
NOTES AND COMMENT

The Gradual Transformation of Japanese Corporate Governance

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Comparative corporate governance is inevitably more complex than comparative law since it encompasses self regulation and business ethics as well as legal regulation. In other words comparative corporate governance involves a study of national and corporate culture. Most corporate governance systems are in flux and this adds to the problem facing the researcher. Path dependence is a more complex process than is often thought.

Japanese corporate governance historically has had some very distinctive features — the Keiretsu system, a galaxy of companies revolving around a main bank, cross shareholdings and interlocking boards, life time employment, weak shareholders whose rights tended to come last and so on. This is the post war picture for complex reasons and it preceded the “lost decade” of economic stagnation in Japan, after which followed regulatory and international reforms. The question is how we explain these events and how deeply the reforms have gone.

There are different schools of thought — some think that eventually there has been little or no change. Others think that there has been change and that Japan is moving closer to the Anglo American model. Others think that there has been a gradual transformation which continues.

It is in this context that we welcome a new work by Australian and Japanese scholars and practitioners edited by Luke Nottage of Sydney Law School, Leon Wolff of UNSW and now Bond and Kent Anderson of ANU.¹ This follows the work by Masahiko Aoki, Gregory Jackson and Hideaki Miyajima (eds), *Corporate Governance in Japan: International Change and Organisational Diversity*, Oxford University Press, Oxford, 2007.² In that work Zenichi Shishido had given an excellent and comprehensive account of the reforms in his paper, “The Turnaround of 1997: Changes in Japanese Corporate Law and Governance” which included a supplemental note dealing with the further turnaround in 2005 when the new Companies Act was passed separating Company Law from the Commercial Code in the Sarbanes-Oxley era.

In this new work, after an introduction by the editors which summarizes the chapters, Luke Nottage gives a very useful overview of the different approaches in the literature and emphasises five caveats:

1 L. Nottage, L. Wolff, K. Anderson (eds), *Corporate Governance in the 21st Century: Japan's Gradual Transformation*, Edward Elgar, Cheltenham, 2008. (\$79.95.)

2 M. Aoki, G. Jackson and H. Miyajima (eds), *Corporate Governance in Japan: International Change and Organisational Diversity*, Oxford University Press, Oxford, 2007.

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timing; the need for care about comparison; the context in which black letter law reform takes place; the need for openness in normative preferences; and emphasis on processes as well as outcomes.

Leon Wolff writes a very interesting and iconoclastic chapter entitled "The death of lifelong employment in Japan?" He argues that lifelong employment is not common, is not progressive, and actually promotes inequality. This is a more radical treatment than that by Gregory Jackson in the earlier work.

Dan Puchniak writes about "Perverse rescue in the lost decade: main banks in the post bubble era" explaining some of the reasons for the mysterious events of that period. This supplements the earlier paper by Arikawa and Miyajima. Tomoyo Matsui deals with corporate governance and closely held companies, a much neglected topic. Peter Lawley deals with the effect of the optional committee system in Japan which has had limited direct impact.

Two chapters discuss takeovers. One, by Gerard Dooley, deals with streamlining the market for control and an argument for a Takeovers Panel for Japan; and the other, by Mitsuhiro Kamiya and Tokutaka Ito, deals with takeover defences. These too are valuable discussions of changes taking place. Takeovers remain rare in fact.

Christopher Pokarier deals with "Open to being closed?" about foreign investment and control. Souichiro Kozuka then concludes with a discussion of Japan's largest companies with useful empirical data. There are no simple trends. There is gradual change and it moves in ambiguous directions. Change has to be absorbed into the local culture, hence the ambiguities. This can be usefully compared with Masahiko Aoki's magisterial conclusion to the earlier work. Japan is unlikely to progress to the American model but change is taking place in the bureaucracy towards a system of regulation, with a more arms-length relationship to the industry

This book, which is a product of the Australian Network for Japanese Law, is a sophisticated analysis which adds much to our knowledge and it is fitting that the book is dedicated to my good friend and former colleague, the late Professor Malcolm Smith, who prior to his premature death pioneered this as an area of scholarship for many years.

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