

**The Clarke Lecture
Cornell Law School
2014/03/26**

**Capitalism and Cultures
– Universality and Particularity
of the Corporate System
across Societies**

by

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For Whom Do Business Corporations Exist? (1991)

%	US	UK	Germany	Japan
Shareholders	75.6	70.5	17.3	2.9
All Stakeholders Employees, Shareholders & C	24.4	29.5	82.7	97.1

If Managers Have to Cut Either Dividends or Employment, Which is Their Choice? (1991)

%	US	UK	Germany	Japan
Cut Employment to Maintain Dividends	89.2	89.3	40.9	2.9
Cut Dividends to Maintain Employment	10.8	10.7	59.1	97.1

Source: Masaru Yoshimori, "Towards the 'Japanese-Style Corporate Governance'," *Organizational Science*, 27 (2), 1993; in Japanese.

Respondents: **INSEAD Graduates** (US 82,83; UK 78,75; Germany 110,105; Japan 68,68.)



A Variety of Corporate Systems.

US-UK Corporate System

**⇒ Maximization of Shareholders' Return.
= Managers as Agents of Shareholders.**



**Japanese-German-... Corporate System
⇒ Growth & Survival of the Corporation
as Organizational Entity**

**(or as a Community of Stakeholders).
= Managers as Leaders of Organization.**



Other Systems (to be Seen Later).

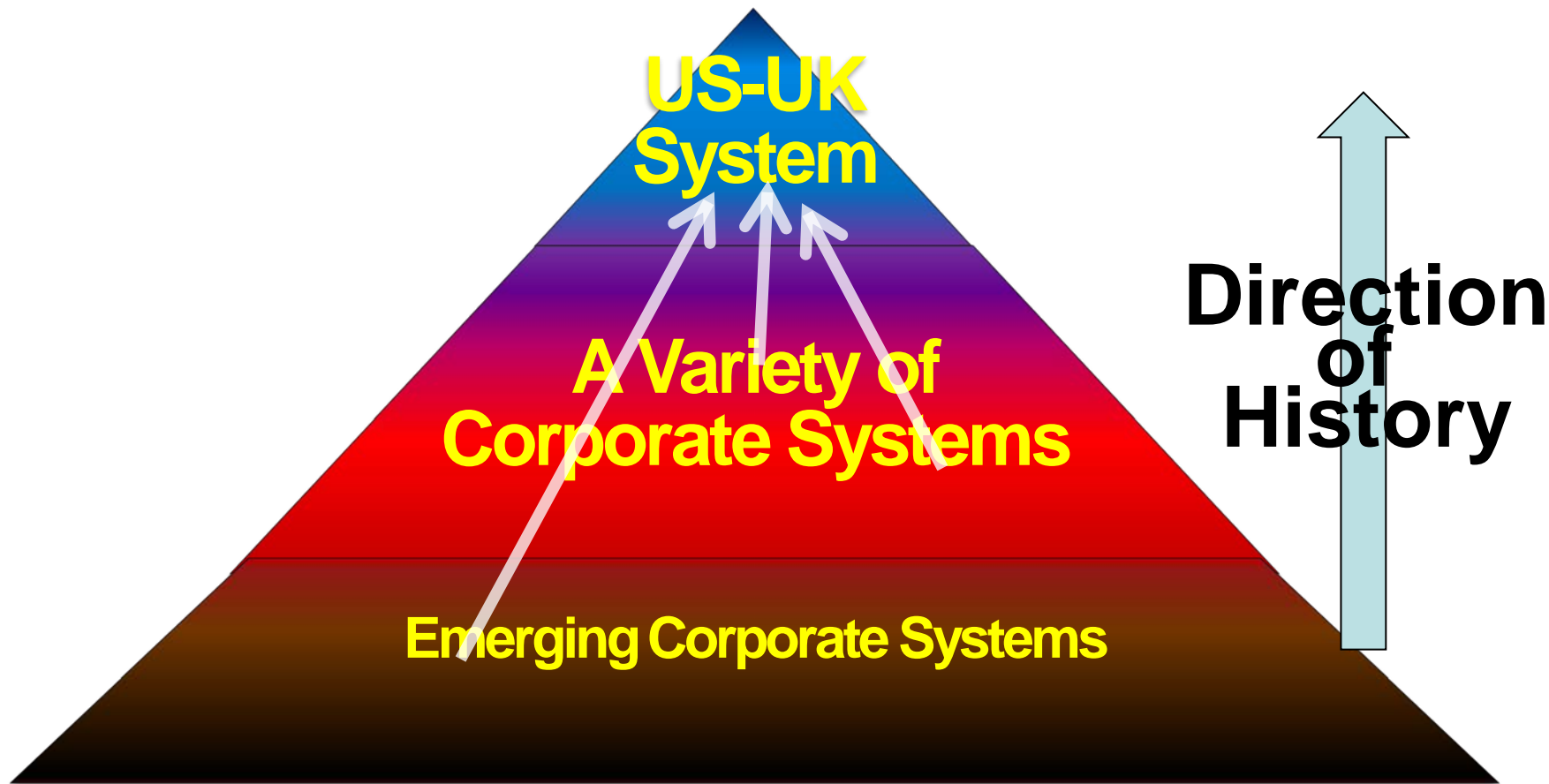
**But,
Hasn't 'the Globalization' Led to the
Convergence?**

**Not
to a Hybrid System
But
to the US-UK System
Of Shareholder Supremacy
as the Universal Norm?**

The End of History for Corporate Law.
by
Hansmann & Kraakman, *Georgetown LJ*, 2000.

“Despite [the] apparent divergence [among Europe, US & Japan], the basic law of corporate governance ...has achieved a high degree of uniformity across these jurisdictions, and continuing convergence toward a single standard model is likely.”

“There is no longer any serious competitor to the view that corporate law should principally strive to increase long-term shareholder value.”



**A Variety of Corporate Systems
As Late-Comers' Effects.**

Bound to Disappear as History Progresses.

Yet, History Has Not Ended, & Difference in Values Persists.

“What is important to you in your job?”
1 = not important, **4** = most important

	Japanese Directors 1993	Japanese H.R. Executives 2001	U.S. H.R. Executives 2001-2
Share Price	2.0	2.3	3.3
Employees’ Jobs	3.3	3.2	2.1

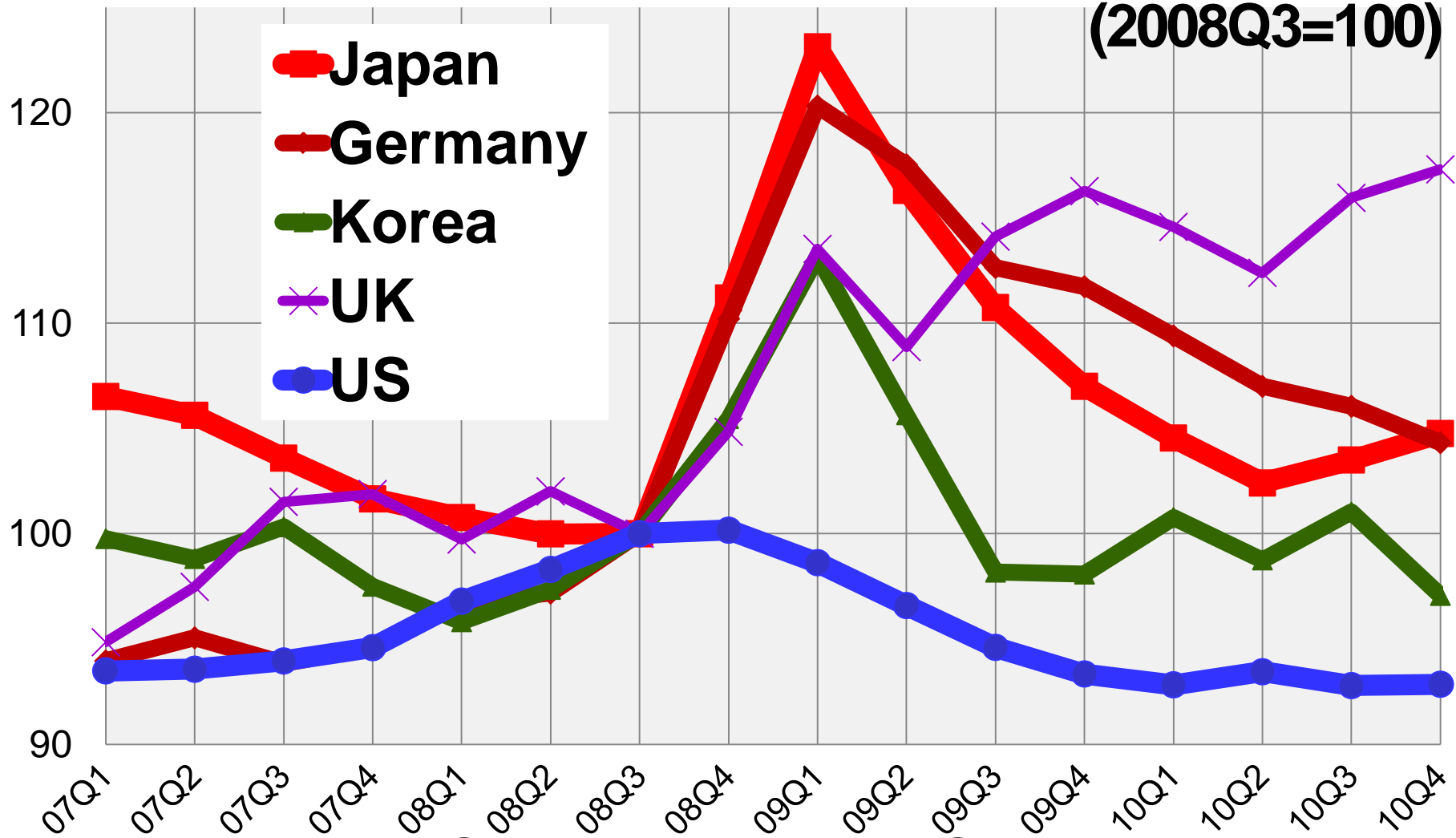
Source: Jacoby, S., H. Nason and K.Saguchi, “The Role of the Senior HR Executive in Japan and the United States: Employment Relations, Corporate Governance, and Values,” *Industrial Relations*, 2005

**But,
Aren't They Merely Executives'
Subjective Values ?**

**Then,
2008.9.15,
The Lehman Shock
!**

Industry Sector's 'Unit Labor Costs' Before & After the Lehman Shock

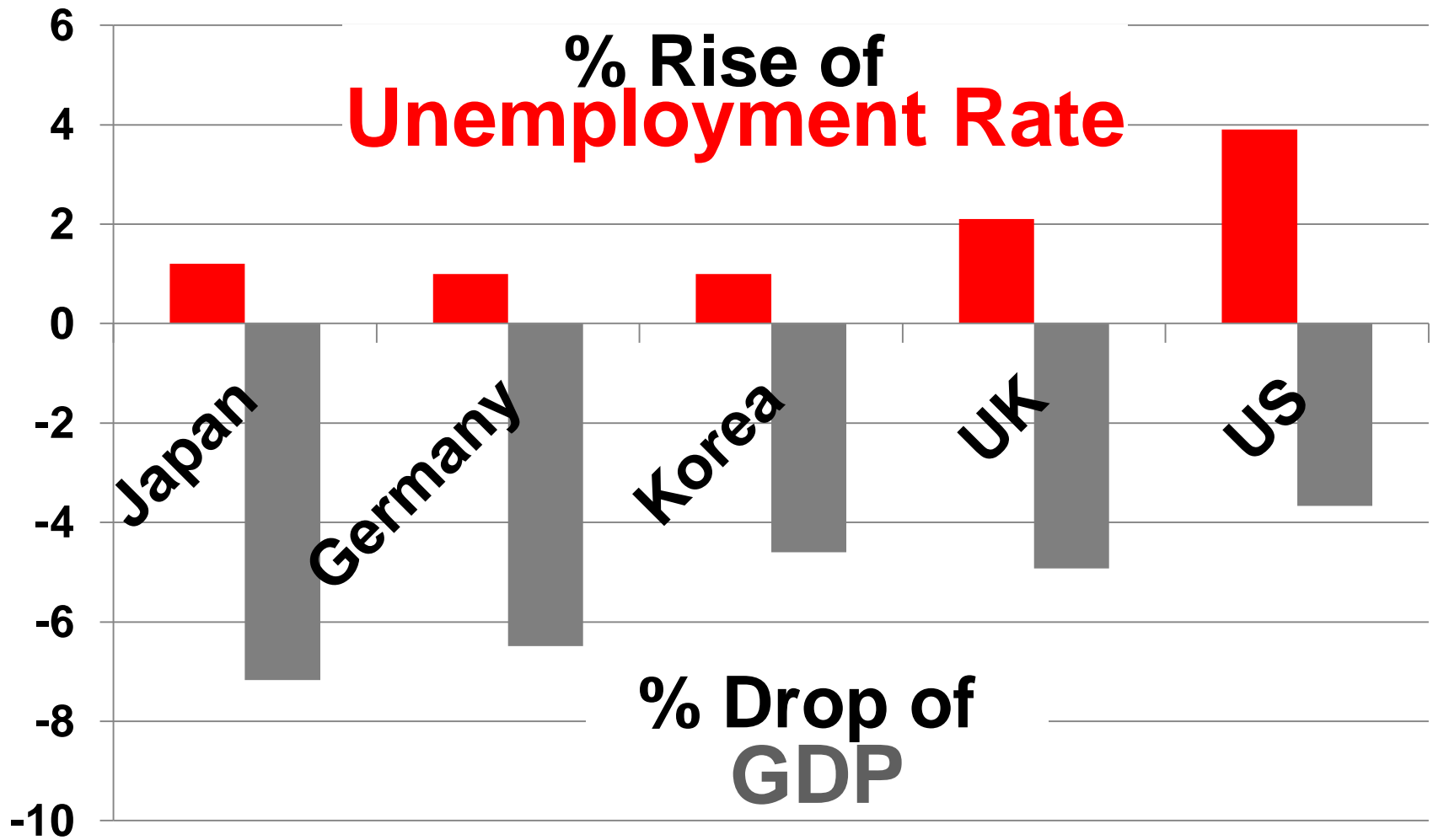
(2008Q3=100)



The Unit Labor Cost = Total Labor Costs ÷ Real Output

Source: OECD iLibrary, Rescaled; Seasonally Adjusted

From the Lehman Shock (2008III) to the Trough of the Subsequent Downturn



Source: OECD iLibrary; Seasonally Adjusted Quarterly Data;
This diagram is suggested by Professor Ryo Kambayashi of Hitotsubashi University.

? *A Puzzle* ?

**US, UK, Korea, Germany & Japan :
All Capitalist Countries
Based On
the Universal System of Private Property.**

**How Can
These Seemingly Contradictory
Corporate Systems
(Persistently) Coexist Within
the Supposedly Universal Capitalism?**

Cultures?

E.g. Ronald Dore,

*Stock Market Capitalism, Welfare Capitalism:
Japan and Germany vs. the Anglo-Saxons, 2001;*
& Many Other Scholars

US-UK Model = “Company Law Model”

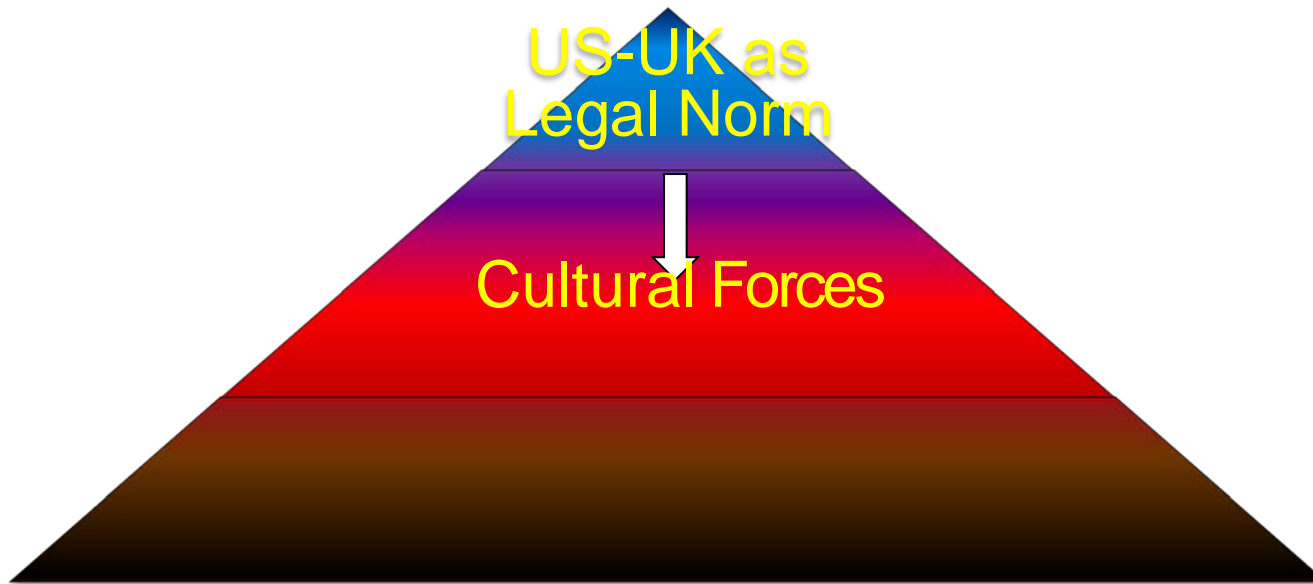
vs.

Japanese Model = “Community Model”

← **“A Matter of Social Convention.”**



**My Respect & Sympathy with their Position, but
Still Find It Within the Framework of
Normal/Deviant or
Universality/Particularity.**



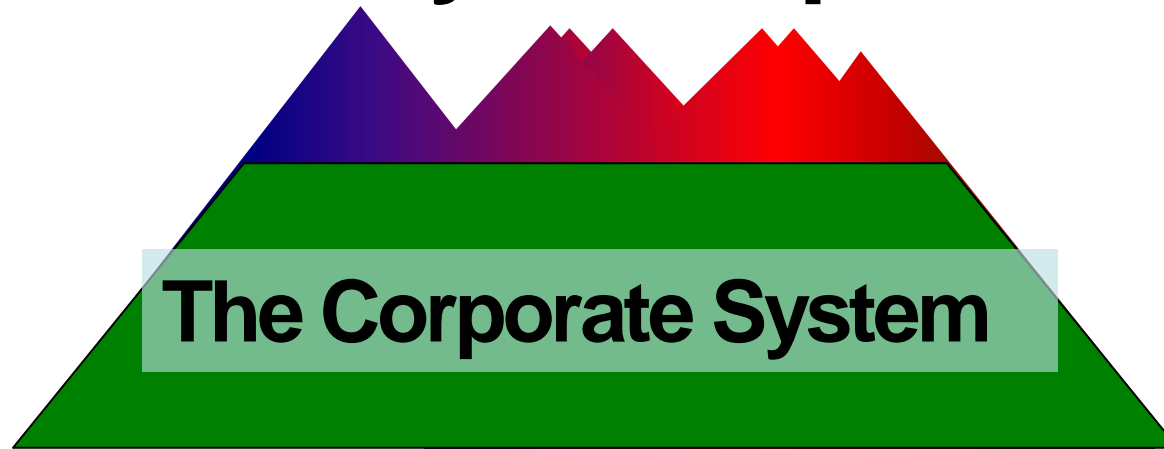
**The Variety of Corporate Systems as
Culturally Forced Deviations
from the Legal Norm.**

**The Only Way to Uphold J. System Against
the ‘Legal Norm’ of Shareholder Supremacy is
to Resist the “Decline of Communal Ethos”**

Or

to Introduce German-like Codetermination Law.

My Theses: The Universal Nature of the CORPORATION Itself Allows a Multiversality of Corporate Systems.



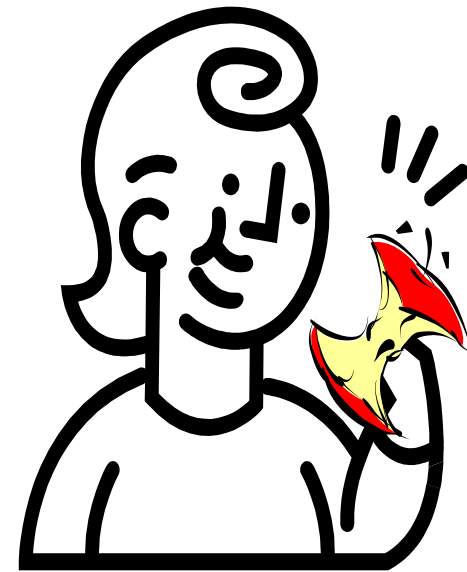
**I Will Come Back to
the Role Cultures Play
Towards the End of the Talk.**

**What Do I Mean by
“Multi-Versality” of
the Corporate System?**



**What is
BUSINESS CORPORATION?**

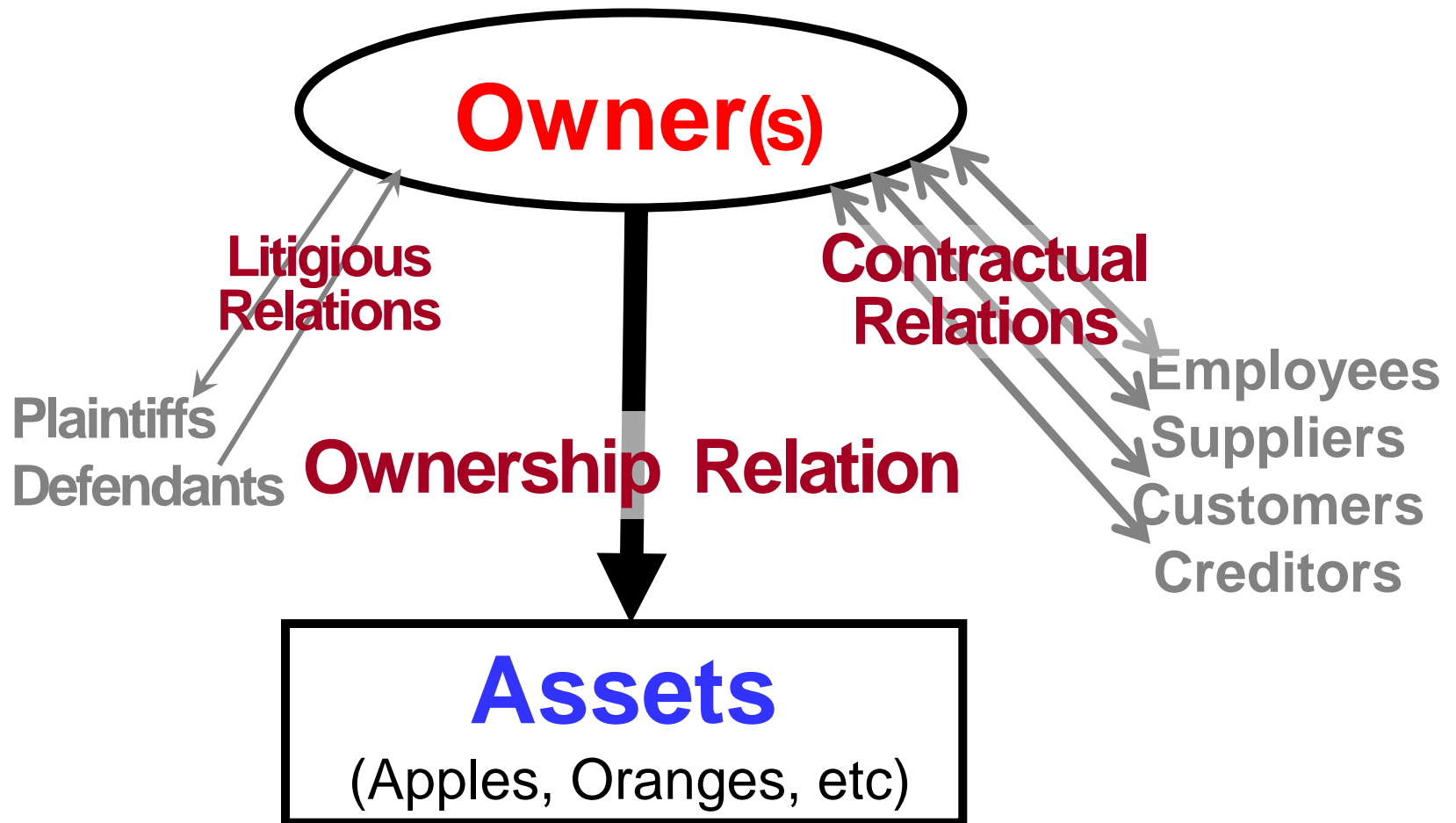
A Mom & Pop Grocery Shop
≠ Business Corporation
= An UNINCORPORATED Firm, or
A Textbook Firm.



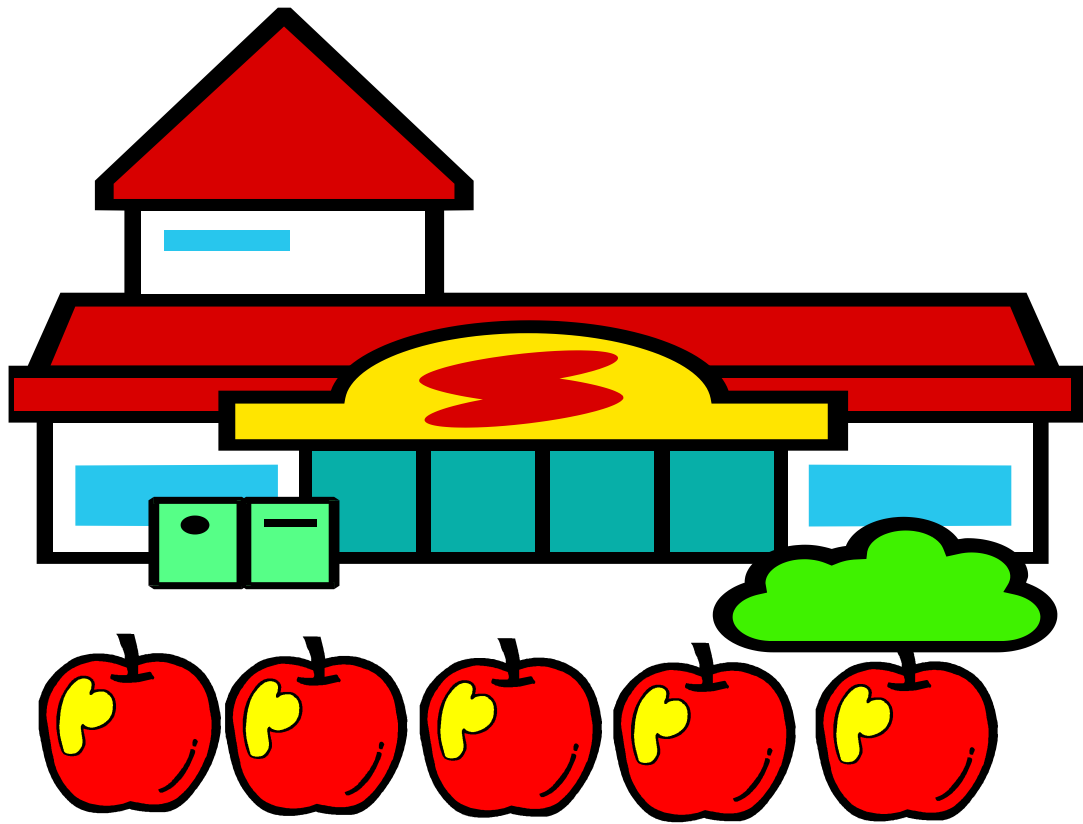
The Shop Owner



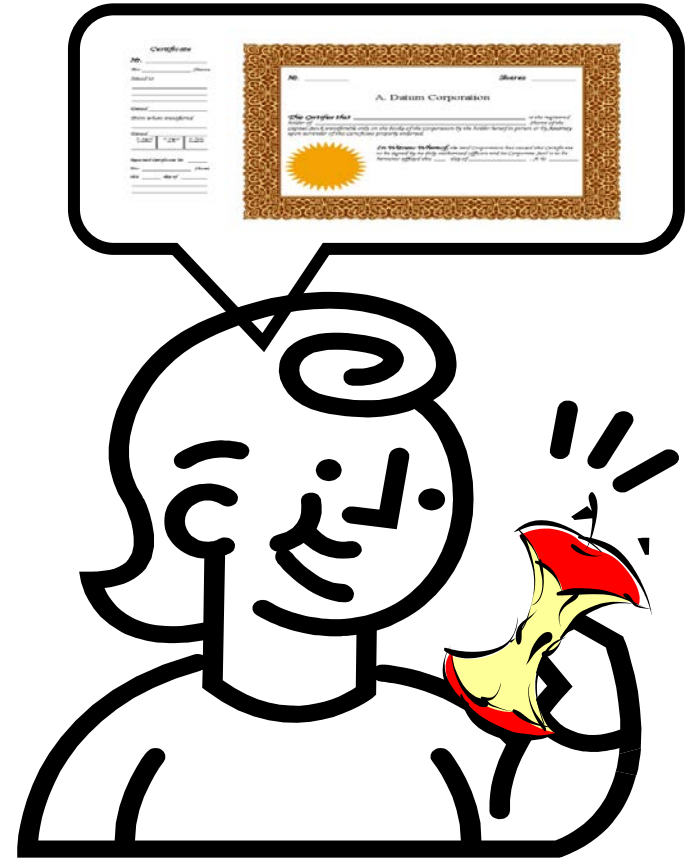
The Single-Story Structure of a Textbook Firm



A Big Super-Market Chain Inc. **= An Incorporated Firm, or** **A Business Corporation**



Assets

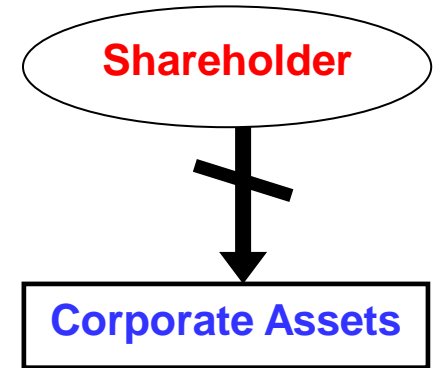


A Shareholder



WHY?

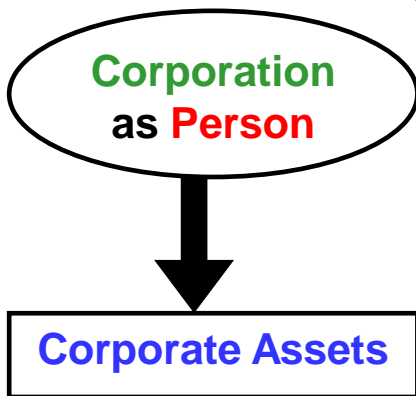
**The Shareholder
Is NOT
The Legal Owner of
Corporate Assets.**



**Who, Then, is
The Owner of Corporate Assets?**



**The CORPORATION
As
a LEGAL PERSON
is!**

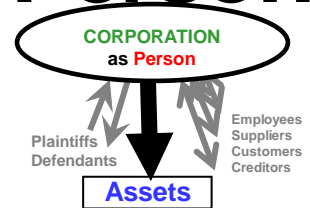


A Corporation is Not Naturally a Person, hence a “Thing”,

CORPORATION
as Thing

Yet,

“Every corporation has the same power as an individual to do things necessary or convenient to carry out its business & affairs...”
(ABA’s Rev. Model of Business Corporate Act)



“The Corporation is a Thing That is Treated Legally as a Person.”



Thing
CORPORATION
Person



The Corporation Has Person/Thing Duality!

It is Because of this (Mystifying) Duality
the Concept of Corporation has Generated
Heated Debates over its “Essence” for millennia .

A Note on “Corporate Governance”

**Since the Corporation is in Reality a Mere Thing,
It Must Have Natural Persons to Do Real Acts.**



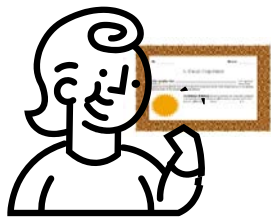
This is the Role of Managers



**Managers owe Fiduciary Duties
to the Corporation,
Not to Shareholders!**

Cf. K. Iwai, “The Foundation for a Unified Theory of Fiduciary Relationships: ‘One May Not Make a Contract with Oneself’,” *Mimeo*, Sept. 2012;
K. Iwai, “Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance,” *Am. J. of Comparative Law*. 47(4), 1999.

**But,
The Present Lecture has to Skip this Topic.²²**



Who is a Shareholder?

A Holder of a Corporate Share.

What then is a Corporate Share?



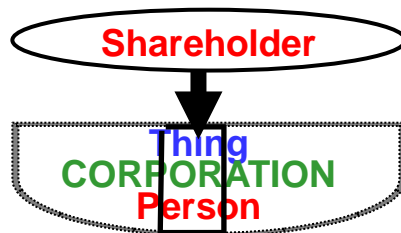
A Unit into which



the Corporation as a Thing is Divided;
Can be Owned Piece by Piece &
Traded Separately from Corporate Assets.
(The Share Market is the Market for Shares.)



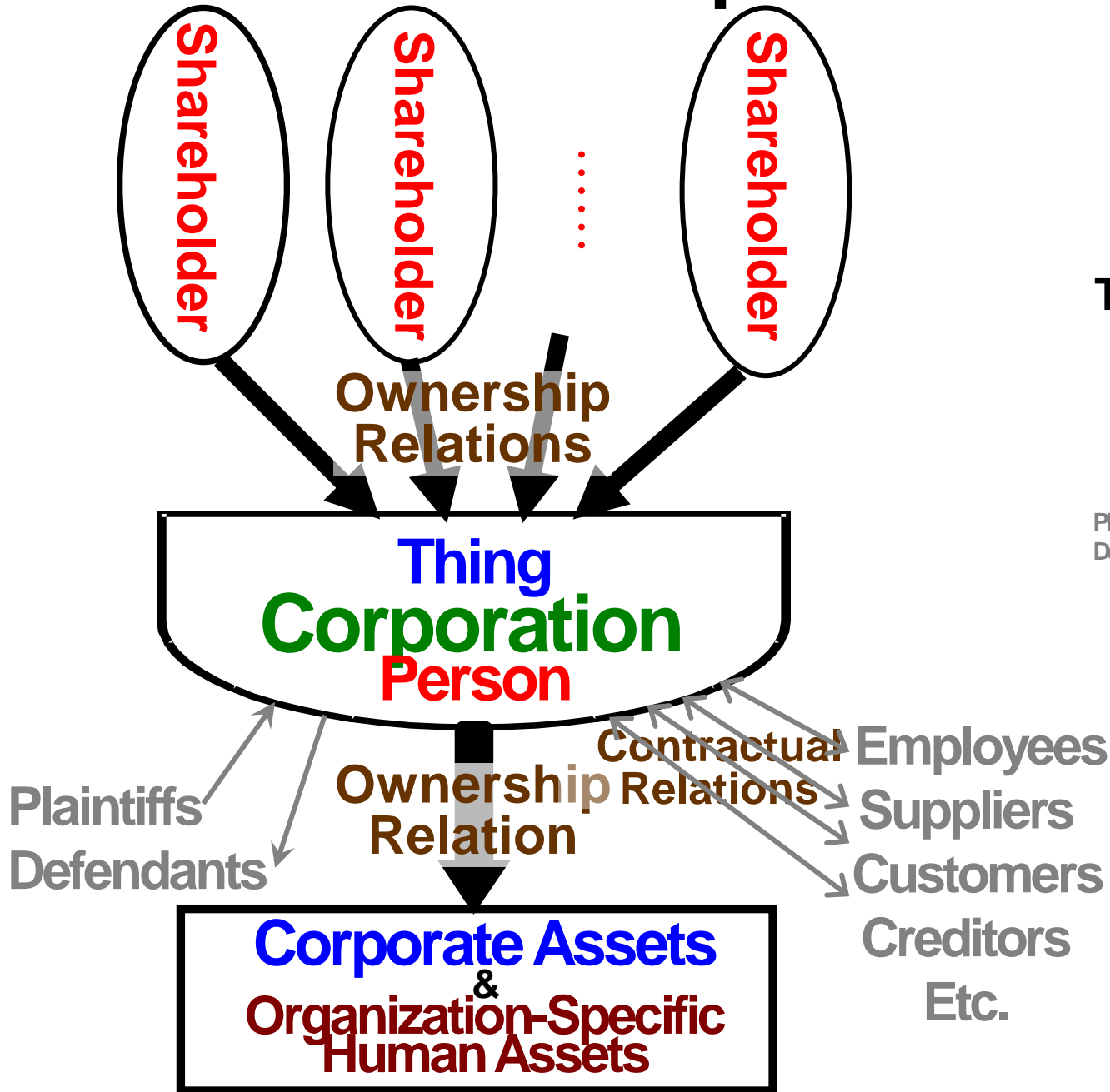
A Shareholder is the Owner of
(a Unit of) the Corporation as a Thing.



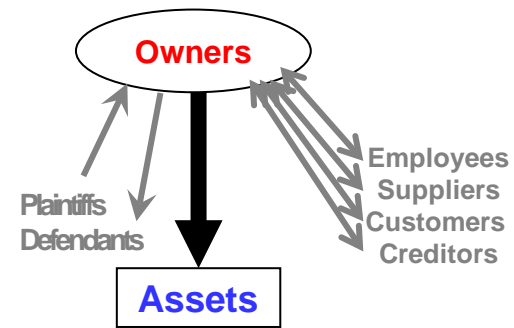


***The Business Corporation
Has
Two-Story Structure.***

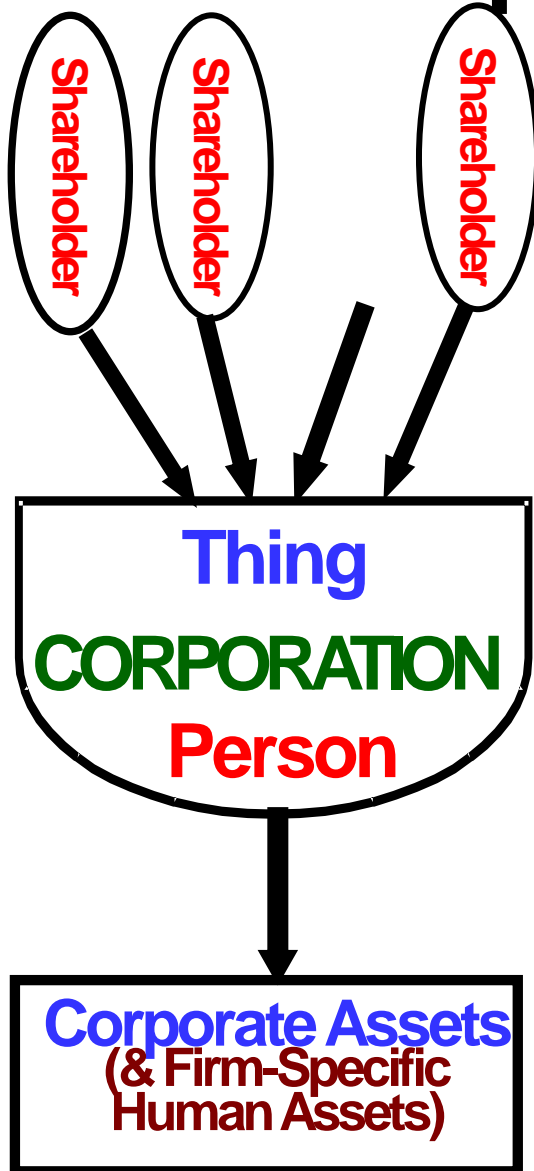
The Business Corporation



The Textbook Firm



Upstairs/Downstairs



When We Focus on Upstairs

⇒ **The Corporation Appears Only as a Thing Owned by Shareholders.**

⇒ **Shareholder Supremacy**

When We Focus on Downstairs

⇒ **The Corporation Appears Only as a Person Controlling Corporate Assets & Organization.**

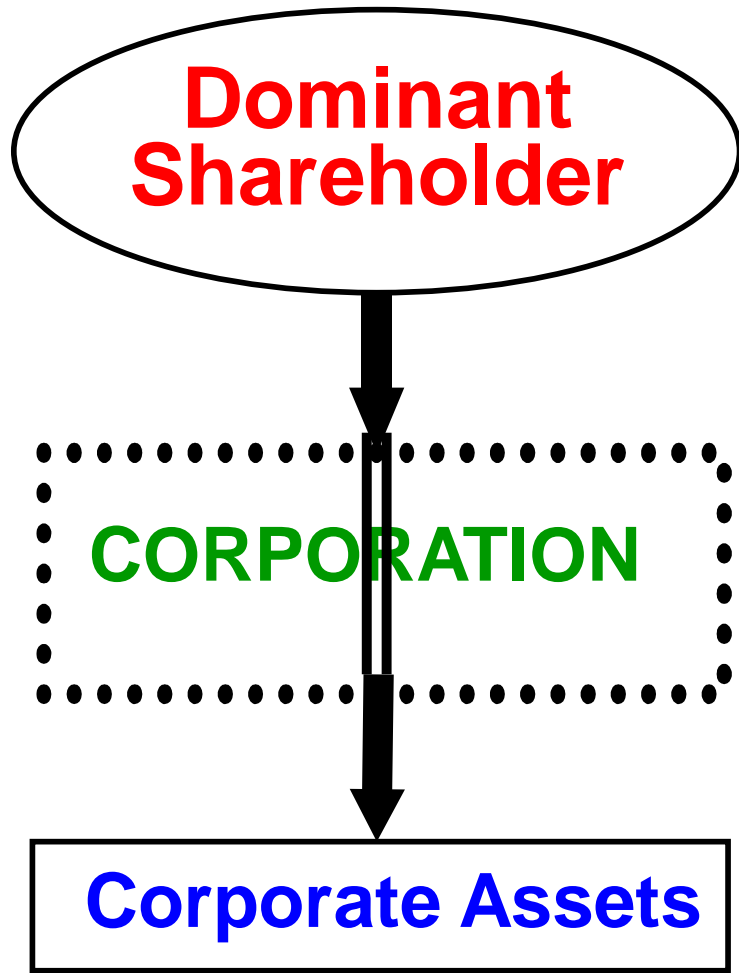
⇒ **Organizational Autonomy (or Community of Stakeholders)**

We Can Go Further.

**There are Legal Mechanisms
that Can Turn
a Corporation or a Set of Corporations
Into a**

- (1) Mere “Thing”,**
- (2) “Pyramidal System”,**
- (3) Full “Person”.**

(1) Turning the Corporation into a Mere “Thing”.



A Person or a Group Owning 50%+ α Shares Becomes a *De Facto* Owner of Corporate Assets.

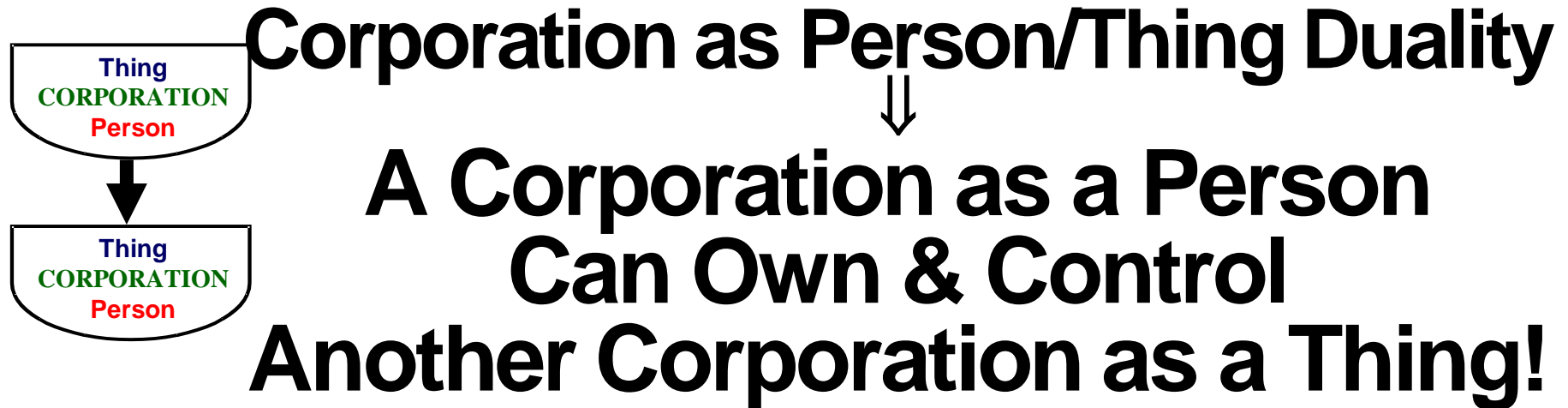


2nd Floor Invades 1st Floor.

Or,

**Mere Threat of Hostile Takeovers May Discipline Managers to Max. Share Values.
(=Market for Corporate Control²⁹)**

(2) Building Up a Pyramidal System

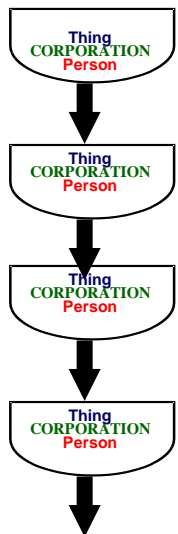


↑

‘Holding Corporation or Company’

↓

**A Chain of
A Corporation Holding
Another Corporation Holding
Yet Another Corporation
& So On.**



A “Pyramid” of Ownership & Control

50+ ϵ % Ownership

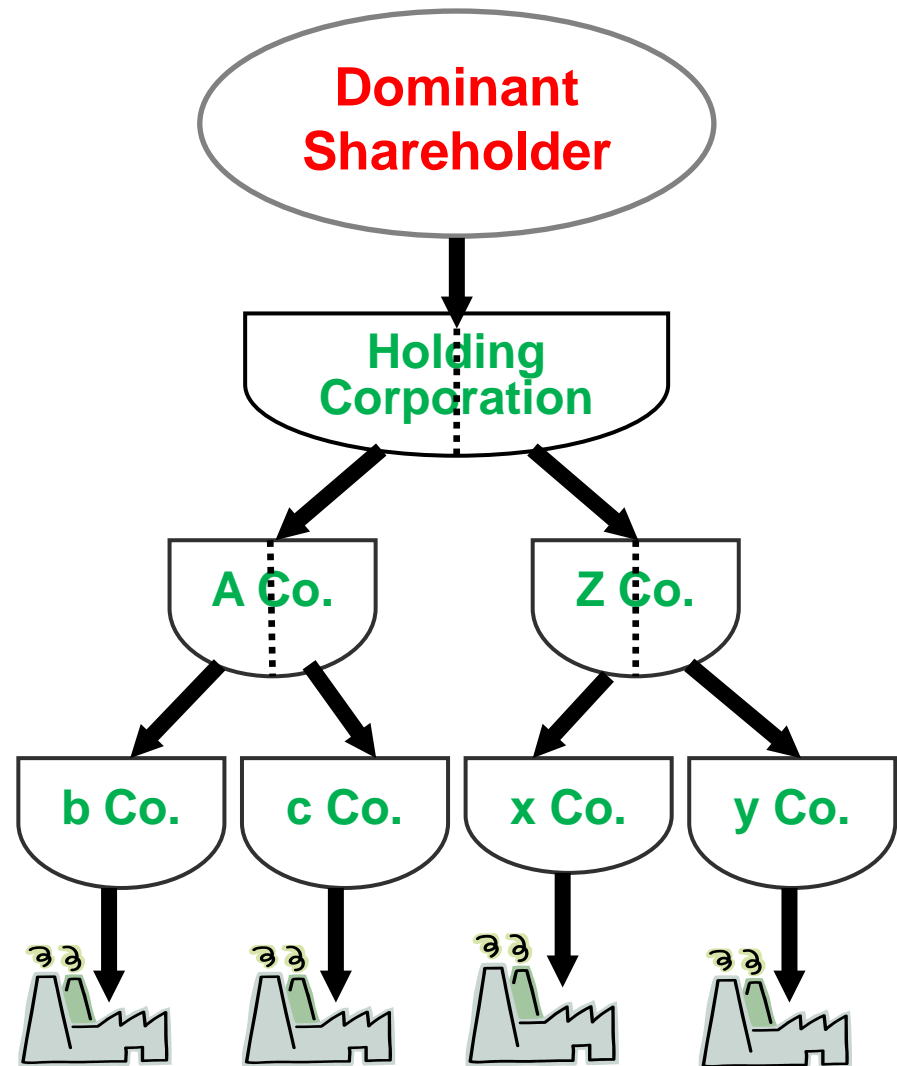
(Majority Votes in Meeting;
In Practice, 1/3 is enough)

100% Control

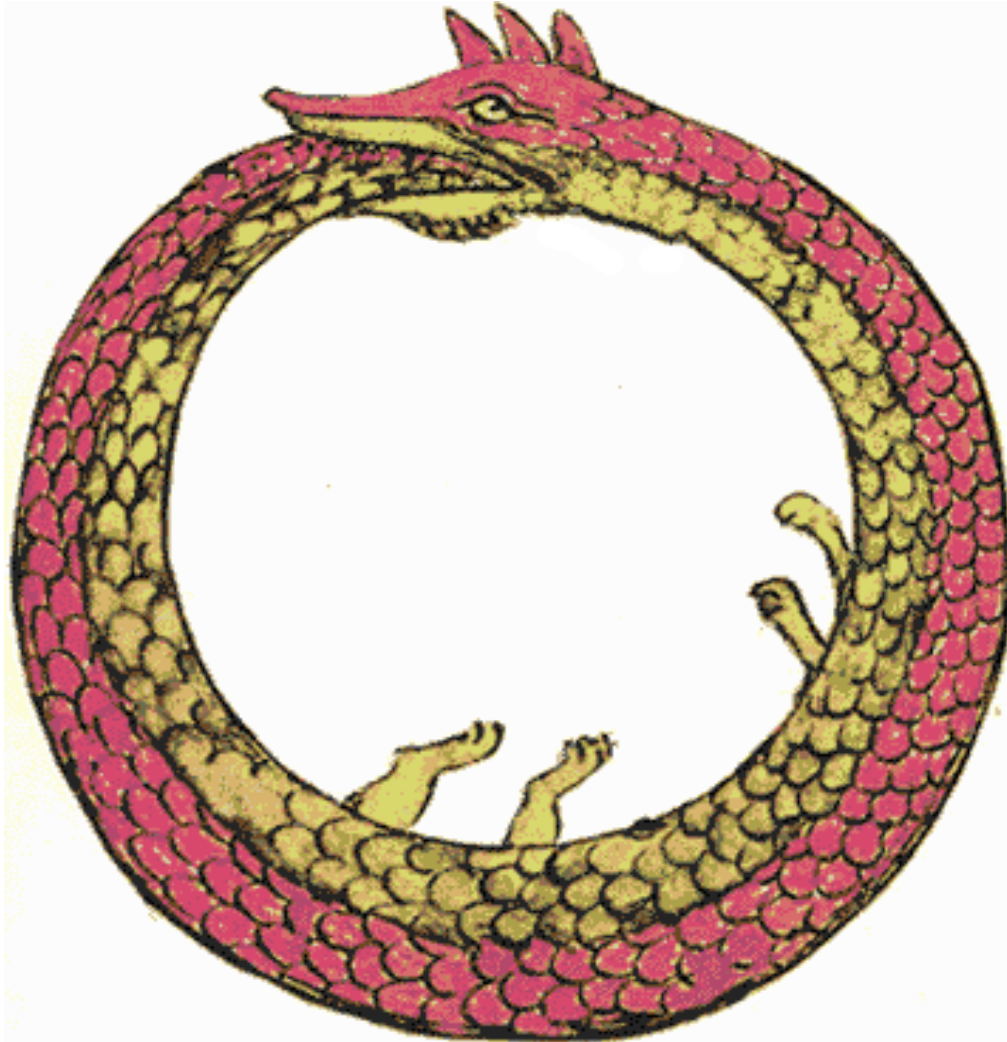
1B\$ + N Layers

**Control of
 2^{N-1} B\$ Capital.**

**Enabling Dominant
Shareholders to
Amass Large Capital &
Diversify Their Business.**

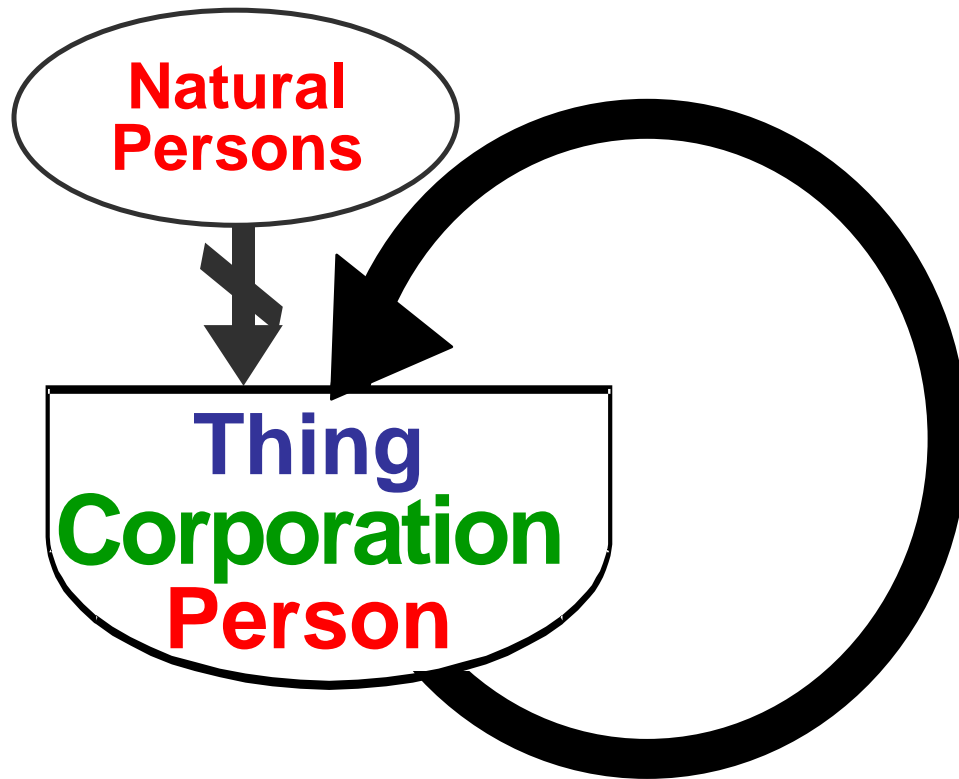


(3) Turning a Corporation into a Full “Person”.



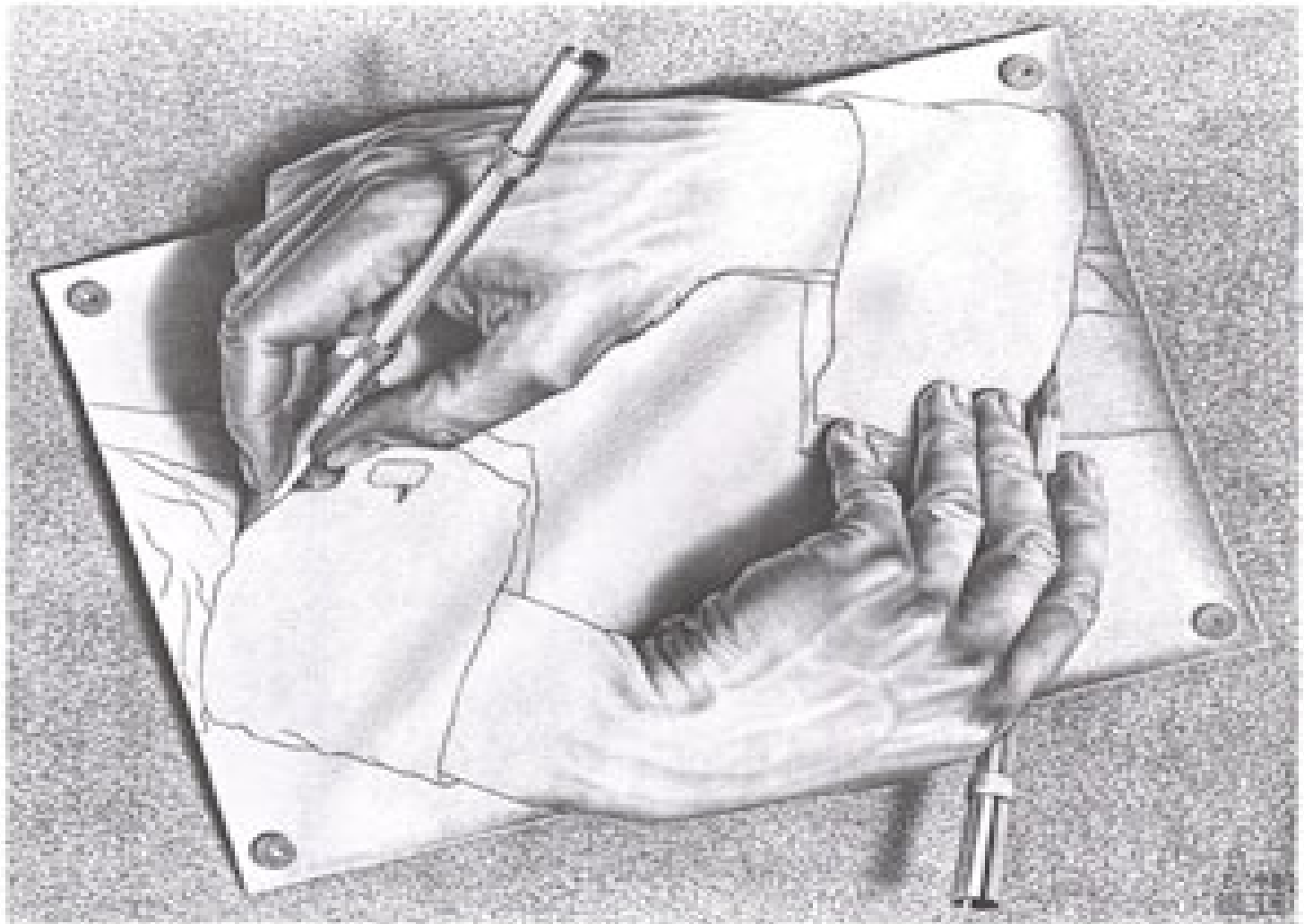
Uroboros

(a). *Self-Owning Corporation*



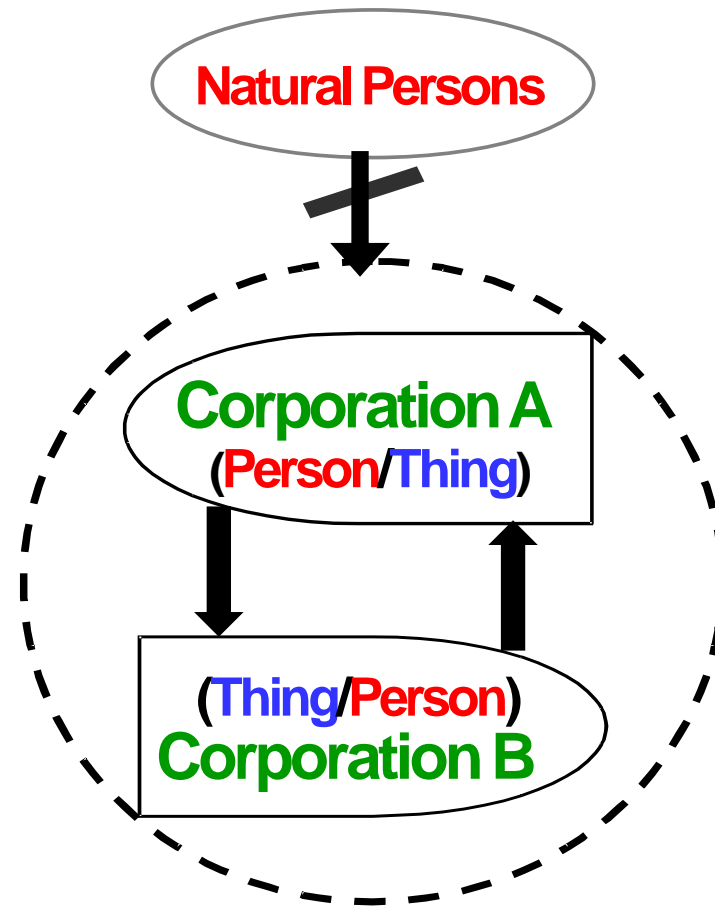
**The Corporation
as a Person
Can OWN ITSELF
as a Thing,
&
Become a
Self-Controlling
Subject,
at least in Theory!**

**Most Countries, however,
Treat Self-Owned Shares
as Treasury Shares
(i.e, Locked in during Shareholder Meeting).**



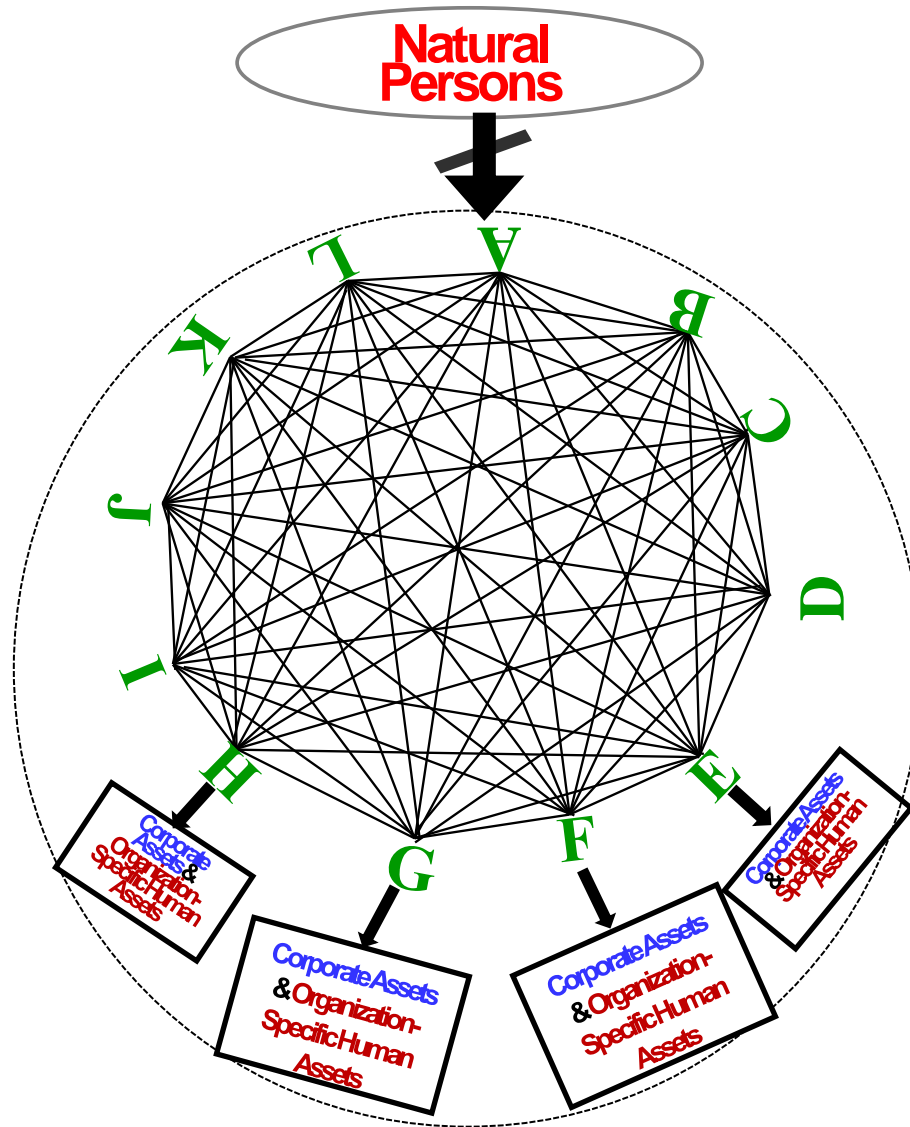
Drawing Hands by M.C. Escher

(b). *Mutually Holding Corporations*



- But, Still Legal Limits
on Cross-Shareholdings : E.g. Japan (& U.S.):**
- 5% Rule for Financial Corporations.
 - Subsidiaries Cannot Own Shares of Parent Co.

(c) Cross-Shareholding Among 12 Corporations



A Solution to 5% Rule:
 $5\% \times (12-1) = 55\%$
> 50%!

↓
**Complete Separation
of Ownership
and Control.**

↓
**Encouraging
Employees
to Accumulate
Organization-Specific
Skills, Know-hows, etc.**

**But,
Aren't These Nice Pictures
Nothing But
Fanciful Scribbles of
An Armchair Theorist?**

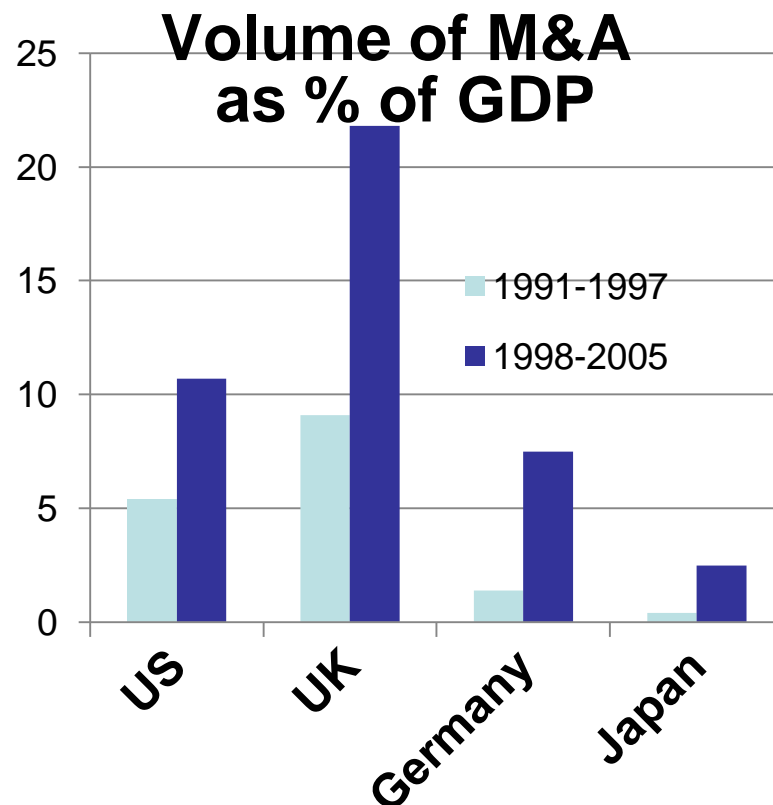
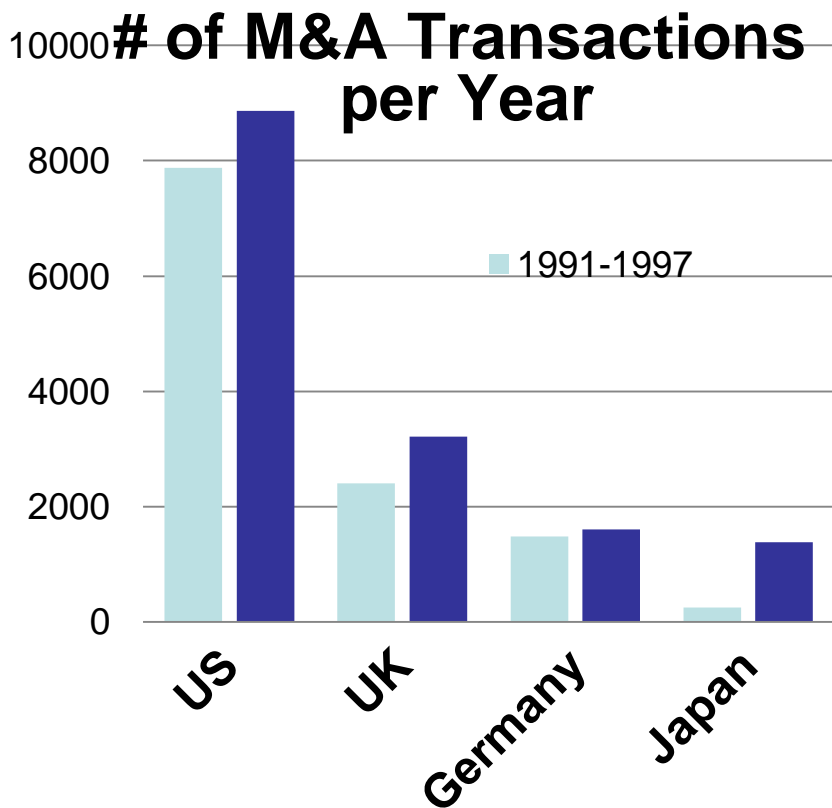


Reality Check.

(1) US-UK Corporations as Mere Things.

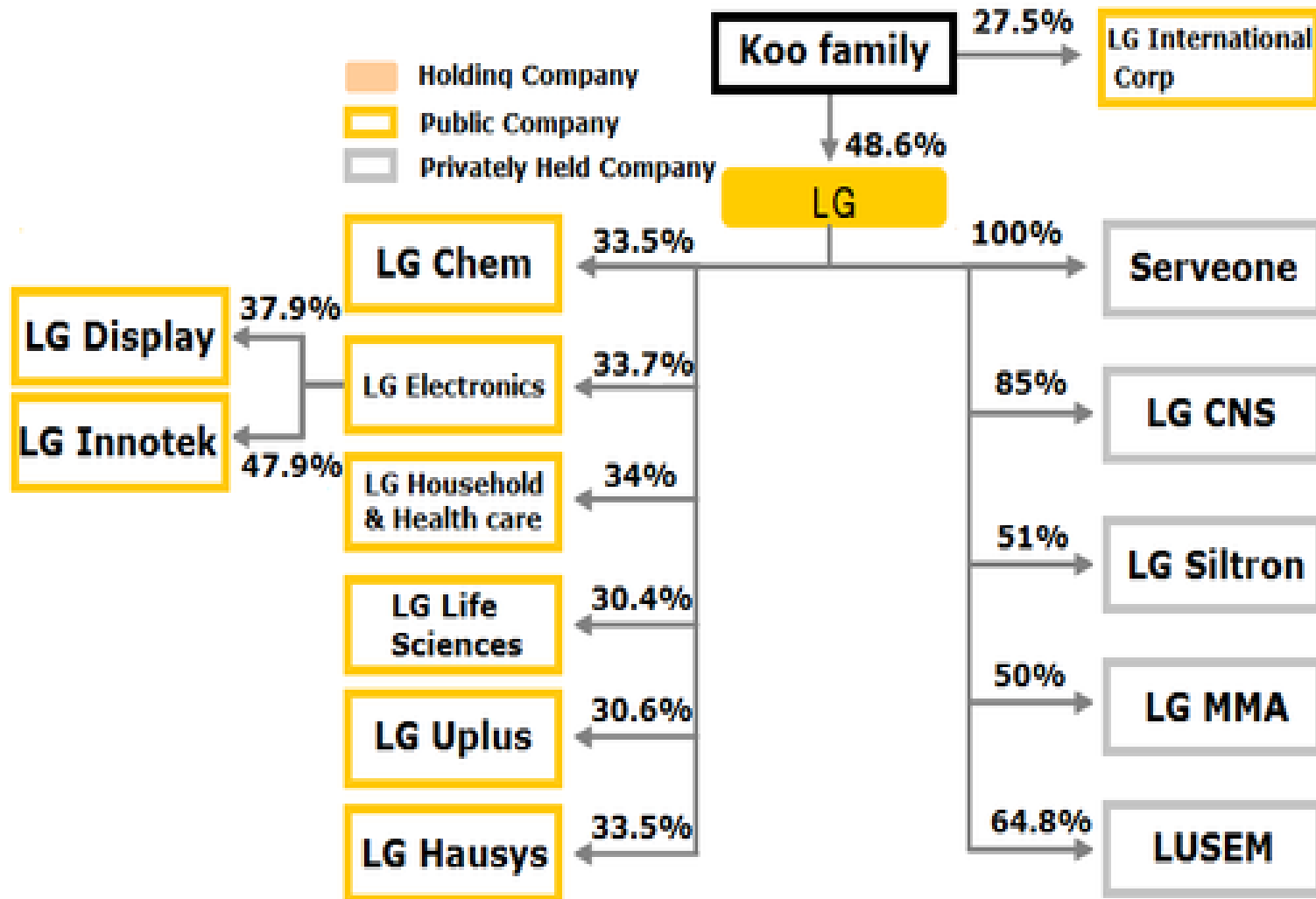


Active M&As Have Turned their Stock Markets into Markets for Corporate Control.

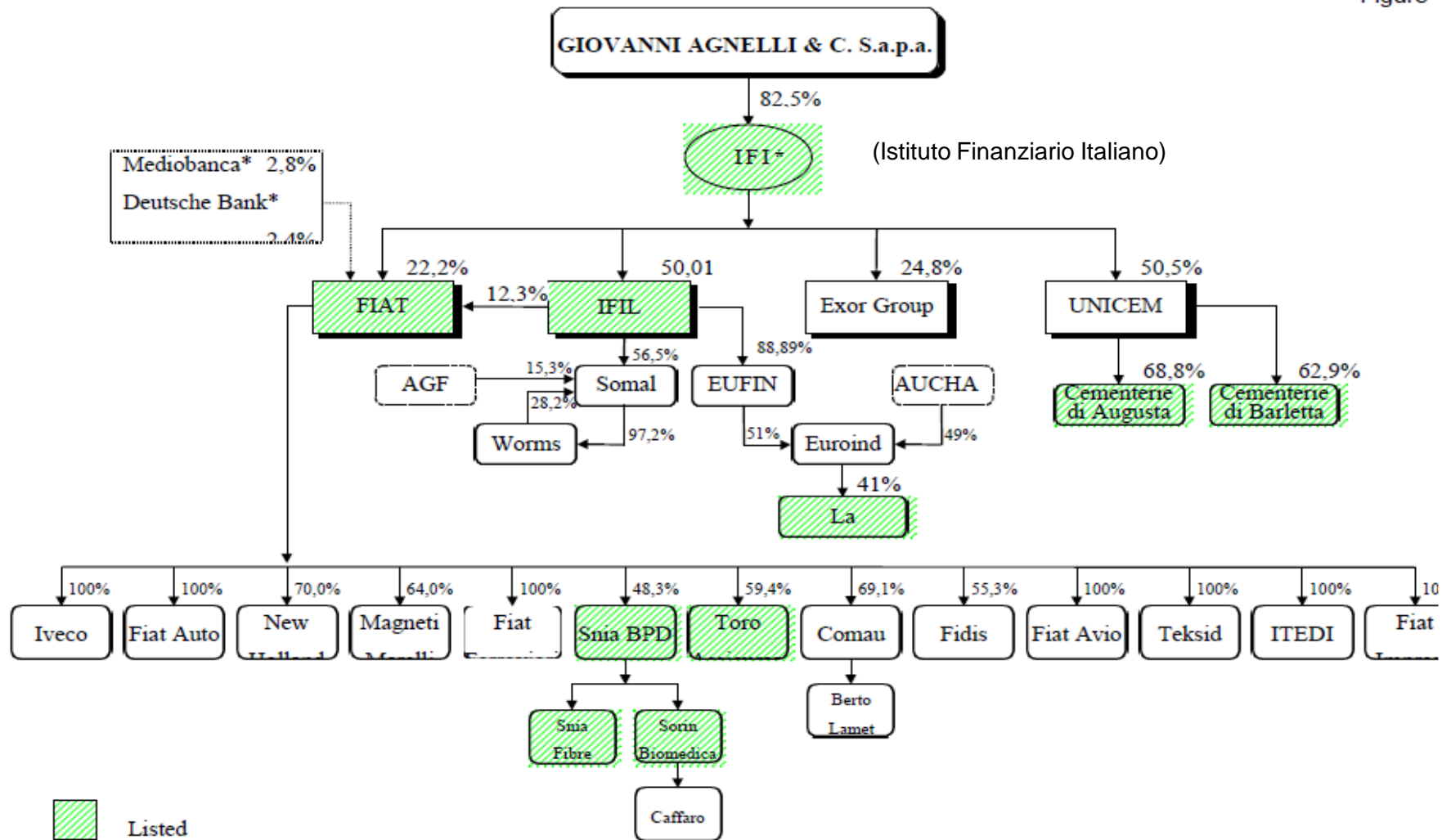


Source: Jackson, Gregory, and Hideaki Miyajima. "Varieties of capitalism, varieties of markets: mergers and acquisitions in Japan, Germany, France, the UK and USA." *Varieties of Markets: Mergers and Acquisitions in Japan, Germany, France, the UK and USA (June 2007)* (2007).

(2) Pyramidal Ownership & Control System of Present-Day Korean Chaebol (LG)

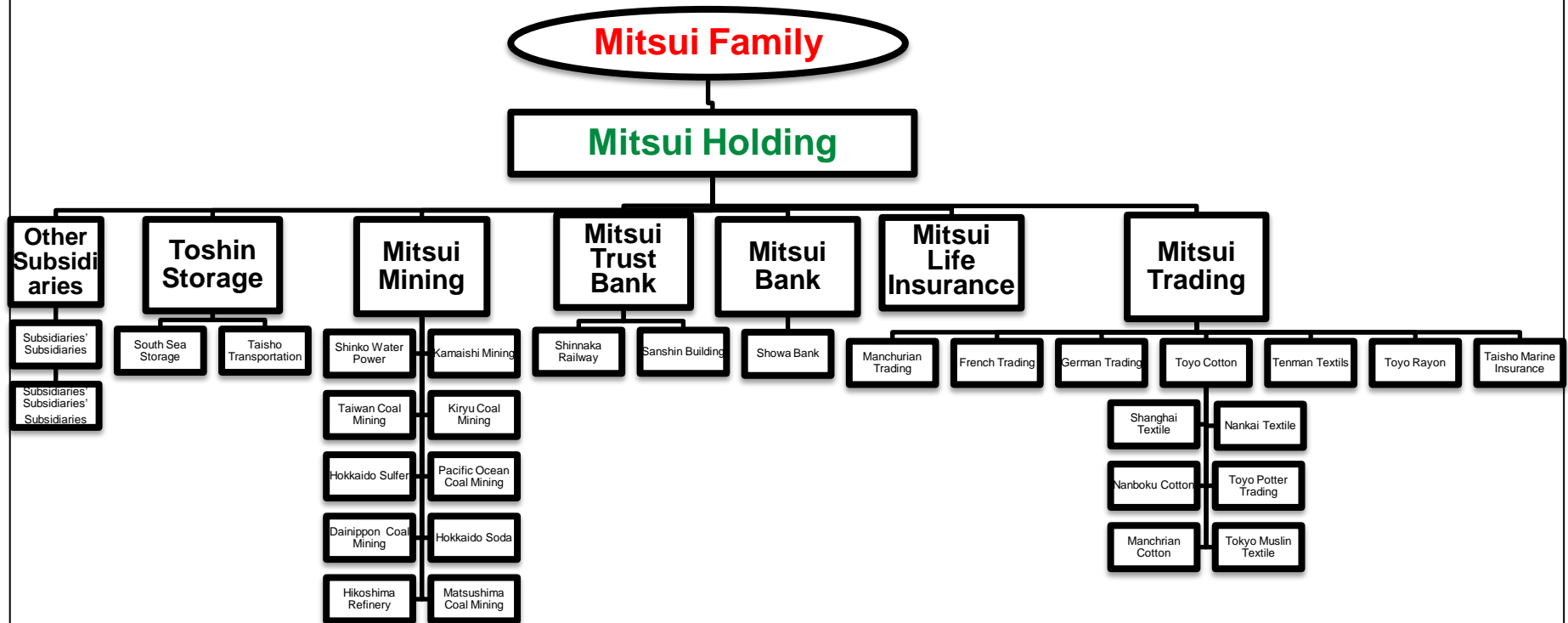


Pyramidal Ownership & Control System of Italian Family Empire (Fiat 1996)



Source: Marcello Bianchi, Magda Bianco, and Luca Enriques. "Pyramidal groups and the separation between ownership and control in Italy." *The control of corporate Europe* (2001)

Pyramidal Ownership & Control System of Pre-War Japanese Zaibatsu (Mitsui Zaibatsu 1937)



Source:
Takahashi Kamekichi & Aoyama Jiro,
Japanese Zaibatsu, 1938

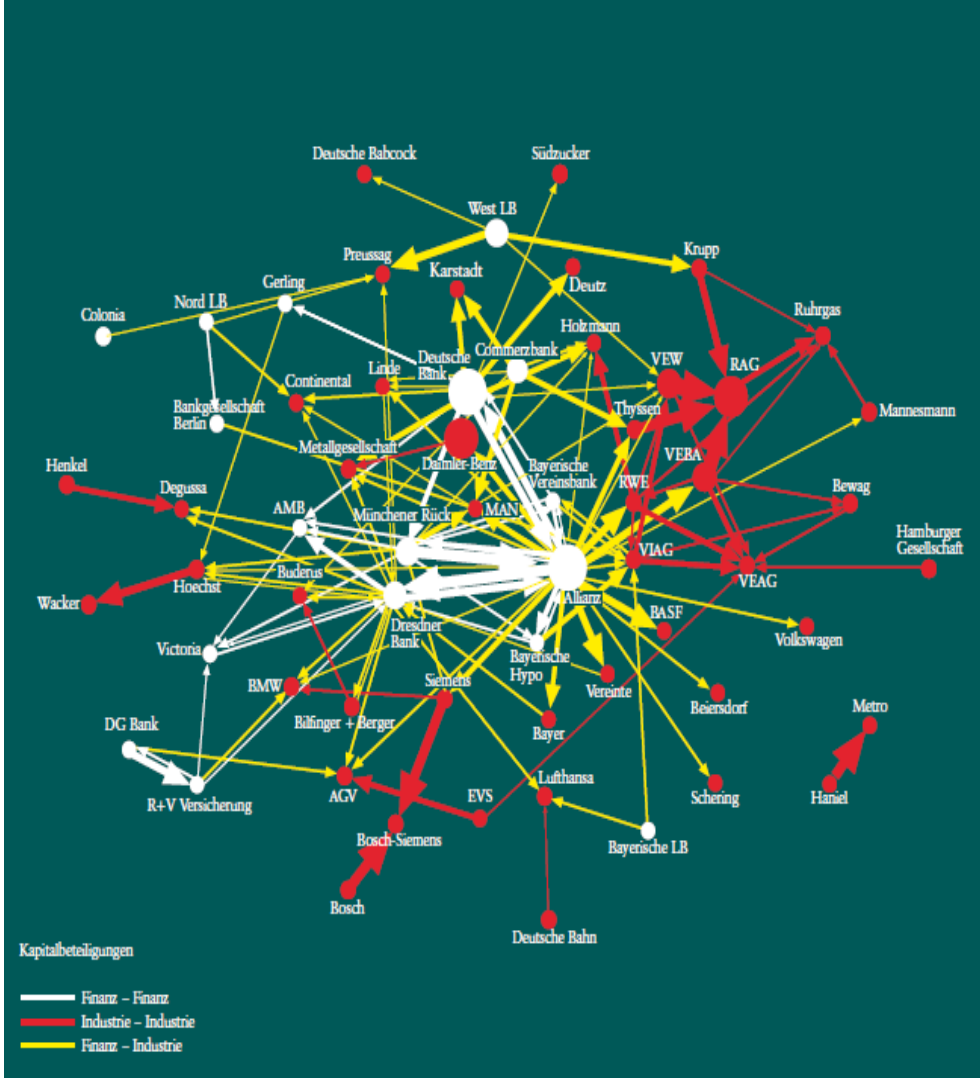
(3) Personification of Japanese Corporations by Cross-Shareholdings (Mitsui Group 1993)

Issuers of Shares	Holder of Shares	Sakura Bank	M. Trust Bank	M. Life Ins	M. Marine Ins	M. Trading	M. Mining	M. Construct	Sanki Eng	Nip Flour Mills	Toray	Shin-Oji Pulp	Nip Pulp	M. Towa Chm	Elec Chm Eng	M. Pet Chm	Onoda Cement	Jap Steel Workal	M. Metal	Toshiba	M. Shipbuilding	I-H Heavy Ind	Toyo	Mitsukoshi	M. Real Estat	M. OSK Lines	M. Storage	Total
Sakura Bank		1.7	3.5	1.1	0.9	-	0.1	0.1	0.5	0.9	0.3	-	0.1	0.2	0.3	0.2	0.2	-	1.5	0.5	0.3	2.6	-	0.9	0.1	0.2	16.6	
M. Trust Bank	2.5		4.2	1.7	1.3	-	0.2	0.2	1.2	1.6	1.0	-	0.2	0.4	0.6	0.5	0.2	-	1.3	0.5	0.6	1.8	-	2.9	0.1	0.7	24.9	
M. Life Insurance	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.0	
M. Marine Insurance	4.8	4.3	5.1		3.6	-	0.2	0.4	1.4	0.9	0.2	-	0.1	0.6	0.3	0.6	0.1	-	0.4	1.3	-	2.1	-	1.5	0.1	0.5	28.6	
M. Trading	4.9	3.9	4.7	2.7		-	0.1	0.1	0.2	0.8	0.1	-	0.1	0.2	0.1	-	-	-	0.4	0.3	0.2	0.4	-	0.1	0.9	0.1	20.4	
M. Mining	5.0	6.4	9.3	2.1	5.5		3.0	-	-	-	-	-	-	-	0.5	2.9	-	-	-	-	-	-	-	-	2.0	0.3	-	37.0
M. Construction	4.7	5.1	6.8	1.2	2.1			0.3	0.1	0.8	-	-	-	2.0	-	-	0.2	0.2	-	-	-	-	-	-	15.7	-	0.2	41.9
Sanki Engineering	4.2	3.4	9.5	1.7	-		-	0.4	-	-	-	-	-	-	-	-	-	0.1	-	-	1.2	-	-	-	-	-	0.2	20.6
Nippon Flour Mills	5.0	6.6	6.3	5.2	2.7		-	0.4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.4	26.5
Toray	4.5	4.6	4.9	1.4	0.6		-	0.1	-	-	-	-	-	-	-	0.0	-	-	-	-	0.2	-	-	-	-	0.2	-	16.6
Shin-Oji Pulp	3.5	3.1	3.5	-	0.2		-	-	-	0.0	-	-	-	-	-	-	0.1	-	-	-	0.2	0.2	-	-	-	0.0	-	12.0
Nippon Pulp	2.7	2.8	4.1	-	-		-	-	-	-	-	1.0	-	-	-	-	-	-	-	-	-	-	-	-	-	0.2	-	10.7
M. Towa Chemical	5.0	4.5	3.8	2.3	1.8		-	0.3	-	-	-	-	-	-	0.1	0.1	-	-	-	-	0.1	-	-	-	-	0.1	0.2	18.3
Elec Chem Engineering	3.1	3.2	6.8	2.7	1.5		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	17.3
M. Pet Chemical	5.0	5.2	4.3	2.2	4.1		-	0.2	-	-	11.5	-	-	2.6	-	-	-	-	-	-	3.3	-	-	-	-	-	0.2	38.8
Onoda Cement	5.0	5.8	4.9	2.2	0.9		-	0.1	-	-	-	0.4	-	-	-	-	-	-	-	-	0.2	-	-	-	0.3	-	-	19.7
Japan Seel Works	4.9	4.7	6.5	1.9	-		-	0.5	0.1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1.0	-	-	19.5
M. Metal	2.5	4.4	4.1	0.9	0.5		-	0.3	-	-	-	-	-	0.1	-	-	-	-	-	-	-	-	-	-	0.5	-	-	13.3
Toshiba	3.7	2.3	2.9	1.3	0.4		-	0.0	-	-	-	0.0	-	-	-	-	0.0	0.0	-	-	0.0	0.6	-	-	0.1	0.1	-	11.6
M. Shipbuilding	2.4	3.1	4.0	2.1	2.4		-	-	0.3	-	0.3	0.3	-	-	-	-	0.1	0.1	-	-	-	0.6	-	0.4	1.9	-	-	18.1
Ishi-Hari Heavy Indust	1.5	2.3	1.6	-	0.7		-	-	-	-	-	-	-	-	-	-	-	-	-	4.3	-	-	-	-	0.1	-	-	10.4
Toyota	5.0	2.4	2.2	2.5	0.3		-	0.1	0.1	-	0.0	-	-	-	-	-	-	-	-	0.2	0.1	-	-	-	0.0	-	-	12.7
Mitsukoshi	4.6	3.9	4.3	0.8	0.2		-	0.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.2	-	-	-	14.1
M. Real Estate	4.6	5.4	2.9	1.7	0.3		-	1.0	0.2	-	0.2	-	-	-	-	-	0.0	0.1	-	0.3	0.2	-	-	-	0.2	0.1	-	17.3
M. OSK Lines	3.7	4.2	4.1	3.0	0.7		-	-	-	-	-	-	-	-	-	-	-	-	-	-	3.8	1.1	-	-	0.5	0.1	-	21.2
M. Storage	5.0	7.1	8.9	5.9	-		-	0.9	0.4	0.4	-	-	-	-	-	0.5	-	-	-	-	-	-	-	-	0.9	-	-	30.0

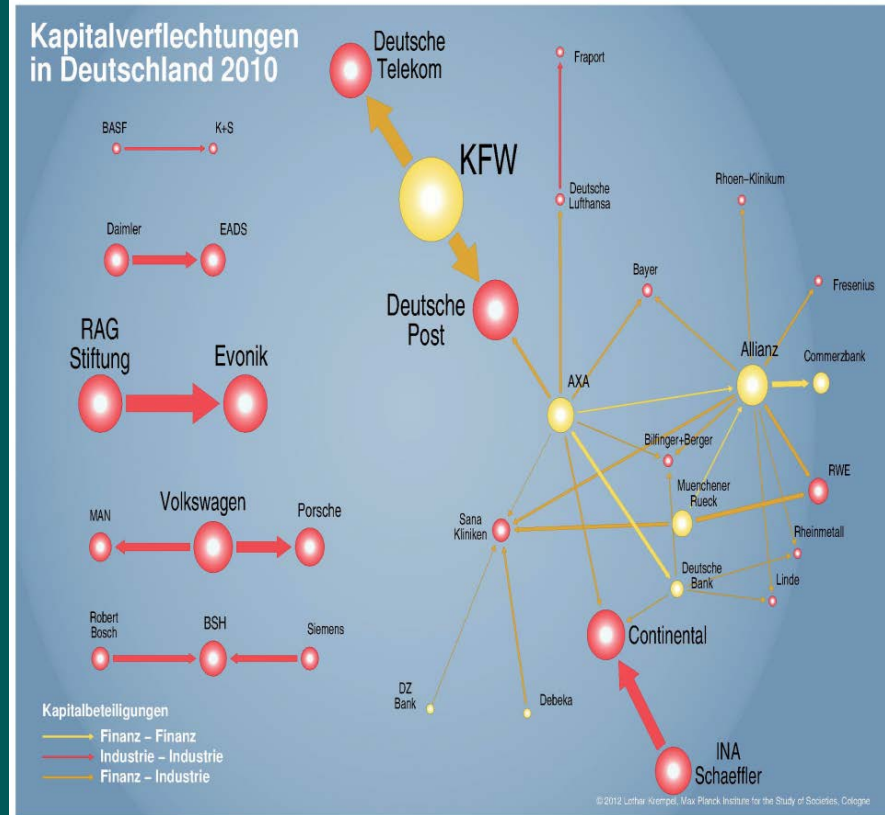
**Unwinding of Cross-Shareholdings among Listed Co. & Insurance Co.: 41
49.6%(1992)→16.8%(2012)
(Nomura Securities' Estimates)**

Cross-Shareholdings of German Corporations 1996, 2010

Kapitalverflechtungen deutscher Unternehmen im Jahr 1996



Kapitalverflechtungen in Deutschland 2010



Source: <http://www.mpifg.de/aktuelles/themen/d-ag.asp>

There are Other Ways to Strengthen Organizational Autonomy.

(1) Family-Owned Corporation

(e.g. Suntory, Kajima, Suzuki, etc.

Cf. Mehrotra, Morck, Shim & Wiwattanakantang, *JFE* 2013.)

(2) Managerial Buyouts,

(e.g. World, Sunstar, Gento-sha &c.)

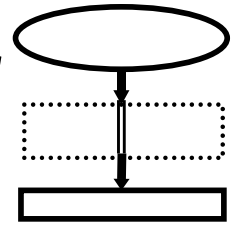
(3) Class Shares

(e.g. J: CYBERDYNE;

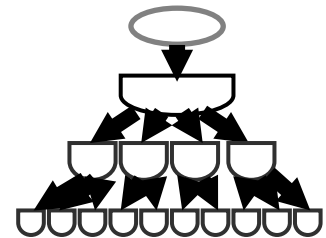
US: Google, Facebook, Berkshire Hathaway),

etc.

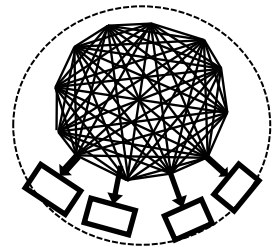
Not Only
(1) US-UK Corporate System of
Shareholder Supremacy,
But Also



(2) Korean, Italian, ...,
Prewar-Japanese System of
Pyramidal Ownership & Control
&



(3) Postwar Japanese & German System
of Organizational Autonomy
through Cross-Shareholdings,
&c.



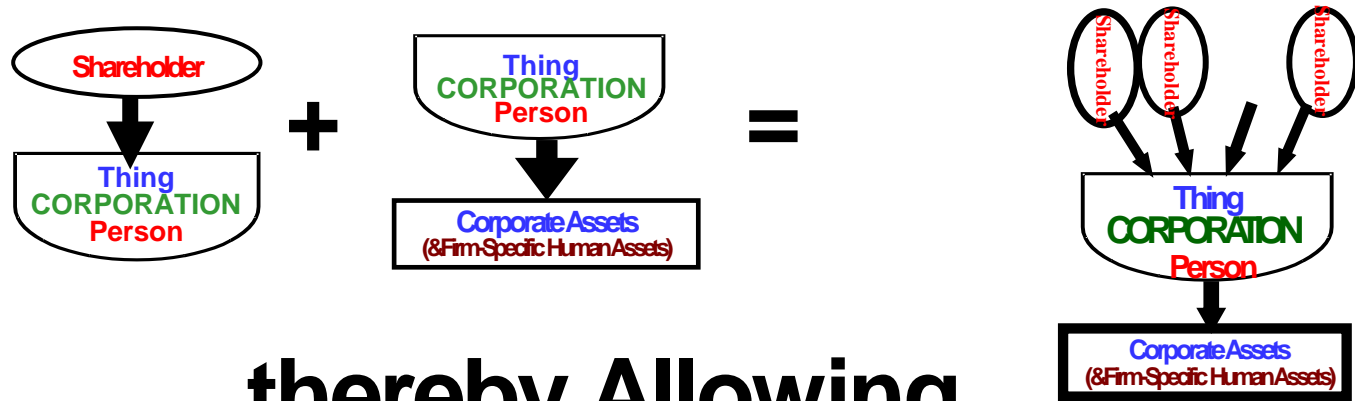
Are
“Equally Universal”
Corporate Systems!

?

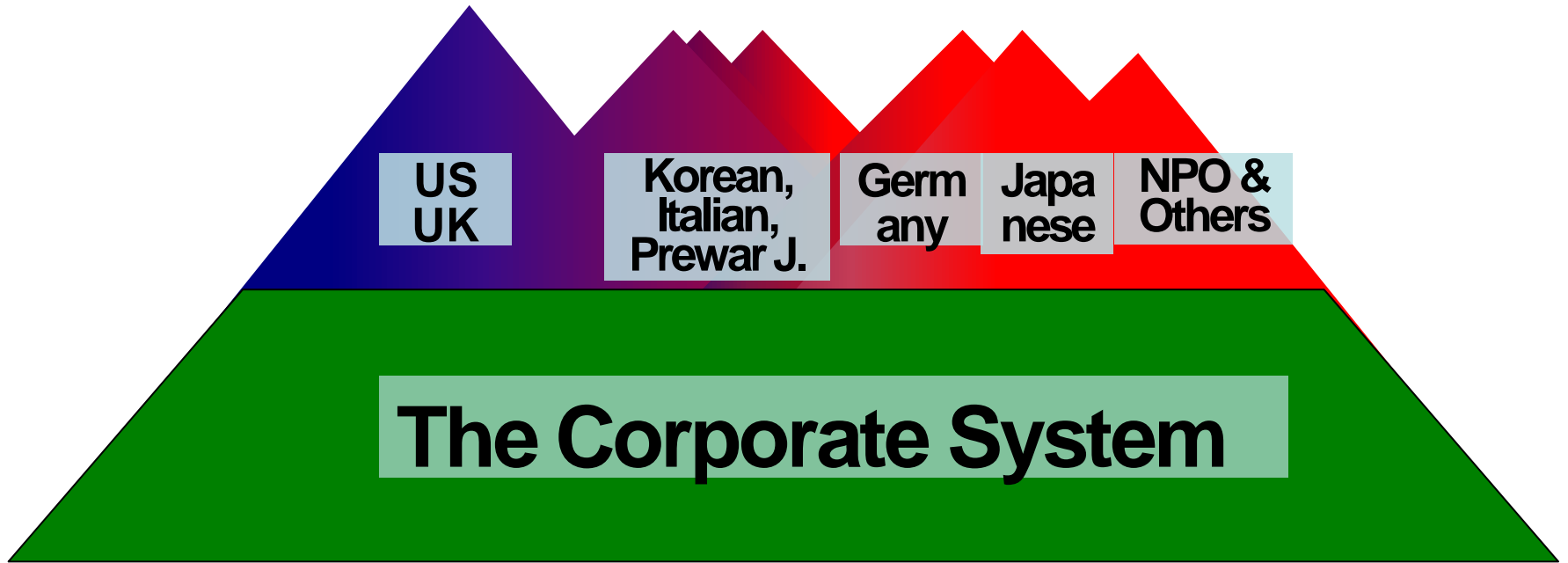
CAPITALISM & Corporate Systems

The Corporation's
Person/Thing Duality
Connects

TWO Ownership Relations,



thereby Allowing
the Universal CAPITALISM
(or the Universal Private Property System)
to Have
“Multi-Versal” Corporate Systems.



**It is this Intrinsic Multi-Versality
of the Corporate System
(Not the Shareholder Sovereignty!)
That Has Enabled
Business Corporations
to Play the Central Role
in Capitalistic Development.**

Selecting a Corporate System

**Each Economy, Each Industry & Each Firm
Has Selected (& Will Select)
One of these Corporate Systems**



**On the Basis of
Historical Legacy,
Economic Efficiency,
Social Structure,
Political Ideology,
Academic Dogma
&
Cultural Tradition.**

How Cultures Play their Role in the Selection of Corporate System.

An Example:

**GHQ of the Occupation Army
Ordered the Resolution of
Japanese Zaibatsu
in 1945-47**

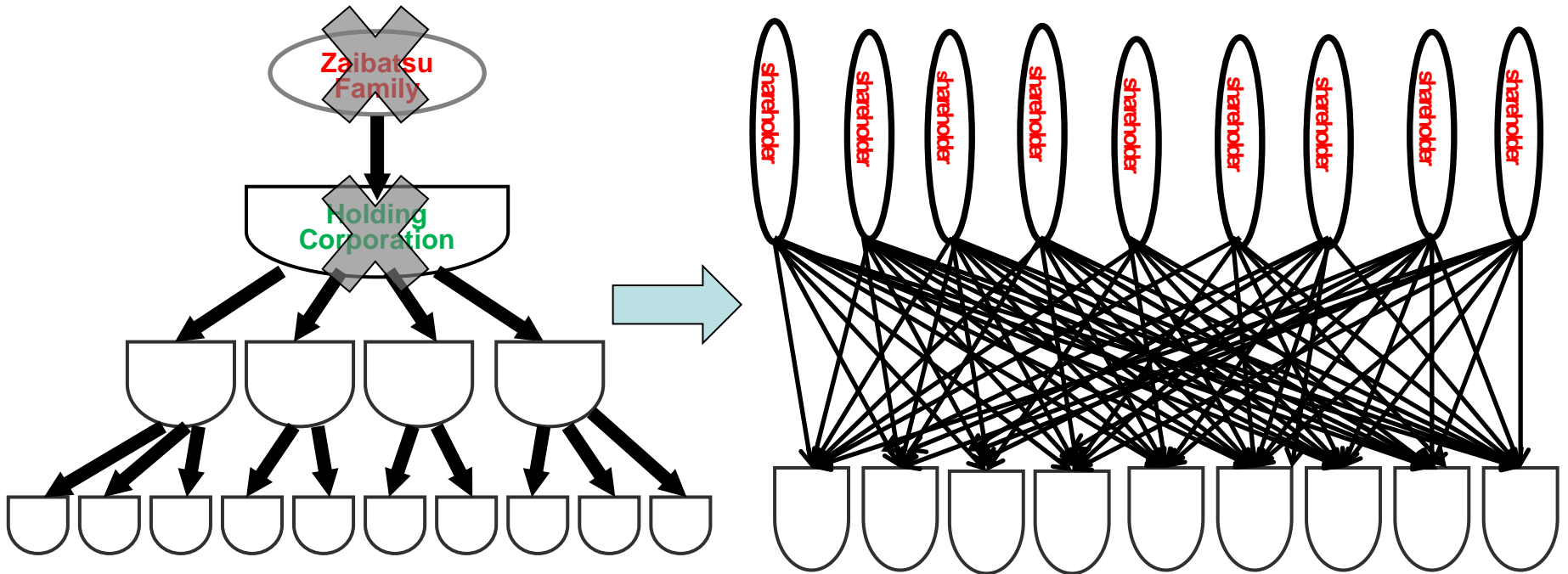


**Freed Families' Shares to the Public,
Dissolved Holding Corporations,
Purged their Directors,
Divided Large Corporations,
&c.**

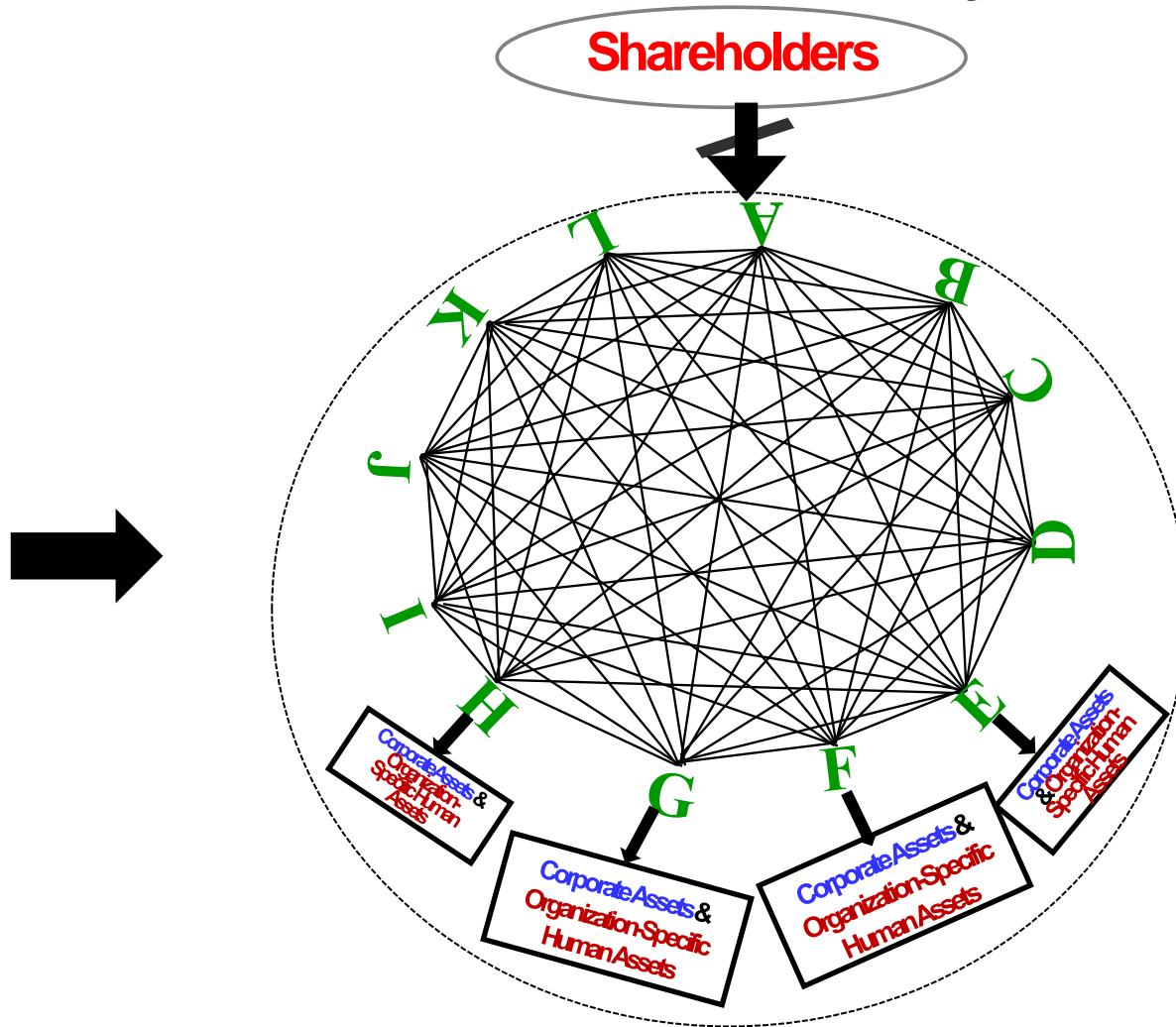
GHQ's Intention

Democratization of J. Corporate System.

An Idealized US-UK System.



What Actually Emerged was “Japanese-Style” Democratization of the Corporate System!



**What are the Forces
that Moved
Postwar Japanese Corporations to
the So-Called “Japanese” System?**



**(a) Postwar Heavy Industrialization
(Late-Comer’s Advantage),**

**(b) War-time Control Economy
(Corporatism from above),**

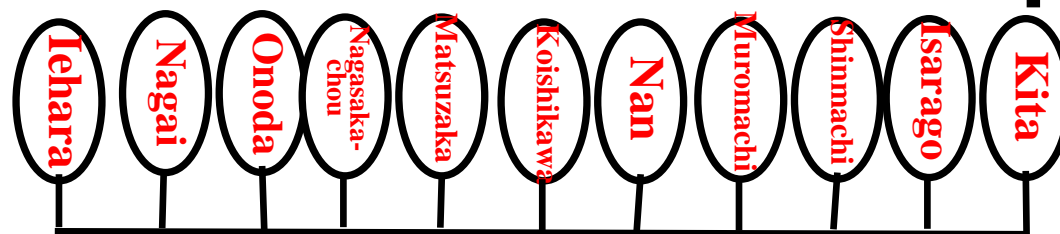
**(c) Setback of Postwar Reforms
Due to the Onset of the Cold War,**

....

(x) Cultural Tradition



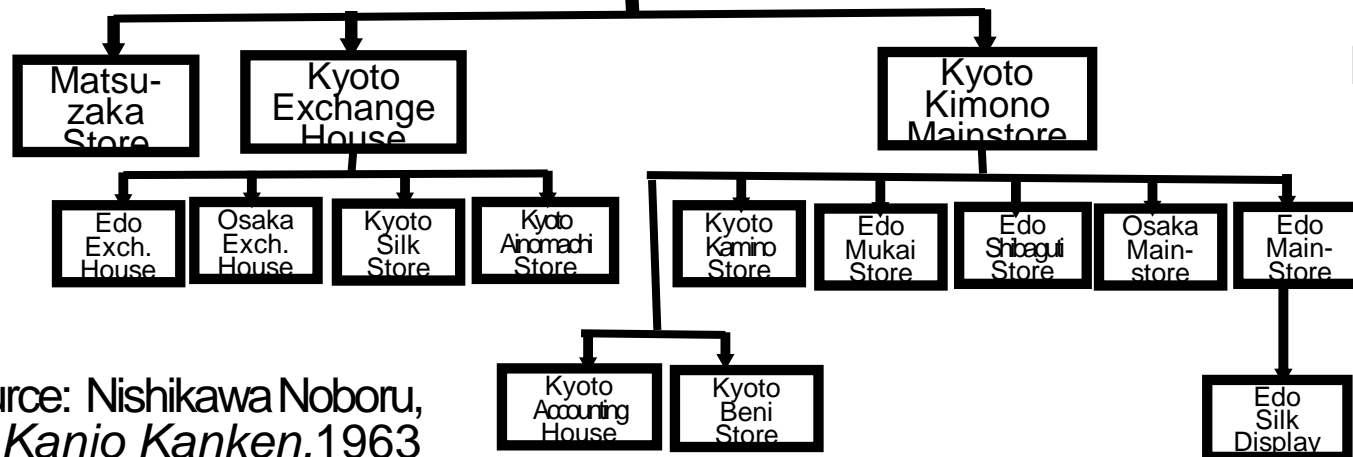
The Ōmotokata System of Mitsui Merchant House in Japan, 1730.



11 Mitsui Families

Ōmotokata

大元方



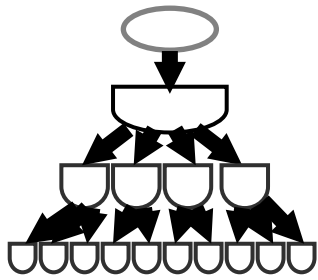
Main Stores

Branches

Original Source: Nishikawa Noboru, *Mitsui-Ke Kanjo Kanken*, 1963

Ōmotokata (≈ the Foundation)

First Established by Mitsui in 1710 & Adopted by Other Houses During Tokugawa Period
 The Pre-modern “Holding Corporation”.



In contrast to
Korean or Italian ... System
where the Family Head
Commands the Whole Business,



at **Ōmotokata**




All the Family Members
Pooled their Entire Assets,
Received Only *Pro Rata* Dividends



&
were Never Allowed to Withdraw their Shares.

Management was Left to *Bantos* (Managers).
De Facto Separation of Ownership & Control.

Japanese Family (“*ie*”) System.

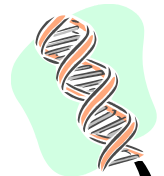
“*ie*” (家 ≈ Family or Household) 

A Collectivity Transcending Family Members
& Perpetuating Itself for Eternity.

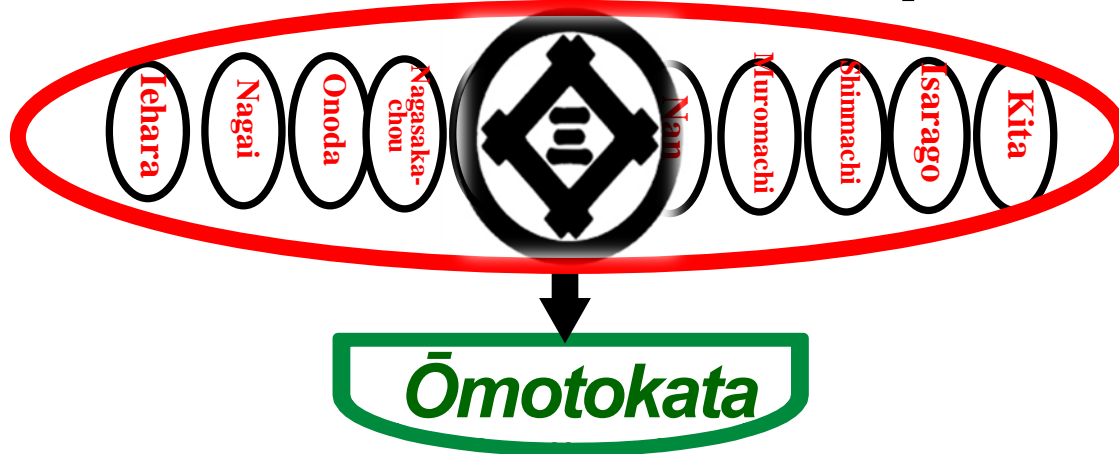
The Imperative of the Family Head
 (“Tōshu” ≈ The Current Caretaker of the *ie*)



is the Perpetuation of the *ie*,
Not Necessarily his Blood Lineage.



(Hence, the Prevalence of Adult Adoption in Japan.)



The “*ie*” was the True Owner of *Ōmotokata*.

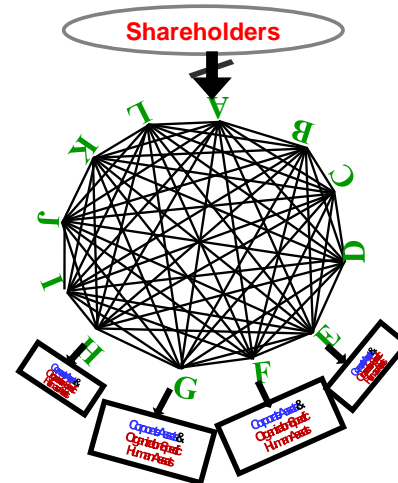
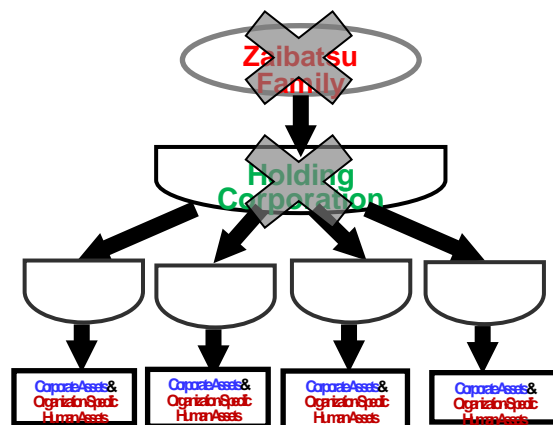
⇓

The *Ōmotokata* System Survived Until 1945 !

(Though Transformed into Holding Co. in 1909)

⇓

The Zaibatsu Resolution Merely Brought Out J. Corporations' Cultural Tradition of the Separation of Ownership & Control & Even Encouraged Them to Fortify It through Cross-shareholdings & other means.



How the Traditional Family System of Other Societies has Affected the Historical Path of their Corporate System, Esp. at its Critical Junctures, Is Yet to be Explored.

For Example,

**Korea's
Patrilineal Stem Family
System with Hiving off.**



**Korean Chaebols
During the Asian
Currency Crisis.**

**China's
Patrilineal Joint Family System
with Branching.**

**Taiwanese & Chinese
Corporate Groups
in Globalization.**

**Germany's
.....**

**Postwar Reforms,
Hertz Reforms ..**

<SUMMING UP> Two Conventional Views on the Variety of Corporate Systems



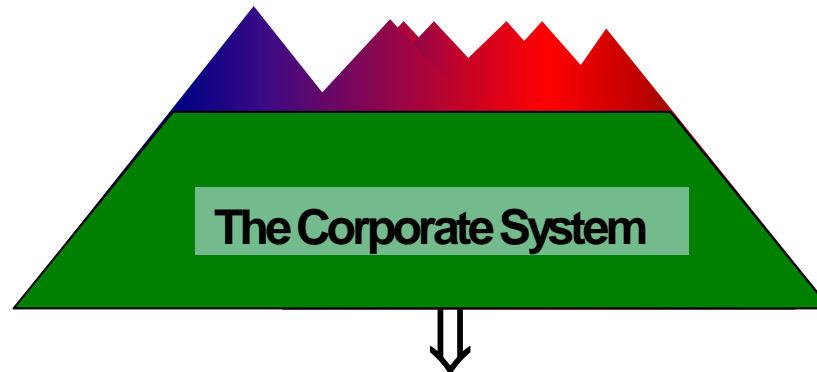
Late-Comer's Effects

Deviations by Cultures

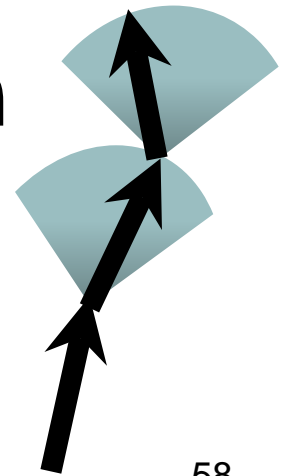
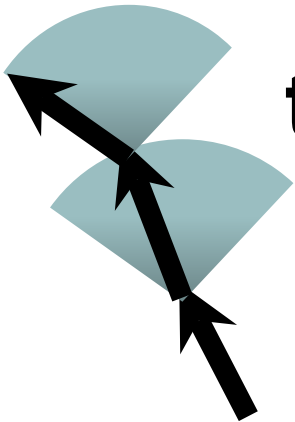


**In Spite of their Apparent Opposition,
Both Views Share the Same
Norm/Deviant or Universality/Particularity
Perspective on
the Corporate System,
more generally, on Capitalism.**

**What I have Demonstrated is
the Intrinsic Multi-versality of
the Corporate System Itself,
or more generally, of Capitalism Itself.**



**The Role Cultures Play is
that of the Force of Deflection
Deciding a Particular Path
the Capitalism Follows
at Critical Junctures
of its Path-Dependent History.**



Capitalism and Cultures.



**Beyond
Universalism/Particularism.**



History Matters!

This Talk is Based Partly On:

K. Iwai, “Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance,” *American Journal of Comparative Law*. 47(4), 1999.

F. Barca, ———, U. Pagano and S. Trento, “Divergence of the Italian and Japanese Corporate Governance Models: the Role of Institutional Shocks,” *Economic Systems*, 23 (1), 1999.

———, “The Nature of the Business Corporation– Its Legal Structure and Economic Functions,” *Japanese Economic Review*, 53(3), 2002.

———, *What Will Become of the Corporation?* (in Japanese), (Heibonsha) February 2003.

———, “Do Corporations Belong to Their Shareholders?: U.S.-Style Shareholder Rights Orientation Will Not Become the Mainstream in the Twenty-First Century,” *Japanese Economy* 33 (4), 2006-7.

———, “What Will Become of the Japanese Corporation?” in Hamada, Otsuka, Ranis, & Togo, eds, *Miraculous Growth Followed by Stagnation of the Catch-up Economy: Lessons from the Postwar Japanese Economic Development Experience*. (Routledge) 2011.⁶⁰