-bonded workers), or by agreement with employers (presumably via strike threats), or by law. Stevedores and marine terminal operators would be obliged to hire only cartel members -- a set of "regular" dockworkers. The cartel would insist on decent wages and a non-discriminatory hiring system, such as assigning jobs by strict rotation among cartel members. It would also insist on smaller sling-loads, shorter work-shifts, exclusive job demarcations for different subspecialties of dockwork, and larger work gangs -- all of which would spread existing work over all cartel members. Ideally, the cartel would also achieve remuneration for its members even on days when there were no ships to be worked.

The vital position of dock labor in the flow of commerce brought such goals within the range of possibility. If dockworkers could organize labor unions and engage in effective strikes or slowdowns, their power to cork the bottleneck of trade would put stevedoring firms under great pressure from shippers and consignees whatever concessions were necessary in order to remove

the stopper. In fact, dockworkers, exposed to ideas from abroad, enjoying ample time to discuss their situation in waterfront saloons, were among the first workers to form unions. By the late 19th Century, labor radicalism flourished on the docks of San Francisco, London and Rotterdam (Kimeldorf, 1988; Jensen, 1974). Specialized, skilled dockworkers, such as coal-heavers in Liverpool and cotton screw-men in New Orleans, had effective unions during the 19th Century.

But unions enrolling the mass of dockworkers, who were easily replaceable by unskilled men, had less leverage. Large scale dock strikes occurred with some frequency -- in Rotterdam in 1889, 1896, 1900, 1911, 1920, 1932 (Jensen, 1964; Nijhof & Schrage, 1988); American longshoremen spearheaded city-wide general strikes in San Francisco in 1901 and 1934, and mounted numerous work-stoppages in other West Coast ports in the 1890-1920 period. Everywhere, however, employers imported strikebreakers to try to maintain the flow of goods through the ports. Violence often ensued. Port city governments and police departments generally responded by using force to protect the strikebreakers. Employer associations often created blacklists, excluding ex-strikers and union members from employment. In most ports, before the 1940s or 1950s labor unions only intermittently exerted significant power, and casualism in hiring and deployment prevailed.

When dock unions did succeed in creating closed shops, disorder of another kind often ensued, as they used their power to frustrate the installation of labor-saving loading and unloading

technologies [3], reduce the pace of work, implement make-work rules, and demand extortionate wages. As employers resisted, strikes and slowdowns often erupted. In the latter half of the 1930s, the newly consolidated longshore union on the West Coast of the U.S. engaged in scores of "quickie strikes" every year, refusing to load or unload a particular ship until concessions were made. In the 1950s and '60s, long dock strikes repeatedly tied up East and Gulf Coast ports until federal mediators pressured employers to make large concessions to unblock the gates of trade (Ball, 1966). Cross-national studies of inter-industry propensity to strike placed dockworkers at the top (Kerr & Siegel, 1954).

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3. In New Orleans, the cotton screwmen, skilled workers who used huge hand screws to pack cotton bales into ships, had two strong unions in the late 19th Century, one black, one white, which at times fought each other bitterly for jobs, but at times agreed to divide them. Around the time of World War I, a high-powered cotton press came into use, operable by unskilled workers. Nevertheless, the screwmen's unions forced waterfront employers to continue to let their members operate the new machines, which could stow cotton much more rapidly, and to continue to pay them the pre-existing high skilled-labor piece rates (Northrup, 1942).

III. DE-CASUALIZATION: HIRING HALLS AND LABOR POOLS

By the 1960s or '70s, most major ports had institutionalized, by law or by governmentally-supported collective bargaining, organized systems for limiting competition in the dock labor market and for increasing income of a limited subset of dockworkers. The schemes generally involved three elements:

> (1) designation of an "in-group" of officially registered (in effect, licensed) dockworkers -- and sometimes a second designated group with lower preference in hiring;
>
> (2) registered workers who were not permanently employed at particular stevedoring enterprises were hired through a central pool or hiring hall, which stevedores were obligated to use for their primary source of casual labor;
>
> (3) a system of minimum pay guarantees or unemployment benefits for registered dockworkers who were left idle by a shortage of ships to be worked during a particular day, week or month.

As a result of these plans, dockwork unions generally were strengthened. Workers now are fewer in number, but enjoy greater stability of earnings and more control over on-the-job work rules.

Decasualization schemes differ in two principal ways: (a) the relative power of labor unions in controlling work assignments, and (b) the sources and level of income support for idled registered workers. The role of government and its labor laws seems important in this regard, but so are a series of economic, cultural, and geographic factors, as the following accounts of decasualization in U.S. West Coast ports and Rotterdam indicate.

A. American West Coast Ports

Early in the 20th Century, West Coast dockworkers had a tradition of radicalism. Many were "Wobblies," members of the

IWW, sharing its dream of "one big union" encompassing all workers (Kimeldorf, 1988). Their periodic strikes induced waterfront employers in some ports to take organized countermeasures. In Seattle, Portland and Los Angeles, after finally breaking a 74 day 1916 dockstrike by importing strikebreakers, local associations of shipping companies and terminal operators established their own hiring halls . These stabilized employment for an inner core of longshoremen who were admitted into "company unions," while excluding members of the IWW, the International Longshoremens Association (ILA), and Communist-front unions. In San Francisco, employers were more fragmented and workers more resistant to company-run hiring halls, and the daily dockside "shape-up", as well as a punishing work-pace, prevailed (Larrowe, 1955, 1972). During the 1920s, shipping companies, aided by improvements in rail and truck transport, could circumvent a strike in any one port by diverting ships to another. Dockworkers came to believe that only a single, coast-wide union, acting in concert in all ports, could improve their lot. In the 1930s, the federal government helped them achieve that goal.

In 1933, the New Deal Congress enacted the National Industrial Recovery Act. Workers were guaranteed "the right to organize and bargain collectively through representatives of their own choosing") . The NIRA also called NRA-administered industry-wide codes of fair trade (no price-cutting) and fair labor practices (basically, sector-wide adherence to wages negotiated between organized labor and industry-associations). The NRA, America's move toward European-style corporatist government, soon became

politically unpopular and was ruled unconstitutional. But it gave a sharp boost to labor organizing throughout the nation. The ILA sought recognition as the representative for all West Coast longshoremen and demanded union-controlled hiring halls in each port. (Larrowe, 1955: 96) Employer resistance led to an 83 day strike in 1934, pitched street battles on the San Francisco waterfront between longshoremen and police called out to guard strikebreakers, and a general strike of all trades. President Roosevelt appointed a board of mediators for the longshore industry. In the spirit of the NRA, it sought an "industry-wide solution," ultimately issuing an award calling for a coast-wide agreement and hiring halls in each major port, jointly run by union and management; but the hiring-hall dispatchers -- the crucial job --were to be selected by the ILA (later to reconstitute itself as the ILWU). Differences over work-rules were to be settled by arbitration.

West Coast dockworkers now had their cartel: to this day, no terminals on the coast have escaped the union-dominated hiring hall, union-wage settlements and arbitrated work-rules. For 15 years, employers fought bitterly, as the union engaged in scores of localized "quickie strikes', and several lengthy coast-wide work-stoppages, gaining control over registration of dockworkers, work assignments, discipline, and work requirements.

By insisting on strict rotation in job assignments, the union prevented workers from reporting regularly to the same dock or terminal, weakening employer capacity to discipline unresponsive men and redirecting the longshoreman's loyalty from any individual

employer to the union and its hiring hall. Initially justifiable union work-rules designed to reduce workloads and improve safety gradually became mechanisms for featherbedding, creating make-work tasks, extorting overtime pay, and blocking technological change. Productivity plummeted (Hartman, 1969).

Employers resisted every step. Hundreds of disputes were taken to arbitration. They pushed for the deportation of ILWU leader Harry Bridges as a Communist party member or sympathizer. But in 1948, after a long strike, a new management team took over a reconstituted coast-wide employers association, the Pacific Management Association, and adopted a stance of cooperation with the ILWU (Kerr & Fisher, 1949). In return for a no-strike clause during labor contract periods, they basically gave in to union power over hiring and work assignment, and strikes have since been infrequent. By the late 1950s, motorized fork-lift trucks and conveyor systems (for bulk materials) made the union's restrictive work rules look increasingly indefensible, and coastwise trade continued to slip away from shipping to trucks. The ILWU agreed to a basic exchange: more efficiency (elimination of restrictive practices) in return for greater job security and benefits. Under the 1960 Mechanization and Modernization (M & M) Agreement, stevedores and shipping firms acquired the right to introduce new machinery, eliminate multiple-handling, and reduce gang sizes.[3a]

3a. In the two years following the M & M agreement, productivity in West Coast ports (controlling for technologby and type of cargo) increased by an estimated 30 percent (Hartman, 1969), which provides some indication of the earlier effect of ILWU job-protecting work rules.

In return for rapid arbitration of grievances, longshoremen would continue to work pending a job dispute -- on-call arbitrators would drive at once to the dock.

Here was the major price: under the M & M Agreement, employers agreed to maintain the full-employment pay level of registered longshoremen rendered redundant by the ILWU's agreement to relax make-work rules. Retirement benefits for longshoremen were increased dramatically. All this was to be financed by employer contributions of about $29 million (1960 dollars), to be raised by a charge to shipping lines for each ton of cargo (Ross, 1970; Fairley,1979). In 1972, after a the first coast-wide strike in many years, the employers extended the weekly pay guarantee plan to longshoremen idled for a short time due to lack of work in their port in any particular week. Registered West Coast longshoremen had a guaranteed income for life, regardless of the economy's fortunes.

B. Rotterdam

The Port of Rotterdam, at the mouth of the Rhine, today is the world's largest port. During the late 19th Century, as the port grew rapidly, dock labor unrest exploded into numerous strikes, which were extremely threatening to a small nation deeply dependent on trade. In 1908, the Rotterdam association of shipowners and stevedores (the SVZ), sought to stem labor radicalism by entering into a collective agreement with the dockworkers' union; henceforth, portwide agreement on wages was the norm for Rotterdam (Jensen 1964:220-227). In 1917, the SVZ

(following the example of harbor employer associations in Hamburg and Amsterdam) established a centralized hiring system, the Havens Arbeider's Reserve (HAR). It provided for registration of a maximum number of "regular" dockworkers who gathered at set times in a covered hall; there employers from all docks would come to select the workers they needed. By 1919, the HAR had become responsible for centralized payment of wages, payment of compensation to injured dockworkers (pursuant to a national law), and -- in this regard going beyond the hiring hall system as first set up in U.S. West Coast ports in 1934 -- payment of minimal unemployment benefits to registered dock union members who had not been selected for work over a six day period (Nijhof, 1988).

As in the U.S., government action was critical to decasualization. In 1914, the Dutch government passed the Stevedore's Act, which banned child labor from the docks, limited hours of work, established safety rules, and prohibited hiring and payment of wages in saloons. The Act also provided for a governmental labor inspector, and to assist him, a joint labor-management safety committee and a more general joint dock labor advisory committee. More importantly, as World War I reduced international trade and hence jobs in neutral Holland, the Dutch government created public employment exchanges and provided subsidies to voluntary systems of unemployment insurance, based on contributions by union members and employers (Levenbach, 1964:546). The SVZ's centralized registration scheme was created in response to a 1917 general demanding such unemployment benefits. (Centralized registration, it would seem, would enable

employers to limit the number of dockworkers eligible for unemployment payments and give the SVZ control over the operation of the "employment exchange").

In the next two decades, dock strikes in Rotterdam were infrequent by American and British standards, even though the Havens Arbeiders Reserve was created and run by employer. Rotterdam shipping and stevedoring firms (not the union) continued to exercise choice over which workers to select from the pool, and over the number of workers admitted to the pool by registration. Because each employer chose a number of regular, permanent men, work remained irregular for a substantial number of more marginal dockworkers, and unemployment payments apparently were rather low. These features-- low average earnings and employer choice over whom to hire (with its potential for favoritism) -- are precisely what West Coast dockworkers disliked about employer-controlled halls in Seattle and Los Angeles during the 1920s, stimulating the ILA's ultimately effective demands for a union-controlled hiring hall which would assign men to jobs strictly by rotation. Why did this not occur in Rotterdam? Moreover, what distinguished the HAR from the ILWU-dominated hiring halls in the late 1930s, which produced decasualization but also continuing strikes and labor disputes?

The answer lies partly in political organization: in The Netherlands, labor was divided and management unified; on the U.S.West Coast, labor was unified, management less so. Thus Dutch employers' control over dispatching and worker-selection was

partly attributable to the organizational weakness of Dutch dock labor, which was fragmented among a mainstream socialist union, a more radical union, a Catholic union, a Protestant union, and a larger group of non-members.[4] The U.S. West Coast dockworkers, in contrast, resentful of their fragmentation into port-specific company unions in the 1920s, coalesced into a single, coast-wide union, ideologically driven and determined to act in concert. Ex-Wobblies and Communist unionists brought valuable organizational skills to bear in shaping ILWU strategy (Kimeldorf, 1988).[5] On the management side, waterfront employers were much more tightly organized in Rotterdam than in America, reflecting a nationwide movement in The Netherlands to establish employers' associations that could deal with labor in a concerted manner (Van Voorden,1984). Linked by interlocking directorates, Dutch stevedores and shipping companies generally could ensure that all

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4. In 1922, the SVZ refused, even after a strike was called, to bargain with the main socialist dockworkers union, claiming it had come under radical, foreign influence. Members of the rival Catholic and Protest dockworkers unions returned to work. Henceforth, dockworkers were divided. (Jensen,1964).

5. The importance of organizational unity is also suggested by labor's experience in other ports. On the U.S. East and Gulf Coasts, where the International Longshoremen's Association (ILA) was a loose association of separate, local unions -- ethnically divided, often corrupt, often dominated by criminal organizations -- decasualization did not occur until 1953, after a governmental investigation of labor corruption resulted in abolition of the shape-up and creation of a registration scheme and hiring hall, operated under the aegis of the governmental port authority (Jensen,1974; Kimeldorf,1988). In Great Britain, where dockworkers, as other workers, were divided into scores of small craft-specific unions, decasualization did not occur until a Labor government established a national dock labor scheme by law in 1947, requiring registration of workers, rationalized job assignment, and unemployment benefits for idled workers (Phillips & Whiteside,1985; Jensen, 1964).

harbor employers would hire casual labor only through the SVZ-operated pool, on common terms, thereby moderating competition. On the U.S. West Coast, employers -- more numerous, independent, competitive,and geographically scattered -- were unable to establish a viable coast-wide organization until after the union's battle for a coastwide contract had essentially been won. In the large port of San Francisco, they were unable to establish a common hiring system even in the 1920s. [6]

Even more important in accounting for the Rotterdam/U.S. West Coast differences, I suspect, were differences in labor law. Dutch law, as noted, authorized a subsidy for a voluntary scheme providing some unemployment payments to idled dockworkers. In the U.S., in contrast, while the New Deal government in Washington helped the longshore union achieve coast-wide power, it did not extend the newly enacted (mandatory) unemployment insurance law to intermittently-employed casual workers like longshoremen. Without such a governmentally-subsidized program, the ILWU sought a guarantee of regular earnings by "job creation" strategies -- demanding, and striking for, a slower work pace, larger gang sizes, make-work rules, and elimination of "steady gangs" permanently employed by particular stevedoring firms. In Rotterdam, where the government-subsidized harbor-employer (SVZ) insurance plan helped provide some small cushion for dockworkers,

6. Where employers were even less unified, as in New York and London, decasualization did not occur until after World War II, and then, as noted earlier, only as a result of governmental intervention.

the Dutch unions imposed certain restrictive practices, but much milder ones than those in San Francisco and Los Angeles, and Dutch unions did not halt the permanent employment of valued workers by particular companies.

Government policy and law also played a major role in the decade after World War II , when dockworkers in America and England exploited their power to bottle up commerce and extracted large wage gains. During this period, Rotterdam dockworkers' bargaining power was limited by a national legal regime designed to spur recovery from wartime devastation by encouraging investment and holding down wages. Dutch employers, on the docks as elsewhere, were forbidden to pay wages higher (or lower) than a "social minimum wage" (with various adjustments) set by the national government, reflecting mediated agreements among "peak associations" of industry and labor unions.(Sturmthal, 1957). To prevent inflation, wage increases were limited to average productivity gains. In return, the government mandated statutory non-wage benefits, such as pension rights, paid vacations, and increased unemployment insurance (Pels, 1957:112-114). In the 1960s and 1970s, as governmental controls were relaxed , the tradition of centralized bargaining on an industry-wide basis by trade union federations and employers associations continued, and union federations tended to push for roughly equal pay scales across industries.

As trade expanded, both harbor employers and dockworkers chafed under the centralized bargaining system. Employers couldn't get enough workers at the low, controlled wage, and sought to

provide other inducements: more regular employment, education programs for dockworkers, and social programs for families (Nijhoff, 1988). Dockworkers resorted to wildcat strikes, and in 1955 won an increase of the pay guarantee for idle registered workers to 80 percent of normal wages. By law, half of that amount was to be financed by a tax on employers, the rest by the national government's unemployment fund. (In the U.S., in contrast, the pay guarantee for idle dockworkers is financed entirely by stevedoring and shipping firms -- and their customers -- as a result of the basic productivity for security bargain the ILWU made in 1948 and 1960. In Antwerp, the Belgian government pays 70 percent of the unemployment payments received by idle workers, compared to the Dutch government's 50%).

In 1963 and 1970, wildcat strikes in Rotterdam yielded gains in relative pay for dockworkers and greater union control in the operation of the central hiring pool, so that workers had more choice and employers less in determining job assignments. Nevertheless, in contrast to Los Angeles, Seattle, and San Francisco Bay, Rotterdam stevedoring terminals remained free to offer priority to steady gangs, who reported directly each day to the same employer's terminal, much as a factory worker might. In the late 1960s, employers drew on the pool for only about 30 percent of their labor needs, on the average.[7] By the 1980s, that

7. In San Francisco/Oakland, every longshoreman must first report to the hiring hall, and is assigned essentially at random to different employers. The ILWU has relented in part with respect to operators of huge container-cranes, agreeing that they should be allowed to work as "steady-men" at particular terminals, where cranes and procedures are somewhat unique. But although the crane operators usually live on the Oakland side of the Bay, close to the container terminals, the union insists that they must report

figure was far lower. Dutch dockworkers, like American ones, had virtually guaranteed incomes, even when trade was slack, but had very different relationships with their employers.

IV. ADAPTING TO THE TECHNOLOGICAL REVOLUTION

In the last two decades, market-driven technological changes have wrought major changes in port operations and international trade. Among the most striking developments have been the containerization of general cargo; faster automatic loading and unloading systems for bulk cargos (oil, coal, grain); much larger,specialized ships for containers, various bulk commodities, and motor vehicles; instantaneous electronic interchange of shipping documents and information; and "intermodalism" - systems for rapidly transferring containers from ships to specially-designed trains, trucks and barges for inland destinations (and vice-versa), all under contract with a single transportation company. These technologies have intensified competition among nations, by vastly reducing international shipment costs, and intensified competition among ports, by diminishing their natural geographic advantage in serving nearby hinterlands. The huge capital costs associated with these technologies also have intensified pressure on stevedores and shipping companies to avoid work-stoppages. At the same time, the

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first to hiring hall in San Francisco. This results in a fictional arrangement whereby the crane operators go directly from their East Bay homes to the Port of Oakland, but are paid for transit time between the San Francisco hiring hall and Oakland . On Los Angeles, see Finlay, 1988.

enormous productivity increases have provided shipping companies and marine terminal operators with the financial means to avoid work-stoppages. By granting dockworkers large increases in pay and job security, the dockside employers (in Holland, with some support from government) have **purchased** order from the dockworkers unions, along with the right to deploy workers more efficiently.

Holland and the U.S. have differed, however, with respect to the distribution of the productivity gains generated by the new technologies. In the U.S., labor unions captured a proportionately larger share. Moreover, American longshoremen have also retained hiring practices and work rules that make American stevedoring operations less efficient and more costly than comparable operations in Rotterdam. These differences are attributable partly to the different economic pressures that flow from the divergent geo-political configurations of The Netherlands and the U.S. But they also flow from differences in labor law in the two nations.

A. Containerization

It will be helpful to concentrate on one aspect of the technological revolution in transportation -- containerization and intermodal transport of general cargo, introduced at the end of the 1960s in West Coast ports and in Rotterdam. Today, general cargo typically is stowed at the shipper's loading dock in a sealed 40 foot rectangular steel box (essentially a truck trailer detachable from its chassis), driven to the dock, loaded onto a ship for ocean transit, unloaded overseas and transported to the

consignee by train or truck -- without being opened, without the multiple handling and repacking that historically led to high labor costs, damage rates and pilferage.[8] At the dock, a giant, wheeled gantry crane loads a 20,000 lb. container onto the ship, slipping it into specially-designed cells, every three minutes -- a fraction of the time it took for an equivalent weight laboriously packed onto wooden pallets. Gangs of dockworkers no longer are needed in the hold to stow the cargo. The containers are sealed and numbered at the factory or warehouse gate, eliminating the need for labor-intensive dockside checking and counting of goods. Impervious to weather and difficult to steal, imported containers are stacked in yards near the dock like books in a Brobdignagian library, ready for rapid transfer to over-the-road trucks or railroad cars. In Rotterdam, containers are lifted directly from the ship onto large barges that carry them up the Rhine to Germany, France and Switzerland. Standard-sized containers have been built for chemicals and fluids (cylinders fitted into oblong frames) and for perishable fruits, meats, and agricultural products (containers have refrigeration units,

8. Before containerization, general ("break-bulk") cargo generally was shipped in small packages or on wooden pallets, moved by truck to dockside warehouses, then by forklift truck to the dock. There pre-stacked pallets, or irregular pallet loads assembled and secured by dockworkers, were lifted by shipborne cranes into the hold, where they were individually stowed. Between the shipper's loading dock and the ultimate destination overseas, the goods had to be handled and repacked and secured many times. Loading and unloading ships was slow: a typical cargo ship spent far more time in port, piling up docking fees and crew wages as well as stevedoring costs, than it did in transit. For shippers of goods, port costs accounted for about 40 percent of all shipping costs (Campbell, 1986:5). Losses due to pilferage and damage in handling were large, often 5 -10 percent and in some cases of 24 percent of the value of cargo (Campbell,1986).

plugged in on ship during transit). Thus an ever-larger range of commodities can be shipped in containers, and the proportion of traditional "break-bulk" stevedoring work has rapidly declined.

Containerization and intermodalism have sharply reduced the cost of international shipping. For about $2000, a 40 foot container, holding hundreds of jeans or car stereos, can be shipped from Hong Kong to Seattle, and hence, stacked two-high on a container train, to depot in Chicago and then, by truck, to a store -- that is, for a dollar or less per item, and in a space of 15 or 16 days. With transportation costs diminished, the effective range of international competition expands dramatically. And of course, containerization also vastly reduces the labor needed for stevedoring operations. One gang of dockworkers, about 15 men -- crane operators, drivers of trucks or giant "straddle carriers" that move the "boxes" from crane to storage yard, men on ship unlashing the containers -- unload as much cargo in 10 hours as three gangs did in a week in the pre-container era. [9] West Coast ports averaged .83 man hours per ton of cargo in 1960; in 1985, only .09 hours.(Pacific Maritime Association, 1987)

In some ports around the world, organized dock labor has tried to block job-depleting technological changes. In Alexandria, Egypt, I was told, pneumatic grain unloading machines are used

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9. According to Finlay (1988:63):
" A twenty-person work unit on a container ship can remove forty to fifty containers an hour, using two cranes.... At an average weight of 15 tons per container, the hourly tonnage is 30 to 37.5 tons per worker. With a break-bulk gang, company managers estimate an average production rate of 1.5 to 2 tons per worker per hour."

only part-time, so that jobs will be preserved for dockworkers who carry the grain sack by sack in the traditional manner, and the hiring bosses can continue to rake off a share through pilferage. In Bombay, where partial decasualization and a hiring hall was established in 1948 by law (Bogaert, 1970), labor unions have insisted that the 30 man gangs used in break-bulk work also be hired for containerships, even though only 15 man gangs are needed. In Genoa, a Communist local government and labor union refused for years to allow installation of container cranes; in consequence, Genoa declined drastically in significance. In Genoa's fate, however, lies a lesson: due to the efficiency of modern inland transportation systems, when productivity lagged in Genoa, containers destined for Milan were diverted to Livorno, Marseilles or even Rotterdam, transferred to truck or train and sped to their destination in a day or two.

This was the problem faced by dockworkers unions on the U.S. West Coast and in Rotterdam in the late 1960s, as shipping companies and terminals were investing in new containerships, cranes, docks and storage yards. In both places, labor resistance to containerization was modest, at most. And as containerization increased efficiency, dock employment declined. In Rotterdam, despite a massive increase in tonnage handled, the number of dockworkers dropped from 17,000 in 1966 to 10,000 in 1985. On the West Coast, where tonnage leapt from 28 million in 1960 to 135

million in 1985 , the list of registered longshoremen contracted 13,150 in 1972 to 10,187 in 1982. [10]

B. The Quid Pro Quo: U.S. West Coast

Why did the ILWU, with its strong coast-wide control over dock labor and its ability to extort large concessions from shippers, agree to this depletion? Containerization was introduced in Oakland during the Viet Nam War, when West Coast ports were bursting with shipping business. Union leaders may have underestimated its future impact (Ross, 1970:417). More importantly, the ILWU had already made a fundamental choice in its 1960 M & M Agreement: **to abandon opposition to productivity-increasing measures in return for higher wages, pay guarantees for idle workers, and pensions**. In 1972, the union agreed that containerization could continue, in return for a benefit-financing "tax" on increased tonnage.

The productivity gains generated by expanding container traffic financed very handsome wage and benefit increases indeed. In 1960, the base pay rate for ILWU longshoremen was $2.82 per hour (almost 25 percent higher than the contemporary average hourly wage in manufacturing, $2.26). In 1986, the ILWU rate was $17.27 per hour, 77 percent higher than the $9.73 average American manufacturing wage. (The $17 hourly rate, moreover, applied to the

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10. On the East and Gulf Coasts of the U.S., the count of longshoremen plummeted from 34,100 in 1972 to 14,100 in 1982, even as port business grew. In Great Britain, the number of registered dockworkers in the national scheme fell from 64,000 (clearly an inflated number) in 1947 to about 10,000 today. (The Economist, 1988)

first six hours of an eight hour shift; for the last two hours, the longshoreman got time-and-a-half overtime pay). An average West Coast longshoreman received annual earnings of $45,900 -- almost 25 percent higher than the average, well-paid production worker in steel and automobile plants. Longshore clerks made $70,000 and crane operators $80,000 or more. With generous pension and disability insurance plans, total labor costs for Pacific Maritime Association employers in 1985 were $31 an hour, compared to average industrial costs of $13 per hour (Economist, 1986:85). Admission to the union-controlled list of registered dockworkers was one of the hottest tickets in town.

Employers paid these extraordinary labor costs partly because of the productivity improvements that accompanied containerization. For all West Coast ports, while longshore wages went up, total labor costs **declined** -- from $3.35 per ton in 1960 to $2.50 in 1980 (not adjusting for inflation), edging up to $2.78 in 1985 (PMA Annual Report). However, this decline did not nearly match the tenfold rise in productivity, measured in tons per hour, suggesting that the dockworkers captured the lion's share of the productivity increase. Why?

One factor is the huge increase in capital costs associated with special container docks, ships, cranes, landside container-handling machines, railroad cars, and the containers themselves.[11]

11. A giant container-ship can cost $40 million. Matson Navigation recently ordered 1000 refrigerated containers at a cost of $26 million. Sea-Land has an inventory of 110,000 containers. Operating costs on a large containership, including interest, insurance and depreciation, can reach $50,000 per day (Container News, March 1988:17,40). A dockside gantry crane can cost $5

Secondly, as overseas trade has encompassed high-value consumer goods and consignees demand "just-in-time" deliveries to hold down inventory costs, shipping firms' customers have placed an ever-higher value on speed of delivery. With high fixed costs and strong demand for speed and reliability in service, Pacific Maritime Association members have been unwilling to "take a strike" over compensation or control-of-hiring issues. Port authorities, fearing disruptive strikes that would undercut their reputation for speed and reliability, have been reluctant to rent terminals to non-union operators. Waterfront employers thus have been willing to purchase continuity of operations by paying the high toll demanded by the union that controls the bottleneck of trade.

B. Containerization in Rotterdam: Some Differences

In Rotterdam, most containers pass through two multi-user terminals, founded and jointly owned by consortia of competing shipping companies -- ventures that probably would run afoul of the anti-trust laws if formed in the United States. European Container Terminus (ECT) is one of the largest and most technologically sophisticated stevedoring firms in the world. From its origins in the late '60s, ECT, like American firms, used the productivity gains of containerization to purchase labor's

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million. The big straddle carriers that move containers from yard to dockside cost $450,000 each. Dredging, landfill and construction of a set of container docks costs hundreds of millions, costs that are passed on to container terminal operators in rental fees.

acquiescence in the installation of new labor-saving (and job-destroying) equipment. Unlike American firms,however, ECT refused to take any dockworkers from the central labor pool, arguing that its new container terminal was radically unlike traditional break-bulk cargo handling, requiring new full-time employees specially trained to operate expensive container-handling equipment. ECT asserted that a container terminal was more like a capital-intensive factory, which had to be operated around the clock to amortize the investment and to meet expensive containerships' demand for fast turnaround. (Traditional "breakbulk" Rotterdam dock-workers typically worked neither nights nor weekends). The Dutch unions acceded. ECT recruited an entirely new team of workers with whom it signed a separate collective bargaining agreement, providing for higher pay than pool workers and for full-time employment.[12]

At ECT, in short, the legacy of casualism was completely left behind. The productivity gains of containerized stevedoring, together with the more regular flow of ships into a multi-user terminal in an increasingly trade-intensive world, enabled ECT to afford to provide regular pay even for slow days or slow weeks.[13]

12. ECT workers were assigned on rotating basis to four (now five) shifts, so that the average work week would be 32 hours. They were trained to operate a number of different machines and do different jobs, as opposed to the traditional rigid job descriptions (whereby winch operators, for example, could not be assigned to fork lifts, and vice versa).

13. The basic economic logic of regular employment in busy multi-user terminals is reflected in the practices of Modern Terminals, a large stevedoring firm in Hong Kong, the world's busiest container port. In Hong Kong, wages are low (by Western

But what of the workers in the shrinking break-bulk terminals and the pool? In the U.S., the ILWU (like the ILA on the East and Gulf Coast), insisted on a common deal for all longshoremen, assignment of employees from the hiring hall to container or traditional terminals alike on a rotating basis, and pension guarantees (financed by all waterfront employers, regardless of type) for workers rendered redundant by mechanization. ECT undertook no such obligation toward Rotterdam break-bulk dockers. In 1977, Rotterdam unions struck, demanding job preservation in the breakbulk sector. The Netherlands central government, eager to keep the port open, came to the rescue, agreeing to make an extra contribution to help provide pay guarantees for "temporarily unemployed" break-bulk workers and to subsidize an early retirement scheme (Peper & Van Kooten, 1983:133).

As in the U.S., Dutch dock labor captured a substantial portion of the productivity gains generated by containerization. A young ECT forklift driver, under the 1984 wage agreement, earned approximately $22,000 a year, working a 32 hour week. An experienced container-yard heavy machine operator made $27,000. Median pay in manufacturing, in that year, was about $22,000, for a 37 hour week. [14] Still, the proportionate gains of Dutch

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standards), labor unions play an insignificant role, and governmental intervention is limited. Under these free market conditions, Modern Terminals, like ECT, broke away from casualism, hiring operators of its expensive cranes and yard equipment on a steady, three shift basis, paying slightly higher wages than the norm for dockworkers. Break-bulk terminals in Hong Kong continue to hire on a casual basis.

14. In The Netherlands, direct payroll taxes for social programs, as well as income taxes, are much higher than those of American

dockworkers are far lower than those of their American counterparts. Rotterdam dockers' wage and benefit packages were at least roughly comparable to workers in Dutch manufacturing firms, whereas ILWU members, as compared to average American factory workers, earned far more and had far better income security guarantees.

Moreover, the Dutch dock unions insisted on fewer efficiency-diminishing work rules. ILWU members who worked in Rotterdam for a few weeks in 1975 observed that the pace of work there was much faster (with greater risk of injury) and that crane-loads in the break-bulk sector were heavier. They felt Dutch dockworkers and union officials had a less adversarial, more cooperative relationship with employers (Rogers, 1979). In 1987, the typical gang working a container crane at ECT averaged 10 men (crane operator, drivers of yard vehicles, men who secured above-deck containers). Gangs in Oakland then numbered 18, and a casual observer could note that some of them were less than essential most of the time. (In New York and Houston, to put things in a wider perspective, the ILA insisted on 22 man gangs). In contrast to ECT's multi-skilled workers and flexible task assignment schedule, the ILWU tenaciously guards rigid job demarcations and shift-endings, often requiring the stevedore to send to the hall

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workers, so Dutch dockworkers' net was some 25% lower than the gross earnings mentioned above. In 1983, the Dutch marginal tax rate at the average wage level was the highest in Europe (OECD, 1987:45). On the other hand, Dutch workers were protected by much more generous unemployment and disability programs than the average American worker (although not than the average U.S. longshoreman), as well as by national health insurance.

for additional men. Most American container terminals "move" fewer containers per hour than ECT (National Research Council, 1987), and stevedoring charges to shipping companies seem to be about 25 percent higher.[15] Shipping company executives with cross-national experience say Rotterdam dockworkers are more careful and make fewer costly errors in storing and dispatching containers than American longshoremen.

C. Geo-politics and Competitiveness

Shipping companies and terminals in Holland are no less capital intensive than those in the U.S. They are under the same customer pressure for speed, and they are just as reluctant to "take a strike" as their American counterparts. Why haven't the Dutch dock unions, who have the same power as the ILWU to strike or to slow the container crane, extracted the same extraordinary wages, benefits, and job control rules?

One factor arises from the interaction of politics and geography in shaping national boundaries and inter-port competition. The Netherlands is a small country. Dutch dockworkers have a nationwide cartel, to be sure, but they do not have as extensive a monopoly over the terms of dockwork as the ILWU enjoys. Their cartel can more easily be circumvented. If Dutch dockworkers push stevedoring charges too high, ships will

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15. Although West Coast labor costs and work rules pushed stevedoring costs per container to a level perhaps 25% higher than Rotterdam's (about $150-175 vs $125), the situation in New York, until recently, was far worse. Because of an enormous ILA-negotiated cargo assessment, designed to fund pay guarantees and retirement programs, New York "box costs" in 1985 were triple Rotterdam's charges.

call at Hamburg, Bremen, Antwerp or LeHavre, from which loads nowadays can be taken to Dusseldorf almost as quickly and cheaply as from Rotterdam. Belgian, German and French dockworkers, no further removed from Rotterdam than Tacoma and Long Beach are from Oakland, are not in the same union. Dutch dockworkers must balance their demands against the threat of loss of competitiveness. [16]

The U.S. West Coast longshore union, in contrast, has a multi-port cartel, extending from San Diego to Vancouver, Canada. Shipping firms, as members of the Pacific Maritime Association, have agreed not to establish or patronize non-union stevedores, and the same high rates prevail in every potentially competitive West Coast port. The ILWU guards its jurisdiction fiercely and thus far, successfully.[17] Except for a few small, specialized

16. In 1987, several stevedoring firms in Rotterdams' declining break-bulk sector, pleading deepening losses, sought to merge and dismiss about 300 workers (out of a remaining 2200) in the central pool. The dockworkers union declared a a highly selective strike: each day, they refused to work at only one of Rotterdam's many terminals. Union leaders were reluctant to convey the impression to the world shipping community that Rotterdam was completely shut down and unable to handle vital cargoes. The Dutch papers reported nervously on shipping companies who diverted ships to Bremen, and published a study comparing Dutch dockworkers pay and Rotterdam stevedoring charges with those of Antwerp. Ultimately, the strike-ending agreement to retain and gradually retire the 300 workers included a provision for a contribution by employed dockworkers to the maintenance fund.

17. In 1988, ILWU workers engaged in a work-stoppage in all WEst Coast ports to protest a plan by an Oregon forest products company to establish a non-union stevedoring company to load log-carrying ships. Also, in August, 1988,San Francisco Bay longshoremen staged a one-day walkout, stalling at least 10 large container ships, to protect terminal operators' plans to hire non-ILWU office workers to operate the computers that are making dockside marine clerk jobs obsolete. (A computer operator can be hired for a third of the salary of an ILWU clerk). One further example: a Japanese shipping line recently implemented a computer program that would enable off-dock clerks in Tokyo to enter documentation information needed to direct cargo transfer in Los Angeles, reducing the number of entries made by ILWU clerks in L.A. from 18 to 2 or 3.

ports in Southern states, the ILA has a similar monopoly that extends from Galveston and Houston to Baltimore, New York, Boston and Halifax in Canada. If longshore unions push stevedoring costs "too high" in the U.S., there are no feasible alternative ports of entry. Unlike manufacturers, American stevedores can't move their operations to low-wage foreign ports. [18] The continental scope of the U.S. has facilitated a more impermeable dockworkers' cartel.

Similarly, in Great Britain, an island inaccessible from ports outside the national dock labor scheme, dockworkers earned on the average $40,000 (US) a year, far higher than the average manufacturing worker, featherbedding is rampant, and port costs are much higher than on the Continent. (The Economist, 1988:51-52). On the island continent of Australia, too, a nationwide union-dominated dock labor scheme (Fadem, 1967) has led to substantial inefficiency.

D. Labor Law

Besides Rotterdam's greater vulnerability to competition, differences between American and Dutch labor law help explain why Rotterdam dockworkers' pay is more moderate and Dutch stevedoring

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The ILWU protested and a U.S. arbitrator held the change would violate job-preserving provisions in the ILWU's contract with the Los Angeles terminal operator, a subsidiary of the Japanese shipping firm.

18.Because of foreign competition, American steel and automobile worker unions have been unable to preserve their very large wage and benefit packages and job-creating work rules . Their cartel did not extend to Korean steel mills. But a container of Korean goods destined for Denver cannot be offloaded in Seoul, and it matters not to ILWU members in Los Angeles that Hong Kong dockworkers are paid only $6000 (US) a year.

operations are more efficient. Consider, for example, Dutch dock unions' acquiescence when ECT negotiated a separate agreement with workers hired from outside the labor pool, providing for permanent employment,higher pay, and more flexible job assignment rules. The ILWU (or the ILA) assuredly would have struck any terminal that attempted such a change. That is why, despite widely-admired efficiency of the ECT labor-relations model (National Research Council, 1986), no American counterpart has been established.

The difference stems from the structure of the Dutch labor relations system, which was pushed by years of price and wage controls and a tradition of corporatism (Lijphart, 1976) toward relatively centralized national collective bargaining (Flanagan, Soskice & Ulman, 1983). When asked about ECT's separate peace, officials of the largest Dutch labor union federation, the FNV, expressed indifference about which trade union assumed jurisdiction of container terminal work , as long as the company dealt with a branch of the FNV. Union officials saw containerization as a route to the expansion of port business as a whole and hence to the expansion of national employment.

In addition, Dutch law, along with the tradition of national-level collective bargaining, virtually ensures that wages or benefits secured at one worksite in an industry will be extended, by agreement or by government order, to all firms in the industry. Regardless of the number of workers in a firm that pay union dues, there are essentially no non-union companies that compete by

paying markedly lower salaries or benefits than the national norm (although they can compete for workers by offering more). In a Dutch stevedoring firm, to make the comparison clear, individual workers might join one of several competing nationally-organized labor unions or none at all. No union election is held at the individual worksite, and no contract is negotiated there. Federations of unions jointly bargain with federations of employers concerning the entire transport sector. The individual employer, therefore, has relatively little stake in "keeping the union out" of his establishment.

In this legal structure, the labor-management struggle for advantage occurs primarily not at the firm level but at the nationwide industry level, and the union federations strive for rough equality across industries. Moreover, many of the most important worker benefits, those relating to job security and safety and income replacement, are sought and achieved not by bargaining but by legislation. Dutch law, for example, requires employers to seek agency approval to fire a worker, proving "just cause" in contested cases, and to pay termination benefits according to a statutory schedule, based on years of employment (Knegt, 1989). National legislation specifies, for all employers, generous rules for paid holidays, vacations, disability payments and and sick days, and establishes the basic health care insurance rights for all workers. Dutch law provides for a high minimum wage -- much higher, as compared to average wages, than the U.S. minimum wage (OECD, 1987:43) -- and unemployment benefits that

are much higher (in relation to the unemployed worker's previous earnings) and longer-lasting than those provided by U.S. laws.

American labor law, in contrast, provides relatively little in the way of statutorily guaranteed job security, vacation, health care, and unemployment benefits. No peak associations (such as the AFL-CIO and the National Association of Manufacturers) negotiate sector-wide collective agreements. The American labor law system, rather, invites each local union to wrest whatever advantage it can for its members on the basis of its particular set of bargaining advantages. Under the National Labor Relations Act, power flows to the local union that manages to win an election in a particular worksite. The benefits a union negotiates with any individual employer or group of employers are not extendable by law (as in The Netherlands) to competitor firms in which the union has less strength.

The American legal structure thus puts each union "on its own", with little help to be expected in winning benefits and protections for its members from the government or from an overarching federation of labor unions. Each union has an incentive to seek a closed shop (or its legal equivalent) in particular firms or industries and use it to extract maximum pay and job security advantages (including make-work rules) . The American legal structure thereby encourages non-union firms to seize a competitive advantage by fiercely resisting unionization. In consequence, and in contrast to The Netherlands, differences in

pay and work rules across American firms in the same industry (unionized versus non-union) quite often are large, as are differences across industries with different unions. Thus, in contrast to The Netherlands, American unions invest enormous efforts on contested workplace elections, endless legal appeals concerning the conduct of elections (Flanagan, 1987), and jurisdictional disputes among unions (Bok, 1971). It was in this competitive and conflict-encouraging legal context that the ILWU bargained, seeking the maximum benefits and job protections for its own members in return for acceding to containerization and non-disruption of the flow of goods through the port. Unlike national level Dutch unions, the ILWU had no incentive to accede to work rules that would, by improving transport efficiency, maximize employment for workers in the nation as a whole.

V. CONCLUSION

To stabilize port labor relations, the Dutch and American governments both helped create legally-enforceable, competition-restricting cartels (in Rotterdam in 1916, on the Pacific Coast in 1934). Access to dockwork was restricted to a limited circle of registered or licensed workers. Dockwork unions were strengthened. Workers enjoyed greater stability of earnings and gained more control over on-the-job work rules. Since the late 1960s, larger ships, containerization of cargoes and related intermodal transport systems created the opportunity for dramatic increases in dock productivity and trade volume. In both countries, dockside

employers responded by guaranteeing dockworkers high wages and regular pay (regardless of fluctuations in the need for dock labor) in return for uninterrupted and efficient cargo-handling.

Despite these commonalities, however, economic outcomes in the two countries vary. American longshoremen have retained hiring practices and work rules that make U.S. stevedoring operations less efficient and more costly to shippers than comparable operations in Rotterdam. Compared to the average worker in their nation, American longshoremen earn much more money, Dutch dockworkers only slightly more.

In accounting for these differences, law matters. Dutch law tends to concentrate power in national-level unions, to narrow wage differentials among workers in different industries, and to guarantee dockworkers -- and other workers -- high levels of income replacement in case of unemployment or underemployment. At least partly in consequence of these equality- and security-enhancing measures, Dutch labor leaders have tended to be more concerned with what is good for labor as a whole, not for members of any particular union, such as the dockworkers. Rotterdam dockworkers have not been passive. They have mounted several strikes in the past decade to protect jobs for technologically redundant workers. But Dutch dockworkers' unions, more strongly backed than their American counterparts by nationally-mandated security-enhancing laws, have been more willing than American

longshoremen to yield to management with respect to hiring and work-assignment practices.

American labor law, in contrast, establishes a decentralized, adversarial method of empowering labor unions and vests more power and responsibility in local unions (Bok, 1971). One consequence is more decentralized bargaining than one finds in Holland, and much larger differences in pay and benefits among workers. American labor law, moreover, provides workers less legal protection against dismissal, as well as much lower governmentally-guaranteed unemployment and retirement benefits. American longshore unions, less bolstered by governmentally-mandated protections, less constrained by nationwide pay norms, understandably have been more avidly self-interested than their Dutch counterparts, using work rules to create extra jobs, extracting extraordinary benefits for their own dwindling membership, and refusing to relinquish control of hiring practices to conform to new dock technologies.

But if legal differences between The Netherlands and the U.S. have significantly affected on-the-dock outcomes, they have not been wholly determinative. Perhaps cultural differences play a role, inclining the Dutch toward cooperation, the Americans toward conflict. Despite similarities with American labor law structures, Japanese and Canadian workers and unions, partly for cultural reasons, behave differently from American ones (see Lipset,1986; Waldron, 1985) But at least some and perhaps most of Rotterdam stevedoring terminals' greater efficiency can be traced to

differences in economic conditions. As market-driven technological innovations in transportation have eroded the natural monopolies enjoyed by well-located seaports, Rotterdam has become more vulnerable than American ports to international competition, making Dutch dock unions more sensitive to the comparative efficiency of their operations. In recent years, The Netherlands, faced with high unemployment and slow economic growth, has been compelled to scale back its generous statutory employee benefits, which discourage employers from hiring new workers.

It is possible, of course, that the increasingly unified European Economic Community will generate coordinated social benefit and labor laws. Conceivably, Dutch dockworkers will in effect merge with other European dock unions, establishing a continent-wide cartel that matches that of American longshoremen and using that power to extract American-style wages and work practices. Indeed, cooperation at the EEC level has yielded enormous, economically inefficient subsidies for European farmers, along with protectionist policies.

Nevertheless, international competition presses against and tends to erode legally-protected worker or producer cartels and unusually generous subsidies and statutory benefits. Even in huge, economically inward-looking America, unions threatened with loss of jobs to international competition (such as steel and auto workers) have shown flexibility, amending extremely costly wage-and-benefit packages and relaxing productivity-slowing work-rules. Under Prime Minister Thatcher, the British government, concerned

about the U.K.'s declining competitiveness, passed legislation discouraging the strikes that had crippled British industry and, recently, abolishing the 1947 Dock Labour Scheme.[19] There are recent indications, moreover, that some American longshore locals, faced with increasing competitive pressures that have diminished the flow of business through their ports, have begun to make concessions.[20] The U.S. Federal Maritime Commission, responding to concern about declining American competitiveness, outlawed an inefficient job-creating work rule long defended as sacred by the East Coast longshore union.[21]

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19. Another example: in 1984, the Italian government installed new management in the Port of Genoa. It cut the labor force in half, increased container-handling capacity, cut container gangs from 28 to 19 and then to 15, and installed an pay incentive plan based on productivity. This did not come easily. Strikes crippled the port for most of 1987, the government gave lump sum bonuses averaging $60,000 for 900 laid off dockworkers, and the labor union was given 24% share in the container terminal company (Vail, 1988).

20. In response to the loss of business to expanding, more efficient East Coast ports -- Charleston, South Carolina; Norfolk, Virginia; Halifax, Nova Scotia -- the ILA in 1988 agreed to cut in half its "cargo assessment" on containers handled in the Port of New York & New Jersey. (Joseph, 1988:10B)

21. The ILA's "50 mile agreement", dating from 1967, concerned the loading and unloading of less-than-full-load containers, in which packages from different shippers or for different consignees were consolidated. This "stuffing and stripping",the ILA had insisted, if done within 50 miles of the port, must be done only by ILA members -- in effect, at ILA-manned pier-side warehouses. This, the FMC held, violated the federal Shipping Act's prohibition against discrimination against freight forwarders and non-ILA warehousemen to with whom carriers outside of the ILA agreement wished to deal. One customs broker testified that once imported containers were stripped off the pier by non-union warehouses, there had been a material reduction in damage and pilferage, fewer delays, misdeliveries and shortages. (Federal Maritime Commission, 50 Mile Container Rules Case, Docket 81-11, Initial Decision of Administrative Law Judge, February, 1985).

The more nations are foreced to compete in international markets, this suggests, the stronger the arguments for the "competitive convergence" hypothesis: domestic political pressures grow to circumvent or amend glaringly inefficient effects of existing law. And markets are becoming more competitive, as the cost of transporting goods declines and the mobility of capital grows. All kinds of security-enhancing laws and legal arrangements -- from import restrictions to job preservation rules to government subsidies for inefficient or unproductive work -- come under political attack. In Western Europe, the EEC is more likely to serve more as a forum for levelling the legal playing field across nations and enhancing market forces than for promoting protectionism. Pressures are growing for **internationally coordinated** regulations to deal with costly problems such as curtailing acid-rain producing sulphur emissions, phasing out chlorofluorocarbons, and curtailing combustion of fossil fuels.

The unusually high level of benefits and restrictions on competition still retained by a declining number of American longshoremen thus may be an exception that proves the rule. The NRA helped the ILWU establish its tight coast-wide cartel, and American labor law, taken as a whole, continues to authorize and in some ways encourage it. But the ILWU's advantages rests mainly on its unique invulnerability to foreign competition, which in turn is abetted by the immobility of ports (as contrasted with factories), the large geographical scale of the United States, and

the union's consequent ability to extend its cartel over potentially competing ports.

But one wonders how long that can last, as American ports compete with each other for trade and American exporters search for ways to reduce their costs. In the realm of business regulation, labor, and perhaps even tort, taxation and welfare law, national differences in law among industrialized nations seem likely to matter less and less. Increasingly, I would guess, in the political struggle between security and efficiency unleashed by international competition, the advocates of efficiency may not prevail, but will have their say, and legal systems will be pushed to produce roughly convergent economic outcomes.

REFERENCES

Badaracco, Joseph (1985) Loading The Dice: A Five Country Study of Vinyl Chloride Regulation Boston: Harvard Business School Press

Ball, Joseph H. (1966) The Government-Subsidized Union Monopoly: A Study of Labor Practices in the Shipping Industry.

Bayley,David (1976) Forces of Order: Police Behavior in Japan and the United States Berkeley:University of California Press

Bell, Daniel (1962) "The Racket-Ridden Longshoremen: The Web of Economics and Politics " in Bell, The End of Ideology. New York: Free Press.

Bogaert, Michael (1970) Trade Unionism in Indian Ports: A Case Study at Calcutta and Bombay. New Delhi: Shri Ram Centre for Industrial Relations

Bok, Derek (1971) " Reflections on the Distinctive Character of American Labor Laws" 84 Harvard Law Review 1461

Braithwaite, John (1985) To Punish or Persuade: Enforcement of Coal Mine Safety. Albany, N.Y.: SUNY Press

Campbell, Scott (1986) Transformation of the San Francisco Bay Area Shipping Industry and Its Regional Impacts. Berkeley, CA: Institute of Urban & Regional Development

Ch'en Kang (1977) "Changes at the Shanghai Harbor Docks" in Stephen Anders, ed., Workers and Workplaces in Contemporary China

Day, Patricia and Rudolf Klein (1987) "The Regulation of Nursing Homes: A Comparative Perspective" The Milbank Quarterly 65:303-347

Economist (1988) "Dock Labour Scheme:Quaint Seaside Customs" July 2, 1988:51-52

Fadem, Joel (1967) "The Case of the Australian Waterfront: Organizational Design" Journal of Industrial Relations (March:26-36)

Fairley, Lincoln (1979) Facing Mechanization: The West Coast Longshore Plan. Los Angeles: Institute of Industrial Relations, U.C.L.A.

Finlay, William (1988) Work on the Waterfront: Worker Power and Technological Change in a West Coast Port. Philadelphia: Temple University Press

Flanagan, Robert J. (1987) Labor Relations and The Litigation Explosion. Washington, D.C.: The Brookings Institution

Flanagan, Robert J., David Soskice & Lloyd Ulman (1983) Unionism, Economic Stabilization, and Incomes Policies: European Experience. Washington, D.C.: Brookings Inst.

Galanter, Marc (1983) "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society" 31 U.C.L.A. Law Review 4

Hartman, Philip (1969) Collective Bargaining and Productivity: The Longshore Mechanization Agreement
Berkeley: University of California Press

Hobsbawm, E.J. (1964) Labouring Men: Studies in the History of Labour. London: Weidenfeld & Nicolson

Jasanoff, Sheila (1986) Risk Management and Political Culture. New York: Russell Sage Foundation

Jensen, Vernon (1964) The Hiring of Dockworkers and Employment Practices in the Ports of New York, Liverpool, London, Rotterdam and Marseilles. Cambridge: Harvard University Press

---- (1974) Strife on The Waterfront: The Port of New York Since 1945. Ithaca, N.Y.:Cornell University Press

Joseph, Gloria (1988) "Box-Moving Costs Vary Widely at Top 3 North Atlantic Ports" Journal of Commerce, July 28:10B

Kagan, Robert A. (1988) "What Makes Uncle Sammy Sue?" Law & Society Review 21:717-742

Kelman, Steven (1981) Regulating America, Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy. Cambridge, Mass: MIT Press

Kerr, Clark and Lloyd Fisher (1949) "Conflict on the Waterfront" Atlantic Monthly (Sept. 1949: 17-23

Kerr, Clark & Abraham Siegel (1964) "The Interindustry Propensity to Strike -- An International Comparison" in Clark Kerr, ed., Labor and Management in Industrial Society. Garden City, N.Y.: Doubleday.

Kimeldorf, Howard (1988) Reds or Rackets? The Making of Radical and Conservative Unions on The Waterfront. Berkeley, Ca: University of California Press.

Kirp, David L. (1982) "Professionalization as a Policy Choice: British Special Education in Comparative Perspective" World Politics 34:137

------ (1979) Doing Good by Doing Little: Race and Schooling in Britain. Berkeley:University of California Press

Knegt, Robert (1989) "Administrative and Judicial Procedures for Dismissal from Work in The Netherlands' Law & Policy 11: no.2 (in press)

Langbein, John (1985) "The German Advantage in Civil Procedure" 52 Univ. Chicago Law Review 823-866

Larrowe, Charles P.(1955) Shape-Up and Hiring Hall: A Comparison of Hiring Methods and Labor Relations on the New York and Seattle Waterfronts. Berkeley : University of California Press

------- (1972) Harry Bridges: The Rise and Fall of Radical Labor in the U.S. Westport, CT: Lawrence Hill & Co.

Levenbach, M.G. (1964) "Sociaal Bestuur", in Nederlands Bestuursrecht III. Samson: Alphen aan den Rijn

Lijphart, Arend (1976) The Politics of Accommodation: Pluralism and Democracy in The Netherlands, 2nd Edition. Berkeley: University of California Press

Lipset, Seymour Martin (1986) "North American Labor Movements: A Comparative Perspective," in Lipset, ed., Unions in Transition. San Francisco, Institute of Contemporary Studies

Lis, Catherina (1986) Social Change and the Labouring Poor: Antwerp, 1770-1860. New Haven: Yale University Press

Lundqvist, Lennart J. (1980) The Hare and The Tortoise: Clean Air Policies in the United States and Sweden. Ann Arbor: University of Michigan Press

Miller, Raymond C. (1969) "The Dockworker Subculture and Some Problems in Cross-Cultural and Cross-Time Generalizations" Comparative Studies in Society and History 11: 302-314

Mnookin, Robert & Lewis Kornhauser (1979) "Bargaining in the Shadow of the Law: The Case of Divorce" 88 Yale Law Journal 950

Morris, R. (1983) "The Melbourne Dockers War" Maritime Policy and Management 10:53-60

National Research Council (1987) Improving Productivity in U.S. Marine Container Terminals. Washington, D.C.: National Academy Press

Nijhof, Erik (1988) 'Gezien de Dreigende Onrust in De Haven ...': De Ontwikkelung van de Arbeidsverhoudingen in de Rotterdamse Haven, 1945-1965' ("In Light of the Threat of Unrest in the Port...":The Development of Industrial Relations in the Port of Rotterdam, 1945-65). Amsterdam: Stichting beheer IISG

Nijhof, Erik & Peter Schrage (1988) "Behind the Picketline: The Home Front of the Rotterdam Dockers in Times of Social Warfare, 1900-1980 " in L. Heerma van Voss & H. Diederiks, eds., Industrial Conflict: Papers Presented to the Fourth British-Dutch Conference on Labour History Amsterdam: Stichting beheer IISG.

Northrup, Herbert R. (1942) "The New Orleans Longshoremen" Political Science Quarterly 57:526-544

OECD (1987) OECD Economic Surveys: Netherlands. Paris: Organization for Economic Cooperation and Development

OECD (1986) OECD Economic Surveys: Netherlands. Paris: Organization for Economic Cooperation and Development

Pels, P.S. (1957) "The Development of Collective Employment Agreements in The Netherlands" in Sturmthal, ed. Contemporary Collective Bargaining in Seven Countries. Ithaca, N.Y.: Institute of International Industrial and Labor Relations, Cornell University

Peper, Bram and Gerrit Van Kooten (1983) "The Netherlands: From an Ordered Harmonic to a Bargaining Relationship" in Solomon Barkin, ed., Worker Militancy and Its Consequences: The Changing Climate of Western Industrial Relations. 2nd Ed. NewYork: Praeger

Phillips, Gordon and Noel Whiteside (1985) Casual Labor: The Unemployment Question in the Port Transport Industry, 1880-1970

Quam, Lois et al (1987) "Medical Malpractice in Perspective" British Medical Journal 294: 1529-31; 1597-1600

Rogers, Sidney (1979) "Six Longshoremen in Rotterdam" in Robert Schrank, ed., American Workers Abroad. Cambridge, Mass : MIT Press

Ross, Philip (1970) "Waterfront Labor Response to Technological Change: A Tale of Two Unions". Labor Law Journal: July, pp. 397-419

Sturmthal, Adolf (1957) "An Essay on Comparative Collective Bargaining" in Sturmthal, ed. Contemporary Collective Bargaining in Seven Countries. Ithaca, N.Y.: Institute of

International Industrial and Labor Relations, Cornell University

Vail, Bruce (1988) "Genoa Pushes to Reclaim Status in Med" American Shipper (April: 48-50)

Van Voorden, William (1984) "Employers Associations in The Netherlands" in John P. Windmuller & Alan Gladstone, eds. Employers Associations and Industrial Relations: A Comparative Study. Oxford: Clarendon Press.

Vogel, David (1986) National Styles of Regulation : Environmental Policy in Great Britain and the United States. Ithaca, N.Y.: Cornell University Press

Waldron, Arthur (1985) "Japan: The Legal Roots of Labor Peace" The Public Interest Summer:421-452

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