## **Contents**

Abb	reviationsxvii
The	Contributorsxxi
Part	1: Change of Governance in Historic Perspective: From State to Market – Pathways of Change in the 20 <sup>th</sup> Century
] ] ] ]	Change of Governance in Historic Perspective: The German Experience by Harald Baum
] ] ] ]	Corporate Governance Changes in the 20 <sup>th</sup> Century: A View from Italy by Guido A. Ferrarini
1 1 1 1 1	Historical Pathways of Reform: Foreign Law Transplants and Japanese Corporate Governance by Curtis J. Milhaupt
<i>i</i> l I I	Asking the Wrong Question: Changes of Governance in Historical Perspective?  by Yoshiro Miwa and J. Mark Ramseyer

St. an	olitics on Wall Street: The Implications of Eliot Spitzer on ate-Federal Relations in the Regulation of Public Corporations and Capital Markets in the United States  Jonathan R. Macey
I. II. III	Introduction 85 Crisis and the Growth of Government 86 Spitzer's Legacy: A Tale in Four Parts 91 Conclusion 101
$T^{p}$	randals, Regulation, and Supervisory Agencies: the European Perspective to Gerald Spindler
I. II. III IV	-
Part 2	: Corporations - Changing Models of Corporate Governance 117
W by I. II. III	Introduction 119 The Company Law Action Plan of 2003: Setting the Stage 121 A Glance at the List of Planned Actions: Topics Other than Corporate Governance 127 C Corporate Governance in Particular 131 Outlook 140
Uy by I. II. III IV V.	hanging Models in Corporate Governance – Implications of the S Sarbanes-Oxley Act Gary M. Brown
Ea by I. II.	nron and Corporate Law Reform in the UK and the uropean Community  Paul L. Davies

	V. Non-executive Directors 186 C. Conclusions 190
	Ongoing Modernization of Japanese Company Law y Misao Tatsuta191
I. II	Introduction 191  Modernization of Company Law: Major Steps 192  I. Modernization Now 196  Concluding Remarks 203  Postscript 204
$\boldsymbol{A}$	apanese Perspectives, Autonomous Firms and the esthetic Function of Law y John O. Haley205
$\boldsymbol{A}$	Corporate Governance Crises and Related Party Transactions:  Post-Parmalat Agenda  y Joseph A. McCahery and Erik P.M. Vermeulen
I. II IV V	•
Part 3	3: Bureaucracy and Regulations247
	egal Ground Rules in Coordinated and Liberal Market Economies  Y Katharina Pistor
I. II. III IV	•
	orporatist versus Market Approaches to Governance y Horst Siebert281
III IV	Introduction 281 Three Different Institutional Arrangements: Markets, the Political Process, and Corporatist Decision-Making 281 Main Areas of Corporatist Decision-Making 283 The Informal Consensus Approach in Governmental Decision-Making 296 Implications of the Corporatist Approach: The Restrained Market Economy 297

xii Contents

Regulatory Paternalism: When is it Justified?
by I milliony I. Ogas
<ul> <li>I. Introduction 303</li> <li>II. Economic and Paternalist Reasons for Overriding Individual Preferences 305</li> <li>III. Individual Decision-making and Irrationality 307</li> <li>IV. The Benefits and Costs of Paternalist Inverventions 310</li> <li>V. An Analytical Framework for Paternalist Regulation 311</li> <li>VI. Some Examples of Paternalist Regulation 312</li> <li>VII. Conclusions 319</li> </ul>
The Regulation of Regulation: Judicialization, Convergence,
and Divergence in Administrative Law
by Thomas B. Ginsburg
<ul> <li>I. Introduction 321</li> <li>II. Precis: Dynamics of Convergence and Divergence 322</li> <li>III. The Scope of Administrative Law 324</li> <li>IV. Divergent Systems of Administrative Law 326</li> <li>V. Trends: Judicialization and the Search for Neutral Third Parties 331</li> <li>VI. Conclusion 336</li> </ul>
The Proper Role of Bureaucracy in a Modern Market Economy:
The Case of Japan
by Christian Kirchner
<ul> <li>I. The Problem Under Review 339</li> <li>II. Methodological Approach 342</li> <li>III. Regulatory Reform in Japan: The Outside Perspective 347</li> <li>IV. A New Institutional Economics Approach to Regulatory Reform in Japan 349</li> <li>V. Concluding Remarks 351</li> </ul>
The Role of Bureaucracy in Deregulation – The Case of
Justice System Reform in Japan
by Kahei Rokumoto353
<ul> <li>I. Introduction 353</li> <li>II. The Case: The Role Played by Bureaucracy in the Justice System Reform 354</li> <li>III. Behind the Scene 358</li> <li>IV. Analysis: The Role of Bureaucracy in Deregulation 359</li> </ul>
The Terms of the Fire and IM 1 to D. I. to D. I.
The Transatlantic Financial Markets Regulatory Dialogue by Hans-Jürgen Hellwig
I. The Problem of Extraterritorial Regulatory Spillover Effects 363
II. The Genesis of the Dialogue: The US Sarbanes-Oxley Act 364
III. The Dialogue and How It Works 365
<ul><li>IV. Concrete Examples of Topics in the Regulatory Dialogue 368</li><li>V. Final Remarks 374</li></ul>

Contents	X11I

rt 4: Markets – Creation, Risks, Safeguards	377
Market Discipline, Information Processing, and Corporate Governance	
by Martin F. Hellwig	379
<ul> <li>I. Rhetoric, Semantics, and Reality of 'Market Discipline' 379</li> <li>II. What Do Financial 'Markets' Do? What Do They Do Differently? 384</li> <li>III. Information Processing and 'Discipline' Under Market Finance 390</li> <li>IV. Market Discipline and Corporate Governance in the 1990s 396</li> <li>V. Concluding Remarks 401</li> </ul>	
Implementation of the Corporate Governance Codes	
by Eddy Wymeersch	403
I. Introduction 403	
II. Who Is Setting the Rules? 403	
III. The Codes Are Self-Regulatory 406	
IV. Ambit of the Governance Codes 407	
V. Enforcing the Corporate Governance Codes 408	
VI. European Company Law Initiatives 417 VI. The Effects of the Governance Rules: Risks and Liabilities 418	
VII. Conclusion 419	
The Market for Corporate Control: The Legal Framework,	
Alternatives, and Policy Considerations	
by Stefan Grundmann	421
I. Introduction: Competition Over Which Assets in the Market	
for Corporate Control? 421	
II. Takeover Regulations 423	
III. Alternative Forms of Replacement of Management:	
Within the Organisational Framework of the Company 441  IV. The Content of the Control Position of Management and its Limits 444	
V. Conclusions 445	
Antitrust, State Aid, and the Governance of Public Undertakings	
by Ernst-Joachim Mestmäcker	447
<ul> <li>I. The System of Property Ownership in the Internal Market 447</li> <li>II. Jurisdiction: The Concept of Undertaking 451</li> </ul>	
III. Public Undertakings 452  IV. Undertakings with Exclusive or Special Rights and Undertakings	
Entrusted with Services of General Economic Interest 455  V. Unbundling in the Energy Industry 457	
VI. Costs and Benefits 459	
Sector-Specific Regulations and Antitrust: Corporate Governance	
of Public Undertakings in Japan	
by Fumio Sensui	461
I. Non-EU Nations where State Aid Rule does not exist and their Coping Strategies 461	
II Control by SSRs in Japan 462	

xiv Contents

IV. F V. U VI. F VII. F VIII. F IX. A	Controls through the Antimonopoly Law in Japan 463 Postal Service and Predatory Pricing? 466 Unbundling in the Energy Industry in Japan 466 Role of Competition Law within Corporate Governance in Japan 467 Review of Enforcement Systems and Corporate Governance 469 Review of Monopoly and Oligopoly Regulations 473 Application of the Antimonopoly Law to Public Undertaking 475 Conclusion 478
Part 5: I	ntermediaries – Functions and Responsibility479
	mation Theory and the Role of Intermediaries einhard H. Schmidt and Marcel Tyrell481
II. F III. 7	The Problem and Its Context 481 Elements of the Economics of Information 484 The Use of Information and the Difference between Corporate Governance Systems 489 Conclusions 507
of In	g Basel II to Facilitate Access to Finance: The Disclosure ternal Credit Ratings érard Hertig511
II. F III. F IV. S	ntroduction 511 Basel II and Internal Credit Ratings 513 Efficient Disclosure of Internal Credit Ratings 514 Sketching a Mandatory Disclosure Regulatory Framework 522 Conclusion 526
from by Y I. I II. 1	Multiple Roles of Banks? Convenient Tales  Modern Japan oshiro Miwa and J. Mark Ramseyer
	l Explanations on Bank Behavior ideki Kanda567
by Lı I. I II. ( III. I	recting Japan's Multi-level Governance uke Nottage

Contents xv

	itekeeper Failure and Reform: The Challenge of Fashioning levant Reforms
	John C. Coffee, Jr
I.	Introduction 599
II.	Gatekeepers: Past and Present 605
	The Near Future of Gatekeepers: Sarbanes-Oxley
	and the Looming Litigation Crisis 632
IV.	The Future Gatekeeper: Remedies for Gatekeeper Failure 644
	Conclusion 661
Th	e Changing Worlds of the CPAs in Japan
	Hiroshi Oda
I.	The Background to the Reform 663
II.	The Amended CPA Law 669
III.	Measures to Increase the Effectiveness of the Audit by the CPAs 675
IV.	The Independence of the CPAs' Audit from the FSA –
	the Resona Bank and the Ashikaga Bank Cases 680
V.	Conclusion 682
Summ	ary of Discussions
Ch	anges of Governance in Europe, Japan, and the US:
	scussion Report
	Heike Schweitzer and Christoph Kumpan
_	
I.	Governance Systems Between State and Market:
II.	Categorization and Evaluation 688
11.	Market Regulation as Corollary to Liberalization: Toward a Theory of Regulation 695
111	Corporate Law and Corporate Governance: Structures and
111.	Current Legal Developments in the US, Japan, and Europe 706
IV.	Intermediaries and Their Regulation 719
V.	<u> </u>
VI.	Conclusion 729
Selecte	d Bibliography731
Annex	
	odernising Company Law and Enhancing Corporate Governance ihe European Union – A Plan to Move Forward (EU)743
Annex	2
Th	e Combined Code on Corporate Governance (UK)775
Annex	
	e Sarbanes-Oxley Act (US)855
	• •
Index .	923