

“Japan’s Gradual Transformation in Corporate Governance: Interpreting the Securities Law Prosecutions of Hostile Takeover Pioneers”

Luke Nottage (USydney)

Leon Wolff (UNSW)

Kent Anderson (ANU)

Paper for the Corporate Law Teachers’ Association conference, UNSW, 5 February 2008

Abstract: In 2006, two high-profile entrepreneurs were arrested in Japan for securities law violations, and both were sentenced to imprisonment in 2007 [Appendix A]. These events have generated as much public debate as had their innovative deployment of hostile takeovers, after the country slowly emerged from its “lost decade” of economic stagnation over the 1990s. Were the successful prosecutions evidence of a new phase of “Americanisation” of Japanese corporate law, paralleling stricter enforcement in the US following the excesses uncovered by Enron and other corporate collapses? Or did they signal a reassertion of Japan’s stakeholder model of corporate governance, not centred on shareholder interests?

This paper introduces our own analyses and others’ contributions from our co-edited book (Elgar, September 2008), generally concluding that Japan’s corporate governance is undergoing a “gradual transformation” towards greater shareholder primacy, while retaining or reinventing other important stakeholder relationships. That can be seen not only in the revitalised field of takeovers law, but also the new governance structures that large and now smaller companies can choose to adopt, as well as in the less formalised arenas involving “main banks” and labour relations. This work is also tied into recent research by political scientists, especially studies identifying specific ways in which other major post-industrial democracies are now experiencing gradual transformations in socio-economic relations more broadly.