

Preface

“How does law matter?” is a tough question for lawyers to answer, although they are experts in answering the question, “What is the cause and effect of this particular law?” A few attempts to answer the first question have been made by economists, even without having any expertise on the second question.

Thousands of comparative law studies which focus on specific subjects of law have been conducted by academic lawyers, particularly with respect to Japanese and United States laws. However, very few of them have argued about how different laws affect practices in different environments, such as markets and social norms. Also very few of them have taken into consideration the interrelationship between different areas of law.

This book grew out of an attempt to gain a better understanding of how law as a whole matters to enterprise. The title of this book, *Enterprise Law*, covers many areas of law that affect the practice of business enterprises. The challenge of our attempt is to draw the whole picture of enterprise law and to show how enterprise law affects practice together with the markets and social norms of each region.

As an analytical framework, we choose the incentive analysis of economics. We take the enterprise (or firm) as an incentive mechanism between the four indispensable capital providers of the firm: management and employees as the human capital providers, and creditors and shareholders as the monetary capital providers (the “four players”). Our view is that the four players bargain with each other to give other players incentives to provide their capital to their joint project (that is, the enterprise) for maximizing their own payoff (“incentive bargain”). Enterprise law is a part of the infrastructure of the incentive bargain of the firm, together with markets and social norms.

Because the incentive bargain among the four players is always negotiated via management, the first three parts of this book are organized along the lines of the three bargaining relationships in the firm: between employees and management (Part I); between creditors and management (Part II); and between shareholders and management (Part III). Part IV describes how governments affect the incentive bargain of the firm.

Such an attempt is indispensably a group effort. No one in the world can be an expert on all legal areas, even if they focus on enterprise law.

Very few have the same level of expertise in both law and economics. Fortunately, we can successfully organize an ideal group of people: academic lawyers in different fields of enterprise law, such as corporate law, securities regulation, bankruptcy law, employment law, labor law, and tax law; economists who are interested in organizational economics and the economic analysis of law; and practitioners who provide a sense of the practice of law and business.

Our group's work already has a substantial history. It started from April 2007 as a project at RIETI (the Research Institute of Economy, Trade and Industry) and held 38 workshops including US speakers over three and half years. Since 2011, it has continued on a monthly basis as a workshop at Hitotsubashi Graduate School of International Corporate Strategy (ICS) sponsored by the Zengin Foundation for Studies on Economics and Finance.

The result of the RIETI project was published in Japanese by contributing Japanese members (ZENICHI SHISHIDO ED., "KIGYOU-HO" KAIAKU NO RONRI: INSENTHIBU SHISUTEMU NO SEIDO SEKKEI [THE LOGIC OF "ENTERPRISE LAW" REFORMATIONS: INSTITUTIONAL DESIGN OF THE INCENTIVE SYSTEM] (Nikkei Book, 2011)). This book is the second release of our project, this time with US members. We held an international conference in Tokyo in January 2014 with most of the contributors to this book for presenting our achievement so far and discussing further development of the enterprise law project. Our project is still ongoing, particularly with respect to combining detailed arguments concerning each part and the whole picture of enterprise law, and developing a theory of legislative policy which stimulates efficient enterprise.

Participants in the conferences and workshops provided us with valuable comments. The able research assistance of Anthony Bertero, Alexander Coley and Aaron Ferner contributed to this publication. We are indebted to RIETI and the Zengin Foundation for Studies on Economics and Finance for sponsoring this project.

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