

Revisiting the Distinction between Shareholder- and Stakeholder-Orientation with Respect to Stock Company Law in Japan Focusing on the Relevance of Shareholder Structure, Legal Fashions and Institutional Lock-ins

フリドリッヒ バウムゲーテル

<https://hdl.handle.net/2324/7329405>

出版情報 : Kyushu University, 2024, 博士 (法学) , 課程博士
バージョン :
権利関係 :



氏 名 : フリドリッヒ ヴィルヘルム ゲバード バウムゲーテル

論 文 名 : Revisiting the Distinction between Shareholder- and Stakeholder-Oriented with Respect to Stock Company Law in Japan *Focusing on the Relevance of Shareholder Structure, Legal Fashions and Institutional Lock-ins*
(日本の株式会社法における株主志向モデルとステークホルダー志向モデルの特徴に関する再考察: 株主構造、法様式、制度の関連性を中心として)

区 分 : 甲

論 文 内 容 の 要 旨

The thesis' principal argument is that the binary distinction between a shareholder- or a stakeholder orientation of the company law of a jurisdiction has limited epistemological value. This hypothesis draws on the observation that, in principle, the corporate laws in jurisdictions that have embraced a somewhat capitalistic economic approach have, in unison, come to acknowledge the position and rights of shareholders. Notwithstanding such a common denominator, some jurisdictions are perceived as shareholder-oriented, while others have been classified as stakeholder-oriented. This difference in classification, despite underlying systemic similarities, gives rise to the question which qualities exactly cause the corporate law and the pertinent institutional arrangements of a jurisdiction to be considered shareholder-oriented.

The focus of the thesis lies in identifying the composition of the shareholder class and the relevant group of shareholders that influences the perception and utilization of shareholder power, inter alia, through reliance on shareholder rights. The forum of the general shareholders' meeting represents only one of several arrangements that shareholders may rely on for articulating and asserting their positions and rights. Different groups of shareholders may have different demands and put emphasis on distinctive mechanisms. To provide anecdotal evidence for this proposition, the thesis delves into an analysis of the composition of the shareholder class of Japanese stock companies as well as a selection of essential instruments of contemporary stock company law in Japan.

The initial chapter of the thesis covers the relevant threads of academic literature which form the theoretical foundation and are relevant to the further course of the investigation. In this respect, the debates on legal families and origins will be touched upon as they map out the playing field of comparative (corporate) law. The legal transplant proposition is intertwined with the previous two debates and complements the conceptualizations of legal change and the rigidity of legal systems. Since the thesis is not limited to the letters of the law but is equally attentive to the "living law" and corporate practice, the different concepts discussed in the context of ownership dispersion are added.

In the second chapter of the thesis, the arrival of the stock corporation concept in Japan, its interaction with existing concepts of joint economic activity as well as its consolidation in the Kyū-Shōhō is recapitulated, which – as far as it can be seen – has not been comprehensively

covered yet in the international academic discourse. The definition and codification of the stock company and its factual promulgation in the business community in the mid-Meiji period constitute a reasonable entry point for the further course of the thesis.

In this vein, the third chapter is devoted to the historical analysis of ownership patterns of Japanese public stock companies from the period around 1900 until current times. The review of ownership patterns is complemented by historical analyses of (i) dividend payouts and (ii) corporate finance patterns over the same period. The complementary reviews support the observation that reshufflings in the composition of the shareholder class have repercussions for shareholder return and corporate finance policies which firms adopt. Dispersed ownership patterns and the high relevance of capital markets in the early nineteenth century correlate with generous dividend payouts to reward shareholders for their participation in capital increases. In contrast, the increasing corporatization and relational shareholding structures post-1950 resulted in growing reliance on other sources of corporate finance and a neglect of affirmative shareholder return policies. The bubble burst, and ensuing crises only slowly ushered in another reorientation.

The empirical excursion in the previous chapter is mirrored in the fourth chapter, which focuses on a selection of five key legal instruments which have found their way into the corporate law of Japan between the inaugural codification of a commercial code in the form of the Kyū-Shōhō and the current Companies Act as well as related corporate law regulation. The “lifespan” analysis of – what is deemed to represent – five key elements of contemporary corporate law in Japan indicates that the written law develops largely independently and detached from the reshufflings between the owners of stock companies in Japan. The position of shareholders has been transformed under the impression of increasing corporatization. The adoption of the Stewardship Code seeks to formalize arrangements outside the general shareholders’ meeting to encourage and ensure monitoring through (domestic) institutional shareholders, as the *kansayaku* while – apart from a temporary departure – have been a constant factor, have for various reasons not been formed into the corporate organ assertively monitoring corporate management. New corporate governance models explore alternative approaches. Finally, the pair of duty of care and duty of loyalty is a story of a slow emancipation of the latter from the former, which is accompanied by a more substantial accentuation of fiduciary principles. In sum, the five legal instruments reveal disparate, distinctive patterns.

In the fifth and final chapter, the evidence accumulated in the previous chapters is consolidated to construct the narrative that shareholder-orientation is tantamount to the attentiveness of corporate management to the demands and “legal convictions” of international institutional shareholders that have grown into a prominent role as shareholders of Japanese public companies in the last one and a half decades succeeding former “dominant” groups of shareholders such as investor managers (*zaikaijin*) and founding families, *zaibatsu* and relational (*keiretsu*) shareholders. Regulators have employed different strategies to support and cater to the various specific demands of this new “dominant” shareholder group. Anecdotal evidence related to the previous findings from the historical review and analysis finally also allows for some general considerations on the function and development of law from a legal theory angle.