

as those in other parts of the world and that Japanese culture is entirely secondary to how relationships that seek legitimacy, power, representation and change play out over time. Indeed, Brumann's overarching message and, we suppose, his reason for compiling his observations and arguments into this work is that he hopes to deconstruct the various intra-cultural groups that compose any Japanese (human) context. In so doing, he ensures that the motivations and influences brought to bear on the definition of cultural heritage, tradition and democracy—on defining a common past—are not conflated with the forces of any one (Japanese) culture but rather are exposed in all their contested glory.

Brumann's wider hope of contributing to a deep de-exoticization of Japan is one that a variety of readers are likely to commend. In addition, affecting the view of Japan from those viewing it from outside, the same messages of intra-cultural diversity will have regenerative effects on those individuals within Kyoto and Japan. Indeed, one would hope that the book is translated into Japanese for the benefit of Kyotaites (and other 'locals' in Japanese contexts) who would doubtless find the same observations and messages valuable in securing for themselves further social and political resources to continue to represent and contest their and others' rights to claim their pasts.

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Quiet Politics and Business Power: Corporate Control in Europe and Japan, by Pepper D. Culpepper. New York: Cambridge University Press, 2011, 248 pp., £20.99 (paperback ISBN 978-0-521-13413-2)

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Since the work of [Roe \(2003\)](#), researchers have been actively engaged in political analysis of corporate governance. This body of research tries to explain differences in corporate governance among countries and changes to corporate governance within a country by focusing on political factors. Culpepper's book provides a novel framework for political analysis of corporate governance, chiefly by introducing the concept of salience. In addition, Culpepper's framework can be applied beyond corporate law. However, there remain some problems, as is usual in any research. Here, I review Culpepper's book chiefly from the viewpoint of a Japanese corporate law scholar (for reviews by researchers in other disciplines, see [Schnyder 2011](#); [Cioffi 2012](#); [Goyer 2012](#)).

Culpepper introduces the key concept of salience. Salience is high where the public (or more precisely, the electorate) cares about a given matter, whereas it is low when voters do not care about the issue. Because politicians try to maximize the possibility of reelection, when salience of a given matter is high, they care about the matter as voters do. On the other hand, in a low-salience situation, politicians do not attend to the matter as much. Even though the public does not care about an issue, there may be an interest group that has great interest and rich knowledge of the issue. The interest group has a significant incentive to try to influence rulemaking on the particular matter, and politicians are often open to input from the interest group when salience is low.

Matters regarding corporate governance, including corporate law, usually have low salience. An interest group that has a significant stake and much knowledge is business, or more precisely, managers, in the case of laws on corporate control. Furthermore, some of the battles over corporate control occur outside of formal legislation. Rather, these laws and rules arise as informal institutions, defined

as “regularized rules or practices that are not established by lawmakers or regulators” (p. 11). Here, managers are incumbents who can decide the content of such informal institutions.

Together, these two concepts constitute a noble framework by which to understand the power of business as an interest group. In the realm of ‘quiet’ politics, where the salience of a given problem is low and solutions to problems come in the form of informal institutions, business stands to exert significant influence on the outcome of changes to regulations. On the other hand, in the case of high-profile ‘noisy’ politics, salience is high and problems will be solved formally by legislation. In these instances, the influence of business is weakest, although they may well have some influence. Relevant parties, including business, will try to move the situation to the realm of politics where they can expect a more favorable outcome. As such, business tries to keep issues in the realm of quiet politics, while parties confronting business (e.g. investors) try to move the issue toward higher-profile, ‘noisy’ politics.

The salience of issues affecting the market for corporate control and corporate governance is low, in general. In addition, informal institutions comprise a considerable part of regulation. Therefore, most of the rulemaking is done in the realm of quiet politics, meaning that businesses (i.e. managers) are able to exert influence and achieve their goals. However, in some situations where salience becomes high (such as the case of rulemaking concerning triangular mergers in Japan), business may lose. Culpepper empirically demonstrates this point by presenting case studies from France, Germany, the Netherlands, and Japan. In addition to regulations of the market for corporate control, Culpepper shows the impact of ‘salience’ in the area of corporate law, by focusing on the regulations of executive compensation in France and the US.

Previous studies by political scientists that focus on coalitions of interest groups (Gourevitch and Shinn 2007) or on partisan politics that emphasize the role of central left parties (Cioffi 2010) fail to recognize that voters and politicians usually do not make a difference to corporate law policies including takeover regulations. As Goyer (2012: 268) puts it, politicians cannot win elections by proposing new regulations on takeovers: “No more poisonous pills” is hardly a winning slogan’. Culpepper’s book enables us to explain the dynamics of corporate law by introducing the concept of salience and focusing on the formality of lawmaking in particular.

As Chapter 6 of this book illustrates, Culpepper’s framework can easily be extended to other areas of corporate law. Furthermore, it can be useful in explaining the formation of law in other fields in which voters (and hence politicians) express low interest and in which a strong interest group exists. For example, intellectual property law is a potential area of study to which the framework of noisy/quiet politics could be applied.

Another contribution of this book is its discussion of the informal rules. As shown by Armour, Jacobs and Milhaupt (2011), legal academics also recognize the importance of informal rulemaking on takeovers. Prior studies by political scientists highlight the importance and mechanisms of coalition building by interested parties and are useful in analyzing informal rulemaking. However, because these studies mainly focus on formal legislation, coalition building cannot readily be applied to informal rulemaking, where the mechanisms of changing existing norms are different. This book illustrates the importance of analyzing informal institutions. Furthermore, this book succeeds, although only to limited extent, in revealing the mechanisms of informal rulemaking and how an interested party’s information and specialized knowledge can make its influence strong.

Despite these significant contributions, some shortcomings and problems remain. The first concerns laws regulating corporate takeovers in Japan. Culpepper’s analysis of Japanese law mainly focuses on the report by the Corporate Value Study Group (CVSG), formed under the Ministry of Economy, Trade and Industries (METI), and on the METI–Ministry of Justice guidelines based on

that report (hereafter collectively referred to as the Government Guidelines). However, as pointed out by [Armour, Jacobs and Milhaupt \(2011\)](#), case law and self-regulation by stock exchanges constitute an essential part of hostile takeover law in Japan. Both case law and stock exchange regulations cast substantial restrictions on directors' discretion to adopt and exercise defensive tactics. Therefore, Culpepper fails to recognize laws that are not consistent with managers' interests. Furthermore, even when discussing the impact of the Government Guidelines, we must look into other sources of law. The guidelines themselves are not law and have no formal enforcement mechanism. Further, METI has no formal authority over matters pertaining to corporate takeover. The Guidelines' practical influence as soft law stems at least in part from the expectation that courts and the Tokyo Stock Exchange (TSE) will not allow defensive tactics that violate these norms. In other words, the importance of these norms as enforceable rules depends on the decisions of the institutions with enforcement power.

When we focus on case law and self-regulation by stock exchanges, it is unclear whether Culpepper's framework can explain their formation. First, the concept of salience might not be as effective when analyzing case law on hostile takeovers. Important hostile takeover cases are always salient, especially at the first stage of the formation of takeover law. In addition, bringing a case into the courts in itself makes the case salient. Therefore, there are relatively small variances in salience among important cases. This makes it difficult for us to consider correlations between salience and outcome. Furthermore, the concept of salience focuses on the incentive of politicians: if voters care about something, politicians also care about it. Although judges might care how the public will react, they clearly have no or little incentive to gain political support from the public because they do not confront elections as politicians do. In fact, courts in Japan are not merely copying or reciting the Government Guidelines. Rather, courts are much more skeptical about the loyalty of Boards facing hostile takeovers. In turn, courts respect decisions made in shareholder meetings, although they do so without considering the influence of cross-shareholdings.

Self-regulation by stock exchanges may have a different mechanism of rulemaking. As mentioned above, the attitude of the TSE is somewhat more pro-shareholder compared with that of CVSG–METI. For example, the TSE essentially prohibits the use of golden shares and other class shares as defensive tactics, which is not prohibited by the Government Guidelines. In general, the TSE clearly cares about the voices of foreign institutional investors, chiefly due to the increasing shareholdings of and trading volume by foreign institutional investors.

The above discussion in turn shows that further research is needed to reveal the mechanisms of the informal rulemaking process. First, informal rulemaking that is not dominated by business does occur. It is true that most of the informal rulemaking processes are strongly influenced by business compared with the formal legislation processes. However, as TSE self-regulation illustrates, there can be an informal rulemaking process in the corporate law arena that is not dominated by business associations. In addition, the existence of both CVSG–METI guidelines and TSE regulation implies a possibility that even when an interested party is unable to achieve influence in a given rulemaking process, it can nevertheless do so via other routes.

Second, as implied in the discussion above, in the area of law where case law is important, we need further research on the mechanisms by which interested parties influence court decisions, given that case law is formed in its own distinct way. First, judges are (at least apparently) politically independent. Therefore, it is crucial to shed light on the preferences and incentives of judges. For example, as mentioned above, judges may react to public opinion in high-salience situations, although in a different manner from politicians. So, why and how judges react (or do not react) to salience are problems to be solved by future research.

Beyond the existence of judges, we can consider other peculiar ways in which specific interest groups can influence case law. Managers may have stronger influence on case law compared with other interested parties, not because they can lobby judges, but because managers have strong incentives to resist a hostile takeover and are able to use corporate funds instead of their own money to do so (see [Armour and Skeel 2007](#)). Moreover, in some areas of law, they can control case law via the selection of the case being tried; after all, courts cannot decide anything in the absence of cases brought forward by disputing parties. As indicated here, there is research by legal academics that focuses on this distinct feature of rulemaking by case law and it may offer insights to the problems addressed by the political science research in this area. In conclusion, Culpepper's book raises new and interesting possibilities for analyses of the formation of laws in many areas. The problems discussed above are all related to the law and point to the fact that collaboration between political scientists and legal academics could be productive to future research on these issues.

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References

- Armour, John and David A. Skeel. 2007. 'Who Writes the Rules for Hostile Takeovers, and Why?—The Peculiar Divergence of U.S. and U.K. Takeover Regulation'. *Georgetown Law Journal* 95: 1727–1794.
- Armour, John, Jack B. Jacobs, and Curtis J. Milhaupt. 2011. 'The Evolution of Hostile Takeover Regimes in Developed and Emerging Markets: An Analytical Framework.' *Harvard International Law Journal* 52(1): 221–285.
- Cioffi, John W. 2010. *Public Law and Private Power: Corporate Governance Reform in the Age of Finance Capitalism*. Ithaca, NY: Cornell University Press.
- . 2012. 'Quiet Politics and Business Power: Corporate Control in Europe and Japan'. *Perspectives on Politics* 10(3): 849–851.
- Gourevitch, Peter A. and James Shinn. 2007. *Political Power and Corporate Control: The New Global Politics of Corporate Governance*. Princeton, NJ: Princeton University Press.
- Goyer, Michel. 2012. 'Quiet Politics and Business Power: Corporate Control in Europe and Japan'. *Corporate Governance: An International Review* 20(2): 228–229.
- Roe, Mark J. 2003. *Political Determinants of Corporate Governance: Political Context, Corporate Impact*. New York, NY: Oxford University Press.
- Schnyder, Gerhard. 2011. 'Quiet Politics and Business Power. Corporate Control in Europe and Japan'. *Swiss Political Science Review* 17(4): 492–496.

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Since the mid-1990s, equity financing has become increasingly diversified and complicated in Japan. It is not easy to understand, even for those in the middle of these kinds of deals, to transfer the lessons