

## **Labor Market Governance in the Philippines: Wages, Unions, CBAs, Small Enterprises, and Employment\***

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### *Abstract*

*The author compares command and collaborative governance of Philippine labor market outcomes. He suggests that while the government has been advocating the shift to a more collaborative and less competitive approach to collective bargaining and labor standards compliance, figures on the same are not encouraging. According to the author, part of the reason arises from the divergent legal origins of labor laws in the country.*

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## Introduction<sup>1</sup>

In a recent study, Sale and Bool (2010) noted that Philippine public policy encourages a shift in the modes of realizing labor market governance outcomes, from command to collaboration, that is, from hierarchy and authority (centralized control) to forms of working together, e.g., collective bargaining and the 2004 Labor Standards Enforcement Framework (LSEF, which aims to establish a culture of voluntary compliance with labor standards). Aggregate empirical data, however, suggest that this is not happening.

Labor market governance indicators include the extent, size or levels of workers' associations, trade unions, collective bargaining agreement (CBA) coverage, labor management councils (LMCs), compliance rates upon labor inspections including those under the LSEF, establishments or employers, labor standards and Employees' Compensation Commission (ECC) cases handled, and public expenditures in proportion to gross domestic product (GDP) and gross national product (GNP). The low membership in or coverage of workers' associations, unions, CBAs, and LMCs, as well as low compliance rate on general labor standards are inversely related to the sizeable number of labor standards and ECC cases handled. Workers in unorganized establishments file such cases since they are not within the scope of CBAs, LMCs and the LSEF. Thus, the efficacy of the LSEF is also adversely affected as indicated by the average compliance rate for general labor standards of nearly half of the establishments inspected, which includes LSEF data. Due to the weakness of organized labor and low coverage of CBAs and LMCs, the burden of labor standards enforcement falls on the inspectorate and administrative systems of government which are based on command, i.e., hierarchical authority and centralized control. However, the capacity to enforce laws through labor inspections and administrative cases filed is linked to public expenditure as a percentage of GDP (and GNP) which is at a low level.

In this research, which is a work in progress, the author tries to study and unravel further seeming shifts in methods of governance affecting the Philippine labor market and determine empirical evidence of both competitive governance and collaborative governance.

## Literature Review<sup>2</sup>

Globalization – the unfettered flow of goods, capital, services, and technology across nations (Sale 2002) – has fuelled the desire for simplicity and flexibility in rules, regulations, systems, and processes of decision making within nations. For instance, de Soto (2000) calls for the simplification of rules so that people in the informal economy would find it easier to gain access to, and thus join, the formal economy. Friedman (2005) echoes this in relation to the felt need to attract business and capital. Market-based approaches to governing have been adopted in many nations because of globalization. Yet recent developments demonstrate that such approaches fail. Greenspan (2008) admits as much and points to the underestimation of risk as the culprit behind the global financial and economic crisis, i.e., “irrational exuberance.” There was inordinate amount of risk taking because rules and regulations were wanting. Aside from putting in more capital, governments should regulate even when there is no crisis to avoid excessive risk taking, says Krugman (2009).

Cooney (2000) notes that globalization can lead to marginalization, abuse and impoverishment in the absence of proper forms of governance. That is why it has the tendency to become a “race to the bottom.” This phrase, attributed to US Supreme Court Justice Louis Brandeis, refers to a situation where nations reduce regulatory measures to attract business – the race is not of diligence but of laxity.<sup>3</sup> Regulatory measures, while intended to protect the vulnerable, can be costly, and the costs of doing business are uneven across nations. And this unevenness is being used as a comparative advantage. Others call this regulatory competition (Smith-Bozek 2007) or competitive governance (Schachtel and Sahmel 2000).

According to Smith-Bozek (2007: 1): “Regulatory competition can occur horizontally—among co-equal governments at various levels—or vertically—for instance, between state and national governments. Governments’ motivation for horizontal, and in some cases vertical, competition is to attract new businesses to bolster tax revenue and help spur job growth and economic development. With horizontal competition, companies may move to the jurisdiction that provides the most effective regulation in terms of the firm’s business model. When a company does move, it takes its tax revenue and demand for office space and employees with it. Vertical competition, on the other hand, may not necessarily require companies to move to enjoy the benefits of a different regulatory program.”<sup>4</sup>

Collaborative governance is an approach that governments could use in lieu of the competitive method, particularly since, to borrow from Peters (2001), there is “policy fragmentation” and “polity differentiation.” Collaboration is the latest “one best way” or the last resort when nothing else works due to “wicked” or “intractable” problems, according to O’Flynn (2009). Mechanisms that enable stakeholders to exchange information, harmonize activities, share resources, and enhance capacities – elements of collaboration identified by Himmelman (2002) – ought to be put in place.

Philippine public policy encourages a shift in modes of realizing labor market governance outcomes from command to collaboration, that is, from hierarchy and authority (centralized control or disposition by government and competition by parties) to forms of working together (Sale and Bool 2010; Sale 2011).<sup>5</sup>

But minimum wage fixing in the Philippines is regionalized, that is, it takes into account existing regional disparities, such as demand for and supply of goods, inflation rate and consumer price index that differ from region to region. Among the factors to be considered by the Regional Tripartite Wages and Productivity Board are the need to induce industries to invest in the countryside and fair return on the capital invested and capacity to pay of employers.<sup>6</sup> To that extent, regional minimum wage fixing is a form of competitive governance.

On the other hand, unions and collective bargaining, the LSEF and workers’ associations, are forms of collaborative governance because of the exchange of information, harmonization of activities, sharing of resources, and enhancement of capacities inherent in them (Sale and Bool 2010; Sale 2011)

In this regard, it is useful to study the legal origins of the system, that is, whether it is of common law or civil law origin, and their relationship, if any, with other phenomena in the country (Sale 2011). Also, cultural explanations are worth exploring. Park (2010), citing Kozan (1997), and Huntington (1996) opine that Asian societies have “associative or collectivistic cultures” – they value general over individual interests and are less confrontational. If true, then collaborative governance seems apt for the Philippines. But is there evidence as well of competitive governance?

In another research, Sale and Bool (2011) attempt to unravel seeming shifts in methods of governance affecting the country’s labor market by determining whether there is evidence of competitive governance, aside from collaborative governance. The issue is also studied

in the context of legal origins. Cultural factors are broached. The effects of trade union density and collective bargaining coverage, among others, are considered.

### **Some Preliminary Data and Findings**

Based on data from the Bureau of Labor and Employment Statistics (BLES, see [www.bles.dole.gov.ph](http://www.bles.dole.gov.ph)), average membership per newly registered union<sup>7</sup> went down while average membership per newly registered workers' association<sup>8</sup> slightly increased, over time (See Table 1). Also, the average number of workers covered per new CBA went down (Table 2). Meanwhile, compliance rate on minimum wages decreased while compliance rate on general labor standards increased. Average compliance rate for general labor standards is about 50% of all establishments inspected, inclusive of LSEF data (from 2004 to 2010). Compliance rate on technical safety standards increased, too (Table 3). Wage orders have been issued in 2010 up to July 2011, increasing minimum wages in all 17 regions of the Philippines (Table 4). But minimum wages are nearly flat across regions. Minimum wage, trade union density and collective bargaining coverage are highest in the National Capital Region/Metro Manila (Figure 1). The number of establishments employing 50 or more employees is highest in Metro Manila (close to 6,000). But the number of establishments employing less than 50 employees is even higher outside Metro Manila (more than 500,000 or over 70%) (Table 5). Based on the data across regions, there is evidence of collaborative governance (through unions and collective bargaining, albeit average union membership and CBA coverage decreased over time, as well as through LSEF and workers' associations) and competitive governance (via regional minimum wage fixing). These findings are supported by Figures 2, 3 and 4.

Table 1. Number of registered unions, workers association, and members, 2005-2010

<b>Indicators</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Unions registered	492	371	260	279	384	335
Membership of newly registered unions	45,032	31,777	24,079	22,248	34,283	30,078
Average membership per newly registered union	92	89	86	80	89	90
Workers associations newly registered	1,924	1,603	1,649	2,345	3,689	2,821
Membership of newly registered workers associations (WA)	74,168	68,301	58,076	89,368	159,216	116,708
Average membership per newly registered WA	39	43	35	38	43	41

Source: Bureau of Labor &amp; Employment Statistics

Table 2. Number of CBAs and covered workers, 2005-2010

<b>Indicators</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
CBAs registered	459	536	318	307	453	540
Workers covered by new CBAs	82,925	60,790	44,375	55,290	74,924	87,445
Average number workers covered per new CBA	181	113	140	180	165	162

Source: Bureau of Labor &amp; Employment Statistics

Table 3. Compliance rate on minimum wage, general labor standards, and technical safety standards, 2004-2010

<b>Indicators</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Compliance rate on minimum wage upon inspection (%)	82.1	81.3	82.6	80.5	82.3	78.7	81.3
Compliance rate on general labor standards upon inspection (%)	44.9	46.1	49.2	55.4	55.4	36.7	63.8
Compliance rate on technical safety standards upon inspection (%)	86.9	85.3	81.4	82.8	88.3	88.1	91.0

Source: Bureau of Labor &amp; Employment Statistics

Table 4. Summary of current regional daily minimum wage rates  
 Non-Agriculture, Agriculture  
 As of July 2011  
 (In pesos)

REGION	WO No./ DATE OF EFFECTIVITY	NON- AGRICULTURE	AGRICULTURE	
			Plantation	Non-Plantation
NCR a/	WO 16/May 26, 2011	P 426.00	P 389.00	P 389.00
CAR b/	WO 14/January 1, 2011	255.00 - 272.00	238.00 - 254.00	238.00 - 254.00
I c/	WO 14/January 20, 2011	228.00 - 248.00	228.00	200.00
II d/	WO 14/February 16, 2011	237.00 - 245.00	225.00 - 233.00	225.00 - 233.00
III e/	WO 16/June 24, 2011	279.00 - 330.00	264.00 - 300.00	244.00 - 284.00
IV-A f/	WO 14/January 15, 2011	253.00 - 337.00	233.00 - 312.00	213.00 - 292.00
IV-B g/	WO 05/Nov. 11, 2010	252.00 - 264.00	210.00 - 219.00	190.00 - 199.00
V h/	WO 14/ Nov. 1, 2010	204.00 - 247.00	215.00 - 225.00	195.00 - 205.00
VI i/	WO 19/ July 15, 2011	235.00 - 277.00	245.00	235.00
VII j/	WO15/Sept 1, 2010	240.00 - 285.00	220.00 - 267.00	220.00 - 267.00
VIII k/	WO 16/June 1, 2011	248.00	223.00-229.00	208.50
IX l/	WO 16/ Sept. 9, 2010	255.00	230.00	210.00
X m/	WO 15/August 22, 2010	254.00 - 269.00	242.00 - 257.00	242.00 - 257.00
XI n/	WO 16/Sept. 1, 2010	286.00	276.00	276.00
XII o/	WO 16/Oct. 31, 2010	260.00	240.00	235.00
XIII p/	WO 10/August 25, 2010	243.00	233.00	213.00
ARMM q/	WO 12/ August 20, 2010	222.00	222.00	222.00

a/ Granted a P 22.00/day COLA

b/ Granted P P12.00 COLA

c/ Granted P 5.00 or 8.00 wage increase and integrated the P10 COLA under W.O. 13 into the basic pay.

d/ Granted P 10.00 wage increase.

e/ Granted additional P 14COLA, the P4 under W.O. 15 will be integrated into the basic wage on January 1, 2012

f/ Granted P 17.00 wage increase

g/ Granted P 12 wage increase

h/ Granted P 8 wage increase and integrated the 7 COLA into the basic wage.

i/ Granted P12.00 ECOLA

j/ Granted P P18.00 wage increase

k/ Granted P15 COLA to be given in 2 tranches: P10 on June 1 and P5 on Sept. 1, 2011; integrated into the basic pay the P8 COLA under W.O. 14

l/ Granted P 15 wage increase and integrated the P15 COLA under WO No. 15 into the basic wage.

m/ Integrated the P12 COLA into the basic pay effective August 22, 2010 & granted P13.00 wage increase effective on Oct. 1, 2010

n/ Granted P21 wage increase

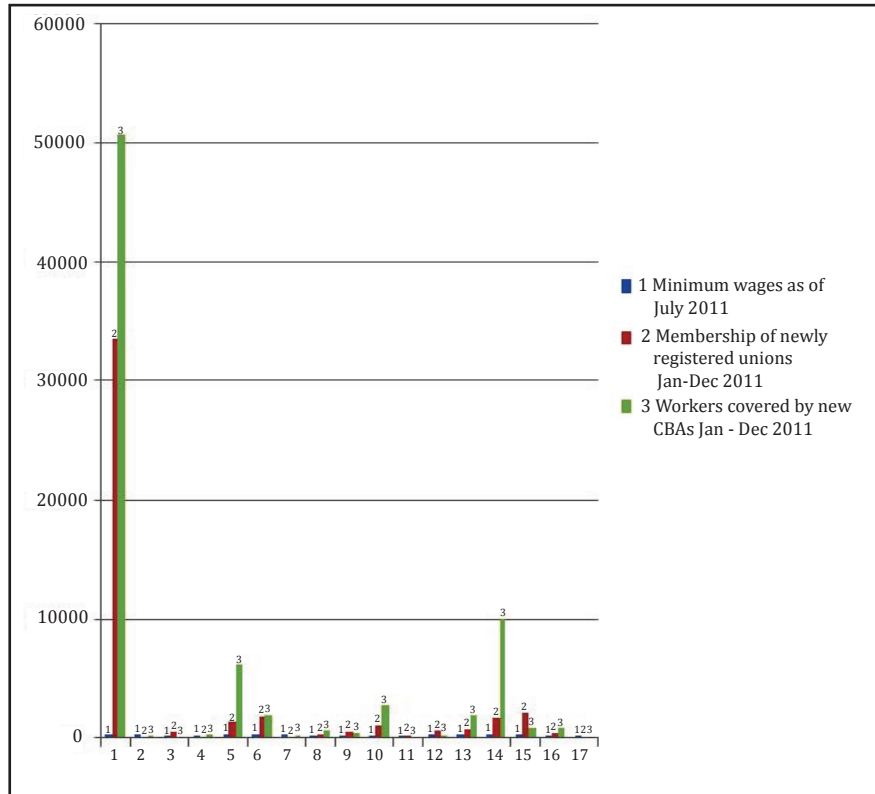
o/ Granted P 15 COLA (P10 upon effectivity & P5 on April 1, 2011) and integrated the P21 COLA from previous WOs into the basic pay

p/ Granted P10 wage increase and integrated into the basic pay P10 COLA under WO No. RXIII-09

q/ Granted P12.00 wage increase.

Source: National Wages & Productivity Commission.

Figure 1. Minimum wage rates, union membership, and workers covered by new CBAs, by Region, Jan-Dec. 2011



Source: Sale in this study, Sale and Bool 2011, based on data from Bureau of Labor & Employment Statistics. Numbers along the x-axis represent regions of the country, 1 being the National Capital Region.



Table 5 - Number of Establishments by Region and Employment size,  
Philippines: 2010

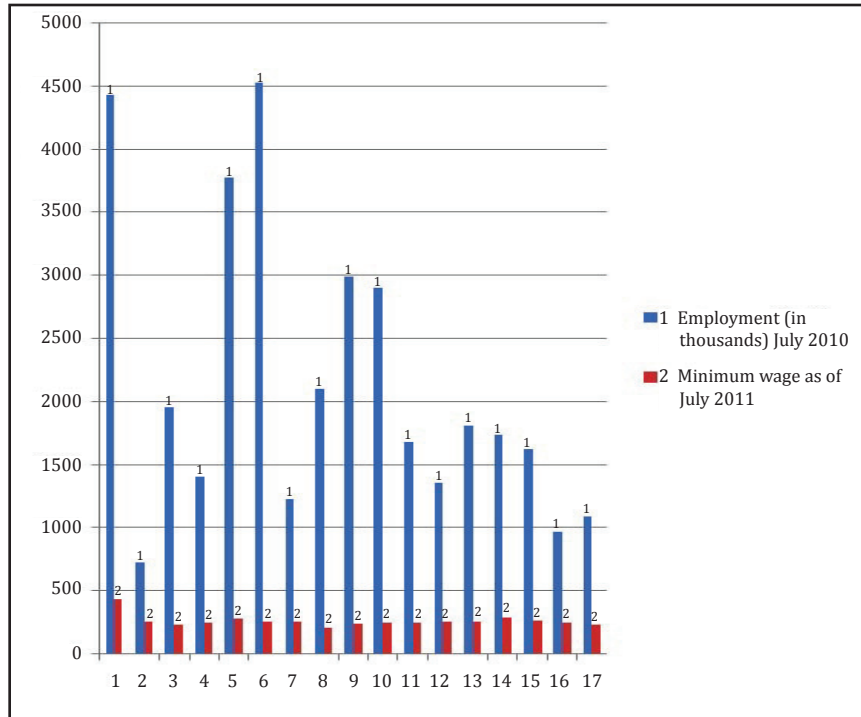
REGION	Employment Size							
	Total	1 - 4	5 - 9	10 - 19	20 - 49	50 - 99	100 - 199	200 & Over
<b>PHILIPPINES</b>	<b>777,687</b>	<b>619,991</b>	<b>89,908</b>	<b>40,132</b>	<b>15,905</b>	<b>5,942</b>	<b>2,786</b>	<b>3,023</b>
National Capital Region	210,574	148,142	32,093	17,106	7,736	2,901	1,245	1,351
Cordillera Administrative Region	14,079	11,893	1,365	545	165	58	30	23
Region I – Ilocos Region	42,202	36,916	3,503	1,190	389	113	58	33
Region II – Cagayan Valley	23,723	21,066	1,790	574	195	52	25	21
Region III – Central Luzon	79,219	65,901	7,666	3,525	1,266	459	202	200
Region IV-A - CALABARZON	114,378	95,822	10,656	4,398	1,791	803	389	519
Region IV-B - MIMAROPA	22,499	19,272	2,252	707	189	53	13	13
Region V – Bicol Region	27,428	22,798	3,068	1,036	326	115	51	34
Region VI – Western Visayas	45,315	36,796	5,054	2,157	778	247	144	139
Region VII – Central Visayas	45,609	35,095	5,882	2,600	1,092	431	222	287
Region VIII – Eastern Visayas	18,023	14,827	2,134	707	226	64	37	28
Region IX – Zamboanga Peninsula	24,259	21,144	2,020	740	190	88	38	39
Region X – Northern Mindanao	28,454	22,626	3,512	1,466	520	159	89	82
Region XI – Davao Region	36,719	29,492	4,390	1,772	564	216	146	139
Region XII - SOCCSKSARGEN	24,919	21,001	2,481	906	289	108	59	75
Caraga	12,298	10,059	1,407	566	154	57	25	30
Autonomous Region in Muslim Mindanao	7,989	7,141	635	137	35	18	13	10

Note: Updating of the list of establishments was based on Field Updating conducted by the NSO on supplemental lists from different secondary sources and updates from feedbacks on the surveys undertaken by the office.

Source of data: National Statistics Office, Industry and Trade Statistics Department, 2010 List of Establishments

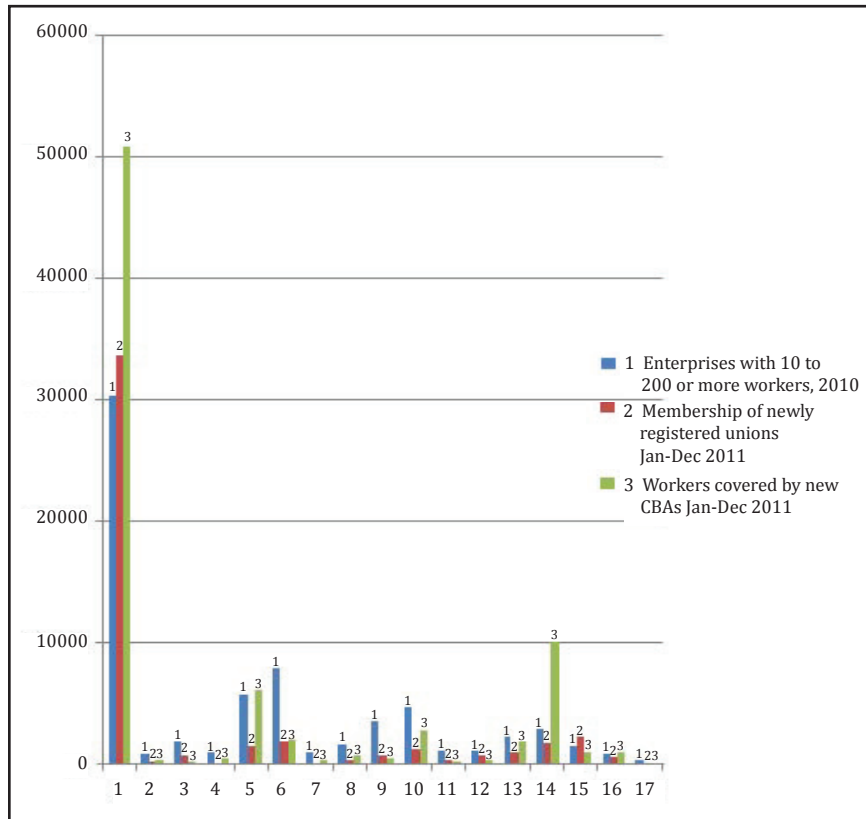
Source: Bureau of Labor & Employment Statistics.

Figure 2. Regional employment and minimum wage rates as of July 2010 and July 2011



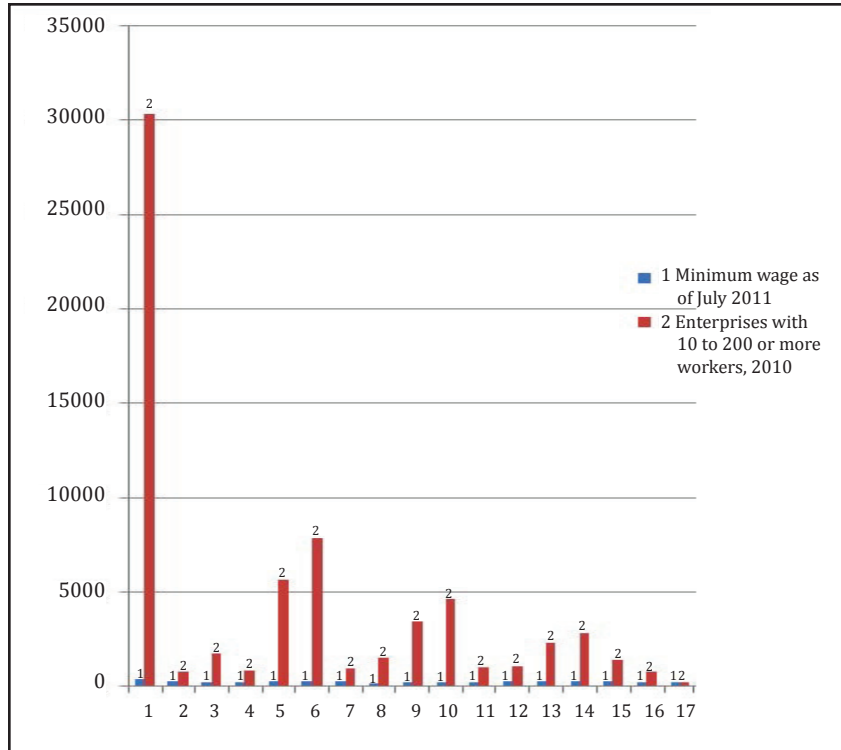
Source: Sale in this study, based on data from Bureau of Labor & Employment Statistics. Numbers along the x-axis represent regions of the country, 1 being the National Capital Region.

Figure 3. Number of enterprises employing 10 to 200 or more workers (2010), membership of newly registered union, and CBA coverage, Jan-Dec 2011



Source: Sale in this study, based on data from Bureau of Labor & Employment Statistics. Numbers along the x-axis represent regions of the country, 1 being the National Capital Region.

Figure 4. Enterprises employing 10 to 200 or more workers (2010) and minimum wage (as of July 2011) by Region



Source: Sale in this study, based on data from Bureau of Labor & Employment Statistics. Numbers along the x-axis represent regions of the country, 1 being the National Capital Region.

### **Some Preliminary Explanations<sup>9</sup>**

Philippine law on management prerogative is of civil law origin while that on freedom of association, collective bargaining and minimum wage is of common law origin. The legal origins of labor relations and property rights are summarized Table 6 (found in the appendices).

The different legal origins of management prerogative, freedom of association, collective bargaining, and minimum wage have resulted in system incoherence or inconsistency. According to Sale (2011):

*“Public policy divergence or fragmentation occurred in 1936: property rights under civil law (the basis of management function or prerogative) remained laissez faire, while labor relations law under common law shifted to compulsory arbitration (from laissez faire) with social justice as the aim. Thereafter, labor relations law shifted from compulsory arbitration to freedom of association and collective bargaining, then to a combination of the two, and finally to the present system (still of common law origin and tied to social justice), where the combination remains but voluntary modes in settling labor disputes are enhanced and preferred.*

*The divergence or fragmentation has resulted in system incoherence or inconsistency, i.e., trade union density and CBA coverage are low and the number of compulsory arbitration cases is very high, even while labor regulations are seemingly abundant. Enterprises/employers assert property rights and managerial prerogatives (based on civil law and laissez faire) when deciding to reduce costs and compete in open (thereby larger, combining) markets. The processes and phenomena of globalization and flexibility give impetus, and are thus connected, to the exercise of property rights and managerial prerogatives. And as explained, globalization and flexibility are related to the high unemployment/underemployment rates and poverty incidence, large informal sector/economy and preponderance of small enterprises in the Philippines, which in turn have influenced low trade union membership and CBA coverage. The use of compulsory arbitration*

Table 6 - Legal origins of labor relations and property rights<sup>10</sup>

<b>Period</b>	<b>Of common law origin</b>	<b>Of civil law origin</b>
Pre-commonwealth (prior to 1936)	Act 4055 (1933) provided for voluntary mediation, conciliation and arbitration  Basic policy: laissez faire	Spanish civil law applied to relations between labor and capital, particularly the law on obligations, contracts and property  Basic policy: laissez faire
Commonwealth (1936 to 1953)	Commonwealth Act 103 (1936) established compulsory arbitration by Court of Industrial Relations (CIR) of all labor disputes and Philippine Civil Code (1950) introduced "Contract of Labor"  Basic policy: social justice	Spanish civil law on property applied to management function or prerogative, which was retained in the Philippine Civil Code (1950)
Industrial Peace Act (1953 to 1972)	Philippine Civil Code (1950) provisions on "Contract of Labor" applied; Republic Act 875 (1953) provided for the primacy of freedom of association and collective bargaining; compulsory arbitration by CIR was limited to specified/defined situations  Basic policy: social justice	Philippine Civil Code (1950) on property rights applied to management function or prerogative  Basic policy: laissez faire
Martial law (1972 to 1986)	Philippine Civil Code (1950) provisions on "Contract of Labor" applied; Labor Code (1974) provided for the primacy of freedom of association and collective bargaining; compulsory arbitration by Secretary of Labor or President and National Labor Relations Commission (NLRC) was limited to specified/defined situations  Basic policy: social justice	Philippine Civil Code (1950) on property rights applied to management function or prerogative  Basic policy: laissez faire
Post-martial law (1986 to present)	Philippine Civil Code (1950) provisions on "Contract of Labor" and 1987 Constitution provisions on Social Justice apply; Labor Code provides for the primacy of freedom of association and collective bargaining and preference for voluntary modes in settling labor disputes, including conciliation; compulsory arbitration by Secretary of Labor or President and NLRC is limited to specified/defined situations  Basic policy: social justice	Philippine Civil Code (1950) on property rights applies to management function or prerogative  Basic policy: laissez faire

Source: Sale (2011)

*is very high because this mode has been resorted to by unorganized workers and establishments.”<sup>11</sup>*

While collaborative governance seems suitable for the Philippines given that Asian societies have “associative or collectivistic cultures,” as discussed previously, and considering the existence of unions and collective bargaining (albeit the numbers are declining), the LSEF and workers’ associations, there is empirical evidence of competitive governance. This may be gleaned from the fact that **lower** trade union density (averaging 773 members), CBA coverage (averaging 1,700 employees) and minimum wages (averaging P247) converge with an abundance of small enterprises outside Metro Manila. About 75 per cent (529,664 out of 709,899) of establishments employing less than 10 workers exist outside Metro Manila (Table 5). Also, the number of bigger enterprises (establishments employing 10 to 200 or more workers) is small outside Metro Manila (Table 5, Figures 3 and 4), averaging 2,341. And employment is generally lower outside Metro Manila, save for Region IV-A (CALABARZON) which has a higher level of employment (Figure 2). Thus, most employers in the Philippines are small enterprises operating outside Metro Manila where trade union density, CBA coverage and wages are at very low levels. It appears that competitive governance is influencing these outcomes.

## Endnotes

<sup>1</sup> Taken from J.P. Sale and A.C. Bool, Philippine labor market governance: shifting methods from command to collaboration unraveled, 2011 Conference, Working-Class Studies Association (22- 25 June 2011), Monarch Room, Conference Center, University of Illinois – Chicago Student Center East, U.S.A.

<sup>2</sup> Ibid. Inclusive of footnotes.

<sup>3</sup> *Liggett Co. v. Lee*, 288 U.S. 517 (1933). <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=288&invol=517>.

<sup>4</sup> Smith-Bozek, Jennifer. (2007). Regulatory Competition: A Primer. <http://cei.org/studies-point/regulatory-competition-primer>, p. 1.

<sup>5</sup> See CONST., Art XIII, Sec. 3.

<sup>6</sup> LABOR CODE, Art. 124 (e) and (h).

<sup>7</sup> Unions are organized in whole or in part for the purpose of collective bargaining or of dealing with the employer regarding terms and conditions of employment. See LABOR CODE, Art. 212 (based on old numbering of articles).

<sup>7</sup> Workers’ associations are organized for mutual aid and protection, but not for collective bargaining. See Implementing Rules of Book V, LABOR CODE. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those

without any definite employers (in the informal economy) may form such associations. See LABOR CODE, Art. 243 (based on old numbering of articles).

<sup>9</sup> Based substantially on J.P. Sale and A.C. Bool, Philippine labor market governance: shifting methods from command to collaboration unraveled, 2011 Conference, Working-Class Studies Association (22- 25 June 2011), Monarch Room, Conference Center, University of Illinois – Chicago Student Center East, U.S.A., inclusive of footnotes.

<sup>10</sup> Taken from Sale, Jonathan P. (2011). *The Governance of Decision Making and Labor Dispute Settlement in the Philippines: Shifting Methods from Command to Collaboration or Vice-Versa?* Doctoral Dissertation, University of the Philippines National College of Public Administration and Governance, 08 March 2011, pp. 152-153.

<sup>11</sup> *Id.*, at 153-154.

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