CORPORATE SOCIAL RESPONSIBILITY AND CORPORATE GOVERNANCE: JAPANESE FIRMS AND SELECTIVE ADAPTATION

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> Corporate social responsibility is a hard-edged business decision. Not because it is a nice thing to do or because people are forcing us to do it . . . because it is good for our business.[1]
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> If CSR is at the heart of a corporation's comprehensive activities aimed at maintaining harmony between the corporation, society, and the environment, all the while sustaining development, Japanese companies are certainly at least on par with the West. Moreover, by turning its resource-poor handicap to its advantage, Japan has targeted cutting-edge technology and knowhow toward energy conservation, resource conservation, and environmental protection—to the good of the rest of the world.[2]

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1 Interview of Niall FitzGerald, Co-chairman and Chief Executive, Unilever (5 July 2003) in Larry Elliott, "Cleaning Agent", *The Guardian*, online: <http://www.guardian.co.uk>.

2 Hiroshi Hirose, "Corporate Social Responsibility: The Strength of Japanese Corporations", *Nippon Keidanren's Subcommittee on Socially Responsible Management*, online: Keidanren <http://www.keidanren.or.jp>.

I. INTRODUCTION

Differences in business practices in corporate governance (CG) and organizational behaviour between Japanese and U.S. firms have been widely debated. In most analyses, U.S. firms are considered to be driven primarily by shareholder-value-maximization objectives, whereas Japanese firms are driven by stakeholder-welfare considerations.[3] However, recent CG reforms in Japan have incorporated various aspects of U.S., and more broadly Anglo-American, CG practices, including the adaptation of the *Sarbanes-Oxley Act* (*SOX*).[4] *SOX* and the Japanese equivalent, *J-SOX* (the section on internal control in Japan's revised *Financial Instruments and Exchange Act*),[5] show what law and society expect from corporations in their financial transactions and related behaviour.[6] In Japan, where stakeholder welfare is regarded as the

3 On the Japanese-style stakeholder-value approach, see e.g. Masaru Yoshimori, "Whose Company Is It? The Concept of the Corporation in Japan and the West" (1995) 28:4 Long Range Planning 2 at 33; Rolf Bühner et al, "Research on Corporate Governance: A Comparison of Germany, Japan, and United States" (1998) 12 Advances in International Comparative Management 121; Ronald Dore, *Stock Market Capitalism, Welfare Capitalism: Japan and Germany Versus the Anglo-Saxons* (New York: Oxford University Press, 2000); Yves Tiberghien, *Entrepreneurial States: Reforming Corporate Governance in France, Japan, and Korea* (Ithaca: Cornell University Press, 2007). On the general distinction of shareholder- and stakeholder-value corporate strategies, see Gérard Charreaux & Philippe Desbrières, "Corporate Governance: Stakeholder Value Versus Shareholder Value" (2001) 5:2 Journal of Management and Governance 107; Alberto Chilosi & Mirella Damiani, "Stakeholders vs. Shareholders in Corporate Governance" (2007) 6:4 The ICFAI Journal of Corporate Governance 7.

4 *Sarbanes-Oxley Act of 2002*, Pub L No 107-204, 115 Stat 2390 ff, 116 Stat 745–810 (2002) [*SOX*].

5 *Kin'yū shōhin torihiki-hō* [*Financial Instruments and Exchange Act*], Act No 25 of 1948 (Japan) Amended Act No 109 of 2006 [*J-SOX*]. *J-SOX* incorporated many features of *SOX*, requiring corporations to practise transparency, disclosure, and internal control.

6 See Roberta Romano, "The Sarbanes-Oxley Act and the Making of Quack Corporate Governance" (2005) 114:7 Yale LJ 1521 (discussing the CG implications of *SOX* for U.S. firms). For discussion of stock-market reactions to U.S. firms' implementations of *SOX*, see e.g. Jacqueline S Hammersley, Linda A Myers & Catherine Shakespeare, "Market Reactions to the Disclosure of Internal Control Weaknesses and to the Characteristics of Those Weaknesses under Section 302 of the Sarbanes-Oxley Act of 2002" (2008) 13:1

primary objective of corporate function, the role of *J-SOX* and how it actually functions is relevant in both CG and corporate social responsibility (CSR) contexts. Given these recent trends in CG- and CSR-related laws and institutions in Japan, establishing clear-cut typologies between Anglo-American and Japanese practices in these areas has become increasingly difficult. This observation resembles the insights gained from the convergence–divergence debate of the 1990s and early 2000s that revealed that formal changes in organizational and institutional structures of political-economic models may be paralleled, followed, or undermined by a functional alteration of organizational and institutional practices.[7]

Successive Japanese governments and large numbers of Japanese corporations have been implementing U.S.-style CG practices in a selective manner in their ongoing CG reforms since the mid-1990s. As we have shown elsewhere,[8] selective adaptation drives the dynamic process of transplantation of U.S.-style CG mechanisms based on Anglo-American liberal norms to Japan. Japan's CG reform aim has been to enhance Japanese firms' global competitiveness by introducing a U.S.-style (or more broadly Anglo-American style) CG system. The implementation and integration through "selective adaptation"[9] depends on a range of conditional factors, including relevant institutions and established business practices in Japan and the

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Review of Accounting Studies 141; Ivy Xiying Zhang, "Economic Consequences of the Sarbanes-Oxley Act of 2002" (2007) 44:1-2 Journal of Accounting and Economics 74.

7 See Colin Hay, "Common Trajectories, Variable Paces, Divergent Outcomes? Models of European Capitalism Under Condition of Complex Economic Interdependence" (2004) 11:2 Review of International Political Economy 231.

8 Masao Nakamura, "Adoption and Policy Implications of Japan's New Corporate Governance Practices after the Reform" (2011) 28:1 Asia Pacific Journal of Management 187 [Nakamura, "Adoption and Policy"].

9 See generally Ljiljana Biuković, "Selective Adaptation of WTO Transparency, Norms and Local Practices in China and Japan" (2008) 11:4 Journal of International Economic Law; Pitman B Potter, "Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices" (2003) 2:1 Washington University Global Studies Law Review 119; Pitman B Potter, "Legal Reform in China: Institutions, Culture, and Selective Adaptation" (2004) 29:2 Law and Social Inquiry 465; Pitman B Potter & Ljiljana Biuković, eds, ***Globalization and Local Adaptation in International Trade Law*** (Vancouver, BC: UBC Press, 2011).

respective "shared understandings"[10] through which such novelties are assessed and evaluated by corporate actors and stakeholders.

While CG practices and associated organizational forms have been discussed prominently in the context of divergence–convergence debates, recent and significant changes in another area of corporate behaviour, CSR, have received relatively scant attention in this context. CG and CSR are inherently related, yet their interactions are not clearly defined in practice. Defining and analyzing their intersection depends on, *inter alia*, what the perceived purposes of corporations, in the form of legal requirements as well as prevailing best-business-practice expectations, are. Even broadly conceived, these conditions vary greatly between firms operating in the Japanese and American business environments due to differences in localized social understanding of corporate philanthropy and responsibility.

Building on findings from previous research on the dynamic process of transfer and integration of U.S.–style corporate governance practices into the Japanese system, in this article we examine the interactions of CG and CSR by comparing CSR practices of U.S. and Japanese firms operating and competing in the global markets.[11] Similar to the findings for CG practices, we contend that the shareholder-value-maximization principle, one of the key notions in U.S. firms' CG and CSR practices, will continue to be challenged by Japan's more traditional stakeholder-welfare-maximization principle.[12] Speaking to the gap in the literature on CSR, we show that

10 Peter A Hall & David Soskice, eds, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (New York: Oxford University Press, 2001).

11 Corporate nationality is determined here solely on the basis of where the companies have their central administration (i.e., their corporate "seat").

12 We argue in this paper that CG and CSR practices are not always clearly separable in a Japanese context, in part because implementation of both CG and CSR involve many of the same key stakeholders of corporations (e.g., community or government). This in turn makes certain corporate scandals relevant from both CG and CSR perspectives. For example, very close and cozy ties between the Japanese government's nuclear-power regulators and the Tokyo Electric Power Company (TEPCO), a government-authorized monopoly utility, through which the latter has been a major hirer of government-service retirees, made TEPCO a failure in its CG, with excessive slack throughout the firm, and also a failure in its CG and CSR in terms of strictly discharging its responsibilities to be prepared for dealing effectively with major nuclear accidents. See Hiroko Tabuchi,

Anglo-American-style CSR practices are selectively adapted into Japanese firms' CSR practices and that the long-standing Japanese business tradition of close intertwining between corporation and stakeholder provides Japanese firms with a degree of advantage over their American counterparts in terms of reputation benefits and credibility.

In the next section (Section II), we briefly review the literature on CSR and CG practices and outline the theoretical framework underlying our discussion. In Section III, we discuss how selective adaptation in CSR is proceeding in Japan as Anglo-American-style CSR practices are being introduced. We present some examples of corporate practices that illustrate this point.

Presenting some limited statistical evidence in Section IV that connects Japanese firms' CSR performance to CG performance, we show that although the connection is not clear-cut, a positive relationship is broadly discernible, which confirms that Japanese firms' CSR approaches are statistically positively correlated with profit considerations. These findings are qualified insofar as it is not possible to ascertain the direction of the causality of this relationship. In Section V, we present a comparative analysis of some U.S. and Japanese high-tech firms' CSR structures, guiding principles, and explicit policies, which will serve to substantiate our

"Nuclear Operator in Japan Exonerates Itself in Report", *New York Times* (21 June 2012) A6. Transparency and disclosure requirements, which are the core notions in both CG and CSR practices, must be implemented in Japan at both parent and subsidiary firms. This is because many Japanese firms also have many related firms. Although these requirements are legally in effect, Olympus Corporation has managed to escape these disclosure requirements and has successfully hidden substantial investment losses from the 1990s by shifting them from the parent to overseas and domestic subsidiary firms. See e.g. William D Gordon, *A Critical Evaluation of Japanese Accounting Changes Since 1997* (MA Dissertation, University of Sheffield, 1999), online: Wesleyan University <http://wgordon.web.wesleyan.edu/papers/japacct.pdf>. This has resulted in significant losses (about $4 billion) to Olympus shareholders, among other stakeholders. See Hiroko Tabuchi & Makiko Inoue, "Company News: Olympus Shareholders Vote in Favor of Directors", *New York Times* (20 April 2012) B2. In both the TEPCO and Olympus cases, weak CG practices at these firms were evident. In the case of TEPCO, their weak CG practices resulted in a serious CSR failure on their part.

theoretical framing with empirical evidence. In Section VI, we conclude by discussing the implications of our findings.

II. CORPORATE SOCIAL RESPONSIBILITY: A THEORETICAL PERSPECTIVE

Although its formal conceptualization and national as well as international standardization are more recent phenomena, CSR itself is not. For example, many large enterprises owned by successful Japanese merchants in the 1500s and 1600s emphasized the importance of modesty in profit making and contributing to various aspects of society for their sustainable existence. This is thought to be due to the traditional emphasis in Japan on maintaining social harmony; the merchants learned this skill historically by experience and kept it within their family business enterprises.[13] For example, the Mitsui family enterprise, noted as one of the great merchants in the Edo era, kept as one of its house rules: "greed causes a feud";[14] the Sumitomo family, another long-standing business enterprise, kept house rules such as "do not profit yourself in your task", "do not behave in such a way to shame our fame and

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[13] See Randall K Morck & Masao Nakamura, "A Frog in a Well Knows Nothing of the Ocean: A History of Corporate Ownership in Japan" [Morck & Nakamura, "A Frog in a Well"] in Randall K Morck, ed, *A History of Corporate Governance Around the World: Family Business Groups to Professional Managers* (Chicago: University of Chicago Press, 2007) 367; Randall Morck & Masao Nakamura, "Business Groups and the Big Push: Meiji Japan's Mass Privatization and Subsequent Growth" (2007) 8:3 Enterprise and Society 543; Tetsuo Najita, *Visions of Virtue in Tokugawa Japan* (Chicago: University of Chicago Press, 1987); Calvin M Boardman & Hideaki Kiyoshi Kato, "The Confucian Roots of Business Kyosei" (2003) 48:4 Journal of Business Ethics 317; Hama Noriko, "Traditional Merchant Values Resurgent in Recessionary Japan" *The Japan Times*, (25 May 2009), online: <http://www.japantimes.co.jp>; Johannes Hirschmeier & Tsunehiko Yui, *The Development of Japanese Business: 1600-1973* (London, U.K.: Allen & Unwin, 1975).

[14] The Mitsui family house rules, including "*oku wo musaboru to hunkyu no moto to naru*" ("greed causes a feud"), were published in *Sochiku Isho* (the precursor to the Mitsui family code, final version completed in 1722) and are physically available in the Mitsui Bunko (business archives). See Mitsui Public Relations Committee, online: <http://www.mitsuipr.com/history/column/05/index.html> (in Japanese); Morck & Nakamura, "A Frog in a Well", *supra* note 13 at 459.

trust", and "maintain your sense of honor and avoid greed and corruption";[15] and the Ohmi Shonin (the collective of merchants from the Ohmi, now the Shiga Prefecture area) has had a long-standing motto of its business: *sampo yoshi* (good for three sides),[16] meaning its business must be good for (1) the company, (2) the customer, and (3) society—this is what Hama coined the "trinity of bliss".[17] These businesses implemented their social contributions and public goods in various ways, as documented historically.[18]

In many ways, contemporary Japanese firms continue to share some of these traditional attitudes in order to maintain some form of social harmony and emphasize their ability to survive as a going concern in the long run, often expressed by the importance of the corporation's relationship with, and responsibility for, its related stakeholders. This notion of harmony has some things in common with more activist approaches introduced recently in Japan by the modern Anglo-American notion of CSR, but as we show below, Japanese firms' implementation of modern CSR practices seems systematically different than that of their Western counterparts.

As early as the 1800s, firms in the U.S. actively practised community engagement and involvement on a philanthropic basis. Such involvement, however, was conditional on the premise that it would positively affect

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15 There are 13 Sumitomo House Rules. See Japanese Institute of Tokunaga, "Sumitomo Family Motto", online: <http://www.ncn-t.net/kunistok/2-1sumitomokakun.htm>. The initial Sumitomo House Rules originally appeared in a letter known as *Monjuin Shiigaki* by Masatomo Sumitomo (1585–1652) to his family member Kanjuro Sumitomo. Subsequently, these initial house rules developed into *Sumitomo's Operational Rules* in 1891. See Sumitomo Group Public Affairs Committee, "Sumitomo in History", online: <http://www.sumitomo.gr.jp/english/history/s_history/s_history.html>.

16 See Noriko, *supra* note 13.

17 *Ibid.*

18 Many corporations that have historical roots in the Ohmi area explicitly relate their CSR to the *sampo yoshi* philosophy. For example, the ITOCHU Corporation, one of Japan's largest general trading houses, states on its CSR web page, "[o]ur history has been built together with the philosophy of *sampo yoshi*. We intend to practice CSR that is rooted in this principle going forward as well." They also state their contributions to global society in areas such as protecting the human rights of the workers of their suppliers in developing nations and their initiatives for environmental sustainability. See ITOCHU Corporation "CSR" *ITOCHU Corporation*, online: <http://www.itochu.co.jp/en>.

shareholder value.[19] This line of thought has survived, and its focus has been sharpened, as is best evidenced by debates on this subject found in management literature from the past three to four decades. Substantial demarcation evolved around the question of what the central purpose of a corporation ought to be. For scholars such as Milton Friedman, wealth generation is the primary objective of a corporation,[20] whereas others such as Edward Freeman contended that corporations should have a more socially balanced purpose (i.e., a stakeholder approach).[21] Subsequent debates have allowed for more nuanced distinctions. It is in this context that the CG–CSR nexus can be clarified further along four categories/dimensions as outlined by Garriga and Melé: instrumental, political, integrative, and ethical.[22]

For comparative purposes, in this article, we are primarily concerned with instrumental approaches, best represented by Friedman:

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19 See Peggy Simcic Brønn & Albana Belliu Vrioni, "Corporate Social Responsibility and Cause-Related Marketing: An Overview" (2001) 20:2 International Journal of Advertising 207.

20 Milton Friedman, "A Friedman Doctrine: The Social Responsibility of Business Is to Increase Its Profits", *The New York Times Magazine* (13 September 1970) 32 & 122.

21 See R Edward Freeman, *Strategic Management: A Stakeholder Approach* (Marshfield, Mass: Pitman, 1984). Note that throughout the subsequent analysis, stakeholders are conceptualized in terms of persons, groups, or institutions that hold an active interest in and a particular relationship to the business operations of the corporations at hand.

22 Essentially, "instrumental" approaches deem CSR relevant only if it serves as a means toward the end of wealth creation, whereas "political" theories emphasize the political weight corporations hold due to the nature of their position within society and how this causes them to adopt certain societal duties/responsibilities. So-called "integrative" theories point to the dependence relationship corporations have with their social environments and the eventual or required integration of societal demands into corporate strategy. Lastly, theories that depict CSR as an ethical responsibility of corporations, indicating that social responsibilities are primary and not secondary concerns for corporations, were categorized as "ethical" theories. See Elisabet Garriga & Domènec Melé, "Corporate Social Responsibility Theories: Mapping the Territory" (2004) 53:1–2 Journal of Business Ethics 51. For an alternative categorization on slightly different premises, see Henry Mintzberg, "The Case for Corporate Social Responsibility" (1983) 4:2 The Journal of Business Strategy 3.

> [T]here is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud.[23]

In essence, this is to say that socially responsible activities of firms are acceptable only if they contribute toward firms' wealth-generating function. We contrast this position with the perspectives that follow a mere "enlightened value-maximization" principle.[24] Duane Windsor argues that wealth generation is an overarching managerial leitmotif,[25] and thus, an *adequate level*[26] of philanthropic corporate activity may resonate well with such a premise. Especially in the context of fierce competition among firms with prima facie similar competitive edges, CSR can become a tool or means to attain a competitive advantage; for example, through positive reputation effects.[27] Challenging the rigid value-maximization principle, enlightened value maximization conforms to "much of the structure of stakeholder theory but accepts maximization of the long-run value of the firm as the criterion for making the requisite tradeoffs among its stakeholders".[28] It is from here that the contention can be made that companies with close

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23 Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 2009) at 133.

24 See Michael C Jensen, "Value Maximization, Stakeholder Theory, and the Corporate Objective Function" (2002) 12:2 Business Ethics Quarterly 235 at 245. The Economist argues: "Thoughtful advocates of CSR also concede that companies are unlikely to do things that are against their self-interest. The real task is to get them to act in their enlightened long-term self-interest, rather than narrowly and in the short term.... done well, CSR can motivate employees and strengthen brands, while also providing benefits to society": "In Search of the Good Company", *The Economist* (6 September 2007) 65.

25 Duane Windsor, "The Future of Corporate Social Responsibility" (2001) 9:3 The International Journal of Organization Analysis 225.

26 See Abagail McWilliams & Donald Siegel, "Corporate Social Responsibility: A Theory of the Firm Perspective" (2001) 26:1 Academy of Management Review 117.

27 See Michael E Porter & Mark R Kramer, "The Comparative Advantage of Corporate Philanthropy" (2002) 80:12 Harvard Business Review 56; CJ Fombrun & M Shanley, "What's in a Name? Reputation Building and Corporate Strategy" (1990) 33:2 Academy of Management Journal 233.

28 Jensen, *supra* note 24 at 235.

stakeholder relations and long-standing experience in stakeholder-welfare management may have a distinct advantage over firms whose preponderant leitmotif has been shareholder value.

Following Marcel van Marrewijk's line of reasoning that if definitions of CSR are not concise enough, they will be "too vague to be useful in academic debate or in corporate implementation",[29] we introduce our working definition of CSR as follows: *A corporate strategy that firms adopt to integrate social and environmental concerns into their business operations and into their interaction with their shareholders and/or stakeholders on a profit-generating basis.*[30]

Given the breadth of competing views about the objective of CSR, we derive our theoretical framework on the premise that, in accordance with general CG practices in Japan and the U.S., we expect U.S. companies' CSR approaches to be innately short-term and shareholder-value oriented and their Japanese counterparts to follow comparably long-term stakeholder perspectives. That is, CSR is a means for wealth creation in the form of shareholder value for U.S. firms, whereas CSR for Japanese firms is a means to sharpen long-term competitive advantage and survivability over other

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29 Marcel van Marrewijk, "Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion" (2003) 44:2–3 Journal of Business Ethics 95 at 96.

30 We are aware that this definition is non-exhaustive in that it does not reflect upon alternative conceptualizations of CSR as, for example, an ethical stance. See Michael Novak, *Business as a Calling: Work and the Examined Life* (New York: Free Press, 1996); Linda K Trevino & Katherine A Nelson, *Managing Business Ethics: Straight Talk About How to Do It Right*, 2d ed, (New York: Wiley, 1999). Thereby, it only indirectly addresses questions surrounding stakeholdership (i.e., society writ large in terms of human-rights-based social restrictions on corporations in their freedom of property usage versus narrow, primarily corporate, stakeholdership driven by corporations siding with shareholders in their responsibility toward society). However, this particularly instrumental form of definition has been adopted to allow for a more focused discussion of how variance in underlying corporate-governance principles is critical in determining the adoption of specific CSR approaches in alternative business environments. For an overview of alternative CSR definitions, see e.g. Wan Saiful Wan-Jan, "Defining Corporate Responsibility" (2006) 6:3–4 Journal of Public Affairs 176. It is also on the basis of this reflection that we have not drawn an explicit distinction between CSR and corporate philanthropy.

firms. However, in both countries, investments in firms' CSR activities and engagements are assumed to be pursued predominantly out of *for profit* reasoning and not *altruistic* or purely *ethical* reasoning.[31]

If the wealth-creating potential of CSR is emphasized or made explicit in firms' CG policies and codes of conduct and/or *vis-à-vis* shareholders, then we conceive of CSR as following short-term, profit-making rationales (i.e., the U.S. model). If the predominant emphasis is laid upon the long-term stakeholder-welfare maximization—survivability and corporate development in terms of reputation and competitiveness—then this will be considered the enlightened value-maximization principle framed within the stakeholder-oriented view (i.e., the Japanese model). Ambiguous strategies (i.e., "hybrid" approaches) will fall under "selective adaptation" in reference to the frameworks explicating Japan's CG reforms, during which American business liberalism was merged with the Japanese corporate emphasis on stakeholder relations and socio-economic responsibility.

We present below some limited empirical evidence based on statistical analysis and case studies of firms that suggest that the types of differences in CSR behaviour alluded to above are empirically discernible among Japanese and U.S. firms. U.S. firms tend to focus more explicitly on profit making as they pursue investment in CSR activities, while Japanese firms often state their seriousness in responding to social needs, despite the potentially adverse profit implications of certain CSR activities. This seems to be consistent with our selective-adaptation (hybrid) hypothesis.

III. ANGLO-AMERICAN CSR PRACTICES AND JAPAN'S SELECTIVE ADAPTATION: SOME EXAMPLES OF JAPANESE FIRMS' CSR PRACTICES

Although profit making has always been an essential ingredient of Japanese firms' operating principles, many Japanese managers and workers alike

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[31] It is important to clarify at this point that "cause-related marketing" is not an alternative strategic capability but a means to attain either of the former two options, shareholder value or long-term competitiveness driven by stakeholder-welfare maximization. See Oliver Hart, "Corporate Governance: Some Theory and Implications" (1995) 105 Economic Journal 678.

consider their firms as serving not just their shareholders, but also more broadly their stakeholders, including workers, suppliers, customers, creditors, and the community.[32] Such notions of firms tend to open more possibilities for government interventions in firm decisions in various ways (e.g., regulations or influence on firms' investment decisions).

Contemporary CSR activities in the Western economies are founded not just on philanthropy, but also on firms' interest in contributing actively to the communities they serve in a broad sense. Japanese firms generally accept these principles of CSR as Western firms do. Yet, in part because of different perceptions, institutions, and business norms, the framework in which Japanese firms engage in CSR decisions is systemically different, for example, from their U.S. counterparts. This is expected, given that the Japanese CG system, after the last two decades of Japan's reform efforts to achieve a more U.S.–style system, has now adopted many U.S. CG practices, but in a rather selective way.[33] CSR activities are inevitably closely tied to firms' CG

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[32] See e.g. Nakamura, "Adoption and Policy", *supra* note 8; Takashi Araki, "Corporate Governance Reforms, Labor Law Developments, and the Future of Japan's Practice-Dependent Stakeholder Model" (2005) 2:1 Japan Labor Review 26; Sanford M Jacoby, "Business and Society in Japan and the United States" (2005) 43:4 British Journal of Industrial Relations 617.

[33] See e.g. Nakamura, "Adoption and Policy", *supra* note 8. Japan's CG reforms were introduced and implemented during the post-bubble recession period in the mid-1990s. The proposed reform measures were substantial and were promptly implemented beginning in the late 1990s. Many laws underlying CG practices were revised or new versions of them were enacted and associated institutions were established. See e.g. Zenichi Shishido, "The Turnaround of 1997: Changes in Japanese Corporate Law and Governance" in Masahiko Aoki, Gregory Jackson & Hideaki Miyajima, eds, *Corporate Governance in Japan* (New York: Oxford University Press, 2007) 310 (for discussions on the new company law incorporating the old commercial code, the revision to the *Financial Instruments and Exchange Act*, and the revised antimonopoly law allowing holding companies to own other industrial firms). The reforms were modelled after practices prevailing in the U.S. In particular, new Japanese laws and institutions focus on practices based on shareholder-value maximization, transparency and disclosure, and efficient organization of corporate structures (M&A activities), among other goals. See e.g. Yasuhiro Arikawa & Hideaki Miyajima, "Understanding the M&A Wave in Japan: What Drives Japanese M&As?" in Masao Nakamura, ed, *Changing Corporate Governance Practices in China and Japan: Adaptations of Anglo-American Practices* (New York:

principles, and we expect Japanese firms' CSR activities to reflect such differences in CG practices as exist between Japan and the U.S.

In the Appendix we show the types of criteria included in annual surveys on Japanese firms' CSR activities conducted by Toyo Keizai, a leading business-intelligence firm in Japan. The criteria included in their questionnaires are generally reflective of Japanese firms' CSR activities. We see that, in addition to standard items included in Western firms' lists of CSR activities (e.g., firms' contributions to the environment and communities), firms' contributions to employment are given heavy weight in these surveys. Questions about female employment and employment stability at firms, for example, are given special attention in the Toyo Keizai list of CSR activities.[34] This is consistent with our discussion above asserting that Western CSR activities have gone through some type of selective adaptation in Japan.

As noted previously, despite historically strong ties between Japanese firms and the communities in which they operate, the Western (both Anglo-American and European) concept of contemporary CSR practices has

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Palgrave Macmillan, 2008) (for a discussion on increased M&A in Japan). Japanese corporations now can, if they wish, set up their own CG practices almost entirely as U.S. corporations do in the U.S. As discussed in Nakamura, "Adoption and Policy", *supra* note 8, this has not happened. One characteristic of Japanese reforms is that reformed laws in some key areas allow Japanese corporations to choose between the new (U.S.–style) practices and the traditional Japanese practices. See Ronald J Gilson & Curtis J Milhaupt, "Choice as Regulatory Reform: The Case of Japanese Corporate Governance" (2005) 53:2 The American Journal of Comparative Law 343. For example, Japanese corporations can continue with their traditional board system, with relatively few outside directors, rather than choose to adopt a U.S–style executive-committee system with three executive committees whose majority members must be outsiders. Limited evidence exists that certain U.S.–style practices improve firm performance. See e.g. Hideaki Miyajima, "The Performance Effects and Determinants of Corporate Governance Reform" in Aoki, Jackson & Miyajima, *supra* note 33, 330. Also, new disclosure requirements on financial transactions between related firms are stricter than before, but the degree-of-transparency requirement is not viewed as adequate by Western standards. See e.g. Hiroshi Tanaka, "The Ideal and the Reality of Japanese-Style Accounting Disclosure" (in Japanese) (1998) 154:6 *Kaikei* 15, cited in Gordon, *supra* note 12 (as evidenced recently by the Olympus scandal discussed above, note 12).

34 This is typically not the case with U.S. firms' CSR policies.

motivated many Japanese corporations to rethink their contributions to society as related to company profit, and more broadly, the notion about what corporations' objectives should be. Clearly, such rethinking is important and often essential if they want to continue operating in global markets. However, this rethinking takes place within the explicit stakeholder context that Japanese firms are nested in, and not outside of it. This is the dimension along which selective adaptation and credibility advantages, as mentioned previously, intersect.

In August 2011, the *Nikkei* newspaper reported on the recent global strengthening of CSR practices by large Japanese firms in 2011.[35] Some of the reported, notable developments are as follows:

1. As more countries adopt *ISO 26000*[36] (the ISO international standard on social responsibility), Japanese firms, in order to achieve their global expansions, recognize the need to make their management practices compatible with the *ISO 26000* standard in the areas of human rights, labour management, and other company management areas. NEC and Shiseido began identifying potential problems with their company practices in human rights and labour management, while Ricoh has begun quantifying its progress in these areas of CSR so that it can visualize the progress the company makes annually.
2. To avoid potential problems arising from using suppliers who do not satisfy the *ISO 26000* standard in countries where *ISO 26000* has been adopted, NEC has decided to implement its policies such as enforcing human rights and avoiding child labour practices at its 200 subsidiaries as well as its local suppliers by the end of March 2012. The company has prepared learning materials about human rights to be accessed on the internet in order to generate worker interest in this area of management. NEC regards this as an important point in its risk-management system since the importance of adhering to human rights is becoming recognized as essential in some of the developing countries where NEC

[35] "Consideration of Human Rights and Labour Practices Strengthen Corporation's CSR" *Nikkei* (*Nihon Keizai Shimbun*) (24 August 2011) ["Consideration of Human Rights"].

[36] International Organization for Standardization, *ISO 26000* (Geneva: ISO, 2010).

plans to expand its business.

3. Shiseido has begun investigating 32 items regarding its (approximately 50) suppliers' CSR practices, including the question about whether their employeeshave good work–life balance. Shiseido has used more than 20 different manuals for CSR behaviour in different countries, but it is working on creating a single manual for CSR practices based on *ISO 26000* for all countries.
4. Ricoh introduced numerical goals for 30 of its CSR practices, starting in fiscal 2011 (ending in March 2012). This will supplement existing numerical goals for its practices regarding greenhouse emissions and other environment-related activities. By comparing these goals with where the practices currently are, it hopes to show its CSR approaches to the global marketplace. Similar numerical goals for CSR practices were also adopted by Toshiba and have been operational since the 2009 fiscal year (adoption of key performance indicators from 2009 through until the fiscal 2012 year-end).[37]
5. Finally, these companies' approaches to CSR have been generally framed as a part of their corporate risk-management systems, and in response to this, NKSJ Risk Management began providing consulting services on how firms should approach *ISO 26000*.[38] Its first seminar for Japanese firms' CSR personnel was given in July 2011.[39]

We have shown above some of Japan's representative corporations paying attention to CSR from their global perspectives. We now list a number of areas where Japanese firms' CSR behaviour differs from that of their U.S. counterparts.

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[37] See Toshiba, "Major Achievements in FY2010 and Targets & Plans for FY2011", online: <http://www.toshiba.co.jp/csr/en/kpi/index.htm>.

[38] See "Consideration of Human Rights", *supra* note 35.

[39] *Ibid.*

A. TRANSPARENCY (TO IMPROVE DISCLOSURE IN THE CAPITAL MARKETS)

The Japanese government introduced its own version of *SOX*, *J-SOX*, to protect shareholders. The introduction of *J-SOX* is an important part of Japan's ongoing CG reforms.[40] Disclosure and transparency are clearly essential not only for shareholders, but also for the Japanese economy, which requires efficiently functioning capital markets. In this sense, *J-SOX* provides an institutional setting for CSR behaviour in financial transactions. Yet, as implemented, *J-SOX* seems considerably diluted in its enforcement power/effectiveness compared to its U.S. counterpart, as is shown below.

B. COVERAGE

1. *SOX* COVERAGE

Initially *SOX* applied to all publicly traded firms in the U.S. with a market value of $75 million or greater[41] (about half of all listed firms in the U.S.). After several extensions to include smaller firms over the years, *SOX* is now applicable to all publicly traded firms.[42]

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40 *J-SOX*, *supra* note 5.

41 *SOX*, *supra* note 4, § 404. According to an estimate by the U.S. Chamber of Commerce (2007), about half of all listed firms in the U.S. have a market value of $75 million or greater. See U.S. Chamber of Commerce, *Sarbanes-Oxley Section 404: New Evidence on the Costs for Small Businesses* (2007) at 5, online: House Small Business Committee Democrats <http://democrats.smallbusiness.house.gov/hearings/hearing-12-12-07-sox/testimony-12-12-07-USCoC.pdf>.

42 After several extensions to include smaller firms, the Securities Exchange Commission, on 2 October 2009, granted another extension for the outside auditor assessment until fiscal years ending after 15 June 2010, saying that there will be no further extensions in the future. See SEC News Digest, "Small Public Companies to Begin Providing Audited Assessment of Internal Controls over Financial Reporting in Nine Months" (2 October 2009), online: U.S. Securities and Exchange Commission <http://www.sec.gov/news/digest/2009/dig100209.htm>.

2. *SOX* INFRASTRUCTURE

There are over 300,000 Certified Public Accountants (CPAs).[43] *SOX* requires both internal reporting by the management and direct reporting in which external auditors report the results of their internal-control audits independent from the management's assessment.[44]

3. *J-SOX* COVERAGE

J-SOX applies to all listed firms (about 4000 firms), as well as their related (consolidated) firms (over 50,000 firms),[45] which makes the required auditing task potentially very large compared to U.S. circumstances.

4. *J-SOX* INFRASTRUCTURE

There are about 20,000 CPAs in Japan.[46] Parent firms' internal controls requires standardization of work processes at both parent and subsidiary firms. From 1 April 2008, internal controls and auditing reports must be

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43 More than 300,000 accountants are represented by the American Institute of CPAs. In addition there are CPAs who don't belong to this organization. See OpenSecrets.org (2012), online: <http://www.opensecrets.org/orgs/summary.php?id=D000000095>.

44 *SOX*, *supra* note 4, §§ 204, 404.

45 For example, as of 28 February 2009, 4925 firms were listed on the Japanese stock markets. See IPO Support Inc, "Listed Japanese Market" (2009), online: <http://www.iposupport.co.jp/ipo/01.html>. No precise estimate exists for the number of related firms in Japan. But see Nikkei, *Annual Data on Consolidated Group Firms* (Tokyo: Nihon Keizai Shinbunsha, 2002) (which contains about 2300 listed firms in Japan and over 40,000 related firms). We estimate that over 4000 listed firms have more than 50,000 related firms. The 2002 *Annual Data on Consolidated Group Firms* is out of print, but its overview, with the numbers of firms contained in their database, can be found online. See "Yearbook of Consolidated Group Companies 2002 Edition" (in Japanese), online: Traders Shop <http://www.tradersshop.com/bin/showprod?c=9784532214579>.

46 The Japanese Institute of Certified Public Accountants, "Total Membership", online: JICPA <http://www.hp.jicpa.or.jp/english/about/member/index.html> (giving 2009 estimates).

prepared.[47] Under Japan's Standards of Internal Control Audit,[48] the same auditor performs the internal-control audit and financial-statement audit.[49] Audit evidence obtained through each audit can be effectively used in both fields, and improvements can be expected in the efficiency and effectiveness of the audit. Furthermore, unlike in the U.S., direct reporting, in which external auditors report the results of their internal-control audits independent from the management's assessment, is not required.[50] Auditors in Japan eventually will prepare one single audit report containing the results of both financial-statement audits and internal-control audits because the same auditor conducts both audits in a similar framework.[51]

The large domain of coverage and the relatively small number of CPAs in Japan may imply that the implementation of *J-SOX* will be limited to very large firms, and the enforcement in general will be weak at best.[52]

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47 See *Act for the Amendment of the Securities and Exchange Act*, Act No 65 of 2006 (Japan); *Act for the Development of relevant Acts for Enforcement of the Act for the Amendment of the Securities and Exchange Act*, Act No 66 of 2006 (Japan). See also *Financial Instruments and Exchange Act*, online: Financial Services Agency <http://www.fsa.go.jp/en/policy/fiel/index.html>; Kazuhiro Uehara et al, "J-SOX Challenge: Efforts to Comply with the New Japanese Regulation" (2008) 5 *Information Systems Control Journal*.

48 See *Act for the Amendment of the Securities and Exchange Act*, *supra* note 47. See also *Financial Instruments and Exchange Act*, *supra* note 47; Kazuhiro, *supra* note 47.

49 *Ibid.*

50 This shows Japan's selective adaptation behaviour in transplanting U.S. *SOX* laws into Japan. Japan's requirement that, unlike in the U.S., no external reporting is required may have adverse implications for the level of disclosure of Japanese corporations. This remains to be seen.

51 See e.g. Dick Carozza, "An Interview with Prof. Shinji Hatta: New Japanese Internal Controls Framework: Japan Works to Deter Fraud with 'J-SOX'" *Fraud Magazine* (November/December 2007), online: <http://www.fraud-magazine.com>.

52 One implication of this might be Japan's continuing difficulty in implementing satisfactory levels of transparency and disclosure for transactions between large firms, their small subsidiaries, and other related firms. Currently, we have only a few cases of anecdotal evidence that support this preliminary hypothesis (e.g., the Olympus scandal that we discuss elsewhere in this paper). A few more years of experience by many Japanese firms in implementing the *J-SOX* laws will be needed to obtain empirical evidence of this.

C. PENALTY

1. *SOX* PENALTY

Up to 20 years in prison; up to $5 million fine. Corporate directors, executives, and CPAs will be liable.

2. *J-SOX* PENALTY

If false reporting or no submission of reports occurs, possible penalty will be up to five years in prison, or up to ¥5 million (about $63,000) fine.

We expect that Japan's rather weak implementation of *J-SOX* embodies selective adaptation, as has been the case in other instances of Japan's efforts to adopt Western laws (e.g., antitrust laws).[53]

D. STAKEHOLDER INTERESTS/HUMAN RIGHTS

Selective adaptation has had a significant impact on Japan's ongoing CG reforms, where the aim has been to introduce more U.S.-style CG practices into Japan. Even though the Japanese government has essentially created an institutional and legal framework in which Japanese firms *can* operate like U.S. corporations as far as CG practices are concerned, many Japanese firms have chosen not to adopt U.S. CG practices in their original forms, or not to adopt them at all in the case of certain practices. The U.S. practices adopted were selectively chosen and modified. Concerns have been raised that adopting U.S. CG practices by selective adaptation might result in inconsistencies and dysfunctional applications of some important CG principles, leading to serious economic inefficiencies.[54]

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[53] See e.g. Nakamura, "Adoption and Policy", *supra* note 8 at 193, 208–09; Kazumasa Niimi, "Management Analysis of Consolidated Companies Corporate Group" (in Japanese) (2007) Business & Economic Review, online: The Japan Research Institute <http://www.jri.co.jp/report/ber/detail/187>. See also D Eleanor Westney, *Imitation and Innovation: The Transfer of Western Organization Patterns to Meiji Japan* (Cambridge, Mass: Harvard University Press, 1987) (for a discussion on how Japan historically chose among various organizational forms for its institutions).

[54] See Nakamura, "Adoption and Policy", *supra* note 8.

In this process of selective adaptation in Japan, the shareholder-value-maximization principle, one of the key notions in the U.S. CG system, has been challenged by Japan's more traditional stakeholder-welfare-maximization principle. Since CSR generally addresses firms' stakeholders, including shareholders, workers, suppliers, customers, and the localities where firms operate, it may mean that CSR activities might find a better fit in Japan than U.S. firms in the area of stakeholder relations.[55] We will explore this notion further in our case studies in Section V.

Finally, the following two related examples illustrate the intertwining relationship between CSR and CG (or, more generally, management) practices in Japan.

E. FEMALE WORKERS IN JAPAN

Japanese labour-management practices include several practices that are not common in the U.S. For example, because of female workers' relatively short tenure, many Japanese firms do not think promoting them is consistent with firm-profit maximization. This is because these firms invest heavily only in the human capital of long-term workers, and they expect to receive the

[55] Yet, as discussed below, how Japanese corporations generally treat their female workers relative to their male counterparts in rather unequal manners suggests that female workers' human rights are not fully protected in Japanese corporate settings. This issue of the unequal treatment of workers based on gender has not been treated as a confrontation between shareholders and female human-rights holders at Japanese courts (at least not yet). This reflects Japan's selective adaptation of Western CSR practices into Japanese society, where women's place has been historically well-established. See e.g. Edwin O Reischauer & Marius B Jansen, *The Japanese Today: Change and Continuity* (Cambridge, Mass: Harvard University Press, 1988). Such traditional notions are not always compatible with Western-style concepts such as "equal opportunities for everyone" and "equal pay for equal work". Nevertheless, the new economic realities of the rapidly dwindling working-age population of Japan, prompted by new government policy measures to promote female employment, have begun forcing many Japanese firms to adopt more female-friendly labour policies, for example, to promote child care subsidies, equal employment, and promotion opportunities for women. See Adam Westlake, "Ministry of Labor Encourages More Female Employment", *Japan Daily Press* (16 May 2012), online: <http://www.japandailypress.com>.

returns of their investment in workers' human capital over a long period of time.

Female workers' short tenure is thought to arise from the termination of their employment if they get married, quit, and/or decide to spend their time on child rearing after they give birth to a child.[56] Also, many Japanese firms' policies of not giving the same types of employment and promotion opportunities to both men and women is clearly a statistical discrimination for the women who do not follow this perceived pattern of employment over time.[57] Such a practice has not caused any problem in CG contexts at many Japanese firms, despite Japan's Equal Employment Opportunity Law, which has gone through several revisions since the 1980s.[58] (The primary reason for this disobedience of the law by firms seems to be that the law lacks serious enforcement or penalty clauses, unlike its U.S. counterparts.)[59] Strong U.S. government regulations have discouraged this type of discrimination. For example, even though some small improvement was made in Japan's gender wage gap between 1999 and 2009, Japan remained next to last in the level of gender wage gap among OECD countries in both 1999 and 2009.[60]

Even though it is not necessarily profitable to do so (hence it would not be good management/CG practice), Japanese firms with good standings in CSR areas may choose to promote female workers in their workplaces. For example, Toshiba, regarded as having one of the highest CSR ratings in Japan, has the following reported example:

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56 See e.g. Masao Nakamura, "Japanese Industrial Relations in an International Business Environment" (1993) 4:2 North American Journal of Economics and Finance 225 [Nakamura, "Japanese Industrial Relations"].

57 *Ibid.*

58 For details on Japan's "Equal Employment Opportunity Law", see e.g. Megan L Starich, "The 2006 Revisions to Japan's Equal Opportunity Employment Law: A Narrow Approach to a Pervasive Problem" (2007) 16:2 Pacific Rim Law & Policy Journal 551.

59 See generally U.S. Equal Employment Opportunity Commission, "Federal Equal Employment Opportunity (EEO) Laws", online: <http://www.eeoc.gov/facts/qanda.html> (for details on the applicable laws).

60 Organization for Economic Development (OECD), *Employment Outlook 2011* (Paris: OECD, 2011) Table 1 at 262, online: <http://www.oecd-ilibrary.org>.

> It is the Achilles' heel of 3-D television: the clunky glasses that viewers must wear to see images pop out in 3-D.
>
> But Rieko Fukushima, a researcher at Toshiba, developed a way to do away with the glasses—and at the same time is helping to crack Japan's glass ceiling for women.
>
> 'I'd be lying if I said it wasn't tough as a woman,' said Mrs. Fukushima, 39, who led Toshiba's effort to develop the world's first 'naked eye' 3-D TV. The project began nine years ago, when she had just returned from maternity leave.
>
> 'Sometimes, I'd see it in my colleagues' expressions,' she said. 'What? A woman? This age? In charge?'[61]

But Mrs. Fukushima's breakthrough is a rare example of a company that has successfully tapped into what some economists call Japan's most underused resource: women.[62] According to a 2009 government survey, women made up 10% of managerial jobs in Japan;[63] in the United States, women hold 51% of supervisory positions, according to Catalyst, a non-profit in New York.[64] Only 65% of college-educated Japanese women are employed, many of them in low-paid temp jobs, compared with about 80% in the United States—"a significant lost economic opportunity for the nation", Goldman Sachs said in a report in October 2010.[65] Over two-thirds of Japanese women leave the workforce after their first child compared with just one-third of American women, the report said, often because of corporate and societal norms, as well as insufficient child care.[66] If Japan's

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61 Hiroko Tabuchi, "Leading in 3-D TV, and Breaking Japan's Glass Ceiling", *The New York Times* (18 January 2011) B1 [Tabuchi, "Breaking Japan's Glass Ceiling"].

62 See e.g. Kathy Matsui, *Japan: Portfolio Strategy: Womenomics 3.0: The Time Is Now* (1 October 2010) at 11, online: Goldman Sachs Global Economics, Commodities and Strategy Research <http://www.goldmansachs.com/our-thinking/topics/women-and-economics/womenomics-2011/womenomics3-the-time-is-now.pdf>.

63 Japanese Government Gender Equality Bureau, "Investigation on Women's Participation in Policy and Decision Making," (Tokyo: GEB, 2011), online: <http://www.gender.go.jp/english_contents/category/pub/pamphlet/women-and-men11/pdf/1.pdf>

64 "Women in U.S. Management", Catalyst (2012), online: <http://www.catalyst.org/publication/206/Women-in-us-management>.

65 Matsui, *supra* note 62.

66 *Ibid* at 3.

60% female-employment rate in 2009 could match the 80% rate among men, the country would have 8.2 million more workers to replenish its rapidly aging population and raise its gross domestic product by as much as 15%, according to the report.[67]

Mrs. Fukushima credits Toshiba with creating a hospitable environment for women. When she was on maternity leave, her supervisor e-mailed her with updates on the latest research and to assure her she "had a place to come back to," she said.[68] Toshiba introduced measures in 2004 to help women balance work responsibilities with those at home, including more flexible working hours and a career track with a reduced workload.[69] Now, the majority of women who take maternity leave return to their jobs, officials say.[70]

The type of work environment that promotes female workers is still uncommon in Japan. Even though doing so is socially beneficial, many firms in Japan are still reluctant to follow Toshiba's example, primarily because they do not see good prospects in recovering their cost of investment in such projects.[71] Another reason may be that they do not know how to proceed with such a new employment policy in their management structures.

Is this a profitable thing to do? Most firms consider it potentially profitable in the long run, yet not in the short run. Since this is something that goes beyond what CG usually covers, we might say this behaviour by Toshiba belongs to CSR and outside CG.

F. PROMOTION OF EMPLOYMENT BEYOND PROFIT

We might generalize the above case of female workers and consider some Japanese firms' desperate efforts to retain their employment in Japan as an activity almost belonging to CSR. To the extent that workers form an

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67 *Ibid.*

68 Tabuchi, "Breaking Japan's Glass Ceiling", *supra* note 61.

69 See Toshiba, "Employment Policies" (in Japanese), online: <http://www.toshiba.co.jp/csr/jp/labor/work.htm>.

70 *Ibid.*

71 An inference we draw from the statistics as well as our observations of contemporary business practices.

integral part of Japanese firms' stakeholders (despite the above example of female workers), we expect Japanese firms to pay special attention to workers' employment problems.

For example, Akio Toyoda, CEO of Toyota Motor Corporation, asserted again[72] while commenting on Toyota's effort to maintain domestic production of three million cars, that

> [production in Japan in the adverse environment with the highly appreciated Japanese currency, the earthquake/tsunami disaster, etc.] is beyond any [economic] reasoning, but Toyota will do everything to adhere to the domestic production.... Toyota, a global enterprise, was born and brought up in Japan, and we cannot abandon domestic production just because of adverse business environments.[73]

It remains to be seen how Toyota's policies on domestic production and employment change over time. Moving production facilities out of the domestic home market to low-wage countries has been observed in all developed economies. This is what one would expect under standard CG practices. Then can we say that Japanese firms like Toyota, behaving in the manner discussed above, are following their domestic-production policy, at least in part, as a CSR activity?

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72 Toyota's annual production plans, published on its home page, have maintained domestic production of over three million passenger cars, but the rapid rise in value of the Japanese currency against the U.S. and E.U. currencies in the last few years made President Toyoda focus on his policy of maintaining an annual production of at least three million cars in order to keep essential R&D and new product development capacity in Japan. He made this view clear in a number of press conferences last year (in 2011). Most recently, press releases by Toyota along these lines have been given. See e.g. *Mainichi* newspaper (24 July 2012) (stating that even though Toyota Motor is moving some of its production capacity of Lexus SUVs and Yaris models out of Japan to its manufacturing facilities in Canada and France, respectively, to lower production costs, it will hold on to the policy of producing at least three million cars in Japan).

73 See Response, "President Toyoda on Strengthening Their Domestic Production," (13 July 2011), online: <http://response.jp/article/2011/07/13/159401.html>. Toyota's policies on domestic production levels were repeated by President Toyoda in Toyota Motor's annual general shareholders' meeting held on 15 June 2012. See *Mainichi* Newspaper (15 June 2012), online: <http://mainichi.jp/select/news/20120616k0000m020046000c.html>.

G. RELATIONSHIP TO GOVERNMENT REGULATIONS

As discussed above, Japan has its own version of the equal-employment-opportunity law, which was introduced in the late 1980s and has been revised several times since then. Its primary aim is to promote female employment opportunities and, for the most part, it is very similar to the U.S. equal-employment law.[74] But one main difference between this law and its U.S. counterpart is that the Japanese law has no real enforcement clause yet.[75] In this context, firms that provide more than the average treatment to their female workers might be making some CSR contributions beyond CG, as we discussed above.[76]

We note also that Japanese firms' subsidiaries in the U.S. promote female employment and equal employment opportunities just like many U.S. firms, and they are in fact largely profitable.[77] At many such U.S.-subsidiary firms, this type of human-resource-management (HRM) practice is well established, providing added productivity and good public image.

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74 For details see e.g. Starich, *supra* note 58.

75 *Ibid.*

76 See Joyce Gelb, "The Equal Employment Opportunity Law: A Decade of Change for Japanese Women?" (2000) 22:3–4 Law & Pol'y 385; Ryoko Sakuraba, "Employment Discrimination Law in Japan: Human Rights or Employment Policy?" in The Japan Institute for Labour Policy and Training, New Developments in Employment Discrimination Law JILPT Report No 6 (Tokyo: JILPT, 2008) 181, online: JILPT <http://www.jil.go.jp/english/reports/documents/jilpt-reports/no6.pdf>. Sakuraba notes: "Japanese employment discrimination law has not been so strong an instrument to abolish discrimination as that in, for instance, the US or EU. . . . In Japan, principle of freedom of contract predominates over the equality principle with regard to hiring process": (*ibid* at 199).

77 Recognizing that their HRM practices must conform to the U.S. employment laws, many Japanese firms' subsidiaries in the U.S have followed policies of hiring employees with diverse characteristics. They have contributed significantly to their parent firms' profitability. See Robert Abraham "Limitations on the Right of Japanese Employers to Select Employees of Their Choice Under the Treaty of Friendship, Commerce and Navigation" (1991) 6:4 American University International Law Review 475; Nakamura, "Japanese Industrial Relations", *supra* note 56; Mariko Sakakibara & Hideki Yamawaki, "What Determines the Profitability of Foreign Direct Investment? A Subsidiary Level Analysis of Japanese Multinationals" (2008) 29:2–3 Managerial and Decision Economics 277.

Although all Japanese firms' subsidiaries in the U.S. conform to the U.S. equal-employment laws, few have introduced the practice of equal employment back in Japan. The generally light penalty in Japan for corporate violators of the laws originally imported from the West, such as the equal-employment law and the antimonopoly law, reflects closer relationships between Japanese corporations and government and is consistent with Japan's selective-adaptation behaviour.[78]

IV. JAPANESE FIRMS: STATISTICAL RELATIONSHIP BETWEEN CSR PRACTICES AND CORPORATE PERFORMANCE

In this section, we review some of the existing empirical evidence in the literature that connects CSR practices and corporate performance. Since good CG practices generally imply a high level of firm performance, as we have discussed above, we assume below that firm performance is a surrogate for quality levels of CG practices. Positive correlations between firms' CSR practices and performance imply that CSR practices are consistent with firms' CG principles. Since there are several classes of CSR practices in which firms can engage, and there are also several ways by which firm performance is measured, research findings on estimated correlations of the relationship between CSR practices and firm-performance measures typically present partial results on such relationships, at best. Nevertheless, they may have information that is not available elsewhere.

Many studies in the literature explore, empirically, the relationship between U.S. firms' CSR practices and firm performance. Findings from U.S. cases generally suggest that, while some authors have found some positive correlations between CSR practices and firm performance, such evidence

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78 A U.S.-style antitrust law was introduced by the Allied Forces to occupied Japan in the late 1940s following the end of the Second World War. See generally Japan Fair Trade Commission, *Legislation and Guidelines: The Antimonopoly Act*, (Tokyo: Japan Fair Trade Commission, 2011), online: <http://www.jftc.go.jp>; Mitsuo Matsushita, "Reforming the Enforcement of the Japanese Antimonopoly Law" (2010) 41:3 Loyola University Chicago Law Journal 521.

seems to be limited to certain industries and/or certain types of businesses.[79] In addition, some researchers question whether any meaningful relationship exists between CSR and profit, or CSR and the social good.[80] Our review of some of the empirical studies for Japanese firms in the literature suggests that Japanese firms' CSR behaviour is largely consistent with that of U.S. firms,

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79 See e.g. Ray Fisman, Geoffrey Heal & Vinay B Nair, "A Model of Corporate Philanthropy" (2005) Working Paper, Wharton School, University of Pennsylvania, online: University of Pennsylvania <http://knowledge.wharton.upenn.edu/papers/1331.pdf>; Timothy M Devinney, "Is the Socially Responsible Corporation a Myth? The Good, the Bad, and the Ugly of Corporate Social Responsibility" (2009) 23:2 Academy of Management Perspectives 44; Paul C Godfrey, Craig B Merrill & Jared M Hansen, "The Relationship between Corporate Social Responsibility and Shareholder Value: An Empirical Test of the Risk Management Hypothesis" (2009) 30:4 Strategic Management Journal 425; Oliver Falk & Stephan Heblich, "Corporate Social Responsibility: Doing Well By Doing Good" (2007) 50:3 Business Horizons 247.

80 See e.g. David Vogel, "CSR Doesn't Pay" *Forbes* (16 October 2008), online: <http://www.forbes.com>:

> The belief that corporate responsibility 'pays' is a seductive one: Who would not want to live in a world in which corporate virtue is rewarded and corporate irresponsibility punished? Unfortunately, the evidence for these rewards and punishment is rather weak. There is a 'market for virtue,' but it is a very limited one. Nor is it growing.
>
> One can certainly find examples of firms with superior CSR performance that have done well, as well as firms with poor CSR reputations that have performed poorly. But there are at least as many examples of firms with good CSR records that have not done well and firms with poor CSR reputations that rewarded their shareholders.
>
> The good news is that firms with superior CSR performance have not performed any worse than their less virtuous competitors. But the disappointing news is that neither have they done any better. For most firms, most of the time, CSR is largely irrelevant to their financial performance.
>
> Revealingly, the long-term performance of socially responsible investment funds has been no better, or worse, than those of funds that use other criteria to predict future shareholder value.

See also David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (New York: Brookings Institution, 2005); Robert B Reich, *Supercapitalism: The Transformation of Business, Democracy, and Everyday Life* (New York: Alred A Knopf, 2007) at 170. Reich says not to depend on corporations to solve social problems. Companies "cannot be socially responsible, at least not to any significant extent" [emphasis removed], and CSR activists are being diverted from the more realistic and important task of getting governments to solve social problems. Debating whether Wal-Mart or Google is good or evil misses the point, he says, which is that governments are responsible for setting rules that ensure that competing, profit-maximizing firms do not act against the interests of society.

and their estimated positive correlations at best provide only limited evidence on the relationship between firms' practices in CSR and CG.

A. EMPIRICAL EVIDENCE: CONNECTIONS BETWEEN CSR AND CG FOR JAPANESE FIRMS

Table 1 shows the top-15 Japanese firms in terms of CSR scores based on the Toyo Keizai scale,[81] with their CSR scores for the three-year average (2008–2010) as well as 2010 scores. Also included in Table 1 are the firms' financial performance measured in terms of stock returns, growth, and safety. We see that top CSR firms are not necessarily top financial performers. As an extreme case, Japan Airlines (JAL) is ranked ninth in terms of CSR contributions, but JAL went into bankruptcy and asked for protection from creditors in that year.

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[81] Toyo Keizai Shinposha, *Toyo Keizai Data Bank series: CSR* (Tokyo: Toyo Keizai 2010), online: <http://www.toyokeizai.net/csr/pdf/syukei/CSR_syukei2012.pdf> (Toyo Keizai produces annual publications on individual company CSR data).

TABLE 1: TOP 15 CSR COMPANIES IN JAPAN

Rank	Company	CRS: HRM-Quality		Corp. finance–valuation (2010)				
						(AAA/AA/A/B/C)		
		Three-year average score (100), 2008–2010	Year 2000 score (100)		Total score (4,000)	growth	stock return	safety
1	Teijin	97.5	100.0		2,913	B	A	B
2	Shiseido	96.8	100.0		2,986	B	A	AA
3	Toshiba	95.6	94.3		3,127	A	B	C
4	ANA	93.7	90.5		3,052	A	B	C
5	Takashimaya	93.0	94.3		2,881	B	B	B
6	Toray	92.4	90.5		3,091	B	A	B
7	Panasonic Elec.	91.8	88.6		3,070	B	A	AA
8	Panasonic	91.8	92.4		3,245	C	A	AA
9	JAL	91.1	92.4		2,797	C	B	C
10	NYK	91.1	94.3		3,260	A	A	B
11	Hitachi, Ltd.	91.0	100.0		3,127	B	B	C
12	NEC	89.8	98.1		3,027	C	B	B
13	Sony	89.2	92.4		3,252	A	B	B
14	Sharp	88.6	84.9		3,283	A	B	B
15	Daikin Ind.	88.6	90.5		3,365	AAA	A	B

Source: Toyo Keizai Shinposha, *supra* note 81.

Notes: (1) HRM: human resource management; (2) JAL went into Chapter 11 reorganization last year.

Daiwa Institute of Research calculated excess returns that were earned by large Japanese firms that are ranked high in terms of their practices in each of the following areas of female employment:[82] (1) the degree of convenience with which female workers can work; (2) the degree to which female workers have been promoted to the management ranks; (3) the extent female workers' skills have been utilized; (4) the degree to which the company is willing to allow workers to balance their work with their personal lives; and (5) the degree to which male and female workers are treated equally.

Based on the results of a survey of 416 Japanese firms on a set of questions in each of the five categories, the following numbers of high-ranking firms in these categories were selected: (1) female workers can work with convenience (seventy-two firms); (2) female workers are promoted to managers relatively often (six firms); (3) female workers' skills are utilized (eight firms); (4) female workers are allowed to balance their work with their personal lives (seven firms); and (5) female and male workers are treated equally (eight firms). In Table 2 we compare these firms' stock returns with the benchmark stock returns generated by the portfolio of Tokyo Stock Exchange (TOPIX) firms. The TOPIX firm index uses market value as weights.

Results in Table 2 clearly show some level of positive correlation between good HRM, with respect to female-worker management, and firms' financial returns. In particular, from columns A, B, and C, we see that paying attention to providing mechanisms that facilitate a female-friendly work environment (our factor (1)), and also to mechanisms that enable workers to lead a life that is well-balanced between work and leisure (our factor (4)), appears to be correlated with positive excess returns for different time periods (2, 5, and 10 years). But correlations observed for return on equity (ROE) are somewhat mixed and numerically small (columns D and E). These results are uneven and conditional on relevant HRM functions and other business-environment factors. This is consistent with some of the U.S. findings.[83]

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82 See also *Nikkei Woman* 285 (May 2008), online: <http://ec.nikkeibp.co.jp/item/backno/WO0257.html>.

83 See e.g. Devinney, *supra* note 79; Fisman, Heal & Nair, *supra* note 79.

TABLE 2: JAPANESE FIRMS THAT FACILITATE FEMALE EMPLOYMENT AND THEIR EXCESS STOCK RETURNS

	(A)	(B)	(C)	(D)	(E)
	EXCESS STOCK RETURNS			EXCESS RETURN ON EQUITY	
	2 YEARS (2006–2008)	5 YEARS (2003–2008)	10 YEARS (1998–2008)	5 YEARS (2003–2008)	10 YEARS (1998–2008)
FIRM TYPE (NUMBER OF LISTED FIRMS RANKED EXCELLENT IN EACH CATEGORY OUT OF THE TOTAL SAMPLE OF 416 SURVEYED FIRMS)*					
(1) PROVIDING CONVENIENCE FOR FEMALE WORKERS: 72	1.59%	1.42%	3.03%	1.29%	0.63%
(2) PROMOTION TO MANAGEMENT RANKS: 6	-13.28	2.01	5.86	2.48	4.22
(3) FEMALE WORKERS' SKILL UTILIZED: 8	-5.04	5.00	1.87	0.03	-0.51
(4) BALANCE BETWEEN WORK AND LIFE IMPORTANT: 7	9.13	3.30	3.18	-1.31	0.02
(5) EQUALITY BETWEEN MALE AND FEMALE WORKERS: 8	-1.70	7.37	4.27	-2.50	-0.91

	(A)	(B)	(C)	(D)	(E)
	EXCESS STOCK RETURNS CONTINUED			EXCESS RETURN ON EQUITY CONTINUED	
	2 YEARS (2006-2008)	5 YEARS (2003-2008)	10 YEARS (1998-2008)	5 YEARS (2003-2008)	10 YEARS (1998-2008)
(6) PROVIDING CONVENIENCE FOR FEMALE WORKERS (30 FIRMS WITH HIGHEST SCORES)		2.03%	2.73%		
(7) PROVIDING CONVENIENCE FOR FEMALE WORKERS (30 FIRMS WITH LOWEST SCORES)		-0.09	1.19		
TOPIX AVERAGE (VALUE ADDED)				7.87	4.12

Source: Daiwa Institute of Research, *JSOX: How Do Responses to JSOX Relate to Improved Firm Value* (in Japanese) (Tokyo: Daiwa Institute of Research, 25 August 2008). See also *Nikkei Woman* 272 (June 2006), online: <http://ec.nikkeibp.co.jp>.

*Notes: Excellent companies are defined as follows: for category (1), excellent firms are the 100 highest-scoring firms; and for categories (2)–(5), excellent firms are the 10 highest-scoring firms in the respective categories.

The rating scores were calculated for each sample firm based on the survey results as of April 2006. Of these excellent firms, only listed firms (as of April 2008) are included for our comparisons below. Four-hundred and sixteen Japanese firms (both listed and unlisted) were included in the original survey sample. TOPIX (Tokyo Stock Exchange index) is a value-weighted stock index based on all firms listed on TOPIX.

Table 3 shows simple regression results relating certain CSR index measures to various measures of firm performance for 742 Japanese firms listed on the Tokyo Stock Exchange (TSE). The dependent variables used are firms' total CSR scores and scores of HRM quality.

TABLE 3: CORRELATION ANALYSIS (SIMPLE REGRESSIONS)

	DEPENDENT VARIABLE		
	CRS: TOTAL SCORE		CRS: HRM-QUALITY
	R^2		R^2
FINANCE—TOTAL SCORE	0.2158*		0.1773*
GROWTH	0.0002		0.0009
STOCK RETURN	0.0122*		0.0207*
SAFETY	0.0000		0.0000
FIRM SIZE	0.3658*		0.2741*

Source: Toyo Keizai Shinposha, *supra* note 81.
Sample size: 742 listed firms.
* denotes significance at a 99% level.

Both the total score and HRM-quality score of CSR ratings of listed Japanese firms are correlated with the firms' financial performance, stock return, and size. Firms' growth prospects and safety properties seem to be uncorrelated with CSR scores. This shows difficulty in separating out CG and CSR factors.

Findings reported in Tables 2 and 3 both suggest that good HRM practices, including good management mechanisms for female workers, are positively correlated with at least some aspects of firm performance. But at this time, it is not possible to say anything about the direction of causality.[84] Hence, it is possible that good HRM practice in the area of female management may increase firms' financial returns, but it is also possible that causality is reversed, in that firms with good financial performance can afford to pay extra attention to certain HRM practices, including dealing with special issues related to female workers. For our purpose, the direction of causality does not seem to make much difference. Since we know that a majority of Japanese firms still have poor management practices as far as their female workers are concerned, and since such practices are still the norm in many Japanese businesses, moving to correct such practices seems consistent

84 While the direction of causality (or endogeneity) problem is of research interest, it seems difficult to solve this issue statistically using data, in part because CSR and CG cannot be separated by definition in practice.

with our definition of CSR practices. While some firms undertaking such a move may get some tangible financial returns, many of these firms are not likely to realize financial gain from such practices. The findings above are generally consistent with the findings we discussed earlier for U.S. firms. Now we turn to our case studies of large listed firms in Japan and the U.S.

V. CSR PRACTICES OF JAPANESE AND U.S. FIRMS: A COMPARISON

In this section we present a comparative study of pairs of Japanese and U.S. firms with a specific focus on their CG and CSR guidelines and objectives, as stated by the companies themselves. We assess their adherence to Western and/or international CSR standards in the context of specific CSR activities and allude to the relevance of Japanese firms' selective-adaptation behaviour. In doing so, we further point to some advantages of Japanese firms vis-à-vis their U.S. competitors in regards to credibility. We expect certain systematic differences in CSR activities between the two countries' firms, in part due to different business norms and values, which drive relevant historical and institutional settings, CG practices, and subsequent CSR activities in Japan and the U.S.

Our comparisons will be between large U.S. and Japanese companies in electronics and industrial-appliances industries. Using publicly available information in their annual CSR reports and elsewhere, we analyze these firms' stated codes of conduct for CG and CSR practices. In particular, we focus on the following: (1) concrete projects within the firms' CSR agendas; (2) their global engagement dispersion, as well as their proclaimed and recognized adherence to national and international standards for CSR conduct such as the United Nations Global Compact;[85] and (3) the intersection between the firms' CG and CSR practices and the degree to which CSR activities were deemed short-term and/or long-term business-

[85] See UN Global Compact, online: <http://unglobalcompact.org>. The following additional standards were taken into consideration: *ISO 14001*; World Business Council for Sustainable Development's (WBCSD) Vision 2050, Global 100 listing, FTSE 4 Good Index, and the Dow Jones Sustainability World Index (DJSWI).

and value-enhancing corporate strategies. The company pairs discussed as examples here are IBM and Toshiba, and Sony and General Electric.

TABLE 4: COMPANY PAIRS AND INDUSTRY SECTOR

COUNTRY/ INDUSTRY	UNITED STATES	JAPAN
Electronics /industrials	IBM	Toshiba
Electronics /industrials	GE	Sony

Sony, GE, IBM, and Toshiba are among the largest corporations in our comparison-group companies,[86] with their global workforces (including related companies) ranging approximately from 170,000 (Sony) to 200,000 (Toshiba), 290,000 (GE) and 400,000 (IBM) at the end of 2011.[87] An interesting difference among these firms in terms of their CG practices, which is relevant for our analysis, is their financial-incentive structures for their management personnel.

A. CORPORATE GOVERNANCE AND EXECUTIVE PAY

How financial incentives for firms' executives are designed is known to exert considerable influence on firms' managers' preferences for certain types of business strategies. Financial incentives for managers are particularly

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86 We present additional comparisons between U.S. and Japanese companies elsewhere. See Masao Nakamura & Sven Tommi Rebien, "CSR and Corporate Governance: Japanese and US Firms" (Paper delivered at the Corporate Social Responsibility in the Pacific Rim Conference, 14–15 April 2011) [unpublished].These pairs of companies were chosen from the following industries: pharmaceuticals, chemicals, construction, and automotive industries.

87 See Toshiba, *Corporate Profile,* online: <http://www.toshiba.co.jp>; IBM, *2011 Annual Report,* online: <http://www.ibm.com/annualreport/2011/bin/assets/2011_ibm_annual.pdf>; Sony, *Corporate Profile,* online: <http://www.sony.co.jp/SonyInfo/CorporateInfo/index.html>; General Electric, *Fact Sheet,* online: <http://www. ge.com/company/factsheets/corporate.html>.

important tools for motivating managers in the U.S. If shareholder value is given particular priority in CG (as it is in the U.S.), then executive pay aligned to this value can be expected to produce an immediate incentive for executives to attain corporate performance that both meets share-value maximization and increases their own pay.[88] Jensen and Murphy[89] point this out as follows:

> Shareholders rely on CEOs to adopt policies that maximize the value of their shares. Like other human beings, however, CEOs tend to engage in activities that increase their own well-being. One of the most critical roles of the board of directors is to create incentives that make it in the CEO's best interest to do what's in the shareholders' best interest.... Some combination of three basic policies will create the right monetary incentives for CEOs to maximize the value of their companies:
>
> (1) Boards can require that CEOs become substantial owners of company stock.
>
> (2) Salaries, bonus, and stock options can be structured so as to provide big rewards for superior performance and big penalties for poor performance.
>
> (3) The threat of dismissal for poor performance can be made real.[90]

The aforementioned practice of executive compensation has traditionally been common practice in large, publicly traded U.S. corporations. In contrast, for Japanese firms, executive-pay incentives on the basis of stock options (i.e., compensation in accordance with stock-value performance) have only recently been introduced with the amendment to the Japanese

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[88] See Gerald F Davis & Tracy A Thompson, "A Social Movement Perspective on Corporate Control" (1994) 39:1 Administrative Science Quarterly 141; Michael Useem *Executive Defense: Shareholder Power and Corporate Reorganization* (Cambridge, MA: Harvard University Press, 1993).

[89] Michael C Jensen & Kevin J Murphy, "CEO Incentives: It's Not How Much You Pay, But How" (1990) 68:3 Harvard Business Review 138 [Jensen & Murphy, "CEO Incentives"]. See also Michael C Jensen & Kevin J Murphy "Performance Pay and Top-Management Incentives" (1990) 98:2 Journal of Political Economy 225.

[90] Jensen & Murphy, "CEO Incentives", *supra* note 89 at 139–40.

Commercial Code in 1997,[91] enabling optional adoption of employee (board-member and non-board-member employee) stock options[92] Previously, executive pay incentives at Japanese firms were customarily regulated in the form of avoidance of overarching pay scales, and for the most part, they came in the form of perquisites.[93] Thus, a brief comparison of the executive-pay structures in the four companies discussed here may yield important insights into the underlying corporate strategy and objectives.

Ever since Sony,[94] and subsequently Toshiba,[95] adopted American-style CG structures with boards and executive committees, focusing on increasing shareholder value, transparency, profitability, and management accountability has become the companies' core management objective, as indicated in their CG principles. Toshiba states specifically that its "corporate governance policy aims to enhance management efficiency and transparency, while maximizing corporate value from the shareholders' perspective."[96] Having established relatively rigid internal-control mechanisms closely in accordance with *J-SOX*, Toshiba's CG system was ranked number one in 2008 by the Japan Corporate Governance Research Institute.[97]

In contrast to the other three companies, only Toshiba's directors and executive officers received fixed amounts of compensation rather than a split

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91 The Commercial Code, with this and other revisions, became part of Japan's new Company Law in 2005. See *Kaisha Ho* (Company Law), Law No 86 of 2005 (Japan).

92 Hideaki Kiyoshi Kato et al, "An Empirical Examination of the Costs and Benefits of Executive Stock Options: Evidence from Japan" (2005) 78:2 Journal of Financial Economics 435.

93 *Ibid.*

94 See Sony, *Corporate Governance* (in Japanese), online: <http://www.sony.co.jp/SonyInfo/csr/management>.

95 See Toshiba, *Governance System for Toshiba* (in Japanese), online: <http://www.toshiba.co.jp/about/ir/jp/policy/governance.htm>.

96 Toshiba, *Corporate Governance*, online: <http://www.toshiba.co.jp/csr/en/governance/governance.htm> [Toshiba, *Corporate Governance*].

97 Japan Corporate Governance Research Institute, *2008 JCGIndex* (in Japanese) online: <http://www.jcgr.org/survey/pdf/2008upper-jp.pdf>.

of fixed income and company shares.[98] Presumably, this would enable Toshiba's directors and executive officers to pursue corporate strategies that are not inherently bound by short-term shareholder-value-maximization principles, as their own income does not depend on it. In sharp contrast, General Electric is the most explicit about the compensation and shareholder-value nexus (i.e., the core objective of the compensation plan for directors is supposed to "align directors' interests with the long-term interests of shareowners").[99] By means of less determinative wording, IBM also states,

> the [Directors and Corporate Governance] Committee periodically reviews IBM's non-management director compensation practices and compares them against the practices of the largest U.S. companies .... In performing this review, the committee focuses on ensuring that the Company's outside directors have a proprietary stake in the Company and that the interests of the directors continue to be closely aligned with the interests of the Company's stockholders.[100]

Sony's CG is in some sense unique, in part because it is listed on both the TSE and the New York Stock Exchange (NYSE). Sony is thus subject to the national regulations of both countries. However, because Sony is listed on the NYSE as a foreign private issuer, Sony is exempt from the NYSE's corporate-governance standards. Sony's CEO, Howard Stringer, is paid on a basis split between fixed income and stock options, similar to the CEOs at GE and IBM.[101] Therefore, it can be assumed that this governance policy, in line with the general notion of the shareholder-value principle rather than stakeholder-welfare maximization, situates the functional rationale of Sony's executives and its CG schemes closer to its U.S., rather than Japanese, counterparts. We now turn to see how this plays out, if at all, in the concrete

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98 Toshiba, *Corporate Governance*, *supra* note 96.

99 GE, *Governance Principles*, online: <http://www.ge.com/pdf/company/governance/principles/ge_governance_principles.pdf>.

100 IBM, *Directors and Corporate Governance Committee Charter*, online: <http://www.ibm.com/investor/governance/director-and-corporate-governance.wss>.

101 See Juro Osawa, "Sony CEO Received $4.5 Million Compensation", *The Wall Street Journal* (20 June 2010), online: <http://online.wsj.com>.

CSR approaches of these four companies, and also to what extent shareholder-value and/or stakeholder-welfare-maximization principles present themselves as evident and advantageous in competitive terms.

1. IBM

The central slogan underlying IBM's approach to CSR is that issues addressed through CSR "are not a choice between [business strategy and citizenship strategy]. They are both."[102] The basic approach that IBM takes toward CSR is reflected in the corporate values associated with CSR (i.e., "[d]edication to every client's success [and] [i]nnovation that matters, for our company *and* for the world").[103] According to IBM's published guidelines, the critical principles shaping the company's CSR activities are in alignment with the Global Reporting Initiative[104] (GRI) and are materiality, sustainability, stakeholder inclusiveness, and completeness.[105]

The auditing and financial review of CSR activities takes place within the company's own corporate accounting system. This is in contrast with some other companies, such as Toshiba, which pursues external collaboration with agencies such as AccountAbility for the evaluation and improvement of its CSR programs. That IBM takes on a results-driven approach with quantifiable results is best exemplified by the following statement:

> Our commitment to solutions-oriented innovation requires that we go beyond simple check book philanthropy. We are working hand-in-hand with public and nonprofit organisations to design technology solutions that address specific problems. This kind of partnership requires our grantee organisations to make significant commitments to us—to go beyond

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102 Letter from Samuel J Palmisano in *2008 Corporate Social Reponsibility Report* at 3, online: IBM <http://www.ibm.com/ibm/environment/annual/IBM_CorpResp_ 2008.pdf>.

103 IBM, *Our Values at Work on Being an IBMer*, online: <http://www.ibm.com /ibm/values> [emphasis added].

104 IBM, *2010 Corporate Responsibility Summary*, online: <http://www.ibm.com/ibm/ responsibility/report/2010/bin/downloads/IBM_CorpResp_2010.pdf>.

105 IBM, *2010 IBM Corporate Social Responsibility Report*, online: <http://www.ibm.com/ ibm/responsibility/report/2010/chairmans-letter/index.html>.

business as usual, to set clear benchmarks and to focus on measurable results.[106]

In terms of concrete spending or "investment" in CSR projects, IBM clearly prioritizes educational projects and supports them primarily through its strength in technology.[107]

The relevance of such spending in the context of IBM's business interests is seen, for example, in their section on CSR programs in China entitled "The Intersection of Business and Responsibility". The benefits of this program are assumed to be that "IBMers [are provided] with an exemplary form of leadership training and development. And [thus] it benefits the company by developing a new generation of global leaders."[108] Furthermore, although regional spending is still concentrated in the U.S. and Europe, given its increasing significance, the spending in the Asia-Pacific region, and especially in China, has taken a more critical role in the long-term business-development strategy of IBM.[109]

In line with their dual-benefit logic, IBM's CSR programs integrate business and citizenship strategy. For example, their education and literacy projects aim to "implement [IBM's] innovative Reading Companion voice-recognition software in as many countries and schools as possible."[110]

This is seen in the context chart below in which the fine line between dominant business interest, cause-related self-promotion, and effective and actual programs of corporate responsibility is drawn in a critical light.

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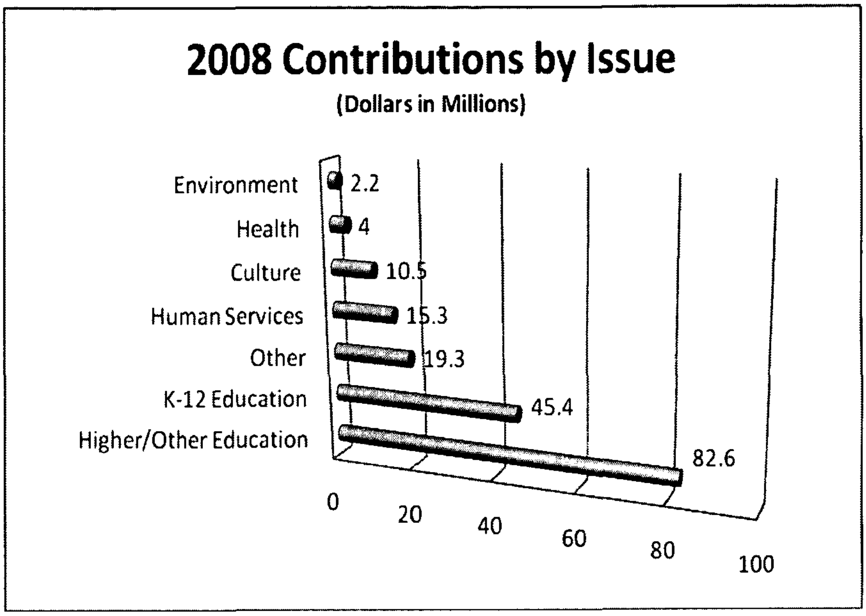
[106] See IBM, *About Corporate Citizenship & Corporate Affars*, online: <http://www-07.ibm.com/ibm/hk/community/community_relations.html>.

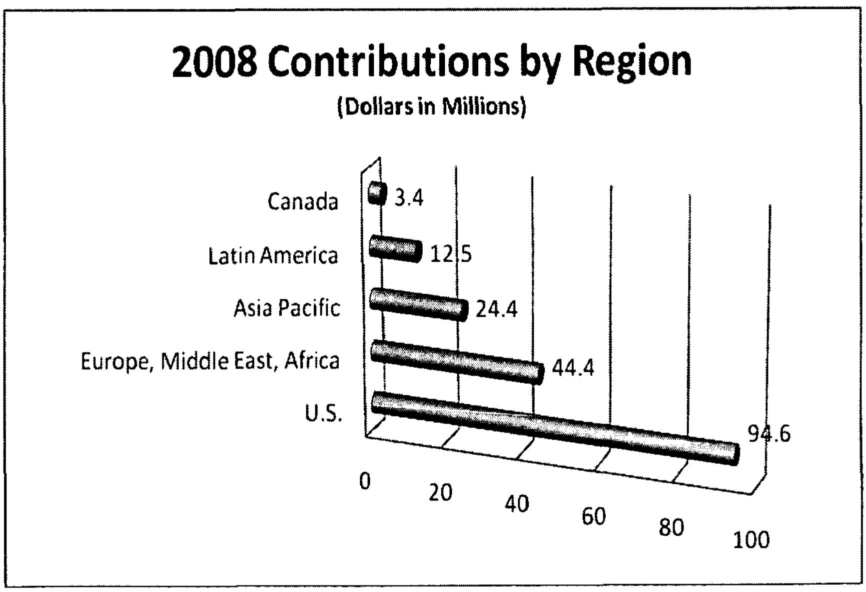
[107] See IBM, *2009 Corporate Social Responsibility Report*, online: <http://www.ibm.com/ibm/responsibility/IBM_CorpResp_2009.pdf>.

[108] IBM, *2008 Corporate Social Responsibility Report* at 16, online: IBM <http://www.ibm.com/ ibm/environment/annual/IBM_CorpResp_2008.pdf>.

[109] *Ibid.*

[110] *Ibid* at 22.





Source: IBM, *2009 Corporate Social Responsibility Report, supra* note 107 at 19.

TABLE 5: BASIC CORPORATE PROFILE AND CSR-STANDARD ADHERENCE IBM/TOSHIBA (2009)

	PAIR 1	
COMPANY	IBM	Toshiba
INDUSTRY	1	1
EMPLOYEES	399,409	199,000
SHAREHOLDERS	546,247	462,649
REVENUE	US$95.76 billion	6654 billion Japanese yen
DJSI	No	Yes[111]
FTSE 4 GOOD	No	No
GLOBAL 100	No	No
WBCSD	Yes[112]	Yes[113]
ISO 14001	Yes[114]	Yes[115]
GLOBAL COMPACT	No	Yes[116]
ADHERENCE	2/6	4/6
Source: See IBM, *Annual Report 2010*, online: <http://public.dhe.ibm.com>;Toshiba, *Annual Report 2010*, online:<http://www.toshiba.co.jp>.		

As for the international-standards scoring,[117] IBM gets two out of six points and ranks at the lower end of the companies sampled here (GE with

[111] See Toshiba, *Evaluation of CSR by External Parties*, online: <http://www.toshiba.co.jp/csr/en/engagement/communication/evaluation.htm>

[112] See IBM, *New Eco-Patent Commons*, online: <http://www.ibm.com>.

[113] See Toshiba, *Participation in External Organizations*, online: <http://www.toshiba.co.jp/env/en/communication/organization.htm>.

[114] See IBM, *ISO 14001*, online: <http://www.ibm.com/ibm/environment/iso14001>.

[115] See Toshiba, *ISO 14001*, online: <http://www.toshiba.co.jp>.

[116] See Toshiba, *UN Global Compact*, online: <http://www.toshiba.co.jp>.

[117] Scoring hereby refers to a yes/no differentiation as to (1) whether the company has committed itself to following the guidelines of standards such as *ISO 14001* or UN Global Compact and/or (2) whether or not it was listed on index lists such as Global 100, FTSE4Good Index, and the DJSWI. The sources used for this analysis were the respective corporate reports as well as the listings mentioned above.

six out of six, representing the benchmark). Adherence to the World Business Council for Sustainable Development's Vision 2050 as well as *ISO 14001* indicates that IBM is committed to business practices-based sustainable development and sound environmental management for production, which is also in line with U.S. regulations and customer demands.

Overall, IBM's CSR approach may be summarized as having a broad mixture of more-or-less profit-oriented projects and principles. This mixture may result from the fact that IBM has its strength in technology, and employing these skills for declared philanthropic purposes likely intersects with business interests. In other words, with regard to the distinction drawn here between two approaches toward CSR, enlightened value maximization within the context of short-term profit making (the U.S. model), or long-term stakeholder-welfare maximization and corporate development in terms of reputation and competitiveness (the Japanese model), IBM leans closer to the former but can nonetheless be seen as a hybrid.

2. TOSHIBA

"Committed to People, Committed to the Future" is the credo under which Toshiba presents its approach to CSR.[118] The emphasis is laid upon making the world a better place and preserving nature for future generations.[119] This sets Toshiba in a spot where the intersection of its business and broader societal interests is not as outspoken as is the case with GE or IBM. Furthermore, with a strong declared commitment to the UN Global Compact, Toshiba puts emphasis on enhanced accountability to its stakeholders in CSR matters as one core consideration guiding its take on the role of CSR. Toshiba is less vocal about CSR as a means to serve corporate business interests and is pointed more toward the implications of CSR for the long-term welfare maximization of its stakeholders.

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118 Toshiba, *Corporate Social Responsibility Report 2009* at 1, online: <http://www.toshiba.co.jp/csr/en/engagement/report/pdf/report09_all.pdf> [Toshiba 2009].

119 See Toshiba, *Protecting the Earth for Future Generations*, online: <http://www.toshibatec-tnd.com/downloads/Toshiba_projectors_and_ environment.pdf>.

Although Toshiba's CSR activities revolve around its home market in Japan, its core regional CSR activities gravitate toward the current most critical markets in Asia—and China in particular, which is "one of the main bases where Toshiba can expand its operations".[120] Not surprisingly, the main emphasis in China is on the engagement of Chinese society through the promotion of science education.

Even though meeting customers' demands for ethically acceptable patterns of production resonates well with social interests being linked to profit, the concrete measures pursued in Asia are de facto more ambiguous. For example, it is difficult to make a strong case for the argument that the enforcement of human-rights conditions in procurement requirements or giving Christmas gifts to mentally challenged children are corporate activities that derive solely from profit reasoning.

Overall, in contrast to IBM, Toshiba's CSR spending is more diversified, covering areas such as "Promotion of Sports and Culture" (12%), "Social Welfare" (8%), "Protection of the Natural Environment" (6%), "Science and Technology Education" (36%), and others (33%).[121] Thus, even though Toshiba's strength lies in technology, its CSR activities are less dominated by these capacities than is the case with IBM.

An interesting aspect of Toshiba's CSR is the ranking of stakeholders' interests. Within the design of CSR activities, customers' concerns are granted priority but are immediately followed by those of shareholders and investors, and only then are employees, local communities, and suppliers brought into consideration.[122] This, however, is contradicted by the reporting scheme employed by Toshiba, where *materiality*, in the form of key performance indicators, lists responsibility toward traditional stakeholders

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[120] Toshiba 2009, *supra* note 118 at 17.

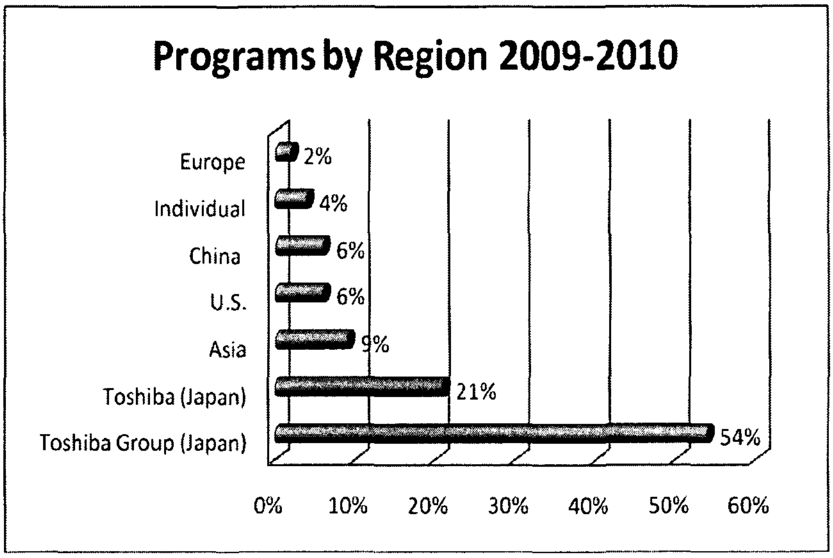
[121] Toshiba, *Corporate Social Responsibility Report 2011* at 49, online: <http://www.toshiba.co.jp/csr/en/engagement/report/index.htm> [Toshiba 2011].

[122] Toshiba, *Social Contributions Activities Report 2010*, online: <http://www.toshiba.co.jp/social/jp/report/pdf/report2010.pdf> [Toshiba 2010].

such as customers, employees and suppliers prior to the responsibility toward shareholders and investors.[123]

In summary, our review of both companies in regard to their declared and implemented CG and CSR practices suggests that these companies hold ambiguous stances toward incorporating shareholders' interests into CSR activities and also into the CSR-specific business-interest calculus.

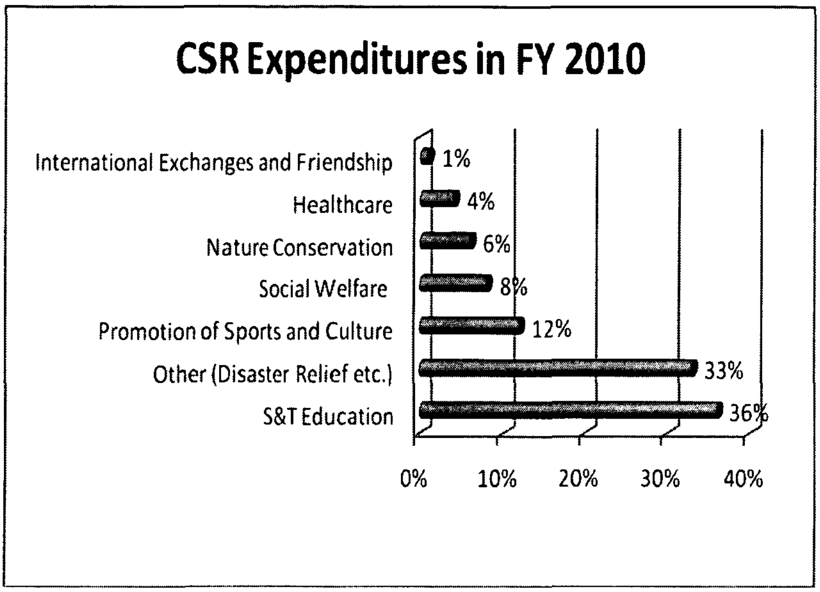
Because of the proclaimed goal[124] of placing emphasis on long-term stakeholder-welfare maximization, corporate development in terms of reputation (Japanese model), and the incorporation of international CSR standards, Toshiba can be seen as representing a compelling case for the "selective adaptation" argument, in that U.S -style structures have been partially adopted, but the derived concrete business practices show the signature of a cultural filtering.



Source: Toshiba 2010, *supra* note 122 at 3.

[123] Toshiba 2009, *supra* note 118 at 21–22 (This differentiation of the listing, as ordered and not random, is based on an interpretation from a stakeholder welfare point of view).

[124] See e.g. Toshiba, *2010 CSR Report* at 19, online: <http://www.toshiba.co.jp>.



Source: Toshiba 2011, *supra* note 121 at 49.

3. SONY

Sony has transformed its CG mechanism from the traditional Japanese system to a U.S.-style system much moreso than Toshiba has. Sony's CG, like that of many U.S. companies, emphasizes the premise of shareholders' interests in the overall business strategy.[125] More bluntly than Toshiba, and more in line with IBM, Sony states that the primary purpose of CSR is "sustainability of Sony's business operation", and only secondarily, "the contribution towards a sustainable society".[126] Howard Stringer, Sony CEO, describes the purpose of the company's CSR activities as follows:

> Recently, Sony has implemented a wide range of initiatives aimed at fundamentally transforming our operating structure, leveraging our global scope and talent, and creating new business opportunities. Our commitment

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[125] See Sony, *Annual Report 2010*, online: <http://www.sony.net>.

[126] Howard Stringer, *Corporate Social Responsibility Report 2010: Message from the CEO* at 2, online: Sony <http://www.sony.net>.

> to corporate social responsibility is integral to the success of each of these initiatives, whether it relates to streamlining our supply chain, developing innovative environmental technologies, helping to support the growth of emerging markets or creating professional development opportunities for our employees.[127]

The "citizenship program" is summarized as follows:

> It is the core corporate responsibility of Sony Group to the society to pursue its corporate value enhancement through innovation and sound business practice. Sony Group recognizes that its business activities have direct and indirect impact on the societies in which it operates, and therefore sound business practice requires that business decisions give due consideration to the interests of its stakeholders including shareholders, customers, employees, suppliers, business partners, local communities and other organizations. Personnel must endeavor to conduct the business of Sony Group accordingly.[128]

Notable also, in this case, is the order of prevalent stakeholders to be considered when developing sound CSR approaches (i.e., the eminence of stakeholders). Sony's corporate culture provides the intersection with CG on this note, expressing that "sound business practice requires that business decisions give due consideration to the interest of its stakeholders including shareholders, customers, employees [etc.]"[129] Thus, Sony reflects that its past philanthropic actions have "proven, time and again, that good environmental practices are also good for business."[130]

In terms of diversity, Sony and Toshiba are similar, given that Sony pursues projects that aim at attaining one or a combination of the following objectives: helping local communities, fostering better educational systems, funding research to cure devastating disease, supporting arts and culture, helping disadvantaged youth, protecting and improving the environment,

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[127] *Ibid.*

[128] Sony, *Sony Group Code of Conduct* at 4, online: <http://www.sony.net>.

[129] *Ibid.*

[130] Howard Stringer, *Corporate Social Responsibility Report 2009: Message from the CEO* at 3, online: Sony <http://www.sony.net>.

and actively encouraging employee volunteerism.[131] That this diversity is not just rhetorical is exemplified by Sony coordinating with UNICEF, the United Nations Development Programme, and various non-governmental organizations (NGOs) to work on projects in Africa that focus on education, social awareness, and health conditions (HIV in particular).[132]

Examining the reforms to Sony's CG structure and practices ("Company with Committees" under *J-SOX*),[133] as well as the emphasis laid upon the connection between CSR and business survival and their low level of adherence to the international standards outlined here, Sony can be characterized as driven by enlightened value maximization. This clear-cut categorization is, however, challenged by their level of programmatic diversity. Therefore, we can conceive of Sony as a case where liberal business norms have been strongly integrated into the CG and CSR design while nonetheless being nested within a more general, normative framework of Japanese business practice. This seems to be Sony's selective adaptation to Western CSR principles, where stakeholder importance has been modified to merge the operative benefits of a more profit-driven CSR with the credibility and reputation benefits of a Japanese-style business practice.

4. GENERAL ELECTRIC (GE)

"Make Money" is the simple summary of what GE considers to be the core of their business strategy. "Make it ethically" clarifies that this business strategy is to be pursued in a manner that relies on rigorous compliance with financial and legal rules. Making money and doing it ethically are to follow the maxim of "making a difference" (i.e., "ethical actions, beyond formal requirements, to advance GE's reputation and long-term health.")[134]

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[131] See Sony, "Eye See: Digital Photo Project for Children", online: <http://www.sony.net/SonyInfo/csr/ForTheNextGeneration/eyesee/?j-short=eyesee>.

[132] *Ibid.*

[133] See Sony, *CSR / Environment: Governance Structure*, online: <http://www.sony.net/SonyInfo/csr_report/governance/index2.html>.

[134] Krista Bauer, "GE Corporate Citizenship: Investing for Maximum Impact" (Presented at Let's Play: A Corporate Citizenship Conference, 31 March 2003), [unpublished].

The concern expressed here regarding how business is conducted is critical to GE's reputation as well as long-term health (what Sony called the "sustainability of business operations").[135] Ensuring such business conduct at GE has also been structurally embedded into their CG system with the "Public Responsibility Committee", something that none of the other three aforementioned companies has. The committee's function is to oversee risks related to public policy, the environment, and some CSR matters.[136] Also, like Toshiba, GE works with accountability to analyze implications of the financial crisis for the citizenship approach across all parts of their value chain.[137]

An interesting and revealing tool that GE has created to determine relevant areas for CSR activities is their so-called "citizenship matrix", which was introduced in 2007 to help identify areas where broader societal opportunities and challenges align with GE's business strategy.[138] The four key building blocks forming GE's overall CSR approach are: (1) operational responsibilities; (2) environment, health, and safety programs applicable to GE's global operations; (3) effective training and tools for GE operations; and (4) metrics.[139]

With regard to concrete programs, GE has identified a priority list called "Citizenship Areas of Leadership" that, among other things, includes "Ecomagination", a growth strategy that addresses customers' needs for more energy-efficient products and services; "Emerging Markets" (i.e., growth in emerging markets, allowing GE to lay the foundation for responsible citizenship from the inception of a business opportunity); "Compliance"; and "Governance" as cornerstones of GE's reputation, requiring full commitment of the entire company.[140] In other words, this is an extension of the three guiding business principles of making money in an ethically

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135 *Ibid.*

136 See GE, *The Public Responsibilities Committee Charter*, online: <http://www.ge.com>.

137 GE, *Citizenship Report* at 20, online: <http://www.ge.com>.

138 *Ibid.*

139 See GE, *Sustainable Growth 2011*, online: <http://static.gecitizenship.com>.

140 See e.g. GE, *GE Citizenship*, online: <http://www.gecitizenship.com>.

acceptable manner that allows GE to make a difference and differentiate itself from its competitors.

GE is more than articulating a committed standing toward ethically sustainable business conduct and sound business performance, it is also taking a leading position in adherence to the international CSR standards. With six out of six,[141] GE is the benchmark in this group of companies, with such commitment to international CSR standards indicating strict environmental regulatory principles, poverty-alleviating conduct, and human-rights-respecting business conduct. Thus, in direct comparison with IBM, GE's conception of CSR is in accordance with widely recognized international standards.

We also point out that GE is by far the most explicit about the relevance of CSR to its business strategy in terms of reputation and healthy business, perhaps best shown by the fact that GE also represents the benchmark for adhering to international CSR standards in this group. Overall, GE comes closest to Friedman's notion of sound business purpose and practice in terms of wealth creation and focus on corporate/shareholder value. In short, GE's CSR activities embody many of the attributes of enlightened value maximization within the context of short-term profit making (i.e., the U.S. model of CG).

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[141] See GE, *Sustainable Growth: GE 2010 Citizenship Report*, online: <http://www.ge.com>.

TABLE 6: BASIC CORPORATE PROFILE AND CSR—STANDARD ADHERENCE, GE/SONY (2009)

	PAIR 2	
COMPANY	GE[142]	Sony[143]
INDUSTRY	1	1
EMPLOYEES	287,000	171,300
SHAREHOLDERS	n.a.	725,811
REVENUE	US$156.78 billion	7730 billion Japanese yen
DJSI	Yes	No
FTSE 4GOOD	Yes	No
GLOBAL 100	Yes	No
WBCSD	Yes	Yes
ISO 14001	Yes	Yes
GLOBAL COMPACT	Yes	No
ADHERENCE	6/6	2/6

VI. CONCLUDING REMARKS

The inherent differences in management style and form between American and Japanese corporations have received great scholarly attention.[144] In this article, the incorporation of American-style corporate-governance structures

[142] *Ibid.*

[143] See Sony, *CSR Glossary: ISO 14001*, online: <http://www.sony.net>; Sony, *CSR Glossary: WBCSD*, online: <http://www.sony.net>.

[144] Japanese management practices, which are distinct from American practices and attracted earlier scholarly attention in the United States, include providing a job for life, with a strong focus on employees' welfare both on and off the job; this is thought to increase employee loyalty and promote stable employment, leading to high productivity and high employee morale and satisfaction. See e.g. James C Abegglen, *The Japanese Factory: Aspects of Its Social Organization* (Glencoe, IL: Free Press, 1958); James C Abbeglen & George Stalk *Kaisha, the Japanese Corporation* (New York: Basic Books, 1985); William G Ouchi, *Theory Z: How American Business Can Meet the Japanese Challenge* (New York: Avon Books, 1981).

and principles in Japanese business, as formally exemplified through the introduction of *J-SOX*, figured prominently. However, the introduction of Anglo-American liberal norms to Japanese corporations did not result in a monolithic displacement of their emphasis on stakeholder-welfare maximization for the preponderance of shareholder-value considerations dominant among U.S. firms. In fact, in the process of selective adaptation, American liberal business norms will continue to be challenged by traditional Japanese business values and practices. Given this observation, in this paper we investigated whether—and if so, to what degree and under what conditions—Japanese CSR practices show similarities to their American counterparts.

Employing an instrumentalist view of a corporation's CSR activities and basing the analysis on the distinction between stakeholder-oriented and shareholder-dominated approaches, in which the company holds either a mere welfare or profit function (similar to the findings for CG practices), we contend that the shareholder-value-maximization principle will continue to be challenged by Japan's more traditional stakeholder-welfare-maximization principle. By more closely examining the intersection of CSR and CG with regard to the central purpose of corporations, and thereby speaking to the gap in the literature on CSR and CG, we showed that Western-style CSR practices are selectively adapted into Japanese firms' CSR practices and that the long-standing Japanese business tradition of a close intertwining between the corporation and the stakeholder provides Japanese firms with a degree of advantage over their American counterparts in terms of reputation benefits and credibility.

Among the high-tech companies examined here, GE perhaps best represents CSR-related profit orientation entrenched with enlightened value maximization (i.e., by being the most explicit regarding the relevance of CSR to its business strategy in terms of reputation and healthy business). When compared to their American competitors such as GE, the Japanese corporations' stakeholder importance has been modified to merge the operative benefits of a more profit-driven CSR with the credibility and reputation benefits of a Japanese-style business practice. In other words, CSR is a means for wealth creation in the form of shareholder value for U.S. firms, whereas CSR for Japanese firms is a means to sharpen long-term competitive advantage and survivability over other firms.

There are two central findings arising from this investigation: First, the selective-adaptation process that was critical to the managed introduction of *J-SOX* is also critical to the American-style CSR principles affecting the development of explicit CSR approaches among Japanese firms. Second, the exact intersection of CG and CSR remains a central theme for further investigation. Because CSR activities can, and for the most part do, have both societal harmonization and profit aspects to them, the distinction between the different management styles has become a matter of degree rather than a clear-cut typology.

VII. APPENDIX: AN EXAMPLE OF HOW JAPANESE CORPORATIONS DEFINE CSR SPECIFICS

In Section 3 we argued that Japanese implementations of contemporary CSR practices adopted from the West have been shaped by selective adaptation. We show this by describing below the types of corporate practices included in evaluating Japanese firms' CSR performance by Toyo Keizai, one of the leading business-intelligence firms in Japan.[145]

A. Corporate Practices Used to Evaluate Corporate Performance in CSR Activities at Japanese Firms

1. Employment

(1) Percentage of (fraction of) female employees; (2) duration (tenure) of workers' stay; (3) percentage of workers between 50–59 years of age; (4) overtime hours; (5) percentage of female managers; (6) percentage of female workers in *bucho* (division head) ranks or above; (7) whether female officers/executives exist; (8) whether a section exists to promote female workers; (9) percentage of workers with disabilities; (10) whether a corporate target exists for percentage of workers with disability; (11) percentage of paid vacation taken by employees; (12) period for pregnancy leave; (13) percentage of workers who have taken pregnancy leave; (14) percentage of workers who have taken child-care leave; (15) percentage of

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[145] Toyo Keizai Shinposha, *supra* note 81.

male workers who have taken paternity leave; (16) percentage of workers who have taken leave for taking care of the sick; (17) whether or not daycare facilities exist within the establishment; (18) whether or not firm subsidizes cost of daycare; (19) whether re-employment practice exists for women who quit for baby birth, etc.; (20) whether unique firm-specific subsidies exist to promote work and child rearing; (21) whether practices exist for flexible employment mechanisms; (22) whether mechanisms exist to promote workers' incentives to work; (23) percentage of industrial accidents per worker; and (24) percentage of new-graduate hires who remain with the firm.

2. ENVIRONMENT

(1) Whether a section exists to deal with environmental issues; (2) whether a position of officer/executive for the environment exists; (3) the range of issues the officer for the environment is responsible for; (4) whether an environmental policy manual exists; (5) whether a third party is involved in the policy manual; (6) whether environmental accounting is practised; (7) whether understanding exists about environmental accounting and costing and about the effects of such a practice; (8) the level of disclosure of environmental accounting; (9) whether environmental auditing exists; (10) whether a framework exists for implementing *ISO 14001*; (11) percentage of domestic facilities with *ISO 14001* certifications; (12) percentage of overseas facilities with *ISO 14001* certifications; (13) framework for green procurement; (14) percentage of green office-supplies purchases; (15) percentage of green purchases in general; (16) environmental labelling; (17) understanding of the level of pollution in the soil and underground water; (18) whether the firm has violated environment-related regulations and laws; (19) whether the firm has caused accidents and/or pollution which will cause environmental problems; (20) whether a mid-term policy exists to reduce emissions of CO_2 and other substances; and (21) whether the firm was awarded a prize in an environmental area.

3. CORPORATE GOVERNANCE PRACTICES RELATED TO CSR

(1) Whether a section exists for dealing with CSR activities; (2) whether an officer/executive exists for CSR activities; (3) the range of issues the officer

for CSR is responsible for; (4) whether a CSR policy manual exists; (5) whether a section for investor relations exists; (6) whether a section for enforcing compliance with laws and rules exists; (7) whether the international standard for CSR activities is implemented; (8) whether a section exists to deal with whistle-blowers; (9) whether internal rules exist to protect whistle-blowers and their rights; (10) whether the firm has received any exclusion order from the Fair Trade Commission or any other related government agencies; (11) whether the firm has received a government order to stop operation because of criminal or other irregular business activities; (12) whether the firm has experienced criminal persecution because of compliance-related accidents or criminal cases; (13) whether a basic policy exists for designing the internal control system; (14) whether a committee for internal control exists; (15) whether a security policy exists to protect the information system; (16) whether internal auditing of firm's information-system security exists; (17) whether external auditing of firm's information-system security exists; (18) whether a firm policy on privacy exists; (19) the status of the firm's policy on risk/crisis management; (20) documentation and publication of the firm's policies on its code of ethics; and (21) whether a firm manual exists for the standard and norm for ethical behaviour.

4. PRACTICES RELATED TO SOCIETY

(1) Whether a section exists for dealing with consumers; (2) whether a section exists for dealing with contributions to society; (3) whether a section exists for dealing with the liability and safety issues of the firm's products and services; (4) the amount spent on firm's social contributions; (5) the firm's alliances with NPOs and non-governmental groups; (6) the firm's adaptation to socially responsible investment and eco-funds; (7) whether a firm manual exists for dealing with claims/complaints from consumers; (8) whether a database exists for such claims/complaints from consumers; (9) percentage of *ISO 9000S* implemented at firm's domestic facilities; (10) percentage of *ISO 9000S* implemented at firm's overseas facilities; (11) the firm's practices on quality management other than *ISO 9000S*; (12) what the firm has done for community services; (13) what the firm has done for education and scholarly support in society; (14) what the firm has done for promoting culture, arts, and sports in society; (15) what the firm has done to promote international

exchange in society; (16) the status of the firm's procurement for CSR activities; (17) the firm's paid vacation provided to workers in order to volunteer; (18) the firm's unpaid vacation provided to workers in order to volunteer; and (19) the firm's practice on matching workers' gifts for charitable purposes.

5. STATUS OF FIRM'S FINANCE

(a) Financial performance

(1) Return on equity; (2) return on assets; (3) sales margin; (4) profitability (ordinary profit/revenue); and (5) cash flow.

(b) Financial stability/safety

(1) Total asset turnover (sales/total assets); (2) debt-to-equity ratio; (3) ratio of fixed assets to stockholders' equity; (4) ratio of cash reserves of profit nature to total assets; (5) ratio of stockholders' equity to total assets; and (6) cash reserve of profit nature.