Owning a Company: The Japanese Experience

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Abstract: The notion that you are free to do what you want with your property is extremely childish and immature, regardless of whether the property in question is an animal, a physical object, or a company. An owner has responsibilities, and even owner-managers are not free to do whatever they want with their companies. Doing so would be treating the company like one's personal property and such acts are punishable by law. In conclusion, it is crucial to understand that owners have responsibilities as long as they call themselves owners.

Keywords: ownership, company, property, corporate governance

Introduction

The question “who owns a company?” has become a fundamental

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issue in economics (e.g., Iwai, 2005). However, what is the basis of the commonly held notion that people can do whatever they want with their property.

For instance, let us assume that you bought a puppy from a pet shop for 300,000 yen. This puppy is now your property. However, this does not mean that you are “free to boil or roast it for eating” (a Japanese saying that means one can do whatever one wants). You are not free to eat the puppy, neither are you free to kill it or abuse it. Such acts are punishable in Japan under the Act on Welfare and Management of Animals.¹ Article 44 of the act states the following. (1) A person who has destroyed or injured, without reason, a protected animal² shall be punished by imprisonment with work for not more than one year or a fine of not more than one million yen. (2) A person who has committed on a protected animal such cruelty as causing debilitation by discontinuing feeding and/or watering without reason shall be punished by a fine of not more than five hundred thousand yen. (3) A person who has abandoned a protected animal shall be punished by a fine of not more than five hundred thousand yen.

In other words, the view on ownership that holds that one can do whatever one wants with one’s property is childish and immature, regardless of whether the property in question is an animal, a physical object, or a company.

¹ English translation of statutes in this article refers to Nihongo Hourei Gaikokugoyaku Database System (Japanese Law Translation, Ministry of Justice) <http://www.japaneselawtranslation.go.jp>

² “Protected animal” as used herein refers to cattle, horses, pigs, sheep, goats, dogs, cats, domestic rabbits, chickens, domestic pigeons, and domestic ducks, as well as any other animals in the possession of persons where such animals are categorized as mammals, birds, or reptiles.

Why Do We Turn Cultural Heritage to Ash?

Even when the property is a physical object and not a living creature, the owner is not free to do whatever he or she wants.³ In May 1990, during Japan's economic bubble, Ryoei Saito, honorary chairman and actual owner-manager of Daishowa Paper Manufacturing Company, became famous for purchasing van Gogh's *Portrait of Dr. Gachet* for a record \$ 82.5 million (or 12.5 billion yen at the then exchange rate) and then two days later purchasing Renoir's *Bal du Moulin de la Galette* for \$ 78.1 million (or 11.9 billion yen at the time). The *Portrait of Dr. Gachet* purchase was listed in the 1991 *Guinness Book of World Records* as the highest amount ever paid for a painting. In a press conference, Saito said, "I have told those around me to cremate them (the two paintings) with me in my coffin. It's too much trouble to leave behind the inheritance of tens of billions of yen." For this, he was criticized for "turning our cultural heritage into ashes" by those in the art world in the UK, France, and elsewhere.

Later on, in November 1993, Saito was arrested for making a 100 million yen bribe to the governor of Miyagi Prefecture, and in October 1995, the Tokyo District Court found him guilty, sentencing him to three years' imprisonment and five years' probation. Saito died in March 1996, during his probation. Disaster was averted as two banks immediately placed liens on the paintings and confiscated them.

Saito was the president of Daishowa Paper from 1961 to 1982, having succeeded his father. In 1970, the company was found to have polluted Tagonoura Port in Shizuoka Prefecture's Fuji City with sludge from its Fuji Plant. Saito was heavily criticized for this and underwent questioning by the Japanese Diet in 1974. Even so, he led

³ The following account is a true story summarized by Takahashi (2010, pp. 179–181) from newspaper articles at that time.

Daishowa Paper as its “owner-manager” for about 30 years.

Saito became even more renowned when he bought massive amounts of Honshu Paper stock in a speculative battle with the former Seibi Group. This battle was over profits from the buying and selling of shares by speculators, and Honshu Paper’s share price climbed rapidly from around 1,000 yen in autumn of 1989 to a high of 5,020 yen in August 1990; then, it subsequently fell to around 1,500 yen in early 1991. During that period, from November 1989 to early 1991, Saito himself purchased about 4.2 million shares and sold about 3.3 million shares, thus becoming Japan’s highest taxpayer in 1990. His comment about burning the paintings along with his remains was actually made at a press conference in May 1991, when it was announced that he was Japan’s highest taxpayer.

Even the Owners Cannot Use the Company for Personal Purposes

Even owners of companies are not free to do whatever they want with their companies. In the past, the Shizuoka supermarket chain, Yaohan, was praised in the media for its overseas expansion, which seemed to know no end under its owner-manager Kazuo Wada, a poster child for the globalization of Japanese companies. Yaohan was by no means large; rather, it was only a medium-sized domestic supermarket chain, but it vigorously expanded overseas and then suddenly went bankrupt.⁴

Yaohan’s founder, upon whom the NHK television series *Oshin* is said to be modeled, founded a greengrocer business in the city of Atami in 1930. Her oldest son, Kazuo Wada, took over as president of the company in 1962.

Yaohan began its overseas expansion in 1971 in Brazil, and then

⁴ See Takahashi (2010, pp. 83–85) for more information on this timeline.

later opened stores in Singapore, Hong Kong, Malaysia, the US, the UK, Thailand, and China. In 1990, the Yaohan Group moved its headquarters to Hong Kong as the company developed into an international retail distribution group. In 1990, Kazuo Wada became the chairman, ceding the title of president to his younger brother (the founder's second son), but in actuality, Kazuo Wada was still in charge as the owner-manager through the family's holding company.

Yaohan Japan relied on convertible bonds and other forms of direct financing for its funding. Convertible bonds are corporate bonds that can be converted into stock at a pre-determined price, so the company thought it would not have to repay the bonds because they would be converted into stock as Yaohan Japan's stock price rose above the conversion price. Despite this expectation, Japan's economic bubble burst prior to the bonds' maturity and the stock market crashed, taking Yaohan's stock price down with it and creating a huge obligation for Yaohan to redeem its convertible bonds.

At the time, Yaohan was not only making a flashy expansion overseas by overinvesting in China and elsewhere but also, domestically, was trying to move into the department store business by building stores that were unprofitable. As it poured money into its international investments and the management of domestic megastores, the company failed to reinvest in its basic business of local supermarkets in Japan; thus, its infrastructure fell into disrepair and sales stagnated.

At this point,⁵ the flashy overseas expansion and domestic department store business became nothing other than management overreach by an owner-manager, and the company was soon

⁵ The following account is from Kato (2002). While countless books that roundly praised both Yaohan and Kazuo Wada were published when the Yaohan myth was still going strong, very few have been published after the bankruptcy.

experiencing a cash flow crunch. From November 21, 1996, when Yaohan Japan announced its first decline in sales and profits, until it went bankrupt, a mere 10 months elapsed. On September 18, 1997, just before its bankruptcy, Wada filed a petition under the Corporate Reorganization Law, after finally being persuaded to do so by those around him. After Yaohan's bankruptcy, the Shizuoka District Court said that Akimasa Wada, the former president of Yaohan Japan who had been charged with violating the Commercial Code (illegal dividends) and other crimes, was "selfish, egotistical, and behaved contrary to managerial ethics." The court sentenced Wada to three years' imprisonment and five years' probation, making the harsh pronouncement that "Wada put off coming up with radical solutions to managerial problems and treated the company as the Wada family's personal property."⁶ Thus, even in owner-manager firms, owners are not permitted to treat the company as their personal property.

Entrust Property to the Company

Although the act of buying stock can be associated with "ownership," traditionally, buying stock in a company meant investing in that company. Investing in a company simply means entrusting one's assets to a company. According to Otsuka (1938), the prototypical companies were formed as mechanisms for entrusting in the 10th century Italian commercial cities of Genoa and Venice, which were situated on the Mediterranean coast where maritime commerce had developed. These groups were called

⁶ Kaisha o shibutsu-ka shita Wada Akimasa moto shacho ni yuzaihanketsu: Yaohan funshoku kessan jiken [Conviction of former president Akimasa Wada, who made the company private: Yaohan window-dressed accounts case] *Asahi Shimbun*, Shizuoka edition, April 1, 1999, morning edition, p. 35.

commenda, from the word *commendare*, which means “to entrust.”⁷ At first, the *commenda* operated with poor merchants who had no financial resources funding but were engaged in maritime trade throughout the Mediterranean coast or with the Hanseatic League (northern Germany and the Baltic coast) on behalf of lenders as the business owners.

Soon, it became common for lenders to accept money instead of goods. The *societas maris*, as they were called in Genoa, were created as a secondary type of *commenda* and operated alongside the original type of *commenda*. The borrowers also started investing money in these *societas maris*, and they themselves came to assume the standing of owners. Furthermore, contracts evolved from being done on a per-journey basis to an annual basis. Of course, when that happened, the ownership ratios and profit allocations among the parties changed. Thus, in *societas maris*, lenders were no longer directly involved in management and became what we nowadays know as investors. Thus was formed the functional differentiation between investors and entrepreneurs/managers. This Italian system is said to have led to the establishment of similar forms of company in Europe during the 15th and 16th centuries.

Prior to April 2006, Japanese corporations were regulated under the Commercial Code, Part II and under the Limited Company Act. However, a new law called the Companies Act went into effect on May 1, 2006. The new Companies Act did away with the system of minimum capital and folded limited companies into the category of companies. Because of this, companies that are not public or large companies⁸ are now able to have a simpler organizational

⁷ These were called *collegantia* in Venice.

⁸ In the Companies Act, “public company” means any stock company the articles of incorporation of which do not require approval of the corporation for acquiring all or part of issued shares through transfers (Companies Act, Article 2 (v)). “Large company” means any stock company that satisfies any of the following requirements on its balance sheet as of the end of its most

structure. At their simplest, such firms are not required to have a board of directors or auditors, and they can be structured so that an individual director can put his or her name on the firm. In such cases, shareholders other than the director are merely entrusting their assets to the director. We can thus see that the fundamental essence of the “company” system under the Companies Act lies in its being a mechanism for entrusting, rather than corporate status, organization, or ownership.

Conclusion

Purchasing shares is a possible way of acquiring the right to vote at a company’s general meeting of shareholders. However, it is a very strange idea that having voting rights is synonymous with ownership, and not just ownership of stock but also ownership of a company. Although this is undoubtedly a leap of logic, the pioneering work (Berle & Means, 1932) of corporate governance is titled *The Modern Corporation and Private Property*, and it advocated the “separation of ownership and control” based on the dispersed ownership of stock.⁹

The term “corporate governance” became common in Japan after the collapse of the bubble economy in the 1990s. The Japanese securities industry, which was blamed for both the bubble economy and its collapse, is said to have initiated discussions on governance

recent business year (Companies Act, Article 2 (vi)): (a) 500 million yen or more in stated capital or (b) 20 billion yen or more in the sum of total liabilities.

⁹ Managerial capitalism replaced family capitalism and financial capitalism between the 1840s and the 1920s with the separation of ownership and management (Chandler, 1977, p. 9). However, the direction of the cause and effect went the other way instead, as talented professional managers pushed for greater amounts of capital, resulting in the dispersion of stock ownership (Takahashi, 2017).

to deflect that blame elsewhere.¹⁰ This was followed by countless economics papers labeled corporate governance research, which studied the relationship between performance and the breakdown of share ownership at Japanese companies (e.g., Lichtenberg & Pushner, 1994; Morck, Nakamura, & Shivdasani, 2000). Thus, in economics, “ownership” became just another variable in an economic model. Unless under selection pressure (Aizawa, 2018), the responsibility of the owner, which should be critical in corporate management practice, has been forgotten.

However, even owner-managers are not free to do whatever they want with their companies. Doing so would be treating the company like one’s personal property and such acts are punishable by law. In conclusion, it is crucial to understand that owners have responsibilities as long as they call themselves owners. This is true regardless of whether the property in question is an animal, a physical object, or a company.

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¹⁰ “Zadankai: Nihon no kaisha no koporeto gabanansu” [Round-table discussion: Corporate governance at Japanese companies]. *Jurist*, No. 1050 (Special issue on corporate governance), August 1–15, 1994, pp. 6–33 (in Japanese).

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