

Part II Discussions

General Comments

by

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One of the questions that has occurred to me several times this afternoon, and occurs to me when reading almost any debate about corporate governance, is: whose corporate governance are we talking about? Many of the prescriptions offered are prescriptions for corporate governance *in general*. Yet any study of corporate governance shows up, as already been shown up very clearly and interestingly this afternoon, enormous differences in the way corporations are run in different countries.

Now Inagami-sensei gave us an example of something that was explicitly intended to be a universal prescription, namely the OECD's principles of corporate governance. The beginning of the discussion within the OECD was in a special working group chaired by an American lawyer called Millstein. The report they issued is generally known as the Millstein Committee report. The Committee included people like Michel Albert from France, Tateishi the Chairman of OMRON in Japan and a distinguished German whose name I forget. The essential point is that it contained people who were very conscious of national differences in corporate governance. And the Millstein report was, to put in terms of the Chinese proverb: "let 100 flowers bloom, let a hundred schools contend". It was a very liberal report. It said you may have corporate governance in which employees participate or you may not, but anyway the only important thing is that whatever corporate governance you have it should be quite clear to investors what they are putting their money behind. That was the only thing absolutely and universally required.

Now when the OECD council of ministers got hold of that report and tried to transform it into a set of principles for all countries to follow it ended up with something different – something designed to diffuse throughout the world the American principle of "shareholder value as the supreme objective"

And I am reminded of another attempt to provide a universal prescription for corporate governance. It comes from no less than the Catholic church, not surprisingly since it claims to be the universal church. You may remember that when the ruling classes of the 19th century were getting rather worried about class conflict, in 1891 the pope published a famous encyclical called *RERUM NOVARUM* ("About New Things"). Well, a century later in 1991 the Pope published another encyclical called *CENTESIMUS ANNUS* ("The Hundredth Year"). Actually the pope, of course, didn't

write it all himself. He was assisted by a number of seminars held in the Vatican. One of the academic members of the group was Amartya Sen, who was teaching at that time a course at Harvard on comparative economics system. He got these worthy monsignors to read about Japan and read about the Japanese enterprise and the encyclical contains one or two interesting passages which seem to reflect that. One such passage went as follows:

It is possible for the financial accounts to be in order, and yet for the people — who make up the firm's most valuable asset — to be humiliated and their dignity offended. Besides being morally inadmissible, this will eventually have negative repercussions on the firm's economic efficiency. In fact, the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a community of persons who in various ways are endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society. (Encyclical Letter *CENTESIMUS ANNUS*, Addressed by John Paul II, 1 May, 1991, Section 35)

Professor Inagami spoke of more or less enlightened versions of the shareholder-value view of the firm. I think the passage I've just quoted is rather a good summary of what I would call a generally enlightened view of the firm.

The general point is that, with all these universal prescriptions we have to --- what do the literary critics call it? — deconstruct them. First of all we have to ask why these debates on corporate governance are taking place. Why in Britain for example, was the Cadbury Report issued and why did it start a general debate?

The reasons, it seems to me, are various but they have to do very much with changes in the nature of capitalism. And I mean not just globalization but also particular changes within the United States. Professor Inagami mentioned in his introduction shareholder activism. Now shareholder activism has been very important and there are two kinds. There is the kind represented in Britain by an organization called PIRC — Private Investors Research Council. They buy a few shares in companies which they think are badly or dishonestly run, and make a fuss. They are dedicated to corporate honesty and preventing the abuse of power. One thing they make a fuss about, for example, is managers and boards of directors paying themselves enormous amounts in salaries and bonuses at the expense of other shareholders. There is a similar organization called LENS in the United States run by a man called Robert Monk — about whom there is an interesting book with the title *A Traitor to His Class* which enumerates a number of his crusading victories.

That is one type of shareholder activism, but the other thing that has happened over the last 20 years in the United States is that, as a result of the enormous growth of the Pension Funds and of Mutual Funds, the large institutional investors now have such large stakes in major companies that the exit option becomes foreclosed for them. They cannot so easily make money by buying stocks when they are cheap and selling them as soon as they think bad management is likely to make them lose value.

Why? Because they have such large holdings and as soon as it's known, as soon as the word gets around, that they are trying to sell off their stakes then the price will immediately go down and they lose money. So institutional investors in the U.S. are increasingly organising to put pressure on management to manage in such a way as to maximize their interests.

And that is one of the reasons why, in American business schools and British business schools, whereas 20 years ago one used to hear a great deal about stakeholders, about the social responsibility of the corporation and so on, nowadays one hears nothing of that kind. It's all about shareholder value. And the change in the ownership of capital which I have been talking about is partly responsible. Which does mean that we are all — all of us who expect pensions are responsible. Suzuki-san was talking about the principal agent problem, but if ever there was a principal-agent problem, it is the control of us prospective pensioner principals over our agents, the managers of pension funds and mutual funds who are investing in our benefit.

So that is one major reason, it seems to me, why there is a widespread interest in corporate governance. If you like to call it such, it's the end of the Berle-Means phase of capitalism. You remember in the 1930's Berle and Means said that because of the fragmentation of share ownership, managers had in effect become autonomous and the development of a responsible managerial capitalism was the task of the future.

It is managerial capitalism no longer, but once again shareholder capitalism. And the major way in which the fund managers exercise influence over the managers of the corporations whose shares they own is, in Britain and the U.S. primarily through the mechanism of the takeover. If a firm gets a bad reputation in the stock market and its price falls, it may run a serious danger of being subject to a hostile takeover bid. And institutional investors can always threaten a manager with the prospect that they might encourage a takeover raider, or sell their stake to bring the price down and make the firm vulnerable. It is the fear of being taken over which acts as the prime external monitoring device.

At the same time, over these last 20 years, there has been a great change in the ideology taught in the economic departments. Not only in business schools but also in the economics departments of American and British and now increasingly Japanese and German and French universities. And this is manifested first of all in the popularity of so-called principal-agent theory and all the games-theory modelling to which it gives rise. What devices will allow the shareholder principals to control the managers who are their agents? One major mechanism of course is the cleverly designed stock option. The development of stock options has been a major reinforcement of the shareholders capitalism characteristic of the American firms. Stock options have become a major element in the remuneration of managers.

I remember when stock options were introduced into Japan around 1994. One of the first firms to adopt the system was Toyota. That seemed to me rather extraordinary because Toyota after all is one of the more communitarian of all Japanese firms. I happened to be in Nagoya and I met a senior finance manager in Toyota and I asked him: How come you introduced stock options? "Well, we thought that it would

give our directors an extra incentive.” Does that mean that your directors were getting lazy?” “Oh! No! Of course not.” In the end he gave the real reason. The Chairman of Toyota was also Chairman of Keidanren — of the major Japanese business federation. “So we thought we should set an example and give a lead in introducing the system.” In other words they were public-spiritedly showing the Americans how good pupils of the U.S. the Japanese can be.

I have to say that I found that slightly reassuring — as someone who thinks the “employee-community type” Japanese system worth preserving — because it suggested that maybe the stock option would not after all become a significant part of executive remuneration in Japan.

I have already used up 15 of my 20 minutes without getting into detailed discussion of corporate governance. I would like to say something about what Professor Inagami called the pluralist models. Now I would insist that there is a difference between the pluralist model of Holland and Germany on the one hand and that of Italy and France and Japan on the other. Whereas in both Holland and Germany the institutionalization of employee representation in the governance of corporations and its entrenchment in law is very explicitly the result of a class compromise. It is reinforced and maintained by the activities of unions which have from the very beginning tried to maintain a control over industry while at the same time combating tendencies towards the development of enterprise loyalty.

The works councils within firms do tend to breed enterprise loyalty and the unions have always been ambiguous about them. When, in the early days of the Weimar Republic a law to regulate works councils was enacted, the unions organized a tremendous demonstration outside the Reichstag which ended in a riot in the course of which 20 people were killed.

In the German, legally based pluralist model there has always been a tension between giving a role in corporate governance to unions as representatives of workers in general and giving a role to the works councils made up of employees. Professor Inagami cited the Bertelsmann report which certainly endorsed the co-determination system, but which also showed signs of continuing conflict between the works councils system and the unions.

In Japan, on the other hand the works council system has totally won out at the expense of any function for independent, nationally extended unions. Suzuki san talked about cooperation between labour and management. When one says “labour and management”, or in Japanese *Ro and Shi*, the implication is that the relation is adversarial. And, of course, relations were indeed adversarial in reality in Japan between 1945 and the mid-1950's. But since then the adversarial nature of within-firm relations has been muted — although the institutions of trade union organization and wage bargaining continue to be framed by the adversarial assumption. For example, who belongs to a trade union in Japan? In most companies people below section chief level all belong to the union. So at the age of 35 years and 3 months when you are a vice-section chief you are a member of the union and a month later when you become section chief you are so no longer. You are counted as ineligible, because you

are what the law describes as “somebody who represents the employer's interest”.

But this is a quite arbitrary line between “labour” and “representatives of the employer”. Who is the employer? The Rengo survey which Suzuki-san described showed very clearly that the managing directors and board of directors have a strong sense of themselves being employees. True, they call themselves *yakuin* – officers of the company -- rather than *shain* – members of the company. But they use the word *jugyoin* to describe both themselves and the *shain*. If you ask whose employees they are, the answer would be some abstract transcendental entity. Certainly not some concrete entity called “capital” such as Prof. Hoffmann was talking about.

So if you ask what kind of organizations Japanese companies are, I would say that in many respects they are a bit more like universities than like Anglo-Saxon companies. What I mean is this. In universities, the younger and lower-level staff – the *joshu* in Japan, the assistant professors and so on -- often need and belong to a union. They need a collective voice to counter the power of the bosses, what the Italians call the “barons” -- the senior professors, who control the academic councils and so on. Nevertheless the assumption is that the university is a unified body working towards unified ends. It seems to me that the typical Japanese firm is somewhat like that – rather than having a truly adversarial “labour versus management” divide of the Anglo-Saxon firm. And maybe if the Japanese firm is going to go on having the kind of corporate governance that it has, it is necessary to recognize that the adversarial relationship has changed since the 1950s, and try to organize a bit like a university – that is to say, maintaining the notion that the people who are further from the center of power do need some kind of collective representation against the people who might abuse the power they have – some kind of employee representation on boards, for instance.

Discussions

(Prof. Inagami) Thank you again. For the panelists, do you have any question or comments or any points? Mr. Suzuki, do you have anything?

(Mr. Suzuki) Well my presentation actually focused only on one aspect of these issues as Prof. Dore mentioned. There are so many issues. I didn' t really touch upon the comprehensive parts of corporate governance changes. I didn' t even mention changes going on in capitalism; and after listening to Prof. Dore, I feel that managed capitalism, which existed along time ago, is now returning to shareholder capitalism. It's almost like a pendulum swinging. So management and workers have become one connected group. Now we have to think in which direction this collective group should go. Japanese managers do not deny that the corporation is a collective group of management and workers; but I don' t think that Japanese manager' s can accept it 100%, so they really

have the benefits and merits of company shareholders in mind.

So in this new environment how do we think of this industrial democracy, especially internal interactive corporate democracy? This is the point we really have to study.

(Prof. Inagami) Any comment from Mr. Goodijk?

(Dr. Goodijk) Our presentations focused on different aspects of corporate governance in different cultures. Very interesting are the remarks about the underlying question on whose corporation are we talking about: the corporation of the shareholders, the directors, the workers? I agree with Prof. Dore that an enterprise is more than a production-place of profits. It's also a community of people. I think that such a community Prof. Dore mentioned, assumes/expects an attitude of common responsibility within the enterprise, an attitude that everybody within the enterprise is in some way responsible for the functioning of the enterprise and the effects to the society. That common responsibility, organized in several ways of consultation, is probably one of the pillars of the so-called Dutch Poldermodel, the 'Dutch miracle'. Besides, ten years ago they called the same model a 'Dutch disease'. Frequent consultation creates some kind of stability in labour-relations, and perhaps more moderate attitudes of trade unions within the enterprise; and the possibility for workers to get influence in the total process of decision making by participation. I think 'whose corporation' is a very important question, also for the Dutch situation. Thank you.

(Prof. Hoffmann) In Germany at the time being there is a remarkable change in the culture of leading corporations and by this a change in corporate governance in the direction of shareholder value attitudes. In general, German industry was and is dominated by small and middle sized enterprises (SMEs) on the one hand, most of them led in patriarch manner which is moderated by the system of codetermination in those enterprises where codetermination is institutionalized by law. On the other hand the big enterprises, especially in the coal and steel industries, formerly practiced forms of corporate governance which you might compare with the manner feudal lords governed the land estates. Till the 60ies the managers of those enterprises or industries did not want to be called „manager“ but wanted to be called „leader of the firm“ (Betriebsführer“). And there was and is a third fraction of capital in manufacturing industries, the electric, optic, car building, mechanical engineering and chemicals industries, where corporate governance was quite the opposite: Those managers knew about the importance of qualification and loyalty of the workers both producing high labour productivities; even before World War I they practiced forms of cooperation with groups of workers and even with single trade unions. And it were those groups of industries which turned out to be the leading industries of the so-called „Wirtschaftswunder“ (the economic miracle in Germany after the Second World War) and which supported the codification and institutionalization of codetermination, developed and codified under the influence of the catholic social ideas by the

conservative christian democrats in the early 50s.

But within trade union movement there existed different fractions towards corporate governance and industrial democracy as well. One fraction (especially the trade union of the chemicals industries) was referring to the reformist practice of the German trade unions in the 20ies, which was expressed by one of their leaders (Hugo Sinzheimer) in the following manner: Labour and capital have common interests in production and conflicting interest in distribution of the social product. They supported the system of codetermination and demanded a Keynesian economic policy in order to foster economic growth and thus to minimize the conflicts in the sphere of distribution. On the other hand there was a very strong fraction in trade union movement which first (in the early 50ies) opposed to those forms of codetermination which was supposed to be aimed to moderate or replace class struggle. Especially the trade union of metalworking industries (IG Metall) put the stress on class struggle and looked upon codetermination as a form of capitalist ideology. But in the 60ies and 70ies those different positions were moderated by the very successful practice of codetermination as part of German „Rhineland Capitalism“.

That cooperative structure of „Rhineland Capitalism“ now came under pressure. The changing relationship between banks and industries and the growing importance of stock markets for capital investments are now threatening the corporate structures, but this is what I pointed out in my contribution.

(Prof. Dore) Can I say something about change and the globalisation of capital ownership. I think that in the recent takeover battle between Mannesmann and Vodaphone, it was important that Mannesmann had 60% of its shares in foreign hands. That practically forced the CEO of Mannesmann to play the takeover battle solely in terms of whether or not the Mannesmann management or the Vodaphone management could provide better value for shareholders – not on the grounds of what a takeover would mean for employees or to the preservation of German corporate culture. When Suzuki san said that capitalism is changing and we have to adapt I wonder if he had in mind that the the ownership of Japanese firms like Sony and so on is increasingly passing to foreign institutional investors. Recently the share price of major firms like Sony has depended almost entirely on whether the Americans are buying or selling. It's not Japanese institutional investors; it's foreign institutional investors that are changing the name of the game for some Japanese firms.

(Prof. Inagami) When you have a question, please state your name and identity.

(Prof. Roger Blanpain) I believe that the enterprise is a community of interest, but in the words of Prof. Dore, to be realistic, we see a power relations between labor and capital in it. Power relations between capital and labor have dramatically changed in recent years. And so the real question today that has to be answered is “Do workers have the legal right or the market power or force to prevent either cost savings or rationalization or shareholder-oriented institutions like pension funds from taking over

enterprises in order of have rationalization, meaning downsizing and making share value go up?" So the question is, "Do you have the legal power to block?" I think there is no country in the free market economy where workers do have that right . . . maybe I'm wrong. On the Dutch side, I don't think that is the case. Germany, which has one of the most elaborate systems of worker participation, is certainly not the case, or in my country, Belgium, France, Italy or what have you. So the power is not there. So, the question of market power would be to block companies from taking rationalization measures to downsize and seeing that you are cost effective. This obviously what Prof. Dore was saying. The market share would go down, the shares would sell, and you would have to take the measures. Worker participation and the power of workers over the years have diminished if we look at the outcome of the European Works Council after 30 years of debate in the European community. We have information and consultation, and power is not going to increase in the future. . . . So as far as I'm concerned, the Anglo-Saxon model is under way, unless the managers decide to stop it. But like Prof. Dore was saying, managers are getting to be more the allies of the shareholders due to stock options plans and so on. I don't like it, but realistically speaking, the Anglo-Saxon model is marching in the direction of East and also Europe. Thank you.

(Prof. Jens Lind) Thank you Mr. Chairman. I'd like to start by congratulating you on your excellent seminar, and I think it's because the topic was something in common among us. We have some very good implications. According to my point of view I think the question of industrial democracy, or economic democracy, or participation, or whatever term, is the most interesting issue that we have dealt with. It can be termed in a lot of ways, but I think it has been important in the past, will continue to be important in the future.

And in saying this we are back to one of the issues, why are we still talking about it? I think it is because we are still dealing with a society with different interests in seeing capital and labor. But there are all sorts of ways to look at democracy and interest; so the question is should we look at the individual firm or society? And if we combine these two issues, we can say that it's not enough to talk about shareholders. It's not enough to talk about employees in an individual firm; and we also have to consider wider social interests when we talk about democracy.

I think that is one of the points which makes the lecture by Mr. Suzuki very important. We have trade unions to take into account wider social interest, but we cannot live only in an industrial democracy with only the employees in an individual firm having the say. You have to take much more social interest into consideration. We heard from the Dutch and the German lecturer, as far as I can see, that they disagree with the Dutch and that models are moving towards the Anglo-Saxon way. I can see less influence coming from labor and choice...as I heard it. Jurgen Hoffmann says the opposite. Management has to consider that it has a clear interest in pursuing labor influence in the company. But you ended up with some very soft words, Mr. Hoffmann. Perhaps I can ask you to elaborate a bit on that. Thank you.

(Prof. Inagami) Thank you for your question.

(Prof. Leo Law Less) I will make a comment and ask some of the panel members to comment on it. We were talking about corporate governments in the U.S. The California employees retirement fund and the N.Y. state teachers employment retirement fund...in fact it was CalPERS who was one of the leaders of causing the board of directors of GM in 1993 to remove both the Chairman and CEO. And the President and the Chief operating officer after which 100,000 jobs of union members were taken out of General Motors. So where do the entire interest lie and who is representing whom. Who would? Any of the panel members like to comment on that?

(Prof. Dore) Just to say that CalPERS was extremely active in Japan too. And one of the Japanese organizations that has produced a report which most clearly recommends that Japan should go in an Anglo-Saxon direction, namely the Corporate Governance Forum had extremely close relations with CalPERS.

(Prof. Manfred Weiss, Germany) I'd like to join the colleague who said we should include wider social interest. I think perhaps It's a bit too narrow if you only talk in terms of shareholders and stakeholders, and so on and so forth. We have to talk about, how should I say, the general social climate of society. I would think that specific strategies run the risk of not being accepted within a society. And coming from Germany I would like to mention the "Vodafone" example, which has led to a very interesting reaction in Germany. The reaction is that the people are more or less shocked by what happened, when they learned that it was done for a sort of short-term interest or the shareholders. Now we have a tremendous discussion on how we can rescue the long term interests of worker participation, and of course about the escape route, which are in the lullabies of our trade unions. But what is interesting now is that we are in the stage of preparing a new law, as there is a commission working these days. The most interesting thing is that not to reduce the workers influence in such situations but to increase it ? increase it because It's the only way in which it would be acceptable to German society. So question is do you think that this category of social instability might make a change in your analysis? That is all.

(Dr. Goodijk) In the Netherlands there also is concern about the long term interest of workers participation. In the politics and in the Social Economic Commission, an advisory board of the government, a discussion is going on about the influence of the shareholders and workers within the enterprise. Especially in the case of the re-appointments of the members of the Supervisory Board. The majority of the Commission seems to prefer to give the shareholders and the workers the legal right to block an appointment. But the Dutch system of workers participation is mainly based on consultation. Once there is consultation, one can convince the other side. There is no legal right to block a take-over, but the workers can play an important role in the

decision making.

(Dr. Hoffmann) But not only the workers but also some fraction of capital who are behind that...

(Prof. Dore) Right...

(Dr. Goodijk) I would like to react also to the remarks about the growing influence of the Anglo-Saxon model. It's indeed the reality that the Anglo-Saxon model is on the way up in Europe and also in the Netherlands. But I'm not so pessimistic about the effects on workers participation. The German or Dutch system is strong enough to resist the growing shareholder's influence. And in reaction to prof. Blanpain, in my job as consultant working with works councils especially in case of mergers and take-overs, I discovered that the works councils - under certain conditions - were able to block a take-over. Works councils together with trade unions have the opportunity to influence take-overs. Moreover, in the Dutch corporate governance model there is a kind of blockade - the separate, independent Supervisory Board - between the shareholders' influence and the boards' governance of the enterprise. It seems that the Dutch system of controlled cooptation in the supervisory board will survive, perhaps with the right to block for shareholders and workers. Enterprises also have to deal with social responsibility. Business ethics is a growing subject in the Netherlands, in Europe, in America, and more and more in stakeholder-meetings. Action groups are included. And what concerns the remarks about the European Works Councils: we only have experienced for 5, 6 years now. EWC's need time to develop a more strategic position at European level, together with the trade unions, so that they can develop also a kind of blockade against take-overs. I'm not so pessimistic about it.

(Dr. Hoffmann) I have only some points left to mention: One of the lessons we learn from a reception of the French „school of regulation“ („école de la régulation“) is, that models of capitalism cannot be simply imported! You may adapt some elements of another dominant model to your own social-economic system, but if – for example – Germany would take over the Anglo-Saxon market capitalism, this would be not only a social but also a economic disaster for Germany. The same applies to the statist capitalism system of France, to the Benelux-countries or to the Scandinavian social democrat system. Of course this might happen nevertheless – nothing is for sure in our days -, but I think the problem is now, how to be able to innovate the system of Rhineland Capitalism without giving up the very social and productive elements of social cooperation and long term views on capital and social developments. In order to be able to cope with the challenges in world markets without destroying the social and – in the long run – economic stability of an historically developed social-economic model.

And there is the European dimension as well: I think the European Union is a great opportunity to build up social and economic structures which might adapt elements of market capitalism (Great Britain is part of the union!) but nevertheless

defend the social-economics elements of continental models (i.e. trust based capitalism). From this point of view the institutionalization of European work councils is a very important step forward and I fully disagree with Berndt Kellers very pessimistic view on this yesterday in the plenary session. He pointed out, that those work councils have „only“ the right of information and communication. Well – from my point of view, information and communication are the very preconditions for building up social movements – of course this is not for sure, but at least now those preconditions exist and may develop their own dynamic. But this is also a question of politics of the European union movement and the ETUC on the European level.

(Mr. Suzuki) I have three additional points to supplement my initial presentation. The first concerns ownership and control. Their structure has been of course changing over the past decade, so what can we say about industrial democracy in Japan? We do have serious problems. . . let me say that . . . Let's say foreign capital occupies 60% of the total capital of a company. This is rather high, but it's still a reality. The question is can trade unions control such a situation? My answer is no, I don't think we can do that.

My second point is this. Even when the structure of ownership changes, is it possible for internal democracy to continue to be advocated? I think that at least we should try to develop argumentation that will make it possible for us to maintain that internal democracy. It is always necessary regardless of the structure of ownership. Now of course we have share; and some people own the company in terms of ownership of those shares. My question here is one of legitimacy? Is this a kind of right share-owners have over management in terms of the number certain shares under their belts? The commercial code says that . . . shareholders commit to invest in the company but they also incur the risk of losing that investment. Once the company goes bankrupt, the share just another piece of paper. Investors also hold residual supremacy, which is the basis of their right to claim management of the company. But the same thing can be said about workers as well.

The American expert on corporate governance, Ms. Margaret Blair, is very emphatic on this point. Workers devote their skills and bodies to the company. Their risk is much more than the investor. Workers cannot diversify themselves among different companies. If the company goes bankrupt, they lose everything. The risks are not only higher for workers, what' s important is that they have the skill and the will and morale to produce. But once you lose that morale, there is nothing left of business activity. Of course money is important and physical assets are important, but human resources provided by the workers themselves are even more important. If investors think that they have a justifiable say in the managerial matters of the company they have shares in, then I think workers, who have invested much more, have an equal right. If there were some legal guarantee for workers to exercise of their rights, I think that would be at least some basis for rule by internal industrial democracy.

Thirdly, concerning stakeholders, I am mainly speaking of internal industrial democracy. Of course, speaking only about internal industrial democracy could result in very egotistical individual companies forgetting about the wider social interest. I should

have mentioned this in my initial presentation. Japanese corporations are islands to themselves. They are part of a larger network. Trade unions in Japan are organized according to individual companies, but they are also organized into industrial federations with Rengo as their ultimate national center. Therefore, I must conclude that in general no industrial democracy can be complete within any individual Japanese company. Our industrial democracy must be open to the rest of society. That is all. Thank you.

(Prof. Michio Nitta) Thank you very much. My name is Michio Nitta. Prof. Dore spoke of something very important when he said that we must not only discuss what corporate governance is, but also why it is. Why did we start this debate in the first place? Now, Prof. Dore spoke of changes in American capitalism. That is where the corporate governance debate began. Now we also have heard presentations describing corporate governance in other countries against a backdrop of traditional societies.

Mr. Suzuki spoke of the Japanese case. What I think is very important can be explained in something that happened to me. I'm talking with some enterprise-based trade union leader. He says that in labor's yearly spring offensive, he and his cohorts are not interested in the small wage hikes, but rather in higher returns on the stock determining their pension funds. Trade unions that organize workers based on enterprises are interested in company financial performance because of the benefit accruing to pension funds.

Also, we are not really quite sure of the validity of the enterprise-based trade union system. As Mr. Suzuki states, are we confident that the Japanese system of trade unionism will be protected? No. Why are we not confident? Because of the burst in the economic bubble that occurred and the stagnation that followed in stocks prices, which when rising solve all of our problems. It is a fact that stock prices are declining in Japan. I don't know the solution, but I do know that that is the major problem facing corporate governance. If we cannot solve that problem, we have no other option but to go more toward the Anglo-Saxon model.

That's my opinion, thank you very much.

(Dr. Alexander Fliaster, Germany) I have two questions; the one is a question for Prof. Dore and the second one a common question for Prof. Dore and Prof. Inagami. The first question is, I analyzed many stock options plans by Japanese companies, American companies, German companies. I think they have one thing in common. That the circle of the people who are eligible for these stock option plans are very closed. It's about 100 or 200 for Siemens, about 59 workers for Toyota of something like that. So it's a group of top management and executives only who have them.

The question is that at the same time when all the knowledge based companies not only start-ups but also other companies give shares to employees. Do you think that this trend of more employee share ownership can change the corporate governance system? And, if so in what manner do you think that this trend is in the future? It becomes more people based capitalism in companies. That my first question and should

we think of the institutionalization of the employee share ownership to give them more rights or proxies? The second question is, this has been said by Mr. Suzuki an inordinate community guidelines of corporate governments, group corporate governments is something about leadership, property, integrity and trust as well. So the discussion about the transformation of corporate governments has been in transit not only Germany but in the United Kingdom as well. Many bankruptcies... the very dramatic...and of bankruptcy of Hotzman. These bankruptcies are consequently the mistake of there top managers. And do you think that there are possibilities to analyze top managers a little bit to increase the accountability in terms of money? Let's remember the case of LTCB Japanese that went bankrupt and Mr. Sakai from the "Keizai-kikaku-cho" in Japan. He told that many managers have been ordered to give back severance pay back. Many pay cuts for management as a reaction to the bad decisions making. So what about the penalization of the management for a bad decision as a measure, a possible measure for the increasing of the accountability of corporate governments?

(Prof. Dore) Well let me start with the question about stock options. Would more stock options for employees improve the Japanese system? It relates also to what Suzuki-san said about the importance of employee share ownership trusts. I'd say absolutely not. One of the strengths of the Japanese system has been that the stock market has not been central to the Japanese economy. It is true, of course, that the collapse of the bubble has been one of the most important determining factors of the Japanese economy over the past 10 years. But until the great boom of the 1980's the stock market was seen as a place where shady speculation ruled, where the market was largely rigged. Well, that was a healthy view of the stock market. It created very favourable conditions for the running of an effective economy in Japan. But now as Nitta san said, even trade union leaders are talking about the stock market and about their concern to find a good fund manager who will increase the value of their pensions. This cultural Anglo-Saxonisazation has gone an enormously long way. I would say: "Stop it!" Insist, as Suzuki-san was saying, that in the last resort rights of employees in a company depend on their status *as* employees. They risk their livelihoods by choosing a career as a member of their company and it is participation in governance *as employees* that is important. I am favour of the appointment of employee representatives to something like a supervisory board. There are proposals in the Diet for changing the Kansa-yaku system. Why not have employee Kansa-yakuin on the board?

I think the situation in Germany and Holland and the situation in Japan are really different. The outcome of the conflict between the shareholder interest and the employee interest in German and Holland will depend on the political strength of the trade unions movement as a consolidated movement. Now the political strength of the trade unions as a consolidated movement in Japan – and I'm sorry to say it in the presence of so many people from Rengo – is low indeed. I was distressed to know that the Rengo representative on the Government's Social Security System Council was in favour of changing the base for calculating pension levels from a link to average earnings to a link with the cost of living – in other words freezing the pension in real

terms. And I gather that was with the approval of Rengo. Which seems to me quite extraordinary.

We are here discussing corporate governance, the control of corporations. But having a union movement that will defend the welfare state, defend the pay-as-you-go you go pension system is also important. There is a much greater prospect for such a defence being mounted in the German-Dutch system, thanks to the fact that the unions do serve to maintain some sense of class solidarity – and provide a basis for political mobilisation, whereas the Japanese enterprise union system tends to create a sense of identification with, and loyalty to, the enterprise rather than to fellow-workers outside the firm.

I was thinking, when you were talking at the end of your speech, Suzuki-san, about the wider implications, whether if Japanese corporations did develop some form of institutionalised employee representation system, would it make much difference to the way corporations are run? Employee representatives would be likely to want to build safeguards against takeovers but managers want to do that too. At the moment the continuance of the Japanese system depends on the continuance of a particular kind of managerial attitude. It depends on managers continuing to have -- as they have showed in your survey -- a sense of being “members” of the firm like all the other employees. Though they have been promoted to a position of responsibility and have to deal with the outside world in a way that they other employees do not, they still have the interests of the employee community at heart. The continuance of that stance depends on the non-penetration of stock option ideology. It depends on being content with the modest salary that they have and not envying those managers with the big yachts and mansions on the other side of the Pacific. And that in turn depends on the continuation of some kind of communitarian ethic in the society at large. The prospect of that I cannot predict, but everything suggests that in the long run that communitarian ethic is likely to erode.

But to return to the question of social responsibility I cannot forget the Minamata incident. It was widely noted that the trade union in Chisso – the offending company, the polluting company which caused so many deaths – did nothing to oppose the company’s cover-up policy for all the power that it had within the company. It did nothing to make the company face up to its social responsibility. Now I'd hope that this not going to be typical of what would happen if employee power were institutionalised within corporations. I would hope that the unions could act to develop within individual corporations a sense of their social responsibilities, even if they do not have the sort of structure of the German and Dutch unions that keep a sense of class loyalty alive.

(Prof. Inagami) I'd like to say shortly with regards to the stock options in Japan. I can not find a reason for introducing stock options plan to be common in Japan. I can not find a reason for the management to move from one company to another. That kind of market for the management does not exist in Japan. Management does affect the dividend to shareholders and the success of management will result in the bonus. But

stock options plan is not widespread in the current Japanese system yet. Maybe venture businesses are exceptional if they want to gather a talented workforce. Maybe stock options would be offered and in fact that is happening to a certain extent and in regards with social responsibilities of the management. In Japan in 1993 the system for the board of executives and directors responsibility with the shareholders have changed. Again the commercial code is being revised so that the liabilities ultimately will not be thought so severely. At least that is the proposal by the leading Liberal Democratic Party. So again the question is whose responsibility is it? To whom do you bear that responsibility?

I think that we have a few more minutes.

(Prof. Dore) A major reason why the effective monitoring of Japanese managers is necessary which is cited in all of the reports on corporate governance is the so-called 'Fushoji', the unfortunate incidents. Now the unfortunate incidents are of 2 kinds. One is paying off gangsters so that they do not make a fuss at the annual shareholder meeting. The director in the firm who was given the job of dealing with the gangsters, was generally looked upon as a sacrificial lamb; and everybody else sort of pitied him. Having to do the job was bad enough, but then to be found out and sent to jail was the ultimate misfortune. That is one kind.

The other type was covering up the truth about bad loans after the collapse of the bubble—making sure that the firm could survive until better times by creative accounting -- in other words fiddle the accounts to make that you are technically insolvent not apparent in the expectation that when the economy recovers and you can make profits, you will get back into the black again. This is what American banks did when they too were technically insolvent in the early 1980s.

Now both of these types of incidents involved illegal behavior on the part of the managers, but in the interests of the firm, not in their own interest. That's very important. The Metallgesellschaft scandal in Germany and many of the scandals in the United States and in Britain are about individual managers using their power to enrich themselves at the expense of the company. If you ask for incidents of this kind in Japan, people will tell you about the famous Mitsukoshi president. That happened 20 or 25 years ago. Such behaviour is rare. And that reinforces my point about the continuance of the Japanese system depending on the ideology of the Japanese manager.

(Mr. Kiyoharu Matsuura, RENGO) RENGO has been mentioned several times in the discussion, so on behalf of RENGO I would like to say a few words.

Here in Japan conventional labor-management relations are as Prof. Dore has pointed out. First, workers are eventually promoted to become managers. In other words, executives are ex-workers. One of the beauties of the Japanese system is that both labor and management do not really emphasize the interests of shareholders. Conventionally, emphasize has been put on expanding prosperity, and benefiting shareholders, or employees for that matter is a consequence of prosperity. However in our present day

globalized economy, short-term shareholder benefits are becoming more important. Especially with regards the United States, Japanese savings are being invested in the U.S. stock and bond markets to help the country on other side of the ocean. The recent management style in Japan has become more Americanized — i.e., more short term than long term — and I am gravely concerned with this change. Should this continue, as Mr. Suzuki asked earlier? Maybe this is going to cause even more dramatic changes. The corporate supervising system and the board of directors need to have representatives of the employees. Should that not be implemented, maybe more employees should become shareholders in order to have more say in the management of the company. Maybe that is what's necessary, with the extreme case being financial institutions ensuring it. If management is so irresponsible for not disclosing information, then maybe the employees should become the shareholders to hold management accountable at general shareholders meetings.

Under current industrial relations in Japan, you have a better chance at getting confidential information from management or at their consultative bodies than at shareholders meetings. Should the current situation be changed to protect the interest of workers and their employment? We need to look at such an approach as well.

Another thing. As Dr. Nitta said, the annual spring labor offensive is getting us minimal wage increases. Some union leaders are saying it's better to have qualified pension fund managers, but such statements do not represent the labor movement as whole. This is just a handful of labor leaders who have access to corporate inside information.

It is true that the enterprise-base trade unions are very common in Japan, as in the case of the "Chisso" and "Minamata" mercury poisoning case. Some union leaders will have you believe that nothing was said to management about the problem. But there is a growing awareness on the part of union leaders that they have to pay more attention to the social responsibilities of their corporations to the outside world.

Things are changing and I would like to emphasize that awareness is growing.

(Prof. Inagami) Now we already behind schedule so if anybody wants to give the last comment or question we can accept it.

(Prof. Dore) Can I make just one comment on what was said just now about buying employees buying shares. If, as a trade union, you are reduced to the tactic of buying shares in order to appear at shareholders' meetings and have an influence on the way the company is run, that seems to me to surrender the possibility of insisting on employee rights in their capacity as employees. It accepts the principle that shareholders' rights are dominant. I would hope that instead of doing that, RENGO could push more and more strongly for employee representation -- as *kansayaku* or whatever. That seems to me a much more effective way of doing things.

(Prof. Blanpain) Mr. Chairman I fully agree with that. That is why the possession of stock by workers is a very difficult question in Germany and Holland. The principle

question is do you have influence based on being a worker in an enterprise or having shares. Another point raised here was about workers' representation on supervisory boards. This is also an old problem in the German and Dutch systems. The choice between the election of the members and our system of controlled co-operation is the very principle of how to obtain influence at that strategy level. Thank you

(Mr. Matsuura, RENGO) I was not limiting the possibilities just to worker participation in the shareholders meetings, but also just offering one or two examples. Some unions do actually buy shares and can influence general shareholders meetings. So I was thinking of one or two examples of one option.

(Prof. Hoffmann) I do agree with Prof. Dore, nevertheless the question is in which logic do shareholders decide. For example, we know a lot of examples in Germany that environmental group are buying shares in order to influence the behavior of corporation. And that's a problem and if for example the trade unions are presented as symbolic shares in the assembly of the stock of the shareholders that would be perhaps a good thing. But they have to use those votes in the logic of the trade unions not in the logic of the shareholders. That's a problem. I think too.

(Mr. Matsuura, RENGO) Just very briefly. . . where unions and shareholders are concerned. The international corporation of free trade unions is not pushing for workers and to purchase shares in companies to influence ethical investment, and environmental concerns, investment activities and so on. I think that workers should get all the power that they can as employees, shareholders or whatever. Thank you.

(Mr. Hisaya Noguchi, RIALS) Japanese labor unions should have some kind of representation on the auditing committees, but as you know in Japan the company president decides on directors and auditors. Moreover, it is almost like general managers or workers or auditors do not have much influence anyway. So I think that the workers council should be revitalized, and collective bargaining should again be revitalized. I think that traditional labor union activities should be utilized more so that labor unions and workers can exert more influence. Recently, we are seeing drastic changes in the environment. Managers are really not sharing the perspectives of the workers. In other words, managers who are becoming more like managers and not like employees. So in that case labor unions perception or activities should be changed, too.

Concluding Remarks

(Prof. Inagami) Well, we are really out of time. I was going to summarize the discussion, but I have decided to focus on just three very basic points. The first one is that we should always take into account the fundamental problems. We should keep in mind such basic questions as "For what, and for whom, the corporation is run?", or

"What sort of social influence will be expected by the undergoing corporate governance reform?" Secondly, for considering about such fundamental problems, we need to have a precise recognition of the real world based on facts, analysis, as well as international comparison. So, it is desirable for us to continue to exchange information and opinions. The third point is that we should have a very clear will, as I said in my general introduction. We are standing at the crossroads, and that is why we need to have a very clear will and intention. In conclusion, we must, firstly, study the basic questions, secondly, learn from facts, and thirdly, have clear intentions. Thank you.

Closing Address

by

Prof. Sei Kuribayashi

Director General

RIALS

I would like to thank everyone here for your active participation in the discussion. It lasted a very long time. When we have planned to organize this special seminar, we tried to concentrate on one issue, industrial democracy and corporate governance, that is very important and immediate in all the countries represented here. Many of you pointed out that you have been able to carry out very active discussion on the basis of some common ground among us. I myself have been brought up as an economist, and when it comes to corporate governance and industrial relations it's not really my main field of study. But let me take this opportunity to say a few words including saying a few words about the Japanese situation.

My first point. When we discuss these issues, I notice the difference between economies that are going smoothly, and economies which are not going smoothly. And sometimes, the good performing economies influence the arguments and debates in the not so well performing economies. However, I feel encouraged to hear about the Dutch miracle instead of just singular emphasis on the Anglo-Saxon model. We have another model from which we can build our argument regarding our specific topic here.

Also when it comes to corporate governance, we need to take into account such factors as who is providing the capital to the company involved and who are managing the companies, and also who are working and manning these companies. Of course, the inter-relationship between these three groups of people is also important. Therefore, when we look at the Japanese situation, we must notice possible changes in the way the companies are going to procure the capital. The general line of the changes probably will be a shift to a greater emphasis on direct procurement of capital through the stock market.

In the past, we have said that traditional way of securing enough capital is

through the bank, which could be common in Germany too. Sometimes, the individual corporation has their main banking quotes and these banks sometimes perform the role of monitoring the corporate behavior. However, after the bursting of the bubble economy, people have lost confidence in the banks and their ability to supervise corporate behavior. At the same time, of course, banks are losing the power to provide necessary capital. In Japan, we are actually seeing the emergence of holding companies, which would probably involve some changes in the bookkeeping system. What influence these changes will have must be carefully looked over.

As Prof. Dore also pointed out, we will see more influx of foreign capital into Japan and capital composition is going to change. What about the managers in such a situation? We don't really have a labor market for managers. We will continue to rely on the internal resources within corporations to get the managerial skills. This will not change for sometime to come. On the issue of stock options, I agree with Prof. Dore. Stock options, as a system, as a means of giving incentives to managers, seem to be not workable in Japan. It will be difficult for the stock options system to give greater incentives to managers.

At the same time, we should try to avoid company scandals or such anti-social behavior of the Japanese corporation. Together with a new bookkeeping system, it is necessary to make new ideas for the monitoring system. And we will have to make greater efforts to harmonize the corporate life and the community we live in. In this aspect, the role of trade unions may be very important. So, the Japanese trade unionists must be more active for the reform of the corporation.

It must be noted that, in Japan, we have enjoyed the trust relationship between management and employees. This trust relationship must be the basis for the corporate governance reform. So, industrial relation is indeed an important factor in examining the corporate governance problems.

These are some of my impressions of this seminar. It may be difficult to get a conclusion for any of these issues. As I have just pointed out, we should keep attention to these issues. I hope to have a similar opportunity as today for discussing these matters again in the future.

In organizing the seminar we had a great deal of cooperation by the people who have come from abroad. Prof. Hoffmann, Prof. Goodijk as well as Prof. Dore. I would like to take this opportunity to give my sincere appreciation for their contributions. I also take this opportunity to say thank you to Prof. Inagami who has chaired this session. Once again, thank you for your kind corporation for such a long time, thank you. This closes the program.