

A Preliminary Study of Integration of Corporate Governance System for East Asian Community

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Abstract

At present, China, Japan, South Korea and other East Asian countries are engaged in the reform of their corporate governance systems. Moreover, East Asian countries are in the emergence of the phenomenon of “corporate governance system integration”. First, we must fully understand the current issue on the reform and integration of corporate governance system in three East Asian countries, represented by China, Japan and South Korea. Second, as we interpret and describe how the East Asian company system will be integrated, it is necessary to consider the value orientation in society, in which, a clear direction and unique value orientation for integration, and referring to the U.S. and EU experiences are very important.

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1 Introduction

European and other regions has made the integration of system and formed an effective institutional framework in the economic aspects. In this particular area, how could the process of the institutional integration or the institutionalization evolve? What elements can have a great influence on this process? These problems are worth studying in modern society that the international and regional integration have become increasingly prominent. For example, recently a lot of media or the heads from different countries claim the formation of an East Asian Community, but many people think that the process of East Asia's institutionalization is not simple because many obstacles which include historical issues, political problems, and economic problems and so on need to be cleared.³ Therefore, some people even think that East Asian countries are different from EU that can determine the common economic and political policy in the same system. Formation of the same institutional framework between East Asian countries that have the complex relationship is impossible and unnecessary. However, relative to human activities, the Earth is getting smaller and smaller (David Harvey, 1990), which is an undeniable fact. Moreover, many countries have activities in the framework such as the WTO, FTA and other systems. We can see from these facts, one day in the future, East Asia countries will have activities in a unified system, which is a general trend. From this perspective, we need to study the problem of institutionalization of East Asia, while, its premise is the research about the theory of regional institutionalization.

This essay will study the selected issues related to corporate governance system that is among the theory of institutionalization. Following the trend of globalization, the relations between states are becoming more integrated, and, simultaneously, regional integration has also become more apparent. This trend of

³ The particular important countries in East Asia are China, South Korea, and Japan in Northeast Asia. Although it is carrying out institutionalization of Southeast and Northeast Asia in the framework of ASEAN +3, especially FTA and other institutionalizations in the trade, some people may think that the core of these FTA is the framework of ASEAN, and the institutionalization of FTA treats ASEAN as a core in a deeper degree, and then other aspects of the institutionalization will be carried out, which is the process of East Asian system. Compared with the economic and political influences in Southeast Asian countries and Japan, China, and South Korea in Northeast Asia, the latter influence is several times larger than the former one. From these facts, for convergence of the East Asia including ASEAN, the movement of the three countries in Northeast Asia is the most important analysis object. Therefore, the analysis of convergence of the East Asia that treats three East Asian countries as the analysis objects is more realistic and more meaningful.

regional integration should be regarded as part of the overall process towards a world-wide integration. But there are actually two phenomena occurring: convergence (integration) and divergence (breaking up) of systems. The WTO is representative of convergence, while the regionalization of the European Union is representative of divergence. Similarly, convergence and divergence are happening in corporate governance as well: A “global standard” for information disclosure and independent supervisory organs is being promoted by investors and organizations around the world. This trend illustrates the convergence/integration of corporate governance systems.⁴ Conversely, a certain amount of “regionally produced corporate governance characteristics” carry with them a regional color, which perhaps is not applicable in other regions. This trend illustrates the divergence/break up of corporate governance systems. Simply put, when a country’s corporate governance system “upgrades” from a state level to a regional level, (Probably need many efforts) then within that region, the corporate governance systems have become “integrated”.

Now many people discuss the issues related to corporate governance, which is common in East Asia, too. China revised the Company Law in 2005; the contents of the relevant corporate governance in it have also been greatly modified. It is same in Korea. In order to prevent the phenomenon that the families of wealthy allies dominate the company happen again, under the guidance of the IMF, Committee governance system was introduced, and the corporate governance system was reformed. In Japan, commercial law is modified very often from 90s. Company Law was separated from Commercial Code from 2005 and the corporate governance system has also been greatly reformed. The common place among the reformations of East Asian countries’ corporate governance is the introduction of American systems such as the independent directors or committee system.⁵

⁴ But “international investor”-based reforms don’t take into consideration the “social perspective” and “regional color”, thus it is likely that implementing only these kinds of reform will bring about serious social problems. It is necessary to analyze the “divergence” of East Asian countries’ corporate governance systems from the “social perspective” as well.

⁵ Reforms in the United States began in the 1970s, and the resulting “American model” was quite influential towards reform efforts in other countries. Prior to the reforms, the shareholder structure in the United States was very decentralized, which resulted in a separation between the managers and owners, which in turn let the managers’ power expand. In response, the United States government, wanting to avoid administrative abuses of power, and also wanting to safeguard investors, carried out the following reforms: 1.As a means to protect the shareholder equity, the rights of minority shareholders rights were strengthened;2.To make the selection process of independent directors, a Supervisory Committee (within the Board of Directors) was established. Also, the supervision function of the Board of Directors was strengthened, and their duties were

From this direction of reformation, the final form of corporate governance in East Asia seems to be the United States-based forms; perhaps this kind of corporate governance that is a U.S.-based system is one of the trends, which belong to the integration of Asian corporate governance. Although the integration of Asian corporate governance has a great significance, but we should pay more consideration for the problem whether the direction of the corporate governance system in the region is Americanization or whether the direction should be Americanization. There are some problems such as whether East Asian company has the possibility of the integration of corporate governance, how the integration direction is, whether it has unique characteristics of East Asia and specific values, etc.

Companies in different countries have different corporate governance systems. One of the reasons is that the trade cost dealing in the society and other economic factors are different among different countries, it treats the company as an instrumental object, and recognizes that the purpose of the company to exist is to reduce costs. Now this view, which is put forward by Ronald H. Coase, becomes the mainstream view. According to this view, if the activities carried out in the market, its Production Cost or Transaction Cost is zero, then the trades among individuals or production activities in the market can be successfully completed, so the company does not need to exist, only individuals are necessary (Coase, 1960). However, there is no zero cost existing in reality. There always exist the elements, which increase the costs in the market (Milhaupt, 2009) such as Agent cost, Bounded Rationality, Opportunism, Asset-Specific Investment and other factors. We form a company in order to reduce these costs. According to the level of Transaction Costs in a particular society, company forms the type of inside system (an internal institution governance model), the type of outside system (a market-based corporate governance), and the type of the intermediation. View from this angle, corporate governance systems should have the value that can reduce the costs. However, observing the situations of corporate governance in the real society, we will find the reasons of formation of corporate governance systems are not so simple. Understanding the formation of different corporate governance systems, we should pay more attention to the elements like society and culture. The new institutionalism is concerned with the phenomenon of organizational isomorphism, that is, why different organizations have similar internal systems and structures (Zhou, 2003). Meyer and Rowan concerned about the external environment systems' effects on the organizational structure. They

stressed;3.To increase the transparency of management, the information disclosure system was improved;4.To make the international comparability of investments more efficient, accounting standards were revised.

believe that many characteristics on business decision-making process, internal procedures and other formal structure of organizations depend on “Rationalized myths” that is the existing of institutional environment outside the organization. The reason why the institutional environment is a myth is that people think system has validity and it became a myth which beyond certain individuals and organizations after being widely used. According to institutionalism, organizations should meet the expectations of external community. In other words, organizations can be gained legitimacy if the systems are introduced into the structure. The organizations can increase the likelihood of survival if they show their efficiency, reasonableness, and value system shared by the society to internals and externals (Meyer and Rowan, 1977). Institutionalism emphasizes on the importance of the legitimate mechanism where the legitimacy not only refers to the normalization of legal system, but also contains cultural systems, concept system, and social expectations and other institutional environments’ effects on the organization behavior. This institutional environment becomes a widely accepted social fact, and then it has a strong binding force to regulate the behavior of people. DiMaggio and Powell believe that the provisions of nation and other external subjects cause the changes of organization structures. This provision’s affects are greater than the market competition. They stress the phenomenon of isomorphism among the organizations, believing the isomorphism can be divided into Competitive Isomorphism and Institutional Isomorphism. The major driving force of Competitive Isomorphism is reasonability, mainly the market competition; Institutional Isomorphism can be divided into three types---Coercive Isomorphism, Normative Isomorphism, and Mimetic Isomorphism. Coercive Isomorphism is the adoption of mandatory authority and coercive powers, such as the state makes organizations use the same structure through orders or law; Normative Isomorphism is mainly generated by specialization which means a communication process that makes accountant, lawyers and other people with special skills expand their interpersonal network scale, and this network quickly spreads the concept of organization reform to all sectors of the society. Mimetic Isomorphism is to deal with all kinds of uncertainties. It is caused when the organization goals and external environment are uncertain. Organizations imitate the practices or structures of other successful organizations or the method and the structure of other organizations that have social legitimacy (DiMaggio, Powell)⁶. From the

⁶ Scott notes that the system is a structure with regulatory, normative, and cognitive levels, and the pillars of these three levels make social behavior more stable, gives a sense meaning to social behavior, and restricts organizational behavior. Regulatory pillar is legal and other formal systems; normative pillar is the social subject's expectations for community and a moral value system, which relates to the social values; cognitive pillar is

sociological institutionalism perspective, there are some common things in corporate governance models in a society, while in other societies there are some other common things in the corporate governance models. This phenomenon is due to the different legitimacy factors that exist in the external environment of the company. Some legitimacy factors existing in a society have an impact on companies, thus promoting the isomorphism of another corporate governance model. Another different characteristic of legitimacy factors in the society promotes another kind of isomorphism of corporate governance model. Therefore, companies in different societies form different corporate governance models according to the different legitimacy factors. The process of formation has relationship with legitimacy such as the company roles that the society expects, and this kind of concept forms the concept of social responsibility, and at last form the particular model of corporate governance. The formation of the corporate governance is in response to social role expectations as an element of legitimacy factors. The function of role expectation is crucial to the formation of corporate governance. But the role expectation, the corporate governance, and the legal system affect mutually. For example, the corporate governance, which is formed through the upper process, promotes the formation of the legal system which has the same values. And this legal system, which is affected by the corporate governance, becomes legitimacy factors and strengthens corporate governance in turn. In addition to this mutual impact between corporate governance and legal system, there is a mutual impact between legal system and role expectation, too. On one hand, the legal system is affected by the role expectation. On the other hand, it has an impact on the role expectations.

the shared meaning system based on social and cultural concepts. The cognitive pillar will support social subject to do the same thing which is consistent with social and cultural values. Scott mentions that these three pillars have some links with DiMaggio and Powell's three isomorphism ideas. In general, economists stress the regulatory pillar. They think the law is a game which treats national mandatory rules as the background force in order to protect their own interests to follow the rules of organization to obtain social legitimacy. In this sense, the system relates to the mandatory system. According to the old institutionalism, system is a normative pillar which provides the behavior subject to the moral standards. Compared with the regulatory pillar, from the level of the normative pillar, the purpose of the individual behavior or organization behavior is not only to pursue their own interests, but also reflects people's expectations. The new institutionalism emphasizes on the cognitive pillar of the system and attaches importance to the symbolic systems and cultural awareness. According to new institutionalism, the objects existing in the world are calibrated after the subjective awareness. The organization wants to make society recognize its validity, so it needs to possess a symbol of legitimacy. From this perspective, the organizational structure itself is a myth or symbolic presence. Quote from Watanabe Shin, *Sociology of Organization*, MINERVA Press, 2007, pp.127-140.

The aim for this study is to promote regional system integration; the other is to explore new research methods. This study will analyze the corporate governance system of East Asian community. It could be regarded as a research about how the East Asian characteristics influence the corporate governance system. First of all, we should know the characteristics about the East Asian community, what will be better for us to know the unification of the governance system in this area. Then, we can understand the importance of this research, the problem we are facing to, together with methods needed. In the following, this paper deals with the background of the idea for East Asian community, conflicts among different countries or organizations, the condition of corporate governance in East Asian countries, importance of exploring the problems facing this area, and how to solve these problems.

2 Characteristics and Problems of the Corporate Governance in Japan, South Korea, and China

The trend of globalization and the 1990s Asian Financial Crisis, these two events prompted East Asia's corporate governance reforms. The following section describes the legal reforms completed in the core region of the East Asian Community: Japan, South Korea and China, after that describes Research perspectives on the integration of East Asian corporate governance systems.

In Japan, the former distribution of power within a corporation was as follows: the General Meeting of Shareholders elected the directors who would be appointed to manage the corporation. The directors formed a Board of Directors, which decided the corporation's important business matters, and supervised how the directors conduct business. The Board of Directors elected representative directors, who acted as the representative of the corporation on the outside. The General Meeting of Shareholders elected supervisors, who monitored the business conducted by the directors. But even with this legal framework, influenced by the traditional "Japanese management style" (which included a lifetime employment system, ranking by record of service, and an internal labor union), employees would often be promoted to managers, thus creating an "employee sovereignty" model of corporate governance. Outside of the corporation, under the guidance of the government, excessive competition between corporations was prevented, and an indirect finance model was promoted. The creditors in this indirect finance model were the Main Banking System, which possessed a great influence over

corporations. The “share structure” of Japan’s corporations was as follows: corporations belonging to the same group or family would own shares in the other corporations, called “corporate cross-shareholding”, but they wouldn’t interfere in the other corporations’ management. Consequently, the continued existence of the corporation became the corporation’s main objective (a situation was known as “corporate capitalism”). Even though this model of corporate governance made it very difficult to supervise the corporation’s directors, it also meant that the corporation could develop long-term goals, have long-term management, and promote unity within itself, thus allowing corporations to contribute to Japan’s economic development. These former relationships can be shown in the following graph:

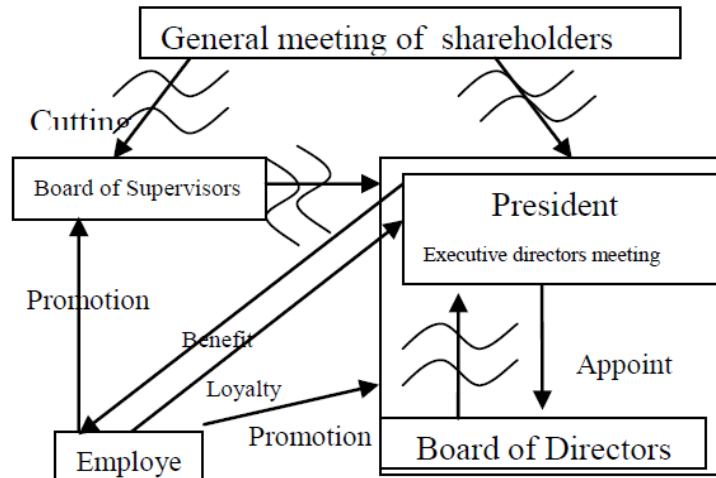


Figure 1: An actual corporate governance

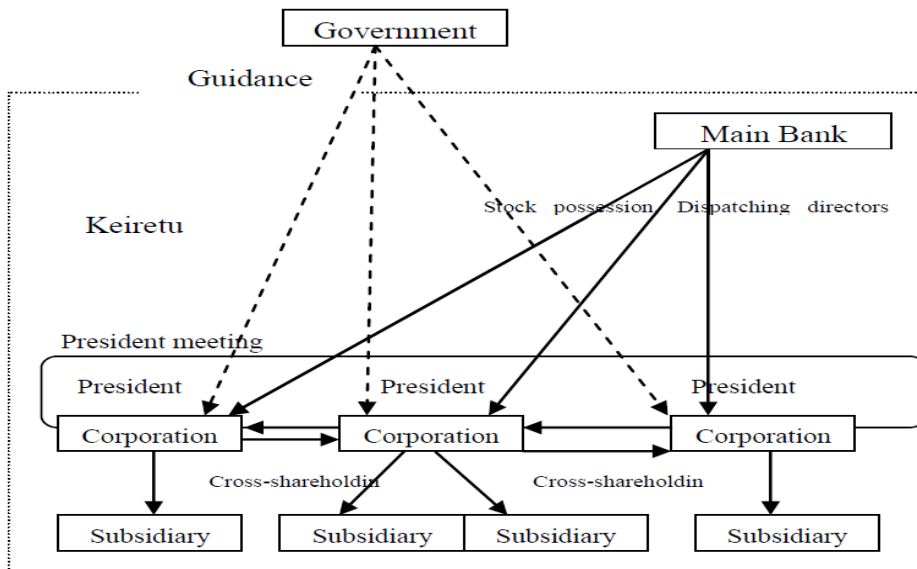


Figure 2: Outside environment of corporate governance

After the “bubble economy” in Japan burst in the early 1990s, its corporate environment changed dramatically. The ownership structure changed as many corporations began use direct financing. Following this, the Main Banking System’s “controlling voice” over corporations diminished, and the phenomenon of corporate cross-shareholding decreased, which in turn led to an increase in foreign shareholders. These developments led to major changes in Japanese management style: Japan now has a top-down decision-making process, a mixed-type management style (which combines American-style of management’s use of “capital efficiency” with the previous Japanese style), a “current price accounting system”, an increase in mergers and acquisitions, and an increase in contract workers (Kinoshita, 2007). At the same time, as the former Japanese management style changed, its corporate governance model changed as well. After the 1990s, Japan’s corporate governance system underwent comprehensive reform. A “committee-set up corporation system” was introduced to strengthen the Board of Directors supervision over the representative director, president, and other managers. And within the Board of Directors, outside directors were introduced, as a means of maintaining objectivity in the Board of Directors’ power to appoint and dismiss presidents, as well as in manager’s evaluations. Accordingly, in each of the three committees (Nomination, Remuneration and Supervision Committees), more than half of the members were required be outside directors.

Two models of corporate governance co-exist in Japan. First, there was a former

Japanese-style corporate governance model that consisted of a Board of Directors and a Board of Supervisors in a parallel relationship (this is in contrast to the German dual-structure governance model, where the Board of Directors is elected by the Board of Supervisors). Second, there was the United States-introduced “committee-set up corporation” model, where outside directors supervise the corporation’s managers. Japanese big listed corporations choose one of these two models.⁷

Even though South Korea started reforming its legal system before the Asian Financial Crisis, after the crisis, the IMF set new conditions for receiving aid (legal system reforms being one of them), and South Korea to meet these new requirements sped up its reforms. Under the guidance of the IMF, the South Korean government, wishing to resolve issues with controlling shareholders, also carried out corporate governance reform. In 1998, President Kim Dae Jung held a forum with the presidents from South Korea’s four large corporate groups. President Kim presented his “five principals of corporate reform”, and the presidents of the corporate groups agreed to follow them. Referred to later as the "chaebol’s five principals of reform", these principles became official government policy:

1. Improve corporate transparency

⁷ In April of 2003, after an amendment to the Japanese “Commercial Code”, committee-set up corporations were recognized, and these corporations were established according to the new regulations of constructing a corporate governance system (known as committee-set up corporation). This new “Commercial Code” stipulated that the Board of Directors had the power to make business decisions and that it had a supervisory function. Within the Board of Directors, three committees were established: a Nomination Committee that decided director appointments, dismissals, and other related matters; a Remuneration Committee that decided the Supervisory Committee, directors, executive managers, and accounting supervisors remuneration; and an Supervisory Committee, which resembled a “Board of Supervisors” in that it supervises directors and managers. In addition, the “derivative action” system was also reformed. Originally, Japan’s court service fee was calculated according to the amount of the plaintiff’s compensation: the greater the amount, the higher the fee. In 1993, Japan's “Commercial Code” was amended and the commission was set at 8,200 yen. Also, Japan established a “whistleblower system” to prevent improper behavior in corporations. In 2004 the “Whistleblower Protection Act” was passed. When law did not cover some part of the internal control system, Japan previously used legal precedent or stock market regulations to create new law. Currently, “Corporate Law” and “Financial Instruments Exchange Law” already implements this system. The Board of Directors for large corporations and “committee-set up corporations” should make resolutions towards the relevant internal control system. As for listed companies, they must submit securities reports to be recorded, and must disclose the situation of their corporate governance model and other matters. Finally, the Japan Financial Services Agency established the “Certified Public Accountant Investigation and Examination Board”, which independently supervises the Japanese Society of Certified Public Accountant’s supervision of CPAs and supervising entities conducting supervision.

2. Resolve the debt pledge problem within the corporate groups
3. Improve the financial structure
4. Strengthen “core” department designation, and strengthen connections between small and medium sized businesses
5. Increase the duties of controlling shareholders and managers. (Imaizumi and Abe, 2005)

After the financial crisis, many corporations, under the guidance of the government, were sold to foreign capitalists, and the influence of the foreign capitalists on the share structure of South Korean listed companies cannot be overlooked (Sakuma, 2005).

Corporate governance reforms in South Korea have been carried out frequently and on a large scale (in 2011, the South Korean "Commercial Code" was amended to improve its governance structure, and it will be implemented on June 1st, 2012). Previously, the structure of the South Korean corporate governance system was similar to Japan's: the General Meeting of Shareholders was the highest body, and the Board of Directors and Board of Supervisors were parallel to each other. Like in Japan, the supervisory function of a corporation's internal organs (supervising the managers) wasn't great. There was also little separation between owners and managers. Under these situations it was very difficult to control illegal behavior. To improve these situations, South Korea conducted corporate governance reforms similar to the reforms in Japan. These reforms strengthened the rights of minority shareholders, established committees within Board of Directors, and used outside directors. There were many aspects to these reforms in South Korea: 1) *Introduction of the committee system*⁸ ; 2) *Strengthen the independence of*

⁸ In 1998, after the amendment of South Korea's "Commercial Code", the Supervisory Committee, and the Board Committee were established. However, this was dissimilar to the establishment of Japan's committee system, as South Korea's Nominations Committee and Remuneration Committee were arbitrarily established. Listed companies or companies on the Korean OTC market (KOSDAQ — Korean Securities Dealers Automated Quotations) with total assets more than two trillion Korean won should establish a Supervisory Committee and a Recommendation Committee for outside director candidates. In both cases, the Board of Directors chooses members of the Supervisory Committee, and in listed companies, after the Board of Directors has chosen candidates; they are present to the General Meeting of Shareholders who then elects the members of the Supervisory Committee. Also, in listed companies, one in four of the directors must be an outside director, and listed companies with total assets more than two trillion Korean won, more than half of the directors must be outside directors (with a minimum of three). Outside directors are elected through the Recommendation Committee (which itself must be more than half made up of outside directors). The Recommendation Committee then presents their chosen candidates to the General Meeting of Shareholders. Candidates must then be approved by a defined percentage of the corporation's minority shareholders. Finally, listed companies with total assets more

*supervisors*⁹ 3) *Give employees priority to buy stock*¹⁰ 4) *Strengthen the rights of minority shareholders*¹¹ 5) *Reform the accounting system*¹² 6) *Strengthen the independence of outside supervisors*¹³ 7) *Strengthen the duties of managers*¹⁴

than 2 trillion Korean won must also have outside directors in the top-level Supervisory Committee (and be at least two-thirds made up of outside directors), when selecting a Supervisory Committee member, a shareholder can vote for a candidate with a maximum of 3% of the corporation's total shares.

⁹ Increasing limitations on the controlling shareholders voting power (max. 3%) when electing supervisors improves the supervisor's independence. There was also a new requirement to establish an executive supervisor position: if the listed company's total assets are between 100 billion and 2 trillion Korean won, it must establish an executive supervisor, and if the total assets exceeding 2 trillion Korean won, the listed company must establish a Supervisory Committee.

¹⁰ To increase employee enthusiasm, and get away from the notion that the controlling shareholders were the core of the company, it was stipulated that employees (especially the managers) should have priority to buy stock. In 1997, after the "Securities Exchange Act" was amended, it permitted employees of listed companies to buy up to 10% of the corporation's shares. And in 2011, the "Commercial Code" allowed them to buy as much as they wanted.

¹¹ The prerequisites for minority shareholders to request an assembly of the General Meeting of Shareholders, dismissal of a director, pursuit of legal action, or access to the accounting books were reduced. The right to make proposals in the General Meeting of Shareholders and the right to hold a cumulative vote when selecting directors were also stipulated. In listed companies and companies on the Korean OTC market with total assets worth more than 2 trillion Korean won, when the General Meeting of Shareholders is electing a director, a cumulative vote can be called for when at least 1% of the shares back the call. And after amending the corporate constitution, in the case that a cumulative vote is eliminated, the (controlling) shareholders or special parties can only vote with a maximum of 3% of the corporation's shares. There is also a special trading stipulation for the corporation and its controlling shareholders: before the corporation, its biggest shareholder, or its special parties are making a deal, they first need the acknowledgement of the Board of Directors and need to report to the General Meeting of Shareholders. Additionally, it was stipulated exercising written voting rights would strengthen the rights of minority shareholders. Finally, regarding shareholders litigation costs, the scope of fees received when winning a lawsuit was expanded, and compensation that corporations who pay legal fees have the right to include the directors and supervisors. As for securities litigation, to counter illegal behavior like making false records, insider trading and manipulating accounts, a shareholder possessing more than 0.01% of the shares can raise a class action lawsuit. This stipulation is applicable to listed companies and Korean OTC companies worth more than 2 trillion won in total assets.

¹² The "Fair Trading Act" stipulated that starting in the fiscal year of 1999, large-scale corporate groups should, in principle, compile a list of all affiliated enterprises' financial affairs. In addition, they should revise their accounting standards, as to remove contradictions with the IAS (International Accounting Standards) and FASB (U.S. Financial Accounting Standards Board). Also a list of corporations that submitted false information was made public, and fines were increased. Finally, starting in 2011, South Korea will implement the IFRS (International Financial Reporting Standards) system.

¹³ A substantial number of shareholders and creditors should form a Selection Committee

8) Establish a "compliance officer" system for corporations that manage financial industries¹⁵ 9) Establish an "executor system"¹⁶.

As noted above, some of the reforms in South Korea, such as strengthening the duties of the directors, are based on the legal system used in European countries. But ultimately, the main goal of corporate governance reform in South Korea is to match the "global standard", which is to say, the "American standard". The internal structure of corporate governance in South Korea was formerly a Board of Directors and a Board of Supervisors in a parallel relationship, while current structures value having an independent director single-leveled structure (like the United States) more and more. One could say South Korea is identical to Japan in this way, and that South Korea's reforms were done to convert to an "American-model" of corporate governance¹⁷.

electing supervisors (it cannot include supervisors, outside directors or controlling shareholders). Also, the "Certified Public Accountant Law" was amended to prohibit outside supervisors from holding concurrent posts at supervision companies that do consultancy work. Finally, the "Joint-Stock Company External Supervising Law" was amended to establish a system where outside supervisors are regularly replaced.

¹⁴ To strengthen director's management duties, the 1998 "Commercial Code" stipulated their "fiduciary duty" (legal obligation of one party to act in the best interest of another). In order to address the problem where controlling shareholder, who, even though they possessed no official duties, still "controlled" the corporation, this law considered them as "designators of business management" when investigating their management duties. The former "Commercial Code" only stipulated a "prohibition of competitive business behavior", but the 2011 "Commercial Code" added "Prohibition of Misappropriated Corporate Opportunity", where if the director wants to use information related to "corporate opportunities" obtained during the management process, he must first obtain permission from the Board of Directors. Additionally, the 2011 "Commercial Code" expanded the scope of "director self-dealing", to include the director's spouse, relatives and other companies that the director holds more than a 50% share in.

¹⁵ The Financial Supervisory Agency stipulated that financial institutions must establish a "compliance department", and the CEO must affirm and sign his name in securities reports and business reports. In the 2011 "Commercial Code", a "compliance assistant system" was established, which expanded the scope of the compliance officer system. Listed companies with assets higher than a defined scale must have a compliance assistant; however the specific scope and standards have yet to be decided.

¹⁶ The 2011 "Commercial Code" added an "executor system", where a corporation can chose to establish either a representative director or executor. Under the supervision of the Board of Directors, this person may conduct business for the corporation.

¹⁷ But, the South Korean NGO has raised the following problems with these reforms:1) The result of corporate governance reforms increases foreign interest, which can lead to foreign capital occupying the South Korean economy;2) These reforms didn't take into consideration the interests of the stakeholders. See Imaizumi Shinya, Abe Makoto (ed.), Corporate governance of East Asia and reform of the enterprise law system, Institute of Developing Economics, 2005, p66. In 2001, a survey of listed companies showed that South Korea still has controlling shareholders who are acting as the top managers, deciding the outside director candidates, recommending these candidates to the General

Real and significant corporate governance reform in China began after the Reforming and Opening Policy of 1978. A section in the 1988 "Law of the People's Republic of China on Industrial Enterprises" first stipulated corporate governance's legal representation in China. But, the "director (general manager) responsibility system" that it established was unable to change the traditional Chinese SOE (state-owned enterprise) model, because of the long-standing problem of "the Party taking the place of the government". Also, it was unable to resolve problems with director/manager supervision. Overall, the "Law of the People's Republic of China on Industrial Enterprises" had many elements of strong state control. During this period, a significant feature of Chinese corporations was the close relationship between the state and the factory. The corporation was essentially a dispatched organization of the state's administrative department, and from this, you can see that in China, "real" corporations did not exist. In China, the interest-based principals that a corporation should have are distorted by the state's involvement. To resolve this problem, it was necessary to reform SOEs into corporations.

In 1993, the "Corporate Law" was drafted. The law adopted the Western corporate form, and the internal structure of the corporation was: the General Meeting of Shareholders as the highest authority, with the Board of Directors and the Board of Supervisors parallel to each other (similar to the traditional Japanese and South Korean models of corporate governance). But, as a socialist country with an emphasis on the interests of workers, China stipulates a "worker participation system", which is different from Japan and South Korea. Under the 1993 "Corporate Law", the corporate governance system was difficult to use because of problems with controlling the inside people and controlling shareholders. In the 2005 "Corporate Law" these aspects were largely amended. But establishing the corporation's inner organs under the new law was not much different from doing it under the old "Corporate Law". The General Meeting of Shareholders was still the highest authority in the Corporation, and the corporate governance system still had a Board of Directors and a Board of Supervisors parallel to each other. Yet, there were substantial amendments that explicitly stipulated independent directors and the Supervisory Committee within the Board of Directors ("Corporate Law").

Meeting of Shareholders, and these "outside directors" are getting election. What's worse: this situation is very hard to change. See Mori Junichiro (ed.), *Corporate Governance of East Asia*, Kyushu University Press, 2005, p136. Mori Junjiro believes that having controlling shareholders will benefit a corporation's efficiency, but dealing with controlling shareholders-related problems is very complicated. See Mori Junichiro (ed.), *Corporate Governance of East Asia*, Kyushu University Press, 2005, p280. There is still a difference of opinion, on whether South Korea should adopt the "American" corporate governance system or create a unique Korean corporate governance system.

China's stock market already had these stipulations, so this system was already in use by many of China's listed companies. As was explicitly stipulated in the "Corporate Law", the authoritativeness of this corporate governance system greatly improved. Similar to Japan and South Korea, the direction of China's corporate governance reform was "Americanization", but as a whole, there are some big differences between China's corporate governance system and the systems in Japan and South Korea.¹⁸

Compared with the corporate governance systems of other countries, these features are unique to China. This will be easier to understand if we take these characteristics, divide them into "priority of shareholder interests" and "priority of stakeholder interests", and then analyze the characteristics of China's corporate governance system:

Article 5 of the "Corporate Law" stipulates *Corporate Social Responsibility*, and although there is a controversy over how to apply it, we can still consider that its value orientation is to protect the interests of the stakeholder (and/or the whole society). Similarly, *the pierce the corporate veil theory* is in the interests of the creditor, and the *worker participation model* is in the interests of the worker, so we can say that these two items also protect the interests of the stakeholders (and/or the whole society). Conversely, the value orientation of the *importance of the General Meeting of Shareholders* protects the interests of the shareholder. The *dispatch supervisor of SOE* protects the interests of the government shareholders. The *duty of controlling shareholders* protects the interests of minority shareholders. Finally, the *greater influence of the state* reflects the important role that the state plays for both the shareholder and the stakeholder.

From these characteristics, we can see that China's corporate governance has two co-existing sovereignty models. The first is "stakeholder sovereignty" (the state acts as a stakeholder too), and the second is "shareholder sovereignty", which protects the shareholders' national interests. As such, we should regard China as having a hybrid or mixed-type corporate governance system (for example, listed companies in China have both a Board of Supervisors and a Supervisory

¹⁸ The following are the characteristic differences of China's corporate governance system:1) "Corporate Law" clearly defines "Corporate Social Responsibility";2) "Corporate Law" explicitly stipulates the "pierce the corporate veil" theory;3) "Worker participation" model;4) Importance of the General Meeting of Shareholders;5) Dispatch supervisor of SOE;6) Duty of the controlling shareholder;7) The coexistence of independent directors and the Board of Supervisors;8) Greater influence of the state

Committee in Board of Directors). So we can conclude that China's corporate governance system is a mix of Asian and American corporate governance systems.

3 The Cause and Foreseeable Trend of Integration in East Asia

These large-scale corporate governance reforms were conducted in East Asia. These reforms were mainly a response to two events.

The trend of globalization: As the Cold War came to an end, globalization was accelerating, and it was especially prominent in the capital markets. Every country, wanting to promote foreign capital investment in their country, carried out necessary reforms to their legal systems.

The 1990s Asian Financial Crisis: In East Asia, controlling shareholders often interfered in the management of a corporation, and other corporate governance malpractices were very common as well. The IMF (International Monetary Fund) and the World Bank, after analyzing the situation, believed that the Asian Financial Crisis was caused by such issues. Therefore, both organizations advocated that, to resolve these malpractices, corporations needed to strengthen the rights of their minority shareholders, strengthen the managing and supervising abilities of the Board of Directors, improve the information disclosure system, improve the management transparency, and conduct other corporate governance legal reforms. The OECDGCGF, (Organization for Economic Co-operation and Development's Global Corporate Governance Forum), along with other regional roundtables, impelled these countries to realize the importance of corporate governance as well.

These two events prompted East Asia's corporate governance reforms. In Japan, South Korea and China, those mentioned issues can be analyzed from the perspective of institutionalism of Sociology. As can be discerned from the above case studies, the United States' corporate governance system has greatly influenced East Asia. We can also see that countries in East Asia have already started integrating their corporate governance systems. As mentioned above, a significant reason which contributes to the integration of corporate governance

systems is investors' vigorous activity. On an international level, "institutional investors", as well as other countries (who want to introduce more foreign investment in East Asia), are also promoting the integration of corporate governance systems in East Asia. This integration will bring with it key legal system reforms, as investors (who pay close attention to the capital application of a corporate governance system) will of course look for countries that has a suitable corporate environment to invest in. As for institutional investors, the unanimous desire leads to the formation of corporate system which to their advantage, thus the consequence is the system's Americanization. Moreover, another important factor to Americanization of corporate governance systems is that people who take parts in legislation are influenced by United States. In Japan and South Korea, two alliance countries of United States, there are reasonably a great number of people willing to introduce American systems. However, in the non-alliance China, it turns out to be many advocates as well. For instance, officials in China Securities Regulation Commission tried to transplant Independent Director were scholars returned from United States and United Kingdom (Xie, 2006). We believe that the network between institutional investors and scholars who participated in legislation enhance the Americanization of East Asia's corporate governance. The phenomenon in which network acts as a tool to enhance system integration, it resembles the Normative Isomorphism assumed in Institutionalism. In addition, as foresaid, integration of East Asia corporate governance is even more remarkable after Asia Finance Crisis, which should be explained that Japan and South Korea who suffered recession and even bankruptcy perceived imitation of flourishing America would ameliorate their situation. This phenomenon is quite similar to Mimetic Isomorphism. What's more, the reform took place in South Korea was dominated by IMF so that it enjoyed a character of Coercive Isomorphism.

Those phenomena can be also interpreted through the agent cost theory. Generally speaking, "corporate governance" or "corporate law" is used for resolving the principal-agent problem, which is: A conflict arising when people (the agents) entrusted to look after the interests of others (the principals) use the authority or power for their own benefit instead. It is a pervasive problem and exists in practically every organization whether a business, church, club, or government. Organizations try to solve it by instituting measures such as tough screening processes, incentives for good behavior and punishment for bad behavior, watchdog bodies, and so on but no organization can remedy it completely, because the costs of doing so sooner or later outweigh the worth of the results, in generally speaking the problem arise between:

- Shareholders and managers
- Large and small shareholders
- Companies and stakeholders (Kraakman,2009)¹⁹

Because corporations exist in different regions, their “principal-agent problems” are also different. For example, the United States needs to pay attention to the principal–agent problem between shareholders and managers, because corporate governance in the United States is characterized by: corporations that are run by their managers, and have a high degree of management freedom, yet, to maintain the integrity of the corporation’s management, they will value information disclosure and other methods to promote corporate governance transparency. In addition, from a structural point of view, America’s corporate governance system thinks highly of having an independent supervisory mechanism (Imaizumi and Abe, 2005). Corporate governance system of the United States is a product of America’s unique banking system, its particular share structure, the emphasis on having a “stock market society”, the culture of respecting shareholder interests, and the increasing number of “institutional investors” in recent years. Conversely, in these three East Asian countries, the share structure or financial structure is very different from those found in the United States. Formerly in Japan, the corporate shareholders had a lot of power, and the Main Banking System was very influential. Meanwhile, in South Korea, the controlling shareholder of a large corporation often participated in its management, so there was no real separation of ownership and management. In China, large SOEs are often the “parent company” of listed companies, so most of the listed company’s shares are still state-owned. And as a result, SOEs and the administrative departments often interfere in listed companies affairs.

In Japan; the “principal-agent problem” among its shareholders and managers was qualitatively different from America’s. In South Korea and China, the “principal-agent problem” among its controlling shareholders and minority shareholders is a big problem, and is also relatively different from United States. China and South Korea need to pay attention to the principal–agent problem between large and small shareholders. Yet, these three countries are all introducing

¹⁹ Reducing costs, and improving a corporations overall interests to society is the purpose of corporate governance or corporate law. The goal of corporate governance is to reduce these agency costs, and establishment of a legal system for corporate governance should take into considerations financial developments and other economic factors. However, the view also sees corporate governance as a tool to reduce costs. Even though the view in do so are taking into account the different characteristics of corporations in different societies and considering the different levels of the “principal-agent problem” (thus, to a certain degree using the social perspective, but in reality, this view still lack the subjective factors of the social community)

corporate governance systems that are intrinsically the same as the United States'. Although establishing information disclosure and an independent supervision mechanisms are very important parts of corporate governance reform, it is more important that we cautiously consider whether or not the "American" model of corporate governance will be fully functional in East Asia countries (which have share structures, financial structures, cultures, and corporate governance problems different from the United States). To solve problems with controlling shareholders and other emerging problems in South Korea and China, both countries they have adopted appropriate (American) corporate governance reforms.²⁰ But, what about addressing problems exclusive to East Asian countries? These problems must be resolved as well. Specifically, they must resolve any regional divergences of corporate governance in East Asia. That is to say, from this perspective, regional integration spurs reform, and decides whether or not we are able to resolve the present "decoupling phenomenon" that exists between the legal system and reality in East Asia.

4 Research Perspectives on the Integration of East Asian Corporate Governance Systems

How do we conduct research on the integration of corporate governance systems in the East Asian community? For this, we need the following two perspectives:

4.1 From the perspective of the East Asian community

The main contents of the corporate governance reform happening in the macro-environment of the East Asian Community are:

- 1) *The East Asian community's integration process is different from that of the European Union, but we should still look at the EU's experiences; we can predict that the formation of the East Asian Community will be different from the formation of the European Union. Therefore it has been suggested that "the design of the East Asian Community needs to be freed from the constraints of the European Union" (Mouri, 2007). However, it must be said that the roles*

²⁰ As mentioned above, to solve problems with controlling shareholders, South Korea and China also have adopted corporate governance reforms; for example, increase the duties of controlling shareholders and managers.

of countries in the European Union as well as in the East Asian Community share certain similarities.²¹

- 2) *Cooperation in economic development comes first, but at the same time, East Asian countries need to strengthen their political and security relationships;* regarding the complex formation process of the East Asian Community: the first step of the formation process is economic development. But, sometimes political assistance is more important than economical assistance, and there are some areas such as the Korean Peninsula, where political assistance is always better than economic assistance.
- 3) *The East Asian community has a characteristic of “openness”;* from the perspective of culture, an “open” East Asian Community is very suitable for the region. Throughout history, the region has absorbed Buddhism, Confucianism, Christianity, Islam and other religious culture. Currently the region is also gradually absorbing Western culture, so we can agree that the cultural foundations of the region are “open”.²² As such, the East Asian

²¹ For example, Germany is very similar to Japan in the following ways: 1. Following Germany's defeat at the end of WWII, it needed the United States' protection, and consequently still highly values its relationship with the United States; 2. Germany, having greatly benefited from free trade, consequently views the formation of a community as a barrier to free trade; 3. Germany's relationship with Europe's other geographically large country, France, has been essential to the formation of the European Union, and the stability of their bilateral relationship is crucial for its stability; 3. Although Germany sees the need for an European Union, it also highly values NATO. See Morii Yuuichi, German and French-- German-French relationship in EU: The viewpoint from Germany, In Tanaka Toshiro, Shouji Katuhiro (ed.), *The locus and vector of EU integration*, Keio University Press, 2006, pp. 228-231. Germany's positions on these issues affecting the European Union are very similar to Japan's position on issues affecting the formation of the East Asian Community (On a separate note, Germany's history was filled with secessions—similar to the histories of both China and South Korea). As compared to Germany, it was through the integration of Europe that France achieved economic modernization and developed an export market. As such, France sees the integration of Europe as a display of its own revival, and it uses the European Union as a method of maintaining its status of a “great nation” and attaining other national interests. In addition, the color of France's economic management has been characteristically strong, and it has adopted many state-led economic policies. Sharing an affinity for a strong state-led economic policy, France's position in Europe is similar with China's position in East Asia. Japan also shares a similarity with the England (besides both being island nations). In Europe, England highly values its relationship with the United States in NATO, and often acts as its representative in European Union affairs. Similarly, Japan highly values its relationship with the United States, and acts as its representative in East Asian Community affairs.

²² From the perspective of globalization producing regional integration, the East Asian

Community should also be “open”. According to this characteristic of “openness”, besides extra-ordinary circumstances—like having difficulties achieving an integrated system because the countries are unable to readjust their relationships with each other because the scope of the regional integration is too large—there are generally no problems with expanding the scope of a community. Therefore, the East Asian Community need not be limited by geography, and there is no need to narrow the scope of its member countries. Therefore, the East Asian Community need not be limited by geography, and there is no need to narrow the scope of its member countries. Currently, ASEAN +3 +3 includes such outside countries as Australia, New Zealand, and India. In the process of expanding the East Asian Community, these countries could join the community, as could the US.

These principals of the East Asian community can also be applied to the integration of East Asian corporate governance systems:

- Countries should understand their differences with the European Union, but consider its experiences nonetheless.
- While considering the economic circumstances of the region, countries should also consider issues regarding the whole society. This study does not consider the influence of international politics, but in many cases, behind these political problems are social problems. As such, this study will include research of social problems in East Asian countries.
- We should consider the influence of globalization, and especially the American influence on the corporate governance systems in East Asia.

This study will use the above content as its principal way of conducting research. When establishing certain systems that strengthen the regional community, these

Community should be open. Even though there has been some opposition to globalization in parts of the region, regional integration measures have still been carried out. See Shindou Eiichi, *How is East Asian Community founded?* Chikumashinsho, 2007, pp.15-81. Even though China, in order to fight against globalization, participated in various East Asian integration measures, such as SCO, the type of globalization that it was fighting against was actually "Americanization", so we can still say that the basis for regional integration is part of the globalization process. That is to say that pre-existing nationalism, influenced by globalization, will change into "regionalism", and this is how globalization will eventually bring about a global integration. However, because some areas do not possess the prerequisites for integration and their differences with other areas are rather large, so they will not be able to participate in the globalization process, and will only be able to achieve area-level integration. Even though the regional integration of some areas is formed through fighting against globalization, but much area integration was produced during the globalization process, so there is no contradiction between globalization and regional integration, they actually complement each other.

countries may need to reduce parts of their national sovereignty and even sacrifice other parts. Also, when establishing certain systems, countries may gain "common threats" and "common interests".²³ As East Asia establishes a common corporate government system, Japan, China and South Korea may also have these "common threats" and "common interests", and we will need to analyze them. At the present, the East Asian community needs to focus on the problem of dealing with the relationship between stakeholders and corporations. For example, the financial sector has bearing on the interests of shareholders, creditors and many other stakeholders, and after the Asian Financial Crisis, countries need to work together on various issues in this sector. Additionally, the natural environment is the area where these countries cooperate very closely, and these stakeholders as well as stakeholders from other relevant fields might become part of the "common threats" and "common interests" of the East Asian region. Also, through the process of establishing a common corporate governance system these stakeholders may also become part of the "common threats" and "common interests" of the region. Therefore, when establishing corporate governance system in the framework of the East Asian community, we need to analyze which factors may become "common interests" and "common threats".

4.2 From the social perspective

This perspective is related to the question of what "corporate governance" actually is/does. When considering corporate governance, knowing the perspective of "what a corporation is" is very important, we should consider the "subject" of the question -- that is how the social community perceives corporations (this perspective is more subjective). We need to further consider the subjective factors of the social community. If we are considering the subjective factors of the social community, then what kind of social existence does a corporation have, and what expectations does the social community have for corporations, and what social duties correspond to these expectations? These concepts all greatly influence the formation process of a corporate governance system. In some regions, corporate governance systems are formed not only by economic factors, but are also influenced by many social factors. If corporate governance systems were only formed by economic factors, then it would have been very difficult to explain why

²³ Generally speaking, there are three factors necessary for a community to form: 1. Countries share "common threats"; 2. Countries share "common interests"; 3. Countries share "common values". See Shindou Eiichi, *How is East Asian Community founded?*, Chikumashinsho, 2007, p.15.

Japan's post-war corporate governance system has lasted into the 21st century. Also, differences between the United States' and the EU's corporate governance systems cannot be credited to being created by different economic circumstances. We cannot deny that the influence of economic factors on a corporate governance system is great, but we should also consider the influence of other social factors. In the long run, the shape a corporate governance system will have a corresponding relationship with that country's economy and its society. There is no contradiction between them. But short-term, there may be some contradictions between corporate governance and the economy or society. As such, it can be difficult for a corporate governance system to promote social or economic development, and it may even hinder it. For example, over the last 20 years, Japan conducted numerous amendments to the market's legal system, but we cannot say that these reforms really suited the Japanese society or that period's financial markets. Consequently, it was difficult for the corporate governance system to serve its purpose.

The important question is how do we design a corporate governance system that suits both economic and social factors? From the social perspective, it is important to consider the social community's expectations of corporations more specifically, as related to the issue of "who will be the stakeholders". The three questions related to the social expectations of corporate governance are:

- Who will own the corporation?
- Who does the corporation exist for?
- Who will supervise its managers?

Different corporate governance models exist in each country because the "who" in *who will own the corporation* and *who does the corporation exist for* is different. Some experts believe that the "two core features of the corporate form underlie corporate governance. The first is investor ownership. The second is delegated management" (Kraakman, 2009). This comment stresses the role of the owners, as well as "principal-agent" relationship of the owners and managers. However, as far as corporate governance is concerned, the "who" in the "who does the corporation exist for" is a more important question than the "who" in the "who will own the corporation", and the corporate role held by the social community has decided that it is the "who" in "who does the corporation exist for". In general, the social community expects that the answers to the above "who" questions are as follows:

- The individuals who, compared with the corporation, hold weak positions
- But, these individuals universally exist in society.

- So, the “social legitimacy” of a corporation is determined by the social community; therefore it should have a large influence over corporations (which is to say the social community supervises the corporation’s managers)²⁴.

The second "who" in these positions perhaps has become the "principal" in the above three "principal-agent problems". In that case, the objective of corporate governance is to resolve "principal-agent problem" or to reduce the "agency cost".

But we need to consider that the main objective of corporate governance is still to meet the expectations of the social community; not to resolve the "principal-agent

problem". Resolving the "principal-agent problem" is a secondary objective of corporate governance. In other words, the objective of corporate governance is to meet social expectations by resolving principal-agent problems. Therefore, the important objective of corporate governance is to resolve social-specific problems according to role expectations (principal-agent problems also need to be resolved according to role expectations). From this perspective, which stakeholders are the second “who” (shareholders or workers, etc.) is a very important question to consider when shaping corporate governance. The corporation’s cognition of these role expectations is based on its cognition of “social responsibility” concept.

This can sometimes result in a “decoupling phenomenon” (between law and reality) within the structure of the corporation. But, through a cognitive process of elimination as well as a legislative process of elimination, these outside role expectations and the corporation’s cognition of “social responsibility” will gradually form a singular corporate government model with a specific value orientation. For example, some role expectations like “protecting worker interests” are universal, and the corporation’s cognition of “social responsibility” may also include “protecting worker interests”. In these cases, corporate governance will likely have this kind of value orientation, as is the case in German and Japan, who both have a “stakeholder primacy” model of corporate governance. Conversely, if the role expectations are for “protecting shareholder interests”, and the corporation’s cognition of “social responsibility” also includes “protecting shareholder interests, then, in these cases, corporate governance will likely have this kind of value orientation, and likely be a “shareholder primacy” model of

²⁴ Mitchell thinks that these stakeholders are “Definitive stakeholders”. See Mitchell R.K., Agle B.R. and Wood D.J., *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts*, *Academy of Management Review*, vol.22, no.4, 1997, pp853-886.

corporate governance, as is the case in the United States.²⁵ From this analysis, we can see that political compromise isn't the only reason that corporate governance systems are formed with protecting workers interests in mind. If it were only political reasons that lead to the formation of this kind of system, even with "path dependency", in a society filled with intense conflicts of interest, it would be very difficult for this kind of corporate system to remain stable.

The "market-based" model and the "internal institutions" model make up another classification of corporate governance. Generally speaking, the degree of marketization will influence the shape of corporate governance, which distinguishes the "market-based" of corporate governance from the "internal institutions" model of corporate governance. Of course, this way of looking at this is relatively plausible. But, we can also agree that the type of stakeholder that is more highly valued will determine whether the corporate governance model is "market-based" or "internal institution". For example, if the shares are liquid, then accordingly, the "shareholder primacy" model of corporate governance will be "market-based" and the corporation will have outside supervision and management mechanisms. This is because the "shareholder primacy" model and "market-based" model have complementary relationship in corporate governance. And compared to the liquidity of the shares, the mobility of the workers is relatively low. Conversely then, the "stakeholder primacy" model and the "internal institutions" model also have a complementary relationship in corporate governance. But, we cannot simply say that it is only "market transaction costs" and other market-oriented processes that determine the corporate governance model.

From the social perspective, we still need to more deeply consider whether or not the target of the director's and manager's "account duties" should be limited only the shareholders (and not extend to stakeholders). The current "OECD Principles of Corporate Governance" also stress the importance of protecting the rights of the stakeholders and the minority shareholders. These stakeholders are likely in a weakened position, in which case the law should protect their rights even more so. For the integration of corporate governance systems in the East Asian community,

²⁵ Someone noted that, compared with other countries' corporate governance, The United States general meeting of shareholders has no power to decide relatively, so the US corporate governance is not friendly with shareholders. See Reinier R. Kraakman, Paul Davies, Henry Hansmann, Gerard Hertig, Klaus J. Hopt, Hideki Kanda and Edward B. Rock. *The Anatomy of Corporate Law; A Comparative and Functional Approach*: Oxford University Press, p67. While, "Securities Law" attaches great importance to the interests of investors, and the corporate governance system have no workers participation, so it can be assumed that U.S. corporate governance system is shareholders sovereignty-based model.

and also for studying the divergence of corporate governance in the region, analyzing the stakeholder is extremely important. Only after analyzing this issue can we understand both the common and unique factors that are in each country's corporate governance system.

The "economic" value orientation of corporate governance is to improve the efficiency of corporation management. Additionally, according to social expectations, its other value orientation is to achieve sustainable social development. It comes as no surprise that these two value orientations are the single largest cause of divergence between corporate governance systems, as their objective and subjective factors both influence the formation process of corporate governance. There are many instances of value orientation affecting the organization of a governance structure: the governance structure of a nation is at its core a manifestation of its value orientation. And the organization of a corporation is no different. As such, we should pay attention to issues besides economic costs and other objective factors, and more greatly consider the influence of role expectations and other subjective factors. Similarly, while researching how the corporate governance systems in the East Asian community should be integrated, we also need to consider what their value orientations are. In light of the above discussion on the three "principal-agent problems", we should also pay more attention to principal-agent problem between the society and corporations.

5 Conclusion

For the analysis of the convergence of corporate governance in East Asian countries and other areas, the importance is how the society expects company and other elements of the company concepts, or how the company recognizes social role expectation and other elements of cognition. The reason of formation of specific corporate governance cannot be only limited to the market costs and other economic factors. In particular, there are some problems such as whether East Asian company has the possibility of the convergence of corporate governance, how the convergence direction is, whether it has unique characteristics of East Asia and specific values, etc. From the upper approach, it can be understood and more realistic to some extent, so it has significant meaning. The convergence of East Asian economic system is not just integration in economy, but also is it the first step of cultural and political integration as well as the EU. Therefore the following aspects of the three countries' corporate governance systems will need

to be researched to understand the integration of Asian corporate governance:

- Analyze the corporate governance systems (and their problems) prior to the most recent corporate governance reforms in Japan, South Korea and China. Then, through analyzing changes in the economic and social environments, as well as the companies themselves, further analyze each country's "common interests" and "common threats".
- Consult the "OECD Principles of Corporate Governance, and introduce the corporate governance reforms that each country has conducted, while simultaneously giving an evaluation of these reforms.
- Analyze each country's legal field as it relates to the close relationship between the stakeholders and the corporate governance systems.
- A comparison of the three countries legal systems.²⁶

After concluding the above analysis, we can finally explore the possibilities of integrating these corporate governance systems, and propose the principles of the East Asian Community's corporate governance system.

While, there are still some issues need to be resolved, such as:

- What special problems exist in East Asia? What kind of influences do these problems have on the legal system? How do corporations actually operate within the context of these special problems and the legal system? With the above-mentioned "decoupling phenomenon" between the law and reality, what kinds of problems can arise?
- What are the biggest differences between Japan, South Korea and China's corporate governance legal systems?
- What are the essential factors for promoting the integration of Japan, South Korea, and China's corporate governance systems? In other words, what are their "common interests" and "common threats"?
- What will be the biggest obstacles for integrating these three countries' corporate governance systems? What is the plan for resolving these obstacles? Between Japan, South Korea and China's corporate governance systems, which parts can be integrated, which parts cannot be, and which parts require selective treatment? Should these countries utilize the "OECD Principles of

²⁶ Exclusively analysis from the outside perspectives will include the following aspects: 1.Compare the corporate governance systems and economic and social backgrounds of the United States and East Asia.; 2.Analyze what a "beneficial" corporate governance system is according to the United States.; 3.Compare the corporate governance systems of the European Union and East Asia.; 4.Consult the European Union's past experiences and propose recommendations.

Corporate Governance” or should they create their own unique system?

- How should East Asia apply what it has learned from the European Union’s experience?
- To what extent should the “American” model of corporate governance be adopted? What are some of the biggest differences between the United States and East Asia?

This study wishes to conduct research on the corporate governance systems of large corporations (especially listed companies). Corporate governance can be divided into systems with internal corporate governance controls and those with external corporate governance controls. For the internal control functions of a corporation, the research target of this study is law that relates to the duties and responsibilities of directors, the distribution of power within the corporation, and its internal control system. For external control functions of a corporation, the research target of this study is law that relates to information disclosure systems in the security market, as well as the supervisory authority’s supervision of the corporation. Law to study includes: corporate law, securities law (and other related laws). Also, legal precedents, regulations for listed companies, and corporate governance regulations will be studied. Particular attention needs to be paid to the following:

- a) In the East Asian region, the “principal-agent problem” between controlling shareholders and minority shareholders is very prominent. Recently, East Asian countries conducted many reforms that touch on this problem, and so in Corporate Law field, we should seriously consider: "the appointment right strategy, the decision right strategy, the trusteeship strategy, the reward, constraints and affiliation right strategy" (Kraakman, 2009).
- b) Since this study emphasizes the analysis of the social perspective, we need to research law from various fields related to the stakeholder and the important role that it plays. And we also need to analyze (in the related law fields) the discrepancies between the law and reality, as well as the causes of these discrepancies. Through conducting this research, we will understand the social expectations that exist in each country.

This study, in addition to using corporate law and securities law, will also include the following:

1. *Areas of law relevant to the relationship between the corporation and the state:* Japan, South Korea and China are all part of the East Asia, which is to say that they have all been influenced by Confucianism, Buddhism and other Eastern ideologies. Influenced by these ideas, the corporate governance systems of these three countries, although not identical per se, share obvious similarities. Compared to the characteristics of the corporate governance system in the United States (market-based), these East Asian countries are quite different. The state and the corporation share a close relationship in East Asia. Also, we should take notice of the collectivity of the local society, the family\clan, and the corporation group. Compared to other regions, in East Asia the influence of the stakeholder (i.e. the state) is very great. Generally speaking, there are three perspectives on the role of the state:

- Try to eliminate state interference, and prevent it from excessively intervening in the market
- Emphasize the role of the state
- Regard the State as having a supplementary role in the market

Among these three views, the East Asian region has adopted the second and third perspectives, and, there is the expectation that the state's role will be rather influential. This study still needs to further analyze problems related to the role of the state in East Asia's corporate governance systems. Research will include the legal system as it relates to market surveillance done by the state.

2. *Areas of law relevant to employees:* In Ireland, Spain and other European countries, the corporation is obligated to establish "employee directors". The "Worker Participation in Management" model is characteristic of corporate governance in European countries. Similar to this, China's "Corporate Law" stipulates that SOEs should allow employees to participate in the Board of Directors and Board of Supervisors. As China is a socialist country, protecting the interests of workers has become an important part of the social expectations of corporations. Although the provisions in each country's legal system are different, Japan's corporate governance also pays attention to the interests of workers. This stems from the Japanese's strong demands for social justice and equality. In these situations of social morality and social expectations, while the corporation seems to have become a "worker society", shareholder interests have gone on almost overlooked. As East Asian countries possess these "social characteristics", we need to further study law related to the relationship between employees and corporations.

3. *Areas of law relevant to the natural environment:* Among the stakeholder's "common interests" or "common threats", we should also include the natural environment. Environmental problems that rely on a single country are very difficult to solve (reducing carbon dioxide emissions is a good example of this). Different from the EU and other developed countries, East Asia must deal with both "complex environmental problems" and "compressed environmental problems". Examples of "complex environmental problems" are: the destruction of a tropical rainforest, water pollution, carbon dioxide emissions, and other global environmental problems, which concurrently exist. Examples of "compressed environmental problems" are: the accumulation of problems (over a few hundred years after the industrial revolution) in the more-developed East Asian countries that all erupted at the same time around 1980. In East Asia, the speed in which "complex environmental problems" appear is quite fast, and requires that we adopt many counter-measures (Ji, 2006). Presently, East Asia also has to deal with cross-boarder environmental problems, such as acid rain, as well as the cross-boarder movement of hazardous pollutants (known as "pollution exports" or "environmental damage through trading"). These problems can only be resolved with regional cooperation. The traditional notion of "nationalism" (national sovereignty) will not at all protect the "environmental commons" (Teranishi, 2006). As environmental problems become increasingly serious, Japan, South Korea, and China must strengthen their cross-border cooperation with environmental NGOs. Moreover, "energy problems", which are quite closely related to environmental factors, are also becoming "common interests" and "common threats" in the region. Some believe that China and Japan need to establish a common Asian energy agency and form an "energy community" (Ji, 2007). As such, we need to pay attention to law as it relates to the close relationship between East Asian countries' shared natural environment as an additional set of "common interests" and "common threats".

4. *Areas of law relevant to consumers and creditors:* From the perspective of the relationship between society and corporations, legal areas related to consumers also must consider. Additionally, in Japan, the Main Banking System still influences its corporate governance. And since the Main Banking System has a complementary relationship with the "workers sovereignty" model of corporate governance, we also need to pay attention to the law related to the relationship between creditors and corporation.

After analyzing the above areas of law, we will also need to consider, within the framework of corporate governance, the problems related to the duties of directors,

the establishment of the corporation's internal structure, and its external supervision mechanisms.

References

- [1] Curtis J. Milhaupt, *U.S. Corporate Law*, Yuuhikaku, 2009.
- [2] David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change*, Blackwell, 1990.
- [3] Ji Zhi Dong, *An environmental problem and environmental cooperation*, In Shindo Eiichi, Hirakawa Tutomu (ed.), *How is East Asian Community formed?*, Nihon Keizai Hyouronsha, 2006, 73-74.
- [4] John W. Meyer and Brian Rowan, Institutionalized Organizations: Formal Structure as Myth and Ceremony, *American Journal of Sociology*, **83**, (1977), 340-363.
- [5] Imaizumi Shinya and Abe Makoto (ed.), *Corporate governance of East Asia and reform of the enterprise law system*, Institute of Developing Economics, 2005.
- [6] Kinoshita Toshihiko, *Business Model of Japanese Enterprises and Japan-sina Economic*, In Mouri Kazuko (Represented ed.), Urata Shuujiro, Hukagawa Yukiko (ed.), *Designing an East Asian Community 2: The view about an Economic Community*, Iwanami Shoten, (2007), 79-80.
- [7] Mouri Kazuko, *Introduction: Designing an East Asian Community : A challenge to Modern Asian Studies*, In Mouri Kazuko (Represented ed.), Yamamoto Takehiko, Amako Satoshi (ed.), *Designing an East Asian Community 1: New local formation*, Iwanami Shoten, (2007), 16.
- [8] Paul J. DiMaggio and Walter W. Powell, *The iron cage revisited: institutional*

- isomorphism and collective rationality in organizational fields, *American Sociological Review*, **48**, (1987), 147-160.
- [9] Reinier R. Kraakman, Paul Davies, Henry Hansmann, Gerard Hertig, Klaus J. Hopt, Hideki Kanda and Edward B. Rock, *The Anatomy of Corporate Law; A Comparative and Functional Approach*, Oxford University Press, 2009.
- [10] Ronald H. Coase, The Problem of Social Cost, *Journal of Law and Economics*, **3**(1), (1960), 1–44.
- [11] Sakuma Nobuo, *Corporate governance of Asia*, Gakubunsha, 2005.
- [12] Teranishi Shunichi, ENVIROASIA (ed.), *Japanese, China and South Korea as an environmental community*, Shueisha Shinsho, 2006, 12-13.
- [13] Xie Chao Bin, *Deconstruction and Embeddedness*, Law Press, 2006.
- [14] Zhou Xue Guang, *Lectures on the Sociology of Organizations: Social Sciences Academic Press*, 2003.