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## AN ISSUE OF CORPORATE GOVERNANCE IN JAPAN: FOR WHOM COMPANIES EXIST?

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### Abstract

*What is corporate governance? This concept has been interpreted in various ways. In the USA the corporate governance is to subordinate a company's managers to the shareholders' benefit. In contrast, the European type of corporate governance attaches importance to the social value of a company from the standpoint of stakeholders in the wide sense.*

*In this paper I will examine desirable direction of the Japanese type of corporate governance. For that purpose, firstly, specific features and problems of the Japanese style management will be examined. Secondly, introducing opinions of two representative researchers in Japan, problems of the American type of corporate governance will be examined.*

**JEL Classification:** L26, M14, M50.

### I. Introduction

Not so long ago, perhaps in mid 1980s, 'corporate governance' began to be discussed. What is corporate governance? This concept has been interpreted in various ways. In the USA a manager's work in a joint-stock company is to maximize shareholders' economic benefit measured by the shareholders' value. Consequently, the corporate governance is to subordinate a company's managers to the shareholders' benefit. In this way, the American type of corporate governance aims to maximize the shareholders' benefit from the standpoint of shareholders who are stakeholders in the narrow sense (Kakurai, 2005, p.88). Many Japanese people feel that something is wrong with the way of thinking that shareholders should be the almighty in a joint-stock company.

In contrast, the European type of corporate governance attaches importance to the social value of a company from the standpoint of stakeholders in the wide sense. Here the stakeholders include not only shareholders of the company but also creditors, employees and consumers (Ibid., pp.93-94). However, if many stakeholders inside and outside a company are included in the persons concerned of its corporate governance, it seems to be too wide to clarify the problem.

Indeed, without capital any companies cannot be established. But it is sure that without daily labors and efforts of workers who work at the companies they will never operate and develop. How should we understand the problem? In this paper<sup>1</sup> I

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will examine desirable direction of the Japanese type of corporate governance. For that purpose, firstly, specific features and problems of the Japanese style management will be examined. Secondly, introducing opinions of two representative researchers in Japan, problems of the American type of corporate governance will be examined. Finally, conclusion will be drawn.

## **II. Japanese Style Management**

Positive evaluation of Japanese style management has been prevalent in the world in the 1980s and early 1990s, reflecting high economic growth in Japan. At that time many people say as follows: In US enterprises shareholders' voice is so strong that share prices and distribution of dividend have been given priority in enterprises' management. Enterprises performance measured in every quarter has been attached importance. Therefore, the top management apt to manage their enterprises in short-run perspective. In contrast, in the case of Japanese enterprises the top management manage their enterprises in long-run perspective. They tend to distribute a low dividend, but instead they tend to increase investment, giving priority to growth. Such a behavior is consistent with their shareholders' interest.

Japanese style management consists of three pillars: Seniority system; Life-long employment; and Company-wide trade union. These pillars have contributed to loyalty of employees to their companies. However, this can be applied only to big companies.

According to Iwai (2003), characteristics of Japanese companies can be summarized as follows:

(1) Compared with Europe and the USA, shareholder in most of Japanese companies have weaker voice and they can hardly put a word in companies' management;

(2) In most of Japanese companies the top management (executives) has been chosen among employees through the competition for promotion within a company organization. They are running their company with expansion of company itself being as their target rather than the profit rate;

(3) Employees, not all but the core, of Japanese companies have been protected by Life-long employment system, seniority wage system and company-wide trade union, and therefore, they have a strong sense of belonging to their companies;

(4) In places of work in production, distribution and development of products in Japanese companies they attach importance to the informal relationship among employees who share information;

(5) Many Japanese companies have organized themselves into several groups, and they have cross share-holding and maintain horizontal 'keiretsu' relationship for a long-term;

(6) Many Japanese companies have maintained vertical 'keiretsu' relationship for a long-term with themselves on the top and with sub contractors and sub-sub contractors;

(7) Many Japanese companies are financing their funds from the main banks which they have been maintaining a long-term financial relationship (Iwai, 2003).

Japan has experienced the so-called a bubble economy due to high growth rate with speculation in real estates after the Plaza Accord in 1985. The bubble has burst in 1991. As a result the banking sector had a huge amount of bad loans. The solution of this problem has prolonged, and with this the Japanese economy stagnated in the 1990s, which was called a lost decade. Hence appeared negative evaluation of Japanese style management at home and abroad. In Japan there are researchers who have pointed out problems of Japanese enterprises since a long time ago. Among them Hiroshi Okumura, the author of a famous book *Corporate Capitalism: 'Company-centered System'*, criticizes defects of Japanese enterprises system. In his opinion, as for the relationship between a company and its employees, 'Japanese style management' has been in fact a 'company-centered' system. The relationship between a company and its shareholders has been also in fact a 'company-centered' system. Based on such a 'company-centered' system, managers represent the company, and they never represent its shareholders nor its employees. It is managers who represent 'the company itself' and as persons represent the company (Okumura, 1984, p.34).

According to him, it is the first half of the 1950s that concentration of shares in hands of corporations showed a noticeable increase for the first time. At that time the restriction on possession of shares by financial institutions and business corporations was eased owing to a revision of the anti-monopoly law, and with this as a trigger, concentration of shares in hands of corporations occurred. At this stage the reorganization of Zaibatsu to enterprise groups proceeded on the one hand, and the grouping of enterprises (= to organize a keiretsu) by big companies proceeded on the other hand. The concentration of shares at the second stage occurred from the second half of the 1960s through the 1970s. In response to the liberalization of capitals, 'organization of stable shareholders' was pursued as its countermeasure. As a result, cross-share holding ('mochiai') by corporations has proceeded, and the percentage of individual shareholders in the total shares has become very small (pp.53-61). Managers became able to manage their enterprises without minding shareholders' interest. A dividend has been usually very small and it has been often even lower than interest rate (Ibid., p.68).

Who decides managers? According to the Commercial Code, it is the shareholders' general meeting that elects directors and internal auditors. A representative director (= 'Shacho') is to be elected among directors. In most cases, however, shareholders' general meeting is held with cartes blanches of corporate shareholders, and candidates of directors and internal auditors proposed by the company are usually approved as they are (Ibid., p.163). Consequently, in Japanese big companies, as a matter of fact, the president (representative director) decides directors, and when he retires he nominates his successor. Internal auditor is a position for a person who is unable to become a director and the second highest position that he can attain within the company. Therefore, it is impossible to expect that internal auditors can check managers' deviant behavior.

There have been many serious scandals. Here I will introduce two typical cases which occurred in recent years:

- Case of Kanebo. A long time ago the company was a famous textile company and later became a diversified company with a cosmetic department and some other departments. Although the company fell into a situation in which its debt exceeded its capital since several years ago, the top management continued to announce falsified profit and distribute dividend every year by window-dressing. At last three years ago the real situation was brought to light, and the company went bankrupt. Chuo Aoyama, one of the four major audit corporations in Japan, was cooperating with Kanebo's window-dressing, and this audit corporation was severely criticized and was obliged to be dissolved later.

- Case of Mitsubishi Automobile Co. Since a long time ago the company has avoided the recall of cars when troubles occurred with cars and dealt with troubles separately. Therefore, the company has been often criticized for its corporate culture giving profit priority over safety. At last in 2002 a serious accident occurred where a tire, which was dislocated from a truck's axle due to a badly adjusted hub, hit a mother and her child walking along a sidewalk and the mother died instantly. This affair became an object of public concern. The top management of Mitsubishi Fusoh, which used to be the Truck branch of Mitsubishi Automobile Co. and became independent a few years ago, was forced to resign.

It is certain that Japanese enterprises are now urged to change themselves. In order to correct such a situation revisions of laws have been repeated in recent years. For example, the Commercial Code has been undergone minor revisions for more than 10 times during past 5 years. The whole Commercial Law and the Corporate Law were changed in 2005. The revised Commercial Code, which came into effect in 2003, allows major companies to adopt the form 'companies with committee system'. I would like to add that here a major company in the Commercial Code denotes a company capitalized at 500 million yen or a company with its total debts of more than 20 billion yen (Kakurai, 2005, p.98). In this type of company the role of board of directors has changed from management into supervision. Executive officers are no longer members of the board of directors. Instead, many outside directors, who should reflect shareholders' interest, are introduced to the board. The board of directors has three committees; Nomination Committee; Compensation Committee; and Auditing Committee. The board of directors choose CEO (Chief Executive Officer) (Yamada, 2004, p.110).

In the case of SONY outside directors hold the majority in its board of directors. Major companies such as Hitachi, Ltd., and Toshiba transformed themselves into 'companies with committee system'. As of 2005, the number of 'companies with committee' system exceeded 100 (Kakurai, 2005, p.99)

Recently in Japan a new social phenomenon has emerged which reminds us an American way of business. A typical case is that of Mr. Hirofumi Horie. He was an owner of an IT related company (Live Door) and other companies. He left the University of Tokyo halfway and dedicated himself to IT business. His controversial

opinion: “In this world there is nothing which cannot be bought with money” repelled older generations. Younger generation rather welcomed him. Two years ago young as he was (32 years old at that time), he tried to acquire a TV company. He run the general election in September 2005. He was defeated but was warmly received by younger generations. He became a hero of the time. In January 2006 year, however, he was arrested for violation of the Law on Securities Exchange, and was brought to trial. In March 2007 he was sentenced to two and a half years’ penal servitude.

Cases of adversary takeover of enterprises have been very rare in Japan. In recent years, however, the situation has changed. A noteworthy case is Bulldog Sauce Company (BSC), a Japanese food company, vs. Steel Partners (SP) an American investment fund. It became known in 2002 that SP owned shares of the BSC, but there has been almost no contact from the former. Suddenly in May 2007 SP jumped into the largest shareholder with 10.52% of the total shares and offered take-over bid (TOB) with the aim to obtain all the shares. In order to counter this move, BSC adopted a poison pill, to put it concretely, the company planned to decrease the percentage of the shares held by SP through the distribution of reservation right for new shares free of charge. SP applied for a provisional injunction against the resolution of BSC’s shareholders’ meeting. This case went up to the Supreme Court. A petty bench of the Supreme Court judged that the distribution by BSC of reservation right for new shares free of charge does not contravene the purpose of the principle shareholders’ equality, and rejected SP’s application. BSC won the case, but it was obliged to spend a huge amount of money for trial-related expenditures and the payment to SP.

This case tells us that in Japan many people have feeling of wrongness in investment funds from foreign countries which loudly demand Japanese companies to increase dividend, giving shareholders’ short-term benefit priority over the companies’ long-term benefit. Mr. Warren Lichtenstein, President of SP, said that he is not interested in a taste of the sauce, but he requested a change in the top management of the company. And he said, “I want to enlighten managers of Japanese companies and Japanese investors”. Such an arrogant speech offended many people in Japan.

Will Japanese enterprises be approaching toward the type of American enterprises hereafter? In my opinion, that is not likely to occur. Firstly because in Japanese society the tradition of “productivism” remains as Ronald Dore (2001) points out, and therefore many people are reluctant to play money games. Secondly because American type of corporate governance has serious defects. Below I will introduce arguments of two distinguished researchers in Japan: Hiroyuki Itami, Professor at the Hitotsubashi University, a specialist on Business Administration, and Katsuhito Iwai, Professor at the University of Tokyo, a specialist on Theoretical Economics. Professor Itami lays emphasis on differences in culture and tradition. Professor Iwai finds out a theoretical error in the American type of corporate governance.

### III. Professor Itami's argument

Itami defines corporate governance as follows: Exercise of influence on the management by 'people possessing citizenship' in an enterprise in order for the enterprise to continue showing its desirable performance (Itami, 2000, p.17). According to him, "Corporate governance is different from the management of an enterprise. The management of an enterprise is done by the managerial strata including the top management and it means the controlling action of business activities. The people possessing citizenship in an enterprise entrusts the controlling action to the managerial strata. ... Check on managerial strata, managers in particular, is corporate governance" (Ibid., p.18).

The problem is how to comprehend 'people possessing citizenship' in an enterprise. The current Corporate Law prescribes that sovereign in an enterprise is its shareholders. However, Itami stresses that the Corporate Law is not a law which explicitly prescribes the relationship of rights and duties between people working in a company and its shareholders. He says, the Corporate Law is a law which prescribes the relationship of rights and duties between providers of stock capital and debtors within (and only within) the people who provided funds. He adds, an argument that Japan has a legal system of shareholders' sovereignty and, therefore, employees' sovereignty is against the law on the ground of the Corporate Law does not hold good (Ibid., pp.84-85).

According to Itami, in Japan a generally accepted notion among people working in enterprises, especially big enterprises is that a company belongs to the people who work there (p.59). Corporate governance of Japanese enterprises is shareholders' sovereignty in "tatemae" (a stated principle), but it is employees' sovereignty in "hon'ne" (reality) (pp.49-50). Here employees' sovereignty of Japanese enterprises means that employees' sovereignty has primacy with shareholders' sovereignty being secondary (p.59). However, it is noteworthy that in Japan usually managers have been chosen among ordinary employees who have competed for promotion within a company. Therefore, Itami includes also managers in a group of employees in this case. Namely, he uses a category of employee in a wider sense. In addition, he classifies the employees into several groups. Not all employees are equally substantial 'sovereign'. There is a group of employees who commit themselves to the company for a long time and can be called a core member. People who belong to this group are substantially sovereign. Part-time workers and workers who do not intend to work in a company for a long time are excluded (Ibid., p.60).

Itami explains enterprises with employees' sovereignty by his unique concept 'Jinponshugi' (Human capitalism). One of his main works is *Jinponshugi Kigyō [Human Capitalist Enterprises]*, published in 1987. 'Jinponshugi' is a word coined by Itami. He extracted it as "a principle that has existed behind the customary practice of management which most of the postwar Japanese enterprises have half tacitly done (Itami, 2000, p.70).

In his opinion, principle of management and its institution can be formulated in

the following way: Institution (System) = Environment  $\times$  Principle (Itami, 1987, p.20) . Later readers will be able to understand more concretely.

According to him, the enterprise system has the following three elements: (1) Concept of enterprise: to whom an enterprise belongs?; (2) Concept of sharing. This is his unique idea. Readers might confuse it with companies' share (stocks), but it is quite different from that. The concept of sharing relates to who share what and get share of what?; and (3) Concept of market: how are enterprises connected with one another? (Ibid., p.31). He compares Human-capitalism and Capitalism (Table 1).

**Table 1. Human-capitalism vs. Capitalism**

	Human-capitalism	Capitalism
1. Concept of enterprise	Sovereignty in employees	Sovereignty in shareholders
2. Concept of sharing	Dispersed sharing	Unified sharing
3. Concept of market	Organized markets	Free markets

Source: Ibid., p.37.

According to him, behind the difference between Capitalism and Human-capitalism there are different views on enterprises and people. There are three views of enterprises. Activities of enterprises are classified into the following three types: 1) Collective of activities of material transformation; 2) Collective of information processing and learning; and 3) Collective of psychological reaction of enterprises' member. In capitalist enterprise system there is stratification of three views of enterprises. At the bottom there is a view of materials. People are grasped as things. In order to make the things function a view of information becomes necessary. Then psychological aspect of human beings should be considered as an element which affects the information activity. In contrast, in human-capitalist enterprise system the three views of enterprises exist on equal footings or as a total behind the system. There is no stratification of the three views, or weak stratification if any. An enterprise is grasped as a collective of human beings. Human beings as physical substance, human beings as informational substance and human beings as psychological substance are all explicitly taken into consideration (Ibid., p.51)

Why was it born in Japan? Was it due to its culture or the epoch? According to Itami, prewar society of Japanese enterprises was much more capitalistic than now. Itami presents the following hypothesis: If we distinguish a principle from an institution in our consideration, the principle of human-capitalism is not bound by the Japanese culture, but it is most likely that the institution as receptacle, which has supported the principle during the post-war period, has been affected by the Japanese culture (Ibid., p.60).

**Table 2 Differences in Competition between Human-capitalism and Capitalism**

Human-capitalism	Capitalism
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Competition in the long run	Competition in the short run
Competition with visible face	Competition with anonymity
Multi-dimensional competition	Mono-dimensional competition
Competition among groups	Competition among individuals

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Source: *Ibid.*, pp.53-54.

Itami explains the biggest reason why has such common principle emerged. He lays an emphasis on the circumstances in which the postwar Japan was placed. The situation such as disorder, critical situation and burst of people's energies for democracy gave rise to a quite democratic and new enterprise system like the human-capitalist enterprises system (*Ibid.*, p.61). He describes the situation in Japan immediately after the war: Quite a large-scale of democratic reform was enforced by the Occupational Army. Activities for democratization were pursued by managers, for example, Keizai Doyu Kai (an association of managers) with Mr. Kazutaka Kikawada as a central figure. At the same time, many trade unions were newly formed. In miserable economic situation industrial strife often occurred. The experience of the strife in such an extreme situation led to perception that simple repetition of selfish behavior and conflicts of interests would result in ruin of enterprises themselves and loss of livelihood of all the working people.

Due to dissolution of Zaibatsu, the so-called "capitalists" have quickly disappeared from Japan and only managers and workers have remained as the persons actively concerned. In addition, most of managers from the prewar period were expelled due to the political purge. As a result, in many enterprises newly inaugurated managers were people who had taken pains close to production processes as middle-ranking executives until yesterday. They were fellows in the production processes.

Itami (2000) writes about activities for democratization pursued by managers. In his book Itami introduces an important material which he recently found among old documents. It is Draft Plan of Democratization of Enterprises, published in September 1947. He quotes an essential part from the Draft Plan, which says: "It is our principle that an enterprise is a cooperative society composed by management, capital and labor. ... The absolute relationship of the shareholders to the enterprise shall be changed. ...". It is very impressive that such a radical statement was announced not by leaders of trade unions but by managers of companies. Its central figure was Mr. Banjo Ohtsuka (President of the Nihon Special Steel Pipe Company). By the way, also Kakurai (2005) mentions Mr. Banjo Ohtsuka (p.155).

According to Itami, quite naturally, perception that an enterprise belongs to working people has emerged in such a situation. It is a natural discussion that sharing in enterprise shall be dispersed democratically. Every enterprise is together with its business partners in the same boat, and therefore, they cannot survive unless they cooperate with one another. An era has come when the principle of human-capitalist system can be implicitly shared (Itami, 1987, p.62). Taking this context into mind, readers will be able to understand Itami's following formula: Institution of Japanese



style management = Principle of human-capitalism × Environment of the postwar Japan (Ibid., p.64).

**Table 3 Strength and weakness of Human-Capitalist System**

Strengths:	Weaknesses
Sovereignty resides in employees. Persons worthy of sovereign are working people. Employees sovereignty is more efficient than shareholders sovereignty in the two points:	Weak check of mismanagement
1. a community of interests	Shareholders' meeting has been reduced to a shell, only a ceremony.
2. informational efficiency of decision-making	
It is easy for employees to accumulate skills and knowledge effectively.	Internal auditing (by Internal Auditors) does not function well.

Source: Prepared by the author based on Itami (1987) and Itami (2000).

Human-capitalism has strengths and weaknesses as shown by Table 3. Of course, Japanese enterprises must overcome such weaknesses while preserving their strengths. These are future challenges for corporate governance in Japan

By the way, what will become of shareholders? On this point Itami says as follows: People who provide a company with money do not work in the company. Nor they are persons who take part in activities in the company and receive satisfaction from the work in any forms. Basically, they are persons who aim to get returns on the investment. It would be the most suitable that shareholders would not become almighty sovereign, but silent partner with the last voice (2000, p.148).

#### IV. Iwai's argument

Iwai defines corporate governance as follows: "Corporate governance is a problem how to control managers' works in order that joint-stock are efficiently managed"(Iwai, 2003,, p.84). Iwai's main works on corporate governance include: Iwai (2003), *What will become companies hereafter?* ; and Iwai (2005), *For whom companies exist?*. A uniqueness of his arguments is that he attaches importance to the concept 'legal persons'. Naturally, his arguments begin with the concept of 'legal person'.

According to him, legal person has two aspects: persons and at the same time things. A company as a legal person can conclude a contract with other company. A company can sue (an) individual(s) or other company. Shareholders are not owners of assets of company. They own a 'company as a thing'. A 'company as a thing' is not a thing which has a concrete form. It is, in fact, abstract things called stacks or shares. Shareholders are literally none other than holders of shares (Iwai, 2003,

pp.48-50).

In order for a company as legal person to conduct its managerial activity in society, it absolutely needs a living person who actually make use of funds and concludes contracts with others in the name of the company. A person who conducts management for and in place of the company is called “representative director” (Daihyo Torishimariyaku & Shacho). In case of foundation like a museum, a trustee (Riji) does that (Ibid., p.77) .

A representative director is an organ. A representative organ such as representative director or trustee is an entity which substitutes for organ like a brain, ears, a mouth, and hands and legs of a legal person. Thereby the organ makes a legal person behave in the real society as if it is a person with flesh and blood. He is like a puppet manipulator in Ningyo Joruri, a Japanese puppet show. An important point is that manager(s) is (are) absolutely necessary for a joint-stock company. Without manager(s), a joint stock-company can never function as a person in the real society (Ibid., pp.77-78).

If a manager is not an agent of the shareholders on the basis of a contract of commission, what is he? He is “a person entrusted fiduciary” (simply called a fiduciary). Fiduciary is a quite different concept from contract. For example, it is a relationship between a sick person in unconsciousness and a medical doctor who operates the former. Relationship between persons like infants, mentally handicapped persons or senile persons who cannot, de jure or de facto, conclude a contract, and guardians who manage property on behalf of them. Jobs of experts with highly professional expertise such as lawyer, engineer, teacher, accountant, fund manager do for others are based on fiduciary, even if they conclude contracts. Because there is a big difference in knowledge and ability between them and their clients (Ibid., pp.81-82).

An organ which represents a legal person like a manager of a company or trustee of a foundation is also placed in a relationship of fiduciary with these legal persons. Legal persons are honorable person in contracts like a sick person in unconsciousness who is conveyed to an emergency hospital, but they have in reality no ability to conclude contracts. A legal person’s representative organ which expresses the will and acts on behalf of the legal person is necessarily a fiduciary of the legal person (Ibid., pp.82-83).

**Table 4 Comparison between a Classic Enterprises and a Joint-stock Company**

Classic (Individual or joint) enterprise	Joint-stock company
Managers do not necessarily exist. An owner is the manager. Even if there is a manager other than an owner, the manager is only a person who is entrusted to manage by the owner on the latter's own responsibility. The manager is an agent of the owner. Their relationship is voluntary proxy. A contract of commission is concluded between the both	A manager exists not because he has a contract with shareholders, but because the Company Law prescribes that companies should have their managers.

Source: Ibid., p.79.

Any contracts concluded among persons concerned in the relationship of fiduciary become basically a 'self-contract' of the fiduciary. It is a fundamental principle that a self-contract is invalid as a contract. Fiduciary obligation includes the following points: (1) A fiduciary should do his job not for his own interest, but do his job faithfully only for the partner of the fiduciary relationship (obligation of faithfulness); (2) A fiduciary is obliged to do his job with usual carefulness which is required in each position (obligation of carefulness). The fiduciary obligation is a 'compulsory regulation', which take precedence over contracts as 'voluntary regulations' (Ibid, pp.85-88).

Barle and Means (1932) pointed out that the phenomenon 'separation of ownership and management' has become prevalent in modern joint-stock companies. Since then, a problem has raised how to regain shareholder's sovereignty and make professional managers act faithfully for the shareholders' interest. The corporate governance system in the USA has drastically changed in response to the tendency of laissez-faire which spread since the second half of 1970s and the emergence of the Reagan Administration (1980). In 1980s it became very popular that a stock option is used as a kind of remuneration to managers (executives). Stock option is 'right to buy stocks (shares) from the company at a predetermined price at designated time in future (Iwai, 2003, pp.89-90).

Iwai introduces a discussion in the USA. A method to regain shareholders' sovereignty is to abolish the separation of ownership and management. If their manager becomes a shareholder, "shareholders' sovereignty" will automatically revive. At least, if the remuneration of manager is connected with the price of the company's shares, then his pursuit for his own interest will simply lead to the interests of shareholders. If a manager receives the remuneration especially in the form of stock option, he will wholeheartedly endeavor to increase the price of the company's shares (Ibid., pp.91-92).

Iwai says, the American system, which has liberated managers from ethics,

neglects the fact that there is essential difference between governance of classic enterprises and governance of joint-stock companies and makes a theoretical error (Ibid., p.95). He says the reason as follows: In the case of a classic enterprise, a manager is an agent of the owner. The owner concludes a contract with a manager of his own accord. He can include whatever clause in the contract. However, in the case of governance of a joint-stock company, i.e., corporate governance, circumstances are quite different. A manager of a joint-stock company is not an agent of shareholders, but a representative organ of the company. Whatever contract a joint-stock company concludes can be concluded only through its manager. Consequently, any contracts concluded between a company and its manager would necessarily become a self-contract of the manager. If a manager is thinking only about pursuit for self-interest, it would be possible for him to make out whatever contract convenient for him. Therefore, managers' behavior in joint-stock companies is required a kind of ethics. Recently in the USA increasingly many companies pay their managers remuneration in the form of a bonus connected with the stock price or stock option. In this point self-contracts by managers are suspected<sup>2</sup> (Ibid., pp.95-96).

Its consequence is clear. A big difference in remuneration has emerged between a president of company and an employee. The average difference in Japan is 12 times. In contrast, in the USA the difference increased from 85 times in 1990 to 531 times in 2000. One of the worst case is the scandal of the Enron (Ibid., pp.92-94).

It is well known that there have been differences between laws and practices. Iwai explains the differences in the following way: According to the Corporate Law, for example, employees are persons outside a company. They are only persons who concluded contracts of employment with a company as legal person. In that sense, they have no difference from suppliers of raw materials, buyers of products and financial institution. Here is a paradox: In Japan an employee of a company is usually called 'shain', which literally means a staff member of a company. In the Corporate Law the word 'shain' denotes a shareholder, who is really an owner of the company. Traditional economics have been treating employees as persons outside the

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<sup>2</sup> Itami (2000) is also very critical about stock option for the following reasons: First, stock option as an incentive for a manager is a device which might lead to fraudulence. A manager gets a right to buy his own company's shares at a low price. When the share price becomes higher he exercises his right and buys the shares at a lower price. If he sells the shares then capital gain immediately emerges, and he can obtain it as a cash income. The cash income is remuneration which he received directly from the company but he received from a man who has newly become a shareholder. In other words, stock option has a quite different way of thinking from profit sharing in which a company rewards its shareholders from earnings that it really accomplished, but stock option aims to reward a manager by an income transferred from an investor in a stock market. A manager who earned money is a person who enjoys a wide-ranging power of decision-making which affects the price of the company's share. There is a too big difference in information between a new shareholder who buys the share that the manager sells and the manager himself. Here, in a nutshell, is a source of fraudulence which might lead to a variant of insider trading. Second, although stock option is given allegedly for shareholders' sake, it contains danger of an excessive income of a manager (pp.341-343).

companies and only suppliers of labor services. However, Japanese ‘salary man’ (a Japanese expression which actually denotes an ordinary employee) identifies himself with his company. The consciousness of representative organs of the companies spread at least partially to common members of the companies, who are only employees de jure. As the case may be, such consciousness reaches blue color workers. Why? Because they are persons who invest in ‘organization-specific human resources’. In the era of post-industrial society, investment in human assets (i.e., brain) becomes increasingly more important. In this way, Iwai points out the limit of the present legal framework of joint-stock companies.

## V. Conclusion

Certainly, there are problems in the present situation of corporate governance in Japan. A change in corporate governance in Japan is inevitable. Corporate governance must be more transparent. However, it will not be the American type of corporate governance that companies in Japan should aim at.

Problems that the American type of corporate governance involves were clarified from discussions of two representative Professors in Japan. Using his unique expression ‘Human-capitalism’, Itami argues positive aspects of the Japanese enterprise system. After explaining his formula that an institution is a product of a principle and an environment, he argues that the Japanese type management has emerged in a special situation in which Japan was placed immediately after the war. It is evident from his formula that with a change in the environment accordingly the institution should change. According to him, even if a concrete institution changes ‘human-capitalism’ as a principle remains unchanged. He criticizes an opinion which has been prevalent in the USA that shareholders should be the almighty. I think that his criticism deserves attention. However, it would be better for us to take ‘human-capitalism’ as a kind of ideal type. In reality, there are many companies whose behavior contradicts the principle of ‘human-capitalism’. If all the companies in Japan behave like ‘human-capitalist enterprise’, phenomena such as ‘karoshi’ (death from overwork) should have never occurred.

Iwai argues what joint-stock companies ought to be on the basis of a concept ‘legal person’. According to Iwai, a representative director is an organ of a joint-stock company, and he/she is a fiduciary of the joint-stock company. From his standpoint, a popular way that managers receive their remuneration in the form of a bonus connected with the stock price or stock option in the USA means a self-contract, i.e., a kind of prohibited technique.

He criticizes the American type of corporate governance in which shareholders are the almighty on the ground that investment in human capital will become increasingly more important in post-industrial society. Although different in their approaches, his argument in this point has something in common with Itami’s following argument: The original source of enterprises’ competitiveness is the enterprises’ ability of technological transformation and its efficiency. The ability

derives from invisible assets which the enterprises have accumulated such as technology, know-how, trustworthiness, etc. Such invisible assets cannot be bought with money. Enterprises need to accumulate in these assets by themselves. It takes time to produce them. Once accumulated, however, they can be used in multiple ways. These assets have such specific features (Itami, 2000, p.96). I think that investment in human capital or invisible assets is one of key issues when we consider corporate governance.

Japanese type of corporate governance will gradually change in the future, but its basic features will remain<sup>3</sup>.

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<sup>3</sup> Nobuo Takahashi, Professor at the University of Tokyo, a specialist of managerial organization stresses the importance of Japanese style of seniority system and severely criticizes 'Seikashugi' (system which differentiates employees according to their results). He argues as follows: People will not work hard by 'Seikashugi'. Make a job itself worthwhile. Japanese style of seniority system is, in essence, not a system which rewards by salary but a system which rewards by the content of next job. Try to build environment of Japanese style seniority system where the young are engrossed in their works without anxiety of daily lives. Takahashi (2004a) and Takahashi (200b).

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