BESPRECHUNGSAUFSATZ / REVIEW ESSAY

A Skeptic's Guide to Miwa and Ramseyer's "The Fable of the *Keiretsu*"

Dan W. Puchniak[*]

I. Introduction
II. A Confused Conspiracy Theory:
Leftist Westerners and Japanese Marxists Are to Blame?
III. The Conundrum of an Impotent Government that Attracts the Best and the Brightest
IV. M&R Fail to Prove their Overly Ambitious Conclusion
A. The Lack of Comparative Evidence Forces "Blind Leaps of Faith"
B. Evidence of a Flawed Description is not Tantamount to Proof of Non-Existence
C. A Missing Chapter: What Happened to "The Fable of Lifetime Employment"?
V. Unused Tools: A Note of Caution on "The Myth of the Lost Decade"
VI. A Case Study of "The Lost Decade": Proof that M&R's Theory Misleads
VII. Buy it, Borrow it or Steal it – But also Buy, Borrow or Steal a "Pillar of Salt"

I. INTRODUCTION

I hesitate to criticize ambition, but in this case it is called for. In the mere 180 pages of "The Fable of the *Keiretsu*", Miwa and Ramseyer skilfully demonstrate that Ivy League academics, Nobel Prize Laureates, a Pulitzer Prize winner and almost every Japanologist has inaccurately described Japan's postwar economy.[1] M&R achieve this by applying fresh empirical research in a precise and logical manner in order to demonstrate that many of the hallmarks of Japan's postwar economy – *keiretsu,* main banks and govern-

* The author would like to acknowledge Japanese government funding for this research and the Kyushu University LL.D. Program for making this research possible. Thanks to Dr. Harald Baum, Dr. Luke Nottage, Professor Mark Fenwick, Sukhabaatar Sumiya, Sandeep Joshi and Jacob Kojfman for their insightful comments on earlier drafts. Thanks also to Professor Abe and Professor Pejovic for their continuing guidance and support. To Norah, thank you for your love, thoughtful advice and making the journey a memorable experience. The views expressed in this paper and any errors or omissions are the sole responsibility of the author.

1 M&R note at the beginning of their book that it is based on a number of more detailed articles that they have published. In order to make this review complete, a number of these articles are cited in this review. *See*, Y. MIWA / J.M. RAMSEYER, The Fable of the Keiretsu (Chicago, 2006) xi [hereinafter MIWA / RAMSEYER 2006].

ment led growth – are exaggerated. Unfortunately, however, demonstrating that the conventional wisdom about the Japanese economy is exaggerated was not enough to satisfy M&R's ambitious research agenda. M&R's attempt to extend their conclusions beyond "disproving exaggerations" and towards proving "academic fables" is what transforms their otherwise groundbreaking book into an illogical diatribe that fails to achieve its goal.

At the beginning of their book, M&R forcefully assert that their goal is *not* to demonstrate that the conventional understandings about the Japanese economy are exaggerated, but rather to prove that "they are simply wrong, fictitious accounts with no basis (not little basis, but *no* basis) in anything on the ground".[2] Proving such an extreme claim about an enormous body of sophisticated research requires an extreme theory. And so, M&R provide one.

M&R's central theory is that, just like the US (and they suspect, everywhere else), Japan's economy is driven by a perfect free-market in which firms freely compete for capital, banks rationally allow failing borrowers to fail, regulations expose firms to perfect competition and the law flexibly allows firms to move to Pareto optimal governance schemes.[3] As such, M&R claim that the Japanese economy can be understood solely on the basis of "standard old-fashioned microeconomic theory".[4]

M&R then spend the balance of their book using "standard old-fashioned microeconomic theory" to demonstrate that the hallmarks of Japan's postwar economy – *keiretsu*, main banks and government led growth – could not have existed in Japan's perfect free-market.[5] According to M&R, this leaves them with only one possible con-

---

2 MIWA / RAMSEYER 2006, *supra* note 1, 3.

3 MIWA / RAMSEYER 2006, *supra* note 1, 147. Curtis Milhaupt, in his brief review of one of M&R's earlier articles, takes a similar view of M&R's central theory: "The theory is that Japanese firms exist in a world of perfect market competition, a world where informal relationships and institutions of all types, including government regulation, are irrelevant in the shadow of the invisible hand and private contracting." C.J. MILHAUPT, On the (Fleeting) Existence of the Main Bank System and Other Japanese Economic Institutions, in: Law and Society Inquiry 27 (2002) 425, 435-36. For another critique of M&R's free market theory, see also, C. FREEDMAN / L. NOTTAGE, You Say Tomato, I Say Tomahto, Let's Call the Whole Thing Off: The Chicago School of Law and Economics Comes to Japan, in: CJES Research Papers, No. 2006-4 (2006),available at *http://www.econ.mq.edu.au/Econ_docs/cjes/research_papers/2006-4_Freedman_Nottage.pdf*.

4 Y. MIWA / J.M. RAMSEYER, The Myth of the Main Bank: Japan and Comparative Corporate Governance, in: Law and Society Inquiry 27 (2002) 401, 421 [hereinafter MIWA / RAMSEYER 2002]. M&R use similar wording at the end of their book, "conventional microtheory…does describe Japan. It always did". MIWA / RAMSEYER 2006, *supra* note 1, 147. In another related article, M&R state that the Japanese economy "tracks the contours of standard economic theory." Y. MIWA / J.M. RAMSEYER, Direct Credit? The Loan Market in High-Growth Japan, in: Journal of Economics & Management Strategy 13 (2004) 171, 202 [hereinafter MIWA / RAMSEYER 2004A].

5 As M&R put it, "[C]onventional microtheory with its profit-maximizing firms buying and selling in competitive markets does describe Japan. It always did. The fables about

clusion: all of the hallmarks of the Japanese economy must be "myths".[6] M&R's attempt to reach this overly ambitious conclusion is what transforms their book from a piece of skilful research built on a solid foundation of empirical evidence to pages of empty rhetoric filled with logical gaps.

The balance of this essay examines the logical gaps in M&R's book. It starts by considering the confused conspiracy theory that M&R developed to explain how the collective understandings about Japan's economy could have been so palpably wrong despite decades of highly sophisticated research (section two). Then, it examines the unanswered questions created by M&R's perfect free-market theory, which leaves no room for the Japanese government to play any meaningful role in the economy (section three). Next, it examines three critical pieces of missing evidence (comparative evidence, evidence of non-existence and evidence of "the myth of lifetime employment") that prevent M&R from successfully proving their ambitious conclusion (section four). Later, it dissects a promise that is not honoured by M&R and specifically their attempt to establish yet another myth: "the myth of the lost decade" (section five). Subsequently, a short case study is provided to demonstrate the weakness of M&R's central free-market theory (section six). Finally, concluding remarks are given to advise the reader on whether they should follow M&R's advice to "buy, borrow or steal" the book (section seven).

II. A CONFUSED CONSPIRACY THEORY : LEFTIST WESTERNERS AND JAPANESE MARXISTS ARE TO BLAME?

It is one thing for office cooler gossip to spawn an urban legend of alligators infesting the New York City sewer system.[7] It is quite another for a legion of academics, which include Ivy League scholars, Nobel Laureates and a Pulitzer Prize winner, to engage in tens of thousands of pages of useless discourse to perpetuate a litany of seemingly obvious myths. To their credit, M&R realize the gravity of their claims. They know that someone will have to be blamed if their claim of a catastrophic academic debacle is to

---

Japanese bureaucrats, keiretsu, main banks and systematically misgoverned firms are just that – fables. At root the Japanese economy differs little from the American economy (or, we suspect, from any economy anywhere else). To learn about the Japanese economy one does not need Japan-specific accounts of corporate groups, main banks and government led growth. One does need economics." MIWA / RAMSEYER, *supra* note 1, 147.

6 M&R commonly use the logic that if standard economic theory (i.e. free-market forces and profit maximization) cannot explain the alleged actions taken by Japanese firms, the best explanation is not that free-market forces do not drive the behavior of Japanese firms, but rather that the alleged action never occurred at all. *See* MIWA / RAMSEYER 2002, *supra* note 4, 418-19; MIWA / RAMSEYER 2006, *supra* note 1, 147.

7 In their book, M&R repeatedly draw comparisons between "urban myths" – such as alligators in the New City York sewer system or a poodle who found itself fried in a microwave – and the "myths" about the Japanese economy. *See,* MIWA / RAMSEYER 2006, *supra* note 1, 2.

stick.[8] It appears that no match made in heaven produces more bliss than economists who meet leftist scholars who they can blame for such a debacle. And so, in their book, M&R repeatedly place blame for the myths about the Japanese economy on leftist Westerners and Japanese Marxists.[9]

M&R's tale of how "Westerners" got the story of Japan's economy so terribly wrong is quite simple. In the 1960s, there was a dearth of Western economists who could conduct research in Japanese.[10] This forced Western economists (and every other non-Japanese speaking person interested in the Japanese economy) to rely on secondary sources written by Western historians, sociologists and political scientists.[11] Not being economists, these scholars were "naturally" all leftists who were adept at Japanese but poor at economics.[12] These leftist academics "of course" chose to selectively rely solely upon Japanese "Marxist literature" in conducting their research.[13] Thus, the "Western understanding" of the Japanese economy is the product of "elaborations on Japanese Marxist scholarship by American historians, sociologists and political scientists [i.e. leftists]".[14] Therefore, according to M&R, with leftist biased secondary sources making up the foundation of Western scholarship on the Japanese economy it is no wonder that "the tales in the *West* about the Japanese economy are not exaggerated… [but] are simply wrong".[15]

M&R's story of "Western tales" spawned by leftist Western academics serves as a useful literary device. It keeps the reader on "pins and needles" throughout the book waiting for M&R to suddenly drop the curtain and display the storehouse of Japanese research that leftist Western academics conveniently forgot to properly incorporate into their original research. After all, M&R assure us throughout the book that these "tales" are primarily Western, not Eastern, ones.[16]

---

8 As M&R state, "For the Academy, the tales are nothing less than a profound embarrassment." MIWA / RAMSEYER 2006, *supra* note 1, 3.

9 For an example of M&R blaming leftist Westerns and Japanese Marxists, *see* MIWA / RAMSEYER 2006, *supra* note 1, 53-56.

10 MIWA / RAMSEYER 2006, *supra* note 1, 55.

11 MIWA / RAMSEYER 2006, *supra* note 1, 55-56.

12 MIWA / RAMSEYER 2006, *supra* note 1, 55-56

13 MIWA / RAMSEYER 2006, *supra* note 1, 55-56.

14 MIWA / RAMSEYER 2006, *supra* note 1, 55.

15 Emphasis added. MIWA / RAMSEYER 2006, *supra* note 1, 3.

16 There are numerous examples of M&R labeling the misunderstandings about Japan primarily "Western creations". M&R state: "the tales in the *West* about the Japanese economy are not exaggerated….they are simply wrong" (3); "*Western* scholars, hoping for culture-specific forms of economic organization…" (3); "notwithstanding claims by *Westerners*" (11); "the legend in the *West* characterizes the Mazda "turnaround" as a story of main bank rescue" (68); "In the *West*, even scholars not otherwise given to cultural analysis stress the importance in Japan of non-Western norms" (119); "As with so much *Western* scholarship on Japan, the scholarship on Japanese government power depends heavily on anecdote" (122); "*Western* observers missed it entirely" "the scholars who dominated the field

At risk of ruining the suspense, M&R do not present a storehouse of Japanese research debunking the leftist Western myths. To the contrary, they present an "empty storehouse". There is not a single piece of Japanese scholarship cited that labels *keiretsu* "a fable". As for "the myth of the main bank", in a recent article M&R curiously cite Masahiko Aoki (Professor Emeritus at Stanford, formerly Professor at the University of Kyoto) as the most influential main bank scholar in the US and Japan.[17] Aoki, an internationally renowned economist who publishes "simultaneously in both English and Japanese" hardly seems like a prime candidate to be misled by the selective translations of leftist Western academics.[18]

M&R's suggestion that shoddy "*Western* research" is also to blame for the "legends of government guidance" is even more confusing. They blame anecdotal "Western scholarship" for perpetuating this myth.[19] But then, even before the reader has a chance to turn the page, M&R assert that "the Japanese press" commonly relies on two other anecdotes, which Western researchers seem to have missed, as evidence for government guidance.[20] Thus, based on M&R's own evidence, it appears that the "tales of the Japanese economy" are even bigger in the "East" than the "West". The constant portrayal by M&R that the "myths" about the Japanese economy are a by-product of "Western misunderstandings", without evidence of a "proper understanding" in Japan, adds little to their book, but confuses a lot.[21]

However, to be fair to M&R, the "leftist Western conspiracy" is only half of their conspiracy story. The other half is an elaborate conspiracy theory (which would have likely made Senator McCarthy blush) that places blame on Japanese Marxists. M&R tell us, that Japanese Marxists are to blame for the origins of the myths about the Japanese economy. According to M&R, in the 1960s they apparently fabricated "the *keiretsu*" because "they needed to find a "monopoly capital" that dominated the Japanese market" to make their research work.[22] M&R also hold Japanese Marxists responsible for the "legends of government control".[23] Apparently, Japanese Marxist academics used their influence in Japanese universities to make virtual automatons out of government officials – who then, according to M&R, used their "Marxist training" to write scores of government white papers over decades that falsely describe how "the government had led the private sector so adroitly".[24]

---

of Japanese studies in the West came from departments other than economics" (156) [emphasis added]. MIWA / RAMSEYER 2006, *supra* note 1, 3, 11, 68, 119, 122, 156.

17 MIWA / RAMSEYER 2002, *supra* note 4, 404-05.

18 MIWA / RAMSEYER 2002, *supra* note 4, 404-05.

19 MIWA / RAMSEYER 2006, *supra* note 1, 122.

20 MIWA / RAMSEYER 2006, *supra* note 1, 122.

21 For examples of M&R's portrayal of the myths as "Western misunderstandings" *see*, MIWA / RAMSEYER 2006, *supra* note 1, 3, 11, 68, 119, 122, 156.

22 MIWA / RAMSEYER 2006, *supra* note 1, 156.

23 MIWA / RAMSEYER 2006, *supra* note 1, 115-46.

24 MIWA / RAMSEYER 2006, *supra* note 1, 145.

The idea that Japanese Marxists sought to disseminate "myths" about "monopoly capital" and "legends of government control" seems plausible. However, disseminating a myth is the easy part. Where M&R's theory comes unglued is in the suggestion that Marxists were somehow able to maintain these myths as the "accepted reality" in Japan from shortly after the War until M&R began their "de-mything" campaign in the early 2000s. Surely, in M&R's perfect free-market Japan, where democracy and conservative governments rule, outlandish Marxist myths about *keiretsu* and a government-controlled economy could not stand. If they did, the free-market for information would undoubtedly produce a vast library of literary opposition. After all, M&R tell us that there is no need to regulate corporate disclosure in Japan (or anywhere else) because the invisible hand will guide corporations to disclose accurate information at near optimal levels.[25] Using the same logic, one would expect the invisible hand to guide the free market to produce accurate information about the second largest economy in the world.[26] Confusingly, according to M&R, apparently not.

As M&R tell it, Japanese Marxists have essentially exerted near perfect control over Japan's free-market for economic information for almost half a century. M&R claim that during much of the postwar period Marxists controlled "the principal newspapers", "ruled…social science departments", "dominated the academic debate" and even "excluded market-oriented scholars" from the field of economics.[27] As explained above, according to M&R, while writing reports government officials acted as mere Marxist automatons that loyally disseminated and maintained the myth of government control over the economy.[28] M&R even suggest that Japanese Marxists found a way to rule Japan's free-market for information from the grave. As they put it, "the Marxists are almost gone now, but the mischief they do lives after them".[29]

M&R's claim of the perfect control that Marxist academics have maintained over Japan's free-market for information is especially confusing considering that they also claim the government was hopelessly unable to regulate markets even "where the … government tried [its] hardest" to do so (see section three, below).[30] It is ironic that in the capitalist utopia, which M&R call Japan, the only ones who were able to control free-markets were the ivory tower Marxists who used their vast power to perpetuate the very myths that M&R's book now seeks to reveal.

Despite providing Japanese Marxists with such a lofty and influential position in Japan's postwar history, M&R's theory suffers from one gross, and illogical, oversight.

---

25 MIWA / RAMSEYER 2006, *supra* note 1, 94.

26 According to standard economic theory, accurate information about Japan should have been produced as such information would have been extremely valuable – especially considering the size of the Japanese economy.

27 MIWA / RAMSEYER 2006, *supra* note 1, 53.

28 MIWA / RAMSEYER 2006, *supra* note 1, 145.

29 MIWA / RAMSEYER 2006, *supra* note 1, 59.

30 MIWA / RAMSEYER 2004A, *supra* note 4, 192-93.

One would have expected that if Japanese Marxists had ironclad control over the market for information, then they would have swept every postwar election. Again, M&R surprise. They tell us that Marxists were shut out of the government for nearly the entire postwar period.[31] How does that work? This is where M&R's creativity seems to have exhausted itself. They provide little explanation besides the confusing suggestion that Japanese people may have carried out a Marxist agenda by day but "voted conservative in secret".[32]

M&R also make a confusing complimentary claim that although the LDP government was "decidedly capitalist and non-interventionist" it pretended to be interventionist to "take credit for the boom market".[33] However, M&R then contradict themselves by claiming that the LDP was repeatedly elected because Japanese voters wanted a non-interventionist government.[34] The Marxist conspiracy theory, while mildly amusing, is not quite the "simple" or logical explanation of Japan that M&R's book claims to be.

III. The Conundrum of an Impotent Government that Attracts the Best and the Brightest

M&R paint themselves into a corner with their central claim that the Japanese economy is driven by a perfect free-market that "tracks the contours of standard economic theory". Such a strong claim leaves no room for government created institutional incentives to play any meaningful role in the Japanese economy. As a result, in order to make their perfect free-market theory plausible, M&R are forced to create a world in which Japan's institutional framework (i.e. laws, regulations, institutions, and formal and informal government policies and practices) is irrelevant. Create they have. According to M&R, the government has been "congenitally unable" to regulate the market.[35] Even in cases "where the Japanese government tried [its] hardest," free-market forces hopelessly overwhelmed it as firms "flouted" government regulations "all the way to the bank."[36]

31 MIWA / RAMSEYER 2006, *supra* note 1, 53.

32 According to M&R, "few self-styled intellectuals admitted voting for the ruling conservative party, and by one standard joke even government bureaucrats talked socialist but voted conservative in secret". MIWA / RAMSEYER 2006, *supra* note 1, 53.

33 MIWA / RAMSEYER 2006, *supra* note 1, 144.

34 According to M&R, "voters did not want interventionist government…That Japanese voters did not want heavy-handed state control government should surprise no one except self-styled intellectuals". MIWA / RAMSEYER 2006, *supra* note 1, 144

35 MIWA / RAMSEYER 2004A, *supra* note 4, 172.

36 MIWA / RAMSEYER 2006, *supra* note 1, 140-41; M&R (2004A), *supra* note 4, 192-99; Y. MIWA / J.M. RAMSEYER, Deregulation and Market Response in Contemporary Japan: Administrative Guidance, Keiretsu, and Main Banks, in: CIRJE Discussion Papers, Paper No. CIRJE-F-267 (2004), available at *http://www.e.u-tokyo.ac.jp/cirje/research/dp/2004/2004cf267.pdf,* 17 [hereinafter MIWA / RAMSEYER 2004B].

The rationale used by M&R to explain the government's inability to create an institutional framework that provides meaningful incentives to influence corporate behaviour varies. In some instances, they suggest incompetence – that the government's ill-conceived regulations "did not bind."[37] In other instances, they suggest a lack of formal and informal power – the government "lacked the means" to regulate.[38] In still other instances, more confusingly, they suggest that the government regulated merely for show. It created regulations it "never seriously tried" to enforce,[39] or that were "enforced haphazardly, if at all"[40] or that were merely made "in principle" but allowed for gaping exceptions.[41] Ironically, this last description of a *honne/tatemae* government seems more "culturalist" than "Chicago School of Economics".

However, in the end, whether by incompetence, inability or face-saving, M&R always find a way to reach the same conclusion: the government had, and presumably still has, "little clout"[42] in regulating the market and "virtually no say in who invested how much in what."[43] In sum, whether Japan's institutional framework is unique is moot because it had, and has, a *de minimus* effect on the Japanese economy.

M&R's claim that the Japanese government is completely ineffective raises many questions. What government anywhere, let alone in one of the world's most developed economies, is completely ineffective? Who would want to work in such a government? Why did (and do) so many of Japan's best and brightest university students vigorously compete to do so? These questions are neither asked nor answered in their book.

IV. M&R FAIL TO PROVE THEIR OVERLY AMBITIOUS CONCLUSION

A. *The Lack of Comparative Evidence Forces "Blind Leaps of Faith"*

A central claim in M&R's book is that there is nothing unique about the Japanese economy. M&R base this claim on the bold assertion that in many important respects "Japan is just like the US (and everywhere else)". According to M&R, Japanese firms, just like US firms, "face competitive capital, service, product and labor markets".[44]

37 MIWA / RAMSEYER 2004A, *supra* note 4, 185, 191, 202.
38 MIWA / RAMSEYER 2004A, *supra* note 4, 202. MIWA / RAMSEYER 2006, *supra* note 1, 127.
39 MIWA / RAMSEYER 2006, *supra* note 1, 128; MIWA / RAMSEYER 2004B, *supra* note 36, 8.
40 MIWA / RAMSEYER 2006, *supra* note 1, 127; MIWA / RAMSEYER 2004B, *supra* note 36, 8.
41 MIWA / RAMSEYER 2006, *supra* note 1, 136-37; MIWA / RAMSEYER 2004A, *supra* note 4, 179.
42 *See* MIWA / RAMSEYER 2002, *supra* note 4, 421.
43 MIWA / RAMSEYER 2004A, *supra* note 4, 172.
44 MIWA / RAMSEYER 2006, *supra* note 1, 114. *See also,* MIWA / RAMSEYER 2002, *supra* note 4, 421.

Japanese bankers, just like US bankers, pull their loans from failing debtors "before their competitors notice the trouble".[45] The Japanese government, just like the US government, takes a "decidedly capitalist and non-interventionist approach".[46] As such, M&R posit that the Japanese economy, just like the US economy (and, M&R suspect, every economy everywhere else), can be understood solely on the basis of "standard old-fashioned microeconomic theory".[47] Based on this assumption, M&R tell the reader that they need not bother with "Japan-specific accounts about corporate groups, main banks and government led growth".[48] According to M&R, such Marxist academic pipe-dreams have absolutely no basis in reality and only serve to confuse.[49]

For a book that is built on the comparative claim that "Japan is just like the US (and, everywhere else)" there is scant evidence of what the US (or anywhere else) is actually like. The absence of meaningful comparative evidence is shocking. If one were to cut and paste all of the substantive evidence about the US (and everywhere else) out of M&R's 180 page "comparative book", the evidence would barely fill a single page. This evidentiary gap is especially disconcerting considering that M&R chastise other academics on the first page of the book for devoting "the most meticulous attention to the smallest aspects of a problem – but [taking] fundamental premises on faith, even blind faith".[50] Yet, by providing virtually no substantive evidence about the US (or anywhere else), M&R require the reader to act in precisely the manner they chastise – to take one of their fundamental premises (i.e. what the US and everywhere else is like) "on faith, even blind faith".

One obvious "leap of blind faith" that results from M&R's lack of comparative evidence involves their repeated assumption that the US (just like Japan) is solely driven by free-market forces and that institutional incentives are *de minimus.* As Milhaupt points out in his critique of one of M&R's earlier articles, the assumption that the US (or anywhere else) is governed by perfect free-markets is tenuous, at best.[51] Yet, M&R fail to provide any evidence to support their "US perfect free-market" contention. They simply assert it throughout the book and hope that the reader is willing to take a leap of faith.

A similar situation exists in M&R's related assumption that the "mythical features" of Japan's economy (i.e. *keiretsu*, main banks and government led growth) do not exist

45 *See* MIWA / RAMSEYER 2006, *supra* note 1, 63-64; Y. MIWA / J.M. RAMSEYER, Conflicts of Interest in Japanese Insolvencies: The Problem of Bank Rescues, in: Theoretical Inquires in Law 6 (2005) 301, 338 [hereinafter MIWA / RAMSEYER 2005]; MIWA / RAMSEYER 2002, *supra* note 4, 421.

46 MIWA / RAMSEYER 2006, *supra* note 1, 144.

47 MIWA / RAMSEYER 2002, *supra* note 4, 421. MIWA / RAMSEYER 2006, *supra* note 1, 147; MIWA / RAMSEYER 2004A, *supra* note 4, 202.

48 MIWA / RAMSEYER 2006, *supra* note 1, 147.

49 MIWA / RAMSEYER 2006, *supra* note 1, 3, 53-57, 147, 155-60.

50 MIWA / RAMSEYER 2006, *supra* note 1, ix.

51 MILHAUPT, *supra* note 3, 426.

in the US or anywhere else.[52] Again, M&R repeatedly assert this contention throughout the book without any supporting evidence. This is surprising considering that one merely has to look to Korea for successful conglomerate groups, Germany for effective bank monitoring and the Nordic countries for successful government led growth.

Perhaps the most poignant example of the weakness of M&R's failure to provide any evidence that the "mythical features of Japan's economy" do not exist anywhere else can be found in a recent article by two leading US law professors, Baird and Rasmussen, which describes how the main bank model has developed in the US.[53] As I describe in detail elsewhere, Baird and Rasmussen's description of the "US main bank model" bares a striking resemblance to the Japanese main bank model, which M&R label "a myth".[54] According to Baird and Rasmussen, US banks have become the centerpiece of American corporate governance (even more important than hostile takeovers and independent directors).[55] In carrying out their central role, US banks delegate monitoring to a "main bank", "rescue" failing client firms by placing a bank-approved turnaround specialist on the board and rely on "implicit" unwritten agreements to carryout their "rescue" operations.[56] These are all central features of the traditional Japanese main bank model that M&R label "a myth".[57] Based on this evidence, M&R's bold assertion that Japanese bankers act "like bankers everywhere else" serves to support the main bank myth, not disprove it.[58]

B. Evidence of a Flawed Description is not Tantamount to Proof of Non-Existence

M&R could have benefited from reviewing the old Indian legend about "The Six Blind Men and The Elephant" before writing "The Fable of the *Keiretsu*". As the Indian legend goes, six blind men stumbled upon an elephant and each touched a different part of the elephant's body before describing it. As to be expected, six different descriptions of "the elephant" resulted – none of which described an elephant. The man who felt the trunk, said it was a snake. The man who felt the leg, said it was a tree. And, so on. Although every blind man was ultimately incorrect in his description, it does not mean they were not describing the same thing or that the elephant did not exist. The lesson is

52 MIWA / RAMSEYER 2006, *supra* note 1, 147.
53 D.G. BAIRD / R.K. RASMUSSEN, Private Debt and the Missing Lever of Corporate Governance, in: The University of Pennsylvania Law Review 154 (2006) 1209.
54 D.W. PUCHNIAK, The Japanization of American Corporate Governance? Evidence of the Never-Ending History for Corporate Law, Forthcoming in: Asian-Pacific Law & Policy Journal (Fall, 2007).
55 D.G. BAIRD / R.K. RASMUSSEN, *supra* note 53, 1212-20, 1223-24, 1236.
56 D.G. BAIRD / R.K. RASMUSSEN, *supra* note 53, 1233-36, 1244.
57 MIWA / RAMSEYER 2006, *supra* note 1, 61-88.
58 MIWA / RAMSEYER 2006, *supra* note 1, 63-64; MIWA / RAMSEYER 2005, *supra* note 45, 338; MIWA / RAMSEYER 2002, *supra* note 4, 421.

simple: evidence of varying or flawed descriptions is not tantamount to proof of non-existence.

M&R's book provides considerable evidence which makes a strong case that Japanese main banks, *keiretsu* and government led growth have been inaccurately described by some scholars. They convincingly show that *keiretsu* relationships are not as perfect as "observers typically claim",[59] main banks do not "rescue" all failing firms as some scholars suggest[60] and the courts do not "defer to [the government]… completely" as many scholars assume.[61] However, even if we accept this evidence, it provides no support for M&R's ultimate conclusion that main banks, *keiretsu* and government led growth are "myths". Obviously, what the evidence shows is that many scholarly descriptions of the Japanese economy are over stylized or exaggerated. Thus, a serious shortcoming of M&R's book is that it provides considerable proof of exaggerated claims but little proof of their primary thesis: Japanese main banks, *keiretsu* and government led growth are fables.

An examination of some of the specific evidence that M&R use to demonstrate that the *keiretsu* is a "fable" illustrates their propensity to rely on evidence of "inaccurate description" rather than evidence of "non-existence". One way that M&R challenge the concept of the *keiretsu* is by demonstrating the invalidity of the common assertion that *keiretsu* firms rely on the *keiretsu's* main bank as their principal lender.[62] To support their argument, M&R provide evidence that in 1975 "only" 40 to 86 percent of *keiretsu* firms (depending on the *keiretsu*) used the *keiretsu's* main bank as their principal lender.[63] Indeed, this evidence demonstrates that it is incorrect to claim that all *keiretsu* firms use the *keiretsu's* main bank as their principal lender. However, the evidence also clearly shows that most *keiretsu* firms do indeed use the *keiretsu's* main bank as their principal lender. In short, M&R's evidence disproves the claim that a perfect relationship existed between all *keiretsu* firms and their main bank, but at the same time proves that a special relationship existed for the vast majority of *keiretsu* firms.

M&R also spend considerable time demonstrating that contrary to "most accounts" *keiretsu* firms do not control each other by holding each other's shares (i.e. through cross-shareholding).[64] To support this they show that the level of cross-shareholding is "a far cry from the 90 percent some US academics trumpet".[65] Again, M&R, miss the point. Such a claim proves that cross-shareholding is not as perfect as some have described it, but does nothing to prove its non-existence.

---

59 MIWA / RAMSEYER 2006, *supra* note 1, 35. *See generally*, MIWA / RAMSEYER 2006, *supra* note 1, 6-37.
60 MIWA / RAMSEYER 2006, *supra* note 1, 61, 67-71.
61 MIWA / RAMSEYER 2006, *supra* note 1, 121-131.
62 MIWA / RAMSEYER 2006, *supra* note 1, 22-24.
63 MIWA / RAMSEYER 2006, *supra* note 1, 24.
64 MIWA / RAMSEYER 2006, *supra* note 1, 20-22.
65 MIWA / RAMSEYER 2006, *supra* note 1, 21.

According to M&R, cross-shareholding among non-financial *keiretsu* firms ranged from 7.6 to 17.6 percent.[66] They also provide evidence that out of a possible 2,070 cross-shareholding opportunities in the Mitsubishi *keiretsu* (46 Mitsubishi firms could have invested in 45 other firms) there were "only" 219 investments.[67] This clearly demonstrates that US scholars have likely exaggerated cross-shareholding and that "perfect" cross-shareholding does not exist (i.e. not every *keiretsu* firm has a cross-shareholding relationship with every other member). However, it does not show that cross-shareholding relationships are meaningless among *keiretsu* firms. To the contrary, a controlling stake of 7.6 to 17.6 percent in a large listed company is substantial and may even result in *de facto* control in Japan's widely dispersed shareholding market.[68] In addition, the fact that each *keiretsu* firm invests in several others (according to M&R, on average, each *keiretsu* firm has about four cross-shareholding relationships with other *keiretsu* firms) shows that there is a web of equity relationships among *keiretsu* firms.[69] This undercuts M&R's claim that special relationships among *keiretsu* firms do not exist.

M&R also provide evidence to show that, contrary to the assertion of some scholars, the relationships between members of vertical *keiretsu* are not exclusive. One piece of evidence that M&R use to demonstrate this is that out of the 1098 firms in vertical *keiretsu* in the automobile industry (i.e. Toyota, Nissan, Mitsubishi, Subaru, Mazda, Daihatsu, Hino, Isuzu, Yamaha, Suzuki and Honda) "only" 738 firms limit themselves to being exclusive to one *keiretsu* group.[70] Again, this clearly demonstrates that not *all* vertical *keiretsu* firms have an "exclusive" relationship, like many theorists claim. However, it does nothing to show that vertical *keiretsu* do not exist. To the contrary, it shows that the vast majority of vertical *keiretsu* firms have an "exclusive" relationship with their *keiretsu* group.

M&R's book is filled with similar examples of evidence that proves exaggeration but does not support their claim of the non-existence of *keiretsu*, main banks and government led growth. This evidence is unhelpful in light of M&R's assertion that they are *not* trying to prove scholarly exaggerations but are attempting to establish "academic myths'".

---

66 MIWA / RAMSEYER 2006, *supra* note 1, 21.

67 MIWA / RAMSEYER 2006, *supra* note 1, 20-21.

68 For a overview of Japan's shareholding structure see, S. CLAESSENS ET AL., The Separation of Ownership and Control in East Asian Corporations, in: Journal of Financial Economics 58 (2000) 81.

69 For example, M&R tell us that in the Mitsubishi *keiretsu* there were 46 firms with a total of 219 cross-shareholding relationships – which amounts to almost 5 cross-shareholding relationships per firm. MIWA / RAMSEYER 2006, *supra* note 1, 20-21.

70 MIWA / RAMSEYER 2006, *supra* note 1, 30.

C. A Missing Chapter: What Happened to "The Fable of Lifetime Employment" ?

As M&R's book draws to a close, something seems terribly amiss. At the beginning of the last chapter, M&R claim that there is no need for "Japan-specific accounts" to understand the Japanese economy.[71] After all, they claim, "at root the Japanese economy differs little from the American economy (or we suspect, from any economy anywhere else)".[72] Consistent as this is with the hundred plus pages that precede it, even those with a cursory knowledge of Japan's economy are left wondering: What happened to the chapter entitled, "The Fable of Lifetime Employment"?

Barring another Marxist conspiracy, it appears that M&R decided not to address the issue of lifetime employment straight on. This omission seriously undermines the completeness of their theory. Lifetime employment appears in almost every analysis of the postwar Japanese economy – along with the other central "fable" (*keiretsu*) and "myth" (main banks).[73] Some prominent scholars even suggest that lifetime employment is more central to the unique nature of Japan's economy than any other institutional feature (*keiretsu* and main banks included).[74]

Considering its central importance, it is curious why M&R skirt the issue of lifetime employment. After all, if true, the institution of lifetime employment undercuts M&R's central claims of perfect Japanese markets and the ability to understand Japan's economy without "Japan-specific accounts". Lifetime employment has been an idiosyncratic feature of the Japanese economy since shortly after the War.[75] It has resulted in imperfect and illiquid labor markets in which the right of employers to terminate unproductive employees and the ability of employees to sell their services to the highest bidder have been severely constrained.[76]

Lifetime employment, and its compliment of a non-existent labor market, have been credited with the absence of Japan's market for corporate control, the success of its internal (non-market based) corporate governance system and even the government's ability to regulate main banks.[77] As such, one would expect M&R to explain how lifetime employment is another "myth" cooked up by leftist Westerners and Japanese

71 MIWA / RAMSEYER 2006, *supra* note 1, 147.

72 MIWA / RAMSEYER 2006, *supra* note 1, 147.

73 D.W. PUCHNIAK, The 2002 Reform of the Management of Large Corporations in Japan, in: The Australian Journal of Asian Law 5:1 (2003) 42, 46-47.

74 "Has been more influential on the patterns of political, economic and social life" than any other "single institutional feature of postwar Japan". J.O. HALEY, Career Employment, Corporate Governance and Japanese Exceptionalism, in: Wash. U. Faculty Working Papers Series, Paper No. 04-04-01, (2004), available at *http://law.wustl.edu/faculty/workingpapers/haley/ corporategoverance.pdf.*

75 HALEY, *supra* note 74.

76 HALEY, *supra* note 74; R.J. GILSON / M.J. ROE, Lifetime Employment: Labor Peace and the Evolution of Japanese Corporate Governance, in: Columbia Law Review 99 (1999) 508.

77 HALEY, *supra* note 74; GILSON / ROE, *supra* note 74.

Marxists. After all, efficient companies built on controlled labor markets can hardly be explained by using "standard old-fashioned economic theory".

M&R's excuse for not directly addressing lifetime employment fails to convince. They claim that they "could [have made] a much longer book" but chose not to.[78] Instead, they briefly address lifetime employment at the end of the book under the deceptive heading: "Other Fables".[79] They spend a single paragraph asserting that the theory for *why* lifetime employment exists is false.[80] Of course, this misses the point. *Why* lifetime employment exists is only of interest to academics engaging in academic debates. The fact that lifetime employment exists, is what has led to Japan's non-existent labor market and made Japanese corporate governance unique. M&R's silence on the "myth of lifetime employment" is deafening.

V. UNUSED TOOLS : A NOTE OF CAUTION ON "THE MYTH OF THE LOST DECADE"

Despite M&R's overly ambitious conclusions, at the very point in the book that M&R could have benefited from more ambition, they lack it. The greatest problem for any analysis of Japan's postwar economy is to make sense out of the economy's extraordinary postwar growth, while simultaneously explaining the 1980s bubble and economic stagnation of the "lost decade" in the 1990s that followed. M&R provide no explanation for the bubble and only attempt to explain away (not explain) the "lost decade".

M&R appear coy and hesitant in addressing the bubble. This should not surprise. After all, economic bubbles are not easily explained in M&R's perfect free-market Japan. Instead, M&R coyly state that they "will not guess" as to why Japan's supposedly perfect free-market allowed an economic bubble to be created.[81] They simply dismiss the bubble by concluding that for "whatever the reason, prices rose".[82]

Instead of actually explaining the "lost decade", M&R try to explain it away. Rather than attempt some explanation of how Japan's perfect free-market may have failed, they claim that during the 1990s there was not a serious recession.[83] In short, the "lost decade" did not exist.[84] This is an unwelcome surprise for the reader to receive at the end of the book, after being promised on page four that "the tools and instincts with which to analyze what went wrong" during the lost decade would be the benefit of read-

78 MIWA / RAMSEYER 2006, *supra* note 1, 159.
79 MIWA / RAMSEYER 2006, *supra* note 1, 159.
80 MIWA / RAMSEYER 2006, *supra* note 1, 159.
81 MIWA / RAMSEYER 2006, *supra* note 1, 147.
82 MIWA / RAMSEYER 2006, *supra* note 1, 147.
83 MIWA / RAMSEYER 2006, *supra* note 1, 148-50.
84 They claim that "most observes…overstate the problem" of the recession in the 1990s and although it was "hardly… a boom" there was no "economic crisis. MIWA / RAMSEYER 2006, *supra* note 1, 147-48, 150.

ing the book.[85] Apparently, the "tools" are unnecessary because the "lost decade" did not exist.

In fact, according to M&R, not only did the "lost decade" not exist, but the Japanese economy recovered from 1995-2002 to such an extent that investors were thrown a "party" by corporate Japan, which most "Western observers missed… entirely".[86] It will take more than a paragraph with a few shreds of data to convince Japanese, Western or other Eastern investors that they were "missing an economic party" in Japan during the banking crisis in 1997 (when Japanese banks were deemed so risky that they were subject to the "Japan premium" for inter-bank borrowing) or during the stock market crash at the end of 2002 (when the TSE closed at about 20% of its 1989 bubble peak).

M&R's failure to explain how free-markets allowed the bubble and the "lost decade" to occur is particularly troublesome considering their claim of Japan's perfect free-market. Indeed, M&R admit that some amount of deregulation occurred in Japan during the 1980s.[87] Although they differ with conventional wisdom on what the effects of deregulation were, they in no way suggest that there was increased regulation in the 1980s and 1990s. As such, Japan's perfect free-market should have performed even better in the increasingly deregulated environment of the 1980s and 1990s. As is patently obvious (even to M&R), the opposite happened. Therefore, even if M&R are correct in their assertion that the "lost decade" was not the recession many claim it to be, M&R are still stuck with having to explain the undeniable facts of the stock market and real estate bubbles, slowed economic growth and deflation in the increasingly deregulated environment of the 1990s. M&R make absolutely no attempt to provide such an explanation in their book.

VI. A CASE STUDY OF "THE LOST DECADE": PROOF THAT M&R'S THEORY MISLEADS

M&R's claim of perfect free-markets in Japan axiomatically leads them to conclude that only firms with "optimal schemes" and "good governance" will survive in Japan's "highly competitive markets".[88] According to M&R, all other firms "will die".[89] This claim sounds logical, because it is. That is if we assume, like M&R, that Japan is governed by "standard old-fashioned microeconomic theory".

85 MIWA / RAMSEYER 2006, *supra* note 1, 4.

86 MIWA / RAMSEYER 2006, *supra* note 1, 150.

87 MIWA / RAMSEYER 2006, *supra* note 1, 150.

88 According to M&R, "Whether in the United States or in Japan, firms raise funds in competitive capital markets, and buy and sell in competitive labor, service, and product markets. Whether here or there, in order to survive, they will need good governance schemes . . . . The scheme they pick will vary from firm to firm. The fact that they will pick the optimal scheme or die will not [emphasis added]" MIWA / RAMSEYER 2002, *supra* note 4, 421.

89 MIWA / RAMSEYER 2002, *supra* note 4, 421

However, as I explain in detail elsewhere, sometimes unique and perverse institutional incentives, and not free-market forces, drive corporate governance.[90] In which case, the incentives for "bad governance" and "suboptimal schemes" may be greater than those for "good governance" and "optimal schemes". Perverse it is, but mythical it is not.

This is the perverse story of Japanese banks in the lost decade.[91] As a result of being mired in nonperforming loans arising from poor lending decisions in the 1980s, banks were on the verge of collapse. Many spent the lost decade treading terribly close to having insufficient healthy capital to continue banking operations. According to American precedent, unhealthy banks tighten lending, causing a "capital crunch". Unhealthy banks definitely do not increase loans to risky clients. American precedent may apply to America, but it does not apply to Japan.

In this case, American precedent and M&R's theory go hand in hand. In M&R's world, sophisticated banks with billions of dollars at stake do not spend good money after bad – especially when there is little hope of recovering part of the bad. With limited capital in a competitive market, standard economic theory would tell us that banks lend to their best clients (those with good governance, who choose optimal schemes and are thus most likely to repay loans), not their worst, or they die. *A priori*, firms that choose suboptimal schemes are deprived of capital and culled from the market. For banks to do the opposite – lend to their worst clients – is not rational in a free-market. Based on M&R's theory, rational bankers will not take such seemingly self-destructive, economically inefficient, actions. Therefore, according to M&R, the best explanation is *not* that Japanese bankers *irrationally* took such actions but rather that such actions did not occur at all. To say otherwise, would be to create another "myth."

Yet, in the lost decade, unhealthy Japanese banks did the opposite of what American precedent and M&R would predict. To start, banks lent more not less. This may seem strange, but does not qualify as perverse. What is perverse is that in lending more they increased lending not to their clients who were most likely to pay them back but rather to their clients who were *least likely* to pay them back. Even more perverse is that they did not charge a premium to their worst clients to compensate for their increased risk. As path dependence would predict, Japan's main banks took the lead in orchestrating the perverse scheme of systematically lending to loser firms, which in essence was "main bank rescue" gone bad. Main banks rescuing loser firms does not sound like banks practising, or rewarding corporations for, good governance or choosing optimal schemes

---

90 D.W. PUCHNIAK, Perverse Main Bank Rescue in the Lost Decade: Proof that Unique Institutional Incentives Drive Japanese Corporate Governance, The Pacific Rim Law & Policy Journal 16 (2007) 13.

91 This case study is taken from a more detailed explanation that I provide elsewhere. *See,* PUCHNIAK, *supra* note 90.

– as M&R's perfect free-market theory would predict. Yet in Japan's unique and perverse institutional environment, rescuing loser firms by lending them more at below-market rates made sense.

Rescuing loser firms made sense because it ensured survival. To survive, which is the ultimate incentive, banks had to solve two problems: (1) to *appear* to decrease non-performing loans; and, (2) to *appear* to have enough healthy capital to continue operating. In Japan's unique institutional environment, lending to their worst customers solved both problems. It made nonperforming loans appear as performing ones and increased the *appearance* of healthy capital. Therein lay the perverse incentives – which do not, any longer, seem so perverse. That is, if you were a senior executive of a Japanese bank during the lost decade.

Make no mistake. According to M&R's theory, "good governance" and "optimal schemes" would not include the survival tactics that Japanese banks took in the lost decade. In their world, such behaviour would not exist. Their assumption is that free-market forces drive Japanese banks to act in essentially the same manner as their American counterparts: to choose economically efficient schemes that maximize profits.[92] In their world, "the truth about Japan is more logical, more mundane, more boring – and more consistent with standard, old-fashioned microeconomic theory."[93] M&R are indeed correct in arguing that, according to standard old-fashioned microeconomic theory, "most banks in the real world try to cultivate a reputation . . . for punishing default debtors [not for rescuing them by lending them more]."[94] Unfortunately for M&R's theory, sometimes incentives created by a country's unique institutional framework, and not "standard old fashioned microeconomic theory," explain reality.

VII. BUY IT, BORROW IT OR STEAL IT – BUT ALSO BUY, BORROW OR STEAL A "PILLAR OF SALT"

After all this, it may be surprising that I agree with M&R's suggestion that you should "buy, borrow or steal their book".[95] However, I suggest that at the same time you should also "buy, borrow or steal" a "pillar (not a grain) of salt" to accompany the read. M&R's book is worth reading only if you are aware of its overly ambitious conclusions and the serious flaws that flow from them. Put aside the "mythical conclusions" and M&R's significant (but unintended) contribution to the literature shines through. They provide fresh empirical evidence and skilful analysis that demonstrate that many of the hallmarks of the Japanese economy have been exaggerated. If only M&R would have been less ambitious, no "salt" would be required.

92 MIWA / RAMSEYER 2006, *supra* note 1, 147.
93 MIWA / RAMSEYER 2002, *supra* note 4, 421.
94 MIWA / RAMSEYER 2002, *supra* note 4, 417.
95 MIWA / RAMSEYER 2006, *supra* note 1, x.

ZUSAMMENFASSUNG

In ihrer ambitionierten Publikation "The Fable of the Keiretsu*" stellen* Miwa *und* Ramseyer *die These auf, daß Akademiker der sogenannten „Ivy League", Nobelpreisträger, ein Träger des „Pulitzer Prize" und so gut wie alle Japanexperten die japanische Volkswirtschaft der Nachkriegszeit unzutreffend dargestellt haben. Die Autoren leiten ihre These aus einer präzisen und logischen Anwendung neuer empirischer Forschung auf die allgemein als zentrale Bausteine der japanischen Nachkriegswirtschaft angesehenen Institutionen* keiretsu, main banks *und staatlich gesteuertes Wirtschaftswachstum ab, deren Bedeutung für den wirtschaftlichen Erfolg des Landes in der bislang herrschenden konventionellen Interpretation maßlos übertrieben worden sei. Bedauerlicherweise beschränken sich die beiden Verfasser in ihrer Arbeit jedoch nicht auf diese Feststellung, sondern versuchen über die Widerlegung überzogener Annahmen hinaus aufzuzeigen, daß in der Vergangenheit eine japanbezogene „akademische Fabelwelt" geschaffen wurde. An diesen Punkt wird aus der ansonsten bahnbrechenden Untersuchung eine irrationale Polemik, die ihr Ziel verfehlt.*

Der Besprechungsaufsatz weist die logischen Brüche in dem Werk nach, die eine Folge der allzu ehrgeizigen (und nach wie vor unbewiesenen) These der Verfasser sind, daß sämtliche der herkömmlich als wesentlich angesehenen Elemente der japanischen Nachkriegswirtschaft „akademische Legenden" seien. Die Rezension zeigt zum einen die Irrtümer in der von den Autoren aufgestellten marxistischen Verschwörungstheorie auf, greift zum anderen die Fragen auf, die sich aus der kühnen Behauptung der Autoren ergeben, daß der Staat bisher keinerlei lenkende Rolle im japanischen Wirtschaftsgeschehen gespielt habe, und weist drittens nach, daß eine Reihe entscheidender Nachweise in dem Buch fehlen. Der Aufsatz weist die Leser besonders auf ein „nicht eingehaltenes Versprechen" der Autoren hin und belegt am Beispiel einer kurzen Fallstudie die Schwäche in deren zentraler Annahme, daß es in Japan seit jeher eine reine Marktwirtschaft gegeben habe, die frei von Staatsinterventionen gewesen sei. Der Rezensent stimmt den Autoren zu, daß alle an der japanischen Wirtschaft Interessierten das Buch „kaufen, entleihen oder gar stehlen" sollten, fügt jedoch hinzu, daß sie dann zur Unterstützung der Lektüre zugleich ein Salzfaß (und nicht nur eine Prise Salz) „kaufen, entleihen oder gar stehlen" sollten – ein Bild, mit dem er seine dringende Empfehlung zum Ausdruck bringt, das Buch von Miwa und Ramseyer mit einer gehörigen Portion Skepsis zu lesen.

(Dt. Übers. durch die Red.)