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Review of Corporate Governance in the 21st Century – Japan’s Gradual Transformation

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Corporate Governance in the 21st Century – Japan’s Gradual Transformation. Edited by Luke Nottage, Leon Wolff & Kent Anderson (Cheltenham, UK: Edward Elgar Publishing. 2008). 309 pp. Hardback. UK£79.95/ US\$145.

Review by Colin P. A. Jones, Professor, Doshisha University Law School.

Back in the 1980s, when Japan was an emerging economic superpower and Japanese firms were poised to conquer the world, there was a great deal of interest in what made them “better.” Japanese companies, it was said, pursued the interests of a broader range of stakeholders – not just shareholders, but “main banks” and other lenders, employees and government policymakers. This broader range of interests enabled Japanese firms to pursue their business in a manner which benefited society as a whole, not just greedy equity investors, whose only contribution to the firm may have been to buy shares from another shareholder on a stock exchange. As a result Japanese firms also retained the freedom to pursue long-term strategic value, rather than being chained to the millstone of quarterly results like their American counterparts.

With the bursting of the economic bubble and Japan’s “lost decade” (by now effectively two decades) starting in the 1990s, Japanese companies came to be identified as part of the problem, often for reasons that sounded very similar to those given for their past success. Japanese companies were burdened by the high fixed cost of increasingly expensive workers who could not be fired, bound by excessively restrictive government policies that prevented them from performing too much better than their competitors, and starved of capital by Japan’s zombie banks. All in all, Japanese firms (“J-firms”) had become a seemingly unattractive prospect for investors in a world where it was becoming increasingly easy to invest abroad in more lucrative markets.

Neither of these pictures is complete, of course, and as the second decade of the 21st century beckons, Japanese corporate governance merits another look. *Corporate Governance in the 21st Century: Japan’s Gradual Transformation* is an excellent resource for this purpose. Edited by Luke Nottage, Leon Wolff and Kent Anderson, three leading scholars of the Australian Network for Japanese Law (“ANJeL”)¹, –the book contains chapters written by Japanese and non-Japanese scholars and practitioners. Collectively it offers a number of important and useful viewpoints on the subject of corporate governance in Japan. The book will also be appreciated by many coming as it does shortly after the implementation of some of the most profound amendments to Japanese corporate and financial laws in decades. These include the introduction of an

¹ The reviewer is also affiliated with ANJeL.

Anglo-American-style “company with committees” option for Japanese companies in 2002, a completely new Companies Act which came into force in 2006 (written in modern Japanese rather than the language of the Meiji period!), and the replacement of the US-modeled Securities and Exchange Act with a new Financial Instruments Exchange Law which took effect in 2007.

These reforms took place during a period which also saw several high-profile struggles for the control of large Japanese corporations, including cases involving foreign investors seeking a larger voice in corporate management, often with the goal of enhancing shareholder returns. The litigation which some of these cases generated will doubtless go on to form the bedrock of Japanese corporate law jurisprudence in the 21st century. While the true impact of these developments is yet to come, the book will prove to be a useful starting point for anyone seeking to understand the foundations of the new corporate governance regime in Japan and some of the central issues in Japanese corporate law.

The book starts with an introductory chapter co-authored by the three editors. Among other things it includes a very useful timeline of the key corporate and financial legislative developments in Japan from 1990 to 2006. In the next chapter Luke Nottage discusses the perspectives and approaches to comparing corporate governance in Japan with other systems. This is a welcome chapter, because it avoids the overly American viewpoint which has sometimes dominated some of the scholarship in English on Japanese law, and also because it provides a handy summary of the views of different scholars on the subject of Japanese corporate governance. As Nottage notes, there is a range of opinions among scholars as to how much change is really taking place in Japan. There is the “slow change” view he attributes to established scholars such as Haley, Dore and Ramseyer (though they may hold these views for radically different reasons), and the “dramatic shift towards market solutions and shareholder primacy” view he attributes to the western financial press. Nottage characterizes his own position regarding change in Japanese law, society and corporate governance as “guarded.” Nottage sees a considerable realignment of Japanese corporate stakeholders, with shareholders becoming a more central presence compared to creditors and employees, who may have been more important stakeholders in the past.² Offering several “ways forward” to further enhance the study of corporate governance in Japan and beyond, he concludes with a call for more “interdisciplinary dialogue” and suggests that:

² Luke Nottage, “Perspectives and Approaches: A Framework for Comparing Japanese Corporate Governance” in Nottage, et al. at 28-29.

“[t]hose engaged in debates framed primarily by law and economics can benefit from greater engagement with the work of sociologists and political scientists, and vice versa.”³

Next, Leon Wolff takes on the subject of “lifelong employment,” which he characterizes as “more a trope than literal fact.”⁴ While the presence of long-term employees as a significant stakeholder was supposedly at the foundation of J-firms, Wolff notes that what is generally referred to as “lifelong” employment has actually been enjoyed only by a minority of the Japanese workforce (and a shrinking minority at that). Even then it has never been true “lifetime” job security, but instead “flexicurity,” a combination of employment security and flexible working patterns. There is a debate among some observers about whether Japan’s prolonged recession has rendered lifelong employment a dying institution and Western-style shareholder primacy triumphant, but Wolff questions whether this debate is on the mark.

Discussing various models that have been used to explain lifelong employment in Japan – the market model, the cultural model, the institutional model and the political model – and some of the changes brought about by both law and economic conditions, Wolff concludes that “[l]ifelong employment is alive – and not well”, though “[p]erhaps it was not well to begin with.”⁵ Referring to record unemployment and the increasing prominence of workers lacking stable employment, Wolff suggests that changing employment practices in Japan present a challenge to corporate governance theory by calling into question the simplistically binary distinction between supposedly Japanese “stakeholder” capitalism and Anglo-American “shareholder primacy” which has prevailed in many discussions of Japanese corporate governance.

Another so-called pillar of Japanese corporate governance, the so-called “main banks” which lie at the heart of “Japan, Inc.’s” corporate groupings, have recently been declared by Yoshiwa Miwa and Mark Ramseyer to be a myth.⁶ Dan Puchniak mounts a convincing rebuttal of this view by looking at the seemingly perverse efforts by the Japanese government to rescue several of Japan’s troubled megabanks in the 1990s. While Miwa and Ramseyer attribute much of the behavior of Japanese firms (including their corporate governance structures and relationships with lenders) to competitive market forces, Puchniak argues that this will not be the case if:

³ *Ibid.* at 52.

⁴ Leon Wolff, “The Death of Lifelong Employment in Japan?” in Nottage, et al. at 53.

⁵ *Ibid.* at 78-79.

⁶ Yoshiro Miwa & J. Mark Ramsyer, “The Myth of the Main Bank: Japan and Comparative Corporate Governance” (2002) 27 *Law & Soc. Inquiry* 401.

“...unique and perverse institutional incentives, and not free-market forces, drive corporate governance. In which case, the incentives for “bad governance” and “suboptimal schemes” may be greater than those for “good governance” and “optimal schemes.”⁷

One aspect of Japan’s lost decade is that a number of Japanese firms were kept alive in a zombie-like condition by the mere appearance of profitability, a divergence from basic economic theory that could only be achieved by financial regulatory policies which required banks to renew massive loans to struggling Japanese companies that were clearly never going to be repaid. Puchniak cuts through some of the more nuanced academic debate with a stark and simple proposition:

“[S]elf-interested bank managers lent to loser firms to meet regulatory requirements so that they could keep their life-time employment – not to make banks more profitable. Self-interested Japanese government officials facilitated this behavior to avoid the political repercussions of massive bank and industry failures. The effect of free-market forces was *de minimis*.”⁸

In concluding, Puchniak notes the evidence of the development of “main-bank” like groupings in the U.S., suggesting that Miwa and Ramseyer’s claims that Japan is like everywhere else “may have some truth – but for entirely different reasons.”⁹

Tomoyo Matsui’s very useful chapter reminds us that in Japan as elsewhere, most corporate governance takes place out of public view, in hundreds of thousands of non-public, small and medium-sized enterprises (“SMEs”).¹⁰ Unlike listed companies that are household names and are scrutinized by journalists and academics alike when causing corporate scandals, or launching ground-breaking takeover bids and mergers, SMEs may be family affairs with entirely different governance issues (family dynamics, succession planning). They may also be ill-equipped to deal with some of the elegant yet often bothersome and pointless formalities that were once imposed upon all companies by Japanese corporate law. Yet corporate governance in SMEs has been largely unexplored, particularly in English-language literature on the subject.

⁷ Dan W. Puchniak, “Perverse Rescue in the Lost Decade: Main Banks in the Post-Bubble Era” in Nottage, et al. at 81.

⁸ *Ibid.* at 103.

⁹ *Ibid.* at 107.

¹⁰ Tomoyo Matsui, “Corporate Governance and Closely-Held Companies in Japan: The Untold Story” in Nottage, et al. at 108.

Matsui provides a summary of what he characterizes the failure of the old corporate law regime's efforts to tighten the accountability of large companies without overburdening smaller ones. These efforts included distinctions between governance requirements based upon capitalization, restricted stock, and number of shareholders, as well as different types of corporate forms. These distinctions were generally unsuccessful, with small companies sometimes choosing the prestige of large company formats, and large companies taking advantage of the laxer standards applied to small company structures.

While a great deal of the analysis of Japan's new Company Law has been conducted through the lens of large public companies, Matsui notes that in the background there is also the SME revitalization policy of the Ministry of Economy, Trade and Industry ("METI") developed in response to economic and demographic changes in Japan. Thus, one trend that is reflected in the new Company Law is that of "continuing deregulation for pre-existing smaller companies."¹¹ Small companies can now dispense with statutory auditors, appoint directors for up to 10 years (rather than the two years under the old law), use documentary resolutions instead of holding formal directors' meetings, or do away with having multiple directors altogether. Matsui concludes by suggesting that while increasingly sophisticated governance and shareholding schemes are made possible even for SMEs by the new Company Law, the new law will result in a growing need for shareholder-oriented governance, while remedies for oppression of minority shareholders will continue to be an important focus of corporate law jurisprudence.

Prior to the wholesale amendment of the Company Law, legislation passed in 2002 gave large companies the option of adopting a US-style committee corporate governance structure. In his chapter, Australian lawyer Peter Lawley considers some of the possible reasons why such structures have not been widely accepted by Japanese companies, most of whom seem to prefer the system which prevailed under the Commercial Code of 1899.¹² The Commercial Code structure involves a unitary board of directors and a separate board of statutory auditors, which is charged with supervising the board of directors, but is characterized as a "weak counterpart to the German supervisory board."¹³

Lawley notes that the 2002 legislation which made a committee system possible, but not mandatory, was a compromise between the Ministry of Justice (which wanted to replace the statutory auditor system with three mandatory committees as well as an outside director requirement) and the business community, which objected to such requirements being made mandatory. Thus, it

¹¹ *Ibid* at 119.

¹² Peter Lawley, "Panacea or Placebo? An Empirical Analysis of the Effect of the Japanese Committee System Corporate Governance Law Reform" in Nottage, et al. at 129.

¹³ *Ibid* at 131.

is perhaps unsurprising that by around 2006 only a comparatively small number of companies – 76 – had adopted the committee system. Referring to a theoretical framework developed by Gilson and Milhaupt and others to introduce the concepts of “shareholder tunneling”, a process which results in the control of a company by the majority shareholder at the expense of the minority) and “stakeholder tunneling” (a company being run primarily for the benefit of non-shareholder stakeholders), Lawson relies on interviews with lawyers, auditors and other corporate governance professionals to arrive at his conclusions. These are that in Japan “the operational committee system provides few advantages over the statutory auditory system” and that “[t]here is considerable skepticism about the monitoring ability of outside directors due to the loose definition of that term.”¹⁴ That said, while not being a panacea, the committee system may have a placebo effect in that a company which has a committee “is perceived to be a stronger and more transparent corporate governance system,” even though this is not confirmed by empirical evidence.¹⁵

In the next chapter another Australian lawyer, Gered Dooley, discusses the potential for takeover panels as a solution to the growing pains in Japan’s Mergers and Acquisitions market. These pains were evidenced in the infamous case of Takafumi Horie and the hostile bid of his company Livedoor for Nippon Broadcasting System Inc.¹⁶ Noting that a great deal of debate in Japan on takeover defenses, including various government reports and guidelines on the subject, has focused on whether “poison pills” are acceptable given the basic principles of equal treatment of shareholders mandated by Japanese corporate law, Dooley goes on to posit that a takeover panel similar to the Australian model would work in Japan as a forum for dispute resolution and policy creation in takeover issues. He further suggests that in Japan, such a panel might play a role in educating Japan’s increasingly activist shareholders, as well as providing a much-needed definition to the concept of independent directors.

The next chapter, co-authored by Mitsuhiro Kamiya and Tokutaka Ito, both lawyers at Skadden Arps in Tokyo, provides an excellent summary of some of the key Japanese court decisions on takeover defenses, including the famous case of *Steel Partners v. Bulldog Sauce* (“*Bulldog Sauce*”) in 2007.¹⁷ Starting with leading cases which predate *Bulldog Sauce* and deal with pre-bid defensive measures, the authors note that Japanese courts have developed a line of logic which says that:

¹⁴ *Ibid* at 153.

¹⁵ *Ibid* at 154.

¹⁶ Gered Dooley, “Streamlining the Market for Corporate Control: A Takeovers Panel for Japan?” in Nottage, et al. at 155.

¹⁷ Mitsuhiro Kamiya & Tokutaka Ito, “Corporate Governance at the Coalface: Comparing Japan’s Complex Case Law on Hostile Takeovers and Defensive Measures” in Nottage, et al. at 178.

“...management’s authority to manage the company comes from the shareholders through their appointment. Thus, the management’s ability to interfere with any change in the shareholders should be limited, and the management’s adoption of a defensive measure should be authorised by the shareholders when there is no contest for control.”¹⁸

The authors suggest that this logic is derived from the courts’ lack of trust in corporate management. This in turn may itself be a function of the absence of truly independent directors at Japanese companies. It is a dynamic which sets the stage for the *Bulldog Sauce* cases, in which Japanese courts at each level of the judiciary up to the Supreme Court approved defensive measures which involved outright discrimination against a particular group of shareholders (Steel Partners and its affiliates). This approval was based in part on the fact that the defensive measures were approved by a meeting of the shareholders. As a result, Japanese case law diverges from Delaware case law on defensive measures by emphasizing shareholder participation in their adoption.

The authors note that the *Bulldog Sauce* jurisprudence is problematic for a number of reasons. First, it “did not explain why the shareholders’ meeting can decide the issue better than the management.”¹⁹ Second, by focusing part of its inquiry on whether the defensive measure would only cause financial loss to a prospective acquirer (arguably it did not: Steel Partners received cash consideration while other stockholders received only stock subscription rights of equivalent value), the case law risks facilitating greenmailing. Finally, while accepting that the Supreme Court decision in the *Bulldog Sauce* case is “correct in justifying defensive measures adopted by an ‘honest’ company,” the authors note that in reaction to the decision:

“... many companies hesitant about hostile takeovers are actually entering into new types of cross-shareholders, aimed at securing favourable resolutions of shareholders’ meetings [i.e. for the adoption of defensive measures].”²⁰

Thus, the primary impact of *Bulldog Sauce* may be to simply encourage collusive arrangements among companies to preserve the entrenched positions of their respective managements.²¹ If this is so, it is a result which will not bode well for foreign investment prospects in Japan.

¹⁸ *Ibid.* at 186.

¹⁹ *Ibid.* at 194.

²⁰ *Ibid.* at 195.

²¹ For what it is worth, the reviewer’s own thinking on the significance of the *Bulldog Sauce* line of cases starts with the question: “is it in the interest of the Japanese judiciary or any individual

Foreign investment is the subject of the penultimate chapter by Christopher Pokarier.²² In it the theoretical openness of Japan to foreign direct investment (“FDI”) is contrasted with the “widespread ambivalence about the foreign control of Japanese firms and infrastructure” which appears to exist on the ground in the country. This ambivalence is reflected in recent cases such as *Bulldog Sauce* in which foreign investors have either been rebuffed through defensive measures or outright government refusal to approve the transaction (as happened in The Children’s Investment Fund’s attempt to increase its investment in Electric Power Development, Co. (“J-Power”), Japan’s largest electricity wholesaler).²³ Essentially, it seems that foreign takeovers are welcome as long as a majority of shareholders consent, or the transaction is not otherwise viewed as a threat to some nebulous notion of enterprise value.

Pokarier starts with three possible explanations for the contradiction between the Japanese government’s aggressive promotion of FDI abroad while at the same time appearing ambivalent to it domestically: that the contradiction reflects (1) a deliberate privatization of economic nationalism, (2) a compromise based on discretionary public interest judgments, or (3) a pragmatic political response to domestic interests seeking to preserve dominant positions which allow rent-seeking behavior. He suggests that all three accounts may be accurate in part, but that effectively:

“... many of the recent changes in corporate law and regulations that permit new organizational and governance forms and practices might be described as potentially dual use. That is, depending on their application, they might serve to strengthen the accountability and efficiency of managements or further entrench them.”²⁴

Japanese judge to rule in favor of a foreign investment fund instead of a Japanese company with a history of over a hundred years and which produces a well-known household food product, which the Tokyo High Court made a point of describing as ‘delicious’?”. The answer to this question almost certainly being “no”, the judgments of each layer of the judiciary may reflect nothing more than a series of efforts to come up with the most plausible rationale for a result that was eminently predictable. In this view, the significance of the *Bulldog Sauce* as “case law” providing a useful guidepost for litigation in future hostile takeovers may be greatly exaggerated.

²²Christopher Pokarier, “Open to Being Closed? Foreign Control and Adaptive Efficiency in Japanese Corporate Governance” in Nottage, et al. at 197.

²³ See, e.g. Shinichi Terada, “Japan Blocks TCI from Upping J-Power Stake” *The Japan Times* (17 Apr. 2008), online: Japan Times <<http://search.japantimes.co.jp/cgi-bin/nb20080417a1.html>> (last accessed 14 Jan. 2010).

²⁴ “Pokarier, *supra* note 22”, at 223.

At the end of the day, Japanese corporations may continue to be managed primarily for the benefit of the shrinking “privileged minority” of workers having so-called lifetime employment. On this note Pokarier concludes by stating that:

“[w]hat some depict as a struggle to defend the egalitarianism of Japanese stake-holder capitalism, against the ruthless efficiency of shareholder-oriented Anglo-American capitalism, may increasingly come to look like the defence of Japanese middle-class insider interests – at the expense of other Japanese and foreign investors alike.”²⁵

A short concluding chapter is offered by Sophia University’s Souichirou Kozuka, who compares Japan’s top companies in 1988 and 2008.²⁶ While there is a fair amount of overlap in his “top forty” list for the two reference years, including companies such as NTT and a number of financial companies which have been reorganized into holding company structures (after holding companies were legalized in 1997), a number of new players appear in the 1998 list including high-tech companies like Yahoo! Japan and Softbank. Kozuka uses various data to compare the top companies in 1988 and 2008. Far more of the shareholders of the 2008 companies are nominees, indicating a substantial increase in institutional investors and a decrease in cross-shareholdings. Mixed data for changes in equity ratios suggest a need for more variety in corporate finance options, a need which has been reflected in recent legal reforms, including deregulation of corporate bond financing and the legalization of share repurchases and the issuance of equity call options. Data for employment are similarly mixed, with some companies showing a significant drop in employees over the 20-year period, while others have actually experienced increases.

Briefly touching on the changes in director liability and takeover law in the two decades surveyed, Kozuka notes that overall the book reaches the same conclusion as others: that “there are no simple trends in terms of changes or developments.”²⁷ It is probably an appropriate conclusion particularly for Japan, where dramatic changes are rare. Even with gradual changes, however, “[a]t some point, people take a look back and find that the point where they stood only yesterday is very distant.”²⁸

All in all, the book provides an excellent overview of the state of corporate law in Japan at the beginning of the 21st century. It does suffer one infirmity which is no way the fault of any of the editors or the authors, an

²⁵ *Ibid.* at 227.

²⁶ Souichirou Kozuka, “Conclusions: Japan’s Largest Corporations, Then and Now” in Nottage, et al. at 228.

²⁷ *Ibid.* at 245.

²⁸ *Ibid.*

infirmity which will also afflict many other contemporary works on the subject matter: timing. Published in 2008, the book covers a period immediately prior to what may (or may not) prove to be not one but two seismic events affecting Japanese corporations. The first is the global financial crisis of 2008-2009, commonly referred to in Japan as the “Lehman Shock” due to the perception of it being caused by the collapse of Lehman Brothers in 2008 (the collapse of Lehman’s Japanese operations having had a significant impact on the country’s economy). The second is the defeat of the Liberal Democratic Party in the lower house elections in the summer of 2009, ending half a century of almost uninterrupted conservative, business-friendly rule in Japan. What effect these two events will have on corporate governance, and whether whatever change they bring will again be gradual, or uncharacteristically dramatic remains to be seen. This caveat aside, *Corporate Governance in the 21st Century: Japan’s Gradual Transformation* should be an essential part of any reading list or library on the subject of corporate law in Japan.

In closing, the reviewer would offer one other observation, and then only as a possible area for further study rather than as a deficiency in the book or any of its articles. While it is common to include “the government” as a stakeholder when discussing Japanese stakeholder capitalism in general terms, the details of what this actually might mean for corporate governance are often not discussed. Puchniak’s chapter touches on one aspect of this when he describes the frantic efforts of Japanese financial regulators as they mandated that Japanese banks use one accounting trick after another in order to meet the risk-based capital adequacy requirements of the 1988 Basle (Basel) Accord, which came into effect in 1992.²⁹ Any commonly understood meaning of the term “corporate governance” would seem irrelevant in the face of this type of regulatory pressure in the name of public policy. Of course, banks represent a special class of corporations which are subject to unique policy considerations, but given the top-down type of regulation which has traditionally held sway in many Japanese industries, “when is Japanese ‘corporate governance’ really just ‘governance’?” may be a legitimate question in some circumstances, particularly when discussing the subject in historical terms.

In addition, it may not just be in areas of legitimate public policy where the government may cast a long shadow over corporate governance in Japan. The question: “what does a particular bureaucracy get out of it?” can often be a fruitful starting point for analyzing issues in Japanese law, and corporate governance may be no exception. For example, the current president of the Bank of Yokohama is a former vice-minister (i.e. the top career bureaucrat) of the Ministry of Finance (“MOF”). As disclosed by Professor Masashi Nakano, the author of a recent study

²⁹ Basle Committee on Banking Supervision, *International Convergence of Capital Measures and Capital Standards* (1988), available at: <http://www.bis.org/publ/bcbs04a.pdf?noframes=1> (last accessed Feb. 9, 2010).

on the subject of *amakudari* (the practice of bureaucrats retiring into positions in industry and quasi-governmental institutions) – no fewer than five former MOF vice ministers have retired directly or indirectly into the top slot at the Bank of Yokohama.³⁰ This suggests the possibility that the post (and similar positions throughout the financial industry) may now or in the past have been regarded as a form of entitlement by top banking regulators.³¹

While government officials moving to private industry is hardly a uniquely Japanese phenomenon, in Japan the practice is focused primarily on moves at the end of a bureaucratic career (i.e., while bureaucrats in other countries may leave government service for industry mid-career because corporate life provides a better set of options, Japanese bureaucrats are probably more likely to seek employment in the private sector only when continued government employment is no longer an option due to the approach of mandatory retirement age). Furthermore, *amakudari* may be institutionalized through unofficial, “extralegal” protocols, possibly because the practice is both widely regarded as unseemly and subject to increasing legal restrictions.³² To the extent that the practice persists, however, it may do so in a form that is difficult to identify (in terms of formal sources) and as a subject which bureaucrats and some corporate insiders may prefer not to talk about or even acknowledge. Yet if a company does have former bureaucrats as executive officers, directors or statutory auditors, this could have potentially profound implications for anyone considering acquiring the company with a view to installing new management and running the company with a greater focus on shareholder value.³³

If specific government agencies do in fact have vested interests in the management of particular companies or particular industries, this might also inform some of the existing debate about Japanese corporate governance. Switching from statutory auditors to an audit committee may simply involve rocking the boat too much for a company if the statutory auditor role is a post that

³⁰ M Nakano, *Amakudari no Kenkyu* [The Study of Amakudari] (2009), at 122-123.

³¹ Professor Nakano’s book provides a wealth of useful data for other national government agencies as well, including the extensive range of companies and positions into which top bureaucrats from each have retired. . *Ibid.* at 91-224.

³² Although elected governments have repeatedly called for increased restrictions on or the total elimination of *amakudari*, those restrictions which have been imposed (including an extensive range of prohibitions and limitations contained in Arts. 103-106 of the the National Public Service Act, which among other things prohibit the outright solicitation of post-retirement jobs by regulators from companies they regulate) have simply resulted in the practice morphing into different forms.

³³ While the efforts of The Children’s Investment Fund to increase its equity stake in J-Power were rebuffed on grounds of national security, it is worth noting that according to the company’s annual securities reports, two of J-Power’s directors (including its vice president) were former bureaucrats from METI, the electrical power industry’s primary regulator, and one of its statutory auditors was a former MOF official.

has traditionally been allocated for *amakudari*. Similarly, “lifetime employment” may indeed have been an exaggerated phenomenon in corporate Japan, yet it may also be alive and well as a priority at the highest levels of the unelected sector of the Japanese government, once post-retirement employment through *amakudari* and its cousin *watari* (subsequent moves into additional lucrative posts after the initial “descent from heaven”) are taken into account. Similarly, resistance to foreign control of Japanese companies may be a reflection of vested interests seeking to protect situations that facilitate rent-seeking, but at least some vested interests might be those of government agencies, and the “rents” sought may be in the form of protected employment opportunities rather than protected markets. Finally, both takeover panels and a more well-defined notion of independent directors might take root, but cynical observers might be forgiven for expecting both to be first converted into roles for former bureaucrats.

The speculation in the preceding paragraphs is just that: speculation. The reviewer is simply offering this speculation to suggest possible areas of further study in the field of Japanese corporate governance. Nottage, Wolff, Anderson and their distinguished slate of authors have provided a fine set of guideposts.