ABHANDLUNGEN

Where Are We Going?: The Process of Change in Japanese Corporate Governance

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I. INTRODUCTION: WHERE ARE WE GOING?

1. The current corporate governance debate

"*Where Do We Come From? What Are We? Where Are We Going?*"[1] – This title of Paul Gauguin's painting at Boston's Museum of Fine Arts coincidentally represents the current research questions on corporate governance.

"*Where Do We Come From*?" – Since the late 1990s, this question has been attracting attention as *La Porta et al.* presented a new view that legal origins and the degree of investor protection might influence the corporate governance.[2] Yet debates over which

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1 P. GAUGUIN (1897), Where Do We come From? What Are We? Where Are We Going?, Museum of Fine Arts, Boston. Boston, MA.

2 R. LA PORTA/F. LOPEZ DE SILANES/A. SHLEIFER/R. VISHNY, Legal Determinants of External Finance, in: 52 J.Fin. 1131-1150 (1997).

factor affects corporate governance are still ongoing. *Roe* argues that the degree of social democracy might matter more in rich countries and explains why good law may not be able to solve the agency problem.[3] *Rajan* and *Zingales* also suggest that cross-country differences in financial development are not necessarily determined by legal origins, using the evidence of the financial market development in the 20th century.[4] Whether law matters is one of the hottest issues of corporate governance debate.

"*What Are We?*" pertains to the research interest in the theory of the firm as the rationale for corporate governance. Starting from the neoclassical theory, economists developed various theories of the firm represented by nexus of contracts theory and property rights theory.[5] As new types of firms like dot-coms emerged in the 1990s, new firm theory to explain the ownership and control of such companies is needed. One of such attempts is presented by Zingales.[6] The evolution of firm theory is also in progress.

Finally, "*Where Are We Going?*" depicts the issue of convergence. *Hansmann* and *Kraakman* predict that the failure of alternative models, competitive pressures to adopt a successful model and the rise of the shareholder class will lead to a convergence to the shareholder-oriented model.[7] In contrast, *Lazonick* and *O'Sullivan* cast doubts on the sustainability of it, given that its prosperity has been maintained by the downsizing of labor and the distribution rather than reinvestment of earnings.[8] *Bebchuck* and Roe also present a theory of path dependence as the reason why divergence might persist.[9] The consequence of debate over convergence or divergence has not yet been seen.

The open debate over corporate governance represented in these questions is exciting both in general and in country-specific contexts.

2. *Traditional Japanese corporate governance model and its troubles*

Japanese corporate governance gathered attentions during the 1980s when Japanese firms were quite competitive. *Aoki* characterized Japanese corporate governance as con-

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3 M.J. ROE, Political Preconditions to Separating Ownership from Corporate Control, in: 53 Stan.L.Rev. 539-606 (2000). Also see M.J. ROE, The Quality of Corporate Law Argument and its Limits, in: Columbia Law School Working Paper No. 186 (2001).

4 R.G. RAJAM/L. ZINGALES, The Great Reversals: The Politics of Financial Development in the 20th Century, Working Paper, February 2001.

5 O. HART, An Economist's Perspective on the Theory of the Firm, in: 89 Colum.L.Rev. 1757-1774 (1989).

6 L. ZINGALES, In Search of New Foundations, in: 55 J.Fin. 1623-1653 (2000).

7 H. HANSMANN/R. KRAAKMAN, The End of History for Corporate Law, Discussion Paper No. 280, Harvard Law School (2000).

8 W. LAZONICK/M. O'SULLIVAN, Maximizing Shareholder Value: A New Ideology for Corporate Governance", 29/1 Economy and Society (2000) <*http://www.insead.edu/cgep*> (cited on 25 April 2001).

9 L. BEBCHUCK/M. ROE, A Theory of Path dependence in Corporate Ownership and governance, in: 52 Stan.L.Rev. 127-170 (1999).

tingently governed since long-term stakeholders such as main banks, *keiretsu* business groups, and employees alternately play the role of monitoring the management depending on the financial state of the firms.[10] At the same time, such commitments of long-term stakeholders into corporate governance have been described as "relational" by *Milhaupt*.[11]

The characteristics of Japanese corporate governance switched from strengths to weaknesses in the 1990s, a "lost decade" for Japan. Economists pointed out that the lack of discipline by shareholders[12] led to the "Governance Recession".[13] Corporate governance was also blamed for the increase of scandals.[14]

As the interest in the issue grew in the late 1990s, various groups including politicians, business leaders and scholars started to make proposals to improve Japanese corporate governance.[15] By this time, pioneering companies like Sony introduced executive officers and outside directors to seek U.S.-style corporate governance structure. However, with no bright prospects for an early economic recovery, pessimistic view also exists that most of Japanese companies can never change their ways.

3. The change of Japanese corporate governance and its implication

Where are we going? Whether Japanese corporate governance can change and how it changes will give an important implication for current debate over corporate governance.

First, while Japanese commercial law is originated from the German civil code, it became a hybrid with the U.S. corporation law after World War II.[16] Japan further add-

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10 M. AOKI, Monitoring Characteristics of the Main Bank System: An Analytical and Developmental View, in: M. Aoki/H. Patrick (eds.), The Japanese Main Bank System: Its Relevance for Developing and Transforming Economies (1994) 122-124.

11 C.J. MILHAUPT, A Relational Theory of Japanese Corporate Governance: Contract, Culture, and the Rule of Law, in: 34/1 Harv.Int.L.J. 3-64 (1996).

12 R. MORCK/M. NAKAMURA, Japanese Corporate Governance and Macroeconomic Problems, Harvard Institute of Economic Research Discussion paper No. 1893 (1999).

13 An article in Zaikai Kansoku (September 1992) is referred to as the first one naming the current recession the "Governance Recession". See N. DEMISE, *Kôporêto gabanansu ronsô no haikei to sono igi* [The Background of Corporate Governance Debate and its Meanings], in: T. Sakamoto/N. Sakuma (eds.) *Kigyo shûdan shihai to kôporêto gabanansu* [Control by Business Groups and Corporate Governance] (1998) 21 at footnote 8.

14 Nikkei Business Magazine, *Risuku kyokushô-ka no keiei* [Risk minimizing management]: Nikkei Business 48-53 (2 October 2, 2000).

15 Reform plans were presented by the Liberal Democratic Party, *Keidanren*, and Japan Corporate Governance Forum. See T. SUENAGA, *Kôporêto gabanansu to kaisha-hô* [Corporate Governance and Corporate Law in Japan] (2000) 4. Reproduction of the proposals can be found in the appendix, SUENAGA, *supra*, at 229-242.

16 M. WEST, The Puzzling Divergence of Corporate Law: Evidence and Explanations from Japan and the United States, University of Michigan Law School Working Paper No. 00-011 (2000).

ed several modifications to the laws of corporations and financial institutions in the 1990s. How these changes affect the corporate governance will provide suggestions about the ongoing debate on whether law matters. Second, whether Japan can change its corporate governance will become an evidence of convergence or divergence. And how it changes its way will suggest whether the shareholder-oriented model will become dominant.

The purpose of this paper is to examine whether any changes have been developing in Japanese corporate governance through the 1990s and outline the process and the direction of the change. Chapter II analyzes the changes of four aspects of Japanese corporate governance: (1) corporate finance and the main bank system; (2) share ownership and the *keiretsu* relationship; (3) lifetime employment; and (4) management organization and corporate governance structure. The analysis is attempted by a unique approach of comparing two types of data: behavioral and perceptional. Looking at both types of data enables us to understand the informal changes that are unobservable otherwise, to predict the direction of the change, and to capture the existence of constraints that hinder the change of behavior. Chapter III summarizes the patterns of the change observed during the 1990s. The role of legal and regulatory reform is also discussed. Finally, Chapter IV concludes with implications for institutional change and current corporate governance debate.

In fact, perceptional change plays a critical role in the process of change in Japanese corporate governance that consists of informal institutions such as main bank system, the *keiretsu*, or lifetime employment. While legal and regulatory reform may not be so effective unless the perception changes, it will be able to trigger the chain reaction between the perception and the behavior. By analyzing the early signs of both perception and behavior, we will be able to facilitate reforms to remove formal and informal constraints that prevent institutional change.

II. IS JAPANESE CORPORATE GOVERNANCE CHANGING?

1. *The methodology of the analysis*

To explore whether any change is emerging in Japanese corporate governance through the 1990s, a wide range of data is collected from various sources to illustrate four aspects of it: (1) Corporate finance and the main bank system, (2) Share ownership and the *keiretsu* relationship, (3) Life time employment, and (4) Organization and corporate governance structure. The Appendix lists major data sources. For some indicators, it is difficult to find chronological data, but the missing information can often be supplemented by similar one.

The objects of the observations in this analysis are mainly large publicly listed corporations that are featured in most of the surveys. The use of almost the same coverage makes relatively fair comparison possible even if the sources are different.

Notably, there are roughly two types of information acknowledged in this paper. One is the "behavioral"[17] data that shows the change of actual corporate behavior or macroeconomic trends (denoted as "B" in the fifth column of the Appendix). The other is the "perceptional" data that suggests the perceptional change of corporations reflected in the change of their views, attitudes and stances (denoted as "P" in the Appendix). The latter, although its availability is more limited, is useful in three ways. First, the perception reveals the informal change that cannot be observed otherwise, or the change of informal institutions such as the main bank system, the *keiretsu* or the lifetime employment. Second, it is useful to predict the direction of the change of actual behavior. And finally, the gap between perceptional and behavioral data, if any, represents how easily the corporate governance can be transformed.[18]

In the following section, the analysis of each aspect starts with the examination of the behavioral change and subsequently searches for the perceptional change behind.

2. *The change of Japanese corporate governance*

a) *Corporate finance and the main bank system*

(1) *Behavioral change*

It is widely acknowledged that Japanese corporate finance after World War II has been dependent on bank finance. In addition, what is particularly unique is the so-called "main bank system" where main banks are not only the largest creditors but also committed to various transactions of the corporations. Through that relationship, main banks are assumed to monitor the management of the corporations on behalf of shareholders.[19] The main bank system was regarded extremely effective until the 1970s.

However, by the 1980s, large Japanese corporations became capable of financing with internal sources of funds and at the same time started financing from domestic and overseas capital markets. Table 1 shows the share of borrowed funds from banks shrank remarkably in the 1980s compared to the decades before.

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17 Economists sometimes use the word "behavioral" to include factors of norms and beliefs that are classified as "perceptional" in this paper. For example, A. GREIF, Historical Institutional Analysis, MIMEO (Forthcoming from Cambridge Univ. Press) 5 (2001) (On file with the author).

18 *North* refers that people's perception about the structure of rules of the system determines the cost of transaction that affect the institutional change. D.C. NORTH, Institutions, Institutional Change and Economic Performance (1990) 76.

19 See AOKI, *supra* note 10, at 111-122.

***Table 1*: Source of Funds for Large Corporations with more than 1 Billion Yen Capital, All Industries**

(%)

Period	Internal Capital	External Capital	Stock Issues	Bond Issues	Trade Payables	Short-Term Loan	Long-Term Loan	Average GDP Growth Rate*
1960-64	22,9	77,1	10,6	5,1	27,7	20,3	13,4	10,7
1965-69	30,6	69,4	3,3	4,3	31,0	15,7	15,1	10,1
1970-74	29,2	70,8	2,3	4,2	30,0	18,3	16,0	5,9
1975-79	38,8	61,2	6,8	9,0	22,8	14,4	8,2	4,4
1980-84	50,5	49,5	9,5	7,8	17,4	9,0	5,9	3,1
1985-89	45,9	54,1	16,0	17,7	13,9	5,3	1,2	4,5
1990-94	87,6	12,4	4,6	11,2	-8,2	-2,8	7,7	2,2
1995-99	90,9	9,1	12,5	0,8	0,5	-6,9	2,3	1,1

* Rates are share to total; weighted averages for each period.

Source: ECONOMIC PLANNING AGENCY (ed.), Economic Survey of Japan 1997-1999 (Tokyo 1999) 194 (Table 2-5-1)
(For 1960-94 data; originally from Bank of Japan, Analysis of the Financial Statements of Principal Enterprises)
MINISTRY OF FINANCE (ed.), *Hôjin Kigyo Tôkei Nenpo* [Financial Statements Statistics of Corporations] 1996-2000 issues
(For 1995-1999 data)
CABINET OFFICE (ed.), "Referential series of Quarterly Estimates of former GDP on SNA68, 1990"
<*http://www.esri.cao.go.jp/en/sna/qe004-68/gdemenue68.html*>
(For GDP Growth data)

Table 1 seems to show further decline of the share of bank loans during the 1990s. But it should also be taken into account that the overall demand for external funds declined. As production capacity is excessive under sluggish economy, the weight of external funds shrank with the accumulation of the amount of depreciation due to past expansion of capital expenditures.[20] The shares of stock and bond issues are not growing as fast as in the previous decades. The sole fact that the share of bank finance is shrinking does not tell whether the main bank system is collapsing.

(2) Perceptional change

The major momentum to change the main bank system had already occurred in the 1980s when large corporations did not need as much funds from banks as before. Such a shift in the balance of power between large corporations and banks was reflected in the perception of corporations. According to the result of survey conducted by Japan Economic Research Center (JERC) in 1991,[21] when asked about the future role of main banks, only 23.1 % of large corporations replied it would be bigger. However, at the same time, merely 10.1 % considered it would be smaller in every aspect. The most popular answer was that the role of main bank would be born by a group of core banks (37.3 %) and the second one was that the role of main banks would be smaller in financing but would be bigger in providing information (35.5 %). The bottom line is that a large part of corporations did not have intentions to terminate their relationship with main banks but wanted to maintain it in a modestly weakened manner.

Their preference remains intact after a decade. 1999 Ministry of Finance Research Institute Survey (hereafter denoted as MOF Survey as shown in the Appendix) reveals that they have not changed their financing method to a more market-oriented one. Financing by main banks (27.7 %) or other banks (22.5 %) is still the most popular method of external finance.[22] In addition, 64 % of the companies intended to maintain the finance from their main banks in the future with 12.7 % to strengthen the relationship. The reasons why they wanted to maintain or strengthen their main bank relationship are: (1) main banks are responsive to the unexpected demand of funds (41.5 %), (2) main banks provide additional services, transactions and information (29.5 %), and (3) the cost of capital is cheaper (12.1 %). The survey does not augur any dramatic changes in the companies' relationship with main banks in the near future. Therefore,

20 K. HAJI/Y. YAJIMA, *Sengo no kigyô shikin chôtatsu no hensen* [Corporate Finance in Postwar Japan], in: 38/9 Sec. Analysts J. 10 (2000) 10.

21 Due to the unavailability of the original source, secondary source was used. ECONOMIC PLANNING AGENCY (ed.), *Keizai hakusho* 1992 [Economic Survey of Japan 1992] (1992) 259, 501.

22 MINISTRY OF FINANCE RESEARCH INSTITUTE (ed.), *Wagakuni no kigyô fainansu to kôporêto gabanansu ni kansuru – ankêto chôsa chûkan hôkoku-sho* [Interim Report on the Survey on Finance System and Corporate Governance of Japanese Corporations] (2000) 72- 73.

once the demands for funds revived, there is high possibility that the ties with main banks will be more overt.

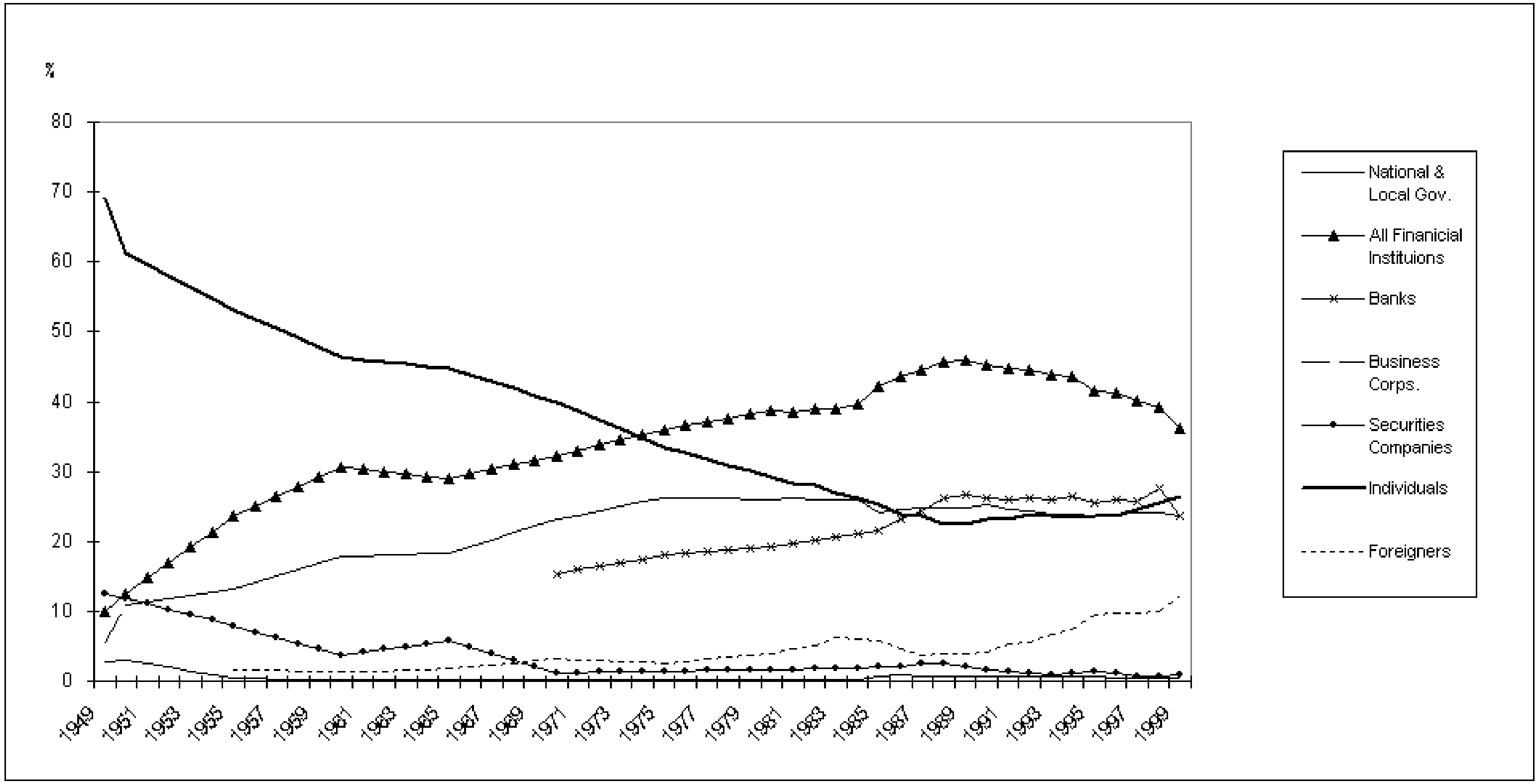
b) Share ownership and the keiretsu relationship

(1) Behavioral change

Although the ownership by individual shareholders in Japan was as high as 70 % right after World War II, it declined continuously until the end of 1980s and the ownership by banks and business corporations rose instead via so-called cross-shareholdings (*Figure 1*).[23] However, the shareholdings by financial institutions peaked in 1989 and started to decline. *Figure 2* confirms that the share ownership by six large *keiretsu* groups has been declining as well.

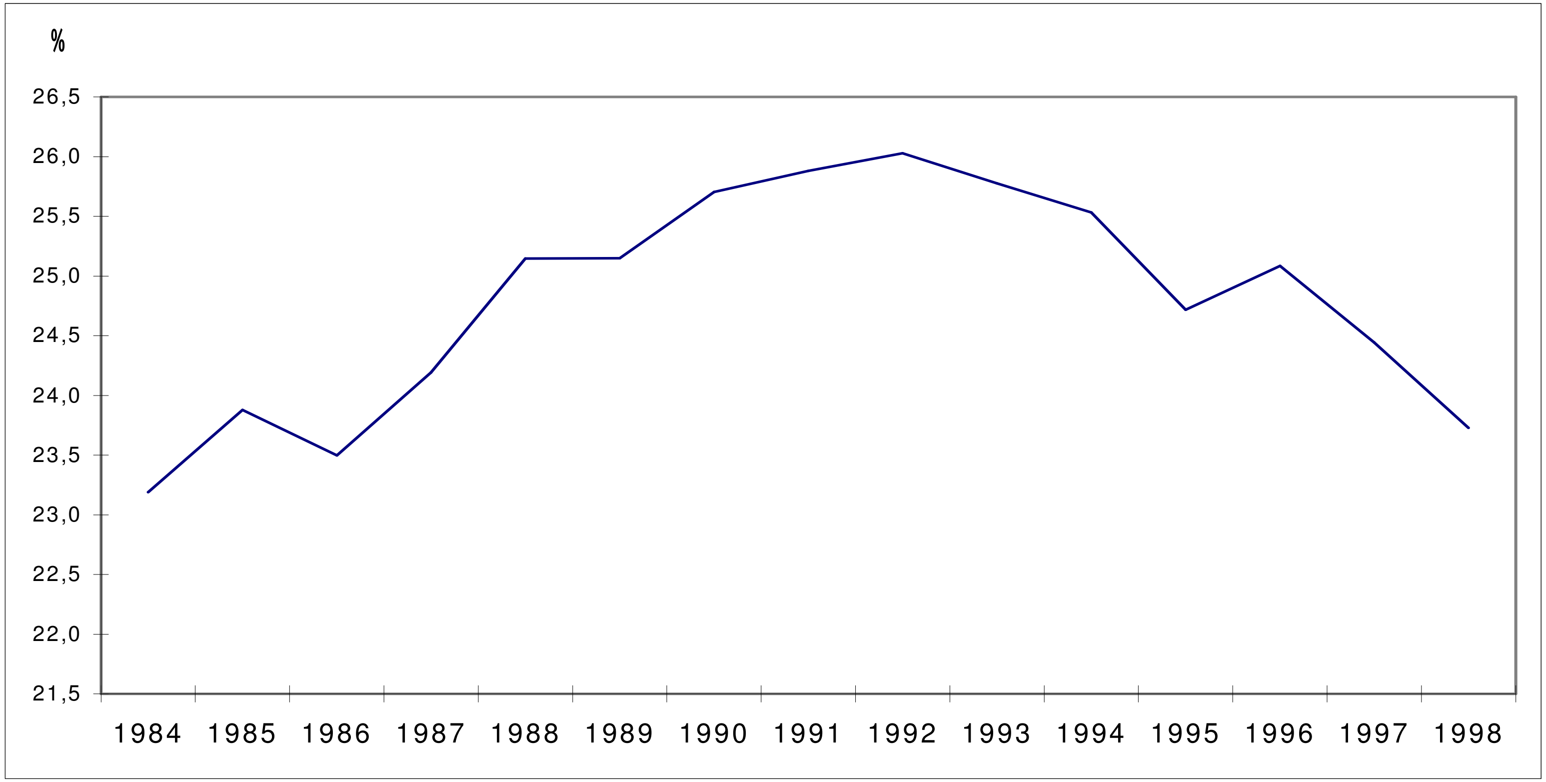
23 H. MIYAJIMA, The Impact of Deregulation on Corporate Governance and Finance, in: Carlile/ Tilton (eds.), Is Japan Really Changing its Ways?: Regulatory Reform and the Japanese Economy (1998) 37-40.

Figure 1: **Percentage of Unit Shares Held by Type of Shareholder**



Source: TOKYO STOCK EXCHANGE (ed.), 1999 Shareownership Survey, updated 26 June 2000, <*http://www.tse.or.jp*> (cited on 1 February 2001) Table I-3

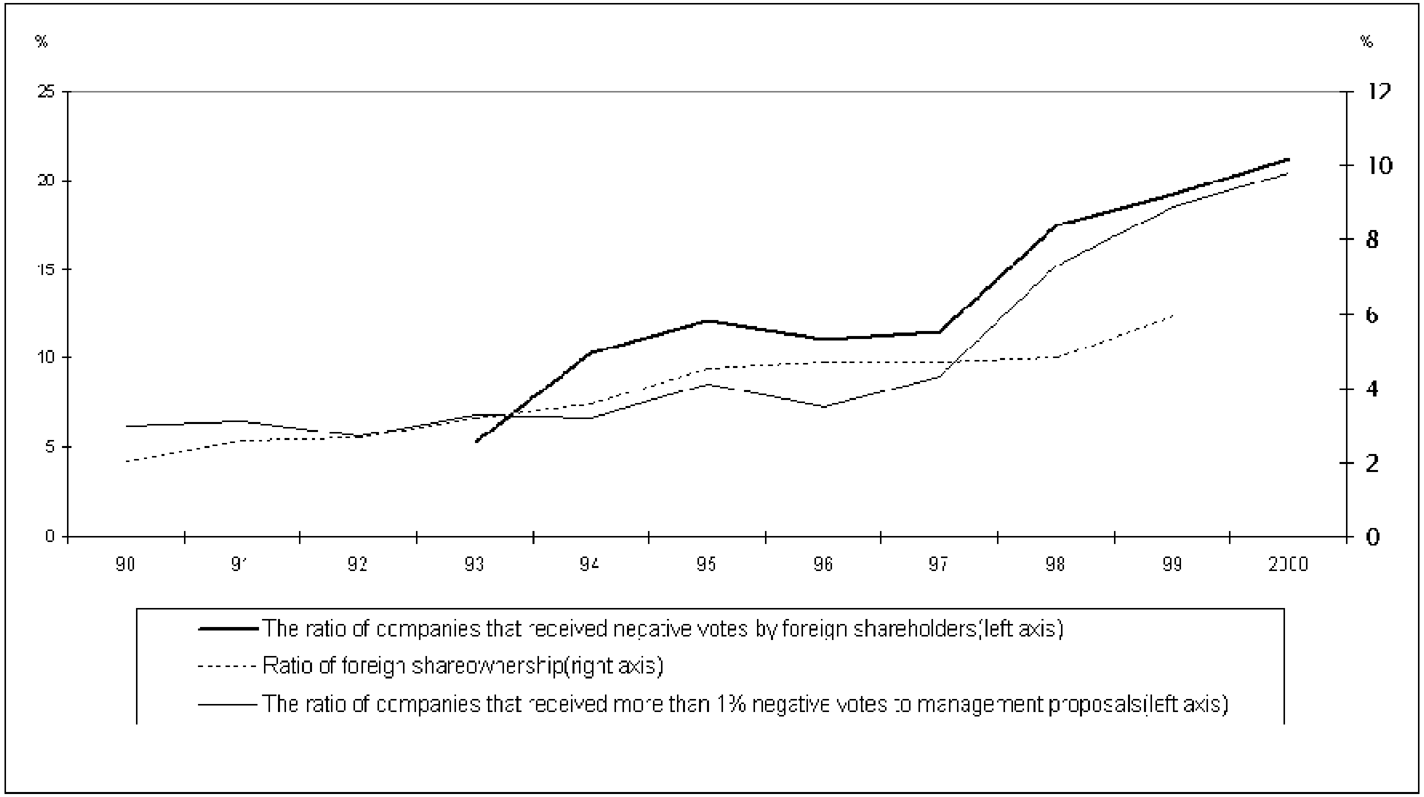
Figure 2: **Shareownership of Publicly Listed Companies by the 6 Largest *Keiretsu* Groups**



While the recovery of individual shareholdings is observed only gradually, what is the most noteworthy change in the 1990s is the rise of the ownership by foreigners. Their share has risen by as much as 8.2 % points during the 1990s. Foreigners own as much as 40 % of companies like Sony, Rohm, Canon and Minebea.[24] This change started to influence the corporate governance in Japan. As is presented in *figure 3*, *Kabunushi Sôkai Hakusho* [White Paper on Annual Shareholder Meetings] (hereafter denoted as SHM Survey as in the Appendix) shows that the ratio of companies that received negative votes by foreign shareholders is rising.

24 M. E.PORTER/H. TAKEUCHI/M. SAKAKIBARA, Can Japan Compete? (2000) 171, Table 6-2.

Figure 3: **The Impact of Foreign Investors**



Source: SHÔJI HÔMU KENKYÛ-KAI [Commercial Law Center] (ed.), *Kabunushi sôkai hakusho* [Annual Shareholder Meetings Survey], Shôji Hômu [Commercial Law Review], various issues.

On the other hand, caution should be exercised before referring that *keiretsu* groups are disintegrating. Both the share of loans made to all public companies by financial institutions belonging to the six *keiretsu* groups and the number of outside directors sent by them were actually rising in the late 1990s.[25] It is consistent with our observation that main bank relationship has weakened only partially and gradually amidst the decline of the demand for loans. Putting all this together, formal data on corporate finance and ownership indicates a declining bank finance and cross-shareholdings, but the substance of informal institutions such as main bank system or the *keiretsu* relationship survives in the mean time.

(2) Perceptional change

The decline of cross-shareholdings could be worrisome for companies if they determinedly need such relationships. In 1993 SHM Survey, 64.5 % of the companies wanted to maintain the existing level of cross-shareholdings while only 3.2 % wanted to dissolve.[26] In 1999 MOF Survey, the share of the companies which prefer keeping the current level of cross-shareholdings dropped to 41.8 % while 43.4 % of the companies wanted to lower the degree of cross-shareholdings.[27] However, among that 43.4 %, 29.4 % wanted to dissolve it only partially. Companies do not want to dissolve them drastically as they have merits as well.

In fact, respondents who replied to maintain (or strengthen) cross-shareholdings in 1999 consider them as useful tools to strengthen their business bases or to construct global alliances (34.0 %), defensive measures to hostile takeovers (20.0 %), or effective strategies in having shareholder meetings smoothly (20.4 %). The fact that 88.4 % of the companies currently have cross-shareholdings and half of the companies are still positive about it makes the idea of the disintegration of the *keiretsu* questionable even if gradual change in their behavior is observed.

c) Lifetime employment

(1) Behavioral change

Lifetime employment together with seniority-based promotion and salary system is another unique characteristic of Japanese corporate governance. The 1994, 1997, and 2000 Survey on Employment Management (*koyô kanri chôsa*; hereafter denoted as MOL Survey as shown in the Appendix) asked companies about their current and future employment policy. According to the result in 1994, 77 % of the companies replied they

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25 Data was compiled from: TOYO KEIZAI INC. (ed.), *Kigyô keiretsu sôran* [Handbook of Keiretsu Groups], various issues.

26 SHÔJI HÔMU KENKYÛ-KAI [Commercial Law Center] (ed.), *Kabunushi sôkai hakusho 1993nen ban* [White Paper on Annual Shareholder Meetings in 1993] (1993) 59, Table 45.

27 MINISTRY OF FINANCE RESEARCH INSTITUTE (ed.), *supra* note 22, at 76. Author recalculated the percentage including the ratio of “not available” to compare with the SHM Survey.

employ workers until or beyond retirement age either at their own company or at their affiliated companies.[28] In 2000, still 72 % maintain this policy. The percentage is nearly 90 % for large companies.[29] Lifetime employment continues to hold for most of large companies.

The change in the area of employment appears to be happening marginally and gradually. For example, among the companies which employ workers at their own company, the ratio of those which do not take care of the employees beyond retirement age is rising (28.0 % in 1994 and 37.6 % in 2000), particularly at large companies with 5000 employees and more (31.8 % in 1994 and 61.0 % in 2000). Lifetime employment has not ended, but companies have become less paternalistic and less benevolent to employees than before.

(2) Perceptional change

Is perception by key players in corporate governance system changing, and if so, how? *Table 2* provides us the change of views on lifetime employment in the 1990s. Companies were in fact strengthening their support for lifetime employment until 1993. The support for lifetime employment was especially strong (51.6 %) among large corporations with 5000 employees and over.

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28 Author's estimation for managerial positions using the data in: MINISTRY OF LABOUR (ed.), Survey on Employment Management, in: Rôdô Tôkei Nenpô [Yearbook of Labour Statistics] (various issues). Same applies to 2000.

29 The result is consistent with the result of the Japan Institute of Labor's Survey in 1998 which reports roughly 80 % of the respondents employed workers until the retirement age and beyond. See THE JAPAN INSTITUTE OF LABOUR (ed.), *Kôzô chôsei-ka no jinji shogu seido to shokugyô ishiki ni kansuru chôsa* [Survey on the human resource management and perception on professions under structural change], summary on corporate survey, point 1 (June 1998) <*http://www.jil.go.jp/ststis/1006.htm*>.

***Table 2*: Views on lifetime employment by the size of corporations**

(%)

		Respect lifetime employment	Do not persist in lifetime employment	Not sure	No answer
Total					
	1988	19,1	39,9	30,5	10,4
	1990	27,1	36,4	n.a.	n.a.
	1993	31,8	41,5	22,1	4,5
	1996	18,9	50,5	29,0	1,6
	1999	9,9	45,3	38,3	6,5
5000 employees and over					
	1988	44,0	32,0	23,1	0,9
	1990	42,5	28,3	n.a.	n.a.
	1993	51,6	17,3	29,9	1,2
	1996	29,3	31,8	38,9	0,0
	1999	22,2	35,9	39,7	2,2

Source: ECONOMIC PLANING AGENCY (ed.), *Heisei 6 nen keizai hakusho* [Economic Survey of Japan, 1994] (Tokyo 1994) 344 (for 1990 Data).
MINISTRY OF LABOUR (ed.), *Koyô kanri chôsa* [Employee Management Survey], in: Rôdo Tôkei Nenpô [Yearbook of Labour Statistics] 1987, 1992, 1995, 1998 issues (for other years).

However, the belief of large companies in lifetime employment suddenly dropped by 20 % points between 1993 and 1996. In 1996, only 29.3 % persist in lifetime employment. The trend was confirmed in 1999. For Japanese companies as a whole, the strong advocates of lifetime employment became merely 9.9 %.

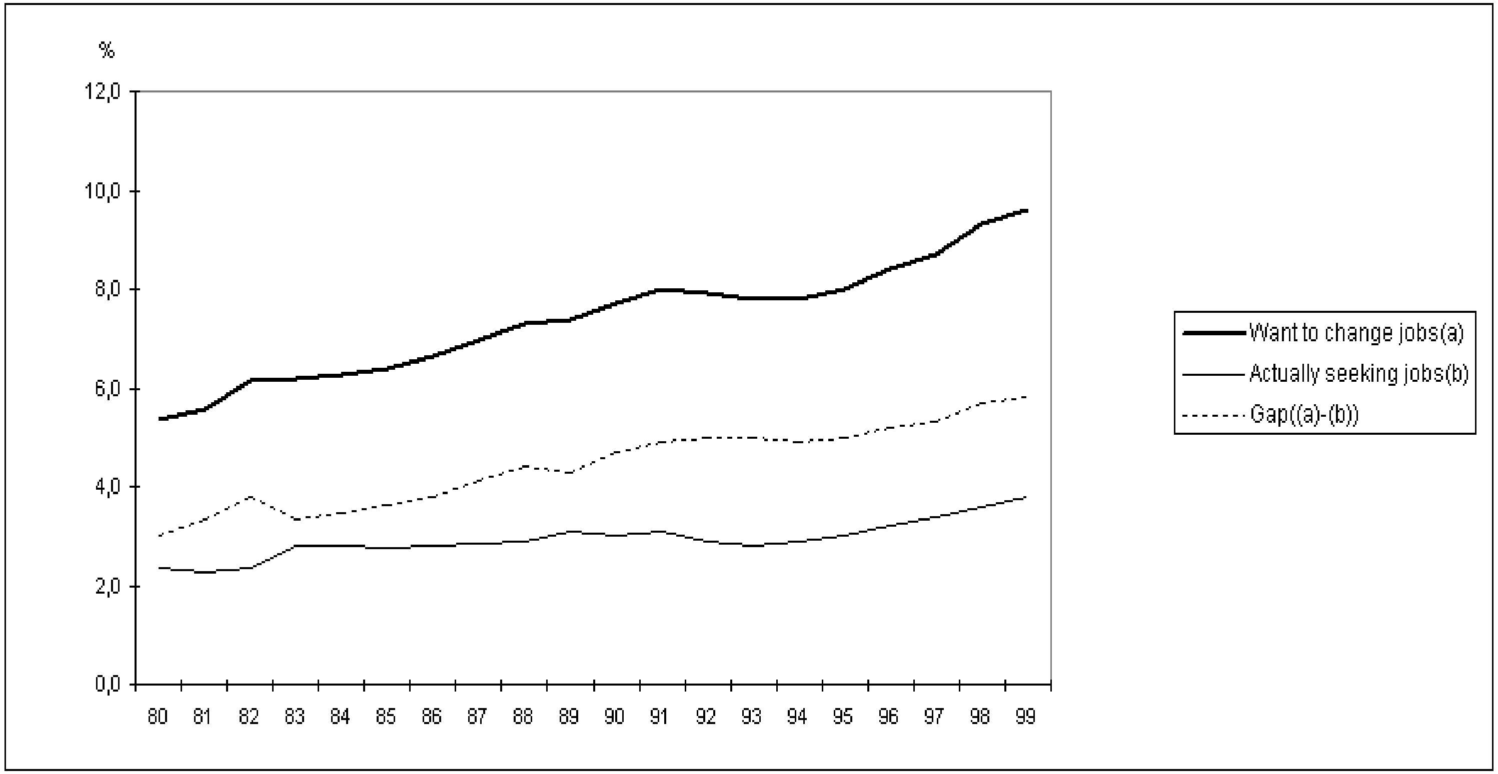
On the contrary, 1999 MOF Survey presents a more conservative result.[30] While 40.4 % affirmed that the traditional Japanese employment is the obstacle for economic recovery, 35.5 % opposed. 74.2 % affirmed that the managers are responsible for securing the employment opportunity. The most popular reason was that the management should operate the company based on medium and long-term view so that they should not reduce employees based on short-term efficiency. The tenacity towards lifetime employment is eroding, but lack of consensus to change long-term commitment, particularly under an economic slump, prevents the behavioral change.

30 MINISTRY OF FINANCE RESEARCH INSTITUTE (ed.), *supra* note 22, at 70-71.

Even if companies want to maintain lifetime employment, unless workers stay with them, they cannot maintain it. The perception and the behavior of workers is also important factors. *Figure 4* shows that the ratio of those who want to change their jobs is continuously rising since 1995. The ratio gained 1.6 % points from 1995 to 1999. However, the percentage of those who are actually seeking other jobs only increased by 0.8 % points. There is a gap between their desire and their behavior. Employees are more willing to change their jobs, but have not acted for some reasons. Other than the gloomy economic condition, one of possible constraints that deter people from changing jobs might be the promotion and compensation system that are disadvantageous for job changers.[31] If such constraints are removed, more behavioral change should be observed.

31 In the 1997 EPA Survey, 56.7 % of the companies operate under some kind of seniority-based promotion and compensation system. See ECONOMIC PLANNING AGENCY, *Heisei 9nendo kigyô kôdô ankêo chôsa* [Questionnaire Concerning Corporate Activities in FY1998] (1997) Figure 3 and 4, <*http://www5.cao.go.jp/98/f/19980415f-ank-1.html*>.

Figure 4: **Ratio of Workers Who Want To Change Jobs**



Source: MANAGEMENT AND COORDINATION AGENCY (ed.), *Rôdô-ryoku chôsa nenpô* [Annual Report of the Labour Force Survey] 1992 (page 24) and 1999 (page 17).

d) *Management organization and corporate governance structure*

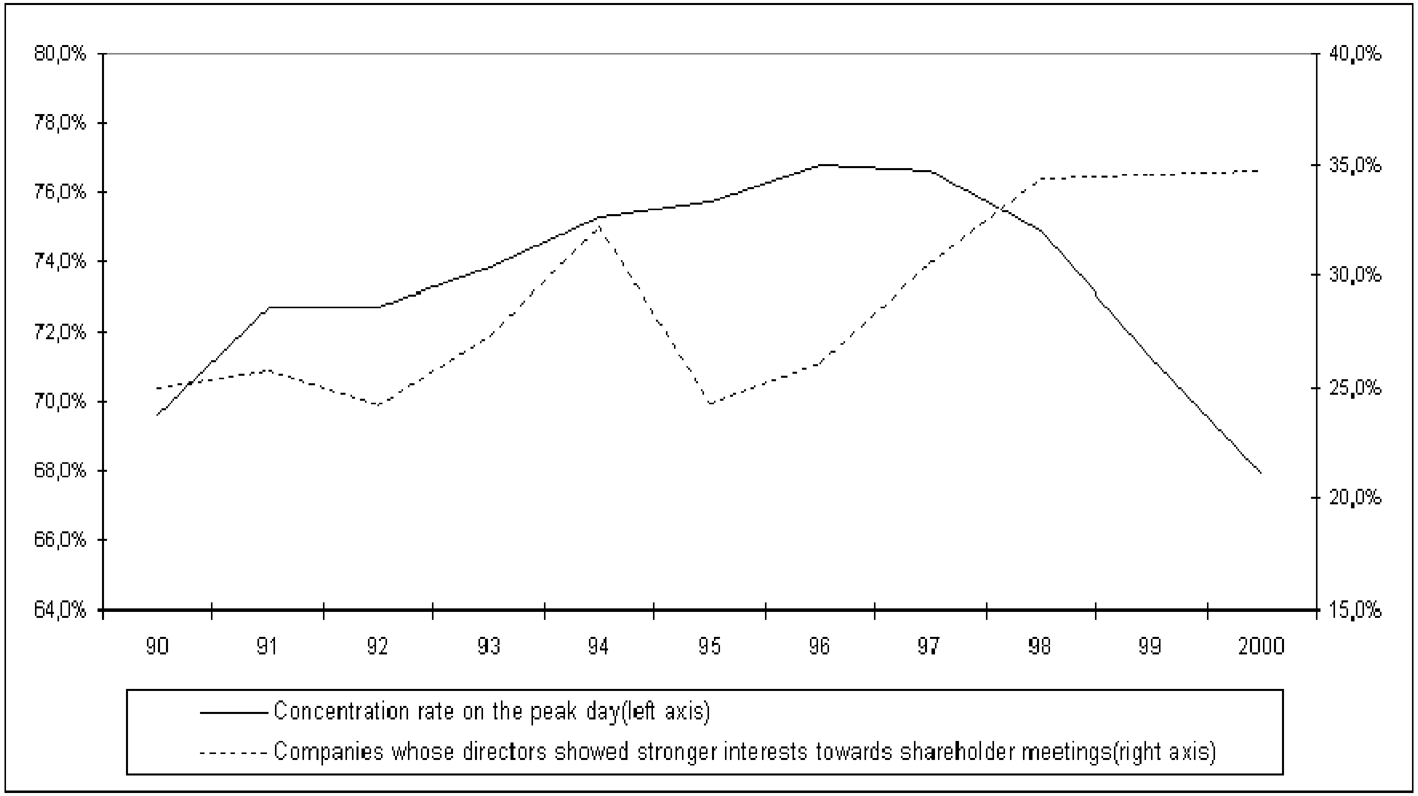
(1) *Behavioral change*

Two of the major criticisms on the managerial and organizational structure of Japanese corporations are the dysfunction of (1) shareholder meetings and (2) corporate boards.

Most of the shareholder meetings of Japanese corporations have been held on the same day in June and prevented shareholders' attendance. The concentration ratio on the day shareholder meetings are most frequently held was rising to as high as 77 % until 1997 (*Figure 5*). However, the ratio went down by 8 % points in three years since then. Other improvement can be found in the cases of Sony, Hitachi, and Honda to release proxy materials earlier than required so that shareholders can take an action more easily.[32]

32 J. SARGENT, The Shareholder: A Japanese watershed, in: Global Finance 26 (1 September 1999).

Figure 5: **Shareholder Meeting Concentration Ratio on the Same Day**



Source: SHÔJI HÔMU KENKYÛ-KAI [Commercial Law Center] (ed.), *Kabunushi sôkai hakusho* [Whitepaper on Annual Shareholder Meetings], Shôji Hômu [Commercial Law Review] various issues.

Corporate boards are also criticized for not working as the monitoring institution of the management. The causes of their ineffectiveness are pointed out as: (1) the board size is too big, (2) the board is wholly consisting of internally promoted officers and not including outside, independent directors, and (3) the functions of directors and management officers are not separated.[33] How do companies respond to these criticisms? In 1998 Tokyo Stock Exchange Survey (hereafter denoted as TSE Survey as appeared in the Appendix), only 30.3 % of the companies have taken action to change their board structures. However, in 2000, almost 60 % have taken some kind of measures. In other words, as many as 30 % of the companies reacted in the previous two years, which can be regarded as a significant change.[34]

Typically, three measures have been taken. The first is the reduction of the number of board members. Nearly 30 %[35] of the companies have already reduced the number.

The second popular measure is the introduction of executive officers system. Although only 3.5 % of the companies had introduced the system by 1998, the figure rose to 21.3 % by 2000.

Appointing outside directors is the third. In 2000 TSE Survey, 19.9 %[36] of the companies have selected them. However, the ratio is not particularly remarkable, compared to 35.5 % in 1998. The ratio of outside directors is less than half for 95 % of the companies that have selected. Compared to the other two initiatives, the practice of appointing outside directors is not as widespread as it was expected at the beginning.

The slow introduction of outside directors illuminates the influence of the existing legal framework on Japanese corporate governance. First, under current commercial law in Japan, auditors are supposed to take the role of monitoring the board, not outside directors.[37] In 2000 TSE Survey, 53.1 % of the companies responded that strengthening

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33 KEIZAI DOYUKAI [Japan Association of Corporate Executives] (ed.), *Dai 12kai kigyô hakusho: Nihon kigyô no keiei kôzô kaikaku – kôporêto gabanansu no kanten wo fumaeta torishimariyaku-kai to kansayaku-kai no arikata* [The 12th White Paper on Corporations, Managerial Structure, Reform of Japanese Corporations – The Direction of Directors' Boards and Auditors' Boards from the Viewpoint of Corporate Governance] (1996).

34 THE TOKYO STOCK EXCHANGE (ed.), "Survey on Listed Companies' Corporate Governance", 30 November 2000, <*http://www.tse.or.jp*> for 1998, S. SHIMOMURA, *Kôporêto gabanansu ni kansuru ankêto chôsa kekka no gaiyô* [Summary on the result of a survey on corporate governance], in: 1511 Shôji Hômu 9-14 (1998).

35 Recalculation of the ratio to the number of whole respondents to compare with other results. TOKYO STOCK EXCHANGE (ed.), *supra* note 34, at 7.

36 Author's recalculation from the original release. The original TSE release showed the proportion (33.2 %) among the companies which had adopted some kind of measures (785 companies), but the proportion to the total respondents (1310 companies) is 19.9 %, which is more comparable to the past result (35.6 %=404 companies out of 1137 total respondents). TOKYO STOCK EXCHANGE (ed.), *supra* note 34.

37 *Suenaga* explains the Japanese monitoring structure as the hybrid of the Anglo-American system (single structure) and the German system (dual structure) and argues the direction of the reform should be both reforming the board for monitoring efficiency and reasonability

the function of auditors is necessary and 55.8 % actually have taken some measure. The most popular measure was the increase of external auditors (69.4 %). If the monitoring function of auditors is reinforced enough, the appointment of outside directors may be redundant. Second, as the number and the amount of indemnity of derivative suits increase recently, the risk of becoming outside directors is too big in comparison to their rewards.[38] Corporate behaviors are affected by the existing legal framework as a constraint, which does not necessarily suggest the convergence to the U.S. system.

(2) Perceptional change

To see how Japanese companies came to realize the importance of shareholder meetings, *table 3* lists the past rankings of their most important stakeholders. Shareholders have not been given the highest rank through the 1990s. But what should be noted is that companies did not think shareholder would be (or should be) the most important stakeholder at all until 1995 while in 1999 they expected the shareholders would be more important. Obviously, the importance of shareholders was not perceived until mid-1990s, but once companies became aware of it, they started to change their attitudes towards shareholder meetings accordingly. *Figure 5* also tells that the directors' interests in shareholder meetings were getting stronger.

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and improving the function of auditors for monitoring compliance and legality. See SUENAGA, *supra* note 15, at 6-13.

38 The Japanese government is considering limiting the indemnity of derivative suits to maximum about two years of their compensation. The dominant political parties are also supportive of this idea and have their own plan. *Torishimariyaku no baishô sekinin wo keigen, kansayaku kinô wo kyôka* [Decrease the indemnity of directors and strengthen the function of auditors], in: Nikkei Net News, 20 April 2001, <*http://www.nikkei.co.jp/news/main/20010420CEEI053020.html*> (on file with the author).

Table 3: **Views on Stakeholders**

Rank	**1993 DYK Survey**		**1995 DYK Survey**		**1999 MOF Survey**	
	Until now	From now on	Until now	From now on	Until Now	From now on
1	Customers	Customers	Customers	Customers	Business Partners	Shareholders
2	Employees	Employees	Employees	Employees	Customers	Customers
3	Business Partners	Business Partners	Business Partners	Business Partners	Financial Institutions	Employees
4	Shareholders/Investors	Shareholders/Investors	Shareholders/Investors	Shareholders/Investors	Employees	Business Partners
5	Local Community	Local Community	Group companies	Group companies	Shareholders/Investors	Financial Institutions
6	Government	Government	Labor Union	Labor Union	Keiretsu Groups	Bond Holders
7			Financial Institutions	Financial Institutions	Other	Other
8			Local Community	Local Community	N.A.	N.A.
9			Government	Government		
10						

Note: The Rankings of Average Scores for 1993 Survey

Source: KEIZAI DÔYÛ-KAI [Japan Association of Corporate Executives] (ed.), *Dai 11 kai kigyô hakusho* [The 11th White Paper on Corporations] (Tokyo 1994), 129.
KEIZAI DÔYÛ-KAI [Japan Association of Corporate Executives] (ed.), *Dai 12 kai kigyô hakusho* [The 12th White Paper on Corporations] (Tokyo 1996), 95.
Ministry of Finance Research Institute, 79-80.

As is the same with the case of shareholder meetings, companies did not recognize the importance of the board until mid-1990s. In 1992 SHM Survey, companies were asked what is an effective measure to check the management of the company.[39] The most frequent answers were the improvement of the ethics of officers and employees (27.3 %) and the reform of internal organization (16.6 %). On the contrary, the improvement of the operation of the board meeting received 11.3 % of respondents and the introduction of outside directors got only 6.4 %. They tried to improve the corporate governance by emphasizing the ethics and the morale within the company rather than monitoring and checking from outside. Then, in the late 1990s, board reform became suddenly perceived important with the recognition of the corporate governance and partly by the necessity of restructuring. Such change of perception must have supported the change of behavior.

However, due to the constraints by the existing legal system as shown, the direction of the change of corporate governance could diverge from that towards U.S.-type corporate governance. In 1999 MOF Survey, 85.5 % of the companies assume the current governance structure with auditors.[40] The most popular governance structure in the future is the dual monitoring structure where auditors monitor the board which in turn monitors executive officers (52.0 %) with 14.6 % attaching monitoring, nominating and compensation committees and 13.3 % attaching outside monitoring institution to watch auditors. The U.S.-type corporate governance is not necessarily the model most of large Japanese companies are currently aspiring.

III. THE PROCESS OF THE CHANGE IN JAPANESE CORPORATE GOVERNANCE

1. *Patterns of the change in Japanese corporate governance*

Changes have appeared to the system surrounding Japanese corporate governance through the 1990s although they are either gradual or just emerged recently. From our observation, we can summarize a few patterns of changes in the behavior and the perception of Japanese corporations.

First, while various endogenous and exogenous shocks provoke behavioral responses, the old system may survive for the time being unless the perception changes as well. Although the data on formal corporate finance and ownership structure shows a sign of change, informal institutions such as main banks and the *keiretsu* survive. Financing from main banks is still a preferred method of finance in general as main banks respond to an unexpected demand of funds and provide additional services while

39 COMMERCIAL LAW CENTER (ed.), *Kabunushi sôkai hakusho 1992nen ban* [White Paper on Annual Shareholder Meetings in 1992], in: 1305 Shôji Hômu 120, Table 147 (1992).

40 MINISTRY OF FINANCE RESEARCH INSTITUTE (ed.), *supra* note 22, at 81.

the bond and equity market do not always work perfectly well for companies.[41] Likewise, companies expect that the cross-shareholdings and the *keiretsu* relationship protect them from increased possibility of takeovers under liberalized capital markets. Particularly when the old system has merits and worked well in the past, the perception persists in the old system rather than searches for a new one to respond to shocks. Such delay in perceptional change suggests the behavioral change proceeds only gradually.

Yet, there are possibilities that further changes are triggered. If shocks are intensified, both the behavior and the perception can change at the same time. For example responses of Japanese corporations to endogenous changes such as the shift to the low economic growth and the aging society were delayed as the changes crept gradually. However, the decline of competitiveness as well as the emergence of powerful shareholders prompts companies to reconsider their corporate governance. Another possibility is the chain reaction. The restructuring of companies driven by the economic slump affects the workers' perception and causes the rise of job transfer, which in turn makes companies consider some responses. The delay in perceptional change does not necessarily mean that initial behavioral responses are meaningless.

Second, once the perception changes, it is easier to adapt their behavior to the shocks. Until late 1990s, Japanese corporations did not recognize the importance of shareholder interests and the corporate governance mechanism even if it had been argued by academics and the mass media.[42] The turning point may be around 1996 or 1997 when recommendations regarding corporate governance reform were proposed by several institutions. Since then, as much as 30 % of the companies took some kind of measures to improve the function of the board and the concentration ratio of shareholder meetings declined by nearly 10 % points. It is a substantial change compared to virtually no actions taken until then. When the perception and the behavior move in the same direction, there is high chance that we will observe a bigger change.

Third, even if the perception changes, the gap between the perception and the behavior sometimes remains if there are obstacles to change their behaviors. The obstacles

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41 1999 MOF Survey asked companies about the usefulness of bond and equity markets. Only 6.2 % and 8.1 % replied that Japanese equity and bond market fully facilitate smooth financing activities although 49.7 % and 48.1 % affirmed that they modestly facilitate them. The ratio of those who replied negatively was about 30 %. Smaller companies with less than 3 billion yen capital tended to express dissatisfaction. The main obstacle is the lack of liquidity for both equity and bond markets. See MINISTRY OF FINANCE RESEARCH INSTITUTE (ed.), *supra* note 22, at 26-27, 74, 162-163.

42 The word "corporate governance " appeared for the first time in Nihon Keizai Shinbun in 1991 and started to increase its frequency of appearances since 1993. See T. WATANABE, *'Kôporêto gabanansu' ron ni okeru kabushiki 'shijô no kiritsu´ to sono zentei – 1980 nendai kin'yû baburu no kyôkun* [Stock 'Market Discipline' and its background under 'Corporate Governance' Debate – lessons from the financial bubble in the 1980s], in: *Kigyô shûdan shihai to kôporêto gabanansu* [Control by Business Groups and Corporate Governance] (1998) 160.

may be the existing legal and regulatory schemes that formally prohibit the move or other complementary institutions that informally affect the behavior. For example, the MOL survey shows that the perception of lifetime employment has significantly weakened, but the actual behavioral change is not yet so obvious. Macroeconomic environment as well as compensation and promotion systems that are disadvantageous to change jobs could be the obstacle to hinder the move. Hence, perceptional change is crucial, but we need conditions where perceptional change translates into behavioral change.

2. *The role of legal and regulatory reform*

The legal and regulatory reform is the result of the changes of the perception and behavior as well as the cause of further changes of them. Literature suggests that the interests of existing players of the market are often considered in the decision making process of Japanese regulatory reform.[43] Perceptional and behavioral changes of large corporations that we have seen should be reflected in their communications with the government and affect the perception of policy makers, while exogenous shocks such as foreign pressures sometimes directly affect it. In this sense, legal and regulatory reform is the result of the perceptional and behavioral change of corporations. However, at the same time, the reform can provoke further changes.[44] In this section, examples of recent reforms in Japan are reviewed in terms of their roles for the change of corporate governance.

The first is the commercial law reform in 1993. After the reform significantly lowered the fee for filing derivative suits, the number of cases filed dramatically increased. The number of cases grew from 84 to 286 between 1993 and 1999.[45] The 1994 SHM Survey shows that companies responded to the reform by elaborating the decision making process of the board meetings (79.4 %), strengthening the function of auditors (60.9 %) and clearly defining the role of directors in charge (45.3 %).[46] The reform gave companies an opportunity to change their perception about the role of the board.

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43 *Milhaupt* points out that the business government relationship in Japan is also “relational”. See MILHAUPT, *supra* note 11. Carlile and Tilton described the decision making process has not changed from prior decades in that the interests of existing parties are bargained in the arenas of *shingikai* (an advisory committee for a ministry or a government agency mainly consisting of academics and business leaders) or the appealing to the dominant political party. See L.E. CARLILE/M.C. TILTON, Is Japan Really Changing?, in: ID. (eds.), Is Japan Really Changing its Ways?: Regulatory Reform and the Japanese Economy (1998) 206-210.

44 North views that formal rules can complement and increase the effectiveness of informal constraints. They may be able to lower transaction costs and promote exchanges. See NORTH, *supra* note 18, at 46-53.

45 M. WEST, Why shareholders Sue: The Evidence From Japan, University of Michigan Working Paper No. 00-010, 9 (2000).

46 COMMERCIAL LAW CENTER (ed.), *Kabunushi sôkai hakusho 1994nen ban* [White Paper on Annual Shareholder Meetings in 1994], in: 1373 Shôji Hômu 140 (1994).

Another example is the Japanese financial Big Bang after 1996. One of the effects of it is the increase of bank mergers. Several mega-mergers such as Fuji-DKB-IBJ, Sumitomo-Sakura, and Sanwa-Tokai have been announced. These mergers surpass the existing *keiretsu* groups. Furthermore, as banks are prohibited from holding more than 5 % of the shares of a single company, they have to sell some portions if the ownership exceeds 5 % as a result of a merger.[47] This will become an opportunity to change the existing corporate ownership structure.

In 1999, merger mechanism was reformed to enable mergers by share exchanges.[48] In addition, for those companies who submit eligible restructuring plans, special measures to simplify the transaction procedures were allowed.[49] The number of mergers and acquisitions in Japan nearly doubled between 1998 and 2000.[50] Although the first attempt of a hostile takeover by a Japanese company in January 2000[51] failed, these changes can make companies realize the emergence of the market for corporate control.

Bankruptcy process was also amended in 1999 and Civil Rehabilitation Law was enforced in April 2000. It enabled a smoother processing of Chapter 11-type reorganization of troubled companies.[52] Under the new law, 816 cases were filed in FY 2000 and it is 4.8 times as many as the number of cases filed in FY1999 under the old legislation.[53]

These changes after legal and regulatory reforms suggest that there were substantial demands for the reforms. If the current legal and regulatory structure restrains the corporations from changing their behavior, reform of it will have an effect. Without the

47 In the case of financial holding company, group companies all together can hold as much as the 15 % of a company. K. MATSUI, *Mega bank tanjô ga hikiokosu sangyô dai-saihen no uneri* [The birth of a mega bank causes a turmoil of industrial reorganization]: The Economist Weekly of Japan, 46-48 (19 October 1999).

48 M. WEST, *supra* note 16, at 55.

49 Laws on Special Measures for Industrial Revitalization was enacted in 1999. See JETRO, Focus: Industrial Revitalization, 21 July, 1999, <*http://www.jetro.org/newyork/focusnewsletter/focus6.html*>.

50 The number of total mergers and acquisitions were 834 cases in 1998 and 1635 cases in 2000 according to the database of RECOF Corporation. Recof Corporation, *M&A anken no sui'i* [Trend in the number of M&A] 15 June 2001 <*http://www.recof.co.jp/01_market/index.htm*>.

51 M&A Consulting Co. launched a hostile takeover bid against Shoei, Co. in January 2000. See D. MACINTYRE, Challenging Japan's Cozy Corporate Culture A maverick defender of shareholders' rights rocks the system by launching a hostile takeover bid: Time Magazine Asia 21 (7 February 2000).

52 For the comparison of the old and new bankruptcy procedures, see M. IWATANI, Reorganization of Insolvent Companies Under The New Reorganization Law, in: 3/1 Capital Res.J. 35-48 (2000).

53 TOKYO SHOKO RESEARCH, LTD. (ed.), *Minji saisei-hô shikô-go 1 nenkan no dôkô chôsa: môshitate kensû1nenkan de 816 ken* [The review of the trends of business failure after one year of the enactment of Civil Rehabilitation Law: the number of cases filed rose to 816] 13 April 2001 <*http://www.tsr-net.co.jp/topics/kaiseki/2001/03.html*>.

perceptional change, it may not have a significant impact initially. But, it can affect the perception by urging behavioral responses as we saw in the case of shareholder derivative suits. Thus, legal and regulatory reform can facilitate the change of corporate governance.

IV. CONCLUSION

1. *Implication for institutional change*

a) *The interaction between perception and behavior*

Through the use of perceptional and behavioral data, this paper presented how the interaction between the perception and the behavior affect the change of corporate governance in Japan. The lack of the perceptional change of corporations in the early 1990s might have delayed the change of behavior. However, when both the perception and the behavior started to move in the same direction, we are able to observe a significant change.

The process of change in Japanese corporate governance reveals the role of perception, particularly in the case of informal institutions such as main bank system, the *keiretsu* relationship, and lifetime employment.[54] The psychological dependence of Japanese corporations on once successful institutions seems to have resulted in delayed responses to the changing environment and the decline of competitiveness.

b) *The role of legal and regulatory reform*

Legal and regulatory reform is both the result of the changes of the perception as well as the cause of further changes. If there is a potential demand for a reform by corporations, it will be effective. On the other hand, without the perceptional change, the reform may not be so effective at the beginning. However, it can have an impact on the perception and prompt the chain reaction of perceptional and behavioral responses, so that we will see a bigger change in a later stage.[55]

Maybe the role of the legal and regulatory reform is to change the incentives and motivations of corporations. By changing the pay-off in a market, companies are driven to change their behavior, which in turn affect the perception.

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54 North refers the feedback process by people perceive and react to changes in a given opportunity as one factor shaping the path of institutional change. See NORTH, *supra* note 18, at 7.

55 North argues that the institutional changes are often incremental. NORTH, *supra* note 18, at 44.

2. *Implication for current corporate governance debate*

"*Where Do We Come From? What Are We? Where Are We Going?*" – What are the implications that the process of change in Japanese corporate governance suggests to these questions at the beginning?

"*Where Do We Come From*?" – The fact that both perception and behavior matter in the process of change in Japanese corporate governance sheds light on the current debate over whether legal origins or other factors affect the corporate governance. While Japanese commercial law on the book is one of the strongest in terms of investors' protection, Japanese corporations have a poor record in promoting shareholder interests in practice. How can we explain the divergence? There seems to be something that cannot have been captured by previous empirical works.[56] Taking into account of the interaction of the perception and the behavior, and especially the role of the perception can help understand such gap between the state of institution in theory and the state of institution in reality.[57]

"*What Are We*?" – We have not found a theory of the firm that perfectly explains the corporate governance in reality that diverges from the corporate governance in theory. That is one reason why there is a persistent support for the stakeholder model as the shareholder model does not necessarily fits with the reality of various forms of corporate governance around the world. In fact, the traditional Japanese corporate governance clearly deviated from the shareholder model and we confirmed some of its aspects were still maintained in a somewhat weakened manner through the 1990s. On the other hand, some companies such as Sony try to improve shareholder interests by adopting a U.S.-style governance. Emergence of such firms requires us to seek a new theory of Japanese firms while we need to search for a new firm theory in general.[58]

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56 In fact, the score of investor protection of Japan in *La Porta et al.*'s work is quite high. See R. LA PORTA/F. LOPEZ-DE-SILANES/A. SHLEIFER/R. VISHNY, Law and Finance, in: 106/6 J.Pol.Econ. 1130-1131, 1136-1137, 1142-1143 (1998).

57 Perception can be paraphrased as norm. Milhaupt points out that a series of "law matters" literature has weaknesses of having (1) tension with the results of transition economies, including Japan, (2) miss specification in the model in that what is being measured is not clear, (3) possibility of reverse causality, (4) multiple interpretation of policy implications. He argues "norm analysis" suggests the need to re-conceptualize the linkage between the "rule of law" and economic structures to accommodate more than the simple focus on formal rules enforced by courts. See C.J. MILHAUPT, Creative Norm Destruction: The Evolution of Nonlegal Rules in Japanese Corporate Governance, Columbia Law School, The Center for Law and Economic Studies, Working Paper No. 190, 27-32 (2001).

58 Ministry of Finance Research Institute identifies a group of companies that achieved high performance via promoting corporate governance. See MINISTRY OF FINANCE RESEARCH INSTITUTE (ed.), *supra* note 22, at 41-60.

3. *"Where Are We Going?": the future of Japanese corporate governance*

"*Where Are We Going?*" – Convergence depends on (1) the magnitude of changes that endogenous and exogenous shocks evoke and (2) the direction of changes. If changes are large enough and the direction of changes is identical, convergence might be observed.

In terms of the magnitude of changes, we have observed several patterns where shocks induce changes. Large enough shocks can change both behavior and perception at the same time, but either of them often comes first and the other lags. When perception lags, behavioral change is not so penetrating at first, but the interaction between the behavior and the perception may prompt further changes at a later point. On the other hand, even if there is a perceptional change, behavior may be impeded if there are formal or informal constraints.[59] However, since perceptional change triggers formal reform, we will see a later impact.

The interaction between institutions and constraints also affects the direction of change. For example, companies started to replicate the practices of U.S. companies, but the appointment of outside directors is still limited because the role of monitoring the board under the current legal structure is left to auditors, not outside directors. Current legal structure may dominate the direction of change so that the convergence to the U.S.-type shareholder model will not happen. We will soon be able to see the result of such interaction between institutions and constraints in the expected overhaul of commercial law in 2002. At the same time, we should not fail in capturing the signs of perceptional and behavioral change and facilitating reforms to remove formal and informal constraints that prevent institutional change.

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59 Milhaupt argues that normative convergence does not necessarily imply formal convergence. "Sometimes normative convergence outpaces legal reform, and must co-exist at least temporarily with conflicting institutions." See MILHAUPT, *supra* note 57, at 33.

V. APPENDIX: LIST OF MAJOR SURVEYS EXAMINED IN THE PAPER

Name of Survey	Abbreviation	Research Body	Category[60]	Type[61]	Availability[62]	Respondents/objects of the survey
Hôjin Kigyô Tôkei [Financial Statements Statistics of Corporations]	HKT	Ministry of Finance	F	B	Annual	Categorized by the size of corporations
Kabunushi Sôkai Hakusho [White paper on Annual Shareholder Meetings]	SHM	*Shôji Hômu Kenkyû-kai* [Commercial Law Center]	O, M	B, P	Annual since 1972	Publicly listed companies
Kigyô Hakusho [White paper on Corporations]	DYK	*Keizai Dôyû-kai* [Japan Association of Corporate Executives]	O, E, M	B, P	1982-1990 1992-93, 1995,1998-99	Varies, mainly publicly listed companies, members of the association
Kigyô Kôdô Chôsa [Questionnaire Concerning Corporate Activities]	EPA	Economic Planning Agency (Currently in the Cabinet Office)	F, O, E, M	B, P	Annual from 1995 to 1999	Publicly listed companies
Koyô Kanri Chôsa [Survey on Employment Management]	MOL	Ministry of Labour (Currently Ministry of Health, Labor, and Welfare)	E	B, P	Annual	About 6,000 randomly selected companies with more than 30 employees, categorized by size
Shareownership Survey	SHO	Tokyo Stock Exchange	O	B	Annual	Publicly listed companies
Survey on Listed Companies' Corporate Governance	TSE	Tokyo Stock Exchange	M	P	1998, 2000	Publicly listed companies at Tokyo Stock Exchange
Waga kuni no fuainansu shisutemu to kôporêto gabanansu ni kansuru ankêto chôsa [Survey on Finance System and Corporate Governance]	MOF	Ministry of Finance	F, O, E, M	P	1999	1219 Publicly listed companies

60 Category notation: F = Corporate Finance, O = Ownership & Control, E = Employment, M = Management & Governance

61 Data type notation: B = behavior, P = Perception

62 In principle, the year of availability do not mean the year of publicity, but the year when the surveys were conducted. It is also important to note that many of annual surveys change the questionnaires yearly and only limited issues of the surveys were useful for this paper even the availability is more frequent. See Appendix 2 for the specific availability.

ZUSAMMENFASSUNG

In einem interdisziplinären Ansatz untersucht der Beitrag die Veränderungen bei der Unternehmenskontrolle (corporate governance) in Japan. In einer umfassenden Analyse werden Datensätze aus verschiedenen Quellen ausgewertet, wobei besonderes Gewicht auf die Herausarbeitung informeller Veränderungen gelegt wird. Auf diese Weise lassen sich zum einen die Richtung, in welche der Wandlungsprozeß sich bewegt, wie auch die retardierenden Elemente desselben herausstellen. Die Analyse setzt sich mit vier Aspekten der corporate governance auseinander: (1) Praxis der Unternehmensfinanzierung und das sogenannte „main bank"-System, (2) Struktur des Anteilsbesitzes und Beteiligungen innerhalb der Unternehmensgruppen (keiretsu), (3) die sogenannte lebenslange Beschäftigung und (4) die Organisation der Unternehmensverwaltung und die Struktur der Unternehmenskontrolle im engeren Sinne.

Die Verfasserin kommt zu dem Ergebnis, daß einer umfassenden Wandlung in Richtung einer kapitalmarkt-orientierten Unternehmensverfassung noch erhebliche psychologische Widerstände von Seiten des Managements im Wege stehen, da dieses nach wie vor überwiegend an die Vorteile des alten Systems glaube, das durch die Begriffe „main bank" und keiretsu zu charakterisieren sei. Auch das System der sogenannten lebenslangen Beschäftigung (in den Großunternehmen) wandele sich nur langsam, da nach wie vor zahlreiche Unternehmen an einer Entlohnung und Beförderung entsprechend der Dauer der Betriebszugehörigkeit festhielten. Der Blick auf die Organisation der Unternehmensverwaltung und -kontrolle zeige jedoch erste Veränderungen. So sei zu beobachten, daß die Zahl der Verwaltungsratsmitglieder zurückgehe und sich eine stärkere Trennung zwischen administrativen und Überwachungsaufgaben herauskristallisiere.

Insgesamt macht die Analyse der Verfasserin die Schwierigkeiten deutlich, mit denen sich Wandlungen von Institutionen konfrontiert sehen, wenn deren Akteure in ihrer Vorstellung an vormals erfolgreichen Strukturen festhalten. Die Untersuchung belegt, daß Verhaltensänderungen zwar durch äußeren Druck – wie etwa gesetzgeberische Reformen – angestoßen werden können, daß sie aber nur dann wirklich erfolgreich sind, wenn sich die Einstellung der handelnden Akteure nachhaltig verändert.

(die Red.)