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Twentieth Century Enterprise Forms: Japan in Comparative Perspective

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ABSTRACT

La Porta et al see Anglo-American common law as most favourable to economic development, but in 1899 Japan explicitly preferred the German corporate law tradition. Yet its new Commercial Code omitted the GmbH (private company) form, which Guinnane et al see as the jewel in the crown of Germany's organizational menu. Neither apparent "mistake" retarded Japan's business development because its corporate laws offered flexible governance and liability options, implemented liberally. Surprisingly (given that Germany's organizational menu predated Japan's by many decades and the country was wealthier), by the 1930s Japanese businesses already used not only corporations proper (*kabushiki kaisha*) but also *commandite* partnerships (*goshi kaisha*, with more corporate characteristics than Anglo-American partnerships) more intensively than Germany. After the introduction of the *yugen kaisha* (a GmbH-equivalent) in 1940, corporate forms were nearly as widely used in Japan as in the US, the UK or Switzerland.

JEL codes: K22, L51, N25, P1

Keywords: corporations, private companies, partnerships, *commandite, zaibatsu, kaisha*, Tokyo Stock Exchange.

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"the dominant scholarly effort was to try to fit the world into simple models and to criticize institutional arrangements that did not fit"

Elinor Ostrom, Nobel Lecture, *American Economic Review* 2010, p.642

COMPARATIVE CORPORATE LAW: THE DISSOLVING CONSENSUS

Issues of corporate law and the menu of organizational forms available to entrepreneurs - and their differential effects on business efficiency - have recently attracted much attention from economists and historians. La Porta and researchers connected with the World Bank proposed the "law and finance" hypothesis, arguing that common law systems (mainly found in the "Anglosphere")[1] promoted stock exchange development, optimal business contracting and economic efficiency.[2] By contrast the Franco- German civil law systems of continental Europe and their legal offshoots throughout Latin America and in most of Asia were less conducive to corporate development and economic efficiency. Criticising this view, Guinnane et al argued that civil law systems had advantages over US common law,[3] particularly for SMEs, in developing organizational forms offering "hybrids" of the benefits of corporations (*kabushiki kaisha* in Japan, hereafter abbreviated to KK) and of partnerships. Downgrading the classic corporation to what they consider

[1] i.e. the US, UK, India, Hong Kong, Australia, Israel and other heirs of British Empire institutions, with exceptions such as Louisiana, Quebec, Scotland, Mauritius or Malta, which retained civil law systems.

[2] La Porta et al, "Law and Finance" and "Economic Consequences."

[3] though not the UK whose "private company" law of 1907 they consider similar to civil law hybrid forms, see Guinnane et al, "Putting" and "Pouvoir."

its distinctly limited place, they praise innovative organizational forms in Europe, notably the GmbH (introduced in 1892 in Germany and 1906 in Austria) and the SARL (introduced in 1925 in France) as offering a wider range of contractual choices, more suited to small and medium enterprises (SMEs) than damagingly conservative and inflexible US corporate law.

If either (or both)[4] of these hypotheses is correct, then the Japanese economy before 1940 was legally backward and organizationally disadvantaged. Meiji reformers were keen to copy western models but decided (after a brief flirtation with American-style national banking corporations in 1872-9) that the clarity of civil law commercial codes was preferable to the judicial discretion of Anglo-American common law. Legislators also increasingly preferred the "top-down" approach that they saw in German autocratic tendencies to more democratic Anglo-American or French liberality. After some discussion of French and English laws - and under pressure to adopt western laws to facilitate reassertion of national control in the treaty ports - the definitive Japanese commercial code of 1899 clearly owed most to the German civil law tradition and its *Handelsgesetzbuch* (Commercial Code). The characterization of Japanese law as an offshoot of German civil law (at least before externally-imposed post-1945 legal Americanisation) is widely accepted. Yet Guinnane et al's major alleged *advantage* of the German system, the GmbH of 1892, was clearly *omitted* from the new Japanese commercial code of 1899 and was thus not available to Japanese entrepreneurs for nearly half a century after its introduction in Germany. The *yugen kaisha* was introduced as late as 1940 and never became as widely used in Japan as the GmbH in Germany.[5]

[4] It is possible that the first applies more to large quoted companies and the second to unquoted SMEs.

[5] In 1995, there were 1,219,214 *yugen kaisha* 1,213,034 KKs, 26,485 *goshi kaisha* and 5,724 *gomei kaisha*, a pattern very similar to Switzerland's, whose corporate laws Japan's perhaps most closely resembled. By contrast in Germany GmbHs (sometimes in hybrids with other forms which were illegal in Japan) were overwhelmingly numerically dominant.

We might possibly conclude from such international contrasts that, in corporate terms, Japanese legislators were seriously incompetent. However, lawyers themselves have been more skeptical than economists about the core hypotheses,[6] which historians have also questioned: La Porta et al's extensively, Guinnane et al's more tentatively.[7] Moreover, the Japanese commercial code of 1899 was much more than a slavish, or foolishly truncated, copy of German law. We argue here that it offered a flexible organizational menu, molded by entrepreneurs to the needs of a developing nation's diverse business organizations, even before 1940. By contrast German corporations - under formally similar laws - were handicapped by relatively illiberal statutory and administrative provisions and authoritarian absurdities before 1945. Japan and its colonies allowed more legal elasticity, so their corporate laws - *despite* their German roots - well and flexibly served the needs of capitalists - including the SMEs on which Guinnane et al focus - both before and after the 1940 innovation of the *yugen kaisha*.

Our suggestion is not that corporate laws and their political underpinnings have no consequences, for, plainly, many twentieth century authoritarian regimes - from Soviet Russia through Nazi Germany to Mao's China - proved inimical to the development of competitive corporate capitalism or saddled it with crony capitalist, socialist or militarist imperfections. However, for political regimes - authoritarian or democratic - more benignly tolerant of capitalist diversity and development, the existing literature exaggerates both the negative effect of the choice of the civil law legal family and the positive effect of GmbH-type forms in determining national paths. There is not one (or another alternative) ideal legal pathway: many different menus of business forms have facilitated entrepreneurs creatively molding superficially incomplete menus to their tastes, especially if they included relatively unconstrained and cheap access to some form of liability limitation with entity shielding and reasonable choices among the different governance rules

[6] Cheffins, "Did law" and Coffee, "Rise."

[7] E.g. Musacchio and Turner, "Does the law;" Hilt, "Corporate Governance."

appropriate for both SMEs and large quoted corporations. To that extent, differences in corporate laws in mainstream capitalist countries constitute only minor variations in a surprisingly standard story of evolving patterns of organisational development on corporate lines, promoting both larger scale and competitive diversity.[8]

A STATISTICAL FRAMEWORK

Comprehensive annual statistics on the numbers and capitals of extant stocks of a wide range of partnerships, joint-stock companies, and other multi-owner business forms are not available for most countries for the twentieth century as a whole. Several series are, however, available annually for Japan from 1883 to the present for all forms in the Commercial Code and can be linked to form one continuous series (see appendix). For some other countries we have similarly comprehensive statistics only for fully corporate forms (which we define here in Japan as *KKs*[9] plus *yugen kaisha*, in the UK public plus private companies, in the US quoted plus close corporations, in Germany AGs plus GmbHs and in Switzerland SAs plus SARLs).[10] Partnership forms are generally

[8] As was arguably even true of earlier evolutionary stages before statutory provision for general incorporation by simple registration, i.e in Japan before 1899 or in England before 1844; on the latter see Bubb, "Choosing."

[9] We follow contemporary Japanese and German statistical practice by including *kabushiki goshi kaisha /Kommanditgesellschaften auf Aktien* (KGaAs, or limited partnerships with transferable shares) with KKs/AGs, though in the twentieth century they were few in either country.

[10] See Table 2 below. We had originally intended to include France in this comparison, but French statistics on business organizations are better on *flows* of new registrations than on *stocks* of extant ones shown in the table: stock figures are only available at irregular intervals. They do, however, indicate that France was slightly behind Germany in numbers of corporations as defined here, until the introduction of the SARL private company form in 1925, though it probably made up this deficiency by more extensive use of *commandites*. It then moved clearly ahead of Germany (with more than twice the German per capita level of corporatization in the later 1930s) and remained slightly ahead of Germany at the end of the century (authors' calculation from SIRENE database).

excluded, necessarily, since - outside Japan - their numbers are rarely reported with precision.[11] In order to assess the level of "corporatization" in these nations of vastly different - and differentially changing - sizes, we have divided the numbers of corporations by their national populations at all dates.[12] The twentieth century experience for five countries at decade intervals is summarized in Table 1.

The most obvious feature of the table is that the common law countries (the US and UK) were, as the La Porta et al hypothesis suggests, ahead of both Germany and Japan at the beginning of the twentieth century and remained so at the end. If the corporate form (as defined in this Table) had any advantages over other forms, these two common law nations apparently benefitted earlier and more abundantly than Germany and Japan. However, the example of civil law Switzerland suggests that legal family was actually no barrier to rapid catch-up. Swiss corporate law, though owing something to German stems, was on a federal rather than cantonal basis and

[11] US statistics (other than partial early data in manufacturing and mining censuses) are derived from tax records and omit changing proportions of small partnerships below the exemption limit, start only in 1916 and provide only numbers data for most years before 1939 and usually do not distinguish limited from general partnerships. UK historical statistics on partnerships are only available for a few years, exclude those below the tax threshold and do not distinguish unlimited from limited forms. French statistics on corporations and partnerships exist only for flows not for extant stocks, except for a few years when official censuses were taken or independent estimates made. No historical statistics on partnership stocks before the 1930s (and somewhat limited ones on flows) appear to be available for Germany, except for coverage of *Gewerbe* only at infrequent business census dates. Switzerland perhaps comes nearest to Japan's coverage, but its statistics do not distinguish corporations from cooperatives until 1902, limited from unlimited partnerships until 1947, or joint stock companies (AGs) from limited partnerships with shares (*Kommanditaktiengesellschaften* or KAGs in Swiss German) until more recently.

[12] An alternative measure is par value of corporate stock as a ratio to GDP (in which international variations are less marked), but this is available for fewer countries, after 1914 is severely distorted by differential inflation and in any case is broadly correlated with the numbers figures, see Hannah, "Global census."

Table 1. Extant Stocks of (Private and Public) Corporations per million people, 1899-1999.

Year	USA	UK	Germany	Switzerland	Japan
1899	1,875	684	174	615	89
1909	2,901	1,044	341	961	117
1919	2,778	1,576	604	1,827	302
1929	3,895	2,412	851	3,177	331
1939	3,584	3,486	415	4,547	452
1949	4,121	4,974	486	4,761	2,081
1959	6,064	6,825	725	6,248	4,861
1969	8,182	9,666	1,265	10,216	7,868
1979	11,358	13,978	3,706	16,807	11,634
1989	14,605	20,181	6,513	23,198	15,527
1999	19,778	23,866	10,846	28,947	19,384

Source: appendix

(although Swiss lawyers were aware of developments in other countries) developed independently. The number of corporations per capita in Switzerland was ahead of Germany's from the earliest available statistical counts, overtook the UK during World War One and the US in the 1930s; it remained the leader of this group for the rest of the century. Moreover, Switzerland was not unique among small European countries with civil law regimes: Norway, Sweden, Denmark, the Netherlands and Luxemburg were all (at various stages of the twentieth century) nearer to the high Swiss than to the modest German levels of corporatization. While common law nations led corporatization at the beginning of the century, civil law nations experienced a more rapid rate of growth in numbers of corporations, so there was some convergence (eventually even in Germany). It was quite rare for (non-communist) societies to experience a reduction in the numbers of corporations per capita over a sustained period, but, with some effort, it could be managed. Germany appears to hold the record for the longest sustained early decline (which can be more precisely dated from 1923 to 1948), but the US also experienced a decline in corporations per capita in the depression of the 1930s.

Factors other than the (unchanging) legal family emphasised by La Porta et al evidently determined this changing degree of corporatization. An econometric analysis of a wider sample of countries before 1914 suggests that more fundamental determinants of the numbers of corporations per capita were living standards (proxied by GDP per capita) and the degree of liberality and open-ness in economic policy (proxied by open-ness to international trade). The latter is closely correlated with more corporation-friendly legal systems, in both common and civil law nations.[13] There was also a close statistical association of high levels of corporatization with both current living standards and future economic growth. The latter relationship is partly causal in the classic sense: corporations promote economic growth through factors like economies of scale, cheaper capital from diversification and liquidity effects, and encouraging entrepreneurial risk-taking though limited liability.[14] Unfortunately, there is also reverse causation (richer societies simply have more savings to invest in corporations), so the net effects in such simultaneous relationships are difficult to disentangle.

How does Japan fit into this international picture? As Table 1 shows, in the early twentieth century, despite having adopted German-style corporate laws, Japan had relatively few corporations (as did most follower economies). This was partly because Japan had come late – in 1899 - to allowing general incorporation without individual state sanction (which had become the norm in western Europe, America and some of the developing world by the 1870s). Nonetheless in the post-war miracle years Japan came to have corporate numbers comparable with other leading nations, and at century-end it had numbers of corporations per million people almost as high as the US and well ahead of Germany. Japan had already overtaken Germany's corporations per capita as early as the 1930s (when it still had much lower living standards than Germany), confirming that

[13] Foreman-Peck and Hannah, "Diffusion."

[14] Rosenberg and Birdzell, *How*, pp. 189-241 provide a classic account of corporate advantages.

adopting a civil law system - even one based on the German code but without the GmbH - was not especially detrimental.

However, Germany's level of corporatization was by then a very soft target because of its exceptionally troubled economy: the decline began a decade before the Nazi's election victory and was from 1933 reinforced by the insane peculiarities of Hitler's policies. The Nazis condemned outside shareholders as leeches on managerial creativity, reduced shareholder protections, restricted dividends and stock issues, closed Jewish businesses (or transferred them to competitors) and provided strong incentives for Aryans to convert their corporations to partnership form.[15] Other right-wing authoritarian regimes - such as Japan and Italy – shared only some anti-corporate prejudices and did not emulate the more extreme of these policies. Of course, like many other combatants, the Japanese government (on a full war footing in 1937-45) did restrict dividends, closed some firms down and restricted incorporation to concentrate business on armaments production, but, unlike in Germany, the overall numbers of corporations consistently increased, with only slight and temporary setbacks.[16]

ALTERNATIVE BUSINESS FORMS

[15] Despite this, the obvious alternative form - *Kommanditgesellschaft* (KG) - was not as popular in Germany as *goshi kaisha* in Japan at the same time. In 1938 (in the boundaries of the Old Reich, i.e. excluding Austria etc) there were 22 KGaAs, 5,493 AGs, 25,625 GmbHs, and 233 *Gewerkschaften* (a total of 31,373 for the entities covered in Table 1), compared with only 13,142 KGs (*Wirtschaft und Statistik,* no 24, 1939, pp. 771-3), so in 1938 inclusion of KGs would increase the Table 1 total by 42%, compared with 138 % for the equivalent *goshi kaisha* adjustment in Japan in that year. Numbers in Germany then perhaps most closely approached Japan's high levels): earlier (but less comprehensive) census data suggest a lower portion were KGs in 1907 or 1924. On German policy see Burhop et al, "Law" and Hannah, "Germany's *Sonderweg*".

[16] At the wartime peak of 1943, *kaisha* numbers were 11% higher than in 1937 and in 1945's devastated economy remained 4% higher (*Historical Statistics of Japan*, Table 6)

The statistics for corporations proper in table 1 arguably understate Japan's position, relative to other nations, in the first half of the century. National statisticians and lawyers (even within the same legal family) draw the dividing lines among enterprise forms in different places, not always using identical logic or language in doing so and sometimes blurring lines of division which in other countries are clear. As Elinor Ostrom has insisted in different contexts, many cooperative, multi-agent contractual relations may function in a coherent manner, without conforming to a market/hierarchy/state trichotomy.[17] Table 2 illustrates some of the issues in relation to the menus of multi-owner organisations in Japan and other relevant jurisdictions, though, just as with apparently identical restaurant menus, equivalents shown in the table actually conceal considerable experiential differences.[18] This table includes only capitalist enterprises: state and municipal business entities (unless they were organised under the general law for capitalist enterprises) are excluded, as are some older capitalist multi-owner legal forms once common in Europe but approaching extinction[19] or minor variants that contemporaries treated together with the cases shown.[20] The characteristics of the seven forms shown in the table might be thought of as a ranking: it is *broadly* true that progressing rightwards from corporations proper to sole proprietors

[17] See her Nobel lecture, referenced on page 2.

[18] We do not show Switzerland separately since French and German terminology was used there and (though its laws substantially differed) no new legal principles are illustrated by the Swiss case.

[19] The *bergrechtliche Gewerkschaft* in Germany or the similar "cost-book" mining company in the UK were species of cooperative with distinctly capitalist characteristics and in many cases quoted on stock exchanges, so closer to the corporate form than most cooperatives. Japan did not have similar forms.

[20] For example, the *kabushiki goshi kaisha* was a limited partnership with shares, a cross between a KK (it issued shares) and a goshi kaisha (managing partners had unlimited liability). It was the normal Japanese practice to amalgamate the small numbers who took up this option with KKs for statistical purposes and we have adopted the same convention for German and French equivalents in Table1.

Table 2. Capitalist Enterprise Forms in the First Half of the Twentieth Century: Japan and the West

Type	A	B	C	D	E	F	G
Japan	kabushiki kaisha	yugen kaisha[21]	goshi kaisha	gomei kaisha	special kumiai	tokumei kumiai	kojin jigyō sha
Germany	AG	GmbH	KG (Kommandit)	OHG	*	stille Gesellschaft	Allein-inhaber
France	SA	SARL[22]	SC (commandite)	SNC	*	association en participation	propriétaire unique
UK	public company	private company	limited partner-ship	ordinary partner-ship	*	sole pro-prietor with "sleeping" investor[23]	sole proprietor
US	corporation		limited partnership	general partnership	*	†	sole proprietor

*In addition to *kaisha*, there were many *kumiai* (cooperatives or associations)[i] in Japan besides those set up under special legislation from 1900 which we have called special *kumiai* (type E). Many similar entities existed in western countries, sometimes set up as cooperatives (sometimes as corporations), but also with a wide variety of names, liability regimes, profit distribution rules and legal status (savings banks, credit unions, mutuals, *Vereine*, *Raffeisen*, etc). On civil law *kumiai* see note 26.

[21] Only from 1940. The fifth type of *kaisha*, the *godo kaisha*, introduced in 2006 to succeed the *yugen kaisha*, is irrelevant for this historical discussion.
[22] Only from 1925
[23] The English translations "sleeping" or "silent" partnerships were sometimes used not only for *commandites* (type C) but also for *stille Gesellschaften* (type F). We use the term silent *investor,* here, for the British type F, to indicate that such arrangements did not constitute a limited *partnership* (type C) in the Anglo-American sense. In the UK, there were printed model contracts for forming them (Smith, *Handy*, pp. 16-19, 106), as in France (see n 36 below) suggesting considerable diffusion.
[23] The *Financial and Economic Annual of Japan* changed its translation of *sangyo kumiai* from cooperative society to industrial association in 1928.

† Similar profit-sharing arrangements in the US lacked the clarity of civil law codes or the 1865 UK statute; investors relied on the common law defence of non-involvement in management to avoid liability as general partners (Crane, *Handbook*, 61-4).

entails a movement toward smaller enterprises (usually with fewer owners and greater personal liabilities). Yet some very large enterprises have at times existed in all categories and it is entirely possible for a corporation (de jure or de facto)[24] to be owned by one person, uniting the extremes. Legally such "corporations sole" may clearly be corporations (type A), but economists may - for some purposes - prefer to group them with type G (sole proprietorships).

Cooperatives and mutuals are generally excluded, since, though they made and distributed profits, control rights were generally not proportional to the capital subscribed or dividends paid (by then the capitalist norm); instead each member normally had one vote. However, in Japan some kinds of *kumiai* – variously translated as cooperatives, associations or partnerships - were close counterparts to certain collective business companies in the west. *Kumiai* was the term used in the civil code to describe partnerships which had had neither legal personality (shadan hōjin) nor limited liability.[25] Many were very similar to western (unlimited) business partnerships (type D), and they had similarly wide freedom to contract and modify contacts when circumstances changed, but responsibility for debts was not (as in the west) joint and several, but proportional to participations in the enterprise (or, if creditors had not been apprised of that, equal liability per

[24] In some jurisdictions there were "corporations sole." Elsewhere multi-ownership was a necessary condition for incorporation, but such rules were often (and with varying degrees of legal risk) evaded by the appointment of dummy shareholders.

[25] It was also used to describe labour unions (*rōdō kumiai*) and some social, cultural and professional associations as well as some commercial cooperatives and partnerships.

partner).[26] We will return to this when considering whether Japanese partnership statistics as fully reflect type D as those in the west.

Another type – *tokumei kumiai* (literally "anonymous partnership") - resembled the long-standing contract that Germans called the *stille Gesellschaft* (type F). In these an outside investor lent money to a business on the basis of sharing its profits, but, despite this, did not incur any liability, nor acquire any control rights (other than for accessing profit information), nor create a separate legal entity. Similar arrangements in the Anglosphere exposed the lender to more risk: common law judges might determine that the lender was really an active partner (correspondingly incurring full liability).[27] However that risk had effectively been removed in the UK by the 1865 Partnerships Act (which established a simple formula for avoiding liability in such partnerships), while state laws in the US still posed varied levels of risk, discouraging resort to this form.[28] Other *kumiai* (type E) set up under special legislation in Japan from 1900 (partly modelled, like its corporate law, on German precedent) did have separate legal status; some had limited and some

[26] This was under the earlier Japanese civil code (not, as with *kaisha*, the Commercial Code of 1899), see de Becker, *Annotated Civil Code*, pp.240-50. They also differed in sometimes being conducted by a default rule of majority voting of partners and in permitting one partner to be expelled by unanimity of the other partners. On related Chinese traditional views on partnership, see p. 37.

[27] In Japan, a limited partner could also (but less easily) be judged liable, for example if his name was misleadingly used in the business.

[28] Even in states that allowed limited partnerships, Lamoreaux and Rosenthal ("Legal regime") document court harassment in the nineteenth century. Ewell's American edition of the classic English partnership law text (Lindley, *Treatise*) includes a long footnote (pp. 71-82) before the discussion of the Cox v Hichens decision that paved the way for the British 1865 clarification, indicating the risks in the US. Crane (*Handbook*, 81-4, 99-103) notes that the remaining risks were less troublesome in the twentieth century, though the American preference for corporate forms remained.

unlimited liability.[29] Some undertook functions (trade associations, cartels, joint purchasing, credit for farmers or homeowners) which might in the west have been constituted under special legislation, but sometimes were organised as (usually private) corporations or cooperatives.[30]

A distinctive feature of Japanese legal terminology is that the word "kaisha" describes all types A-D (under the Commercial Code) but none of E-G (mainly under special legislation or the Civil Code). This was not the case for similar words for generic types in western languages.[31] The corporate form was usually confined to types A and B in the Anglosphere, while *Gesellschaft, société, aktiebolag* etc in continental European languages (and "company" in Victorian British English and modern American English) cover the same four types but additionally sometimes include types E-F. "Firm" (or even "company") in English can sometimes even include sole proprietors (type G), as do non-legal terms like *kigyō*, "enterprise" or "business" in most languages. *Kaisha* is sometimes translated as "company" or "corporation," but is that correct? Not in ways that twentieth century Anglo-American lawyers would have readily accepted. Common law partnerships did not then have

[29] For s*angyo kumiai* under the Industrial Association Law of 1900 see n41, below. On this enterprise form, see Fisher, "Cooperative Movement," Churchill, "Cooperatives." There were also *dogyo kumiai* (trade associations mainly for assuring quality under another 1900 law), s*uisan kumiai* (fishery associations under a 1901 law) and *shinrin kumiai* (forestry associations under a 1907 law). In 1925 further laws created associations to cartelise exports (*kogyo kumiai* for manufacturers and *yushutshu kumiai* for merchants), with stronger controls over non-members than *dogyo kumiai*. Limited liability in the 1930s was discouraged as insufficiently prudent, with cooperatives increasingly adopting "guaranteed" capital, increasing (but still limiting) the liabilities of *sangyo kumiai* and their members (for the shift see e.g. Fisher, "Cooperative Movement," p. 483 and the statistics in *Financial and Economic Annual of Japan*, 1930-38.)

[30] e.g. Raffeisen cooperatives in Germany, corporate savings banks in the US, building societies in the UK.

[31] Though the Japanese terminology was also used in Taiwan and Korea.

separate legal personality in the US and England,[32] but in Japan some types – C and D (both *kaisha*) and some (but not all) *kumiai* - did and even in civil law Scotland, France and Germany they had some (but differing) separate legal entity characteristics.[33]

Some scholars (Guinnane et al 2007) describe type B as a "hybrid" and, when Germany introduced the GmbH in 1892, there was uncertainty about whether to describe it in words reflecting existing types A or C. Some – noting type B's corporate form and fully limited liability – translated it as private company (close corporation); others – noting that its ownership stakes were named *Anleihen* (quotas) rather than *Aktien* (stocks) and that, as with stakes in partnerships, they were not tradable on stock exchanges – translated it as limited partnership (type C). The first usage soon predominated, but the latter has recently been revived in American English, where, from the 1970s, newly legally-defined "limited liability companies" (type B private companies) – though sharing most legal characteristics of corporations - are technically considered partnerships. The historically pervasive Anglo-American use of that same term as a synonym of corporation is accordingly falling into disuse by the minority of English speakers in the US.[34] Confusingly, "limited

[32] though in practice common law courts struggled to maintain this view (Crane, *Handbook*, 8-16). In the US the revised Uniform Partnership Act of 1997 finally conferred separate legal personality on all partnerships, but implementation by states differed. In England and Wales from 2000 limited liability partnerships (but not general or limited partnerships) had separate legal personality, like companies, though continued to be taxed as partnerships. The world is thus now nearer the Japanese usage than it was historically and the distinctive meaning of corporation in English has become fuzzier.

[33] There were, for example, different rules about whether creditors suing to recover debts had to exhaust all partnership assets *before* proceeding against one or more partner's individual assets.

[34] Although there were numerous close (private) companies organised under general corporation laws in earlier decades, the formal US legal equivalents of the British private company – "limited liability companies" - were only introduced by Wyoming as late as 1977 and were numerous nationwide in the US only from the

liability companies" in *British* English (in this context more widely spoken worldwide)[35] were definitely *not* partnerships, but were recognized as a fully corporate form, while partnerships (limited or otherwise) were not.

Economists might wish to define the boundaries between sets of enterprises differently from lawyers, depending on the issue under investigation, and the legal categories in Table 2 – even if not coinciding exactly with their needs - will sometimes provide serviceable approximations. For example, to measure enterprises that were corporate (in the Anglosphere's sense) and in which everyone, including the top managers, had limited liability, one adds types A and B, making small adjustments for exceptions.[36] To include enterprises in which outside investors – but not designated principals or managing partners - had limited liability one needs to add types C and F. To include all capitalist multi-owner entities one further adds D and E, again correcting for odd exceptions.[37] Practicalities are more difficult than principles. No country (to our knowledge) produced statistics on type F: by their nature such arrangements were the subject of private contracts not usually publicly disclosed, yet may have been more prevalent in some nations than in the US.[38] Type D data are full for Japan (at least for Commercial Code *kaisha*, not including Civil Code

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1990s. Many American books published before this recent divergence of legal definition from common usage still treated "(limited liability) company" and "corporation" as synonyms, as in modern British English.

[35] English-speakers in Australasia, India, Singapore, Hong Kong etc, as in the UK, still generally treat private limited liability companies as corporations proper, like other joint stock companies.

[36] In many jurisdictions by 1900 limited liability was a necessary feature of incorporation, but that was not true before 1850 (when limited liability was less commonly specified in corporate charters). In some jurisdictions there were still exceptions: some UK registered companies had unlimited liability and all California corporations until 1933 had only proportional liability. The table omits western cooperatives and mutuals and some of these (and some Japanese *kumiai* in the table) had limited liability.

[37] As we have noted, a few of these had *de jure* single owners and more *de facto* single owners.

[38] Census or tax authorities sometimes collected data on Type D (ordinary partnerships, which in some countries did not require registration), but we have been unable to find any source counting Type F. Adolph

kumiai) but often only partial or non-existent for other countries. Such gaps in the statistical record leave some inevitable lacunae in comparative measures.

Japan has fuller data for its *kaisha* (Types A-D combined) than the equivalents in most countries, facilitating examination of some variations resulting from alternative definitions. In Table 1 we followed a common convention, counting as "corporations" only Types A and B, while excluding types C-G. For Japan - before 1940 when type B was introduced - this includes only type A, the *KK* (or corporation proper in the Anglo-American sense). One might view this with equanimity, because, although Japan as yet had no formal private company form, many *KKs* - as with the basic type A corporation in other countries - were *de facto* private,[39] in the sense that they had few shareholders and their shares were not traded publicly, so companies resembling the German GmbH (formally type B) are actually included. Moreover, the differentiation is logically uniform: both limited and unlimited partnerships (types C and D) are also excluded from all countries' totals. Thus, as a measure of *fully* limited *kaisha* entities, the totals in Table 1 serve reasonably well for international comparisons.[40]

Yet there are indications that Japanese C and D partnerships (in addition to being distinctively described as *kaisha* or "corporate" in Japan's idiosyncratic legal terminology) and also

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described them as "très nombreuses" in France in 1913, pointing to their advantages over SAs or *commandites* of familiarity since 1673, informality, speed, freedom from registration fees, stamp duties and taxes, and encapsulation in a mere four paragraphs of the Code de Commerce (Adolph, *De l'Association*, p. 1, who provides model contracts for such associations, some explicitly designed to be SA precursors, on pp. 99-114).

[39] The terms *kabushiki hikōkai kaisha* and *kabushiki kōbo kaisha* exist in Japanese only as translations of foreign terms (public and private/close companies/corporations in the Anglosphere)

[40] The exceptions in note 36 apart, with the additions of some older forms such as *bergrechtliche Gewerkschaften* (see note 19).

Table 3. Japanese Enterprise Forms in 1910.

	Numbers (by liability status)				Paid-up capital	
	Limited	Partly Limited	Unlimited	Total %	¥ million	% of known
Type A (kabushiki kaisha)	5,026	0	0	26	1,244.5	84
Type C (goshi kaisha)	0	4,783	0	24	96.2	6
Type D (gomei kaisha)	0	0	2,499	13	140.7	9
Type E (special kumiai)[41]	4,204	166	2,889	37	5.2[42]	0
Type F (tokumei kumiai)	0	na	0	na	na	na
Total (of known)	9,230	4,949	5,388	100	1,486.6[43]	100

Source: Department of Finance, *Twelfth Financial and Economic Annual of Japan 1912*, pp. 83, 86.

some *kumiai*, were prone to fulfil functions sometimes undertaken by type A and B organisations in other countries, despite many of them having (partially or fully) unlimited liability. Table 3 puts some numbers on the issue for 1910.

It is clear that counting *KKs* alone (as in Table 1 before 1940) only just captures most entities with *fully* limited liability in 1910, and captures less than half of those with *any* limitation of liability or with separate legal personhood. The discourse about cooperatives in Europe and Japan

[41] Data are available for *sangyo kumiai* under the 1900 Industrial Association Law (see n 29 above and *Sangyo kumiai yoran*). *Sangyo kumiai* had a choice of liability status: limited (*yugen kumiai*) and unlimited (*mugen kumiai*) are self-explanatory; the "partly limited" in the table (*hosho sekinin)* had chosen something in between e.g. double liability); in addition to the 7,259 shown in the table there were 49 not classified by liability class. This law targeted farmers and *kumiai* might be for credit, production, purchasing and/or sales. These *kumiai* might be considered closer to western rural coops than to companies, but s*higaichi shinyo kumiai* (city credit associations, which took deposits from non-members and were able to discount bills) and *shigaichi kobai kumiai* (city consumer cooperatives) were also formed under this law. The other *kumiai* seem to have been less numerous. For example, there were 3,421 fishermen's associations (*suisan kumiai*) in 1910, but their numbers then rapidly declined; and 916 *juyo bussan dogyo kumiai* (trade associations) in 1912 (the earliest year), numbers that had slightly declined by 1930.

[42] Paid-up capital data refer to only 3,527 *kumiai*, that is to less than half the total numbers.

[43] Including reserves would add 25% to this figure while slightly reducing the portion in partnerships.

paralleled that about corporations and other enterprise forms: similar questions about whether they should have perpetual succession through transferable shares and separate legal personality or fully limited liability were raised in both cases.[44] It is the cooperatives (mainly special agricultural *kumiai*) which make up most of the numerical deficit in 1910 and that would increase if we had statistics on other *kumiai*. Moreover, even omitting *kumiai* (as other countries' statistics omit cooperatives, which they appear to have used less intensively than Japan),[45] *kaisha* partnerships (combining *goshi* and *gomei*, i.e. those with and without some limited partners) also outnumber *KKs*. However, KKs are on average much larger, so they account for 85% of paid-up *kaisha* capital in 1910. Their dominance would not be much diminished if we added the paid-up capital of Type E *kumiai*, whose numbers grew more slowly and were smaller than *kaisha* and many of which lost their limited liability status in the 1930s.[46] *Goshi kaisha* proliferated at twice the rate of *KKs* in the quarter century after 1910 (their numbers peaked in 1936), with *gomei kaisha* numbers also growing faster than KKs, but both kinds of partnership *kaisha* remained mainly smaller firms,[47] while the average

[44] As emphasised in Guinnane and Martínez-Rodríguez, "Did the cooperative."

[45] If Woytinsky's (*Welt*, p. 161) estimate of 130-140,000 cooperatives worldwide around 1920 is correct, though it is clear there are some lacunae in his figures (idem, pp. 156-171).

[46] The *Financial and Economic Annual of Japan* began publishing statistics on their capital only in 1928, reporting statistics back to 1917, suggesting similar small sizes to those indicated by the partial data in Japanese sources for 1910 (notes 41 and 42 above). The special *kumiai* numbers had increased to 15,028 by 1935, though the average capital of the 92% reporting had grown to ¥18,753 and by 1939 only 726 had fully limited status, many having been pressured to increase their capital and guarantors (*Financial and Economic Annual of Japan 1940*, pp. 114-5).

[47] though there were notable exceptions. The peak Mitsubishi and Sumitomo holding companies remained *goshi kaisha* until 1937 and Mitsui family control was exercised by a peak *gomei kaisha* until 1940, though many of their subsidiary and associated companies were KKs (Japan had none of the US judicial distaste for hybrids, such as partnerships owning corporations). The change from 1937 was driven by double taxation of family partnership holdings which their new KK holding companies avoided.

paid-up capital of KKs more than doubled. Thus the KK share in all *kaisha* paid-up capital remained at 85% in 1935: still a significant share but no higher than in 1910.[48]

This numerical expansion and stable capital share of partnerships differs from continental European experience in this period, where the *commandite* was in relative decline in both numbers and paid-up capital, particularly in countries which adopted the GmbH/SARL (private company) form before Japan's 1940 adoption of the *yugen kaisha*.[49] Shimizu argues that limited partnerships (*goshi kaisha*) and private limited liability companies (*yugen kaisha*) were more similar in Japan than the German, French and British equivalents discussed by Guinnane et al.[50] *Goshi kaisha* (unlike Japanese *kumiai* partnerships under the civil code) had separate legal personality, like a corporation, and might survive the departure of a partner more readily than European equivalents.[51] However even in Japan dissatisfied partners in a *gomei kaisha* could still compel premature dissolution through withdrawal (at the end of a business year and with six months' notice), though limited partners (or their heirs) in a *goshi kaisha* could only withdraw if all general partners agreed,[52]

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[48] *Financial and Economic Annual of Japan 1940*, p. 217.

[49] By 1925, Germany, Austria, the UK, Poland, France (and some countries in their empires) had adopted the private company form.

[50] Shimizu, "Management," pp. 11-13.

[51] Even in the UK, partnership agreements and trusts could sidestep the rule that partnerships dissolved on the death of a partner. Some partnerships everywhere with indivisible sunk costs had an interest in achieving continuity (approaching that of a corporation with formal perpetual succession) through pre-arranged transfers, trust arrangements or agreed sales of partnership interests on the retirement or death of one partner. In such cases the formal dissolution of the partnership was only notional: the same business entity (in the same premises, with the same equipment and stock and sometimes even the same trading name) effectively continued, albeit under changed formal ownership.

[52] Vogt and Heath, *Commercial Code*, pp. 22-7,36-8. Partnerships were automatically dissolved if all general *or* all limited partners withdrew, but it was easy to convert to *gomei* status if the latter occurred, and from 1911

while this was to be forbidden in *yugen kaisha*, providing fuller entity shielding, as in European private companies.[53] *Goshi kaisha* were also less attractive than *kabushiki* (or *yugen*) *kaisha* to some capitalists because at least one partner had to have *un*limited liability (and, in respect of debts incurred while he was a partner, that liability subsisted for two years after withdrawal), but in other respects they shared many advantages with these forms for small, family enterprises. They were cheaper to register than *KKs* (fees per unit of capital were discounted by 25%) and did not have to publish accounts (secrecy was prized by unquoted and family companies, as well as by head offices of holding companies[54]). Partnership agreements could also entrench family control, protect minorities (through withdrawal rights of unlimited partners for reasonable cause) and allocate rights and duties more flexibly than shareholders (who in *KKs* had to have equal votes per share, with only a 50% majority required for major changes). In the first half of the twentieth century, the *goshi kaisha* (Type C) was thus used in much the same way in Japan as the GmbH (Type B) in Germany.

Goshi kaisha were the smallest of registered *kaisha* in Japan, with less than a tenth the average capital of KKs in 1910 (less than a twentieth by 1935) and only around one-third the average capital of ordinary partnerships at both dates. These limited partnerships thus occupied a position in the size hierarchy different from the ostensibly similar *Kommandit* organisational form (KGs or type C) in the west, which used the advantage of limited liability ("sleeping") partners to amass greater

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it was possible also to convert from *gomei* to *goshi*, attracting limited partners to replace unlimited partner withdrawals

[53] Again the formal legal distinction between the two sometimes bent in the face of reality: the legal doctrine of perpetual succession could not inoculate a GmbH whose dominant owner died against dissolution by bankruptcy, if his heirs failed to smooth ownership and management transitions.

[54] See *Kaisha Tōkeihyo*. In 1927 500 *kaisha* were holding companies, most of them *gomei* (214) or *goshi* (157) *kaisha,* not KKs, and the partnership holdings had larger capitals than KK holdings. In other countries, large holding companies were usually type A corporations, not partnerships (which in some jurisdictions were not allowed to control corporations).

resources than unlimited partnerships. We do not have comparable capital measures for all German enterprises (only for AGs and GmbHs) but, in employment terms, German KGs (limited partnerships) were about eight times the size of OHGs (unlimited partnerships) and somewhat larger than private companies (GmbHs).[55] The US data on limited partnerships are less clear, but, as in Germany, they appear to be much less numerous than either ordinary partnerships or corporations and to be of intermediate size.[56] Japanese KKs, like AGs in Germany or corporations in the US, of course, occupied the top of the firm size hierarchy, but *gomei kaisha* - oppositely to the norm in western countries[57] - were larger than *goshi kaisha*. It was the latter - with (partially) limited liability and freedom from accounts publication - that occupied a similar position among Japanese SMEs to GmbHs in Germany (or close corporation SMEs in the US). That explains both why *goshi kaisha*

[55] In the 1907 German census, AG establishments on average had 179 employees (probably underestimating AG size since AGs were more likely than other enterprise types to have multiple establishments), KGs 79, GmbHs 49 and OHGs (ordinary partnerships) only 7. Japan is the only country for which we have found limited partnerships were consistently and substantially smaller than unlimited partnerships.

[56] In the US manufacturing census of 1909, corporations employed an average of 76 blue-collar workers and all partnerships an average of 12. Sizes for the two kinds of partnerships are not separately reported but for earlier evidence that, as in Germany, they were larger than ordinary partnerships see Hilt and O'Banion, "Limited Partnership." There were 43 times as many manufacturing establishments in US corporations and ordinary partnerships combined than in limited partnerships in 1909; the comparable figure for German manufacturing in 1907 was 59 times. Yet, for all industries in Japan in 1907 the comparable multiple was less than 1.7 times. Thus limited partnerships were already - in relative terms - massively more important in Japan before 1914 (and became more so by the 1930s).

[57] It is likely that this is because many unlimited partnerships in Japan were organised not as *gomei kaisha* under the commercial code*,* but under the civil code as *kumiai,* so reported numbers are biased to large holding partnerships and omit many small partnerships which are counted in the US and German statistics.

substantially declined (in numbers and share of kaisha capital)[58] with the introduction of the *yugen kaisha* (formally the GmbH equivalent)[59] in 1940 and also why Shimizu reports that the advantages of the GmbH identified by Guinnane et al were not a primary reason for the subsequent rising popularity of the *yugen kaisha* in Japan.[60] Just as Guinnane et al show for Germany and France, after the introduction of the type B (*yugen kaisha)* in 1940, limited partnerships rapidly declined.[61] One advantage of the *yugen kaisha* perceived by Japanese firms at that time was extending limited liability to the top owner-managers, at least one of whom had to accept liability in a *goshi kaisha* (or

[58] By March 1949 both forms of partnership *kaisha* were down to 24,451 (17% of corporations proper) and by 2009 there were only 6,056 left (only 0.5% of the number of corporations).

[59] It is oversimplifying to describe the *yugen kaisha* as a copy of the German GmbH. There was no restriction on the numbers of holders in a German GmbH (and a few had more than a thousand owners), but the *yugen kaisha* (following the lead of the British 1907 legislation) was limited to a maximum of 50 shareholders. On the other hand, the British private company had no minimum capital size, while the *yugen kaisha* had a minimum of ¥10,000 capital ($2,344 at 1940 official controlled exchange rates, higher than most US limits but a lower minimum than Germany's M20,000 ($7,994), though arguably about the same in terms of financial affordability to the local bourgeoisie). This minimum was raised to ¥100,000 in 1951 (though, post-inflation, that represented a substantial reduction in real terms) and to ¥3 million in 1990 (when a minimum capital requirement was also first introduced for KKs at ¥10 million, see Nicholas, "Organization"). High minimum capital limits largely disappeared in continental Europe by the twenty-first century, under pressure of competition from British corporate law (the UK's liberal corporate registration is now available to any EU company, as liberal Delaware law has long been available to any US corporation).

[60] Shimizu, "Organizations" and "Management."

[61] See n. 5, above. The requirement of *yugen kaisha* for a supermajority of 75% with at least 50% of voting rights represented for changes on important matters (compared with only a 50% majority for *KKs*) and the possibility of shares with multiple votes (banned in *KKs*) also created a wider range of choices in such private companies for minority protection or qualified majority dominance, but this choice was more constrained than in Germany or the UK.

in *tokumei kumiai*).[62] However, other advantages of the GmbH - notably the freedom from compulsory accounts publication and flexibility in governance arrangements - were already widely adopted by Japanese SME entrepreneurs in the *goshi kaisha* before 1940. It is nonetheless possible that - despite their numerical dominance - partnerships in Japan were less effective than KKs. Nicholas shows that their returns on equity were lower than KKs' in 1922-38,[63] an observation compatible with a dual economy interpretation of enterprise forms. SMEs – often using the partnership forms – perhaps occupied the less profitable niches in a developing economy with many backward sectors, though all *kaisha* forms were present in most industries.[64]

Thus the limited partnership (*goshi kaisha*) was much more popular in its heyday in 1930s Japan than its German equivalent (the KG or *Kommandit*), despite Nazi policy favouring the conversion of AGs and GmbHs to KGs.[65] To find proportions of extant registrations in the limited

[62] Shimizu ("Management") considers the dominant motivation the fuller management integration needs of mergers of multiple sole proprietors required by government wartime concentration policy, while retaining shareholder participation. Safe within-family ownership dispersion, and national and local government and business association endorsement of the form are all mentioned as factors encouraging diffusion of the *yugen kaisha*.

[63] Nicholas, "Organization." His finding is particularly surprising because, in countries like the US and UK, partnerships (and sole proprietors) have higher measured rates of return on capital than corporations, an observation usually explained by partnership profits including some returns to managerial labour, whereas corporate profits largely exclude such returns.

[64] Even in manufacturing, partnerships outnumbered KKs, though partnerships were rare among public utilities, insurance and transport *kaisha*. *Goshi kaish*a were perhaps most prominent in mining, where they were the same average size as KKs (though less numerous) and were particularly numerous in domestic trade.

[65] Germany's 1907 census of *Gewerbe* (most industries and services), suggests that adding simple KGs would add only around 10% to our corporate count and less than 5% to their numbers employed, though by the 1925 census these figures had increased to 12% and 8%. This may understate the total numbers of KGs since

partnership form (rather than the fully corporate form) as high as in 1930s Japan in Germany (or in France and many other civil law countries), one has to go back to the early nineteenth century, that is to before general registration laws were adopted in continental Europe and AGs still required individual governmental approval,[66] or to countries like Tsarist Russia, where such individual authorization was still required at the time of the 1917 revolution.[67]

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professional services were excluded from Gewerbe, but Fränkel's estimate, based on sampling the Frankfurt *Handelsregister*, of only 3,000-3,500 KGs in all sectors in 1915, would also suggest an increment of about 10% economy-wide (Fränkel, *GmbH*, p. 36); see also n.15 above for fuller 1938 data. For the larger figures for Japan in 1910 see Table 3. It is true that Nazi policy favoured conversions from *Kapitalgesellschaften* (AGs and GmbHs) to *Personengesellschaften* (KGs etc) from 1934 and, by the end of 1936, a national *Handelsregister* survey (Statistisches Reichsamt, *GmbH*, p. 4) reported 8,800 KGs, but this would increase Germany's (then much diminished) total of AGs plus Gmbhs by only 19%, compared with 190% for the equivalent *goshi kaisha* alone in Japan for that year.

[66] Hannah, "Corporations."

[67] Russian *tovarischestvo na vere* (limited liability partnerships) were much more easily formed (by municipal registration) than corporations (which required the Tsar's authorization) and might plausibly have more than doubled the number of limited liability entities counted as corporations in 1910, though precise data are lacking. Russia in 1910 had 1,575 corporations - including both joint stock companies (*aktsionernye obshchestva*) and *commandites* with shares (*tovarischchestva na paiakh*) - and this had risen to 2,176, with R7,266m capital, by 1914. Owen (*Corporation,*11n) says "trading firms" (a more easily registered form of partnership) increased from 3,593 in 1905 to 5,801 in 1911, which would make such partnerships (limited and unlimited combined) nearly four-fifths of all registrations including corporations, compared with only three-fifths in Japan in 1910. Without further research in the municipal archives where they registered (email to the authors from Professor Owen, March 2014) it is not clear what proportion of these were *tovarishchestvo na vere* (*commandite* partnerships without shares) rather than ordinary (unlimited) partnerships (*polnoe tovarishestvo*). Some data we have found on this question is for 1893 and suggests that then 31% by number (388/1255) and 38% by capital (R33.5m/R88.5m of such trading companies were limited, (Bokhanov, *Krupnaia*,

There was, however, nothing uniquely Japanese in flexible responses to the absence of the specific enterprise form (type B) which Guinnane et al praise. It is true that *commandites* (type C) were not used in twentieth century Europe as widely as the Japanese *goshi kaisha*, and were already in relative or absolute decline in many countries, as in Japan after 1940.[68] Much more common in Europe was the use of the basic corporate form (Type A: the AG in Switzerland, the NV in the Netherlands, the AS or AB in Scandinavia etc, ie the equivalents of the KK in Japan) to achieve the same as was offered by GmbHs in Germany. They were able to do this because their basic corporate laws were less stringent - on matters like publicity of accounts and governance rules - than Germany's for AGs. The Netherlands most closely resembled Japan, though - significantly - only after its NV (type A) law was tightened up in 1928, without permitting the *besloten vennootschap* (BV, a type B) until 1971. In the intervening decades there was, though less markedly than in Japan, extensive recourse to the *commandite* form. This was unnecessary in Switzerland and many other small European countries, because their basic AG (type A) form continued to have less stringent requirements than German AG law (or Dutch NV law from 1928), so that form could still be widely used by SMEs and family firms. Similar recourse to the KK form was known in Japan (in fact most KKs were small family firms)[69] but was less favored there. This was because Japan's fuller disclosure

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95 n 13). Applying that ratio to 1910/11 would raise the total for corporations alone by around 114%, more than the 95 % for Japan at that time, though less than the higher Japanese level of 1936 (when capitalist forms had been eliminated in Russia). Papp (*Development*, p. 403, citing Shepelev) suggests that the decline in the average capital of trading houses from R55,000 in 1911 to R36,000 in 1914 (the average joint stock company then being fifty-eight times that size) was because many had already been converted to joint-stock company form.

[68] Anon, "Statistique;" Viandier et al, S*ociété,* 66-8, 85-8, 307-27.

[69] In 1927, 85% of KKs had less than ¥1m ($0.5m) capital and 23% had less than ¥50,000 (*Historical Statistics of Japan*, vol. 4, 1988, 172-3), though some very small KKs continued to be traded on the TSE. By 1957 95% of

requirements and the wider scope of decisions that required ratification at a general meeting discouraged some SMEs from registering as KKs.[70] However, the numbers of type A corporations (KKs) in Japan overtook the number of AGs in Germany in 1912 and then expanded even more rapidly. Even after the *yugen kaisha* (type B) was introduced in 1940, KKs remained massively more numerous than German AGs. The KK was perceived to have more prestige than the YK and the provisions for protecting shareholder interests in KKs long remained less stringent than those in German AGs. The KK also allowed some choices, such as restrictions on share transfers by family owners, which were not possible in a German AG, but were allowed in GmbHs.[71]

STOCK EXCHANGES

If the KK form was very widely used by family SMEs we cannot, of course, assume that a high proportion of KKs were publicly traded on stock exchanges, as was the case for AGs in Germany.[72] In Japan - as in the US, UK and Switzerland[73] - *de facto* close corporations - in the sense that their shares were rarely (if at all) traded and were held by relatively few people – dominated the type A population of firms numerically throughout the twentieth century.[74] Japan copied much of Germany's Commercial Code, but (in addition to omitting the GmbH) did not regulate KKs as

Table 4. Stock Markets: Germany and Japan 1913-1999.

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kaisha (which were then overwhelmingly corporations in the sense of table 1, not partnerships) had less than ¥5m (by then less than $13,889) capital (*Historical Statistics of Japan*, 2006, vol 2, p. 52).

[70] Baum and Takahashi, "Commercial and Corporate Law," 376.

[71] von Mehren ed., *Law,* 539.

[72] Around a third of Prussian AGs were quoted on a formal exchange (*Statistisches Jahrbuch 1911*, pp. 228,231).

[73] Before 1938, when the Swiss introduced the GmbH.

[74] Rajan and Zingales count 389 Japanese companies quoted on Tokyo, Osaka and some other exchanges in 1913, less than 6% of the 6,562 KKs extant in 1913.

Date	Ratio of Equity Capitalisation to GDP (%).		Listed Companies per Million Population	
	Japan	Germany	Japan	Germany
1913	49	44	8	28
1929	120	35	17	20
1938	181	18	19	11
1950*	5	15	9	13
1970	23	16	15	9
1999	95	67	20	13

Source: Rajan and Zingales, "Great Reversals," pp. 15, 17.

Note. * Japan's stock exchanges were closed from 1945 to 1949 and post-war recovery was slower than Germany's. stock exchange regulation of 1896/7 which affected all quoted AGs

stringently as Germany's 1884 code regulated AGs, nor did it emulate the tough additional German stock exchange regulation of 1896/7 which affected all quoted AGs.[75] Such laws reinforced the gatekeeper position of German banks and required AG accounts, prospectuses and other investor aids facilitating the divorce of ownership from control.[76] With fewer such legal protections for investors, one might expect Japanese stock exchange development to lag that in Germany, at least until post-war Americanisation promoted investor protection. This increased Japan's score on the "anti-director" rights index (considered by some modern analysts to be the major driver of stock exchange development) from 1 to 5 (out of a possible score of 6).

[75] though KKs did, for example, have to publish accounts, respond to investor concerns in annual general meetings, and give shares equal votes.

[76] Burhop and Lehmann-Hasemeyer, "Geography"; Fohlin, *Finance Capitalism*; Burhop, Chambers and Cheffins, "Law"

Yet, as Table 4 reports, Japanese equity markets were *not* behind Germany's before World War One, by Rajan and Zingales'[77] widely-used metric of the ratio of equity capitalisation to GDP, and they forged ahead of Germany's in the interwar years in quoted company numbers also. One of the reasons may have been competition both among exchanges and from off-exchange trading, whereas Berlin (and Frankfurt) gradually dominated Germany's provincial exchanges and off-exchange securities trading was illegal. Unlike major exchanges abroad, Japanese exchanges did not charge companies listing fees, in order to encourage trading. Japan's 46 stock exchanges of 1898 fell to 13 by 1911[78] and to 11 by 1943, when they were compulsorily amalgamated into the Japan Exchange (with a main exchange in Tokyo and 10 branch exchanges, of which two soon closed). Outside these exchanges, over-the-counter (OTC) trading of both listed and unlisted stock long remained strong, so the precise size of the market is difficult to define, but when nine exchanges reopened in 1949, they were forced to abolish forward trading in return for a ban on this OTC trading of listed stocks.[79] (Low) listing fees were introduced and by 1950 much of the postwar

[77] "Great reversals." Their data include all (Germany) or several (Japan) stock exchanges not just the major metropolitan exchange. Although some of Rajan and Zingales's statistics have (correctly) been criticised, those for Japan and Germany appear broadly correct. Burhop and Lehmann suggest only a slight downward adjustment to Rajan and Zingales's1913 figure, possibly because they adopted a stricter definition of domestic firms than RZ. Hamao et al (pp.53, 62) show a very similar pattern (though, of course, somewhat lower levels) for the Tokyo Stock Exchange alone in 1885-2000 and their estimate of the number of Tokyo- and Osaka--listed companies (available only to 1937, pp.60, 65) are compatible with Rajan and Zingales's figures. If anything the Japanese lead may be understated because, while off-exchange trading was prohibited in Germany, there was a significant - but unmeasurable - OTC market in addition to the formal exchanges in Japan, in the first half of the century.

[78] Tamaki, *Japanese banking*, p.108.

[79] Before 1949, only forward trades had to be on exchanges in Japan: spot trades could be conducted anywhere and so the exchanges' share of this market was low. US-style margin trading was introduced in 1951 to stimulate demand.

reorganization of stock corporations was complete. Paradoxically Japan's quoted capital/GDP ratio reached a nadir when post-war Americanization *increased* investor protection, though within a few decades Japan restored its lead over Germany and now has one of the most widely dispersed stockholdings in the world.[80] As elsewhere, Japanese corporate size distributions were highly skewed and it seems likely that *most* Japanese KK capital at an early stage was in the small minority of companies that were quoted on exchanges,[81] as was the norm in Europe, rather than (as in the US before 1914 or the global norm today) most corporate capital being in close (unquoted) corporations.[82]

Apart from a tightening of the Commercial Code in 1911, which strengthened directors' liabilities for negligence,[83] it is difficult to see any early positive impact of corporate law in Japan on the German model. It has been argued that both law and Nazi politics shifted Germany from its strong initial (pre-1914) pro-shareholder culture to one which stunted stock exchange growth (as

[80] Faccio and Lang, "Ultimate." But also Japan dispersed evidence?

[81] In 1900 authorized capital listed on Tokyo was about a third of all KK capital (Hamao at al, "Listing Rules,"p. 61, with precise data and definitions underlying the graph kindly provided by Tetsuji Okazaki, and *Financial and Economic Annual of Japan 1902)* and most firms were listed and traded elsewhere than Tokyo. Similar data for 1915-37 suggests that the TSE's share of all KK capital remained around a third during World War One, quickly peaked to 60% in 1922 and, after a sharp dip in 1923, remained above 50% from 1924 to the war. By 1949-50 – an untypical year - the corporate capital listed on all Japan's stock exchanges (by then all but a few percent quoted on Tokyo) again accounted for around one-third of the authorized capital in kaisha (compare the figures in the TSE Annual Statistical Report (*Shoken tokei nenpo*) with those in Bank of Japan, *100-Year Statistics*, p. 330).

[82] Compare Hannah, "Global census," 16-17.

[83] Hamao et al ("Listing Policy") note the positive impact of the 1911 change on listings on the Tokyo Stock Exchange.

shown in this table).[84] Why did Japan – with an apparently similar Commercial Code – develop so differently? Historians noting the widespread development of stock exchanges before legal protections for investors were seriously implemented, have speculated that there were alternative mechanisms protecting shareholders, such as information signalling and monitoring by investment bankers, high dividend distribution disciplining boards, private order regulation by stock exchanges of corporate charters or other causes. As far as we are aware, there is no study of whether interwar Japanese corporate charters voluntarily adopted good governance rules and practices (such as anti-director rights or transparent accounts), which promoted shareholder confidence.[85] Okazaki et al argue that one of the reasons for the remarkable post-1918 growth of the Tokyo Stock Exchange, far from a strengthening of investor protection, was a relaxation of the rules, enabling the exchange to trade securities already traded on the outside spot market which had not applied for listing, thus improving market liquidity. Another possible candidate for explaining Japan's remarkable early growth in the quoted capital/GDP ratio is the voluntary emergence of gatekeepers and information signallers trusted by investors. Signalling by influential Meiji reformers such as Eiichi Shibusawa may have been an important supplement to legal regulation in Japan and the *zaibatsu* may later have been an important institutional substitute for weak legal investor protections.[86] We thus

[84] Burhop et al, "Law."

[85] However, Miwa and Ramseyer ("Corporate Governance" and "Value") show before 1914 that Japanese quoted companies adopted good governance practices: they drained firms of excess cash by paying high dividends, tied managerial pay to firm profits, relied on reputational sanctions in the managerial labor market, restricted managerial discretion by charter and statute, and actively recruited prominent industrialists to the board. For similar cases in the UK see Foreman-Peck and Hannah, "UK Corporate Law."

[86] Franks et al, "Ownership," citing Okazaki's finding ("Role") that zaibatsu enterprises had higher rates of return in 1922-36. Okazaki interprets this as the result of close family owners being more willing to employ professional managers than firms with dispersed shareholdings, a striking reversal of the Chandlerian argument about Europe, but in line with Morikawa and others on the zaibatsu. Fruin's view (*Enterprise*, pp. 94-

provisionally view the strong development of Japanese stock exchanges in the interwar years as a result of intense monitoring of professional managers by large investors (in some cases zaibatsu families), rather than wide dispersion of holdings driven by strong investor protections. It was post-war Americanization that placed stronger investor protections on the statute book, but the occupying authorities also dissolved the zaibatsu and expropriated large shareholders. If this caused a loss of valuable signalling and/or monitoring, it provides a neatly compatible explanation of the lower post-war penetration of Japanese stock exchanges. The later recovery may have been caused as much by alternative institutional innovations by main banks and *keiretsu* as by formal investor protections.[87]

. AN ASIAN MODEL?

Was Japanese corporate law - and the flexibility with which Japanese businesspersons used it - in some sense part of a different Asian or Asia-Pacific model of corporate development[88] than its plainly European origins suggest? Not on the dimensions we have so far discussed. Japan was precocious in using corporations (and developing stock exchanges) compared with most Asians, but it was by no means the only case. Singapore and Hong Kong (which adopted western corporate laws decades before Japan) consistently[89] had (and still have) more corporations per capita than Japan and Hong Kong had the highest ratio of quoted capital to GDP in the world as early as 1910.[90] India also adopted English corporate law decades before Japan adopted the German

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5) that Japan's stock exchanges were "small, underdeveloped in terms of the range and sophistication of financial instruments, and highly speculative" is difficult to sustain.

[87] Franks et al, "Ownership;" Morck and Nakamura ("Frog") tell a similar story of strong Japanese institutions compensating for its weak securities laws.

[88] As suggested notably in World Bank, *East Asian Miracle* and Aoki, "Towards."

[89] except briefly when Japanese military occupiers closed their Companies Registries in 1942-44.

[90] Hannah, "Global Census."

model in 1899, yet still at the latter date had fewer corporations (though initially more corporate capital) than Japan, even though Japanese corporations until that time required individual government authorization or lacked legal clarity. India's corporate numbers per capita grew steadily but slowly under British rule and, after independence in 1947, actually *declined* for several decades. Despite China's adoption in 1904 of a commercial code very similar to Japan's,[91] China had fewer corporations even than India and, of course, after Mao's triumph in 1949, corporations were more comprehensively suppressed than under India's disastrous "license Raj." Korea and Taiwan were well behind even India in the early decades of the century but when the Japanese authorities extended free incorporation (on their own 1899 model) to their colonies (in 1920 and 1923 respectively) there was catch-up.[92] On their unexpected independence in 1945, they followed the Singapore and Hong Kong rather than Indian trajectory, continuing to develop the relatively liberal corporate regime each had inherited from their colonial masters.

The main differentiator of the future tigers of Asia-Pacific from other underdeveloped regions in the early twentieth century was the exceptionally small size of their

[91] Williams, *Recent*.

[92] The first estimate for Taiwan of which we are aware in the Japanese language sources is for 1929: when there were 402 corporations (KKs) with ¥287.937m capital, 78.4% of it in Japanese hands, an average size of ¥716,261 (Takahashi, *Gendai* , 435-6). There were also 357 limited partnerships and 59 ordinary partnerships – a smaller relative number than in Japan - making a total capital of ¥312,447,000. The equivalent Korean figures for KKs only in 1929 are ¥582.246m (an average of ¥724,187 for 804 KKs), compared with ¥11,762.7m (an average of ¥619,252 for 18,995 KKs) for Japan proper. The ratio of these capital figures to GNE is 71.9% for Japan, 32.5% for Korea and 37.2% for Taiwan, suggesting that the colonies resembled each other more than the mother country. The numbers of corporations (KKs) in 1929 per million people - 88 in Taiwan, 40 for Korea and 300 for Japan - compares with figures of 4 per million people for Korea (with an average capital of ¥140,415) and 101 per million for Japan (with an average capital of ¥247,612) in 1910 (Hannah, "Global Census," Table 3). The figure for India in 1910 was 12.

corporations, compared with the underdeveloped economies of eastern Europe, Latin America or Africa.[93] The average size of Japanese KKs in 1910 was only ¥247,612 ($125,819), in Korea $152,431, and their equivalents in the Netherlands East Indies (modern Indonesia) $128,260 and in the Straits Settlements (modern Singapore and parts of Malaysia) $138,678. If such countries had any advantage over other underdeveloped economies (where average corporate sizes of $1m+ were not uncommon), it seems to be the absence of crony capitalism. This limited incorporations and access to finance to favoured groups in Latin America and elsewhere and depended more on states "picking winners."[94] A multiplicity of small corporations perhaps encouraged Schumpeterian creative destruction – multiple foundations and multiple bankruptcies – and a more successful, risk-taking growth model than crony capitalism. However, the largest Asian populations suffered similarly to unsuccessful non-Asian models: the average size of Chinese corporations in 1910 was as high as $1,314,851 and in India $410,339. That structure left less room for creative destruction there.

Similar relativities are observable for companies quoted on stock exchanges. The average size of 389 Japanese companies quoted on Tokyo, Osaka and some other exchanges in 1913 was, in dollar terms,[95] only $3.2m, compared with $34.9m for the 298 listed on the NYSE about the same time, $4.8m for the 910 listed on the Berlin Bourse and $14.1m for the 1,198 listed on the LSE (Japanese quoted KKs were also smaller than the $16.4m for the 117 listed Argentine companies, $9.6m for the 75 listed Egyptian companies, or $7.1m for the 113 listed South African companies).[96]

[93] Hannah, "Global Census," Table 4.

[94] Of course versions of crony capitalism intensified in some of these societies after independence.

[95] At that time $1=¥2 and we have converted yen figures in this paragraph to dollars at that rate.

[96] Hannah, "Global Census," Table 4 and online appendix. Of course, firm size distributions are highly skewed, tending toward the lognormal, so the reported sizes are sensitive to the cut-off points implied by different numbers of listed firms averaged. It is also important to make international comparisons at market rather than par because Japanese (and many other) shares generally traded well above par, while US shares before 1914 traded about or below par. It is difficult to sustain the alternative view of Franks et al ("Ownership," p.2592) on

This was partly because of Japan's low minimum listing size: paid-up capital of only ¥75,000 ($37,500) had been required since 1894 and, even when this was raised for new listings for forward trades, many small companies continued to be traded on the spot market. Also, after nationalization in 1905, Japan (like Germany and South Africa) lacked the large quoted railway sector, which then dominated large corporations on many contemporary stock exchanges.

The average corporate size in Japan will, to some extent, be understated because neither the general KK statistics nor the stock exchange statistics group corporate subsidiaries into zaibatsu holding company groups, the major ones until the war typically controlled by (unquoted) family partnerships, not KKs.[97] Seven major zaibatsu accounted for 17.5% of the paid-up capital of all KKs in 1928,[98] nine zaibatsu controlled several hundred KKs with 15.1% of paid-up capital in 1937,[99] and their dominance was then accentuated under wartime controls.[100] Yet some 98% of KK's with 85% of KK capital were *not* in major zaibatsu in 1937 and these included most of Japan's fifty largest

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"the relatively large average size of companies listed on the Japanese stock markets." This is based on Japan having fewer listed companies (151) with a higher ratio of capital to GDP than other countries in 1913/15, without noting that Japan's GDP was small relative to the other countries.

[97] See note 48 above.

[98] Morikawa, *Zaibatsu*, p. xix. Comparison with the Ministry of Commerce data suggests Morikawa used all *kaisha* capital as the denominator, though by this time the zaibatsu had organised most subsidiaries as KKs. We have adjusted his reported 16.5% percentage (actually 16.6%) upwards, as all KK capital is a more suitable denominator for comparisons with Hadley's 1937 and overseas data.

[99] Hadley, *Antitrust,* 54-5. Her data are from the post-war Holding Company Dissolution Committee, using Takahashi and Aoyama's 1937 definition of zaibatsu, which is wider than modern scholars favour. Morck and Nakamura say the big 8 had 449 subsidiaries in 1937 (and the big 10 1,200 in 1945).

[100] Hadley (*Antitrust*, p. 49) gives a figure of 35.2% of KK capital for ten zaibatsu in 1945, but both wartime distortions and larger disagreements among ministries on the size of the denominator make this less reliable than earlier indicators. On the wartime disruptions of capital and management see Okazaki, "Japanese Firm."

enterprises, many of them with shares listed on stock exchanges and more widely dispersed than in the more closely-held zaibatsu subsidiaries.

Moreover, Japan was not unique on these dimensions. All countries' corporate size distributions are highly skewed (with several giants and numerous small companies) and many enumerated in other countries were also subsidiaries of interlocking enterprise groups and corporate pyramids.[101] Gardiner C Means, although mainly now celebrated for his work showing the decline of American insider ownership, actually concluded that four interlocking business groups dominated by the Rockefeller, Du Pont and Mellon families and by Morgan/First National financial interests in 1935 controlled over 23% of US corporate assets, suggesting they were more dominant than the leading family zaibatsu in Japan, and there were also smaller interlocking groups in the US (as in Japan).[102] The New Dealers who spearheaded Occupation economic policy from 1945 dealt more harshly and directly with the Japanese family owners in dismantling their zaibatsu than in the US, where they merely directed anti-holding company laws, taxes on inter-corporate shareholdings and antitrust measures against pyramided groups. The US groups shared many features with, but were not identical to, the zaibatsu,[103] though the Mellon interests perhaps came closest in terms of degree of diversification and nature of interlocking controls. Moreover, given the greater size of the

[101] Morck and Nakamura also cite family pyramids in modern France, Italy, Korea, Canada and Sweden.

[102] Authors' calculation from National Resources Committee, *Structure,* 308ff. The four groups' ownership share was higher in railroads and utilities (each 38% of all corporate assets) than in banks and industrials (each 16%). The definitions used in the US and Japanese statistics differ, but the US criteria are quite stringent, including only seven Rockefeller and four Du Pont corporations, while excluding some in which they had substantial holdings but over which they exercised looser control. The unincorporated business sector was larger in Japan, biasing the result in favour of finding a higher Japanese share for groups.

[103] There is some disagreement about the nature, role and significance of the American groups (as with Japanese zaibatsu or keiretsu), see Hilt, "History;" Morck, "Riddle;" TNEC, *Bureaucracy;* Bank and Cheffins, "Corporate Pyramid Fable;" Kandel etal, "Business Groups."

US economy, the American family groups were distinctly larger than the Japanese zaibatsu in absolute terms. In Germany also similar holding company groups (*Konzerne*) with subsidiary and associate companies increased the average size of grouped companies above that shown in the unadjusted corporation or stock exchange statistics.[104]

One aspect of Anglo-American commercial law which initially struck many Asians as odd (in addition to fully limited liability joint stock corporations) was the joint and several liability in partnerships, by which all partners - or any one of them - were liable for all partnership debts to the full extent of their personal assets inside and outside the partnership. In much traditional Asian law it seemed more equitable when a partnership failed for the active partners to share liability for its debts in proportion to their shares in capital or profits, though in China creditors might bargain to adjust the normal settlement according to the relative wealth of the partners and in the Japanese civil code equal (but not joint and several) liability was accepted where partners had not disclosed their respective shares. A conflict with traditional notions of equity may be one reason why the uptake of western-style partnerships in China's 1904 Commercial Code was so low. Even in Hong Kong, where Chinese entrepreneurs more enthusiastically espoused western corporate laws, the British authorities proved more flexible than Manchu legislators on the mainland, adding to the enterprise menu in 1911 a partnership form for Hong Kong Chinese that conformed more closely to native preconceptions.[105] Although there was no similar modification of the Japanese Commercial Code, this was arguably because the contractual options for liability and governance in *goshi kaisha* and in Civil Code *kumiai* partnerships already left considerable scope for traditionally-minded Japanese to mold their enterprises into an acceptable form.

[104] Liefmann (*Kartelle*, 314) suggested that 18% of AGs with 62-3% of AG ordinary share capital (common stock) were part of *Konzerne*. This clearly included hundreds of groups, many more than the US and Japanese figures, though the IG Farben and Vereinigte Stahlwerke groups alone accounted for 10% of AG capital.

[105] Hong Kong Ordinance 53 of 1911 introduced the option of Chinese-style proportional liability for partners, see Jamieson, *Chinese Family,* 121, 127-9.

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CONCLUSION

Views on the developmental role of business institutions extend from skeptics like Ronald Coase (once *any* clear property rights are established free market exchange will sort everything out), Joan Robinson (joint-stock companies are secondary details: by and large "where enterprise leads, finance follows") and Robert Lucas (professional economists overplay the role of institutions supporting capital accumulation) to the large opposing literature claiming a beneficent causal connection running from the development of efficient financial and corporate institutions to modern economic growth.[106] At a most basic level, there can be no serious doubt that corporate laws are important for the successful development of capitalist economies. Douglass North and his collaborators emphasise that "open access" political and economic orders (especially democratic regimes allowing free incorporation) are conducive to sustained economic growth.[107] Although some "proofs" of that proposition verge on the tautological, they become less so if we look at regimes profoundly unfriendly to corporations: as in Soviet Russia for six decades after 1917 or Communist China for three decades after 1949 (three decades did less damage than six). Sometimes, even in less overtly communist societies, unfriendly governments can suppress corporate numbers growth for decades: as did Germany for two decades before 1945 or India's "licence Raj" for several decades after 1947.

Japan had its share of authoritarian governments, but, in contrast to Nazi Germany, they generally remained as favourable as Meiji autocracy or Taisho democracy to developmental capitalism.[108] Thus Japan *never* suffered declines in corporate numbers over many decades, though

[106] Atack and Neal, *Origins*, pp. 4-5, arguing that the positive view is now dominant, cite Robinson - but not Coase or Lucas - for the negative view.

[107] North et al, *Violence.*

[108] See Okazaki ("Japanese Firm") for Takahashi's 1930 book and anti-shareholder sentiment.

the numbers of *kaisha* (all kinds) did decline briefly in 1903-4, 1921-2, 1936-7 and 1944-5 (as well as for several years of the post-1989 stagnation). One of the requirements of a passage to "modernity" - of the kind to which Meiji governments more clearly committed Japan than did most developing countries – is a liberal process of incorporation by simple registration. That was what an international meeting of corporate lawyers in Paris in 1889 advised for all modern societies[109] and that was what Japan introduced in its 1899 Commercial Code.

On the other hand the criticality of more specific corporate laws hypothesized in some recent studies may be doubted. Although the case for a basic corporate form of limited liability seems clear,[110] our examination of the Japanese experience confirms our doubts about whether it matters whether countries adopted common or civil law systems, whether they relied on English, French or German models, or whether they formally allowed particular statutory forms such as the GmbH. As long as there was some variety of organisational choice, reasonable tolerance of private contracting for governance and liability rules within them and/or a generally liberal government approach to private multi-owner organisations, capitalists - and particularly SMEs - appear to be able to fashion organisational forms to their needs. They tend to avoid unnecessary expense or complication and spend few sleepless nights worrying about the arcane issues that concern corporate lawyers (or Guinnane et al).

The overwhelming importance of contractual flexibility and liberal political stances over notionally perfect law-making can be seen in Russia today: its exemplary formal corporate laws (adopted in the 1990s) were no proof against crony capitalism and corruption.[111] Equally eloquent is the fate of those menu innovations introduced by well-meaning legal reformers, convinced of their logical superiority, but underestimating the ingenuity of businesses already using viable work-

[109] Ministère, *Compte-rendu*.

[110] Foreman-Peck and Hannah, "Diffusion."

[111] Pistor et al, "Evolution."

arounds. The drafters of the new Japanese Commercial Code introduced the German KGaA form (limited partnership with shares) in 1899 (while not considering the GmbH necessary), but the Japanese hardly used it, preferring to achieve similar objects within the KK framework. Bankers who wanted directors of corporations to accept liability for loans simply required them to guarantee the loans, rather than adopt the KGaA form. Similarly when the ordinary limited partnership – which for decades had been advocated by economists like John Stuart Mill as having a superior liability structure to the corporation's – was eventually formally legalised in Britain from 1907, there was hardly any take-up, because (with some trivial legal advice) similar arrangements could already be achieved by limited companies and unregistered participation arrangements.[112] Japanese businessmen were especially slow to hire corporate lawyers (fewer in number than in western societies), preferring face-to-face re-negotiation (based on common sense and continuing mutual interests) to legal struggles in courts, when business circumstances required contractual or corporate governance modifications, but they appear to have been similarly agile in making ad hoc adjustments.

Of course the overwhelming majority of Japan's (and indeed the world's) businesses in the early twentieth century - with self-employment the norm in a global economy dominated numerically by farmers and artisans - were not *kaisha* of any kind, but sole proprietorships. Some individual proprietors operated collectively through family arrangements, unregistered *kumiai* partnerships or other informal multi-owner forms, perhaps governed by trust, convention and interest as much as formal law. In 1920 the first detailed Japanese employment census showed employers (including the self-employed) still numbered 8,958,000, as much as one-third of the

[112] Of course some innovations succeeded. Germany really needed the GmbH in 1892 to free up foolish legislated logjams (caused by the unduly restrictive 1884 AG legislation). More recently, limited partnerships have had greater success in the Anglosphere, though that appears to be because of their (arguably unjustifiable) tax privileges.

civilian labor force. The 29,917 *kaisha* of all kinds[113] thus constituted less than 0.3% of all Japan's business enterprises, and the unknown (but probably more numerous) total for all *kumiai* is unlikely to have increased the proportion of multi-owner organizations to more than a few percentage points.

On the other hand, in a developed economy like Germany multi-owner or incorporated enterprises already constituted above 9% of private sector businesses;[114] and in richer societies like the US, UK or Australia the proportion was even higher.[115] In the UK – the most industrialised economy with a tiny farming sector – corporations alone[116] already accounted for most business employment and for three-quarters of all profits on capital.[117] Japan's twentieth century history is essentially the history of the growth of *kaisha* to become a similarly dominant

[113] Bank of Japan, *100-year Statistics*, p. 326, though compare p. 330 for higher figures. The Ministry of Commerce data show only 28,676 kaisha in the same year (*Financial and Economic Annual of Japan 1922*, p. 85). From 1893 sole proprietors in Japan were forbidden to call themselves companies (Takata," From Merchant House," 101), though some one-man corporations remained legal in Germany, the UK and some US states.

[114] Calculated from the 1907 census of *Gewerbe*, with all private sector establishments except those classified sole proprietors or *Alleinbetrieben* (establishments with no employees and using no power) counted as multi-owner or corporate enterprises. Even in Germany sole proprietors and the self-employed still then accounted for most of the private sector workforce in *Gewerbe.*

[115] For example, in the UK in 1911 sole proprietors and the self-employed constituted only 12.3% of the civilian workforce and in the US in 1910 (which had a much larger farming sector, in which sole proprietorships dominated everywhere) only 30.0%. The implausible suggestion by Nicholas ("Organization," pp. 4, 10) that Japan used the corporate form more than the US derives from his Japanese business count excluding sole proprietors while his US count includes them.

[116] That is corporations by the Anglo-American definition, excluding all partnerships as well as sole proprietors.

[117] Feinstein, *National Income*, 157; Stamp, *British Incomes,* 303-5.

enterprise form. The rise of the Tokyo Stock Exchange to rival western equivalents in absolute size is a similarly normal trajectory for a successful industrializer.

In both the industrialized and developing worlds, private (unquoted) companies now constitute around two-thirds of the corporate sector by value or output and include almost all SMEs.[118] This sector is arguably critical to promoting the competitive diversity on which innovation and productivity improvements thrive. Here too, the main contours of Japanese corporate development are a slight variant on an almost universal story in advanced economies of flexible business organizational development. It did not matter that the framers of the 1899 Commercial Code omitted the GmbH-equivalent (*yugen kaisha*) until 1940. Japanese capitalists simply modified their use of KKs, *goshi kaisha* and *kumiai* to achieve much the same effect. Societies that allowed human capital, infrastructure and basic property rights (modified by some form of limited liability) to work creatively toward wealth creation could relax about the finer details of their legal menus for organizational and financial contracting. The Japanese were very ordinary capitalists, doing ordinary capitalist things, like many others in Europe, Asia, Oceania and America who lacked the GmbH or private company form.

Bibliography

Adolph, L, *De l'Association en participation*, Roger, Paris, 1913.

Anon, "Statistique," *Bulletin de statistique et de législation comparée*, vol 115, January 1934, p.41.

Aoki, M, "Towards an Economic Model of the Japanese Firm," *Journal of Economic Literature*, 28, March 1999, 1-27.

[118] Mayer, p.14; see also Brav, "Access," p. 264.

Atack, J and L Neal, eds, *The Origins and Development of Financial Markets and Institutions*, CUP, New York, 2009.

Bank, S A and B R Cheffins, The Corporate Pyramid Fable," *Business History Review,* 84, Autumn 2010, pp. 435–458.

Bank of Japan, *Hundred-year Statistics of the Japanese Economy*, Tokyo, 1966.

Baum H and E Takahashi, "Commercial and Corporate Law in Japan," In W Röhl, ed.,*History of Law in Japan Since 1868*, Leiden, 2000.

Bokhanov, A N, *Krupnaia burzhuaziia Rossii: konets XIXv.-1914 g* (The Upper Bourgeoisie of Russia: From the End of the Nineteenth Century to 1914), Moscow, Nauka, 1992.

Brav, O, "Access to Capital, Capital Structure and the Funding of the Firm." *Journal of Finance*, 64, 1 (February 2009.

Bubb, R, "Choosing the Partnership: English Business Organization Law during the Industrial Revolution," *Seattle University Law Review*, vol. 337, 2015, pp.237-64.

Burhop, C and S H Lehmann-Hasemeyer, "The geography of stock exchanges in Imperial Germany," University of Hohenheim FZID Discussion Paper 89, 2014.

Burhop, C, D Chambers and B Cheffins, "Law, Politics and the Rise and Fall of German Stock Market Development 1870-1938," University of Cambridge Faculty of Law working paper 283, January 2015.

Cheffins, B R, "Did Law matter? The Separation of Ownership and Control in the United Kingdom?," *Journal of Legal Studies*, 30, 20, June 2001, pp. 459-84.

Churchill, A C, "Cooperatives in Japan," *Far Eastern Survey*, 14, no 15, August 1946, pp. 204-7

Coffee, J C, "The Rise of Dispersed Ownership: the Roles of Law and the State in the Separation of Ownership and Control," *Yale Law Journal*, 111, 1, October 2001, pp. 12-82.

Crane, J A, *Handbook on the Law of Partnerships and other Unincorporated Associations*, West Publishing, St Paul MN, 1938.

de Becker, J E, *Annotated Civil Code of Japan*, Butterworth & Co, Yokohama, vol 2, 1909.

Faccio, M and L H P Lang. "The Ultimate Ownership of Western European Corporations." *Journal of Financial Economics*, 65, 3 (2002), pp. 365-95.

Feinstein, C H, *National Income, Expenditure and Output 1855-1965*, CUP, Cambridge, 1972,

Financial and Economic Annual of Japan

Department of Commerce and Industry, *Kaisha Tōkeihyo*

Fisher, G M, "The Cooperative Movement in Japan," *Pacific Affairs*, 11, 4, December 1938, pp. 478-91.

Fohlin, C, *Finance Capitalism and Germany's Rise to Industrial Power*, CUP, New York, 2007.

Foreman-Peck J and L Hannah, "The Diffusion and Impact of the Corporation," *Economic History Review*, forthcoming (online publication December 2014).

_____, "UK Corporate Law and Corporate Governance before 1914: a Re-interpretation, chapter 7 in *Complexity and Crisis in the Financial System: Critical Perspectives on American and British Banking*, edited by M Hollow, F Akinbami & R Michie (forthcoming, Edward Elgar, 2015)

Fränkel, F, *Die Gesellscaft mit beschränkter Haftung: eine volkswirtschafliche Studie,* Mohr, Tübingen, 1915.

Franks, J, C Mayer and H Miyajima, "The Ownership of Japanese Corporations in the 20th Century," *Review of Financial Studies*, 27, 9, forthcoming, online publication May 2014.

Fruin, M, *The Japanese Enterprise System*, HUP, Cambridge MA, 1990.

Guinnane, T W, R. Harris, N. Lamoreaux and J-L Rosenthal, "Putting the Corporation in its Place," *Enterprise and Society*, 8 (September 2007), pp. 687-729.

_____, "Pouvoir et propriété dans l'entreprise: pour une histoire internationale des societies à responsabilité limitée," *Annales*, 63, 1 (2008), pp. 73-110.

Guinnane T W and S Martínez-Rodríguez,"Did the Cooperative Start Life as a Joint-Stock Company? Business Law and Cooperatives in Spain, 1869–1931," Yale Economic Growth Center Discussion paper no 987, June 2010.

Hadley, E M, *Antitrust in Japan*, Princeton University Press, Princeton NJ, 1970

Hamao, Y, T Hoshi and T Okazaki, "Listing Policy and Development of the Tokyo Stock Exchange in the Pre-War Period," in T Ito and A K Rose, editors, *Financial Sector Development in the Pacific Rim*, NBER/University of Chicago Press, Chicago, 2009, pp. 51-95.

Hannah, L, "A Global Census of Corporations: Publicly Quoted and Close Companies in 1910," *Economic History Review*, forthcoming (online publication, September 2014; an earlier version was published as a discussion paper of the University of Tokyo Centre for International Research on the Japanese Economy (CIRJE F-878, February 2013).

_____, "Corporations in the US and Europe, 1790-1860," *Business History,* vol. 56, no 6, September 2014, pp. 865-99.

_____, "Germany's *Sonderweg* in Corporate Development," in A Smith, S Mollan and K Tennent, eds. *Armageddon and Mammon: the Impact of the First World War on International Business*, Routledge, London, 2015.

Hilt E and K O'Banion, "The Limited Partnership in New York, 1822–1858: Partnerships without Kinship," *Journal of Economic History*, September 2009, pp. 615-45

Hilt, E. "Corporate Governance and the Development of Manufacturing Enterprises in Nineteenth-Century Massachusetts," *NBER Working Paper 20096*, May 2014, p. 233.

_____, "History of American Corporate Governance: Law, Institutions and Politics," *NBER Working Paper 20356*, July 2014.

Jamieson, G, *Chinese Family and Commercial Law*, Kelly and Walsh, Shanghai, 1921.

Kandel, E, K Kosenko, R Morck and Y Yafeh, "Business Groups in the United States: A Revised History of Corporate Ownership, Pyramids and Regulation, 1930-1950," *NBER Working Paper No. 19691*, December 2013.

Lamoreaux, N R, and J-L Rosenthal, "Legal regime and Contractual Flexibility: A Comparison of Business's Organizational Choice in France and the United States during the Era of Industrialization," *American Law and Economics Review*, 7, 1 (March 2005), pp. 28-61.

La Porta, R, F Lopes-de-Silanes, A Shleifer and R Vishny, "Law and Finance," *Journal of Political Economy*, 106, no 6, 1998: 1113-1155

La Porta, R, F Lopes-de-Silanes and A Shleifer, "The Economic Consequences of Legal Origins," *Journal of Economic Literature*, 46, 2, June 2008, pp. 285-332.

Liefmann, R, *Kartelle, Konzerne und Trusts*, Stuttgart, 1930. R Liefmann (*Kartelle, Konzerne und Trusts*, Stuttgart, 1930.

Lindley, Sir Nathaniel, edited by Marshall D Ewell, *A Treatise on the Law of Partnership*, 2nd American edition, vol 1, Callaghan, Chicago, 1888

Management and Coordination Agency, Statistics Bureau, *Historical Statistics of Japan*, (5 vols), Tokyo, 1988.

Mayer, C, *Firm Commitment: why the corporation is failing us and how to restore trust in it*, Oxford, 2013.

Ministère du Commerce, de l'Industrie et des Colonies, *Congrès International des Sociétés par Actions: Compte-rendu Sténographique*, Rousseau, Paris, 1890

Ministry of Finance, *Financial and Economic Annual of Japan*, Government Printing Office, Tokyo, various issues, 1900-1940.

Ministry of Internal Affairs and Communications, Statistical Branch, *Historical Statistics of Japan*, Tokyo, 2006 (5 vols).

Y Miwa and J M Ramseyer, "Corporate Governance in Transitional Economies: Lessons from the Pre-war Japanese Cotton Textile Industry," *Journal of Legal Studies*, 29, 1 (Jan 2000), pp. 171-203.

_____, "The Value of Prominent Directors: Corporate Governance and Bank Access in Transitional Japan," *Journal of Legal Studies*, 31, 2002, pp. 273-301.

Morikawa, H, *Zaibatsu: The Rise and Fall of Family Enterprise Groups in Japan*, University of Tokyo Press, 1992

Morck R K and M Nakamura, "A Frog in a Well Knows Nothing of the Ocean: a History of Corporate Ownership in Japan," in Morck, ed, *A History of Corporate Governance around the world,* University of Chicago Press, 2007, pp. 367-465.

Morck, R, "The Riddle of the Great Pyramids," *NBER Working Paper 14858*, April 2009

Musacchio, A and J D Turner, "Does the law and finance hypothesis pass the test of history? " *Business History*, 55, 4 (June 2013), pp. 524-42.

National Resources Committee, *The Structure of the American Economy*, GPO, Washington, 1939.

Nicholas, T, "The Organization of Enterprise in Japan," Harvard Business School Working Paper 14017, November, 2013.

North, D C, J J Wallis and B R Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, NY, 2009

Okazaki, T, "The Japanese Firm under the Wartime Planned Economy,", in M Aoki and R Dore, eds.,*The Japanese Firm*, OUP, 1996.

_____, “The Role of Holding Companies in Pre-War Japanese Economic Development: Rethinking Zaibatsu in Perspectives of Corporate Governance” *Social Science Japan Journal,* 4 (2) 2001, pp. 243-268.

Owen, T C. *The Corporation under Russian Law, 1800-1917*, NY, 1991.

Papp, R G, *The Development of a Domestic Stock Market in St. Petersburg in Late Imperial Russia*, Columbia University PhD, 2001 (UMI reprint 3005770).

Pistor, K., Y. Keinan, J. Kleinhesterkamp and M. D. West, “The Evolution of Corporate Law: A Cross-Country Comparison,” *University of Pennsylvania Journal of International Economic law*, 23, 4, 2002, pp. 791-876.

Rosenberg, N and L. E Birdzell Jr, *How the West grew Rich*, NY, 1986.

Shimizu, T, “Organizations, Corporations and Shareholders: An Organizational Analysis of the Legal Structure of Business Entities,” Tokyo University Working Paper, 2012.

_____, Management and Control in Small and Medium-sized Enterprises: The Case of Private Limited Liability Companies in Japan before World War II,” paper at World Business History Conference, Frankfurt, 2014.

Smith, J W, *A Handy Book on the Law of Private Trading Partnerships*, Effingham Wilson, London, 1908

Stamp, J C, *British Incomes and Property*, Macmillan, London, 1919

Statistisches Jahrbuch für den Preussischen Staat 1911, Berlin 1912.

Statistisches Reichamt, “Die Gesellschaften mit beschränkter Haftung am 31 Dezember 1936,” *Statistik des Deutschen Reichs*, vol 502, Berlin, 1937.

Takahashi, K, *Gendai Taiwan Keizairon (Contemporary Taiwan Economic Essays)*, Chikura Shobo, Tokyo, 1937.

Takata, A A, " From Merchant House to Corporation: the development of the modern corporate form and the transformation of business organization in Japan, 1853-1912," Stanford University PhD, 1994.

Tamaki, N, *Japanese banking: A history, 1859-1959*, CUP, Cambridge, 1995.

Temporary National Economic Committee, *Bureaucracy and Trusteeship in Large Corporations*, TNEC Monograph no 11, GPO, Washington, 1940.

Viandier, A, J Hilaire, H Merle and H Serbat, *La société en commandite entre son passé et son avenir*, Paris, 1983.

Vogt K and G O Heath, *Commercial Code of Japan*, 2nd edition, Crosse, Heath & Vogt, Yokohama, 1912.

von Mehren, A T, ed., *Law in Japan: the Legal Order in a Changing Society*, HUP, Cambridge MA, 1963.

Williams, E T, *Recent Chinese Legislation relating to commercial railway and mining enterprises*, Shanghai Mercury, Shanghai, 1904

Woytinsky, W L, *Die Welt in Zahlen*, vol 5, Mosse, Berlin 1926,

Appendix.Sources for Table 1.

Data usually relate to the end of the calendar year or the end of the fiscal year ending in the stated year, occasionally to specific census dates or an annual average and in a small number of cases (noted below) to data for one or two years earlier or later. Countries differed in the speed with which corporations entering the bankruptcy process (or simply defunct) were removed from the

register and in how they treated subsidiary companies, so only large international differences in corporate numbers per million people should be considered significant.

US: 1909 from Commissioner of Internal Revenue*, Annual Report*, 1910, p. 12; for 1919-79 *Historical Statistics of the United States*, series ch 13, and from the IRS *Statistics of Income* (online at www.irs.gov) thereafter. 1899 is the authors' estimate based on the assumption that the number of establishments reported as owned by corporations in the *Census of Manufactures 1910* (p. 135), which rose from 37,123 in 1899 to 69,501 in 1909, reflects the movement in numbers of extant corporations in all sectors between those dates. Some subsidiaries that were excluded in other years are counted in 1909 and 1939, though this would have been (to an unknown extent) cancelled out in 1909 by initial undercounting, as the IRS began assembling lists of potential corporate taxpayers. The earlier years include a few old forms such as joint stock associations subject to the corporate tax, but not limited partnerships. In 1909 including limited partnerships would increase the number of limited liability entities by around 11,000 (4% of the number of corporations, extrapolating from the evidence in the manufacturing census) and by 2009 (when the IRS reported their exact numbers as 396,611) by 5%.

UK. Data are from various issues of the *Annual Abstract of Statistics* and, latterly, *Annual Reports* of Companies House, the British Department of Trade and industry and the Northern Ireland Department of Commerce. 1939 data were not published: the mean of the 1938 and 1940 figures is substituted. These exclude statutory and royally-chartered companies (i.e those created individually by parliament rather than incorporated by simple registration), some insurance companies (which had separate legislation) and some older forms (such as "deed-of-settlement" companies, ship parts and "cost book" mining companies) and companies chartered abroad but registered as operating in Britain. Statutory and chartered companies tended to be larger than registered ones (all railways, for example, were statutory) so their omission has less impact on numbers than on estimates of the size of corporate capital. Hannah estimates (for all but insurance companies and foreign-registered ones)

that there were 3,000 omitted in 1910, less than 7% of those included. Many of these companies (notably statutory ones) disappeared in mergers in the 1920s and still more in the nationalizations of 1945/51 (and when re-privatized from 1980 on they typically became registered companies), but the listing in the *Stock Exchange Official Year Book 1936* appears to be incomplete even for statutory and chartered companies. More recently the Registrar of Companies reported for Britain in 2009 that there were an additional 1,178 companies noted as operating on the mainland but registered in British offshore islands (including northern Ireland), 8,925 foreign companies similarly operating in Britain, plus 928 assurance companies (registered under other legislation), 9,547 industrial and provident societies (mainly non-commercial and properly excluded), 803 royally chartered companies, a rump of 47 statutory companies, 530 anomalously still registered under an 1881 Newspapers Act (and mainly defunct) and 219 constituted under EU legal forms. The omissions are to some extent compensated by Britain's role before 1914 as a place where some European and Empire companies with few or even no operations in Britain registered, a role recently revived by a 2003 EU court decision, which has enabled thousands of EU companies – à la Delaware - to register in the UK even though they do no business there (Becht et al 2008 report that 16,438 German private limited companies newly registered in the UK in 2006).

Germany. Figures from Wagon (1903: 6-7, 164-5) for 1900 (his estimate of 5,400 AGs and 4,077 GmbHs in 1900 is substituted for 1899) and various issues of the *Statistisches Jahrbuch* thereafter (data were not published for 1949 or 1959: we substitute the data for September 1950 and end 1958). Unfortunately the *Jahrbuch* recently stopped publishing its series for extant AGs, KGaAs and GmbHs, substituting data on the number of taxpaying *Kapitalgesellschaften*, which seriously understate the numbers since many (and a varying portion from year to year) made losses or profits under the tax exemption limit. Presumably the original data are available from the *Handelsregister*, but for the moment all we have been able to trace in the literature is Mŭller's (2006: 4) figure of 950,000 GmbHs at the end of 2002 and 975,000 at the beginning of 2005 (of which about 120,000

were in the hybrid form GmbH & Co KG, that is a limited partnership in which the general partner was a GmbH, thus achieving completely unlimited form and classified by the tax authorities as *Personalgesellschaften* not *Kapitalgesellschaften*); there were also around 15,000 AGs at that time. We temporarily use for 1999 the 2002 figure less 75,000. No allowance is made for earlier quasi-corporate forms (e.g. mining *Gewerkschaften*, shipping *Partenreederei*) but adding these and KGs, judging from the 1907 census of *Gewerbe*, would increase the numbers by only a few thousand. That census also shows that establishments owned by KGs accounted for only 9% of those owned by the entities we have counted as corporations, suggesting (even after reasonable allowances for KGs and GmbHs being less likely to be multi-plant than AGs) that the KG was less important in Germany than in Switzerland or Japan in the early twentieth century. By 2011 there were only 18,627 KGs (accounting for 2.3% of taxable profits) in the non-hybrid form left. The 1899-1909 data relate to the *Kaiserreich*, and 1919-39 data to the post-Versailles boundaries. The yearbooks for 1939/40 and 1941/2 published 1938-40 data on AGs and GmbHs for the expanded Reich, but, to preserve comparability with earlier years, we estimate a figure from their regional breakdowns for Germany in 1939 *within its 1937 borders* (alternatively including Austria, the Sudetenland and other conquests would further lower the number of corporations per capita). From 1949 data are for West Germany, initially excluding West Berlin and Saar, though from 1958/9 the latter are included. Before reunification in 1988, there were many thousands of state enterprises in East Germany, which were taken over by the *Treuhand* and closed, privatized or sold to western companies; liberated private sector *Ossi* capitalists (who had latterly been permitted to produce only about 3% of net national product in East Germany) were also formally able to incorporate. Figures for *Kapitalgesellschaften* published up to 1992 in the *Statistisches Jahrbuch* exclude East Germany, so in 1989 we anomalously use the 79% of the population in the old *Bundesgebiet* (62.063m) rather than of united Germany (78.667m) as the denominator for calculating corporations per million population (reporting 6,513 rather than the 5,137 if we alternatively - and with only mild exaggeration - assumed there were

zero capitalist *Kapitalgesellschaften* in re-united East Germany in 1989). The 1992 *Jahrbuch* for the first time reported corporate statistics for Germany as a whole (with East Germany's new corporations being some undisclosed sub-set of the 99,968 "new" registrations of 1992; the equivalent figure in 1991 had been 47,159 "new" corporations). On the basis of United Germany's 1992 population of 80.594m and 552,878 extant corporations, the number of corporations per million people that year would have been 6,860, 5% above the figure shown in the table for the old *Bundesgebiet* for 1989 and 34% above the alternative all-Germany figure for 1989. A lot was clearly happening in both east and west in this remarkable springtime of transition and to try to partition the effects quite misses the point.

Switzerland. Data, originally published annually in the *Statistisches Jahrbuch der Schweiz*, are standardized and summarized in the online historical Excel files of the Statistisches Bundesamt (www.bfs.admin.ch/bfs/portal). For 1899, we substitute the earliest observation for 1901. Switzerland registered foreign companies operating there, which are omitted from the Table (there were 118 in 1910 and in 4,184 in 2009, increasing the totals by 3.0% and 1.4% respectively). By 1947 (when KGs were first differentiated from general partnerships in the statistics), there were 3,072 (14.6% of the number of corporations) and this fell to 2,368 (0.8% of the number of corporations) in 2009. If slightly less than a quarter of all partnerships were limited, as in 1947, there would have been 1,525 KGs in 1901 (about three-quarters of the numbers of AGs), but if the ratio was then so high (possibly initially higher than in Germany, q.v), it clearly soon declined: by 1926 the numbers of Swiss AGs exceeded the annually reported number of KGs and unlimited partnerships *combined*. It seems unlikely, then, that KGs were as numerous as in twentieth century Japan, though omitting KGs in the first half of the century clearly underestimates the level and exaggerates the rate of growth of limited liability in Switzerland.

Japan

We count only *KKs* (joint-stock companies, the original standard form), including with them *kabushiki gomei kaisha* (limited partnerships with shares, peaking in 1921 at 57, and disappearing from the statistics in 1956 after falling to 4 in the previous year), *yugen kaisha* (the equivalent of the German GmbH or private limited company, introduced in 1940 and rapidly multiplying in the war and after). *Goshi kaisha* (partially limited liability partnerships without shares, similar to European *commandites*) and a fortiori *gomei kaisha* (unlimited partnerships) are thus excluded throughout.

The statistics omit all foreign corporations registered as operating in Japan (128 in 1949, 750 in 1969 and 3,335 in 2009). Earlier in the century the statistics also exclude a number of companies registered in Hong Kong, Europe and the USA (but operating in Japan), some of whose share quotations were then published in the Tokyo English language press and apparently traded there by expatriate brokers. Such companies were required to register as Japanese companies if mainly operating in Japan (so will be included in the statistics, as formally registered in Japan), but otherwise were required simply to appoint a representative in Japan and register their branch.[i] The latter companies will not be counted.

Japan has fuller annual data on *kaisha* than any other country but in one sense it is too comprehensive: several ministries (at various times Agriculture, Commerce, Finance, Internal Affairs and Justice) produced rival series. They sometimes mildly differed, but at others were rather far apart, as can be seen from comparing various editions of *Financial and Economic Annual of Japan* and *Historical Statistics of Japan,* their related CD-ROMs and the original Japanese sources they use. The disaggregations provided also sometimes varied and we have accordingly used several sources in the footnotes, tailored to the point under discussion.

For table 1 we aimed to produce a series from these sources that was as consistent as possible over time. For 1909-59 and 1979-1999 long series were available in Japanese, from the National Tax Agency. For 1899 we increased the Ministry of Agriculture figure of 3,685 KKs by the

ratio of that series to the Tax Agency figures in two overlapping years (1903-4). For 1969, the Ministry of Internal Affairs and Communications reported figures of 346,460 KKs and 256,710 *yugen kaisha* (*Historical Statistics of Japan*, 2006, Vol. 2, p. 49). For KKs and *yugen kaisha* separately, we assumed that the ratios of that triennial series to the annual one we used for other decade-ends was the same as the mean of the two closest years in which the series overlapped (1960 and 1975). The final calculation was as follows:

Year	KKs (type A)	YKs (type B)	Population in millions (C)	Corporations per million (A+B/C)
1899	3,871	0	43.404	89
1909	5,671	0	48.554	117
1919	16,604	0	55.033	302
1929	20,976	0	63.461	331
1939	32,362	0	71.380	452
1949	134,064	36,133	81.773	2081
1959	267,345	183,004	92.641	4861
1969	469,780	336,997	102.536	7868
1979	767,087	584,294	116.155	11634
1989	1,009,817	903,236	123.205	15527
1999	1,089,082	1,366,236	126.667	19384