Transparency: A Necessary First Step toward an Ethic of Finance

Stephan Rothlin, Dennis McCann, and Thomas Myers
Rothlin International Management Consulting
Beijing and Hong Kong

The demand for greater transparency is a hallmark of today's efforts to promote international business ethics, especially in global financial markets. But what is transparency? Is it a moral absolute? If not, what are its limits? If it is a means, what ends must it serve? Is it possible to have too much as well as too little transparency, especially as it is institutionalized in financial markets? The following is an attempt to address these questions, in light of a particular case study, namely, the controversies surrounding Alibaba Group Holdings and its IPO applications first in Hong Kong (HKSE) and then in New York (NYSE). The authors conclude that, in promoting the Alibaba IPO and related ventures, Jack Ma asked for the trust of investors and other stakeholders, without achieving a robust transparency that would clearly warrant that trust. The authors are concerned to integrate legitimate demands for transparency into an ethic of finance that, while respecting Asian cultural values, also facilitates Asian business development internationally.

Keywords: accountability, Alibaba IPO, asymmetrical relationships, disclosure rules, guanxixue, investor rights and responsibilities, reciprocity, social capital, transparency, trust

INTRODUCTION

An underlying cause of the crisis that rattled world financial markets in 2008 was the deterioration of trust—or if you will, the erosion of social capital—necessary for financial institutions to function properly. The loss of trust, we believe, was the result of the collective sabotage of basic standards of transparency tolerated, if not actually encouraged, by the relaxation of the financial regulatory schemes that had emerged in response to the Great Depression (e.g., Glass-Steagal Act). To be sure, the relaxation of these standards was promoted, at one point, as necessary to "stabilize" financial markets in the aftermath of 9-11. But once the regulations were relaxed—a process that had begun well before 9-11—all too many in the financial community became indifferent to the systemic need for accountability through transparency so long as they continued to earn high returns through a variety of new and mostly unregulated financial instruments.

As Wall Street's increasingly risky ventures culminated in an inferno of predatory lending and other irresponsible practices, transparency remained relatively unknown, or untried, in Asian financial circles. While many Asian institutions managed to evade the worst consequences of the financial crisis, some began to feel pressure from the public at large over their lack of transparency. Suspicions grew that major banks in Hong Kong, for example, were caught in cover-ups of their own involvement in predatory practices. Recall that the original Occupy Central protests[1] in Hong Kong were galvanized by the activities of the HSBC as well as Hang Seng Bank in deliberately marketing toxic assets, created as part of Wall Street's innovative investment schemes. The need to restore trust in the financial markets therefore seems universal and is not simply a conundrum for Wall Street.

If this need is to be met, a restoration of the public's trust in financial markets must be achieved, which can only result from the development of new standards of transparency and accountability. But how is that to be done? This is the argument of our article: We begin with a case study on the controversies surrounding the Alibaba IPO, since these raise questions about appropriate standards of transparency in businesses whose shares are publicly traded. Jack Ma, Alibaba's founder, has also portrayed himself as not only committed to high standards of business ethics but also as a "Confucian entrepreneur", a living witness to the traditions of Confucian ethics in business.[2] We need to examine critically Ma's claims to moral leadership. Do his practices measure up to the standards of transparency and accountability required to sustain the trust of his various stakeholders?

A useful place to begin may be to explore the very notion of transparency, highlighting its nature and limits, as well as its historic origins and development. In order to establish the indispensable role of transparency, especially in a globalized marketplace, we go on to examine a range of cases in which transparency is sabotaged, through either excess or defect. We will argue that, since transparency is merely a means to an end—namely, the establishment of sustainable relationships of trust—it is possible to have both too little and too much of it. Finally, in light of Jack Ma's own success in developing a reliable ecommerce platform, we hope to show how transparency can be embraced as a universal value and integrated into Asian business practices.

THE ALIBABA IPO: GOING ALONG FOR THE RIDE?

Despite the apparent initial success of the Alibaba IPO on the New York Stock Exchange[3], in the year or more since then, Alibaba has remained controversial in light of certain allegations regarding (1) Alibaba's failure to monitor its Taobao marketing platform for fraudulent activity, that is, Alibaba's failure to control, if not eliminate trafficking in counterfeit merchandise; (2) unresolved confusion over the relationship of Alipay, the online payment platform, with its parent company, Alibaba; and (3) the nature of the firm's corporate governance structure and its compliance with PRC regulations regarding foreign ownership of Chinese companies. Each of these allegations deserves a closer look, if we are to understand the challenge of sustaining trust through increased accountability and transparency.

1. Problems with Taobao: The allegations regarding fraudulent activity on the Taobao platform involve not just negligence but also corruption. Alibaba managers are alleged to have taken bribes in order to certify the legitimacy of vendors and their merchandise for sale on the Taobao platform[4]. While Alibaba has promised vigorous action to clean up the corruption, the Chinese government's State Administration for Industry and Commerce (SAIC) issued a report criticizing the firm's practices. The SAIC report was challenged by Alibaba for its methodology and bias, and after a meeting with Jack Ma, the agency withdrew the document, while also declaring that Alibaba was making "good efforts in safeguarding consumer interests". Nevertheless, international agencies representing firms that have been the victims of counterfeit production sold on Taobao—for example, the American Apparel & Footwear Association (AAFA)—have continued their protests and sought to

have Alibaba placed on the US Trade Representative's "Notorious Markets List"[5] for its failure to address the problem. Clearly, there is no trust between Alibaba and the AAFA, who protested the alleged lack of transparency in Alibaba's dealings not only with Taobao but also with the agency (SAIC) that is supposed to be regulating its activities.

2. Paying for Alipay:[6] The agency that Alibaba established to facilitate online payments on its various platforms is now known as Alipay, which has become extraordinarily successful in its own right. As Alibaba was in the initial phases of its rapid expansion, it persuaded foreign investors in 2005, notably Yahoo—as well as the Japanese firm Softbank—to provide the lion's share of the capital needed to fund Alipay, in exchange for seats on the board. At that time, Yahoo acquired a 40% stake in the Alibaba Group. Later in 2010, the People's Bank of China (PBoC) issued new rules for such third-party online payment companies, requiring their licensing. Although the regulations did not directly target foreign ownership of such businesses, in 2011, Jack Ma announced that Alipay would be spun off into a separate company, claiming that it was required by the new rules. His ownership stake in the new Alipay was set at 46%. Yahoo was not informed of the spin-off until 5 weeks after it happened, and when it was so informed, the announcement occasioned a 12% drop in the value of Yahoo's shares. The prospectus for the Alibaba IPO makes confusing reference to this set of events, and the issue remains unclear, with Jack Ma apparently promising to reduce his stake in the new Alipay company (Small and Micro Financial Services Company — SMFSC), and have it listed in a planned, exclusively Chinese IPO. The lack of transparency in the Alipay spin-off meant that, at least in the short-term, Yahoo—one of Alibaba's senior partners—felt that it had been blindsided, unable to protect itself or the interests of its shareholders. Eventually, however, Yahoo made out very well by sticking with Alibaba, but at that time, it was left with little or no way to manage its partnership.

3. What's Disclosed and What's Not in the Alibaba IPO: That Jack Ma's activities sometimes provoked accusations involving conflict of interest, as in such deals as these, ultimately raises questions about the Alibaba Group's corporate governance structure. Were Alibaba's accountability to its investors structured conventionally, investors could raise questions

> about such deals through the company's Board of Directors. But Alibaba's corporate structure involves both a VIE (a "variable interest entity") consisting of the firm's actual enterprises—and a WFOE (a "wholly foreign-owned enterprise"), which in this case is a holding company through which investors may receive profits from the VIE's activities but have no direct control over it.[7] The Alibaba IPO undertaken at the NYSE sold shares in a Cayman Islands entity that is the holding company or WFOE. This means that the Alibaba Group in whose name the NYSE IPO was transacted is a WFOE, which provides capital funding for Alibaba's further development in exchange for a contractual promise that some portion of the VIE's equity interest—the profits from its businesses—will be distributed through the WFOE to its shareholders. While the VIE/WFOE structure is complicated, it clearly indicates that those who invest in the Alibaba IPO cannot expect to exercise direct control or normal oversight over the activities of Alibaba's actual businesses. They are limited to a share in whatever profits (or losses) are transferred from the VIE to the WFOE.

Needless to say, the corporate governance structure for the Alibaba Group remains both controversial and opaque. On the one hand, there is concern that the PRC regulatory authorities might crack down on such VIE/WFOE structures, rejecting them as an attempt to evade restrictions on foreign ownership of businesses operating in China. If the regulatory authorities were to reject the Alibaba Group's governance structure, it is anyone's guess what that would do to the value of the shares sold in the IPO. On the other hand, the decoupling of shareholding from the normal rights and responsibilities of business ownership undermines conventional standards of accountability and transparency, leaving disenchanted WFOE investors with no recourse except to sell their shares and move on. In effect, the Alibaba IPO investors are left with the choice of trusting Jack Ma and his leadership team, or else. They must trust but without any realistic hope of verifying independently the accounts that will be made to them, as the businesses develop.[8]

A year earlier, the Hong Kong Stock Exchange (HKSE) had rejected the Alibaba Group's attempt to do the IPO in its market but for reasons indicating a different problem of transparency. Although the HKSE was not enthusiastic about the VIE/WFOE structure, it turned down the IPO because the two-tiered governance structure specific to the WFOE runs contrary to the exchange's rules. This arrangement enabled the existing management of the Alibaba Group—Jack Ma and some 28 partners—to name a majority of Board Members in spite of the fact that the partners would hold only a minority of the shares in the WFOE. The HKSE observed that this arrangement contradicted its "one shareholder, one vote" rule, and it would not make an exception for the Alibaba Group since this might cast doubt upon its commitment to the rule of law.[9] When the NYSE accepted the IPO that the HKSE had refused and along with it the WFOE's two-tiered governance structure, it looked as if Hong Kong's principled commitment to the rule of law had triumphed over the kind of greed that Wall Street accepted as part of "business as usual".

Since both exchanges, in theory, are committed to protecting the interests of investors, how can their different rulings be understood, if not on moralistic grounds? At bottom, they concern two different approaches to transparency and accountability.[10] The NYSE assumes that current disclosure requirements are sufficient to ensure transparency, in a situation where investors can always sue the firm if those requirements are ignored or violated. The HKSE, on the other hand, operates in a business culture, as Stephan Mulrenan pointed out, that is "dominated by family run businesses and tycoons and has a higher-than-usual ratio of retail investor participation". According to Mulrenan, "its one-share-one-vote guarantee [is] designed to protect retail investor interests". If accountability is to be ensured—given the business culture of Hong Kong, where transparency is more apparent than real—it must come through the rigorous enforcement of regulatory requirements, such as "one-share-one-vote". Though the HKSE itself tried to ease this rule in order to facilitate the Alibaba IPO, the Securities and Futures Commission (SFC)—Hong Kong's financial regulator—refused, and Jack Ma understandably took his business elsewhere.

The divergence between the NYSE's decision and that of the HKSE should not be overdramatized, as if the NYSE is merely running a casino and the HKSE is the only market concerned with protecting investors. A careful reading of the prospectus that the Alibaba Group issued for its NYSE IPO indicates no attempt to cover up the nature of the company's governance structure or to hide the risks involved in the Alibaba Group's business plan going forward. These things are stated clearly and listed in several pages that seem likely to exhaust readers, even potential investors. If "Caveat Emptor" still applies generally to business, then investors have no one to blame but themselves for failing to do due diligence in assessing the risks involved in the Alibaba IPO. Everything is hidden in plain sight, thus leaving investors with a formal transparency in which Alibaba's risks are described generally but not weighed according to their relative importance. Lacking robust transparency in which the risks are exposed to realistic evaluation, investors must content themselves with Jack Ma's personal appeal for their trust. He should be trusted to perform well on their behalf because his efforts have already been crowned with extraordinary success. The formal transparency required by SEC rules for IPO filings may have been fulfilled. But left unfulfilled is the kind of robust transparency that could be ensured by an open governance structure. The contrast between formal and robust transparency reflected in the diverging decisions of the exchange regulators in New York and Hong Kong regarding the Alibaba IPO gives us one more reason to probe more deeply the nature of transparency, its limits, and possibilities.

TRANSPARENCY: WHAT IT IS AND WHY IT CANNOT BE FAKED

Transparency, first of all, is a metaphor. If is living rather than dead, it should challenge us to do some fresh thinking.[11] Like a looking glass transparency allows us to see through something, in order to obtain better information, for the sake of greater clarity. Transparency is like the mirror in a telescope or a microscope. It enables the viewer to capture whatever light illuminating the object under investigation so that its specific features can be identified and understood. One thinks of Galileo and his telescope aimed at the moon or nearby planets. One thinks of van Leeuwenhoek and his breakthroughs in the study of microorganisms.

Transparency, as it is understood today in relation to business and other social organizations, emerged from early modern Europe's fascination with the natural sciences, and the expectation that the clarity achieved in them through technologically enhanced capacities for precision in measurement could also be achieved in the management of social institutions, such as the State, the Church, and other associations that constitute civil society. The European Enlightenment proposed the idea of a rational society, that is, one in which the standards of transparency developed in the natural sciences could be extended to the operations of society as a whole, thus enabling the triumph of democracy and human rights and the emancipation of the productive capacities of all peoples.[12] Transparency, in short, stood at the core of the European Enlightenment's social vision, the indispensable precondition for establishing a rational society, that is, one in which the public sphere would be governed by a genuinely rational consensus based upon a generalizable interest in human emancipation or freedom with justice for all.

As the history of the French Revolution, and all subsequent revolutionary movements up to and including the recent "Arab Spring" have shown, the desire for transparency far exceeds anyone's capacity to achieve it. Human beings are never fully transparent (Gadamer, 1989). Whatever reflections we do inevitably generate distortions, the creation of blind spots, and the proliferation of obscurities along with whatever clarity we are able to achieve. The metaphor of transparency thus has its limits when it comes to persons and their social interactions. Neither we are transparent to ourselves nor do our attempts at communicating with others ever yield the kind of transparency that the European Enlightenment hoped to achieve in the public sphere.

A realistic analysis of communicative interactions among persons suggests that, whenever we attempt to make something transparent—including ourselves—we are also involved in making other things opaque. For every successful disclosure of one thing, there is an overshadowing of something else. In revealing, we conceal.

Even numbers are never fully transparent; they must be interpreted, if they are to communicate meaning to another. The dialectical nature of our attempts to discover and disclose truth need not be understood as evidence of immorality or human depravity, as if the limits to transparency were simply a reflection of willful secrecy or the intent to deceive. We are finite beings, who can never become fully transparent, at least not in this world, if not in the next. Given the impossibility of achieving total transparency, should we abandon the attempt altogether? There is no need to go that far. What we must do instead is recognize the limits to transparency, which means respecting the diversity of human cultures and societies, in which the ongoing dialectic of disclosure and secrecy unfolds in many different ways, each of which is worthy of consideration and respect.

Such philosophical reflections may help us to understand both the possibilities and limits of transparency specifically in business transactions. The GAAP rules, for example, are meant to achieve accountability through the enforcement of common rules of disclosure or corporate transparency. But as anyone who has ever worked with them in a business must know, GAAP rules must be interpreted, and they allow a skilled interpreter—usually a professional accountant—considerable leeway in determining what is and is not to be disclosed, when it is disclosed, to whom and for what purpose(s). The discretion exercised by professional accountants does not mean that GAAP rules can be used to deceive others (by lying, cheating, or stealing) or deliberately to misrepresent materially significant information. Nevertheless, they do provide a variety of options on how to present the truth, transforming it into information that addresses the client's need to communicate with those to whom his or her business is accountable, namely, its stakeholders.

The normative ideal of transparency, then, must fulfill its limited purpose in a variety of contexts. If it is not a moral absolute demanding compliance in all interactions within the public sphere, what can we reasonably expect from it? First of all, transparency is a means to an end, not an end in itself. That end can be defined as the establishment of trust, one type of which is indicated in the term usually associated with transparency, namely, accountability. Merely formal transparency, such as that offered in the Alibaba IPO prospectus, may comply with the standards of the SEC regulating the NYSE; but it is unlikely to create the kind of trust that flows from genuine and open accountability. How then would robust transparency be more likely to generate trust and accountability?

Ethical reflection on the nature of transparency—namely, that transparency is not an end in itself but a means and therefore subject to all the cautions built in to an ethic of responsibility—enables us to determine a Golden Mean in transparency intending, if you will, a "Goldilocks standard" of not too much and not too little, neither excess nor defect. The question, ethically considered, then is not whether transparency but how much transparency, for what purpose, for what set of stakeholders each with distinct claims to full disclosure.

In the case of the Alibaba IPO, for example, if I am an investor who receives a prospectus inviting me to become a shareholder, I have a right to know what is being done by management with my funds, a right to review management's decisions so that I as an owner (shareholder) may participate in the governance of our company.[13] What I need to know, in order to act responsibly as an owner, may be different from what the news media needs to know in order to report on our company's progress, or what government regulatory agencies need to know in order to verify that our company is operating within the rule of law that it is their responsibility to enforce. A degree of transparency is owed to each of these stakeholder groups so that they can carry out their responsibilities in trust and confidence. But that does not mean that the news media or the government needs to know or has a right to know everything that the shareholders—or their representatives on the Board of Directors—as well as top management should know. The actual practice of transparency requires the wisdom that we identify with integrity or moral leadership, particularly, the virtues of prudence and justice (and of course their equivalents in Confucian ethics)[14] that enable a responsible entrepreneur to discern what should and should not be disclosed, what should and should not remain hidden; all of which is governed by the need to establish appropriate levels of trust and accountability, without which markets cannot function properly.

If transparency is to go beyond formal compliance and move toward something more robust, we may have to outgrow the metaphors with which it was originally conceived in the European Enlightenment. If transparency is a means to an end, and not an end in itself, we must get clear about what that end really is, namely, the achievement of trust through truthfulness, signaled through gestures of reciprocity or mutual respect. Given the asymmetries normally encountered in human relationships,[15] especially in the relationships between a business and its diverse stakeholders, genuine moral leadership entails an anticipation of the needs of others (Levinas) whose satisfaction establishes conditions of mutual empowerment. The end, in short, is the achievement of genuine reciprocity, which can only grow in a relationship of trust.

If this is what a robust or substantive transparency requires, we can readily see how inadequate the stipulations of the Alibaba IPO—to take but one example—really are. The risks to which investors may be exposed, as listed in the prospectus, may be exhaustive as well as wearying. But in their vague generality they do nothing to establish reciprocity or mutual empowerment between the company and its stakeholders. They amount to an ultimatum: take it or leave it. Jack Ma may say, "Well, I've informed you what the risks may be; so don't come crying to me, if you now find yourself a loser because you trusted your money with Alibaba. Get over it." Robust transparency cannot and will not be satisfied with such a minimalist view of moral leadership.

WHAT TRANSPARENCY IS NOT: WHAT HAPPENS WHEN TRANSPARENCY FAILS TO ACHIEVE ITS PURPOSE THROUGH EITHER EXCESS OR DEFECT?

We learn, perhaps through bitter experience, that transparency as such provides no silver bullet disposing of all problems of accountability in business. Transparency, once uncoupled from the utopian agenda of the European Enlightenment, is merely a means to an end. As such, the requirements of transparency may vary according to circumstances, with accountability calibrated to the needs of different stakeholders. In such situations, where asymmetrical relationships are the rule, rather than exception, ethical responsibility means trying to establish a Golden Mean, distinguishing the practice of virtue from everything that falls short of it. If there is a Golden Mean in transparency, then we can miss the mark by having either too much or too little of it. When and how does too much of it negate transparency, and when and how does too little of it yield the same result? Answering these questions may provide major clues as to what transparency is and is not.

Can there ever be too much transparency? Before you dismiss the question, consider the forms of surveillance—both public and private—that raise objections these days. One example might be the use of new body scanning technologies for purposes of enhancing airport security. If transparency were an absolute good, why would anyone ever object to an explicit and full exposure of his or her body? Why are some groups more sensitive to the need for modesty, that is, appropriate covering of what is still best described as their "private parts"? Is it sufficient to dismiss the protests of those offended by the new scanners by saying, "What's the harm? If you have nothing to hide, you have nothing to worry about." Such questions, among other things, fail to observe the limits imposed by a proper respect for human dignity and the many asymmetries in relationships between individual persons and powerful institutions exercising such capabilities.[16]
Arguably, the possibility of too much transparency is significantly increased with the widespread adoption of surveillance programs based on digital communication technologies. The voracious appetite of governments and business corporations for data—including so-called "Big Data"—for purposes of national security or innovative marketing has raised serious concerns that the right to privacy has become moot, in an age where access to information is

virtually unlimited.[17] In exploring whether an organization might limit its own attempts to acquire as much data as possible on their clients, customers, and other stakeholders, the only restraint seems to be the fear of an unknown "ick factor", that is, the possibility that those who have been rendered transparent involuntarily in the processes of accessing and analyzing data might actually rise up in revolt against these incursions. Perhaps the price of ignoring the human dignity of others may still deter some excesses. The right to privacy may not yet be as obsolete as technical capabilities alone might suggest.

Ethical reflection on the Alibaba Group's IPO prospectus, for example, may suggest how too much transparency inevitably becomes no transparency at all. The prospectus features several pages of fine print listing in general terms the risks that investors should weigh in deciding whether to buy shares in the Alibaba Group. It is unlikely that any investor, even institutional investors, will read these disclosures and even less likely that they will perform due diligence in investigating whatever facts may be obtained in order to determine the validity of the risk assessment claimed in the prospectus. Rather than creating the kind of transparency that an investor needs in order to make a rational investment decision, the proliferation of formal or merely apparent transparencies—while clearly sufficient to satisfy the disclosure requirements enforced by the SEC—does not produce genuine transparency, let alone accountability. The investors or potential shareholders in the Alibaba Group remain virtually clueless as to how to measure the Group's financial performance and, therefore, disempowered from exercising any ownership responsibility in and for the firm.

If transparency can be undercut by having too much of it, what are the consequences of having too little of it? The question of defects in transparency is easier to answer than the previous question regarding its excesses. Both extremes can be either deliberate or inadvertent. Too much transparency may provide so much unedited and misinterpreted information—for example, generalizations about risk that look like disclosures—that things can be hidden in plain sight. The intent to deceive may have been operative in them, or deception may have been only an unintended consequence. Or they may have been so skillfully presented in order to create the illusion of inadvertence, thus preserving opacity even while faking full disclosure. The negation of transparency through its defects is relatively simpler to understand than the complexities arising in cases of excessive transparency.

One recent example of the deception made possible by defective forms of transparency is the role played by Goldman Sachs in the Greek debt crisis.[18] As a member of the European Union, the Greek government had promised to reform its finances, by meeting the targets set by the Stability and Growth Pact of 1996. But having failed to impose the necessary changes to reduce its deficit, the Greek government was under pressure from the EU to reduce its exorbitant interest costs and inordinately high debt ratio, while also moving toward greater transparency in its financial operations. But instead of tackling the problems head-on, the Greek government enlisted the aid of Goldman Sachs, JPMorgan Chase, and other banks, who advised them on how to mask the loans it was accepting as cross-currency swaps, which would allow the loans to be accounted falsely and thus not trigger suspicion that it had failed to comply with the EU directives. The cross-currency swaps masked the fact that Greek indebtedness had only increased, thus indicating that it had defaulted on the promises made at the time of its admission to the Eurozone. It is reported that Goldman earned a fee of $300 million for its role in facilitating the swaps and then proceeded to short (bet against) the credit risk of the Greek government in dealings with other banks in Germany.[19]

The lack of transparency in Goldman's dealings with the Greek government not only deceived the EU regulators, who were blindsided by the extent of Greece's indebtedness once the global financial crisis got underway. It also provided cover for the kind of double-dealing that Goldman attempted by taking positions against the structured financial schemes that it had arranged for the Greek government.

Undoubtedly, without the assistance of major Wall Street banks like Goldman and JPMorgan Chase, Greece could not have postponed the day of reckoning that would have to come once the consequences of its unwillingness or inability to achieve fiscal reform were evident.

In the meantime, as Greece lay prostrate before its neighbors in the European Union, desperately trying to find a workable solution short of withdrawal from the Eurozone, Wall Street pocketed the hefty fees that it earned by helping to create such mischief. One sobering lesson from the lack of transparency evident in these incidents is that Wall Street bankers apparently will do everything they can to undermine whatever transparency regulatory reformers might attempt to impose. The lack of transparency, in their case, is not a reflection of deeply ingrained cultural values—which may partially explain some of Alibaba's difficulties—but rather an exigency precipitated by the gargantuan conflicts of interest that many Wall Street bankers so boldly embrace in their relentless pursuit of profit-maximization. Is it any wonder that much of the rest of the world, in its disgust over Wall Street's breathtakingly irresponsible practices, are looking to other financial centers—China, the Middle East, and the other emerging economies among the BRICS nations—for alternatives, institutions that might at least restore some sense of trust and confidence in international finance?

STRUGGLING TOWARD TRANSPARENCY IN CHINA AND EAST ASIA

In our quest for alternatives to post-Enlightenment transparency with its checkered history of too much or too little, we may learn something from changing business practices in China and East Asia. A major trend is the struggle overcontinued reliance on "*guanxixue*",[20] that is, the cultivation of "*guanxi*" networks to expand the circle of trust beyond one's own immediate family. Traditional "guanxi" networks rely on trust based on kinship and other commonalities (for example, being high school classmates, coming from the same rural village, serving in the PLA together), where transparency, as such, is usually neither expected nor demanded. If one has good "guanxi", one tends to be trusted implicitly with virtually no supervision or monitoring of performance. Those who have lived and worked in China and East Asia will confirm that reliance upon "guanxixue" is inherently risky. Close family members, as well as people with other ties, have been known to rip each other off, even to the point of destroying their common enterprise in order to get ahead. The question is whether the risks involved in guanxixue are any greater or less that the risks that still occur when the European Enlightenment's model of transparency is the norm. Does "good" guanxixue inevitably involve some accommodation to the need for transparency? Studies such as Dr. Yadong Luo's Guanxi and Business suggest that it is possible to combine the cultivation of guanxi networks with transparency in order to achieve greater accountability and trust all around. It all depends on how guanxixue is practiced, on whether it can provide the support for robust transparency that makes for successful business relationships.[21]

Transparency seems to reduce the risks of relying on guanxixue, since it tends to increase accountability or at least supports the assumption that the demand for supervision or monitoring of performance is a normal and routine part of working within an organization or doing business with other organizations. The demand for accountability, usually implicit in transparency, need not be regarded—as all too often it is in China and East Asia—as an accusation of wrongdoing. Nor does it mean that someone is not trusted. On the contrary, it is an attempt to establish a basis for deepening trust by expanding the circle of accountability and responsibility, to include others not immediately known personally through the guanxi network.

One of the keys to Jack Ma's and Alibaba's impressive success has been his demonstrated ability to use the internet for facilitating business transactions among buyers and sellers who have no prior guanxi. Here is Jack Ma's own explanation for what he attempted to do:

> "Which country is easier to do business, U.S.A. or China? And I think, China, today, if you still think about we should follow the government policy, you know, guanxi, forget it. I have said again and again, in the past 12 years, every time I speak of China, if you meet somebody come to you say, I have a strong guanxi with that mayor, forget about this guy. The only guanxi is the guanxi with the customer. If the customer love you, the government would bitterly love you. Trust me. They need the tax. They need the jobs. But if you want to pick the wrong, you know? You're in trouble. So I don't, I don't believe that, because my relationship with the government in the past 12 years as always in love with them, don't marry them. Always. I love them. Every time they come, I tell them the truth. I do everything they tell me. Yeah, okay. Right, let's communicate. But do business, sorry. My friend does business with government, not me. In this way you get respect from them."[22]

"The only guanxi is the guanxi with the customer." That means building relationships of trust through forms of transparency and accountability that are robust and substantive.

In a subsequent interview with Bloomberg Business' Charlie Rose, Jack Ma indicated how Alibaba was able to overcome the inherent limits of guanxixue, especially on his ecommerce platform, Taobao, by creating an ingenious escrow system for holding payments—namely, Alipay—until both the vendors and customers were satisfied.[23] People who were otherwise complete strangers could trust the system, because the payment system was transparent and apparently beyond manipulation. Alipay's escrow system created a transparency that could be trusted, thus enabling Alibaba's ecommerce platform to operate well beyond the limits of any previously existing guanxi network.

CONCLUSION: FRIENDLY ADVICE FOR JACK MA AND ALIBABA

From the perspective of international business ethics, Jack Ma has made a claim to moral leadership and has sought to capitalize on that claim in the rapid expansion of his businesses. He has consistently asked his investors and other stakeholders to trust him, since, it is claimed, under his leadership, the businesses he has founded have adopted best ethical practices even in the absence of immediate pressure from Chinese government regulators. Alibaba has led the way toward economic and social reform, if Jack Ma is to be believed, with or without the support of the government. But if one raises ethical expectations, claiming to be different from others doing business-as-usual, the result of failure to meet those expectations can be very costly.

This essay examining the challenges of transparency has focused on the Alibaba case because that firm has been, and remains, under intense scrutiny both before and after its NYSE IPO. No business emerging from China has achieved Alibaba's success, no entrepreneur from anywhere has made such extraordinary appeals for trust, nor had these appeals taken seriously by investors and other stakeholders, as has Jack Ma. Our review of his efforts has attempted to be fair-minded, seeking neither to praise nor to disparage Jack Ma's achievement, simply in order to create a morality play. His story is complex, and each piece of it deserves to be judged on its own merits. It may well be that he has been more successful in some things than in others, especially when it comes to business ethics. It seems clear, for example, that the scandal involving Taobao's certification of vendors offering fake merchandise may have blindsided him. We give him the benefit of the doubt on that one and eagerly await further news of his efforts to root out corruption in his ecommerce platforms. On the other hand, we also think that he could do better on transparency in corporate governance. Jack Ma seems very credible personally and surely gifted with extraordinarily persuasive communications skills. But the organization that he has founded in the NYSE IPO still seems opaque and open to all manner of abuse. If Alibaba's governance structure were to become as transparent as Alipay's escrow system, the cheering for Jack Ma might be even more heart-felt.

The bottom line in all this is that, while various regulatory agencies may mandate sound business ethics as, for example, in the NYSE's listing requirements for IPOs, each such stipulation can be circumvented unless the substance and spirit of ethics are honored as well. Transparency can become more apparent than real, unless one is sincerely committed to the basic principles of mutual respect, reciprocity, and inclusiveness, without which the trust necessary to conduct business will quickly evaporate. There will always be a need for moral leadership in business, since markets cannot and do not police themselves. They must be regulated to insure integrity, but it is also up to individual participants to be vigilant. A bad actor, even on a team committed to doing good, will surely undermine everyone's credibility and, with it, the social capital and trust, upon which depend the team's chances for success. Merely formal compliance with regulations will never be enough. If claims to transparency are to be credible, they must be based on a demonstrated willingness to cultivate the moral virtues that sustain it.

NOTES

1 The Occupy Central movement of 2011–2012 was distinct from but indirectly related to the Occupy Central movement that occurred in Hong Kong in 2014. While both were dedicated to the cause of advancing social and economic justice for the citizens of Hong Kong, the relatively small encampment of 2011–2012 was focused on addressing alleged misconduct among the big banks in Hong Kong, especially in their dealings with small investors. By contrast, the 2014 Occupy Central is a mass movement focused on the struggle over the policies and procedures that will govern electoral reform, particularly, the requirements to be used to screen candidates for the office of the HKSAR Chief Executive. For a description of the original movement of 2011–2012, see "Occupy Hong Kong activists camp out at HSBC headquarters". The Straits Times of Singapore. (September 12, 2012). (http:/www.straitstimes.com/breaking-news/asia/story/occupy-hong-kong-activists-camp-out-hsbc-headquarters-20120912).

2 See, for example, Jack Ma's open letter to prospective investors, when the IPO was announced (Mac, 2014).

3 See Bloomberg's analysis of Alibaba's IPO and its impact on share prices generally: Wang, Lam, and Bost, 2014. Soon thereafter, Alibaba's share price declined sharply, and its performance since then has mirrored the overall decline in China stocks. See, for example, CNBC's chart of Alibaba price fluctuations in the past year (CNBC, 2016). On the other hand, Alibaba's extraordinary success on Singles' Day in China suggests that Jack Ma's achievement in online marketing remains unshaken.

See the report, "China's Alibaba breaks Singles' Day record as sales surge" (BBC News, 2015). Jack Ma's business practices do not appear to have adversely affected Alibaba's share prices or the Chinese shoppers' trust in his internet platforms.

4 The accusation is documented in "Alibaba meets with China regulator, controversial

report retracted" (Reuters, 2015).

5 For an account of the AAFA's claims against Taobao even before the Alibaba IPO, see "Alibaba Cheat Sheet" (Jordan, 2014). The discussion of Taobao and Alibaba can be found in the USTR's "2014 Out-of-Cycle Review of Notorious Markets" (United States Trade Representative, 2015). While observing that Taobao had been removed in 2012 from the Notorious Markets list, the Review also acknowledges that current complaints—especially those raised by China's own regulatory agencies—about its failure to curb trafficking in counterfeit goods now required the USTR to continue monitoring the situation, in the hope that there would be further evidence of improvement. The AAFA, however, has continued to accuse Taobao and Alibaba of wrong-doing, even in the face of their recent success on Singles' Day (Butler-Young, 2015).

6 Guilford (2014) provides the basis for this explanation of the Alipay spinoff.

7 This structure should not be dismissed as an attempt to hoodwink unwary investors. It is, instead, an arrangement meant to allow Chinese companies to get listed on foreign stock exchanges—thus gaining access to foreign capital—while also complying with China's restrictive regulations on foreign ownership in certain industries. In this arrangement, the VIE, which controls all the licenses enabling the firm to operate in China, is wholly owned by Chinese citizens, while the WFOE is "an offshore holding company in which foreigners can buy shares. The Chinese entity—which is often controlled by the holding company's top executives—pays fees and royalties to the offshore company based on contracts between the two" (McMahon & Mozur, 2014). While in principle the relationship of the VIE and the WFOE is not illegal in China, it is considered inherently unstable because of the risks of a government crackdown against such schemes. Over and above the regulatory hazard, the arrangement also makes it impossible for foreign investors to exercise conventional ownership rights through a board of directors representing their interests.

8 Jack Ma's appeal for trust unsupported by the usual structures of accountability and transparency is remarkably consistent in all his business activities. Most recently, he has announced plans to purchase the South China Morning Post, Hong Kong's premier English language newspaper. When critics expressed concern over what the acquisition might mean for the newspaper's well-earned reputation for editorial independence, Jack Ma's answer was simply, "Trust us" (South China Morning Post, 2015). Given his stated intention of using the paper to improve China's image internationally and the complexity of Alibaba's relationships with PRC government agencies, without whose approval it could hardly survive, let alone flourish, such an appeal seems like a leap of faith, grounded exclusively on Jack Ma's apparent track record for making money, and lots of it. While such appeals often raise more questions than they answer, they are consistent with Jack Ma's claim to be a "Confucian entrepreneur". Confucian moral philosophy values the leader's personal sincerity and tends to rely upon it as a sufficient basis for sustaining relationships of trust. Formal procedures designed to create transparency tend to be regarded as either redundant or contrary to the spirit of genuine trust.

9 See The Wall Street Journal for an account of how Hong Kong lost the Alibaba IPO (Curran, 2014).

10 These differences were highlighted in an essay for the International Bar Association (Mulrenan, 2014).

[11] See the philosophical analysis of metaphor in Ricoeur, 1978.

[12] The work of Juergen Habermas, starting with his seminal essay, Toward a Rational Society (Habermas, 1971), and especially his The Structural Transformation of the Public Sphere: An Inquiry into a category of Bourgeois Society (Habermas, 1962 translation 1989), and The Theory of Communicative Action. Two Volumes. (Habermas, 1985), is especially useful for understanding the origins and development of the European Enlightenment's ideal of transparency.

[13] See the discussion of various proposals for an investor bill of rights in "Investors: Ethics and Finance" (Rothlin and McCann, 2015: 225–248).

[14] See "The Natural Priority of Moral Virtue," (Rothlin & McCann, 2015: 23–46) for an attempt at a critical synthesis of Confucian and Western traditions on the moral virtues and how they are to be cultivated in business and the professions.

[15] See "The Contribution of Emmanuel Levinas to Corporate Social Responsibility and Business Ethics in the Post-Modern Era" (Becker, 2013), and "A reciprocal asymmetry? Levinas' ethics reconsidered" (Tatransky, 2008).

[16] David Brin's The Transparent Society: Will Technology Force Us To Choose Between Privacy And Freedom? (Brin, 1999) provides a vivid discussion of the issues involved. See also Michel Foucault's Discipline and Punish: The Birth of the Prison (Foucault, 1995), especially his critique of Jeremy Bentham's model of an ideal penitentiary, the Panopticon.

[17] This issue is discussed in a case study on the UK's Newscorp's phone hacking scandal, in "The Social Environment: Ethics and Information Technology" (Rothlin & McCann, 2015: 341–364).

[18] Myers and Hassanzadeh (2013) demonstrate the pattern, by linking what happened in Greece to the way Enron's indebtedness was hidden by its bankers, notably JPMorgan Chase, in order to sustain its share price and general perception of its success.

[19] See The New York Times' "Wall St. Helped to Mask Debt Fueling Europe's Crisis." (Story, Thomas, & Schwartz, 2010).

[20] Yadong Luo's Guanxi and Business (Luo, 2000) is particularly helpful in distinguishing guanxixue from corruption. See also numerous studies distinguishing "good" and "bad" forms of guanxixue (Nolan, 2011; Verhezen, 2012).

[21] For a case study documenting how guanxixue, not properly understood or practiced consistently, can cause the failure of otherwise promising joint ventures in China, see the case study, "Pepsi Sichuan: 'A Marriage too Good to be True?'" (Rothlin & McCann, 2015: 65–75.

[22] Jack Ma's remarks are recorded in a transcript, "Alibaba's Jack Ma Reflects On 12-Year Journey at China 2.0 Conference", the closing keynote address at the conference "China 2.0: Transforming Media and Commerce", hosted by the Stanford Program on Regions of Innovation and Entrepreneurship (SPRIE) at the Stanford Graduate School of Business, on Sept. 30, 2011 (The Singju Post., 2014).

[23] In an extended interview with Bloomberg Business' Charlie Rose, Jack Ma described the challenge of creating a new form of trust beyond the traditional face-to-face of guanxi interactions:

Jack Ma: "When you start doing business via the internet, I don't know you and you don't know me. How can you do things online unless you have trust? For ecommerce, the most important thing was trust. When I first went to the U.S.A. to raise money (talk to the venture capitalists), many people said 'Jack, China does business via guanxi. How can you do business via the Internet'? I know that without the trust system, the credit system is impossible to do business. In the past 14 years, everything we do is about trying to build up the trust system. Charlie, I'm so proud today. Today, in China and in the world, people don't trust each other. The Government, people, media, and everybody think 'this guy is cheating'. Because of ecommerce, we finish 60 million transactions daily. People don't know each other. I don't know you. I send products to you. You don't know me. You wire the money to me. I don't know you. I give a package to a person. I don't know him. He took something across the ocean — across the river. This is the trust. We have at least, 60 million trusts happening every day."

Charlie Rose: "You created it by creating an escrow account in the beginning and so, you keep the money until they got the product. Then you release the money."

Jack Ma: "That's true. The escrow service is about how we pay. For the three years, Alibaba was just an e-marketplace for information. What do you have? What do I have? We talk for a long time, but don't do any business, because there is no payment. I talked to the banks. No banks wanted to do it. Banks said 'oh no, this thing would never work' so I didn't know what to do. If I start to launch a payment system, it's against the financial legal laws because you need to have a license. If I don't do it, ecommerce will go nowhere. Then, I went to Davos. I listened to a leadership discussion. Leadership is about responsibility. After I listened to that panel, I made a call to my friends/colleagues and said 'do it now — immediately'. If something's wrong and the Governor's unhappy about that; if one body has to go to the prison, Jack might go. It is so important for China and the world to be able to trust the system" (BizNews.com, 2015).

REFERENCES

BBC News, 2015. China's Alibaba breaks Singles Day record as sales surge. http://www.bbc.com/news/business-34773940.

Becker, P. A., 2013. The contribution of Emmanuel Levinas to corporate social responsibility and business ethics in the post-modern era. *Journal of International Business Ethics, 6,* 1–2. http://scholarspress.us/journals/JIBE/pdf/JIBE-1-2-2013/v6n1-213-art3.pdf

BizNews.com., 2015. Interviews: 'Entrepreneurial Masterclass: Alibaba founder Jack Ma interviewed by Charlie Rose'. February 9, 2015: http://www.biznews.com/interviews/2015/02/09/the-incredible-story-behind-alibabas-jack-ma-an-inspiration-that-will-span-generations/

Brin, D., 1999. The transparent society: Will technology force us to choose between privacy and freedom? New York: Basic Books.

Butler-Young, S., 2015. Alibaba's revenues soar; Counterfeit criticism continues. The Footwear News (October 27, 2015): http://footwearnews.com/2015/business/earnings/alibaba-revenue-september-quarter-counterfeit-cristicism-165157/.

CNBC. 2016. Alibaba Group Holding Ltd. http://data.cnbc.com/quotes/BABA

Curran, E., 2014. How Hong Kong lost the Alibaba IPO. Wall Street Journal (March 15): http://www.wsj.com/articles/SB10001424052702303546204579440820673013810.

Foucault, M., 1995. Discipline and punish: The birth of the prison. New York: Vintage Books.

Gadamer, H. G., 1989. Truth and method (2nd rev. edn) (1st English edn, 1975). J. Weinsheimer & D. G. Marshall, Trans. New York: Crossroad Books.

Guilford, G., 2014. Alibaba has a new way of explaining its controversial Alipay spinoff. Quartz (June 16, 2014): http://qz.com/221635/alibaba-has-a-new-way-of-explaining-its-controversial-alipay-spinoff/

Habermas, J., 1962. Trans, 1989. The structural transformation of the public sphere: An inquiry into a category of Bourgeois society. Cambridge, UK: Polity.

Habermas, J., 1971. Toward a rational society. Boston: Beacon Press.

Habermas, J., 1985. The theory of communicative action. Two Volumes. Boston: Beacon Press.

Jordan, 2014. Alibaba cheat sheet. The Footwear News (July 7, 2014): http://footwearnews.com/2014/business/news/alibaba-cheat-sheet-143960/.

Luo, Y., 2000. Guanxi and business. Asia-Pacific Business Series, Vol. 1. Singapore: World Scientific. https://books.google.com.ph/books?isbn=9810241143.

Mac, Ryan, 2014. As Alibaba's IPO approaches, founder Jack Ma pens letter to potential investors. Forbes, September 5. Accessed online: http://www.forbes.com/sites/ryanmac/2014/09/05/as-alibabas-ipo-approaches-founder-jack-ma-pens-letter-to-potential-investors/.

McMahon, D. & Mozur, P., 2014. Alibaba and VIEs: A primer. Wall Street Journal (May 6, 2014): http://blogs.wsj.com/moneybeat/2014/05/06/alibaba-and-vies-a-primer/

Mulrenan, S., 2014. Asia: Alibaba's listing raises questions for Hong Kong exchange. International Bar Association (June 5, 2014): http://www.ibanet.org/Article/Detail.aspx?ArticleUid=2ff8e4ca-80fb-4eed-a2f7-d47fda4e3962

Myers, T. & Hassanzadeh, E., 2013. IISD Report: The interconnections between Islamic finance and sustainable finance. Winnipeg, Canada: International Institute for Sustainable Development: http://www.iisd.org/pdf/2013/interconnections_islamic_sustainable_finance.pdf).

Nolan, J., 2011. Good guanxi and bad guanxi: Western bankers and the role of network practices in institutional change in China. The International Journal of Human Resource Management, 22, 16, Special Issue: Society and HRM in China. http://www.tandfonline.com/doi/abs/10.1080/09585192.2011.586869.

Reuters, 2015. Alibaba meets with China regulator, controversial report retracted. January 30, 2015: http://www.reuters.com/article/us-alibaba-group-saic-idUSKBN0L31S020150131#w4P7voubqpVRxFpQ.97.

Ricoeur, P., 1978. The metaphorical process as cognition, imagination, and feeling. Critical Inquiry, 5, 1, Special Issue on Metaphor, University of Chicago Press. (Autumn, 1978): http://www.jstor.org/stable/1342982.

Rothlin, S. & McCann, D., 2015. International business ethics: Focus on China Heidelberg: Springer Verlag.

South China Morning Post, 2015. Trust us, says Jack Ma when asked about SCMP editorial independence (December 17): http://www.scmp.com/news/hong-kong/article/1892251/trust-us-says-jack-ma-when-asked-about-scmp-editorial-independence).

Story, L., Thomas Jr., L., & Schwartz, N.D., 2010. Wall St. helped to mask debt fueling Europe's crisis. The New York Times (February 14, 2010): http://www.nytimes.com/2010/02/14/business/global/14debt.html

Tatransky, T., 2008. A reciprocal asymmetry? Levinas' ethics reconsidered. Ethical Perspectives, 15, 3, 293–307. European Center for Ethics: http://www.ethical-perspectives.be/viewpic.php?TABLE=EP&ID=1114.

The Singju Post, 2014. Alibaba's Jack Ma reflects on 12-year journey at China 2.0 conference. September 28, 2014: http://www.singjupost.com/alibabas-jack-ma-reflects-12-year-journey-china-2-0-conference-transcript/3/.

United States Trade Representative. 2015. 2014 Out-of-cycle review of notorious markets (March 5, 2015): https://ustr.gov/sites/default/files/2014%20Notorious%20Markets%20List%20-%20Published_0.pdf)

Verhezen, P., 2012. The prevalence of networking or guanxi in Asian [family] business. EU-Asia Centre Publications (February 2, 2012): http://www.eu-asiacentre.eu/pub_details.php?pub_id=34

Wang, L., Lam, E., & Bost, C., 2014. Alibaba IPO pours shares into shrinking pool of stock. Bloomberg Business (September 25, 2014): http://www.bloomberg.com/bw/articles/2014-09-25/alibaba-ipo-pours-shares-into-shrinking-pool-of-stock.