A LOST DECADE FOR JAPANESE CORPORATE GOVERNANCE REFORM?: WHAT'S CHANGED, WHAT HASN'T, AND WHY

by
Curtis J. Milhaupt
Working Paper 202
September 2004

Postal address: P.O. Box 6501, S-113 83 Stockholm, Sweden. Office address: Sveavägen 65
Telephone: +46 8 736 93 60 Telefax: +46 8 31 30 17 E-mail: japan@hhs.se Internet: http://www.hhs.se/eijs

A Lost Decade for Japanese Corporate Governance Reform?: What's Changed, What Hasn't, and Why

Prepared for
Institutional Change in Japan:
Why it Happens, Why it Doesn't (Magnus Blomstrom and Sumner La Croix eds.)

Curtis J. Milhaupt*

July 7, 2003

Introduction

The more things change, the more they remain the same. Or so it seems with Japanese corporate governance. Over the past decade, the formal institutional environment for Japanese corporate governance has been reformed significantly and at an accelerated pace. In response, some important new trends in corporate practice may be developing. Yet despite substantial legal reform and a decade after Japan's economic problems emerged, there has been no sea change in Japanese corporate governance practices. To adopt a metaphor favored in new institutional economics literature, the rules of the game have changed; whether the play of the game will change, however, is still an open question.

In this chapter, I seek to answer three questions about institutional transformation in the context of Japanese corporate governance: What's changed, what hasn't changed,

* Fuyo Professor of Law and Director, Center for Japanese Legal Studies, Columbia Law School. I received helpful comments from Bruce Aronson, Mark West, Anthony Zaloom, volume editors Magnus Blomstrom and Sumner La Croix, and participants at the Institutional Change conference in Honololu, particularly David Johnson. Conversations with Hideki Kanda at an early stage of the project were also extremely helpful.

and why? Answers to these questions should provide at least some tentative insights into the central issue—has it been a "lost decade" for Japanese corporate governance reform?

The chapter is structured as follows: Part I briefly surveys the major trends in corporate law reform over the past decade, emphasizing the magnitude and pace of formal institutional change in this area. Part II examines corporate practices that have changed in response to the new institutional environment, and conversely, key areas of stickiness in Japanese corporate practices. Part III attempts to provide an explanation for this pattern of change and non-change.

Revealing the conclusion at the outset, it has not been a lost decade for Japanese corporate governance reform. Indeed, the formal institutional environment for corporate governance today is significantly more flexible and conducive to shareholder wealth maximization[1] than it was in the early 1990s. And there are important, if tentative, signs that the new environment is actually facilitating new forms of corporate finance, alternative organizational structures and more diverse business practices. But the new institutional package is a necessary, not a sufficient, condition for fundamental corporate governance reform. Dynamics external to the formal corporate governance system narrowly defined—such as capital market developments and new trends in the dispersion and identity of shareholders--must animate the new institutional arrangement. Even "perfect" corporate law has limits (Roe 2003): it can help facilitate, but not guarantee, good corporate governance. After a decade of legal reform, Japan now has pretty good

[1] My view is that shareholder wealth maximization should be the principal goal of corporate law and governance, not because it is the only valid goal, but because pursuit of this objective helps ensure that management adds value to the enterprise, and provides a fairly transparent baseline against which to measure managerial performance. I acknowledge that the point is debatable. See Allen and Gale (2002) for a theoretical model showing that under some circumstances, Japan-style "stakeholder" capitalism can do better than Anglo-Saxon shareholder capitalism.

corporate law.[2] The question for the coming decade is whether actors will utilize that law as a framework on which to build a new set of good corporate governance practices.

I. A Sea Change Decade for Japanese Corporate Law

The past ten years can fairly be called a "sea change decade" for Japanese corporate law. For reasons that will be explored in detail below, the decade witnessed the most sweeping and fast-paced amendments to the corporate law (found principally in the Commercial Code) since its enactment a century ago (see e.g. Kanda 2000). Table 1 lists the major amendments to the Code and related laws over the past ten years.

Table 1: Major Commercial Code Amendments 1993-2002

1993	Fixing fee of 8200 yen for shareholder derivative suits
	Introducing a board of statutory auditors [*kansayaku*]
	Reducing shareholding threshold to demand inspection of records
1994	Deregulating limitations on repurchase of shares (1)
1997	Introducing stock option system (Deregulating limitations on repurchase of shares (2))
	Simplifying merger procedures
1998	Deregulating limitations on repurchase of shares (3)
1999	Creating share exchange system
2000	Creating company spin off system
2001	Lifting ban on treasury stock

[2] Only "pretty good" because the Commercial Code retains some arcane requirements like stated capital, and paternalistic features, such as super-majority voting to approve mergers, which are protective of shareholders in a rather mechanical and inflexible way.

	Creating new stock acquisition right [*shin kabu yoyaku ken*] system
	Expanding the authority of statutory auditors
	Authorizing limitations on managers' liability
2002	Creating an option to form committees of the board of directors in lieu of the statutory auditor system

These amendments can be placed into two groups. One group might be called *flexibility enhancing amendments*. These Code changes expand corporate finance options and increase organizational flexibility for Japanese firms in the areas of mergers, divestitures, and reorganizations. A second group might be called *monitoring enhancing amendments*. These Code amendments include changes to the shareholder derivative suit mechanism[3] and statutory auditor system as well as reforms to the corporate board structure. A brief survey of these two groups of amendments follows.

Flexibility Enhancing Amendments.

Stock Options. Beginning in 1997, the Commercial Code formally authorized the issuance of stock options to certain firm employees (though more thorough liberalization required several additional amendments in ensuing years).[4] Liberalization of the stock option regime provides flexibility in employee compensation schemes. It also contributes to the enhancement of monitoring, by helping to align the incentives of managers and shareholders. According to a Nikko Securities/Towers Perrin survey, the number of listed companies issuing

[3] A derivative suit is brought by a shareholder to enforce a corporate cause of action. The action seeks recovery, on behalf of the corporation, for damages caused by a director's breach of duty.

[4] Commcercial Code, Art. 280-19.

stock options climbed to 463 in 2001, up from zero in 1997 and representative of about one-sixth of all listed companies (Daily Yomiuri 2001).

Mergers. Also in 1997, merger procedures were liberalized, eliminating individual creditor notifications and permitting short-form mergers, whereby shareholder approval is not required if the parent already owns most of the target company's stock.[5]

Share-for-Share Exchanges and Holding Companies. The Commercial Code was revised in 1999 to introduce share-for-share exchanges.[6] This was a response to the abolition, in 1997, of the Anti-Monopoly Law's ban on holding companies. Share exchanges can be used to create wholly owned subsidiaries in a holding company structure, and to enable companies to use their shares as acquisition currency to take a partially owned subsidiary private or to acquire an unrelated company. Capital gains taxes are not owed at the time of the share exchange. Time-consuming and expensive valuation procedures to protect creditors mandated by the Commercial Code for ordinary mergers are not required. Minority shareholders can be forcibly excluded from the subsidiary (although they become shareholders of the parent).

Eliminating the prohibition on holding companies could have several important benefits for Japanese firms (see Aoki 2000: 133-140). Most basically, it will promote spin-offs, mergers, and corporate reorganizations. But it will also provide useful legal separation between strategic and operating units of the firm, and allow firms to differentiate personnel management systems. Firms may retain

[5] Law No. 71, June 6, 1997.

[6] Commercial Code, Art. 352 et seq.

conventional "Japanese" employment patterns where useful, while introducing more diverse arrangements in other subsidiaries. For financial institutions, removal of the ban on financial holding companies facilitates reorganization of the financial industry into functionally diverse groups offering banking, securities, and insurance products and services.

Spin-offs and Split-offs. In 2000, a new statutory scheme provided a flexible framework for separating business units from parent companies.[7] Prior to the amendment, divestitures were extremely cumbersome, because corporate transfers of liabilities and assets required individual approval of creditors and court-supervised valuations, respectively.

Corporate finance. A variety of amendments and special statutes over the past decade have effectively eliminated the prohibition against redemption of a company's outstanding shares and expanded the forms of equity securities (such as tracking stock and other classified shares) that a firm is permitted to issue.[8] Share buy backs can be used to distribute cash to shareholders and are useful in a variety of corporate recapitalization schemes; the liberalization of equity securities provides greater flexibility in corporate finance techniques.

Corporate Reorganizations. A Civil Rehabilitation Act, enacted in 2000 and modeled loosely on the U.S. Chapter 11 regime, provides more flexible and efficient reorganization procedures than its predecessor statute. In a major departure from past reorganization procedures in Japan, the Civil Rehabilitation Act is a debtor-in-possession system (meaning that existing management, rather

[7] Commercial Code Art. 373 et seq.

[8] Commercial Code, Art. 210 et seq. (acquisition of company's shares); Art. 222 (classes of shares).

than a court-appointed trustee, operates the firm during the rehabilitation process and devises a rehabilitation plan). Passage of the rehabilitation plan only requires approval by a majority of qualifying creditors. It is now possible to do a "pre-packaged" bankruptcy, with the reorganized firm emerging under new ownership.[9]

Monitoring Enhancing Amendments.

Shareholder Derivative Suits. Until 1993, most Japanese courts required plaintiffs in shareholder derivative suits to pay a filing fee on a sliding scale based on the amount of damages sought. Under this scale, in dollar terms a $10 million claim against management, for example, would require a filing fee of $25,000—a fee that was forfeited if the plaintiffs lost (West 2001a). The 1993 amendment fixed the filing fee at the nominal sum of 8200 yen (about $70), eliminating a major barrier to this form of shareholder monitoring. In the same set of amendments, the required minimum shareholding to inspect corporate books and records was reduced from 10 percent to 3 percent. Practically, however, this threshold is still too high to be meaningful for purposes of bringing suit against management or the exercise of other shareholders' rights, since most shareholders at the 3 percent level are friendly, stable shareholders.[10]

Reforms to Statutory Auditory System. Japanese corporate law has a German-inspired institution known as the statutory auditor [*kansayaku*], whose basic function is to monitor the board's compliance with law and the certificate of

[9] In a prepackaged bankruptcy, the creditors agree upon the essential terms of the restructuring plan before the bankruptcy filing. This is designed to reduce the length and complexity of the proceedings, and to minimize judicial intervention. Prepackaged bankruptcies were pioneered in the United States.

[10] Compare, for example, Delaware corporate law, under which *any* shareholder may inspect corporate books and records for any proper purpose. Del. General Corporation Law, Section 220.

incorporation. Over the past decade, several reforms were made to this corporate organ. Amendments in 1993 mandated that large companies have at least three auditors, functioning as a board of audit.[11] In 2001, amendments sought to strengthen the auditor regime by extending the term of office and responsibilities of auditors, while increasing the required number and qualifications of outside auditors.[12] Effective in 2005, at least half of the board of audit must be comprised of outside auditors.

Board reforms. A major overhaul of the Commercial Code in 2002 allows firms to opt out of the statutory auditor system in favor of a U.S. style "committee system" for corporate governance.[13] In lieu of statutory auditors, firms can establish board committees for the audit, nomination and compensation functions. A majority of the members of each committee must be independent. A 2001 amendment creates a formal distinction between directors, bearing oversight responsibility but not day-to-day managerial functions, and executive officers who actually run the firm.[14] These reforms are designed to strengthen the supervisory role of the board and to enhance the separation of monitoring and decision making functions.

[11] Law for Special Exceptions to Commercial Code Concerning Audit, Etc. (Special Exception Law), Arts. 18, 18-2.

[12] E.g. Special Exception Law, Art. 18(at least half of auditors must be independent); Commercial Code Art. 260-3(1) (requiring auditors to attend meetings of the board); Art. 273 (four year term).

[13] Special Exception Law, Arts. 21-5 et seq.

[14] Special Exception Law, Arts. 21-5, 21-15. Previously, there was no legal distinction between directors and officers, although beginning in the late 1990s companies had begun to informally make the distinction by creating an executive officer [*shikko yakuin*] position for executives who did not simultaneously serve on the board.

Accounting Reforms. Japanese accounting standards have been revised significantly in the past several years to bring them substantially into conformity with international accounting standards. Cash flow statements were introduced in fiscal year 1999, and rules on consolidated accounting were tightened in that year. Mark-to-market accounting for financial assets was introduced in fiscal year 2001. As of fiscal year 2001, pension liabilities must be reflected on balance sheets. The new rules enhance management transparency and provide powerful new incentives for restructuring or divesting under-performing assets, which no longer can be concealed by moving them into affiliated corporations.

II. An Ambiguous Decade for Corporate Practices

Has this plethora of new formal rules for corporate finance, organization and governance changed the way Japanese firms are structured and managed? To date, the evidence on corporate governance change in Japan is ambiguous. While some data suggest meaningful responses to the new rule environment have occurred in several areas, there is little sign that Japanese corporate governance practices are being fundamentally transformed or are rapidly "converging" with those of the United States.

Although my primary aim here is simply to catalogue the areas of change and non-change, I hasten to emphasize the controversial nature of any measurement exercise in this field. Whether Japanese corporate law and governance practices *need* to be fundamentally reformed, and particularly whether they need to emulate U.S. corporate practices, remain controversial issues (on the first issue see, e.g. Miwa and Ramseyer 2003; on the second, see e.g. Osugi and Zaloom 2002). At the same time, however, some sort of baseline is needed against which to measure and evaluate reform. I use the U.S.

corporate governance system for purposes of comparison, both because it is the principal competing model of corporate governance, and because the primary normative features (not always achieved, to be sure) of that model—transparency, managerial accountability, and adaptability--appear to have become de facto "global standards" in corporate governance.

A. What's Changed

Signs of change can be found principally in the areas of shareholder activism, corporate mergers and other organizational changes, board structure, and corporate finance. Reinforcing and reflecting these changes are subtle shifts in "norms" about corporate governance in Japan.

Shareholder activism. The seemingly technical change in procedural law in 1993 that lowered the cost of filing derivative suits led to a major increase in this form of shareholder monitoring. Japanese shareholders brought a total of about twenty derivative suits between 1950 and 1990. By contrast, at least 494 derivative suits were filed between 1991 and 2000 (Milhaupt 2003). While the Japanese derivative suit mechanism suffers from the same attorney's-fee-based incentive distortions that plague such suits in the United States (West 2001a), this shift toward heightened shareholder monitoring may deter at least blatant forms of wrongdoing by managers, and places greater pressure on management to avoid actions that are per se destructive of shareholder value, such as refusing to sell portfolio shares held in a stable shareholding relationship to the highest bidder. Moreover, institutional investors, whose managers must answer to their own shareholders and beneficiaries, will likely face increased pressure to focus on financial returns from their portfolio investments. Recently issued Pension Fund Association

Guidelines reinforce this trend. The Guidelines state that fund managers should evaluate disclosure, dividend policies and corporate governance in exercising shareholders' rights, and provide that fund managers should be evaluated on the exercise of shareholders' rights in addition to financial performance.

Greater resort to derivative litigation has also created new law clarifying the legal responsibilities of directors to their firms. The best example of this process is the Daiwa Bank litigation. In that case, shareholders of Daiwa Bank derivatively sued eleven current and former directors for failing to uncover and report to U.S. authorities massive unauthorized trading in the Bank's New York branch that ultimately resulted in almost $1.5 billion in losses and fines. The directors, heeding a Ministry of Finance indication that disclosure of the losses to the Federal Reserve would be untimely given instability in the financial system, filed a misleading Call Report with the U.S. banking regulators, a violation of U.S. law. The Osaka District Court found the directors liable for breach of duty, and ordered them to pay about $775 million in damages. The court shrugged off the directors' argument that the Ministry of Finance's conduct should insulate the directors from liability. The court found that the "defendant [directors] had persisted in following local rules that only apply in Japan, despite the fact that [the firm's operations] had expanded on a global scale.[15] Through this and other decisions in derivative suits, the courts help to educate management about proper behavior with respect to their shareholders.

Although still extremely small in number, the past few years have also witnessed unprecedented (at least by Japanese standards) incidents of hostile M&A activity. For

[15] Nishimura v. Abekawa (The Daiwa Bank Case), 199 Shiryoban shoji homu 248, 255 (D. Ct. Sept. 20, 2000).

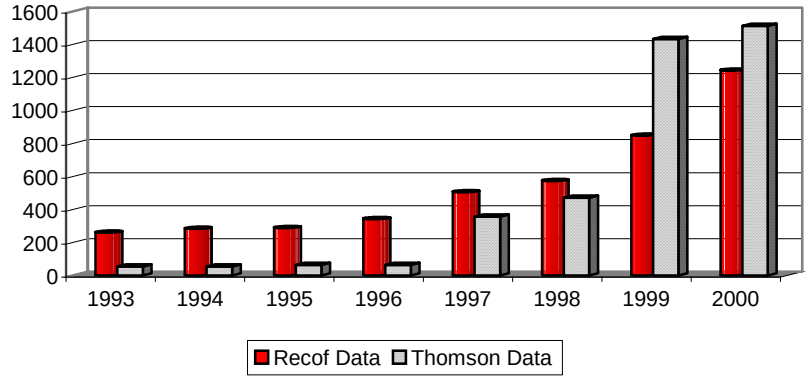
example, in 2000, a domestic takeover firm, M&A Consulting, launched a hostile bid for Shoei Corporation, one of the first postwar hostile bids *for* a Japanese corporation *by* a Japanese corporation. M&A Consulting followed this in 2002 with a proxy fight over dividend policies at a firm called Tokyo Style. Both attempts failed (more on this in the next section). However, when considered in combination with several successful, unsolicited bids by foreign firms such as Cable & Wireless's acquisition of IDC and Boehringer Ingelheim's acquisition of a blocking stake (more than 33.3% of the shares) in SS Pharmeceuticals, it is fair to say that Japanese management is no longer fully secure from the threat of hostile acquisition or other unwelcome shareholder advances.

Separately, a nonprofit corporate reform organization known as Shareholder [*Kabunushi*] Ombudsman has also contributed to a more activist shareholder environment in recent years (see Milhaupt 2003). This organization has been involved in virtually all of the high profile shareholder derivative litigation in Japan, and has reached large monetary settlements with management and commitments to institute procedures to prevent future wrongdoing at their firms. Although not a highly visible player in the Japanese corporate governance scene, Japanese managers ignore this activist organization at their peril.

Mergers and organizational changes. Friendly merger and acquisition activity in Japan has increased significantly in recent years.[16] Although still small in comparison to deal activity in the United States, the increase in the number and size of transactions in recent years is striking.

Available measures show marked increases in the 1990s, as shown in Figure 1.[17] Data from Recof (2001, 2002), which showed approximately 300 mergers and acquisitions of Japanese firms in 1991, reports 847 transactions in 1999, 1,241 in 2000, and 1,348 in 2001.

Figure 1. Number of Deals Involving Japanese Targets, 1993-2000



Thomson Financial data show a significant increase in purely domestic ("in-in") M&A. After averaging fewer than 100 transactions per year during 1990-1994, with a gross average value of about ¥800 billion ($8 billion), in-in M&A reached over 1,300 transactions in 1999, with a gross transaction value of ¥13 trillion ($130 billion). The number of "out-in" transactions, which averaged only about fifty per year during 1990-

[16] For more detail, see Milhaupt and West (2003).

[17] Sources: Thomson Financial, Merger Yearbook (various years); Recof (2001, 2002).

1994, with a total average value of only ¥50 billion ($500 million), increased to 227 transactions with a value of ¥3 trillion ($30 billion) in 1999. Even in the first quarter of 2003, after a steep decline in worldwide M&A activity, Japan ranked fifth in M&A volume by deal value, with 444 deals valued at almost $20 billion, up from 396 deals valued at $17.4 billion in first quarter of 2002 (Mergers Shapshot 2003).

The increase in the Japanese M&A market can also be seen relative to gross domestic product. In 1990, Japanese merger activity was approximately 0.4 percent of GDP. By 1999, Japanese merger activity was approximately 3.3 percent of GDP. In the ranking of targets by nation, Japan moved from a 0.6 percent market share in 1997 to a fifth-place 4.5 percent market share in 1999 (Thomson Financial, Merger Yearbook), and to 5.5 percent in the first quarter of 2002 (Thomson Financial 2002).

There are no data available on the specific legal mechanics of each deal. But some mergers, such as the giant Mizuho Financial Group alliance that combined Dai-Ichi Kangyo Bank, Fuji Bank, and the Industrial Bank of Japan, have used the new holding company structure. The newly established share exchange system also appears popular; one source lists seventeen such transactions in 1999 and another twenty five in the first six months of 2000, involving such firms as Sony, Matsushita, Isuzu, and Toyota (Kikuchi 2000: 118-119). In the first fiscal year that spin-offs were legal, more than 200 such transactions occurred (Kaisha Bunkatsu 2002), including several combinations that would have not been undertaken absent the change (Kaisha ha koshite henshin saseru 2002).

Board and officer reforms. In an effort to enhance the effectiveness of the board, in the mid-1990s many companies began to consider reducing the size of the board and

including outside directors. Survey data show an increase in firms displaying particular interest in reducing the number of directors from 28.6 percent to 46.2 percent from 1998 to 2000 (Tokyo Shoken Torihikijo 2000). Of the firms reducing their boards, 79.9 percent scaled back to fewer than 10 directors. By May 2001, 38.8 percent of first-section Tokyo Stock Exchange firms had added outside directors to their boards (Shagai Torishimariyaku 38% ga Sennin 2001). Moreover, diversity of business backgrounds among board members is beginning to draw attention as a desirable distinguishing characteristic for Japanese firms (Diversity Distinguishes IY Bank 2001).

In concert with reductions in board size, many corporations added a new corporate governance organ discussed above, the executive officer. As Milhaupt (2001) noted, executive officers went from being a Sony innovation in 1997 to a fixture at over 200 firms by 1999. Survey data confirm that 71.4 percent of responding firms had adopted such a mechanism (Shoji homu kenkyukai 1999).

Share Repurchases. In 1998, following Commercial Code revisions, 1,179 companies announced share buybacks, and 186 implemented them in that year (Yasui 1999: 26; Zhang 2000). Buybacks by listed companies in fiscal 2001 exceeded 2.3 trillion yen (about $20 billion) for more than two billion shares, an increase of nearly 100 percent over fiscal 2000 (Jisha kabu kai baizo 2 cho encho 2002).

Norm shifts. The past decade has not only been a time of enormous formal institutional (legal) change in Japanese corporate governance, it has also been a time of informal institutional (normative) change. Norms are simply nonlegal rules—rules that are neither promulgated by an official source nor enforced through formal sanctions, yet

are regularly complied with (Posner 1997). Major features of postwar Japanese corporate governance--the main bank system, the concomitant absence of an external market for corporate control, employee-dominated boards that focus on day-to-day management rather than monitoring, and the lifetime employment system—were all shaped and supported by social norms (Milhaupt 2001; Ono and Moriguchi, this volume). That is, the operation of these institutions was heavily influenced by shared expectations about how Japanese banks, firms, and their governmental regulators should operate.

Over the past decade, however, these expectations have been severely tested, if not shattered. It is apparent that significant norm shifts are under way in Japan: increased, if grudging, acceptance of the takeover as a legitimate tool of corporate strategy and monitoring, a heightened awareness of shareholders' economic expectations, a change in managerial mindset about its proper role in running the firm, diminished expectations of forbearance toward failing firms on the part of banks and their regulators, and rising ambivalence about the benefits of seniority-based employment practices (Milhaupt 2001). In this sense, along with the corporate law, the "informal" institutional environment for Japanese corporate governance has changed in a manner almost unthinkable a decade ago.

Much of this environmental change, in turn, has taken place because of changes in formal institutions discussed above that have reduced the transaction costs of basic corporate activities such as engaging in mergers and acquisitions, filing a derivative suit, or conducting a corporate reorganization. As actors engage in these newly feasible activities, they undermine the continued validity of "cultural" explanations for Japanese corporate practices, and help create new expectations about how the world works.

B. What Hasn't Changed

Despite these considerable signs of new activity, a balanced assessment of the past decade must also highlight stasis in important areas of Japanese corporate governance. Despite the more flexible and shareholder-oriented formal framework provided by the corporate law, the managerialist and employee-oriented cast to the Japanese firm has not been fundamentally eroded. Despite predictions to the contrary (see Hansmann and Kraakman 2001), it is not evident that we are witnessing the "end of history for corporate law" brought on by a Japanese embrace of the U.S. shareholder-oriented model. In fact, a "market test" of the degree of convergence between Japanese and U.S. corporate governance is now possible, at least with respect to board structure. As noted above, as of April 2003, firms have the option of adopting a U.S.-style committee system with outside directors in lieu of the Japanese-style board of statutory auditors. Thus far, a relatively small number of Japanese firms have adopt the U.S. board structure featuring committees of independent directors, principally because few Japanese chief executives are willing to cede authority over important functions such as board nominations to outside directors.[18]

There are other examples of non-change in important areas. Japanese institutional investors, for example, remain passive. Most such investors still place priority on maintaining reciprocal business relationships over increasing shareholder value. They vote, but rarely coordinate with other institutional investors on corporate governance

[18] A survey conducted in mid-2002, about ten months prior to the availability of the "committee option," indicated that just 13 (0.5%) of the 2513 responding firms would switch to the committee-based structure (JCAA 2002). As of this writing, the major exception to the general lack of interest in the committee option is the electronics industry. Major firms in that industry such as Sony and Hitachi have adopted the committee structure. The precise reasons are unclear, but appear to include a desire to signal that the firm has "modern" and internationally accepted corporate governance mechanisms, and a "follow-the-leader" effect, as Sony was the first to adopt this structure.

issues, make shareholder proposals, release focus lists, or engage in other efforts to improve performance at portfolio firms (Akaishi 2002). To be fair, institutional investors in most countries are passive, and the corporate governance record of institutional investors in the United States is mixed. But even with these caveats, Japanese institutional investors to date seem remarkably hesitant to press management for improved performance, or to consider selling their shares in the face of a financially attractive offer.

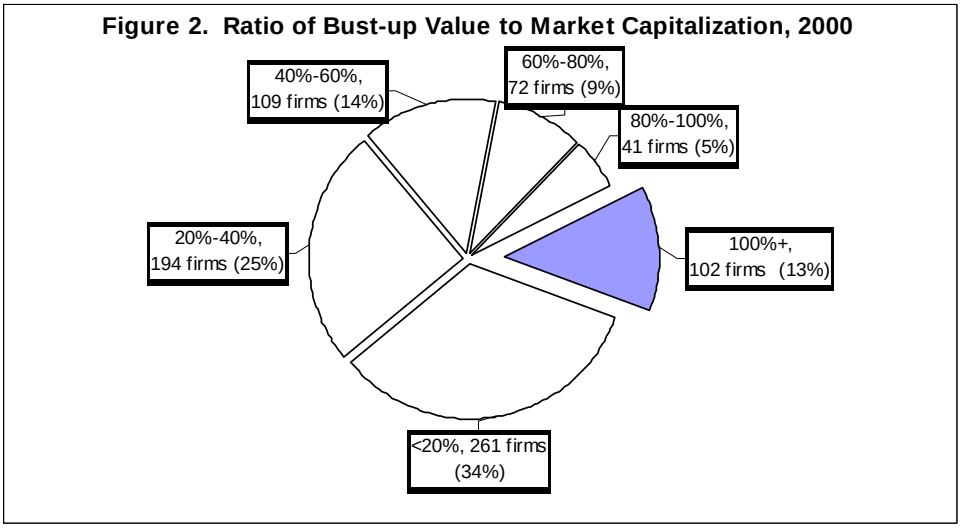
Indeed, the initial forays into shareholder activism discussed in the previous section have sent a decidedly mixed message on the state of Japanese corporate governance. While the mere existence (however scant) of hostile takeovers and proxy fights is a sign of change, both of the recent, purely domestic bids failed. And they failed in large part because banks and institutional investors gave unconditional support to existing management when the unwelcome bidder appeared (see e.g., Institutions Threaten Corporate Governance 2002).

As these episodes suggest, Japanese management is still largely insulated from market pressures, disabling a major force for new governance adaptations. This impression is bolstered by the lack of market activity around firms that should be ripe for takeover. Figure 2 illustrates the ratio of bust-up value to market capitalization for 779 non-financial Tokyo Stock Exchange firms. As the figure indicates, as of 2000 approximately 13 percent of these firms were trading below their bust-up value.[19] In other words, more than one of every eight public firms in Japan in that year was worth more in liquidation than under current management. This situation per se is not

[19] Source: Nomura Research Institute (2001). Bust-up value is defined as cash and cash equivalents + investment securities - short and long-term debt. Calculated for 779 non-financial Tokyo Stock Exchange Firms as of November 2000.

unprecedented. Some U.S. firms traded below their bust-up values in the 1980s. In contrast to the U.S. situation, however, there is virtually no market action in Japan to dismantle these firms. Despite the obvious potential to profit by acquiring and then selling off the assets of these firms, bids are rare. Milhaupt and West (2003) argue that this situation is the result of transaction costs that outweight profits from takeovers, due to poor disclosure practices, mandatory bid procedures that may increase the uncertainty of successfully obtaining a controlling stake in the target, and other obstacles.

Figure 2. Ratio of Bust-up Value to Market Capitalization, 2000



Another important area of relative stasis is employment practices. Evidence to date indicates that lifetime employment remains a core feature of the Japanese firm, even if the number of workers enjoying its protections is shrinking. A 1999 survey indicates that a majority of companies plan to maintain the lifetime employment system; most are seeking to reduce employment through natural or incentivized attrition (Hisada et al. 1999). A comprehensive study of survey results and qualitative data finds little support for the rhetorical claim that lifetime employment practices are coming to an end (Kato

2001). As one recent study concluded, "[t]hus far, there has been no evidence that firms have changed their long-term employment system in the manufacturing sector except for a few firms that have faced financial distress" (Miyajima and Aoki 2002).

In sum, with some important variations at the margins, Japanese management appears to be operating within the same basic set of incentives as ten years ago.

III. Explaining the Pattern of Change and Non-Change

Our survey of the past decade of corporate law and governance in Japan raises two major questions. Why has there been so much corporate law reform? And why have actual changes in corporate governance practices to date been far less sweeping than the changes in formal institutions?

A. Why So Much Legal Reform?

The accelerated pace and expanded scope of corporate legal reform over the past decade reflect changes both in the macro economy and the political economy of Japan (see Kanda 2000). First, the Commercial Code has traditionally contained "surprisingly paternalistic, archaic and impractical concepts" (Osugi and Zaloom 2002: 2), particularly in relation to corporate finance and organizational structures. To cite just a few examples, until recently, repurchase of a company's own stock was prohibited except in narrowly defined circumstances, severe limitations were placed on the kind of equity stock that a company could issue, and holding companies were banned. While these rules were designed to protect creditors and shareholders, some scholars have termed the restrictions "senseless" (see Ramseyer and Nakazato 1999; Osugi and Zaloom 2002). Senseless or not, these restrictions had little impact on Japanese economic activity in the high growth period. Because bank lending was the dominant mode of corporate finance for much of

the post-war high growth period, the Code's strict restrictions on equity finance techniques and emphasis on technical creditor and shareholder protections posed little obstacle to firms. Indeed, a relatively mechanical, rule-oriented approach to corporate law may have complemented Japan's small judiciary and accounting profession (Kanda and Fujita 1998; Osugi and Zaloom 2002).[20] However, as the economy stalled and many corporate sectors were in need of massive restructuring, these serious constraints on organizational form and corporate finance began to block needed reforms.

Second, as corporate managers became increasingly conscious of the organizational straightjacket imposed by the Commercial Code, particularly in comparison to U.S. firms, the political economy of Commercial Code reform changed significantly. Put differently, the market for the production of corporate law became much more competitive. Through the mid-1990s, Commercial Code amendments were the province of a small group of legal scholars and Ministry of Justice officials, who convened a Legislative Reform Council to study—often for years—the propriety of potential amendments. Under this process, the law changed, but relatively slowly and seldom in response to the exigencies of the market (although quite often in response to scandals (West 2001b)). In the words of one scholar, much corporate law reform over the past century was "policy pushed," rather than "demand pulled." (Shishido 1999). But law reform process changed dramatically in the latter half the 1990s. Stock options are the first illustration of the change. The success of Silicon Valley's venture capital

[20] By contrast, flexible and permissive corporate laws empowering boards to engage in any lawful activity, subject only to the constraints of fiduciary standards applied ex post by courts to police selfish or grossly inattentive managerial behavior—characteristics of U.S. corporate law (see, e.g., Chandler and Strine 2003)--complement a fairly robust financial disclosure regime and an expansive legal system, featuring a large legal profession, a judiciary comfortable with the application of broad standards as opposed to narrow rules, and a procedural environment replete with procedural mechanisms to promote private litigation as a tool of enforcement.

industry drew envious glances from the Japanese, whose own VC market was inhibited by a variety of legal rigidities (Milhaupt 1997). For example, various Commercial Code restrictions made the issuance of stock options virtually impossible. This prompted an unprecedented reform of the Commercial Code in 1997, which liberalized the stock option regime. For the first time in postwar history, an amendment was initiated by politicians rather than bureaucrats working through the Legislative Reform Council, as the business community prevailed upon Diet members to bypass the traditional, ponderous amendment process (Kanda 2000). Since 1997, the business community, working through their political allies in the Liberal Democratic Party, has had a much larger voice in the corporate law reform process.[21] Other recent examples of direct business and political input in the production of corporate law include the 2001 amendment permitting firms to limit the personal liability of directors for breach of duty, and withdrawal of a Ministry of Justice draft amendment requiring the appointment of at least one outside director to the board of large corporations.

In addition to politicians and business groups, the Ministry of Economy, Trade and Industry (METI, the predecessor of Ministry of International Trade and Industry or MITI) has also become actively involved in corporate governance reform. Over the past several years, it has promoted a number of special statutes on corporate issues (Kanda 2000). These special statutes, which will likely be incorporated into the Commercial Code in the future, seek to create a more favorable environment for business startups and large-scale corporate restructurings. More broadly, METI now actively monitors and publicly intervenes in corporate governance issues, supporting the creation of a market-

[21] For example, Seiichi Ota, the chairman of the Liberal Democratic Party's Subcommittee on Commercial Law, leaves no doubt that his subcommittee placed priority on ensuring that the business community's views were reflected in recent Commercial Code amendments (see Ota 2002).

oriented, flexible institutional framework for business activity. This is a remarkable role reversal for a ministry that, in the high growth era, often served to enforce—informally, through administrative guidance—anti-competitive agreements worked out in consultation with industry. There may be many reasons why the ministry changed stripes. Discussions with officials suggest concern about the international competitiveness of Japanese firms and frustration over the failure of monetary and fiscal policy to restore the country's economic health. In this environment, the creation of a sound institutional framework for corporate restructuring and good governance practices is seen by METI officials as a logical focus of the ministry's efforts.

Thus, in effect, the Legislative Reform Council now has active competitors in the corporate law reform process: politicians working closely with business interests, and METI. The result of this competitive pressure is more "demand driven" corporate law amendments, made at an accelerated pace. "Demand driven" law can reflect the parochial interests of organized groups, or it can be responsive to broader public interests. As we will see in the next section, the decade's corporate law amendments reflect both characteristics.

B. Why Not More Behavioral Change?

Despite a sea change in Japanese corporate law and the process by which it is produced, to date there has been no sea change in Japanese corporate governance. Why? Two fairly prosaic reasons can be mentioned: legal change often outpaces behavioral change, and some important Japanese actors remain unconvinced of the need for corporate governance reform despite a decade of economic turmoil. The latter point might be termed the "Toyota Effect," because that firm, simultaneously one of Japan's

most successful and traditional, is the example universally proffered by those who defend the status quo in Japanese corporate governance. Without discounting the importance of those factors, I wish to concentrate here on three deeper explanations for the lack of change, one based on institutional complementarities, the second drawn from learning on political economy, and the third related to the limits of corporate law as a vehicle for reform.

It is now commonplace to understand corporate governance systems as a series of complementary institutions. As Gilson (2001a: 335) puts it, a "corporate governance system's development is driven, domino-like, by the linking of complementary institutions." Milgrom and Roberts (1994) were among the first to view the major components of Japanese corporate governance in its heyday—the main bank system, lifetime employment, stable shareholding patterns, and relatively weak capital markets, as institutional complementarities. When complementarities are at work, the separate pieces that make up the entire system display increasing returns characteristics; their inclusion enhances the effectiveness of the other parts of the system, so that the whole is greater than the sum of the parts. But complementarities have a dark side in times of institutional change: piecemeal reform of complementary systems is problematic, because the same dynamic that increases returns when the system is functioning as a whole works to exaggerate the downside when one element of the system breaks down or is replaced. The result may be a whole that is less than the sum of its parts.

It is useful to view the developments in Japanese corporate governance over the past decade in light of these insights. Although many formal rules and structures have changed, important complementary institutions necessary to complete the new system are

still missing. Many examples could be offered to illustrate this point, but I will focus on three. First, while shareholders' legal rights have been strengthened by lowering filing fees and reducing minimum shareholding thresholds for their exercise, complementary facets of the legal and financial disclosure systems that would complement these rights are still not fully in place. The population of Japanese lawyers and judges remains extremely small by international standards. Access to evidence as a plaintiff can be problematic, as Japan lacks a formal discovery system for the production of evidence. The courts are still relatively disinclined to apply broad standards and create flexible remedies to resolve cases. And while Japanese accounting *standards* are now consistent with international standards, accounting *practices* lag behind.

A second example can be found in the new Civil Rehabilitation Statute. This new regime appears to be quite efficient (in terms of the length of time from filing to resolution) both in relation to the predecessor statute and in comparison to U.S. corporate reorganization procedures (see Xu 2002). A more efficient bankruptcy regime in Japan is an important component of an institutional structure that promotes the efficient allocation of resources. Yet the impact of this new bankruptcy regime on resource allocation will be muted if many functionally insolvent firms continue to operate under soft budget constraints because their lenders continue to exercise forbearance (see, e.g. Regional Banks Should be Spared from Bad Loan Target 2003). Thus, political and social will to end bank support to insolvent firms is a necessary (and thus far largely missing) complement to good bankruptcy laws.

A third example is board reform. The trend toward smaller boards having some representation by outside directors, and a separation of functions between directors and

executive officers, is intuitively more conducive to strategic decision-making and effective monitoring.[22] Yet, as shown in the data on takeovers in the previous section, there is still little threat that value destroying decisions by Japanese management will lead to their replacement by a hostile acquirer or at the behest of a large, disgruntled shareholder. The missing market for corporate control would complement the trend toward smaller, more strategically focused boards.

A second explanation for the muted nature of corporate governance change to date is provided by theory on the operation of political markets and the legislative process. Mancur Olson (1982) predicts a rent-seeking political response to economic distress by threatened interest groups. Consistent with this model, Japanese business groups (representing the interests of corporate managers) have significantly increased their voice in the corporate law production process. The impact of this input is readily apparent from a review of the decade's amendments. As noted above, the amendments of the past ten years can be viewed as either flexibility enhancing or monitoring enhancing. We can assume that management would favor the former type of amendment, since greater flexibility enhances managerial discretion and at least potentially increases agency slack between managers and shareholders. Several flexibility enhancing amendments are indisputably management favoring—for example, the 2001 amendment authorizing limitation of personal liability of managers, and authorizing share acquisition rights, which will be useful in constructing defenses to hostile takeovers.[23] While some

[22] Most empirical studies to date have not established that independent directors contribute to firm performance (see e.g., Bhagat and Black 2002).

[23] Commercial Code, Arts. 266(7) through 266(19) (limitation of directors' liability); Arts. 280-19 through 280-39 (stock acquisition rights). Under the amendment, stock acquisition rights can be issued to anyone without shareholder approval, at an exercise price to be determined by the board. This makes technically feasible a defensive tactic widely used in the United States known at the poison pill. The

amendments have enhanced the ability of shareholders to monitor management, they were enacted *prior* to heavy business involvement in the corporate law amendment process. More recent amendments that are ostensibly monitoring enhancing, namely reforms to the statutory auditor system, may have actually served as a means of staving off more drastic corporate governance reforms such as mandating the use of outside directors (Osugi and Zaloom 2002). At least under the existing equilibrium, with relatively weak pressure from the capital markets and institutional investors, many of the rule changes over the past decade have the effect of expanding the scope of managerial discretion without ensuring that such discretion is utilized to enhance shareholder value.

The upshot is that until the environment external to the formal corporate governance structure changes, shareholders may or may not benefit from the new legal regime, depending on whether management of a given firm utilizes the newfound flexibility provided by the corporate law to pursue enhanced shareholder value, or to further insulate itself from market discipline.

This point leads to a third explanation for the relative lack of change despite massive corporate law reform: corporate law bears only a limited relationship to corporate governance. The point is best made by turning to the experience of the United States in the 1980s. American corporate governance underwent enormous functional changes in the 1980s, but these changes were not driven by changes in the formal structure of the governance system. Indeed, the corporate statutes changed very little at this time—although critically, "the existing formal structure proved sufficiently mutable to accommodate the necessary changes" (Gilson 2001b: 9). Rather, the existing legal

---

poison pill is a plan whereby existing shareholders obtain the right to purchase additional shares of the company (typically for a nominal sum) upon the occurrence of a triggering event, such as a takeover attempt.

system became "supercharged" by changes in product markets, capital markets, and the distribution of shareholders (Ibid). These changes to the corporate governance system created forces for change so powerful that those favoring existing institutions, particularly senior management, could not contain them. The result was a dramatic transformation in American corporate governance, from a system that served largely to protect value destroying decisions by insular groups of senior executives to a model whose attributes "animated international reform proposals" (Ibid. 2001: 8), at least until the Enron and other corporate debacles of 2001-02 exposed the U.S. system to intense criticism.

Now return to the Japanese experience of the 1990s and early 2000s. As a result of the past decade's amendments, Japan now has a corporate code that permits mutability and is consistent with active shareholder monitoring. But as the experience of the United States in the 1980s demonstrates, the corporate law can *facilitate*, but not initiate, change in corporate governance. Substantive change is brought about by dynamics external to formal corporate governance institutions. The sea change in Japanese corporate governance practices will occur when Japan experiences transformations analogous to those occurring in the United States in the 1980s—transformations that force management to abandon their attachment to existing institutions. A partial catalogue of heretofore incomplete changes in underlying institutions, practices and mindsets includes the following: a new distribution of shareholders, brought about through increased foreign direct investment and further reductions in cross shareholding; a new approach to the capital markets by both firms and regulators, such as (on the private side) increased investment of retirement funds in equities and greater use of hostile acquisitions as a

device of managerial replacement, and (on the public side) abandonment of governmental attempts to manage stock prices for the "benefit" of banks, which still hold large portfolios of under-performing shares; new incentive structures for senior management, who, short of financial crisis, currently have little incentive to do anything but await comfortable retirements; and further erosion of existing corporate norms that stigmatize redeployment of corporate assets to higher value uses as signaling "failure" or involving "the sale of people."

It is often said that Japan should retain beneficial aspects of its corporate governance system rather than rushing to emulate U.S. practices. Fair enough, but no commentators dare to be specific about which practices should be retained and which should be changed. Japanese managers will discover the answer only when they are forced to adapt. The corporate law now permits, but does not require, them to do so. Only the surrounding institutions, which contribute importantly to the incentive structures of corporate managers, have that power.

Conclusion

It has not been a lost decade for corporate governance reform in Japan. As a result of massive legal change, a formal institutional framework conducive to good corporate governance is now in place. Early signs suggest that academic and other observers are wrong to harbor grave doubts about the effectiveness of legal reforms in altering Japanese corporate behavior (Columbia Conference 2001; Root 2001). The experience of the past decade indicates that Japanese corporate actors do respond to legal reform, particularly reforms that lower the transaction costs of exercising shareholders' rights and doing deals.

But legal change alone is insufficient to transform corporate governance practices. That transformation will require an even more complex set of changes in incentive structures and attitudes prevailing throughout the economic system. This larger set of changes is under way, but far from complete.

To return to the metaphor from the new institutional economics, although the game has new rules, play will truly change only when new players enter in large numbers, or existing players are encouraged (or forced) to abandon the rules to which they have become accustomed, and under which they continue to prosper personally. Or perhaps as other complementary institutions change outside the corporate environment, the players will find incentives to adjust to the new rule structure.[24] Corporate law and governance is, for this reason, a highly salient subject for a study of institutional change and non-change in Japan.

[24] To take just one example, institutional investors may become more aggressive in seeking financial returns from portfolio firms as Japan's aging population places increasing demands on the pension system.

References

Akaishi, Koichi. 2002. Kikan toshika no coporeto gabanansu katsudo no igi—waga kuni no kikan toshika wa kokateki na gabanansu katsudo ga dekiru ka [The Signficance of Corporate Governance Activities by Institutional Investors: Can Institutional Investors in Our Country Play an Effective Role?]. Unpublished report. Research Institute of Economy, Trade and Industry.

Allen, Franklin and Douglas Gale. 2002. A Comparative Theory of Corporate Governance. Unpublished working paper.

Aoki, Masahiko. 2000. Information, Corporate Governance, and Institutional Diversity: Competitiveness in Japan, the USA, and the Transitional Economies. Oxford: Oxford University Press. Translated by Stacey Jehlik.

Bhagat, Sanjai and Bernard Black. 2002. The Non-Correlation Between Board Independence and Long-Term Firm Performance. Journal of Corporation Law 27: 231-273.

Chandler, William and Leo Strine. 2003. The New Federalism of the American Corporate Governance System: Preliminary Reflections of Two Residents of One Small State. University of Pennsylvania Law Review (forthcoming).

Columbia Conference. 2001. The New Rhetoric and Realities of Corporate Governance. Panel discussion at Corporate Japan: The Beginning of a New Era?, held March 23, 2001.

Diversity Distinguishes IY Bank. Nikkei Weekly, June 11, 2001, p. 13.

Gilson, Ronald. 2001a. Globalizing Corporate Governance: Convergence of Form or Function? American Journal of Comparative Law 49: 329-357.

Gilson, Ronald. 2001b. Catalyzing Corporate Governance: The Evolution of the U.S. System in the 1980s. Unpublished manuscript.

Hansmann, Henry and Reinier Kraakman. 2001. The End of History for Corporate Law. Georgetown Law Journal. 88: 439-468.

Hisada, Kishiko et al. 1999. Japan Sticks to Lifetime Job System. Asahi Shimbun. Dec. 2, 1999.

Institutions Threaten Corporate Governance. Nikkei Weekly. 2002, July 22, 2002.

JCAA. Japan Corporate Auditors Association. 2002. Cited in Letter from Group of Japanese Companies to the U.S. Securities and Exchange Commission, November 14, 2002.

Jisha kabu kai baizo, 2 cho encho [Share Repurchases Double to Exceed 2 trillion], Nihon keizai shimbun, April 28, 2002, p. 1.

Kaisha bunkatsu: I nen de 200 ken [200 Spin-offs in One Year], Nihon keizai shimbun, Mar. 31, 2001, p. 1.

Kaisha ha koshite henshin saseru [This is How Corporattions Change], Shukan toyo keizai, Apr. 6, 2002, pp. 42, 43-45.

Kanda, Hideki. 2000. Reforms in Corporate Law and Financial Regulation in Japan. Unpublished manuscript.

Kanda, Hideki and Tomotaka Fujita. 1998. Kabushiki kaisha ho no tokushitsu, tayosei, henka [Features, Variety and Evolution of Stock Corporation Statutes]. In Yoshiro Miwa et al. eds. Kaisha ho no keizaigaku. Tokyo: Tokyo University Press.

Kikuchi, Masatoshi. 2000. TOB, Kaisha bunkatsu ni yoru M&A senryaku [M&A Strategy: Takeovers and Spin-offs]. Tokyo: Toyo keizai shimbunsha.

Kato, Takao. 2001. The End of "Lifetime Employment" in Japan?: Evidence from National Surveys and Field Research. Unpublished manuscript.

Mergers Snapshot. Wall Street Journal, April 2, 2003 at C5.

Milgrom, Paul and John Roberts. 1994. Complementarities and Systems: Understanding Japanese Economic Organization. Estudios Economicos 9: 3-42.

Milhaupt, Curtis. 1997. The Market for Innovation in the United States and Japan: Venture Capital and the Comparative Corporate Governance Debate. Northwestern University Law Review. 91: 865-898.

Milhaupt, Curtis. 2001. Creative Norm Destruction: The Evolution of Nonlegal Rules in Japanese Corporate Governance. University of Pennsylvania Law Review 149: 2083-2129.

Milhaupt, Curtis. 2003. Nonprofit Organizations as Investor Protection: Economic Theory, and Evidence from East Asia. Yale International Law Journal (forthcoming).

Milhaupt, Curtis and Mark West. 2003. Institutional Change and M&A in Japan: Diversity through Deals. In Curtis J. Milhaupt ed. Global Markets, Domestic Institutions:

Corporate Law and Governance in a New Era of Cross-Border Deals. New York: Columbia University Press.

Miwa, Yoshiro and Mark Ramseyer. 2003. Financial Malaise and the Myth of the Misgoverned Bank In Curtis Milhaupt ed. Global Markets, Domestic Institutions: Corporate Law and Governance in a New Era of Cross-Border Deals. New York: Columbia University Press.

Miyajima, Hideaki and Hidetaka Aoki. 2002. Changes in the J-Type Firm: From Bank-Centred Governance to Internal Governance. In Japan—Change and Continuity. Javed Maswood et al eds. (RoutledgeCurzon: London).

Nomura Research Institute. 2001. Unpublished data on ratio of bust-up value to market capitalization.

Olson, Mancur. 1982. The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities. New Haven: Yale University Press.

Osugi, Kenichi and Anthony Zaloom. 2002. Recent Amendments to Japan's Company Law: Drastic Overhaul or Just Tinkering? Unpublished manuscript.

Ota, Seiichi. 2002. "Sentakusei" saiyo ga kansayaku seido wo tsuyoku suru. [Adoption of the "Elective System" will Strenghten the Statutory Auditor System] Torishimariyaku no homu. 95: 4-7.

Posner, Richard. 1997. Social Norms and the Law: An Economic Approach. American Economic Review 87: 365-69.

Ramseyer, Mark and Minoru Nakazato. 1999. Japanese Law: An Economic Approach. Chicago: University of Chicago Press.

Recof. 2001. Mergers and Acquisitions Report.

Recof. 2002. http://www.recof.co.jp/01_market/index.htm.

Regional Banks Should be Spared from Bad Loan Target. Nikkei Net Interactive, March 19, 2003.

Roe, Mark. 2003. What Corporate Law Cannot Do. In Curtis J. Milhaupt ed. Global Markets, Domestic Institutions: Corporate Law and Governance in a New Era of Cross Border Deals. New York: Columbia University Press.

Root, Hilton. 2001. Asia's Bad Old Ways. Foreign Affairs 80(2): 9-14.

Shagai torishimariyaku 38% ga sennin [38% Choose Outside Directors], Nihon keizai shinbun, June 16, 2001, p. 1.

Shishido, Zenichi. 1999. Reform in Japanese Corporate Law and Corporate Governance: Current Changes in Historical Perspective. American Journal of Comparative Law. 49: 653-677.

Shoji homu kenkyukai. 1999. Kabunushi sokai hakusho [White Paper on Shareholders' Meetings]. Shoji homu 1234: 3-118.

Thomson Financial. 2002. Japanese M&A: Stayin' Alive, April 4, 2002, available at http://www.tfibcm.com/league/pdfs/MA/4Q2001/Docs/4Q01JapanesePR.PDF.

Thompson Financial. Merger Yearbook, various years.

Tokyo shoken torihikijo. 2000. Kooporeto gabanansu ni kansuru ankeeto no chosa kekka ni tsuite [Results of Corporate Governance Survey]. Nov. 30.

Yasui, Takahiro. 1999. Corporate Governance in Japan. OECD paper, March 1999.

West, Mark. 2001a. Why Shareholders Sue: The Evidence from Japan. Journal of Legal Studies 30: 351-382.

West, Mark. 2001b. The Puzzling Divergence of Corporate Law: Evidence and Explanations from Japan and the United States. University of Pennsylvania Law Review 150: 527-601.

Xu, Peng. 2002. Bankruptcy Resolution in Japan: Corporate Reorganization vs. Civil Rehabilitation. Unpublished paper.

Zang, Hua. 2000. Share Repurchases in Japan: Market Reaction and Actual Implementation. Unpublished manuscript, available at http://www.efmaefm.org/hzang.pdf.