

Foreign Investors in Japan and the Search for Consensus on Corporate Governance*

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 1949年生まれ。
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 主な著作：The Race to the Intelligent State (Blackwell, Oxford 1993; second edition, Capstone, Oxford 1996)
 Chaucer's Shipman of Dartmouth? John Hawley (Richard Webb, Dartmouth 2008)
 ACGA『日本のコーポレート・ガバナンス白書』(共編集者)

Firstly, I would like to thank you for inviting me to speak to you at Surugadai today. This is an unusual opportunity for me to express what I consider to be the views of foreign investors in general on a subject which is also, I believe, important to all of you.

The issues I would like to cover in my remarks today are as follows:

- *What is corporate governance and why does it matter?*
- *Foreign investors—black ships, tourists or fellow citizens?*
- *Is there really a philosophical gap?*
- *What in the Japanese system needs changing?*
- *How can foreign investors perform a useful role in reform?*

* *This is an approximate transcript of a lecture that was delivered, ad lib, and in Japanese, on November 25th 2008. Although Michael Connors was at that time a Senior Advisor to Hermes Focus Asset Management, the views expressed herein are those of Dr. Connors and do not necessarily reflect the views or policies of that company.*

What is corporate governance and why does it matter?

This is a subject that may appear, on the face of it, to be rather dull but it is nonetheless an issue which has a direct bearing on the lives of everyone and will, if anything, become more important in future. The following definition is my own offering and has no particular authority but it does, I believe, describe what governance is all about:

Corporate governance is a system of supervision of corporate management that seeks to ensure that companies are managed in an efficient and fair manner for the benefit of society as a whole.

It should be emphasised that governance is not about management, but rather about the supervision of management.

In companies which are listed on stock exchanges, governance should be underpinned by shareholder democracy and it is, of course, subject to overarching public regulation. I believe that there is a strong case for saying that shareholder capitalism which is thus suitably constrained has proved to be a potent driving force in dynamic economies. This may sound like a rather vague, legalistic or philosophical statement but I believe that the inadequacies that have emerged in corporate governance in Japan have had a significant negative impact on corporate performance and, thereby, on the performance of the Japanese economy as a whole. It is therefore a subject which is of considerable importance to the Japanese public.

In 2007, the Morgan Stanley Capital International (MSCI) figures for return on equity (ROE) in Japanese companies in that universe showed an average ROE of just 10.0%, and even this is a level which many Japanese companies struggle to achieve. The comparable number for the world ex-Japan is 17.1%. This wide disparity in performance, as expressed by the measure which is arguably the most relevant to shareholders (because it shows the degree of efficiency with

which the managers of a company is managing the assets which the shareholders have put at their disposal) reflects, I believe, some systematic weaknesses in Japanese management which, in turn, have their roots in weak governance.

Foreign investors in Japan—a growing presence.

Foreign investors play an important role in the Japanese stock market. The percentage of the shares of companies listed on the Tokyo Stock Exchange held by foreign investors increased from 5% in 1990 to more than 27% in 2007. Foreigners are, therefore, sizeable investors and, moreover, because they are, on average, forced to take investment decisions more frequently, they have a disproportionate influence on the market dynamic. Foreigners often account for 60% or more of daily traded volume and it is, of course, this which is the main driver of share price movements. As such, foreigners can be seen as being, in one sense, leaders in the Tokyo market.

The attitudes and activities of foreign investors have therefore, understandably, become a subject of considerable interest to the Japanese financial press and broadcast media. This interest spread more widely last year, in the case of Bulldog Sauce vs. Steel Partners. This from the start had all the makings of a media soap opera but, although it aroused considerable interest at the time, it should not be regarded as instructive or as offering any satisfactory precedents.

Bulldog Sauce is, of course, a small and comparatively unimportant company which happens to produce and sell a product which has a certain iconic value in Japan. Steel Partners is a notably activist asset manager which, as a result, tends to have a high media profile. Steel and other activist managers are sometimes accused of being disruptive but many believe that they also have a useful catalytic function. They are neither, however, very large, nor very representative of the

foreign institutions investing in Japan.

In their highly publicised bid for Bulldog, the senior management of Steel were often portrayed in the media as villainous assailants, while the sometimes publicly emotional and tearful female president of Bulldog evoked much public sympathy. The Black Ships, it seemed, had come again.

This reaction of sympathetic solidarity seemed to extend to the Bulldog shareholders, who not only rejected Steel's substantial bid but also allowed the management to expend large amounts of shareholders' funds in launching a takeover defence strategy and fighting the ensuing legal proceedings all the way to the Supreme Court. In the process, Steel were characterised by the judgement of one court as being "abusive" bidders, while the final outcome actually ensured that they did not suffer economically as a result of their alleged abusive practices. After Steel were forced to retreat (having made a significant profit), the share price fell sharply and the remaining shareholders were left significantly impoverished as a result of the affair. The position of the Bulldog management, however, had been protected.

It is not my intention here in any way to criticise the deliberations of the judiciary in this case but the outcome does seem to have reflected many unintended consequences of the legislation and, I believe, raises the question as to whether a mainly legislative approach to issues of this kind is really appropriate.

In all, shareholder behaviour in this case was economically irrational and self-damaging and, in a final irony, the legal judgements appear to have made things easier for "abusive bidders" or "greenmailers" in future.

In the rather febrile mood surrounding the Steel-Bulldog affair it was often asserted that foreign investors are typically short-termist and greedy. This is demonstrably untrue. Most large, institutional in-

vestors manage their huge assets on what is sometimes called a “core and satellite” basis. The core portfolio is typically indexed and the surrounding sub-portfolios are managed on the basis of specialist strategies, often sub-contracted to specialist, external managers. The fact that the core is usually indexed means that the institutions cannot, in effect, sell any stock which forms part of the index. Indexation has thus created a new kind of “semi-perpetual” institutional investor.

This means that, unless they sell “Japan”, they are long-term (virtually perpetual) shareholders in index companies. International investors do, of course, change their asset allocations to different national markets from time to time and will therefore increase or decrease their overall weightings in Japanese equities, but the portrayal of foreign investors as “short-termist” is clearly incorrect.

The recent crisis in credit markets has evoked in some circles a critical reaction against efforts to reform corporate governance in Japan along what are perceived to be “European-American” lines. This reaction is, in my view, mistaken in a number of ways, not the least because there is, in reality, no such thing as a “European-American” system of governance. The style of governance varies even as between countries in Europe and the approach in the United States, again, differs considerably from that taken in the United Kingdom. I would characterise the US approach as “market primacy” and the British approach as (again an expression I have invented) “Magna Carta populism”.

In the United States, that bastion of democracy and the protection of individual rights, the governance system often seems to be surprisingly unsupportive of the rights of shareholders. There is, however, a near-religious belief that, provided only that the market mechanism is stable, unfettered and transparent, all issues can be resolved. One manifestation of this is the notion of the “Wall Street walk”, that is to

say, the right of a shareholder to sell his shares if he is dissatisfied with the way in which a company is being managed. This is supposed to exert indirect pressure on managers to improve things in order that the shares will again become more desirable and the share price rise. It is, at best an indirect mechanism and one about which many have philosophical reservations, but it does seem to work quite well in many cases.

So, although shareholder rights are not necessarily well protected in the United States, the market itself is. The message is that you interfere with the market at your peril and, as with the fictional character Gordon Gekko in the movie *Wall Street*, the US authorities really do deal harshly with those who are found guilty of doing so.

The American system is also largely based on legislation and this does mean that it is sometimes rather slow to respond to unintended consequences by legislative reform.

Britain's "*Magna Carta* populism" is largely principles-based and tends to have a rather lighter touch. It strives hard for "democratic" fairness, transparency and flexibility and often uses the flexible and pragmatic notion of "comply or explain". This latter idea reflects the fact that, in an area as complex as finance, it is very difficult to frame legislation which fits all conceivable cases and circumstances. It means that adherence to a rule should be mandatory but that, provided that a company can give a satisfactory explanation as to why it was inappropriate for them to do so, that can be acceptable. This useful principle is commonly applied in the Combined Code, which has been developed as the framework for corporate governance in the UK, in an accretive manner over a period of years. It is a flexible and pragmatic code which deals easily with the unintended consequences of regulation. For this reason, it is arguably the most advanced system of corporate governance in existence at the moment.

But, what of governance in Japan? Here, I would characterise the situation as being one which reflects a kind of managerial pragmatism and which depends heavily on legal precedent. It is, I believe, an incomplete and somewhat flawed system, although I am optimistic that beneficial changes are in progress.

The philosophical and political basis of the current arrangements is a general confidence in the excellence of Japanese management. This was a perception which spread well beyond Japan in the past. You may remember Ezra Vogel's global bestseller "*Japan as No.1*", which extolled the virtues of Japanese management twenty years ago. At that time, the objective facts seemed to support Professor Vogel's view and Japan's confidence in its corporate managers seemed to be justified—but is it still? And if it is, does this mean, as some assert, that governance is an unnecessary encumbrance of managers in Japan?

Also open to question, I believe, is whether the "hard-wired" legislative and legal precedent-based approach to corporate governance is the most suitable.

I believe that the messages emerging from Japan's system of corporate governance are confused and confusing and that the governance project at large is clearly a piece of unfinished business. I believe, however—and here I may be guilty of unwarranted optimism—that there is an emerging consensus which will result in the introduction of satisfactory rules.

Japanese management—superheroes and tarnished heroes

There can be no denying that the very best Japanese managers are among the best in the world. Even many of those who operate within a governance environment which most foreign observers would say does not provide for adequate supervision of management decision-

making perform at a very high level and the companies which they manage are world leaders. The best, then, are still brilliant, but some others are clearly not.

There are many instances of mismanagement in Japanese companies but two particular patterns are notably common and seem to be typically Japanese.

Where companies have been very profitable in the past, it is quite common for their balance sheets to become unnecessarily inflated. That is to say that cash and marketable securities are held indefinitely for no good reason. In some of the more extreme cases, 70–80% of the total assets of companies are held in this form, which, in effect, turns them into unlicensed investment banks with smaller operating companies attached. This is not what the shareholders intended to invest in. Inflated balance sheets also, where the returns on the non-operating account are minimal or even negative, often dramatically erode that key return on equity measure. In some cases, operating profit margins of more than 50% are diluted to the 10–15% level. This is clearly not in the interests of shareholders, so, for whose benefit are the cash and securities held? Where capital expenditure is already well covered and where the management has no short or medium-term plans to make corporate acquisitions, this seems to be nothing more than some kind of management “comfort blanket” and cannot reasonably be justified. In such circumstances, excess funds should be returned to the owners of the company—that is to say, to the shareholders.

The second typical strategic failing in Japanese companies is irrational diversification. This often arises where operational managers seek to diversify into new areas not because they should but because they can. Such decisions are often supported by senior managers and company presidents who almost invariably come from operational back-

grounds and fail, because of their lack of strategic insight, and for want of any externally imposed financial discipline, to take sensible profit-maximising and corporate value enhancing decisions. This thinking leads, for example an audio maker to manage golf courses and an automotive instrument maker to enter a medical equipment market which it is technically able to supply but which its management does not understand.

This pattern reflects both the greatest strength and the greatest weakness of managers in much of corporate Japan. Because senior managers almost invariably have many years of experience in many areas of the company's business, their operational management skills are usually of a very high level. In this regard they compare very favourably with managers in other countries and this level of operational expertise is highly appreciated. However, their lack of broader strategic and financial training and experience often means that, while they are very strong as managers of operations (*jigyō*), they are quite weak as managers of the total enterprise (*kigyō*).

The systematic failure of governance in general, and of financial discipline in particular, has its roots not in any particular philosophical stance but, rather, in recent Japanese history. In the period of rapid economic recovery and growth after the Second World War, growth was largely financed by bank lending and the banks were therefore in a position to impose financial disciplines on management when this was necessary. As the influence of the banks virtually disappeared in later years, there opened up a vacuum of financial discipline and those who are now in a position to fill that vacuum have so far failed to do so. Why is this so?

Shareholder capitalism vs. stakeholder capitalism in Japan— myth and reality

Managers and the interest groups that represent them often characterise Japanese capitalism as “stakeholder capitalism” and portray it as contrasting with the “shareholder capitalism” of “the West”. This notion is, in fact, a purely political construct and has no basis in Japanese law, at least insofar as it applied to listed companies.

If the owners of an unlisted company wish to characterise it as a manifestation of “stakeholder capitalism” and to operate it in a manner which they believe makes that expression meaningful, they are, of course, at liberty to do so, within the constraints of the laws of Japan. However, once a company has taken the step of obtaining a stock exchange listing, it is subject to the explicit and implicit contractual arrangements with the owners (shareholders) into which it has entered. A stock exchange-listed company is bound by the rules of shareholder capitalism. In this regard, the relevant laws in Japan do not differ in essence from those in the United States or the United Kingdom. Japanese listed companies, then, are as much part of the system of shareholder capitalism as are their US or UK counterparts and there is no real scope for debate about this.

The confusion which currently surrounds the incomplete system of governance in Japan allows the managers to protect their autonomy—which, naturally, they do—but this does not necessarily benefit either shareholders or the economy at large. The notion of “Japanese-style” “stakeholder capitalism” can too easily become a smokescreen for interest groups protecting their own positions. The current laws allow managers to choose between a system of a company-with-committees and a *kansayaku* (statutory auditor) system. Insofar as the *kansayaku* have an essentially advisory role and have no real power over the ex-

ecutive management (including having no *jinjiken*, or power of hire-and-fire) it is hardly surprising that the managers of 97% of Tokyo Stock Exchange listed companies have opted for this system over the company-with-committees, whose external directors do, in theory at least, have such powers and thereby impinge on management autonomy.

Does it matter if good companies have bad governance? Yes; because good governance provides safeguards against managerial incompetence and the longer-term erosion of corporate value.

Do good governance structures guarantee good companies? No. Even when the structures are as good as they can be, there may be situations in which both the managers and those supervising them can make fundamental errors.

It is also the case that inherently sound systems of governance, such as the company-with-committees, can be implemented in an unsound manner. For example, a year or so ago, I visited a company which notionally had a company-with-committees system but where the remuneration committee not only had a majority of inside directors but was also chaired by an insider. And this was so in spite of the fact that the company had a stock option system as part of the remuneration for the senior management. This arrangement would, I believe, be quite unthinkable anywhere where the system was being implemented properly.

Pressures for change

I believe that the Japanese system of corporate governance is, then, unsatisfactory and incomplete and the pressures for change are growing.

In the first place, equity markets are becoming ever more globalised and Japanese companies cannot persist in the pretence that they

can and do operate in a fundamentally different way from listed companies elsewhere in the developed world. This would be true even if the putative Japanese-style stakeholder capitalism had been successful. The inferior ROE numbers suggest that it has not.

Also, the strange view that operating companies can in some way be regarded as “savings boxes”, with inflated and inefficient balance sheets, cannot be allowed to persist, not least because the ageing Japanese public will have an ever growing need for dividend income over the next few years.

There is also a clear need for industrial-level rationalisation in some sectors. The recent Oji/Hokuetsu affair was a straw in the wind in this regard. The management of Oji made a friendly approach to Hokuetsu, suggesting a merger which many commentators believed was in the broader interests of the Japanese paper and pulp industry and, ultimately, of the shareholders of both companies. That this bid, which subsequently became hostile, was eventually defeated by defence measures which included what many regarded as an unwarranted and irresponsible issuance of shares to a third party, was felt to reflect a case where the interests of the shareholders, the industry and, indeed, the Japanese economy, had been subjugated to those of the incumbent management of the target company.

The elephant in the room—conflicts of interest

So, the pressures for reform in corporate governance are not only coming from abroad. There are powerful forces at work in Japan too. So, why are the shareholders not pushing more vigorously for reform? The answer lies in the so-called “Japanese Way”; the outdated and inefficient system of cross shareholdings and quiet reciprocity. This allows the managers of companies to protect themselves and one another from the forces of change.

The natural representatives of the interests of the shareholders, and the people best equipped to fill the vacuum of financial discipline, are the potentially very powerful institutional investors. They are very knowledgeable and potentially very influential and yet they remain silent. Why is this? One of the main reasons is that, as managers of corporate pension funds and as sometime intermediaries in financial transactions on behalf of the companies in which they invest their clients' funds, the institutions which control the bulk of equity funds have a powerful conflict of interest. This is because they do not wish to offend important actual or potential corporate clients by being seen to criticise the management. They therefore tend to remain silent.

Conflicts of interest, of course, exist everywhere and in all aspects of economic, political and social life but corporate governance systems in some other parts of the world are far better developed to cope with this kind of problem than they are in Japan, where the problem has become "the elephant in the room". This English expression refers to a problem which has become so large that everyone is aware of its existence, but, because dealing with it is perceived to be very difficult, everyone chooses to ignore it. Clearly, this is not a situation which can be allowed to persist but, in the shorter term, it explains why the role played by foreign institutional investors in Japan can be particularly beneficial.

Even foreign institutional investors, of course, often do business for Japanese clients and therefore, to a greater or lesser extent, they have the same conflicts of interest as the domestic institutions. However, on the whole, they have fewer conflicts and they come from places where such conflicts are more readily recognised, confronted and resolved. It is no coincidence, however, that it has been the large, public and otherwise independent pension funds, such as CalPERS, CalSTRS, Hermes and Railpen, which have inherently very few conflicts of in-

terest, that have been among the most active advocates of governance reform, in Japan and elsewhere. Foreign investors, on other words have conflicts of interest but they have fewer of them and are better at dealing with them, and they are therefore likely to continue to be important change agents.

What in the Japanese system needs changing?

As the foregoing comments clearly imply, it is important that the spurious notion that Japanese capitalism is stakeholder capitalism should be repudiated and that there should be a clear recognition that it is the shareholders (not the managers) who are the owners of listed companies.

In pursuit of this and, in order that an appropriate mechanism for the supervision of corporate management may be put in place, it is important that those who are best placed to represent the owners (i.e. shareholders) of listed companies should speak up. Japan's financial institutions need, either voluntarily or by compulsion, to deal with their conflicts of interest.

Although I believe that a properly implemented company-with-committees system is inherently superior to the currently predominant *kansayaku* system, it is perhaps unreasonable to expect that this system can be made universal and mandatory any time soon. However, this problem could be significantly ameliorated if Japanese companies were compelled to introduce a meaningful number of well-qualified and genuinely independent directors. Neither independence nor competence alone is sufficient; external directors need to have both. And they need to be appointed in sufficient numbers that they cannot be ignored or suppressed by the executive directors.

I have often heard it said that "there are no such people in Japan", which seems to me to be a completely nonsensical assertion. If Japa-

nese managers are talented (which they are) why is it only in Japan that nobody is available to serve as independent external directors? The answer, of course, is that there are plenty such people but there is no well established system for their recruitment, nor any desire on the part of the self-protecting management groups to establish one.

A vibrant community of independent, external directors, however, brings great benefits to businesses and to the economy as a whole and I believe that, once Japanese managers overcome their initial opposition to any form of external interference in their affairs, they will come to appreciate what value these people bring.

It is sometimes said that such day-to-day supervision of managers in Japan is unnecessary because the shareholders' meeting is all-powerful. This may be true in theory but, in truth, such assertions have little credibility. Countries cannot be governed by referendum and nor can companies, and this would be true even if the annual meeting offered a genuine and transparent channel for shareholders views, which it does not. There are, in fact, various technical reasons why it does not. Most importantly, far too many annual meetings are clustered in one or two days in late June. This makes is very difficult for shareholders to table or to deliberate on and vote on, resolutions. There is simply too much going on at once.

Another undesirable feature of the current Japanese system is that there is no requirement for the trust banks which administer proxy voting on resolutions at shareholder meetings to make the results of the polls public. They can simply say whether a resolution passed or failed and do not need to publish the statistics of the vote. I would suggest that for democracy to be done it must be seen to be done and that there is no reason why there should not be full transparency in shareholder voting. This problem could easily be solved.

Finally, and I believe that this will be the most difficult reform to

achieve in Japan, there does need to develop some form of free market in corporate control. In Japan, this seems a very foreign notion but the idea that companies have “best owners”, that is to say, potentially the most efficient owners, and that the control of companies should be subject to market forces, has considerable support elsewhere and has been shown to be largely beneficial. Japanese managers must not continue to be supported in protecting their own interests where a change in corporate ownership is likely to bring enhanced value to shareholders and broader benefits to society. As has been seen from the unintended consequences which occurred in the Steel/Bulldog case and, I believe, in the more recent TCI/J-Power case, it is difficult to frame legislation which will deal satisfactorily with all contested attempts to change corporate control. In this sense, the UK system in which a publicly appointed Takeover Panel adjudicates on the cases referred to it on a case-by-case basis is perhaps preferable to the rather confused current system in Japan.

So, in summary, I believe that transparency in governance and genuinely independent supervision of corporate management in Japan is essential and that this can be achieved through increased shareholder power and the introduction of large numbers of genuinely independent directors.

There are now often bitter debates between domestic defenders of the *status quo* and foreign advocates of change but I believe that, although it may take some time, the achievement of a consensus should ultimately be easy. The ideal is to facilitate a transparent, expertly intermediated, and reasonable supervision of corporate management creating a balanced combination of market forces, shareholder democracy and legitimate regulation. In the end, there should be no philosophical gap because we all want the same thing—dynamic and profitable Japanese companies. As Winston Churchill once said: “Democracy

is the worst form of government, except for all those other forms that have been tried from time to time.”

I believe that this can also be said of shareholder democracy in a dynamic economy.

講演会資料

日本における外国人投資家及び コーポレートガバナンス についての合意への探求*

マイケル・コナーズ
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株式会社

1

日本における外国人投資家 —コーポレートガバナンスについての 合意への探求—

- コーポレートガバナンスとは何か？どうしてそれが重要なのか？
- 外国人投資家は、黒船、旅行者、あるいはグローバル市民か？
- 本当に哲学的な違いはあるのか？
- 日本のシステムにおいて何が変わらなければならないのか？
- なぜ、日本にとって外国人投資家の活動が役に立つのであろうか？

2

* この資料は、2008年11月25日、駿河台大学において比較法研究所主催の公開講演会において、マイケル・コナーズ博士によって使用され、配布されたパワーポイント資料をそのまま掲載するものである。講演は日本語で行われたが、講演の詳しい内容については、併せて掲載されている英文の論文を参照されたい。

コーポレートガバナンスとは何か？ どうしてそれが重要なのか？

- 社会全体の利益にとって、効率よく公正に会社が経営されていることを保証するような会社経営の監督システム
- 上場されている会社において、これは株主の民主主義によって支えられ、公的な規制を受けるものである。
- 同様に抑制された株主資本主義が推進力となっている。

3

本当の問題点—会社の効率

- 日本の自己資本利益率 (ROE) は低い。
MSCI 日本: 10.0%
MSCI 世界: 17.1%
(2007年)
- 配当金は、国際的な基準によると少ない。
日本: 1.4%
アメリカ: 1.8%
ヨーロッパ: 3.2%
日本以外のアジア: 2.7%

高齢化する人たちは、収入を必要としている。

4

日本における外国人投資家一 増加する存在

外国人投資家は、**1990年**において東京証券取引所の上場株式の**5%**を所有していた。

2007年には、これは**27%**以上までに増加した。

(外国人は、かなりの数の投資家であり、より重要なことは、彼らは、平均して投資についての決定をより頻繁にしなければならぬ。よって、彼らは市場の動きに、かなりの影響力を持っている。)

5

外国人投資家は、黒船、旅行者 あるいはグローバル市民か？

ブルドックソース及び スティールパートナーズ

6

ホームドラマ対退屈な現実

- ブルドック 対スティー爾パートナーズ事件は、面白かったが、教訓とはならなかった。
- 株主の行動は非合理的であり、自分のためにならなかった。
- 裁判所の法的判断は、将来における「濫用的な公開買付の手法による会社買収」をやり易くしたかもしれない。

7

インデックス投資は、新しい種類の「半永久的」な機関投資家を生み出した

- ほとんどの大きな機関投資家は、「コアとなるポートフォリオとサブ的なポートフォリオ」で運用している。「コアとなるポートフォリオ」は、通常インデックスに**連動させたものである**。
- インデックス投資というのは、仮にある株式がインデックス対象銘柄の一部であるならば、投資家は当該株式を売ることはできないということである。
- これの意味することは、「日本」を売るということにならない限り、彼らはインデックス投資対象銘柄の会社の長期にわたる(事実上永久的な)株主である。
- だから、外国人投資家を「短期投資家」として描くのは、不正確である。

8

国際的な視点— 市場哲学における相違

- 米国—明確なマーケット至上主義
- 英国—「マグナカルタ・ポピュリズム」
- 日本—経営的実用主義及び法的先例

9

米国—「マーケット至上主義」

- ルールは、必ずしも公正でないが、市場が物事を整理する
- 「ウォール・ストリート・ウォーク」
- 自己責任でリスクをとり、市場を操作せよ！
- 固有のシステムは、意図しなかった結果に対応してゆっくりと変化する

10

英国—「マグナカルタ・ポピュリズム」

- 「民主的」公正さ、透明性及び柔軟性に対して一生懸命努力する
- 「遵守せよ、さもなければ説明せよ」
- 規則の緩いシティーの行動基準に基づいた原則
- 予期せぬ結果をうまく処理する柔軟かつ実用的なシステム

今ある中では、最善のシステム？

11

日本—経営的実用主義及び 法的先例

- 哲学は、日本的経営の優秀さに対する一般大衆の信頼に基づいている
- これは、過去においては正当化されたが—
現在もそうであろうか？
- 立法的なアプローチでよいのだろうか？
- 今現在においては、混乱したメッセージと未完の仕事である。
—しかし合意は出来つつあるだろうか？

12

日本の経営—スーパーヒーローと 傷ついたヒーロー

- 最もいいものは今でもすばらしいが、でも
他は…
- 膨らませたバランスシート—誰の利益のため
に？
- いくつかの奇妙な戦略…

13

株主の資本主義対ステークホル ダーの資本主義—神話と現実

- システムは、経営者に自分の自治を保護させてい
る—当然、彼らはそうしている
- 日本式の「ステークホルダー資本主義」は、自分
の立場を擁護する利益団体の煙幕(カムフラ
ージュ)になりやすい
- 良い会社が、拙いガバナンスを行うことは差支えが
あるのだろうか？ **はい**
- 良いガバナンスは、良い会社であることを保証する
であろうか？ **いいえ**

14

なぜ、日本にとって外国人投資家の活動は役に立つのだろうか？

- 変化への圧力
- 部屋の中の象一利害の対立

15

変化に対する圧力

- 株式市場のグローバル化
- (高齢化する)日本の大衆
- 産業合理化に対する必要性—王子製紙の北越製紙に対する敵対的入札はその風向きを示すものであった。
- 国内の変化への圧力は高まりつつあるが…

16

The Elephant in the Room (誰もが知っているのにわざと避けている問題) 一利害の対立

日本的なやり方
持ち合い株及び静かな相互主義
潜在的には強力だが静かな機関投資家

外国人投資家にも対立はあるが、その数はより少ないので、重要な変化を求めるきっかけとなり続けるであろう。

17

日本システムの中で何が変化する 必要があるのだろうか？

- (経営者でなくて)株主が、会社の持ち主であるというより明確な認識
- 持ち主(機関投資家)は、堂々と発言する必要がある。
- 2つのコーポレートガバナンス：監査役設置会社方式によるガバナンス 対 委員会設置会社方式によるガバナンス
- 議決権行使の透明性など

透明性と真に独立した監督が肝要である。
答えは、さらに強力な株主の力、プラス独立した取締役である。

18

いくつかの提案

- 「遵守せよ、さもなくば説明せよ」は、役に立つ原則である。
- 会社管理における公正な市場が必要である。
- 議決権行使において、透明性が必要である。
- 専門的な企業買収審議会が物事を容易にする。
- 社外取締役のコミュニティーは、大きな価値がある。

19

合意は簡単なはず

理想は、市場の力、株主による民主主義、及び合法的な規制を作り上げるための会社経営の透明性のある、うまく調整された、かつ合理的な監督を促進することである。

最後に、哲学的なギャップは、あるはずがない—我々は同じものを望んでいる—ダイナミックで収益の高い日本の会社を。

20

「民主主義は最悪の政治体制だ。だがそれ
であったものよりは、幾らかましだ」

(ウィンストン・チャーチル—1947年11月11日)