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Clyde D. Stoltenberg*

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Introduction

Fighting international corruption and bribery in the 21st century is a "concern that corporations and governments must face as national boundaries become increasingly blurred and transactions flow with little regard for the traditional boundaries of the state."1 The problem of international corruption and bribery combines fascinating issues of extraterritorial enforcement of supply-side anti-corruption laws and the relationship between globalization and corruption and the special problems presented by transitional and new market economies. The extensive economic reforms made to China's economy during the last twenty years certainly qualify it as one in transition. Beyond that, however, China's economy presents an interesting case because it juxtaposes a uniquely Chinese socialist ideology, incorporating the philosophies of Marx, Lenin, and Mao Zedong, against the backdrop of a traditions-oriented culture with a belief system that differs in many respects from Western models. Multi-disciplinary readings can contribute to our understanding of the impact of globalization upon the problem of corruption in the Asian, and specifically Chinese, context. It is the purpose of this article to bring some of these resources to bear on our thinking of how best to analyze international corruption in China.

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I. The Globalization Phenomenon

At the beginning of the 1990s, Kenichi Ohmae articulated the principles of power and strategy in the interlinked economy that would give rise to a "borderless world."2 A few years later he questioned "the relevance—and effectiveness—of nation-states as meaningful aggregates in terms of which to think about, much less manage, economic activity."3 Ohmae suggested that "many of the core values supporting a world order based on discrete, independent nation states—liberal democracy as practiced in the West, for instance, and even the very notion of political sovereignty itself—have shown themselves in serious need of redefinition or, perhaps, replacement."4 What were the forces that would undermine "the building-block concepts appropriate to a 19th-century, closed-country model of the world"?5 Ohmae suggests four—"industry, investment, individuals and information"—which, in good management consultant style, he dubbed the "four T's."6 His McKinsey & Company colleagues, Lowell Bryan and Diana Farrell, further argued that the global capital market would increasingly dictate the actions and policies of government, as opposed to governments dictating the actions and policies of the market.7 James Davidson and William Rees-Mogg skillfully articulated how the link between the emergence of an information-based society and the resulting liberation of

4. Id. (emphasis in original).
5. Id.
6. Id.
7. See Lowell Bryan & Diana Farrell, Market Unbound: Unleashing Global Capitalism 1 (1996) ("We are moving toward a world where the capital markets constrain what governments can do—not the other way around. In this environment, government policy is influenced in real time by whether or not it makes economic sense."). In his analysis of recent financial crises, Barry Hager points out that:

What is new in the current global capital market is the presence of two factors: the sheer volume of capital flows across borders and the existence of computers, telephone lines, and the electronic networks that permit transactions to occur instantaneously and in ways that create new challenges for those whose task it is to monitor and regulate those transactions.

BARRY M. HAGER, LIMITING RISKS AND SHARING LOSSES IN THE GLOBALIZED CAPITAL MARKET 5 (1998). Hager points out "[s]everal characteristics of these new, rapid flows of capital" that "have real consequences for each national government attempting to cope with them:"]"

First, these flows are inherently volatile. . . .

Second, due to this volatility, they are also inherent threats to the ability of national governments to manage their economies through two of the most basic tools of monetary policy traditionally used by those governments: interest rates and exchange rates. . . .

. . . .

Where things go wrong in the effort to manage exchange rates and external financial obligations, the international authorities, led by the IMF, are eventually invited in for their assistance. Then the affected government generally loses substantial control over the last of its traditional tools for management of its own national economy: domestic fiscal policy.
individuals would irrevocably alter the power of government.8

It did not take long, however, before significant questions about the impact of globalization arose. As the world’s economy has become increasingly globalized, public anxiety and backlash against the trend has increased. Ironically, governments of both industrial and developing nations, which stand to lose power in the bargain, remain committed to eliminating barriers to the world economy, while many of their citizens, whose sovereignty will be enhanced by these trends, continue to fear the effects of globalization on the social contract.9 Demonstrations at the December 1999 World Trade Organization (WTO) Ministerial in Seattle10 and the April 2000 World Bank and International Monetary Fund meeting in Washington, D.C.11 starkly underscored the growing anxiety over globalization. Contemporaneous surveys of U.S. citizens revealed a mixed message. While “agree[ing] in principle that globalization is good,” surveyed Americans “disagree[d] with policies for carrying it out,” prioritizing concerns of “unfair competition, environmental damage, and job loss,” as well as lower wages, above the Clinton administration’s aims of “boosting exports and keeping consumer prices low.”12 Opponents of globalization voiced another concern at the third Group of Seventy-seven (Group of 77) Summit Meeting, held in Cuba just prior to the World Bank/IMF spring meeting.13 “Dozens of presidents and prime ministers” used the meeting as a platform to complain that “globalization of the world’s economic and information systems had done little but damage their countries.”14 They supported resolutions calling for a “shake-up of the world financial system to give developing countries greater say over economic and trade policies.

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13. See Castro Denounces Lenders at Havana Meeting of Poor Nations, N.Y. TIMES, Apr. 13, 2000, at A17. At least 40 heads of state or government attended the Group of 77’s three-day summit meeting, at which President Fidel Castro “attacked the global capitalist system” as causing “suffering comparable to the Nazi Holocaust.” See id. “Since its 1964 founding, the Group of 77 has grown to include 133 developing nations, representing around 80 percent of the world’s population.” Id.

for forgiveness of foreign debt and for sharply increased foreign aid."\textsuperscript{15}

The changes proposed by the "Group of 7 wealthy nations" at the IMF "that would discourage nations from borrowing too often from the fund and encourage them to pay back their loans quickly" did little to satisfy the demands of developing countries.\textsuperscript{16}

The developing countries' complaints against the WTO are aptly summarized by Linda Lim, Professor of International Business at the University of Michigan: their main criticism is that "the W.T.O. is a rich man's club set according to rich man's rules which tend to disadvantage the poor guys."\textsuperscript{17} Malaysia's Mahathir Mohamad has acknowledged that some countries of the South, including Malaysia, have benefited from the liberalization of trade;\textsuperscript{18} at the same time, he has identified new threats to developing and newly emerging economies:

Not only have the poor countries of the South to struggle merely to meet the basic needs of their peoples, but they are now bullied into adjusting their economic policies to meet their new obligations so that Northern-based corporations can penetrate and capture their markets.

The poor may not reserve their markets for themselves even when they have no capacity to penetrate the markets of the rich.

Fair competition and level playing fields are only for the rich. For example, their attempts to link the environment and labour standards to trade in manufactured goods is a clear attempt to deny developing countries their meagre competitive advantage.

The relationship between trade and labour standards emerged not because of a concern for the well-being of workers in poor countries, but as protectionist moves aimed against growing and competitively-priced imports from the South.

To compound this unfair interpretation of the multilateral trade rules, when it comes to technology transfer, Northern countries take a fiercely anti-liberal stand, insisting that all World Trade Organization member states introduce a set of national laws to protect intellectual property.

Since most patents are owned by the North, this, in effect, means legal protection of their technological monopoly and a drastic curtailment of the right of developing countries to have access to new technology.\textsuperscript{19}

Mahathir thus suggests that the methods formerly utilized by developed countries to develop are no longer available to presently-developing countries because those methods are now believed to impose unacceptable

\begin{thebibliography}{9}
\bibitem{15} Id.
\bibitem{16} Joseph Kahn, \textit{Wealthy Nations Agree on Changes in I.M.F.}, \textit{N.Y. Times}, Apr. 16, 2000, at A6 ("Though the move by the ministers might reduce some long-term borrowing by I.M.F. client nations, it seems unlikely to satisfy many of the critics of the fund's long-term loan programs."); see Jane Bussey & Ken Moritsugu, \textit{Are They Making the Poor Poorer?}, \textit{Kan. City Star}, Apr. 24, 2000, at 6B.
\bibitem{17} Barbara Crossette, \textit{Making Room for the Poor in a Global Economy}, \textit{N.Y. Times}, Apr. 16, 2000, at D1. Professor Lim elaborated: "The sectors which benefit poor countries have not been liberalized . . . and those sectors are textiles—labor intensive textiles—and agriculture." \textit{Id.}
\bibitem{19} Id.
\end{thebibliography}
2000 Impact of Tradition and Change

costs on developed countries. Essentially, Mahathir perceives an implicit fundamental fairness argument against this shift in standards. Indeed, when the U.S. government imposes sanctions on Southeast Asian countries because their labor organization values are inadequate by our standards, one could plausibly ask, with some degree of cynicism, whether the real driving force is genuine concern for suppressed Southeast Asian workers or pressure from domestic union interests to exclude cheaper imported goods.

Some argue that Mahathir's arguments go too far. One such critic, Gregory Andrews, responded to Mahathir's editorial and pointed out two considerations he had ignored: (1) "sound legal principles of personal freedom and property rights have an integral role in economic development;" and (2) "sound economic policies contribute more to economic development than either protectionism or resource exploitation." Ha-joon Chang has demonstrated that, "[a]lthough the constraint imposed by transnational corporations (TNCs) "on national industrial policy may be growing, it is nowhere near the point where a strategic industrial policy is impossible." For one thing, "despite the recent increases in their importance, TNCs do not have unambiguously superior bargaining power in all industries in relation to all countries." Moreover, "there is [still] a lot of room for maneuver for national governments."

II. The "Asian Values" Debate

Assuming a country still has room to assert its strategic policy against the onslaught of globalization, can a peculiarly Asian approach be articulated? If so, does this approach necessarily carry with it uniquely "Asian val-

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20. Gregory R. Andrews, Dubious, S. CHINA MORNING POST, Oct. 13, 1996, at 11 (letter to the Editor) ("For instance, the principles of intellectual property which Dr. Mahathir scorns are also one of the main forces behind the 'astonishing developments in science and technology' which Dr. Mahathir covets. Likewise, the expectation of debt repayment is what leads lenders to lend in the first place.").

21. Id. ("Policies which restrict the markets for foreign goods, or which use resources in an unsustainable manner, while possibly beneficial in the short run, are ultimately costly in the long term.").


23. Id.

24. Id. In addition, the paradox of simultaneous globalization and fragmentation has become a reality of the post-Cold War world. For Benjamin Barber's thoughtful analysis of the conflict between the globalizing force of consumerist capitalism and the fragmentary force of religious and tribal fundamentalism, see generally BENJAMIN BARBER, JIHAD VS. McWORLD (1995). Philip Nichols has considered the impact of this duality on the regulation of transnational bribery. See Philip M. Nichols, Regulating Transnational Bribery in Times of Globalization and Fragmentation, 24 YALE J. INT'L L. 257, 260 (1999). Others have argued that alongside globalization, tendencies persist toward the territorialization and reterritorialization of economic life, as well as the development of new organizing strategies by labor. See, e.g., Kevin R. Cox, Introduction to, SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL 1, 5 (Kevin R. Cox ed., 1997).
The arguments run both ways. The event that sparked the debate was "the signing of the Bangkok Declaration in April 1993 by a number of East and Southeast Asian states, including China, Malaysia, Indonesia, and Singapore." The signatories embraced the notion that "Asian states, because of uniquely Asian values and special historical circumstances, are justified in adopting an understanding of human rights and democracy that is fundamentally different from that prevailing in the West." Western criticisms, they contended, are "simply part of an attempt by Western countries to assert political and economic hegemony over Asia."

Western critics countered that "there is no such thing as 'Asian values,'" suggesting that "the Asian statesmen's challenge to the idea of universal human rights is simply an excuse for their own grave violations of human rights." Dismissing the notion of "Asian values" as "absurd," they point out that "Asia is one of the most diverse regions in the world in terms of culture, religion, ethnicity, and language." Whatever the outcome of this debate, "it may not be totally misguided to speak of general differences between Asian and Western cultural tendencies and dispositions." Further, given East Asia's remarkable record of high and sustained economic growth from 1965 into the 1990s, attained using many of the same policy instruments used by other developing countries, it seemed plausible to

25. See, e.g., Joseph Chan, Asian Values and Human Rights: An Alternative View, in Democracy in East Asia 28, 34 (Larry Diamond & Marc F. Plattner eds., 1998). Among the values frequently associated with the term are "respect for traditions and authority, strong family ties, reverence for education, and the willingness to work hard." Id.
26. The debate over "Asian Values" is not a new one. See Bilahari Kausikan, The "Asian Values" Debate: A View from Singapore, in Democracy in East Asia, supra note 26, at 17, 24. "In one form or another it has engaged intellectuals and governments in Asia for almost two centuries, ever since their first contacts with the West." Id.
27. Chan, supra note 26, at 28.
28. Id.
29. Id.
30. Id. at 28-29 ("[T]he so-called Asian conception of human rights is wrongheaded and lacking in intellectual credibility.").
31. Id. at 34.
32. Id. at 35 (emphasis in original).
33. See World Bank, The East Asian Miracle: Economic Growth and Public Policy 1 (1993). From 1965 to 1990 the twenty-three economies of East Asia grew faster than all other regions of the world. Most of this achievement is attributable to seemingly miraculous growth in just eight economies: Japan; the "Four Tigers"-Hong Kong, the Republic of Korea, Singapore, and Taiwan; China; and the three newly industrializing economies (NIEs) of Southeast Asia, Indonesia, Malaysia, and Thailand.
attribute Asia's greater success to its unique constellation of beliefs, habits or values. This inference motivated John Naisbitt to articulate "eight Asian megatrends that are reshaping the world."34

The Asian financial crisis of the late 1990s, however, seriously undermined any claims that Asian values were superior. A 75% drop in Asian asset values from June 1997 to September 1998 put a serious dent in Asians' confidence that they knew "the way."35 Reflecting the rush to a revisionist view of the Asian economic miracle, William Overholt of Banker's Trust asserted that Asian economic success had merely resulted from "the same things that drive growth everywhere: high investment rates, mainly though not entirely financed by high domestic saving; a rapidly improving level of education; and the transfer of large numbers of underemployed peasants into the modern sector."36 Paul Krugman's prescient characterization of Asia's "miracle" as a "myth" several years before the collapse of the region's currencies lent credence to his later observation that Asia's economic achievement had been "no miracle, if by a miracle we mean something inexplicable according to the usual laws of nature."37

Id.

34. See John Naisbitt, Megatrends Asia: Eight Asian Megatrends that Are Reshaping Our World 16 (1996). Naisbitt examined eight principal trends which would effectively shape Asia into a commonwealth of nations soon to rival the West: (1) "From Nation-States to Networks," (2) "From Traditions to Options," (3) "From Export-Led to Consumer-Driven," (4) "From Government-Controlled to Market-Driven," (5) "From Farms to Supercities," (6) "From Labor-Intensive to High Technology," (7) "From Male Dominance to the Emergence of Women," and (8) "From West to East." Id. at 14-16.


39. Id. Krugman's emphasis on the primacy of basic economic principles carries through to his analysis of the "new economy":
There is no question that Asia’s recent financial crises “ravaged the credibility of a supposedly distinctive East Asian, or Japanese, model of economic growth based on cooperation between conglomerates—Japan’s keiretsu, South Korea’s chaebol, Indonesia’s konglomerat—and astute government officials.”40 Rather, and particularly relevant to issues of corruption, “collapsing Asian markets revealed the crony capitalism beneath the surface of East Asia’s ‘developmental state.”41 Donald Emmerson’s comparison of the economic resilience of nine East Asian countries and the degree of political freedom enjoyed by their populations suggests that, although there is not a direct relationship in every case, “[o]ther things being equal, the economies best able to withstand the present crisis may prove to have been those with more political freedom.”42 Presumably, transparency of decision-making processes would go hand-in-hand with enhanced political freedom.

It should be noted that the same evidence is compatible with other hypotheses. For example, the fact that Northeast Asian economies tended to fare better than those of Southeast Asia may simply be a reflection of their distance from Thailand, where the crisis started.43 It could also implicate “the effectiveness of sheer wealth as a defense against attacks on a country’s markets.”44 Finally, a culturalist might note that:

In the view of many business and political leaders America has entered the era of the New Economy, in which traditional limits to economic expansion are no longer relevant. And because America has a New Economy and the rest of the world does not, it is once more indisputably number one, and the rest of the world must adopt its values and emulate its institutions if it wants to compete.

To anyone with a sense of history, this is all deeply worrying. If pride goeth before a fall, the United States has one heck of a come-uppance in store.


41. Id.
42. Emmerson, supra note 40, at 52. Another commentator noted that recently developed democratic institutions had helped Thailand and South Korea adjust to the crisis in a number of ways:

First, they facilitated a smooth transfer of power from a discredited set of politicians to a new group of government leaders. Second, democracy imposed mechanisms of participation, consultation, and bargaining, enabling policymakers to fashion the consensus needed to undertake the necessary policy adjustments decisively. Third, because democracy provides for institutionalized mechanisms of “voice,” the South Korean and Thai institutions obviated the need for riots, protests, and other kinds of disruptive actions by affected groups, and, furthermore, undercut support for such behavior by other groups in society.


43. See Emmerson, supra note 40, at 53.
44. Id. In support of the theory that such wealth may have shielded Northeast Asian economies from the full effects of the crisis, Emmerson observes the following:

[I]n 1996 each of the three northeast Asian economies that would turn out to be the most resilient—Japan, Taiwan, and Hong Kong—held more foreign exchange on reserve than any other economy [in the region]. Moreover, all the northeast Asian populations enjoyed higher average incomes than any of the Southeast Asians except in Singapore.
the five most resilient places on the list—Japan, Taiwan, Hong Kong, Singapore, and South Korea—were also those most indebted to China historically or demographically, that is, by tradition or migration. So although the crisis has buried the belief that Asian values guarantee economic success, the race to recover from the shocks of 1997-98 could resurrect a Confucian version of the same faith.\textsuperscript{45}

Cross-cultural management specialists have observed that, "[a]lthough national differences account for variations in the concepts of status, leadership and organisation, there is a clearly discernible 'eastern model' which is compatible with general Asian values."\textsuperscript{46} They argue that these "[c]ultural values dominate the structure, organisation and behaviour of eastern enterprises more than is the case in the West, in as much as deeply-rooted religious and philosophical beliefs impose near-irresistible codes of conduct."\textsuperscript{47}

What are the elements of this Confucian faith? The Confucian model, whether applied to corporations or civil service or governmental departments, strongly resembles family structure.

Confucianism, which took final shape in China in the twelfth century, designated family as the prototype of all social organisation. We are members of a group, not individuals. Stability of society is based on unequal relationships between people, as in a family. The hierarchies are father-son, older brother-younger brother, male-female, ruler-subject, senior friend-junior friend. Loyalty to the ruler, filial piety to one's father, right living, would lead to a harmonious social order based on strict ethical rules and headed up in a unified state, governed by men of education and superior ethical wisdom. Virtuous behaviour, protection of the weak, moderation, calmness and thrift were also prescribed.\textsuperscript{48}

In the corporate context, Confucian theory encourages "paternalistic attitudes to employees and their dependants, top-down obligations, bottom-up loyalty, obedience and blind faith."\textsuperscript{49} Networking is a natural element of "hierarchical, family-type" companies.\textsuperscript{50} Such organization also has a dis-

\begin{itemize}
\item \textsuperscript{45} Id.
\item \textsuperscript{46} RICHARD D. LEWIS, WHEN CULTURES COLLIDE: MANAGING SUCCESSFULLY ACROSS CULTURES 81 (1996).
\item \textsuperscript{47} Id.
\item \textsuperscript{48} Id.
\item \textsuperscript{49} Id. at 82.
\item \textsuperscript{50} Id. at 83. The significance of overseas Chinese networks and business linkages throughout Southeast Asia has received much attention; such organization has been seen as providing "a competitive edge for the overseas Chinese businessmen vis-à-vis their indigenous counterparts and hence a basis for capital accumulation and business expansion." Farid Harianto, Business Linkages and Chinese Entrepreneurs in Southeast Asia, in CULTURE AND ECONOMY: THE SHAPING OF CAPITALISM IN EASTERN ASIA 139 (Timothy Brook & Hy V. Luong eds., 1997). For other accounts of this phenomenon, see generally Jamie Mackie, Business Success Among Southeast Asian Chinese: The Role of Culture, Values, and Social Structures, in MARKET CULTURES: SOCIETY AND MORALITY IN THE NEW ASIAN CAPITALISMS 129 (Robert W. Hefner ed., 1998) (considering the impact of traditional Chinese values and culture on the growth of markets in mainland China); see also FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY 91-92 (1995) (discussing the significance of kinship ties in Chinese culture); BUSINESS NET-
Distinct impact on task orientation:

"Immediate objectives are not as clearly expressed as they would be in, for example, an American company. Long-term considerations take priority and the slow development of personal relationships, both internally and with customers, often blur real aims and intent.

Asian management, when organising activity, attaches tremendous importance to form, symbolism and gesture. The showing of respect, in speech and actions, is mandatory. There must be no loss of face either for oneself or one's opponent and as far as business partners are concerned, red carpet treatment, including lavish entertaining and gift giving, is imperative.\textsuperscript{51}

Similar concepts carry through to negotiation and contracting. In reflecting on his negotiation of deals in a Chinese business environment, an experienced commentator has noted,

The Chinese contract... embodied a principle which went far beyond the making of lasting commercial deals. It was about the importance of compromise as a prerequisite of progress. Both sides have to concede for both to win. It was about the need for trust and a belief in the future. Writ large, it was about sacrifice, the willingness to forego some present good to ward off future evil, or, more positively, it was about investment-spending now in order to gain later.\textsuperscript{51}

The Chinese contract... involves a major rethink of our cultural habits.\textsuperscript{51} The pursuit of self-interest has to be balanced... by 'sympathy', a fellow feeling for others which is... the real basis for moral behavior. Only if we are conditioned by this 'sympathy' will we want to take any risks with our fellow men and women, will we trust them farther than we can count them, or want to make life better for those we never meet.\textsuperscript{52}

III. The Case of China and Its Reforms

Many of the specific elements discussed above focus on the general importance of relationships in an Asian business environment.\textsuperscript{53} The Chinese word for informal relationships—guanxi—can also mean "connections."\textsuperscript{54} It is not unusual in Chinese enterprises for "unofficial channels or 'connections' [to be] used to achieve organisational aims and objectives by the dispensing and repayment of favours or patronage."\textsuperscript{55} Generally speaking, the practice of guanxi ("guanxiue")

involves the exchange of gifts, favors, and banquets; the cultivation of personal relationships and networks of mutual dependence; and the manufacturing of obligation and indebtedness. What informs these practices and

\textsuperscript{51} See supra notes 1-2 and accompanying text.
\textsuperscript{52} Id. ("Because of this, compared with managers of other countries, Chinese managers often pay more attention to personal relationships within the work environment than to the job at hand.").
\textsuperscript{53} WORKS AND ECONOMIC DEVELOPMENT IN EAST AND SOUTHEAST ASIA 4 (Gary Hamilton ed., 1991) (discussing the importance of Asian business networks).
their native descriptions is the conception of the primacy and binding power of personal relationships and their importance in meeting the needs and desires of everyday life.\textsuperscript{56} 

The practice of guanxi is a timeless underlying "cultural assumption shared by Chinese everywhere, on the mainland before and after the Communist Revolution of 1949, in Taiwan, and among overseas Chinese in Southeast Asia."\textsuperscript{57} It certainly has the capacity to further all the positive aspects of Confucian belief systems described above, and is consistent with the balancing of self-interest and sympathy exemplified by the Chinese contract. It embodies the "forms of decorum that were thought to embody sentiments of humane concern and respect for others" that are at the very core of Confucian tradition; "the practice of civility and mutual respect" encouraged by Confucian teaching was commonly regarded as a "humane" and superior alternative to the enforcement of laws on "unwilling or recalcitrant subjects."\textsuperscript{58}

However, as often occurs, there was a gap between belief systems and actual practice in traditional China. Clearly, "[n]o Confucian-oriented emperor who wished to assume a moral role as an exemplar of the officialdom and the people could afford to tolerate corruption."\textsuperscript{59} However, the low official salaries paid by the central government to district magistrates at the lowest rung of the Civil Service ladder were grossly inadequate to cover their heavy bureaucratic and personal expenses; as a result, virtually the entire Civil Service at the provincial level levied customary fees or surcharges, or both.\textsuperscript{60} “Viewed from this angle, it is no exaggeration to comment that the Chinese government functioned as a mechanism of inbuilt corruption.”\textsuperscript{61} This reflected a built-in tension of Confucian ideology, which “discouraged corruption by its emphasis on the moral values of

\begin{itemize}
\item \textsuperscript{56} See Mayfair Mei-hui Yang, Gifts, Favors, and Banquets: The Art of Social Relationships in China 6 (1994).
\item \textsuperscript{57} Id.
\item \textsuperscript{58} Wm. Theodore de Bary, Confucianism and Human Rights in China, in Democracy in East Asia, supra note 25, at 43.
\item \textsuperscript{59} Adam Y.C. Lui, Corruption in China During the Early Ch'ing Period 1644-1660, at 1-2 (1979).
\item \textsuperscript{60} See id. at 2-3.
\item \textsuperscript{61} Id. at 4. Local constituents' recognition that such additional customary fees and surcharges were in fact needed to maintain a functional government at the provincial level led to these fees being regarded as "socially sanctioned." A practice evolved by which they were actually discussed and determined by the local officials and the community leaders, and the agreed sum was usually within local financial capabilities to pay. \textit{See id.} at 6. 
\end{itemize}

This socially-sanctioned but extra-legal amount would then be reported to the immediate provincial seniors and through the hierarchal ladder to the governor-general or the governor concerned, who, however, would not report it to the Central Government. Thus while the Emperor still maintained his stand that any taking of money more than the official quota was an act of corruption (but closed his eyes to such activities, if they were not reported to him), the local authorities regarded the collection of customary dues/surcharges as part of their work. To them, as well as to the people, in general, corruption was obtaining from the people more than the sum agreed upon by local officials and failing to report it to the provincial headquarters. Usually this extra sum would be levied
the human character" but "also stressed the importance of human relationships."\footnote{2}

When the success of the Communist Revolution ushered in "New China" in 1949, a new sense of governmental rectitude and duty to the people emerged. Doak Barnett described the leaders of the Communist Party in those early years as "a remarkable group of men. Intellectually tough, they have purpose and determination, are unswerving in their devotion to their beliefs, and are incorruptible to a degree previously unknown in modern China."\footnote{3} By the end of the Maoist era in 1976, however, the "Great Leap Forward" and "Cultural Revolution" had severely undermined the integrity and legitimacy of the "massive institutional structures—party, government, army"—Mao had created to run China.\footnote{4}

The Third Plenary Session of the 11th Central Committee in December 1978 made the strategic decision to shift the focus of work to "socialist modernization," ushering in the reform period which has been proceeding now for more than twenty years.\footnote{5} Convinced that excessive bureaucratic control stifled change and efficiency, Deng Xiaoping thought it necessary to decentralize power within the state and to permit at least part of the Chinese economy to develop outside the noncompetitive state sector of the economy. The latter would force the state sector itself to become more efficient and dynamic. It would require far-reaching changes in employment practices, the legal system, property rights, social policy, the incentive system, and so forth.\footnote{6}

In line with his deeply held authoritarian views concerning China, however, Deng also felt that "even with economic reform and a [resulting] wealthier society, China would have to be ruled solely by the [Chinese Communist Party]."\footnote{7} The coupling of continued Communist Party primacy with the evolution of a socialist market economy with Chinese char-

\begin{itemize}
\item in an arbitrary and stealthy way to be pocketed by the corrupt persons concerned. \ldots
\item The provincial senior officials (prefects, intendants, governors, governors-general) knew the district magistrates personally and were required to evaluate their performances regularly. If a magistrate practiced private corruption, it was not too difficult for them to learn about it, but whether they took action to impeach their subordinates was a big question mark. These provincial seniors might have participated in the sharing of grafts. In this case, they tended to protect their subordinates from being impeached by other officials.
\end{itemize}

\footnote{62. Id. at 6-8.}
\footnote{63. A. Doak Barnett, Communist China: The Early Years, 1949-55, 8 (1964).}
\footnote{64. Kenneth Lieberthal, Governing China: From Revolution Through Reform 120 (1995).}
\footnote{66. Lieberthal, supra note 64, at 127.}
\footnote{67. Id.}
acteristics has produced some troublesome tensions and contradictions. For one thing, "the pervasive involvement of government in the economy is matched by the relatively weak record in institutionalizing some of the key roles that government needs to play in a market economy," thereby opening the door to corrupt practices.68 "Official entrepreneurship" has been pervasive,69 and "the loss of financial control over SOEs [State-owned enterprises] by the branch ministries represents de facto privatization of SOE income streams" by enterprise managers and "asset-stripping" totaling "about 50 billion yuan [annually] since the early 1980s."70 "The corruption of those in power, combined with the blatant materialism that the reformers have nurtured, sap the moral underpinnings of state power."71

Mayfair Yang has observed how the Party, in apparent recognition of the challenge to its legitimacy, has tended "to portray guanxixue only in terms of official corruption and bribery."72 She cites a 1981 public speech by Zhao Ziyang criticizing officials in charge of economic activities for taking advantage of opportunities provided by the reforms to use their office as a means for extracting benefits for themselves:

As a result of the ten years of internal disruption, our fine tradition has been seriously damaged. Old practices and ways of thinking left over from the old society have been resurrected. Recently in the economic sphere of our soci-

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68. Barry Naughton, The Pattern and Logic of China's Economic Reform, in CHINA'S ECONOMIC FUTURE: CHALLENGES TO U.S. POLICY 3 (Joint Econ. Comm., U.S. Congress, ed. 1997) ("Weak institutionalization and pervasive government involvement in business open the door to corrupt practices.").

69. Kenneth Lieberthal, Politics and Economics in China, in CHINA'S ECONOMIC FUTURE, supra note 68, at 13. Lieberthal has described the phenomenon as follows:

Government and communist party cadres take advantage of their official positions to demand bribes, to place their relatives in lucrative positions, to impose illegal "fees" for performing regular duties such as issuing licenses and approvals, and to engage in other forms of corrupt behavior. Corruption has reached a level that has provoked widespread cynicism and anger among China's citizens, thus weakening the ties that bind the polity together even as it strengthens the resolve of many officials to maintain the current system largely intact.

Id. at 13. A recent study of foreign enterprises doing business in China defines corruption as a generic term for a weak array of issues dealt with by foreign enterprises in developing markets such as China:

It might encompass bribery, theft, bid rigging, intellectual piracy, and coercive collection engaged in by private parties, public officials at any level, or expatriate businessmen and firms. The universe of the possibly corrupt ranges from the clearly corrupt (bribes to get customs duties lowered) to the likely corrupt ("rep fees" to facilitate large government procurement contracts) to the murky (gift giving and extravagant entertainment for official customers or children of high-level officials).


70. Wing Thye Woo, Crises and Institutional Evolution in China's Industrial Sector, in CHINA'S ECONOMIC FUTURE, supra note 68, at 165.

71. Lieberthal, supra note 69, at 13 ("Because in China the state has always been expected to provide the moral framework for society as a whole, the failure to articulate and sustain a moral rationale for the current system is potentially a very serious matter.").

72. YANG, supra note 56, at 62.
ety have appeared the abominable phenomena of banqueting and gift-giving, pulling guanxi, seeking "commissions," going through the back door, and engaging in extravagant and wasteful behavior. In a few economic units, economic management organizations and their responsible cadres are not only so familiar with this behavior that they do not bother to put a stop to it, but even go along with it and sink into the mire. This sort of phenomenon has already seriously corrupted the ranks of our cadres and workers and has given rise to intense discontent amongst the masses.73

Yang finds representative value in this passage "in that it shows how in official discourse, the art of guanxi is predominately understood as a negative phenomenon, the corruption of officialdom."74

The Chinese reforms, however, are a dynamic, ongoing process, and they have produced "an impressive number of laws and regulations aimed at supporting the transition towards a socialist market economy" in the areas of "contract, property and foreign business relations."75 The fact that their enforcement has been spotty76 should come as no surprise in view of the Confucian tradition's non-legalist foundations and Maoist antipathy toward law in its quest to reduce bureaucratism and harness the energy of permanent revolutionary fervor. By 1995, however, Douglas Guthrie produced evidence to support the argument that "powerful economic actors often pay more and more attention to the laws, rules and regulations that are part of the emerging rational-legal system which is being constructed by the Chinese state."77 This view represents a shift from the arguments a few years earlier that "social networks and the use of these networks to exchange gifts and favors (guanxi xue or guanxi practice) are increasing in importance in China's transition."78

[G]uanxi is often embraced as an important part of business in a market economy, a clear distinction is made between "establishing good business relations" (gaohao shangye guanxi) and using social relations to take care of procedures (kao guanxi xue ban shouxu) in economic and political situations. The latter, which is considered corrupt—"backdoor" (houmen) practice—is increasingly taboo for many large urban industrial firms.79

As a result, "[m]any managers of large industrial organizations increasingly view guanxi practice as unnecessary and dangerous in light of new regula-

73. Id.
76. See id. (stating that "enforcement remains a serious problem").
78. Id. In his first footnote, Guthrie cites a number of studies suggesting the increased importance of guanxi in the transition. Id. at 254-55 n.1.
79. Id. at 255.
tions and prohibitions against such approaches to official procedures.80

Evidence in another study conducted contemporaneously with that supporting Guthrie's conclusions suggests a continued predominance of act utilitarianism over rule utilitarianism in China, compared to South Korea, Mexico, and the United States.81 Even that study, however, suggests links between managers' ethical responses and varying stages of their countries' cultural and economic development. The study suggests that "the strong capitalist economy that has emerged recently in South Korea is contributing to the development of an ethical decision pattern similar to that of the Western countries, albeit somewhat restrained by the traditions of Eastern cultural values."82 The study attributes the unusual prominence of act utilitarianism and weakness of rule utilitarianism in China to "the current transition from central planning to a market economy," noting that "[f]or many people in China, this process has undermined traditional cultural values as well as those of communist socialism."83 The study also observes the need for "[m]ore extrinsic analysis of the process of values change and its implications for business ethics in China . . . with particular attention to the effects of temporal change."84 An earlier "snapshot" generalization about acceptable ethical behavior in China may or may not lead to appropriate conclusions concerning conduct in subsequent transactions.

IV. Back to Globalization

Having first discussed broad issues of globalization earlier in this paper and, second, conducted a more microscopic examination of the impact of economic reform on Chinese conduct, let us come full circle and return to the impact of globalization. The accelerating rate of globalization has been accompanied by heightened awareness of differing attributes and values with regard to bribery, corruption and business ethics in general. In this connection, globalization has sparked a debate over whether extraterritorial restrictions on bribery are a viable and desirable international policy for the 21st century, or whether they represent a new-form of cultural imperialism. A recent Colloquy in the Yale Journal of International Law posed two sides of the issue.85 Steve Salbu suggests that, while fostering community in the "global village" is a desirable goal, pluralistic attitudes

80. Id. Given the ongoing evolution of China's transition, Guthrie does not find it surprising that "changes surrounding guanxi vary with a firm's position in the state administrative hierarchy; attitudes toward guanxi also vary with a number of organizational factors ranging from the background of the firm's general manager to whether or not the organization has a joint venture with a foreign company." Id. at 255-56.
81. See John M. Etheredge & Carolyn B. Erdener, Ethical Decision Patterns in Four Countries: Contrasting Theoretical Perspectives, in INTERNATIONAL BUSINESS ETHICS: CHALLENGES AND APPROACHES 61 (Georges Enderle ed., 1999) ("[N]on-consequentialist orientation, emphasizing human rights and individual justice, is also relatively important [for China], although at a much lower level than in the two Western societies.").
82. Id.
83. Id. at 62.
84. Id. (emphasis added).
across the globe make assessing motives across a cultural divide very difficult, with significant risk of ethnocentrism.\textsuperscript{86} Philip Nichols takes the contrasting position that host country regulation and voluntary codes have not been able to completely reach transnational bribery, which is seen as harmful and increasing; home country regulation is therefore required for effective control.\textsuperscript{87}

It is important to note that this debate began to emerge when only one country, the United States, had adopted anything like the Foreign Corrupt Practices Act\textsuperscript{88} ("FCPA"). If not cultural imperialism, extraterritorial enforcement of the FCPA could at the very least be criticized as an exercise of American hegemony. However, hegemonic influence is not always necessarily evil, or even bad. Lea Brilmayer suggests that consent can be obtained for the exercise of post-Cold War American hegemony as a form of international governance and demonstrates how further justification for hegemonic governance can be derived from basic universal norms of human rights.\textsuperscript{89} One might see a parallel here to Donaldson and Dunfee's "hypernorms," universal principles by which authentic ethical norms of diverse communities are bounded.\textsuperscript{90} Hegemonic stability theory requires the existence of a hegemon for the creation and maintenance of open trade regimes.\textsuperscript{91}

It is also important to note that the FCPA is no longer solitary or unique. Global momentum has grown in recent years toward the development and implementation of legal regimes to deter corrupt practices; these efforts to deter corrupt practices in the conduct of international business

\textsuperscript{86} See id. at 226.


\textsuperscript{89} See Lea Brilmayer, American Hegemony: Political Morality in a One-Super-Power World 66-90, 91-111, 112-40 (1994) (discussing at length contemporaneous consent, ex ante consent, and hypothetical consent). Brilmayer identifies three bases for consent: (1) contemporaneous consent, whereby subordinate states have acquiesced. In this way, hegemonic power is obtained by persuasion and inducement, not by coercion and threats, see id. at 66-90; (2) ex ante consent, whereby hegemony is exercised in accordance with international law, see id. at 91-111; (3) hypothetical consent, which may result when a hegemon facilitates the provision of public goods that would not be produced in its absence, see id. at 112-40.


\textsuperscript{91} See Anders Ahnlid, Comparing GATT and GATS: Regime Creation Under and After Hegemony, 3 Rev. Int'l. Pol. Econ. 65 (1996) ("According to hegemonic stability theory the creation and maintenance of open trade regimes require the existence of a hegemon.").
have taken place in both international and domestic fora. Clearly, the pace of harmonization of domestic institutions, policies and practices addressing bribery and corruption across trading nations is beginning to quicken as globalization and a freer trade environment continue. If the GATT disciplines of Most Favored Nation and National Treatment can be extended to services, it may be logical to employ the World Trade Organization’s enhanced enforcement mechanism to address transnational bribery as well.

With respect to China, WTO membership may be a more effective deterrent to official corruption and bribe-taking than the Communist Party’s much publicized campaigns against it. Kenneth Lieberthal has pointed out how China’s corruption “thrives on the fact that the Chinese system is currently semireformed, neither subject to a disciplined plan nor driven primarily by the market via activities constrained by law.” Most commentators believe that China’s accession to the WTO will reinforce

94. A good case for this position is articulated in Philip M. Nichols, Outlawing Transnational Bribery Through the World Trade Organization, 28 LAW & POL’Y INT’L BUS. 310 (1997).
95. In the anticorruption campaign of 1990-92, for example, “707,000 cases were investigated, and more than 600,000 Party cadres were punished, including 16,005 cadres above the rank of county magistrate.” SHIPING ZHENG, PARTY VS. STATE IN POST-1949 CHINA: THE INSTITUTIONAL DILEMMA 208 (1997). “Although serious warnings against corruption are reported almost every day in the official newspaper, corruption in China seems to have continued unabated. The reason is that the widespread and epidemic official corruption in China is structural rather than personal.” Id. at 209. Kenneth Lieberthal explains the phenomenon as follows:

Corruption is a function of both opportunity and lack of restraint. The restraints on such activities have eroded as the guiding ideology of the country has shifted from one of social purification to one of unvarnished pursuit of income. Essentially, the reformers have created a situation in which a rising standard of living provides the political underpinning of the regime. . . .

The economic reform effort has thus led to deeply rooted corruption of the political system.

96. Id. at 269.
domestic reform. The market opening commitments China has made will force even the SOEs to adhere more closely to market forces. All Chinese enterprises will have to upgrade and ensure that their products meet global standards. Not only higher quality products but also "financial systems that operate in accordance with international practices and a corporate culture open to outside influences" will be the key ingredients for competitive success in such an environment.

Conclusion

The impact of globalization on Asian development, and the case of China's economic reform experience in particular, initially appear to give a mixed message about the effectiveness of extraterritorial restrictions on bribery. Economic development has flourished in East and Southeast Asia since World War II in a business and cultural environment that is markedly different from that prevailing in the West. The Asian values debate suggested alternative routes to growth with due consideration for local customs and belief systems. These factors must not be ignored in determining what constitutes ethical conduct. C.K. Prahalad and Kenneth Lieberthal have demonstrated that, while multinationals will change life in big emerging markets, the opposite is also true:

Many corporations . . . are beginning to see that the opportunity that big emerging markets represent will demand a new way of thinking. Success will require more than simply developing greater cultural sensitivity. The more we understand the nature of these markets, the more we believe that multinationals will have to rethink and reconfigure every element of their business models.

However, the region's rapid development can also be attributed to global phenomena and how effectively it has adapted to dispersed manufacturing systems. Following chronologically upon state-directed pol-


99. Id.

100. C.K. Prahalad & Kenneth Lieberthal, The End of Corporate Imperialism, HARV. BUS. REV., July-Aug. 1998, at 70. Their analysis focuses on the big emerging markets of China, India, Indonesia, and Brazil. See id. at 69. Another study focusing specifically on China concluded that foreign joint-venture policies and practices "tend to reflect the parent company's corporate culture and strategic imperatives, home-country cultural beliefs and social values, and CEO philosophies," but that "success in the PRC often depends on a certain degree of adaptation to Chinese conditions and practices." John Z. Yang et al., When MNCs Come to China, Who Changes Whom?, CHINA BUS. REV., Mar.-Apr. 1999, at 16.

cies of import substitution and export promotion, coupled with promotion of foreign direct investment and high domestic savings rates, development must now proceed in an environment of restructured global competition in which companies must “focus on their core activities and outsource the rest.” This evolution necessitates increased integration into global systems; and with that will come the need to adhere to the rules of those systems. Over time, it may be that problems of extraterritorial enforcement of restrictions against bribery will diminish as harmonized regulations emerge to supplant them. The trick will be to ensure the fairness of the process by which such rules evolve, advancing basic principles of economic efficiency while preserving the richness of diversity and cultural difference that make international business so endlessly fascinating.

102. See THE EAST ASIAN MIRACLE, supra note 33; see generally CHALMERS JOHNSON, M I T I AND THE JAPANESE MIRACLE (1982); ROBERT WADE, GOVERNING THE MARKET: ECONOMIC THEORY AND THE ROLE OF GOVERNMENT IN EAST ASIAN INDUSTRIALIZATION (1990). The Asian development model has by now become a very familiar one.

103. Magretta, supra note 101, at 103. Robert Reich explains the phenomenon as follows:

Once upon a time, products had distinct national identities. Regardless of how many international borders they crossed, their country of origin . . . was never in doubt. Products were manufactured in one place because economies of scale necessitated a central location.

But in the emerging high-value economy, quantities can be produced efficiently in many different locations and combined in all sorts of ways to serve customer needs in many places . . . .

What’s traded between nations is less often finished goods than specialized research, design, fabrication, management, marketing, advertising, consulting, financial and legal services, as well as components and materials.
