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Workers, Communities, and Industrial Property: An Emerging Language of Rights

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Out of recent national debates and local struggles over plant closings, an alternative language of industrial property rights has emerged. This language places the rights of workers and communities above, or on a par with, those of owners and managers. While this new language of rights coexists with more traditional conceptions of owner/manager prerogatives, its emergence suggests that rights of property ownership, which are often seen as relatively immutable structural constraints upon the capitalist labor process, may themselves be contested and subject to change.

KEY WORDS: industrial property; plant closings; employee rights; community rights; labor process.

INTRODUCTION

This article attempts to show how traditional conceptions of managerial rights, which are generally seen as tilting the balance of power in the labor process in favor of management, are not immutable or unchallenged. As "consensus" norms that constrain social interactions, they are continually subject to contestation and change. Below we examine recent challenges to traditional concepts of managerial rights, including a new popular discourse of rights and certain trends in political and legal actions at the federal, state, and local levels. We conclude by suggesting that these developments may have implications for the balance of employer-worker rights in the workplace, as well as for economic development initiatives under community control.

Our story begins in 1977, when U.S. Steel Corporation decided to close two mills in Youngstown, Ohio. The closures threatened the loss of approximately 3500 steelworker jobs and the destruction of the economy of an already damaged community. Local unions, government officials, and religious and community organizations formed a coalition to save the mills through media and political pressures

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and a proposed employee buyout (Lynd, 1987a). In addition, United Steelworker Local 1330, Congressional representatives, and the Attorney General of Ohio filed a lawsuit against U.S. Steel in federal court, asking the courts to order the corporation either to keep the plants in operation or to sell them to the plaintiffs (*Local 1330, United Steel Workers of America v. United States Steel Corporation*, 1980).

In response to the complaints, U.S. Steel argued that the plants were unprofitable, and that obsolescence and changes in transportation, markets, and technology ensured that they would be unable to regain their profitable status. The company also asserted "an absolute right to make a business decision to discharge its former employees and abandon Youngstown," stating that "there is no law in either the State of Ohio or the United States of America which provides either legal or equitable remedy for plaintiffs" (*Local 1330*, 1980, p. 1266).

At a pretrial hearing in February of 1980, the District Court judge made a statement about the parties' relationship and the public interest. He noted that the Mahoning Valley and the lives of its inhabitants were based entirely upon steel, and that without steel local communities would almost certainly become ghost towns. "Hasn't something come out of the relationship" between U.S. Steel, Youngstown, and its inhabitants? he asked.

> It would seem to me that when we take a look at the whole body of American law and the principles we attempt to come out with, and although a legislature has not pronounced any laws with respect to such a property right, that is not to suggest that there will not be a need for such a law in the future dealing with similar situations—*it seems to me that a property right has arisen from this lengthy, long-established relationship between United States Steel, the steel industry as an institution, the community in Youngstown, the people in Mahoning County and in the Mahoning Valley in having given and devoted their lives to this industry.* Perhaps not a property right to the extent that can be remedied by compelling U.S. Steel to remain in Youngstown. But *I think the law can recognize the property right to the extent that U.S. Steel cannot leave that Mahoning Valley and the Youngstown area in a state of waste, that it cannot completely abandon its obligation to that community, because certain vested rights have arisen out of this long relationship and institution.* (*Local 1330*, 1980, p. 1280, quoting the District Court judge) (emphasis in the original)

Judge Lambros searched the law in vain for a community property right. After initially restraining the company from closing the mills, he issued a final opinion finding that the plants had become unprofitable and denying relief to the plaintiffs. His frustration and disappointment are clearly expressed in his opinion:

> The Court has spent many hours searching for a way to cut to the heart of the economic reality—that obsolescence and market forces demand the close of the Mahoning Valley plants, and yet the lives of the 3500 workers and their families and the supporting Youngstown community cannot be dismissed as inconsequential. United States Steel cannot be permitted to leave the Youngstown area devastated after drawing from the lifeblood of the community for so many years.
>
> Unfortunately, the mechanism to reach this ideal settlement, to recognize this new property right, is not now in existence in the code laws of our nation. (*Local 1330*, 1980, p. 1266, quoting the District Court judge)

As the District Court judge was forced to acknowledge, the values and assumptions underlying the U.S. legal system incorporate strong conceptions of the rights of private owners to manage their property without interference (Atleson, 1983). This set of values, which supports unencumbered managerial control, unfettered capital mobility, and the unquestioned dominance of market forces, is "[s]o

pervasive, so deeply rooted, and so systematically internalized...that it has often been considered a 'consensus' norm" (Lynd, 1987a, p. 926). Lynd's observation accurately reflects the Supreme Court's view that workers have no "say" over decisions that are viewed as relating to the "core of entrepreneurial control" (*Fibreboard Paper Products v. NLRB*, 1964, p. 223; *First National Maintenance Corp. v. NLRB*, 1981). (See Gaines [citation, this issue] for a more detailed discussion of the historical origins of control relations in the workplace and a delineation of the balance of specific rights in the context of labor process theory.)

Judge Lambros, however, was not alone in challenging the consensus and seeking an alternative approach. In many communities, plant closings, major layoffs, and work relocations—aspects of the process Bluestone and Harrison (1982) identify as the "deindustrialization of America"—have engendered considerable public debate. When localities are threatened by massive job and revenue loss, traditional views of the rights and prerogatives of workers, management, and communities are called into question. In the crucible of local and national debate, new conceptions of worker and community rights to industrial property have begun to emerge.

Over the past decade officials and community members in localities across the country have frequently tried to make the case for community (state and local) rights to industrial property. Their arguments and actual or threatened legal actions illustrate a strong belief that a concept of worker and community property rights has been brought into existence and should be given weight in law. Without finding such rights in existing law, some judges have nevertheless given weight to them within the constraints of the current legal framework. As we will see later, legislation has been passed that indirectly acknowledges those rights and challenges the predominance of managerial rights. At the same time, public officials and community coalitions have attempted to take over industrial facilities using the language of worker and community rights. This article traces this emerging language of rights as it is manifested in legislation, government and community action, judicial decisions, and public debate, examining its impact upon traditional notions of managerial control, worker rights, and traditional relationships between management, workers, and communities.

The emergence of a discourse of worker and community rights to industrial property has implications for our understanding of industrial relations and, more specifically, of the capitalist labor process. According to Littler (1990, p. 71) and others, one of the key cultural supports of managerial control of the labor process is "widespread acceptance of property rights within modern capitalist societies." Traditional property relations "entail a general form of control relations" (p. 78) which constrain particular contests between workers and management in the workplace. As these control relations are challenged in the larger community, they become easier to challenge in the workplace as well. The consensual vision of unfettered managerial rights cannot retain its unspoken power once it becomes subject to open criticism and debate. As the consensus view of ownership prerogatives is undermined, the labor process may become a site of social uncertainty and renegotiation. New boundaries may be drawn to delineate employer and employee rights and a new balance achieved between worker resistance and acquiescence to employer control. Though not in any sense guaranteed or even likely, the impact

of a new language of property rights on the capitalist labor process is potentially far-reaching.

A NEW LANGUAGE OF RIGHTS

In 1986 the Roman Catholic bishops in the United States issued a pastoral letter on economic justice which devoted considerable attention to the problems of plant closure and capital mobility. The bishops affirmed workers' rights to notification, compensation, retraining and relocation in the event of a plant closing, anchoring these rights in a conception of the "stakes" in a business enterprise:

> Every business...depends on many different...groups for its success: workers, managers, owners or shareholders, suppliers, customers, creditors, the local community, and the wider society.... Present structures of accountability, however, do not acknowledge all these contributions or protect these stakes. (National Conference of Catholic Bishops, 1986, section 298)

The concept of stakeholders' rights, as opposed to the narrower concept of shareholders' rights, is invoked with increasing frequency in debates over the disposition of industrial property. This is in part due to the efforts of community-based coalitions and their supporters who make up what might be loosely designated as the "community property rights movement" (Lynd, 1987b, p. 17). The success of this community-based movement's efforts to engender a new public consciousness is evident in a wide variety of settings. A 1990 editorial in *Business Week*, for example, citing a strict anti-takeover bill under consideration in Pennsylvania, clearly counterposes traditional and new conceptions of rights:

> The bill undermines a key concept of capitalism: a board's fiduciary duty to shareholders. It allows directors to place the interests of so-called stakeholders, such as employees, communities, and suppliers, above those of shareholders. (Editorial, 1990, p. 106)

In a reference to the extravagances of "deal mania," the editors of *Business Week* indirectly acknowledge that the new concept of stakeholders' rights has emerged in response to perceived violations of a social contract. The conception of unfettered managerial rights is embedded in a larger context of values and assumptions, most notably the assumption that the pursuit of private economic interests is consonant—at least in the long run—with the larger public interest. When these values and assumptions are abridged, as they have been in the shutdown of profitable plants, conglomerate milking, and corporate raiding, the concept of management rights loses some of its crucial supports (Rippey, 1989). Rampant speculation in productive assets is seen as violating an implicit agreement between management and communities—that they will not operate to do each other major harm unless constrained by larger (economic or political) forces. As James P. Laney, President of Emory University, argued in a 1988 speech to the Lawyers Club of Atlanta: "The problem is that takeovers are predicated often on a rather narrow definition of interests, a definition that excludes many who in fact have a stake in the outcome, in the sense of being affected by it" (Laney, 1989, p. 319). The trend toward cashing in on productive assets violates a social norm of fairness that is visible in the concept of stakeholder's rights.

It is this sense of the rules of fair play and implicit social contracts that in part has motivated the hostile public reaction to Frank Lorenzo's rapacious managerial style and generated responses like the *Boston Globe* article entitled "Who Owns Eastern?" This 1989 article noted that the public was siding with the strikers against Lorenzo, an unusual response to a transportation workers' strike. Experts speculated that the public reaction might reflect a shift in thinking about the relative rights of workers and owners. According to George C. Lodge of the Harvard Business School, "the right to manage is coming increasingly from the people you manage.... Employees are saying, this company is ours. We care more about it than do a bunch of traders on Wall Street who represent an amorphous group of shareholders." The article also notes Harvard professor and former Secretary of Labor John Dunlop's point that many corporate managers fail "to recognize that employees have a legitimate stake in the future of the company..." (Butterfield, 1989, pp. A1, A18).

FEDERAL PLANT CLOSING LEGISLATION

A decade-long debate over national plant closing legislation culminated in August of 1988 with the signing into law of a bill requiring that most employers notify workers in advance of plant closings or major layoffs (Worker Adjustment and Retraining Notification Act, 1988). Several states and cities had already enacted some form of advance notice or plant closing legislation, and proposals for federal legislation had been before Congress since the 1970s (Aboud & Schram, 1984). Participants in the debates over these legislative initiatives focused on issues of economic efficiency, the appropriate balance between managerial and workers' rights, and the emergence of a sense of community property rights (McKenzie, 1981; Bluestone & Harrison, 1982; Carroll, 1984; Lawrence, 1987).

Management representatives assailed the proposed federal legislation, calling it "another encroachment by the federal government on the management of privately-owned companies" (Finney, 1987). While a number of business leaders and business organizations supported the concept of *voluntary* advance notification when management makes the judgment that such notice is possible and advisable, many in the business community perceived a significant danger in legislatively mandated advance notice. As Mark de Bernardo, special counsel to the United States Chamber of Commerce pointed out, there is "a very important principle involved—you insert governments, unions and the courts into the process by which fundamental management decisions regarding the economic well-being of an employer's company are made—and much more" (*New York Times*, 1988a, p. 5).

Advance notice advocates, on the other hand, argued that the longstanding principle of managerial autonomy had to give way to basic fairness, worker rights, and the interests of state and local government agencies: "With advance notice, workers can begin to look for new jobs, to make arrangements for their families, to deal with the psychological stress—before they are actually out of work... [and] the appropriate government agencies can start their assistance before a closing or layoff," stated Thomas R. Donahue, Secretary-Treasurer of the AFL-CIO (Finney,

1987, p. 84). The bill's supporters cited studies showing that advance notice significantly reduces worker joblessness and would result in substantial savings in unemployment insurance costs as well as decreased worker income losses. Noting that plant closings can have a devastating effect on communities, experts also argued that advance notice would make it easier for communities to adjust school budgets and other services adversely affected by a shrinking tax base (Madigan, 1988; Murray, 1987).

These arguments carried the day over the traditional conceptions of unencumbered owner/manager property rights. Polls taken in 1988 established that 80% of the general public supported some type of federal statute requiring advance notice of plant closings and large-scale layoffs (Farnsworth, 1988). According to one participant in the 1988 Senate debate, the Congressional vote reflected the American public's sense that advance notification is "the right thing to do" (*Daily Labor Report*, 1988). The support for the legislation was so strong that, faced with an upcoming election, even a staunch supporter of managerial rights like Ronald Reagan was forced to sign the bill into law.

The passage of advance notification legislation marks a shift in public values and a new attitudinal balance. While the more traditional rights of unfettered capital mobility and unencumbered managerial decision making are still predominant, this legislation challenges the "omnipotent and omniscient image given to management" (Thompson, 1990: p. 96) and constitutes increasing recognition of the rights of workers and communities affected by managerial decisions. This recognition does not constitute an acknowledgment of a community property right, but it is one of the preconditions of such an acknowledgment.

STATE AND LOCAL INTERVENTION

Sensing a shift in public attitudes toward managerial rights, and faced with economic pressures and losses brought about by plant closings and other corporate actions that threaten state and local economies, local and state government officials throughout the country are beginning to speak up and to take action. Many of their statements and actions are based on a conception of a community's rights in the industrial property it has contributed to creating.

States and Communities Fight Back

Corporate takeover attempts and decisions concerning investment capital have traditionally been viewed as expressions of management's right to take unilateral action concerning the use and disposal of its property. It was not surprising, then, to discover that Shearson/American Express had taken a significant equity position in Beazer PLC's attempt to acquire—in a hostile takeover—the Koppers Company in Pittsburgh. What was surprising was the State Treasurer of Pennsylvania's open letter to the CEO of Shearson/American Express, published as a full-page ad in the *New York Times* on March 25, 1988. Citing the "broader public interest—the

impact on jobs and business activity in Pennsylvania," the Treasurer notified Shearson that he had suspended all business activities, totalling more than $7 billion dollars in the past year, between Shearson Lehman Hutton and the Treasury's investment office. He also listed several other actions directed against Shearson that he was prepared to take if the takeover attempt proceeded. Chastising Shearson for "narrow self interest and greed," Treasurer Greene warned the company: "Your firm...cannot expect to benefit from business done in Pennsylvania while at the same time carrying out what appears to be a hostile action that can potentially have a significant adverse impact on jobs in this state" (*New York Times*, 1988b, p. D-3). The takeover attempt, discussed fully by Burrough and Helyar (1990), eventually failed.

Pennsylvania has also been a leader in the antitakeover movement among the states, a number of which have passed laws restricting corporate takeover activity. As noted above, Pennsylvania's legislation "permits directors to favor the interests of so-called stakeholders, such as employees and customers, over those of owners" (Fromson, 1990, p. 67).

Companies that propose plant closures have increasingly been subject to the wrath of local communities. As the *Wall Street Journal* noted in 1988,

> [f]rom Kenosha, Wis. to Freehold, N.J., factory towns losing major plants are fighting back. After throwing money and favors at companies to win or preserve jobs, these communities now want their due. Maybe they can't force open bolted plant doors, but they are using public outrage, political pressure and legal leverage to extract compensation well above what union contracts and employee picket lines have yielded before. (White, 1988, p. 1)

In Clarksburg, West Virginia, Newell Company announced they were closing the city's last large glass factory, eliminating 942 jobs. Workers, business people, and community leaders demonstrated at the county courthouse, a state legislator threatened to block the plant doors with a bulldozer, and Governor Arch A. Moore filed a $614.6 million dollar breach of contract lawsuit against the company. While the company did eventually close the plant, it paid a price—$1 million dollars was paid out in aid to workers, and its equipment remained locked inside the plant as it discussed other reparations, including the possibility of eventually reopening the plant (White, 1988).

The community's anger at Newell was fueled by the knowledge that the company had benefited from a hostile takeover of the glass factory's original owner, which had in turn benefited from $3.5 million in state-sponsored loans at 4% interest over the past decade. As the *Journal* pointed out, however, even long-time owners are not immune to such community challenges. In the summer of 1988, Norwood, Ohio filed a $318.3 million breach of contract lawsuit against General Motors Corporation for abandoning its 64 year-old auto assembly plant. Norwood had recently spent just under $1 million to help GM buy land, and stood to lose millions in tax dollars because of the closing. In an attempt to settle the case, GM hired a developer to formulate alternative land use plans for the site and agreed not to seek a lower tax assessment on the closed plant. In a similar vein, protests against a Chrysler Corporation closing in Kenosha, Wisconsin resulted in a mul-

timillion-dollar worker aid fund and Chrysler's decision to keep a 20-factory parts subsidiary open (White, 1988).

Eminent Domain

The rash of plant closings over the past decade has also led community leaders to assert the right of eminent domain. Eminent domain is government's power to take private property for a public purpose against the owner's consent if fair compensation is provided. The basis for the government's right is set forth in the Fifth Amendment to the United States Constitution: "nor shall private property be taken for public use, without just compensation." Historically, eminent domain has been used to obtain land for building sites, roads, railroad rights of way, and other infrastructure development. It was used, and permitted after appeal to the United States Supreme Court, by the State of Hawaii to transfer title of lands from large landowners to individuals renting those lands (*Hawaii Housing Authority v. Midkiff*, 1984).

In the context of plant closings, the right of eminent domain has not been extensively tested, although it has been put forward in a number of settings, including the Youngstown situation discussed at the beginning of this article (Lynd, 1987b). The town of Greenfield, Massachusetts considered using eminent domain in 1984 to seize factory land in order to keep a Bendix Corporation subsidiary operating, thus saving 100 jobs (*Daily Hampshire Gazette*, 1984). In 1986 the Boston City Council worked with unions and community groups to use eminent domain to keep the newly sold Colonial Provision pork processing plant in operation. Both these attempts eventually failed (see Rippey, 1989, for more examples of the eminent domain cases and an evaluation of the strategy).

New Bedford, Massachusetts officials, led by Mayor Brian Lawler, threatened to take Morse Cutting Tool by eminent domain in 1984 in order to facilitate the sale of the plant to a buyer who would keep it open. Though a buyer was found before the taking was initiated, the effort had the full backing of state officials and many community organizations and drew national attention to the problem of corporate disinvestment in viable plants (Doherty, n.d.).

When the use of eminent domain has been challenged in court, results have been mixed. In 1982 the City of Oakland did persuade the California Supreme Court that eminent domain could be exercised to obtain the Oakland Raiders if such a taking were found to be a valid public use (*City of Oakland v. Oakland Raiders*, 1982). The California Court of Appeals, however, found that the taking—for the purpose of transferring the Raiders to an owner willing to keep the team in the city—violated the Commerce Clause of the United States Constitution (*City of Oakland v. Oakland Raiders*, 1985).

The Michigan Supreme Court, on the other hand, allowed the city of Detroit to condemn a residential area housing 4200 individuals in order to give it to GM for expansion. The court made its decision based upon GM's promise to build a new plant which, GM asserted, would save thousands of jobs (*Poletown Neighborhood Council v. City of Detroit*, 1981). It is, of course, not clear whether such a use

of eminent domain would succeed if the taking were against GM itself (and if the neighborhood "taken" were not an older, ethnic one). As in the Oakland Raiders case, the commerce clause, along with basic common law assumptions concerning managerial private property rights, might serve to constrain judicial action.

Localities and the Courts

While courts in general have remained constrained, if not always persuaded, by traditional concepts of private property, indications of judicial sympathy toward concepts of community and worker rights appear in judicial rulings across various areas of law. In 1984 Morse Cutting Tool in New Bedford, Massachusetts was bought by a private investor after massive efforts by community, state, and union representatives to save the plant. The new investor went into bankruptcy in 1987. In June of 1987, the bankruptcy judge had before him two bids: the higher one from an American manufacturer, which had made clear its plans to abandon the plant and move its assets out of the community; the lower one from a Scottish toolmaker, International Twist Drill, which had made a commitment to reopen the plant and rehire its 375 skilled laborers. The judge took the lower bid, thereby abrogating owner's property rights and the rights of creditors. The jobs promised by International Twist Drill, he said, "overcame the difference" (*New York Times*, 1987, p. 51). Community and state involvement was evident from the scene in the bankruptcy courtroom as the decision was issued. Massachusetts economic officials, who had put in hundreds of consulting hours and $1.5 million dollars of loans to keep the company operating, sat in the front row of the courtroom, and dozens of unemployed New Bedford workers applauded the judge's ruling. The higher bidder, on the other hand, complained that "the state was too involved and had unfairly tilted the contest to International Twist Drill" (*New York Times*, 1987, p. 51).

Although managerial decisions to initiate and participate in takeover attempts are well-accepted and sanctioned by our legal system, an article in the *American Bar Association Journal* noted that "one judge has found a way to protect workers who were fired after a hostile bidder violated federal securities laws" (Moss, 1990, p. 24). In a March 1990 oral opinion, a Camden County, New Jersey judge refused to dismiss a complaint seeking damages on behalf of approximately 800 Owens Corning Fiberglass Corporation workers who lost their jobs after a failed attempt by Wickes Companies, Inc. to take over Owens Corning. The plaintiffs' brief called Wickes a "rogue, scofflaw company" and alleged negligence and unlawful interference with prospective economic advantage (Moss, 1990, p. 24). Here again is an example of a court that is offended by managerial lack of concern for rights other than that of unfettered managerial action.

Workers and communities resisting the unilateral disposal of industrial property have reached beyond themselves into the courtroom, communicating their anger and sense of entitlement to a growing number of judges on the bench. Their ability to "speak" a new language of property rights and to have that language heard by the interpreters and enforcers of the traditional language suggests that other arenas

of owner/manager dominance—including the labor process—may be ripe for change as well.

CONCLUSION

In a recent article, Walter Nord argues forcefully for the view that worker rights "are not abstract and unchanging, but rather are won and sustained by people in pursuit of their interests" (Nord, 1989, p. 251). Quoting Eric Hobsbawm, Nord notes that rights are created and destroyed through social action: "'Rights don't exist in the abstract, but only where people demand them or may be assumed to be aware of their lack'" (Nord, 1989, pp. 229-230). Particularly when they are recognized by courts, rights have significant consequences: "they are means for instituting very strong pressures for actualizing certain central values..." (Nord, 1989, p. 236).

Debates and struggles over the past decade have begun to bear fruit for worker and community groups in the form of recognition of rights that, at times, could take precedence over traditional common law conceptions of private property rights. As Supreme Court Justice Benjamin Cardozo noted in his landmark book, *The Nature of the Legal Process* (1921), common law rules are like hypotheses: they are continually tested against reality and always subject to change. The shifting balance of the debate and the emergence of a new language of rights indicate that management may more often be held to a new standard of responsibility toward the communities in which they establish plants and the workers whom they employ. As the concept of a community property right gains meaning to a wider circle of people, lawyers and judges will increasingly incorporate this new concept in their own language of rights and will continue to seek its confirmation in existing law.

It is interesting that the concept of stakeholders' rights in industrial property should emerge at a time when neoconservative jurists are promoting a unitary conception of property and a corresponding conception of exclusive ownership rights (Garber, 1990). The resurgence of judicial support for these traditional conceptions makes an ironic counterpoint to the emergence of "a conception of property in which ownership and rights are relatively mutable and nonexclusive" (Garber, 1990, p. 2). Fortunately, the effects of the community property rights movement go far beyond the courts. In the realm of economic development strategy, to take perhaps the most telling example, the new language of rights is embedded in a new knowledge of local economies, and the forces that undermine or sustain them. As local officials and community organizations broaden their opposition to plant closings to embrace strategies to create and retain jobs, they have created a popular knowledge not only of corporate disinvestment strategies, but also of local options for sustainable development. One of the ingredients of this new knowledge is the new language of worker and community rights whose emergence we have attempted to document in this article. This language supports community opposition to "irresponsible" corporate behavior and justifies local action to save or replace existing industrial facilities. As widespread local initiatives to save jobs and communities take up the concept of community property rights, this new concept will gain greater currency and weight.

Given the current crisis in traditional industrial relations, the language of worker rights to industrial property could potentially become a constituent element in a new paradigm. As worker responsibilities are enlarged and labor-management relationships change, workers may be able to broaden the scope of their work-related rights. The potential impact of a new discourse of property rights on the labor process is as yet unknown. Certainly, unilateral managerial control of the production process has frequently been abridged by labor unions and by individuals who have contested management prerogatives in the workplace setting. A new language of property rights could be used by workers to gain greater control over their own conditions of work and to assert employee rights at a time of rapid and significant change in the nature of workplace relations.

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