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Social Responsibility of Corporation

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(Translated by Ittoku MOMMA)

I. The Development of the social responsibility theory of corporation in Japan

The rise of the social responsibility theory of enterprise dates back to the resolution passed at the National Assembly of the Keizai Doyu Kai held in November 1956, which called for the need of realization and implementation of social responsibility by management. The resolution implies that, an enterprise must be managed in such ways and forms wherein; (1) an enterprise is not allowed to pursue profit only in both logic and in actuality, (2) it must combine various productive elements most effectively in balanced form between economy and society, by producing quality merchandise at cheaper prices and rendering good aftercare services, and that, (3) the social responsibility of the management is to carry this thought into action. However, this kind of theoretical discussion could easily be put behind profit-first realism when business condition become slack. That is to say that at the general assembly of the Keizai Doyu Kai of the Western Japan District, held in November 1964, they passed a resolution that the management should devote their utmost efforts to enhance profit, which is the original objective of an enterprise. The reason why this social responsibility theory of enterprise which the Japanese management advocated, had to go through such a process, is because, in Japan, the existence of citizens or society which is

* The Toyama Itai Itai Disease Case (June 80th 1971. Toyama District Court August 9th 1972. Nagoya High Court)
* The Niigata Minamata Disease Case (September 29th 1971. Niigata District Court)
* The Yokkaichi Zensoku Disease Case (July 24th 1972, Yokkaichi, Branch of Tsu District Court)
* The Kumamoto Minamata Disease Case (March 20th 1973. Kumzmoto District Court)

confronting enterprise, is not fully recognized, and social responsibillity theory of an enterprise was only a one-man-show on the part of enterprise.

However, in 1970s, the social condition changed. With the occurrence of pollution cases accompanied by the high rate of economic growth, damage recovery suits against the pollution causing enterprises by local residents sharply increased,* together with the growing consumerism campaign. Once again, social responsibility theory of enterprise was called into attention by a very realistic and imminent mode. After the middle half of 1972, the number of newspaper articles concerned with the social responsibility of enterprise sharply increased. The reason for this was that the cynical antisocial behaviors of enterprise became apparent. That is to say, a large scale land purchase by enterprise for speculative sales and cartel among enterprises, provided the main cause for sharp land and commodity price increases. With this social background, the Communist Party increased its seats in the Diet very sharply at the election of 1971. This seemed threatening to business circles and they begun to discuss the social repsonsibility of enterprise. Along this line, management organizations made many suggestions with regard to this subject. That are as follows :

1. The written opinion made by The Sangyo Mondai Kenkyu Kai (Industririal Problem Study Organization) (This Organizaton consists of 22 influential business leaders) dated January 4, 1973.
2. The annual report prepared by the Keizai Doyu Kai in 1973, which is titled as "Realization of a New Mission by Management".
3. The Suggestion prepared by the Keizai Doyu Kai titled "Establishing Mutual Trust between Society and Enterprise", which is dated March 16th, 1973.
4. Report made by Mr. Kidagawa, representative direcror of the Keizai Doyu Kai at th e General Assembly of 1973, which is titled "Change in Behaviors toward social Progress", dated April 13th, 1973.
5. "General Behavior Standard of General Business Firms", prepared by the Japan Trade Association dated May 10th, 1973.
6. The Resolution passed at the General Assembly of 1973, of the Keizai Dantai Rengo Kai, titled "Our responsibility and the economy to maintaine Welfare Society", dated May 28th, 1973.
7. The first meeting held on June 14th, 1973, between the 18 social groups and the representatives of the Keizai Dantai Rengo Kai.
8. The meeting held on June 28th, 1973, by 37 economic groups including the Keizai Dantai Rengo Kai, on the subject of the social responsibility of enterprise.

9. The West Japan conference on environmental problem, jointly held by 5 productivfty centers, July 3rd-4th, 1973.
10. The second meeting held on July 5th, 1973, between the representatives of social groups and the representatives of the Keizai Dantai Rengo Kai.
11. The 18th Karuizawa Top Management Seminar held by the Japan Productivity Center on the subject "Need for Change in a Free Economy", on July 8th-13th, 1973.
12. The meeting held by the Keizai Dantai Rengo Kai on the subject of mercury pollution, on July 20th, 1973.
13. The meeting held by the Keizai Dantai Rengo Kai on the subject of land problems, in August 1973.
14. The opinion prepared by the representatives of Japan Management Federation, on the subject of "Japan's economy and politics as a turning point", dated July 26th, 1973.
15. The releasing to the public of residential land at a reasonable price by 15 realestate firms affiliated with associations, on July 31, 1973.
16. Organizing the study group for making guide line of the social responsibility of enterprise by the Japan Productivity Centers on August 5, 1973.
17. Proposal for "Keep Japan Clean Campaign" by the Japan Chamber of Commerce, on August 13th, 1973.
18. Proposal made by the Industial Problem Study Association on "New Living and Resources-saving Campaign" dated August 20th, 1973.
19. The General Assembly of the West Japan Keizai Doyu Kai, on October 19th, 1973.
20. The General Assembly of the West Japan Economic Conference held on the subject "Driving forward social consolidation and enterpise", on November 6th, 1973.
21. Establisment of a committee concerned with social responsibility, by the All Japan Bankers Corporation on November 7th, 1973.
22. Seminar held by the Keizai Doyu Kai of thd Kansai chapter on the subject of "Entrepreneur Spirit of the New Age", on November 16th, 1973.

Besides the above-mentioned movements, individual enterprises also took very concrete steps. They are as follows :

1. Strengthening the function of business assessment by general business firms such as the Marubeni Firms.—In this firm, they newly established item in a decision-inviting form where the firm is required to show performance of

social responsibility. April 22nd, 1973.

2. The Tokyo Electric Power Company has worked out an in dexation of environmental improvement — in order to improve environment, the company showed specific objectives with index and urged its employees to work hard toward the ojectives. (The Nihon Keizai News paper dated May 7th, 1973.)
3. The speech made by leaders of big banks at the meeting attended by branch managers of the banks — Emphasis on the social responsibility of banks, service to the public by bank, and establishment of social welfare society. (in the same newspaper dated May 8th, 1973.)
4. Sanyo Electric — Newly established "Local Community Welfare Improvement Section" — the Company made it policies to offer its facilities such as athletic fields and gymnasium for public use on certain fixed days, to participate in local community affairs, and to accelerate a tree planting campaign. (in the same newspaper dated June 13th, 1973.)
5. Mitsubishi Firm — Established its behavior standard, — expressly stipulated in the firm's regualtion, prohibition of speculative transaction (in the same newspaper dated June 16th, 1973.) and the firm established a social environmental committee within the firm. — (in the same newspaper dated August 15th, 1973.)
6. Medium and small sized enterprise — Released their corporate facilities, such as gymnasium to the local residents. Concluding agreement with local residents on pollution prevention measures. (in the same newspaper dated June 26th, 1973.)
7. Electric Power Company — coexistence with local communities (in the same newspaper dated July lst, 1973.) Kansai Electric — with regard to the establishment of Atomic power station at Daihanbara, Fukui Prefecture, the company concluded a welfare agreement with this local community (Total sum involved was ¥3,000,000,000) — the company is considering to establish social control System (in the same newspaper dated October 14th, 1973.)

   Kyushu Electric — the company bred smelts by using warm water drained out of Omura power station in Nagasaki Prefecture and supplied grown smelts to the local residents.

   Chubu Electric — the Company offered vapor heat generated from the power station for agricultual use, for local heating systems, for tree planting, and for snow melting.

   Shikoku Electric and Hokuriku Electric — established facilities where sea water is turned into fresh water at its power station, and supplied fresh water to the local people in case of shortage of water.

8. Mitsui bussan Firm — In order to cope with the pollution problem, the company established the Mitsui environmental pollution prevention study center — established a public Welfare Department and offered to the public some of its facilities for their use. (on the Asshi newspaper dated July 5th, 1973.)
9. Marubeni — made management behavior policies — the company decided not to engage in speculative transaction of stock. With respect to specific merchandises which are heavily related to the living, the company made it policies to report to the corporate officers meeting of their stock condition and cost structures. (in the Nihon Keizai newspaper dated August 4th, 1973.)
10. Matsushita — Divided the country into 6 Regions and each region established a close relationship with the community.
11. Sanyo Electric, and Sharp Electric — Both companies made declaration stating that they will not change product models so often at the cost of consumer. (in the Nihon Keizai newspaper dated August 17th, 1973.)
12. Toyota Auto Sales Company — the Company collected used cars at the company' s Cost. (on the same newspaper dated August 22nd, 1973.)
13. Department Stores — strengthened ties with local community. (in the same newspaper dated October 19th, 1973.)
    Daimaru — established a social responsibility committee — offered its facilites for public use. — actually participated in local affairs.
    Seibu distribution group — established Merchandise Science Center — established policy to supply products which are valued from consumer's point of view. Mitsukoshi — Established Product Study Center — offered some of its facilities for public use.
14. Donation by Corporation
    Sumitomo Grnup — $2,000.000 to Yale University
    $1,000,000 to Nihon Kyokai in the United States.
    (in the same newspaper dated June 22nd, 1973.)
    Mitsubishi Group—$5,000,e000 to Havard University
    (in the same newspaper dated June 22nd, 1973.)
    Mitsui Group—made policy to budget 2-4% of corporate income before taxes for a social contribution fund.

(in the same newspaper dated July 5th, 1973.)
Marubeni—established Marubeni Fund
(in the same newspaper dated August 4th, 1973.)
Tokyo Kaijo Insurance — established a policy to return ¥300,000,000 which is the premium of public offering of stocks on increase of capital.
(in the same newspaper dated October 13th, 1973.)
Matsushita—Donated in all ¥500,000,000 to prefectures.
(in the same newspaper dated November 28th, 1973.)
As for others—As of August 1973, 105 (26.1%) firms out of 405 which were surveyed decided to establish a social foundation. (Data based on the survey conducted by Keizai Dantai Rengo Kai)

As another trend, the number of corporations showing their contribution to society in their business report sharply increased.

1. In the proposal made by the Keizai Doyu Kai which titled "in seeking mutual trust between society and enterprise" it would show its activities which contributed toward the welfare of society, in details in its business report.
2. Examples :

Nihon Electric—In the No. 133th Business Term Report, (From October 1st, 1972. to March 31st, 1973.) the company described its activiites which contributed to the improvement of the social welfare of the community, on two pages.

Sanyo Electric—In the 47th Term (From November 30th, 1972 to May 31st, 1973.) of the company's business report, the Company used 6 pages out of 20, to explain the relationship with and the company's contribution to the Community.

Shiseido—the Company explained the company's way of thought toward consumerlism and toward environmental problems, and it also explained how a welfare foundation was established by the Company.

Hitachi Electric Company—In Annual English report which the Company issued for American investors, the Company introduced its activiities serving the welfare of communities under the caption titles "Society and Our Corporation".

As for others—23.8%out of 800 firms which the Keizai Dantai Rengo Kai surveyed, are considering introducing in their business report captions titled "the Social Responsibility of Enterprise".

On the other hand, with the growing anti-Japan sentiment toward business activities in the Southeast Asian Countries by Japanese business enterprises, there are several movements which regret about it.

1. Dispatching social and economic study team to Southeast Asian Countries by the Kansai Keizai Doyu Kai —and its proposal titled "Establishing a New Order for Economic Cooperation".
   (in the Nihon Keizai newspaper dated January 6th, 1973.)
2. Japan Trade Association—prepared on overseas investment standard.
   (in the same newspaper dated January 12th, 1973.)

Through a brief look at these above-mentioned movements, it seems that the theory of the social responsibility of enterprise has been well founded in Japan. Unfortunately, however, a series of the above mentioned talks made by the managements on the social responsibility of enterprise, were completely swept away by many incidents occuring from the end of the year before last. These are the incidents where antisocial activities by some large enterprises were disclosed to the public in connection with the oil crisis. These incidents are as follows.

1. Criticism by the Vice-Minister of International Trade and Industry toward the Oil industry (in the Mainichi newspaper dated December 4th, 1973.) —"The Oil industry is like a greedy merchant. It is the sources of all social evils".
2. Discovery of tax evasion by two major business firms. (At the budget committee of the House of Representatives, on January 30th, 1974.)
3. Recommendation issued by the Fair Trade Commission ordering the repudiation of the cartel made by 15 Oil chemical companies. — This recommendation was finally accepted by them. (in the Asahi newspaper dated January 31st, 1974.)
4. Major Business firms were prosecuted on the charge of the tax evasion. (on the Nihon Keizai newspaper dated January 16th, 1974.)
5. The Oil industry was prosecuted by the Fair Trade Commission. (in the same newspaper dated February 20th, 1974.)

The public was well informed on these incidents through the Diet hearing conducted in February of the last year. Although the true picture of these events has not yet been clearly disclosed, it is an appropriate time for us to question and analyze this social responsibility theory of enterprise which was voiced from the mangement side of enterprise.

With this realistic background, analysis is made on this social responsibility theory of enterprise, from a purely academic point of view. At first, we will take look at the movements and trends in the various scientific fields closely relating to law.

II. The Social Responsibility theory of corpoation in the various scientific fields relating to law

1. In the field of business administration. — In this field, both theoretical and practical studies had been made on management philosophy. The typical writing made on this subject is a book by Mr. Yamashiro, Akira, titled "Modern Management Philosophy (1972)". In this book, it is pointed out that, with diversification in corporate objectives, the profit pursuing objective became only one of corporate objectives. The social responsibility of corporation or enterprise is to be regarded as a very important subject from this point of view.
2. In the field of sociology. — From the legal point of view, interest must be shown in the results of industrial sociology or management sociology. A typical writing on these subject is a book by Mr. Tominaga, Kenichi "The Social responsibility theory of enterprise". (No. 2., volume 4 of Tsusan journal) and a book by him also, titled "Management and Society" (1972, volume 15 of Kindai Keiei Zenshu). These books analyze the relatonship between management and society by the techniques applied for mechanism and function analysis in the field of sociology. It emphasizes that private enterprise will have a public aspect in its entity, and the idea of social responsibility of enterprise is necessry to recognize the need of sanction to be applied, on behaviors of enterprise in the phase of its public aspect. With respect to this theory, the details will be discussed in the latter chapter.
3. In the field of accounting. —Studies are actively made in this field in an attempt to clarify the stand of accounting in terms of the relationship between social environments and accounting. The basic and theoretical study results are reflected in the book by Mr. Kurosawa, Kiyoshi, titled "Accounting and Society" (1973). The part in this book which is very interesting for legal study is a part wherein the author is making specific and practical suggestions. These suggestions imply that the achievments of enviroment accounting or social responsibility accounting should be introduced into the field of legal study. In another words, let enterprises disclose to the public how much efforts enterprises had put into preventing environment

pollution and in maintaining clean environments, so that society would have means to control the activities of each enterprise. This proposal emphasizes the need of strengthening a system where the inside activities of enterprise be disclosed to the public in the light of accounting practice. In order to make system effective, it is necessary to restudy the assement index and new techniques for this purpose should be developed. Unfortunately, both are not fully developed as yet at the present time. In the article written by Mr. Wakasugi, Akira, titled "Theory of environment accounting", page 113, No. 1., of volume 26, of Kigyo Kaikei, it described that "such technique are being studied gradually both in theory and in practice, and various new technique are being developed for experimental purposes. For the details of this subject, please refer to the special issues of Kigyo Kaikei, No. 10, of volume 24, which is titled "Problems is Accounting and Environment Maintenance" and No. 9, of volume 25, which is titled "The Way that the Social Responsibility of Enterprise and the Accounting practice should be".

III. The social responsibility theory of corporation as a sanction mechanism

According to one of the theories of managment sociology which was mentioned above, modern enterprise, particularly a large sized industry, is a system by itself. When the relationship between enterprise and society is questioned, society means the total social system (Nation wide society and local community as its part) which is ranked higher than a enterprise as a system. In this case, enterprise is placed in a lower level of total system as a constituting element. Even a private enterprise has an aspect which is closely related with public interest, as a constituting element in the lower level of the total system. It is because, a private enterprise is not completely self-supporting independent entity. It is not always that this public aspect of privale enterprise and the private objectivees of enterprise (pursuit of maximum profit) are found in conformity. There was the latent possibility of conflict between the private aspect and public aspect of enterprise, at the time when total society was demanding enterprise to pursue its growth and achievements in its private aspect. However, this possibility has became apparent, when the pollution problem was brought to light. In this case, since enterprise is considered as one of constituting element of the lower level of the total social system, it became necessary for the nation wide society or local community, both of which are in a higher level of the total system, to establish certain standards and to apply sanctions based on this standard. This is what is called the social responsibility of enterprise.

In so far as fair and free order of the market is maintained, for the purpose of supplying quality merchandise at cheaper prices by enterprise, price will function as the best sanction mechanism, and each enterprise can pursue its maximum profit within this scope. However, enterprise in the modern society has many aspects which are of public interests, besides these purely economic activities. With respect to control in this area, it can not be denied that, private enterprise system has a weak point. Therefore, it is necessry to establish a mechanism by which certain sanction or compensation could by applied in the light of fixed standards, on the result of enterprise behaviors. Certain standard in this case includes not only legal provisions, but also a wider sociological concept. That is to say, all kinds of binding behavior rules which have been created by moral, customs and public opinion are included.

The above-mentioned sociological approach provides very appropriate clues for lawyers when observing the social responsibility of enterprise. The task that legal scholars will have to impose on themselves seems to be to analyze what kind of legal standard could be established, and to what extent this standard could be applied, as a sanction to be applied on the result of noneconomical behavior of enterprise.

IV. Theory of the social responsibility of corporation in the field of law

Unlike the various fields of science closely related to the subject, very few legal scholars have written books on the subject of the social responsibility theory of enterprise. These books are as follows : A book written by Shinozuka, Teruji, titled "Law and the social responsibility of enterprise" (separate book, "Management and accounting—legal practice by different type of management activities 1972)", a book written by Kawamoto, Ichiro, titled "Society and Enterprise", (coauthored by Ueyanagi and Kawamoto—Enterprise, Management and Law, 1973)) nad a book written by Kato, Ryozo, titled "Enterprise and Management and Legal Analysis", (Autumn Issue of Soshiki-Kagaku 1973).

1. Legal control to maintain price mechanism :

Although we legal scholars accept the idea of social responsibility and public interest aspect of private enterprise, we are not abandoning market economic theory. We are supporting the theory of divided market economics. We also realize, at the same time, that it can be affirmatively said that, this theory alone will not bring about the best satisfaction to consumers. Therefore, it is necessary to design another mechanism which would supplement free market mechanism.

In the following, we will first analyze legal control to maintain price mechanism. This legal control is, at the present, considerably well organized. But, it should be further strengthened.

(1) Antitrust law : This law was stipulated after the World War II, following the pattern of the United States. This law is intended to prevent excessive economic concentration, and, by eliminating acts which illegally bind enterprise activities, and also by eliminating competition controlling acts, it is intended to maintain fair aud free order in market. The prosecution filed against the illegal cartel of oil industry by the Fair Trade Commission (indeed, this was the first case where the Fair Trade Commission prosecuted a cartel in Japan), which was mentioned above, is the case where this antitrust law was applied. Now, this antitust law is being considered for amendment, so that by enforcing this law, capital monapolization can be disolved and fair competition can be restored. Toward this objective, the Fair Trade Commission formed the Antitrust Law Study Committee 1973 which is making a draft of amendment. The main points of amendment are, restoring the authority to the Commission where it could issue orders for separation of an enterprise which aurhority was abolished in 1953, vesting Fair Trade Commission the new authority where it could issue orders to reduce merchandise prices, and restricting business firms acquisition of stocks, and making it easy for the Fair Trade Commission to investigate infringements. The main purpose of the amendment at this time is aimed at commodity price control. Japan is faced with such a serious price increase. It can well be said that, the key to success in this matter is dependent on the fate of the free enterprise system. However, it is very doubtful whether these amendments like restoring enterprise separation authority and restricting stock acquisition by business firms, could be realized under the present Liberal Democratic Party, because it is certain that these amendments will be subject to very bitter opposition by industrial circles. (On May 26th, 1977 the Diet approved this amendments)

The proposal for the amendment on restriction of stock acquisition is based on the survery of 6 major firms that the Fair Trade Commission conducted on January 21st, 1974. According to this survery, capital shares that these 6 major business firms would hold in wholesale business circles reached 70%. It was also found that, these 6 major business firms are, in cooperation with banks, functioning as the center of enterprise groups and concentrating economic power, through stock acquisition and corporate financing. Although there is a provision in the current antitrust Law where restriction is applied to stock acquisition by banking busineses in civil enterprise, there is no such legal restriction in the case of business firms. Since business firms are operating nowadays as financing corporations in a sense, it is quite reasonable to explore the possibility of restricting stock acquisitton by business firms.

(2) Law preventing unlawful gifts and labeling and the law preventing unfair competition : These laws also intend to insure fair competition and to protect consumers.

(3) Security Exchange Law : This is the law which was brought into Japan forcibly, while Japan was under the U. S. Occupation Forces after the World War II. This law is well rooted in Japan now.

Generally speaking. under the free enterprise system, stocks issued by enterprise are considered as goods which have a market price. As these stocks are traded in the public market and held by the general public, it becomes absolutely necessary to insure the fair prices of stocks. This will not only protect directly the interest of shareholders, but also serves as a control on management, under the free enterprise system, through the stock market price mechanism. Fair stock price presupposes free security exchange market. The Security Exchange Law is stipulated with the objective to insure fairness of issue, sales and purchase, and other kind of trading of stocks. The basic principle under lying this law is philosophy of disclosure. Enterprises in which stocks are held by the general public, are required to discloses in details their business activities. The above-mentioned environment accounting system can be well established if these disclosure systems are further strengthened and expanded.

The problem now being studied in the area of Security Exchange Law is again that of enterprise concentration or grouping. This is to say, that, in Japan there is tendency where individual shareholders are reduced while institutional enterprise shareholders are increasing. According to statistics, ratio of shares held by individuals as against total shares of all corporations of which stocks are listed at Stock Exchange, was reduced from 37.4% in 1971 to 32.9%, while ratio of shares held by enterprises increased 62.4% to 66.9%. In other words, 70% of stocks of all Japan business corporations are owned by business corporations, corporations own the corporations. The above-mentioned major business firms holding substantial number of stocks is one of the results of this general trend. Since the main objective of cotporation in holding majority shares of another corporation is to control such a corporation, these stocks will not come out to the Security Exchange Market for trade. This means that the price fluctuation of stock at the market would be reduced. As result of this, even a small demand in the market could cause a big price flunctuation. [Page 10, No. 293 of Shoken, of Tokyo Stock Exchange, titled "Stock distribution in 1972, and Page 8, No. 296 of the same titled "What influence of change in stock holding structure would bring about on sales volume and stock market price".] Under such circumstances, unlawful acts such as stock market price manipulation could easily be conducted, and this might destory the price mechanism of the security exchange market completely. In order to prevent such a result, it is almost impossible to find a solution within the scheme of Security Exchange Law, but is possible to do so in the Antitrust Law, by restricting stock holding by corporation, and this way is most the effective way.

It is true that even under the present Antitust Law, holding company is prohibited. (Article 9 of Antitrust Law). The Law also prohibits stock acquisition, in cases where such acquisition would restrain fair competitions. This provision is indeed a provision which reflects the history of mitigating control in the Antitrust Law. Before this provision was amended in 1949, stock holding in corporation by another business corporation was prohibited as a rule, excepting a very few cases where permission of the Fair Trade Commission was granted. However, with the amendments which were added in 1949 and 1953, this restriction was widely mitigated, and vertical control of corporations by holding company was actively carried on, through stock acquisition. With this historical background, it is very interesting to see how far the current movement of amending Antitrust Law could bring this restriction back to the original starting line, in strengthening stock acquisition restriction.

On the other hand, the disclosure system in the area of security exchange regualtion has also became a point of controversy. Under the existing Security Exchange Law and regulation, business corporations are required to disclose price trend of basic raw materials. However, even under this rule, business corporations are not required to disclose the price at which it purchased them, it is required to disclose only their fair market value. Recently, since Japan was hit with such an abnormal price increase, questions as to whether a rule should be established to make business corporation disclose its manufacturing cost of its product, were highlighted. Newspapers reported that the office of the Finance Minister was considering making companies disclose the manufacturing cost to the public, in relation to price increases of oil products and other essential materials. (Nihon Keizai newspaper dated February 20th, 1974). The disclosure of manufacturing cost is something any business corporation would most hesitated to do, because they consider it as a disclosure of trade secrets. How this question is solved is something which we will watch with great interest.

As it has been explained above, it seems that legal system to maintain free market mechanism which the theory of social responsibility of enterprise would basically accept, is well organized. However, it is apparent that this legal system is not practically effective as a system. This is proved by the fact that, in practice, big enterperises are controling many small capital enterprises and such a trend is creating a main cause of price increase. So that, it is vitally important to reinforce the function of the Antitrust Law and Security Exchange Law. If management really feels the socail responsibilty of enterprise, they should not take such steps to prevent amendment of these laws.

2. Government intervention in prices :

It is our basic view that prices should be left free at the market mechanism. However, if the market fails to function properly and if legal amendments necessary to insure proper market function are interfered with it becomes necessary for the Government to intervene in this area. This has actually been done in the several cases in the past. These are :

(1) The law relating emergency steps against concealment, withholding, speculative trading on essential materials (July 6th, 1973.) : Under this law, if the price of essential materials increases abnormally or if there is fear of such a trend, and if concealment or withholding of the essential materials were made, or if there is a fear of such movements, Government may designate by ordinance such materials as special material, and the Government can issue an order, ordering such a person to release such special materials to the designated persons at the designated price. In order to carry out this regulation, the Government appointed price investigators and they have the authority to go into the workshop of business firms and conduct price investigation.

(2) The Law which keeps the supply and demand of oil in balance (December 22nd, 1973.) : In case there is a fear that the nation's living would substantially be damaged because of an oil shortage, the Government can declare emergency conditions, showing the objective of supply and demand of oil. Then the Government orders major oil producers to submit oil production schedules. If these schedules are not in conformity with the above-mentioned Government objectives, the Government may order the producers to change

their schedule. In case the oil producer failed to meet with such Government order, the Government will make announcement of such facts and thereby impose social snaction. On the other hand, the Government will issue order to consumers of large amounts of oil, and restrict their oil consumption. In case such consumers failed to comply with such orders, the Government will make announcements to such effects, thereby imposing social sanction on them. The same law stipulates restriction of sales of gasoline at gasoline stations.

(3) The Law providing emergency measures for stabilization of the nation's living (December 22nd, 1973.) : In case there is a fear that the price of essential living materials would go up sharply, the Government will designate such materials, fixing standard prices for such materials, and make announcement of such standard prices. If a person or enterprise sold such material at a price higher than this standard price, the Government can order them to reduce such prices to the standard price. If the enterprise failed to comply with such Government order, the Government will make announcement of such facts. In addition to that, the Government can designate such materials as special materials, and fix standard trading prices for such special materials. If enterprise sold such special materials at price higher than this special standard price, the Government may impose an excess tax of which amount is equivalent to such price difference, and have it paid to the Government.

As it has been explained above, based on these laws and regulations, it became necessary for the Government to intervene in price policy, to cope with the price increases of the present conditions.

If the price still keep rising, there would be fear that the true sense of the free enterprise structure will completely fall apart. To cope with this difficult situation, economic circles, based on the social responsibility of enterprise, declared they would self-refrain from price increase.

On January 10th, 1974, 4 major groups in economic circles, (Keizai Dantai Rengo Kai, Japan Chamber of Commerce, Keizai Doyu Kai, and Nihon Keieisha Dantai Renmei), declared 3 major policies in order to cope with abnormal increases in commodity prices ; 1) All enterprises shall try their very best to absorb whatever price increase they may have from price increase of raw materials and fuel, by their rationalization, and try the best not to reflect such increases in their products to consumers.

2) With the best efforts by management, management will try to prevent the vicious spiral circle reaction between wage increase and commodity price increase. 3) In order to maintain friendly business relation with foreign trade partners, management will try their very best to faithfully execute export-contracts.

3. Legal regulation on uneconomical factors outside of enterprise : As we have repeatedly mentioned above, our basic thought on price is that price should be determind by the free market mechanism. As it was also mentioned above, however, market is not necessarily functioning in the way it is supposed to be functioning. Even in the area of enterprise activity, there is a part where appropriate results can not be insure by market mechanism. Even more, there is an area where dependency on market mechanism would produce the worse results. This is the area of pollution. Within the past several years, law and regulations relating to pollution had been well organized. That is to say, with enactment of the Basic Law of Anti-pollution, a series of anti-pollution laws and regulations had been passed. If these laws and regulations are to be ccategorized, they are as follows ; 1) In the area which is relating to air-pollution,— Anti-air Pollution Law, Mining Safety Law, Electric Enterprise Law, Gas Enterprise Law, Traffic Control Law, 2) In the area which is relating to water-pollution—the Anti-water Pollution Law, Mining Safety Law, Electric Enterprise Law, Anti-ocean Pollution Law, Law regulating purification and disposal of drain water, Drain Water Control Law, Natural Park Law, Poison and Dangerous Powerful Drug Control Law, Agricultural Drug Control Law, Port Regulating Law, Harbour and Gulf Control Law, Marine Resources Protection Law, and River Control Law. 3) In the area relating the noise—Noise Control Law. 4) In the area which is related to ground sinking, the Law regulating extraction of under ground water for building use. 5) In the area relating to soil pollution, — Law preventing pollution of agricultural soil pollution. 6) In the area controlling bad smell, —Stench Prevention Law. All these laws and regulations are administrative laws, preventing or controlling pollution. Naturally, infringements of these rules are subject to punishment. As for the law punishing acts which are harmful to human life and body or health due to pollution, there is a law, punishing pollution crimes, called Kogai Hanzai Shobatsu Ho, as a special law.

In addition to the above administrative laws, in the area of civil law including damages caused by pollution, there exists article 109, of Mining Law, imposing mining enterise liability without fault. In the case of the Toyama Itai Itai Disease, this article was applied. As for provision of liability withough fault, this provision was nowly introduced into the Air Pollution Prevention Law and the Water Pollution

Prevention Law on June 22nd, 1972, when they were amended. This provision was also introduced in the law which is relating to compensation of damages caused by Atomic Powers.

There also has been the Law enforced on October 5th, 1973, wherein, damages caused in health by pollution, can be compensated by the fund accumulated from penalties collected from those who caused air and water pollution, depending on the degree of damage caused, by way of paying medical or living expenses to the victims.

4. Relationship between the social responsibility of corporation and corporation law :

There is a view that the root of the theory of the social responsibility of enterprise is to be found in such background and movements wherein, various laws and regulations mentioned above, had to be established. From a legal point of view, this kind of theory of social responsibility dose not need to be accepted. This is also a view that, even though laws governing the pollution problem are enacted one after another controlling management activities, management must try their best in pursuing the utmost profits and that is the utmost management could do. (*See the attached note below.) This view shares the same thought as the thought that, "Management must observe law". With this view in mind, we, as law scholars, should be studying such special laws relating to the pollution problems, and should like the scholars in civil law are doing, be studying in the attempt to introduce the theory of torts into the field of pollution prevention law, in favor of the victim. In this case, the private law field, particularly the field of commercial law, would be left alone separate from the theory of the social responsibility of enterprise. Whether this bounary could or should be traversed remains to be questioned.

In the meanwhile, it would be worth-while to take a look at what american law scholars are discussing in the United States where this theory of social responsibility of enterprise is prevalent, to find a clue on this subject.

In the article written by Blumberg, titled "Corporate Responsibiltiy and The Social Crisis" (50B. U. L. Rev. 157), he is treating legal effect of donations which corporations are making in relation to charity, academic and other social activities. He pointed out that, the judicial precedents in the earlier stage in America required that such donation should serve to produce direct profit to the corporation and the requirement is gradually relaxed. Blumberg further developed in this article, his detailed interpretation and legislative opinions in relation to legal provisions wherein the Corporation Law of various States in America provides that business corporations legally can make donation for the purpose of charity, scientific or educational activities. His conclusion is that legislation should be established where the law expressedly provides that corporation can make donation for the purpose of improving social and economical environments. In connection with the role of corporation which is real existence of society, and supporting this idea that the corporation can legally make dpnations, we have also the Supreme Court Decision (June 24th, 1970.— This Decision is concerned with political donation). In evaluation of the effectiveness of corporate donations, the so called business judgement rule is applied to the directors of the corporation who decided on such a donation. Thus, the chances where the director's responsibility will be questioned will become less, as compared to the stockholder's responsibility.

In addition to that, under the American law which recognizes the system whereby shareholders of corporations can make proposal at the general shareholder's meeting, it is still a pending as a controversial issue as to how far the deliberation of general shareholder's meeting in connection with social issues should be developed.

The extent of issues involving the social responsibilty of enterprise, under the american company law, is just about the all I have mentioned above.

In another words, it is difficult to clearly show the theory of the social responsibility of enterprise in the field of general law such as commerciaial law. The reason for this is that, since the social aspects of modern enterprise are so widely diversified, it would be very difficult to control and govern all these aspects and basic amendments in the law can not be achieved within a short period of time. Therefore, the area which is not governed by law, will have to be left entirely upto the initiative of each enterprise. It is particularly so in such critical circumstances as now. In the field where social responsibility is carried on by initiatives of individual enterprises, the role which law can play can not help but become very passiv. The extent to which the law can intervene may have to be such that, if a corporation made a donation in trying to solve social problems and if the corporation stopped price increases at the cost of its earning, the law would gurantee that management will not be disturbed even if management participates in social or economic problems.

As a typical view criticizing the theory of the social responsibility of enterprise, there is a view held by Prof. Murakami Yasusuke, of Tokyo University, which is as follows : The content of the social responsibility theory that anybody would agree to would be pollution measures, public relation activity, softening relation with local community, donation to cultural movements, and improvements in business reports and general shareholders meeting of corporation, all of which are too common to us. In fact, resolutions passed recently by economic organizations are directed toward these ends. If these are at all of what social responsibility should be directed, this content would be meaningless". He further point out that, in the concept of the social responsibility theory, there is a risk in the long run. "This risk can be created under such circumstances wherein, a influential large enterprise, by using its own initiative, recognized its social responsibility, and based on such recognition, would establish a very close relationship and a cooperation with the Government agency concerned, designing out controlled price structure, financial and monetary policies, and establishing deplomatic relationship with a foreign country ahead of Government, through its overseas investment activities, all of which would move toward creating a kind of controlled society. As for the steps against such tendency, he insists that : "As for one, enterprise should act freely in pursuing its profit, under the application of a very strict legal rule which includes environment preservation. As for two, — enterprise activities should be limited to production only, and it is not desirable that enterprise will participate in activities such as saving resources, holding and operating of lands and stocks. Along this line, overseas investments should carefully be re-reviewed. As for three — Control price structure created by enterprise can constitute a main cause of inflation and there is a fear that, that can cause a fatal damage to capitalism. In such case, strong steps such as the split of enterprises or disclosure of enterprises financial accounting may become necessary. As for four — In determining economic policy, it is necessary to reflect the policy opinions of various classes of society. In choosing economic growth rate or in determining public investment, new idea should be sought which will avail valid opinions from various classes of society. If true meaning is to be found in this word of social responsibility, the meaning should imply such content as were mentioned above." (From article of Nihon Keizai newspaper dated March lst, 1974, titled "What is social responsibility ? ".)