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Regulating Corporate Governance in China and Hong Kong: Do Chinese values and ethics have a place in the age of Globalization?

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Abstract:

Much has been said about the convergence of corporate governance and regulations. The underlying assumptions of this phenomenon are driven by globalisation and the dominance of the Anglo-US model of corporate governance. Since the Asian crisis in 1997, Hong Kong and perhaps to a less extend Mainland China, had amended both Company laws and Stock Exchange Listing Rules obligations, arguably, mirroring provisions and rules in the UK and US. However, there has been a small amount of literature in law drawing from cross cultural management asking the question - is Western governance and regulation appropriate for the East? This paper will approach this issue from a different mindset, instead of drawing distinctions about East and West, a meta-regulatory framework will attempt to incorporate Western ‘hard’ and ‘soft’ laws with Asian ethical values. The aim is to combine laws and ethics thereby enhancing corporate governance and, improve compliance of those rules by adapting Chinese ethical values like Confucianism into the regulatory system. The overarching goal of this exercise is to adapt the wisdom of Chinese ethics into regulatory guidelines to suit the modern global market.

Introduction:

This paper examines the critical issue of – does Chinese values matter in regulating corporate governance in China and Hong Kong? As much of the Asian economic crisis in 1997 and more recently the global economic crisis in 2008 had focus on enhancing corporate governance and accountability of directors, little has been said about developing a system that can be adapted to suit the culture and values of particular jurisdictions. China and Hong Kong do not necessarily share the same problems with the UK, US or Australia so why adopt measures instituted by these countries? And yet, it would be unwise to ignore the lessons learnt and more important new regulatory innovation to improve the effectiveness of regulatory measures. Hence, the logical course of action is to incorporate norms and values that are unique to China and Hong Kong, while adopting the innovations in regulatory strategies to improve overall effectiveness and compliance. This shall be explored in three key sections, starting with the deconstruction of what corporate governance is, then, the concept of paternalistic governance and Confucian ethics, followed by a discussion on meta-regulation.

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Deconstructing the Multiplicities of Corporate Governance:

Corporate governance is a term commonly used by economists, lawyers, accountants, and organisational theorists to examine how corporations are directed and controlled, or sometimes broadly characterised as a system of checks and balances to ensure that decision makers are accountable to the stakeholders. Even though it sounds simple and straightforward, in reality it is a complex and dynamic concept that is multi-dimensional and evolving. For example, in the aftermath of the recent global economic crisis in 2008, ‘risk’ has been added to the growing list tagged to corporate governance.

Some of the more commonly discussed theories are: agency, stakeholders, stewardship, managerial hegemony, and resource dependency. Although it is beyond the scope of this paper to go into the details, it is worth noting that each of the theories builds on a set of assumptions, often a victim of the latest trends or grand narratives. The result is, on one end of the spectrum is agency theory, it sets out corporate governance in a two dimensional world, where the real world is reduced into crude and rudimentary classroom experiment because the thesis rest upon the notion that a company is made up of two groups of actors known as principals and agents. At the other end is resource dependency theory which envisages a company is steered by developments outside the organisation. The reason for such diverse simplicities according to Pettigrew is because corporate governance research lacks coherence empirically, methodologically or theoretically, which might help to explain why this label has been misrepresented as a ‘cure’ for all corporate ills.

While it would be hasty and ill informed to write off or dispel the authenticity of any of these theories, the array of theories attest to the complexities of governing a corporation, thus there is no definitive or ‘one size fits all’ model. The reality might well mean that there is a juxtaposed of theories. Consequently, it would be fair to say corporate governance is a multi

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3 John Farrar, Corporate Governance in Australia and New Zealand, (2001) 3
dimensional issue. More fundamental, regardless of which theories one subscribes to, the accountability of the board of directors is a cornerstone of effective governance. Therefore, improving accountability of the board as well as the individual director is crucial.

The modern board is not just about a group of people sitting in a room making decisions. The demands on boards range from many foreseeable to unforeseeable challenges, and in the global era where the market is borderless, the pressure to perform under intense competition adds to the onus of the task. Although this does not constitute an excuse or limit scope of responsibilities of directors, it meant that effective governance calls for greater vigilance, to respond to market volatility and pressures. But to improve board accountability, it is important to identify what the board does. And given the array of board responsibilities, dividing their tasks along functional lines would permit greater clarity on the allocation of duties, obligations and liabilities. After a survey of management and organisational books on company directors, one could broadly ‘pigeonhole’ the duties into three functions: "structural", "operational", and "relational" (see figure 1).

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Paper by Angus Young
The structural elements are concerned with board structure and processes, which are easily identifiable. Getting it ‘right’ will depend on a host of internal and external factors. Some are straightforward; others can be more problematic. In essence, the structural aspect of governance is about due process and a system of checks and balances. For example, on board committees, Carter and Lorsh write, ‘the rationale for establishing board committees is to divide up the work among board members so that they can accomplish more in their limited time. Committees allow directors to develop specialized understanding and to delve more deeply into specific issues.’

Operational considerations consist of strategy formulation, policymaking, monitoring, and supervising management, and risk assessment. Since operational matters are made up of matters that objectively determined as well as value judgements that are subjectively chosen, thus directors’ personal experiences are crucial in decision-making. Hence, diligence is crucial. As for supervision, vigilance is paramount. Whilst best practices guides could help with the development of better policies and protocols, many operational matters are involve subjective judgements drawn from directors’ experiences and business acumen.

Relational issues are matters to do with people. Dealing with people is not straightforward, it is interactive and dynamic, which includes matters like leadership, corporate social responsibility, stakeholder communications, and relationship management. Since human relations are by nature more complex and challenging, there are universal templates or solutions available. A good practice would be actively engage with various stakeholders and address their concerns. Besides, changing circumstances or personal interest could tempt directors to adopt creative ways to bypass regulatory and procedural safeguards. This suggests that the governing and managing relationships are challenging and dynamic. Therefore, values especially ethical values and social norms could influence how relational matters are dissimilar across companies and countries. More importantly this is where


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cultural values play a critical role. Human to human relationships, interactions, and communications are heavily influence by culture, as demonstrated by cross cultural management research, for example, findings of Hofstede.\textsuperscript{12}

Consequently, to improve the accountability of director by developing robust rules and best practices to address the three aspects of board functions would, in theory, enhance corporate governance. Two questions emerge, first should the law regulate all aspects of board functions, and second can the law regulate these functions adequately? The short answer is – yes and no. ‘Yes’, concerning the general duties of directors, these duties are broad in scope, but specific in how the law defines those duties. ‘No’ because there are limitations of the law can do to shape behaviour and its ability to cover every contingency. Also the law, as a regulatory tool cannot micro-manage every aspect of board functions. Besides, the law should not and cannot replace good governance practices and values. Therefore, apart from legal obligations, quasi-legal and non-legal regulatory instruments could be considered as complementary or supporting mechanisms to regulate the behaviour of directors.

Adding to this is the open ended debate about converging corporate governance regime. Hansmann and Kraakman argue that corporate governance and laws are converging international.\textsuperscript{13} They claim that there are three key factors driving consensus on a ‘standard model; ‘the failure of alternative models; the competitive pressures of global commerce; and the shift of interest groups influence in favour or an emerging shareholder class.’\textsuperscript{14}

Hansmann and Kraakman also claim that globalisation and economic integration where competitive forces and efficiency of capital is promoting convergence towards the shareholder-oriented model.\textsuperscript{15} Furthermore the rise of shareholder class around the world, the diffusion of equity ownership, and the shift in balance towards public shareholders is prompting greater convergence in governance.\textsuperscript{16} Much of the premises of these statements appear to be based on anecdotal evidence at best, given that ownership structure of public and private corporations in Europe and Asia’s continue to be concentrated (block shares) held by

\textsuperscript{12} See subsequent paragraphs below. Also see Geert Hofstede, Cultures and Organizations, Software of the mind: Intercultural cooperation and its importance for survival (1994)
\textsuperscript{14} Ibid, 36
\textsuperscript{15} Ibid, 45-48
\textsuperscript{16} Ibid 48-50
individuals (founders) or families, this is more acute in Hong Kong and is a growing trend in China. Bebchuk and Roe assert, ‘what is clear is that, notwithstanding the forces of globalization and efficiency, some key differences in corporate structures among countries have persisted.’

Pinto notes,

Globalization has raised the issues of whether a particular model is optimal and given competition there may be some form of convergence. Just as trade globalization has raised significant economic and policy issues, comparative corporate governance studies raise some similar issues.

Even if some levels of convergence exist, Gilson argues that there are at a functional level but not at a formal level. He notes, ‘functional convergence occurs at a high level of generality.’ This meant substantive and in-depth convergence is difficult to achieve especially on the global scale.

The path dependence model challenges the convergence thesis. In essence, path dependency draws from a political premise by noting traditional European political ideology in social democracy would not sanction the creation of strong securities market. Another strand of path dependence is ‘rent protection’ thesis. If private benefits of control were high, concentrated ownership would dictate over dispersed ownership. This is also known as structure-driven path dependence. Sunk adaptive costs could influence the efficient choice of a corporate ownership. Other considerations like complementarities between entities and institutions, network externalities, and endowment effects would impact on ownership structures. Persistence of existing structures can be due to retention of rent seeking opportunity. The other path dependence thesis is rule driven. When countries have different rules corporate structure, it could produce difference patterns of corporate structures.

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21 Ibid 138
22 Bebchuk and Roe, above n. 17, 69
23 Ibid
24 Ibid 77-78
25 Ibid 79
26 Ibid 80-81
27 Ibid 82
28 Ibid 93
In a rejoinder to the above on board functions, even if there is convergence in the regulation of board structural and operational matters, relational aspects will always present a challenge. The core legal duty of a director is to be loyal to the company, yet the notion of loyalty is a subjective judgement with objective benchmarks, the interpretation culturally and norms driven. This is especially the case for Hong Kong and China, where traditional Chinese values have been embedded into the social norms and moral values. From a regulatory perspective, even if the laws in governance converge, this does not mean social norms will follow. Thus the effectiveness of corporate laws will require widely acceptance beyond superficial legal compliance – liken a ‘coalition of the willing’.  

Licth asserts that culture does matter in corporate governance and notes,  

A nation's culture can be perceived as the mother of all path dependencies. Figuratively, it means that a nation's culture might be more persistent than other factors believed to induce path dependence. Substantively, a nation's unique set of cultural values might indeed affect — in a chain of causality — the development of that nation's laws in general and its corporate governance system in particular. 

For example, South Korea had recently underwent corporate governance reforms in the aftermath of the Asian financial crisis, Licth writes  

The architects of corporate governance reforms may want to consider the idea of culturally compatible governance… [the] far reaching reliance on American models may bring about some improvement. But Korean reformers could devise better corporate governance that draws on the country’s huge social capital that its cultural endowment embodies.  

Therefore, values inspired corporate governance practise ought to be a key consideration in developing a suitable and responsive regulatory framework for Asian countries.

**Paternalistic Governance and Confucian Values:**

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Hofstede a pioneer in the field of cross-cultural management came up with 5 value dimensions identifying cultural and behavioural difference between countries. The most relevant value dimension to corporate governance is ‘power distance’. This would impact on boardroom dynamics. According to Hofstede’s findings, ‘Hong Kong’ s power distance score is 68 compared to the other Far East Asian countries average of 60. This indicates the inequality of power is high, the founder of the company or head of family of a Chinese family business in Hong Kong is more likely to dominate board decisions, or that his/her views would carry more weight irrespective of the official positions in the company.

Another finding unique to Asian countries according to Hofstede, is the influence of Confucian doctrines. Countries like Hong Kong that subscribe to Confucianism are thus stable based upon unequal relationship between people, the family is the prototype of all organisations, moral and relationship based managerial values. This implies governance preference in Asian countries tended to be stable and relationship based, and thus less transparent to third party. This mode of informal and personality centred governance is common in Asia, quite distinct from the structured, process-oriented, and ruled based governance in the West.

Redding found that Hong Kong’s Chinese family owned businesses are similar to those in Singapore and Taiwan, governed under a hierarchical structure with power central in the

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33 Geert Hofstede, *Cultures and Organizations, Software of the mind: Intercultural cooperation and its importance for survival* (1994) 13-15. The 5 independent value dimensions are: power distance; uncertainty avoidance; individualism versus collectivism; masculinity versus femininity; long versus short-term orientation. The research is based on surveys from many countries over a 20-year period. The respondents were drawn from over 116,000 employees in IBM branches spanning across 50 countries. See Geert Hofstede, *Cultures and Organizations, Software of the mind: Intercultural cooperation and its importance for survival* (1994) 23-172.

34 It measures the dependence relationship between superiors and subordinates. In countries where power distance is small, Subordinates readily approach and contradict their superiors if they disagreed. Whereas if the power distance is large, a typical in Asian countries, the opposite will occur. See Geert Hofstede, *Cultures and Organizations, Software of the mind: Intercultural cooperation and its importance for survival* (1994) 27-28.


37 Geert Hofstede, *Cultures and Organizations, Software of the mind: Intercultural cooperation and its importance for survival* (1994) 164-165. There are a number of weaknesses in Hofstede’s model, it based on a single industry and there are a number of technical difficulties associated with the methodology of his research. See Richard Mead, *International Management: Cross-Cultural Dimensions* (3rd ed., 2005) 47-49


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Paper by Angus Young
hands of the head of the organisation, which he coins as ‘paternalism’. The implications is that he/she is granted very high discretion and not questioned about why he/she adopts certain policy, the relationship between the ‘boss’ and senior executive is often described as didactic.

Chen observes that,

The typical Chinese business family is headed by either a patriarch or a matriarch – usually the individual who founded the business, or his or her direct descendants – and family members hold key positions within the business. This core business may then be linked to a web of subsidiaries and allied companies, typically owned by various members of the immediate and extended family. The family business thus emerges as a complex network of companies, with ownership distributed throughout the extended family, and often cross-held to create intrafamily dependencies.

And he describes the form of leadership style is authoritarian, where,

The boss’s concern with the retention of power is also reflected in the careful maintenance of a large power distance…[i]n Chinese family business system, subordinates are supposed to think what the boss is thinking and tailor their ideas accordingly. Dissenting opinions and proposals should be conveyed to the boss through private and personal channels, with respectful tone.

The justification for this centralised control is a moral one, where the emphasis is on hierarchical relationships not about processes or formal rules. In a typical hierarchical order of a Chinese family-owned business the founder or head of the family (usually holds both the positions of CEO and Chair) is at the top of the organisational structure, and the control is top down (see figure 2).

Figure 2

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43 Ibid.
44 Redding, above n. 39, 156.
Even in listed companies where there is a high concentration in ownership in the hands of Chinese families, those who possess strong associations with these families, especially those in the inner circles of business networks who have no direct stake in the listed companies are most likely to be appointed to the board as independent non-executive directors.\textsuperscript{46} Redding noted that, ‘the grafting on of new outsiders at a senior level in such organisations is particularly difficult, given the lengthy socialisation needed for understanding the organisation's core and often concealed features, but more particularly given the problem of time needed for the essential networking, not just outside but also inside the company.’\textsuperscript{47}

\begin{footnotesize}
\textsuperscript{47} Redding, above n. 39, 218-219.
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Even if independent non-executives are appointed to these listed entities in Hong Kong, in-depth study of two companies by Wong found their access to information and ability to scrutinise the companies’ accounts were limited.\textsuperscript{48} This suggests the role of independent non-executive directors in Chinese family-owned listed companies might be more symbolic than functional.

There are clear advantages and disadvantages of paternalistic governance. Since power is vested with the one person, so the speed of responding to external changes is relatively fast.\textsuperscript{49} Hence, family-owned businesses can adapt more quickly to economic changes.\textsuperscript{50} Internal organisational efficiency can also be achieved with vertical control of paternalistic governance.\textsuperscript{51} The reliance on networks also generates horizontal efficiencies and cooperation between family-owned businesses.\textsuperscript{52} There are also cost savings as family members usually not paid well in small scale business enterprises. They do the work out of a sense of loyalty and social obligations.\textsuperscript{53} In addition, loans are usually from family members and relatives, at little to no interest charged.\textsuperscript{54} Finally, there is an expectation of benevolent leadership, which stems from Confucian ethics, where harmonious relationships are important and thus the emphasis on cooperation and avoidance of conflict is embedded into the organisational culture of family-owned businesses.\textsuperscript{55}

There are also many disadvantages. Since paternalistic leadership is authoritarian, the decisions made by the head of the company should not be questioned or debated over, which means the rationale of decisions are not always justifiable in an analytical manner.\textsuperscript{56} Instead, personal principles and experiences form the basis of certain decisions. It is not easily deciphered or understood by others.\textsuperscript{57} This leadership style also tends to repress professional

\begin{footnotesize}
\begin{itemize}
\item[49] Redding, above n. 39, 207.
\item[50] Ibid, 221-225.
\item[51] Ibid, 208-212.
\item[52] Ibid, 213-217.
\item[54] Ibid, 282-283.
\item[56] Angus Young, Grace Li, and Alex Lau, ‘Corporate Governance in China: The Role of the State and Ideology in Shaping Reforms’ (2007) 28(7) The Company Lawyer, 204
\item[57] Ibid, 204.
\end{itemize}
\end{footnotesize}
talents, so innovation and growth is limited by the lack of new blood and ideas. Non-family employees are often left out of promotional opportunities, and have a low degree of loyal and responsibility towards the company. The lack of institutionalised successions plan also undermines the longevity of family-owned business. Another barrier Chinese family-owned businesses face is limited access to finances. This is because they tend to use personal saving or loans from family members and extended relatives to fund their enterprise. In part, this is due to their reluctance to let outsiders examine their company’s accounts. Hence, these drawbacks limits the long term growth potential and many of these companies remain undercapitalise.

The corporate governance implications for Chinese family businesses in Hong Kong are twofold. First, the power and decisions at the board would most likely be dominated by the chair or CEO, while stewardship theory might be relevant unlike in the West where the board empowers the CEO, the reverse is more likely to be true in Chinese family-owned businesses in Hong Kong. Second, since these companies are ‘ruled by one man’ Western inspired governance structures, processes, protocols, and standards are not likely able to influence or shape the behaviour of these individuals beyond superficial compliance.

At the outset, it is important to appreciate a few things about Confucius’s writings. There three major pieces of works said to be by Confucius: The Analects, The Great Learning, and The Doctrine of the Mean, all of which were put together by Confucius former students after his death. The Analects – was a compilation of conversations Confucius had with his students and other scholars, thus the meaning of certain concepts would vary. In addition,

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59 Redding, above n. 39, 132-133.
60 Chen, above n. 57, 76.
61 Ibid.
63 James Legge, Confucius: Confucian Analects, The Great Learning and The Doctrine of the Mean (1971) 1-21. Note, there is a fourth book written by Mencius, titled ‘The Works of Mencius’ is arguably one of the most quoted authority on Confucius. Even though, Mencius was not Confucius’s students, his work appeared after Confucius’s death – some contemporary authors would list Mencius’s writings as Confucian school of thoughts (Ru Chia).

Paper by Angus Young
there have been many translations of Confucius’s work into English and other languages, the number of interpretations in the last two thousand years had been enormous, including some groups of academics known as Neo-Confucian. Furthermore, Confucian doctrines had been deciphered and applied onto modern research from many disciplines like anthropology, law, politics, management, economics, Asian studies, Chinese literature, and theology. And there had been countless of work critiquing his ideas.

Another thing to note is that the terminologies and concepts used in Confucius’s texts are often interlinked with each other in a circular sense (at times the meanings seemed to be repetitive), this atypical in Chinese philosophy. The same term could be applied across many contexts, whilst the meanings vary accordingly, the central ideas can be applied to specifically or generally. This means interpreting of his work can be narrowly understood in the literal sense, or broadly characterised by analogy and inductive reasoning. Thus the study of Confucian doctrines can be an inexhaustible adventure.

A caveat to note, Confucius's writings were not intended to be applied to corporate governance or business regulations per se. For the purpose of this research, inferences from the three books (as named in the above) and contemporary works will be drawn on at a conceptual level, and the interpretation adopted in would be secular, liberal and open textured. The analysis of his work will be selective and restricted to matters related to this research.

As mentioned in the above, Confucian values are not only part of Hong Kong’s heritage, it is embedded into the beliefs and value system. In 1993, the World Bank labelled Hong Kong as one of the East Asian economic miracle (also known as one of the four tigers).

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65 One of the most widely used English translations of Confucius’s work is - James Legge, *Confucius: Confucian Analects, The Great Learning and The Doctrine of the Mean* (1971) – for the purpose of this research all quotes in English of Confucius’s work will be drawn from this translation.

66 For example see Daniel Bell and Hahm Chaibong (eds.) *Confucianism for the Modern World* (2003)

67 For more on understanding Chinese philosophy see Bo Mou (ed.) *Comparative Approaches to Chinese Philosophy* (2003).


stated that a key engine of growth its high levels of productivity.\textsuperscript{70} Several researches asserted that the levels of productivity were driven by Asian values and work ethics inspired by Confucian ethics.\textsuperscript{71} Results from Hofstede and Bond’s survey showed that Hong Kong is one of the four countries Asian countries scoring high in ‘Confucian dynamism’.\textsuperscript{72} They found, ‘it then appeared that the country scores on Confucian Dynamism derived from this exercise are strongly associated with those countries’ economic growth. Thus we have found a cultural link to an economic phenomenon.’\textsuperscript{73} Some of the Confucian values accredited for the high economic growth include hard work, education, thrift and social order.\textsuperscript{74}

Confucian values are also said to be the ‘glue’ that binds Hong Kong’s network of family-owned businesses. Redding notes that,

> The Chinese networks derive their legitimacy and attraction from certain cultural predispositions, most of which are traceable to Confucian values. The very success of these networks encourages other cultural predispositions, such as patrimonial authority patterns, which give high organizational influence to key individuals, and an ethic of trustworthiness, which provides discipline and moral justifications to the system. This reciprocation releases other forms of efficiency, which can be explained technically in terms of low transaction costs, strategic flexibility, and a capacity for innovation, all of which facilitate a continuation of successful receipt in the future.\textsuperscript{75}

The order of things in civil society according to Confucius can be found in ‘the five relationships’.\textsuperscript{76} The five relationships are those between: 1) father and son; 2) ruler and subject; 3) husband and wife; 4) old and young (or elder and younger siblings); and 5) between friends.\textsuperscript{77} Chen argue that,

> Each of these relationships is governed by an ethics of mutuality and entails reciprocal moral obligations on the part of each party. There was a deep recognition that the human individual does not live in isolation and is not existentially self-
sufficient; he or she lives amidst a network of human social relationships, and full realisation of his or her nature, self, and destiny is a function of the fulfilment of the moral obligations associated with the social roles defined by these relationships.\textsuperscript{78}

These five relationships were subsequently transformed into the concept of \textit{sangang}\textsuperscript{79} (three bonds). Out of the three bonds, two of which (king and subject, father and son) relates to governance, the duties and obligations arising are \textit{zhong}\textsuperscript{80} (loyalty to the King) and \textit{xiao}\textsuperscript{81} (filial piety – son towards father).\textsuperscript{82} Violation of these moral duties and legal obligations in ancient China constitute a cardinal sin and serious crime.\textsuperscript{83} Chen adds that, ‘[o]n the positive side, it may also be said that the ‘three bonds’ made a major contribution to Chinese civilisation by ensuring the maintenance of relatively stable social and political order most of the time during the two millennia.’\textsuperscript{84} On the negative side, the system of \textit{sangang} had been exploited to justify absolute obedience. The ultimate goal of \textit{sangang} is to create social harmony and harmonious relationships,\textsuperscript{85} based on moral values and ethical norms.\textsuperscript{86}

In Chapter ten of \textit{The Great Learning}, Confucius said to make the kingdom peaceful, the King should lead by example so his subjects will learn to be virtuous and act ethically,\textsuperscript{87} and the principle of reciprocity is the yardstick by which he regulates himself.\textsuperscript{88} A good ruler he has to first attention to his own moral motivation because being virtuous he will gain men. Having men will help him obtain territory, and having territory will bring him revenue and

\begin{footnotes}
\footnote{\textsuperscript{78} Ibid.}
\footnote{\textsuperscript{79} This refers to the obligations of official to monarch, son to father, wife to husband. See Kai-wing Chow, \textit{The Rise of Confucian Ritualism in Late Imperial China: Ethics, Classical, and Lineage Discourse} (1994) 11}
\footnote{\textsuperscript{80} There are several meanings, ‘faithfulness’, ‘loyalty’ and ‘sincere commitment’. See Bo Mou (ed.) \textit{Comparative Approaches to Chinese Philosophy} (2003) 166.}
\footnote{\textsuperscript{81} This is central in ancient China’s political ideology, social life, and legal system. It means more than looking after one’s parents, but also showing reverence to them. See Lusina Ho, “Traditional Confucian Values and Western Legal Frameworks: The Law of Succession” in Daniel Bell and Hahm Chaibong (eds.) \textit{Confucianism for the Modern World} (2003) 288, 291.}
\footnote{\textsuperscript{82} Chen, above n. 79, 516. Note that \textit{xiao} had been a paramount virtue in China governing parent-child relationships. Confucius felt children are morally obligated to show appreciation for the sacrifices their parents have given over the years in upbringing of the child. In addition, he believed that children should obey, care and revere their parents. See Chichung Huang, \textit{The Analects of Confucius: A Literal Translation with an Introduction and Notes} (1997) 22-23, 52-54.}
\footnote{\textsuperscript{83} Albert Chen, ‘Confucian Legal Culture and Its Modern Fate’ in Raymond Wacks (ed.) \textit{The New Legal Order in Hong Kong} (1999) 505 at 516.}
\footnote{\textsuperscript{84} Ibid, 515.}
\footnote{\textsuperscript{86} Daniel Bell and Hahm Chaibong, Introduction: The Contemporary Relevance of Confucianism’ in Daniel Bell and Hahm Chaibong (eds.) \textit{Confucianism for the Modern World} (2003) 1, 23-28.}
\footnote{\textsuperscript{87} Legge, above n. 62, 373-374.}
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wealth. The King should thus use the resources wisely for the betterment of his subjects. Therefore, virtue is the root and wealth is the consequence.  

Confucius said, in order for the King to rule the state well, it is necessary to regulate the family first. Chapter 9 of *The Great Learning* states,

> From the loving example of one family a whole State becomes courtesies the whole State becomes courteous, […] the ruler must himself be possessed of the good qualities, and then he may require them in the people. He must not have the bad qualities in himself, and then he may require that they shall not be in the people…[T]hus we see how the government of the State depends on the regulation of the family.

According to Confucius the regulation of the family depends on the cultivation of individual morals. Chapter 8 of *The Great Learning* states, ‘the regulation of one’s family depends on the cultivation of his person…[i]f the person be not cultivated, a man cannot regulate his family.’

*Sangang* had been adopted by Kings and Emperors of China for centuries to create a system of hierarchical order. Arguably, this had helped perpetuate the feudal system and order of things in China. For Confucius these values and ethical principles were a definitive self regulatory mechanism, he believed that if individuals can discipline themselves in accordance to ethical norms and moral values, laws would be redundant. Applying these moral values on a social level through the regulation of families and the state, according to Confucius it is the basis for a civilised and compassionate society.

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89 Ibid, 375.
90 Legge, above n. 62, 370.
91 Ibid, 371.
92 Ibid, 369.
Apart from the governance of the state, Confucian ethics also influenced China’s legal tradition and jurisprudence.94 According to Cao’s reading of The Analects, Confucius believed a nation led by laws is condemned as perpetrators could find ways to avoid punishment.95 Even if compliance is achieved, they are external instruments, and are powerless to transform the inner character,96 only morals could rectify wrong behaviour.97 Confucius advocated that the King and his ministers should lead by example through the cultivation of moral rules,98 law and punishment were considered as secondary instruments or as a last resort to maintain social order.99

The Chinese traditional legal system unlike the West, failed to provide effective restraints against the state and ruler like the use of arbitrary powers. It also failed to protect individuals against the arbitrary powers of the state.100 To a certain extent, China is similar to the West where mercantile disputes were settled by guilds and clans, however little have evolved into laws like in many European countries because much are relationship rather than rule based standards.101 This could help explain why historically, China did not have indigenous laws to regulate companies apart from broad principles loosely base on customary practices and Confucian ethics supported by clan elders or village mediator-elites.102

The seeds of modern Chinese companies (Kongsi)103 were sown, according to Wang around the period of the Ming Dynasty.104 There were not creatures of legal instruments, it emerged...

97 Cao, above n. 95, 23.
98 Note Confucius did not believe in entrusting justice and good governance to be placed on systems and structures because they are instruments created by men. If the men had flawed characteristics, the systems they create would be equally flawed, that is why Confucius placed his faith on morality.
99 Cao, above n. 95, 27.
100 Peerenboom, above n. 96, 41.
102 Ibid, 35-9. Note that company laws were transplanted from Japan, which were modelled according to European laws, for more see Angus Young, ‘Conceptualising a Chinese Corporate Governance Framework: Tensions between Tradition, Ideologies and Modernity’ (2009) 20(7) International Company and Commercial Law Review, 235.
103 This term, ‘[kongsi] was utilized by Chinese throughout the diaspora to overcome economic difficulty, social ostracism, and oppression. In today's overseas Chinese communities throughout the world, this approach has been adapted to the modern environment, including political and legal factors. The kongsi is similar to modern business partnerships, but also draws on a deeper spirit of cooperation and consideration of mutual welfare. It has been stated by some that the development and thriving of Chinese communities worldwide are the direct...
out of an informal commercial arrangements used by Chinese migrant workers in Southeast Asia in the 18th Century.\textsuperscript{105} Chinese customs and Confucian ethics governed early Chinese corporations, as there were virtually no laws regulating these entities.\textsuperscript{106} Prior the 20th Century, the lack of laws regulating businesses in China had much to do with the Confucian mindset in governance and regulations.\textsuperscript{107}

In sum, the Confucian order of society is mapped out under a hierarchical order of three core relationships stipulated in \textit{sangang}. Ultimately, it was aimed at creating social harmony and order, based on moral values and ethical norms. Aside from the spiritual references, leadership (as a King or father) according to Confucius is built on the notion of ‘moral authority’.\textsuperscript{108} Accordingly, those who lead must be strive towards moral excellence. Therefore the order of things in the Confucian universe follows this sequence (see figure 3) – first, self cultivation (with moral excellence, this will bring about self discipline and control), then the regulation of a family (affairs at home ought to be orderly and family members live harmoniously together), and finally the governance of a state (a good king is like a benevolent father who takes care of his subject as he would his own children).\textsuperscript{109}

\textbf{Figure 3}

\textsuperscript{105}Ibid, 3.
\textsuperscript{107}For more on China’s early attempts to modernise their laws and legal system see Vivienne Bath, ‘Reforms in Chinese Law from 1901 to 1911’ (Unpublished BA (Hons) Thesis, Australian National University, 1977).
\textsuperscript{109}Legge, above n. 62, 369-370.

\textbf{Paper by Angus Young}
The two key principles of Confucian ethics that underpins the above discuss about *sangang* relevant to Chinese governance and jurisprudence is the notions of *li* and *ren*. The Chinese character of *li* is rooted in rituals performed during the worship of the heavens.\(^\text{110}\) The rituals and rites were codes of propriety, a set of rules and institutions by which nobles and commoners conduct themselves in their relations with the gods and spirits as well as with other human beings. Thus this code of propriety encompassed all aspects of human life. It is also stringent etiquettes governing the organisation of the state, families and social relations. The purpose of *li* was used by rulers as governmental measures to achieve humane rule.\(^\text{111}\) It also aims to instil motivational attitudes, serves to shape character and moderate behaviour.\(^\text{112}\)


\(^{111}\) Ibid, 20.

This is accomplished through self cultivation. For Confucius, ‘self cultivation focuses on training oneself to follow the li (rituals) of the social value system conforming orderly to the social norms.’ Also the practice of li fosters the growth of trust between people and the discipline of li helps people cohabitate harmoniously by resolving conflict with non-confrontational postures and predisposition towards compromised resolutions.

As noted in the above, li was one of two schools of Chinese legal tradition. According to Cao’s translation of The Analects, Confucius believed that a nation led by laws is condemned because perpetrators would find ways to avoid punishment. Even if compliance is achieved, laws can only demand physical obedience, and so are unable to rehabilitate the wrongdoers, only morals could rectify wrong behaviour. Therefore li was intended to be ethical based socialised obligations, which does not invoke penal punishment, instead non-compliance draws indignation from the community. It is expected that the wrong doer or perpetrator feels shameful for the wrongful act or behaviour and be repentant. There is an educative facet to the notion of li, it is a behavioural norm that, ‘operates by being internalized by the person, so that in effect it becomes part of his or her entire being.’

The moral foundation of li is the concept of ren. Chong claimed that, ‘Ren is absent when li is performed without proper spirit, and the rituals of li, seen in this light, have an education

114 Ibid, 130.
115 Sor-hoon Tan, ‘Can There Be a Confucian Civil Society?’ in Kim-chong Chong and Sor-hoon Tan, C. L. Tan (eds.) The Moral Circle and the Self: Chinese and Western Approaches (2003) 193, 210-211.
116 The two schools of thoughts in Chinese legal tradition, one is the Confucian school and the other is the fa (legalism) school. For more see Alex Lau and Angus Young, ‘In Search of Chinese Jurisprudence: Does Chinese Legal Tradition have a Place in China’s Future’ (2009) 20(5) International Company and Commercial Law Review, 155.
117 Peerenboom, above n. 96, 28.
118 Cao, above n. 95, 23.
120 Hahm Chaibong, ‘Constitutionalism, Confucian Civil Virtue, and Ritual Propriety’ in Daniel Bell and Hahm Chaibong (eds.) Confucianism for the Modern World (2003) 31 at 43.
function in bringing about the attitudes and values incorporating ren.\textsuperscript{121} For Confucius ren is the essence of perfecting one’s virtues or perfection of human character.\textsuperscript{122} It is also central to Confucian ethics and the foundation of the Confucian order. In essence, a leader has to internalise the morals through the exercise of li moderated by the affection of ren to produce social harmony and ethical conduct.\textsuperscript{123}

From a critical perspective the Confucian inspired governance system appears to be at odds with profit maximisation objectives of corporations, with the emphasis on li and ren. Then again, these values are central to enhancing accountability. Looking back at history, China’s economy thrived for centuries under a Confucian based order and governance. China had sophisticated trade networks and robust financial/credit system with relatively little policy or legal intervention by past Imperial governments.\textsuperscript{124} In the modern business context Romar argued that, ‘Confucianism is a useful foundation for organizational ethics because it addresses the reality of life in organizations and assigns responsibilities only in the context of the situation.’\textsuperscript{125}

More important, Confucian doctrines are moral based code of conduct, intended to cultivate one’s moral values. It is aimed at internalising these values to govern individual conduct, like a self disciplinary mechanism, but in practice, rely on social coercion to shape behaviour and reframe from immoral or unethical conduct. And it lacks formalised due process or detailed prescriptive standards to govern individual behaviour, Confucius’s teaching are also vulnerable to varied and creative interpretations.

Nevertheless, the corporate governance practices in Hong Kong and to some extent in China, are influenced by Confucian values. This poses certain challenges from a legal perspective, because for Hong Kong company laws based almost entirely based on British Companies

\textsuperscript{121} Kim-chong Chong, *Early Confucian Ethics* (2007) 19. Ren can be characterise and defined as “benevolence”, “kindness”, “goodness”, “human-heartedness” and “humanity”.
\textsuperscript{123} Steven Greer and Tiong Puiow Lim, ‘Confucianism: Natural Law Chinese Style?’ (1998) 11(1) *Ratio Juris* 80, 82.
Act, and for China company laws are heavily influenced by European countries. So the laws as it stands currently in Hong Kong and China do not incorporate any elements of Chinese tradition values. Thus, there is a clear mismatch between the prescription of legal standards and companies who practices paternalistic governance. Evidently, this disparity requires urgent attention. Why? Because markets need clear and robust laws to sustain economic growth, for Asian countries this has becoming an area of growing importance as ‘bottle-necks’ in the economy begin to become visible.

Meta-regulation and Regulating Corporate Governance:

Levi-Faur note that the era of deregulation and privatisation in the 1990s had spurred the creation of a new socio-economic and political order where an increase delegation of regulatory responsibility from state to private institutions coupled with new technologies and greater inter/intra-institutional coordination resulted in the proliferation of self-regulatory arrangements. And yet efficient and effective self-regulation will not come about without the supervision and support of the state. This is where meta-regulation plays a key role. It is a concept that evolved out of a web of self regulatory relationships between law and society or law and the economy. It is the ‘regulation of self regulation’, where regulators monitor and assess the self-regulatory efforts of regulated entities. Self regulation has been labelled as management based regulation. This approach involves companies developing their own process and management system standards designed to comply with the objectives found in substantive law. Meta-regulation permits complex interaction of different sets of legal and non-legal ordering to coexist under pluralistic structure. This theory also builds on responsive regulation originally developed by John Braithwaite and in many ways tries to...
overcome or address the criticism or weakness of this regulatory framework,\textsuperscript{135} as well responding to past regulatory failures and crises from high profile disasters.\textsuperscript{136} Its focus is on outcomes, principles, and processes instead of prescriptive rules, while not neglecting the merits of legal instruments.\textsuperscript{137} Sinclair notes, ‘rather than regulating prescriptively, meta-regulation seeks to stimulate modes of self organization within the firm in such a way as to encourage internal self-critical reflection about its performance.’\textsuperscript{138} According to Haines, this form of regulation has many advantages, particularly where causes of harm are complex and require constant vigilance. The promise of meta-regulation as a response to catastrophic risk lies in its potential to bring together an organization’s understanding of risk and appropriate methods of risk reduction with the demands and expectations of the regulator.\textsuperscript{139}

Parker wrote, ‘meta-regulating law could connect with communities, networks and organisations that are rich with the possibility of regulating themselves and one another responsibly, and work with that possibility to invigorate and enliven their inner commitment to responsibility.’\textsuperscript{140} Meta-regulatory law also recognises that law itself is regulated by non-legal regulation, and should therefore seek to adapt itself to plural forms of regulation.\textsuperscript{141} Therefore it is capable of extending beyond the prescriptions of responsive regulation to absorb the merits of smart regulation and nodal governance into a more integrative regulatory framework.\textsuperscript{142}

By taking into account macro factors like social relations, economic pressures, and political considerations, as well as micro issues like norms, meta-regulatory. Meta-regulation motivates, moulds, and augments the self regulatory impetus to aid better compliance.\textsuperscript{143} The development of meta-regulation came about with the realisation that rules as an edict imposed on individuals might not be an effective regulator of conduct and behaviour. Other non-legal factors like sociological and ideological imperatives, as well as political economic

\textsuperscript{137} Ibid, 31.
\textsuperscript{138} Gunningham and Sinclair, above n. 132, 866.
\textsuperscript{139} Haines, above n. 135, 1.
\textsuperscript{140} Christine Parker, ‘Meta-Regulation: Legal Accountability for Corporate Social Responsibility’ (Legal Studies Research Paper No. 191, University of Melbourne, 2006) 9.
\textsuperscript{141} Ibid, 11.
\textsuperscript{142} Ibid, 3.
\textsuperscript{143} Haines, above n. 134, 32.

Paper by Angus Young
constrains altogether play a regulatory function. Criminologists argued that these contextual factors can influence individual behaviour; hence the line between social environment and individualism is not a clear one as they interact with each other.

At the macro-level, this is where the socio-economic, political, and international pressures shape how regulatory instruments (‘hard’ and ‘soft’ laws) are formulated, and the regulatory activities (monitor and enforcement) of various governmental (regulators and enforcers) and non-governmental (professional bodies and litigators) regulatory bodies. Locally, economic pressures and political factors are key drivers of legal reforms. The relationship between markets and laws is a mutually supporting one. The process of law making and reform is often a product of political compromise. External influences from international institutions like the International Monetary Fund, OECD, or regional bodies like the European Union and Asian Development is important. They can influence and shape national regulations and standards through various forums and exchanges, thus regulations or recommendations made by these institutions constitute ‘web of influence’ on national regulatory debates and policies adopted.

At a micro level values take on a regulatory role. Values can be social (cultural) or ethical based, or a combination of both. Norms can be understood as the socialisation process and institutionalisation of individual values. Norms are social conventions that are often rooted in moral values steering towards elements of socially and ethically accepted ends.

Whilst the above forms the basis of formal regulatory and enforcement functions, it has a propensity to oblige superficial compliance of rules because of the fear of sanctions by the various authorities. It does not necessarily shape or alter the values and beliefs of regulated entities and individuals. A key assumption of meta-regulation is that ethical values are incorporated in social norms. But social norms contain socialised attitudes acting like an

\[\text{144} \quad \text{Ibid, 3.}\]
\[\text{145} \quad J. \text{ Robert Lilly, Francis Cullen, and Richard Ball, } \text{Criminological Theory: Context and Consequences (2nd ed., 1995) 50-59.}\]
\[\text{146} \quad \text{John Gillespie, ‘Law and development in the ‘market place’: an East Asian perspective’ in Kanishka Jayasuriya (ed.) Law, Capitalism and Power in Asia (1999) 118-150.}\]
\[\text{147} \quad \text{John Braithwaite and Peter Drahos, } \text{Global Business Regulation (2000) 7-10, 27-34.}\]
\[\text{148} \quad \text{Christine Parker, } \text{The Open Corporation: Effective Self-regulation and Democracy (2002) 197.}\]
\[\text{149} \quad \text{Helen Stacy, } \text{Postmodernism and Law: Jurisprudence in a Fragmenting World (2001) 136-137.}\]
\[\text{150} \quad \text{Johan Graafhland, } \text{Economics, Ethics and the Market: Introduction and Applications (2007) 5.}\]
\[\text{151} \quad \text{Haines, above n. 134, 8-12.}\]
externally imposed legal rule or standard, except for the fact that it emulates accepted social practises and conforms to social expectations. From an individual perspective, socialised norms might not create sufficient motivation to comply. Thus a separate code of conduct based on ethical values can create a heightened awareness at a conscious level to comply with the objects laid down self regulatory regimes, as well as appealing to one’s conscience to do so. Then again, this builds on the assumption that regulatees recognise the merits of these codes and voluntarily wishes to comply because he/she knows they either should or ought to without the need to look up hard or soft rules. By complying with such ethical codes, they would unconsciously be adhering to the spirit and objects of the law.

By characterisation, ethical values are normative and subjective principles dealing with what one ‘ought to do’, a standard of behaviour one imposes on oneself to conform with. Ethical values can serve as a motivator to comply with the law, not out of obedience or fear of penalty, rather from a sense of civic duty. Ethical or moral values are embedded in the works of both Weber and Durkheim’s conception of law and regulations. Durkheim sees the law as ‘essential’ to the constitution of social solidarity because they are the most stable and precise element of expression that reflects the society’s collective morality. In contrast, Weber sees the law and regulations as a form of convention backed by sanctions that is administered by enforcement agencies. His emphasis is on the inter-relationships between laws, religion, political agencies onto economic structures and development. However, on closer scrutiny, Weber also argued that protestant ethical values influenced the development of capitalism, bureaucracy and the rational-legal state in the West. In short, ethical values have a regulatory function in terms of governance and compliance.

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153 Note that a counter argument could be made on this point. Ethics can be used to justify disobedience with the law because the laws in questions could be deemed unethical.
154 Leaving aside the positivist and natural law debate about ethics because this thesis focuses on the sociological dimensions of law and regulation, there the positivists and natural law debate about morality is not imperative to the discussions in this context.
Whilst ethical values can be community based or cultural specific on the one hand, on the other hand, some beliefs are universal like for the betterment of society, therefore, they are flexible and malleable tools and instruments to influence human behaviour. Ethical values are also capable of internalising standards of behaviour that is conducive and consistent with the objectives found in formal regulatory instruments like in laws and regulations, as long as they are based on universal or common beliefs. However, some cultures communicate and achieve these beliefs differently. And it may also differ in the way how each culture achieves these ethical ends. And unlike hard rules and laws, it is more flexible and broad, as well as less intrusive with the imposition of penalties for non-compliance.

Meta-regulation is not without weaknesses. As illustrated in figure 4, meta-regulation consists of a web of formal and informal regulatory instruments and stakeholders. It remains vulnerable through selectively addressing risks, offering unpalatable expectations to resolve complex socio-economic or emotionally charged regulatory problems. Since there are formal and formal regulatory instruments, as well as governmental and non-governmental regulators, the issue of coherent regulatory objectives comes into question. Even if those objectives are similar, they are no guarantee the conflicts or discrepancies would not materialize overtime, when disputes between rival groups or between government policies and stakeholders emerge from time to time. Also the coordination between governmental and non-governmental agencies might not be straightforward. This suggestions discrepancy between different sets of formal and informal regulatory standards would emerge from time to time, thus creating gaps in regulatory ends. Furthermore at an organisational level, the gaps between the intentions of companies or regulators and the outcomes could be substantial, and resistant by individuals could also be difficult to overcome. Conversely, meta-regulation is comprehensive in terms of its design, incorporation of formal and informal regulatory agencies, and ‘hard’ and ‘soft’ laws. Altogether create a web like effect upon individuals to comply with regulatory objectives. Furthermore, it is capable of integrating diverse norms and values that maybe culture specific with the aim of achieving a common regulatory outcome. Even though this ideal or normative regulatory model is perhaps over ambitious in integrating complex human interactions and behaviour, early empirical results of the use of

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158 Haines, above n. 134, 2.  
159 Gunningham and Sinclair, above n. 132, 872.
meta-regulation on a range of issues like environmental enforcement and tax compliance is encouraging.\textsuperscript{160}

In Asia, meta-regulation also gained momentum with massive economic liberation program in the aftermath of the 1997 Asian economic crisis.\textsuperscript{161} And thus re-regulation of the privatised entities was required to ensure good governance was mandatory.\textsuperscript{162} Hong Kong has long tradition of minimum governmental intervention dating back to the Colonial administration, self regulation amongst the elite business community was arguably the key to island city’s rapid economic growth. For example, the Hong Kong Stock Exchange had long been self regulated body.\textsuperscript{163} It was not until the early in 1990s after a government enquiry that leads to reforms being introduced.\textsuperscript{164} Even so, the listing rules are not backed by statutes.

Even though China is still under the considerable influence of the state, its massive privatisation and listing of state-owned enterprises in its stock markets, greater delegation of regulatory responsibility to corporations will gradually be introduced because of inefficiencies of a command and control regulatory system in a modern economy.

With regards to the modern self regulatory regime and traditional Chinese values. For Centuries China had been adopting customary practices and social norms drawn from Confucian ethics to regulate commerce and trade, therefore China has a track record of self...

\textsuperscript{160} John Braithwaite and Christine Parker, ‘Conclusion’ in Christine Parker, Colin Scott, Nicola Lacey, and John Braithwaite (eds.) \textit{Regulating Law} (2004) 267, 287

\textsuperscript{161} John Gillespie, ‘The Role of State, Non-state, and Hybrid Actors in Localizing Global Scripts in East Asia’ in John Gillespie and Randall Peerenboom (eds.) \textit{Regulation in Asia: Pushing Back on Globalization} (2009) 24 at 43

\textsuperscript{162} Angus Young, Sandi Rahaju and Grace Li, ‘Regulatory Multiplicities in Telecommunications Reforms in Indonesia and China’ (2005) 2 Macquarie Journal of Business Law, 135-67


regulatory systems. As noted earlier in this paper, Confucian ethics uses moral excellence as self disciplinary mechanism. And it internalises those moral values to ensure individuals act accordingly. Therefore, applying meta-regulatory instruments in modern China and Hong Kong would in effect legitimise some elements of Confucian doctrines. Of course this does not mean it mimics China’s traditional methods of regulation, new procedures and processes in the modern meta-regulatory framework will ensure it complies with current objects of the laws are actualised.

Nevertheless, traditional values will play a key role in the success of meta-regulatory framework in China as well as Hong Kong, especially in the regulation of corporate governance since Confucian ethics are already the foundation of paternalistic governance widely practiced in Hong Kong and is slowly gathering pace in China’s private family-owned businesses.

**Figure 4**

Conclusions:
The aim of this paper is to propose an ambitious idea - that is to incorporate traditional Chinese value into modern meta-regulatory framework to regulate corporate governance. I started with a discussion about what is corporate governance because like any fashionable issue it runs the risk of being misrepresented or misunderstood due to ‘knee jerk’ reactions, passing impressions, or just ignorance.

Unlike management which focuses on daily operational matters, corporate governance, ‘refers to the arrangements for its ultimate control, involving who sets its direction, and who monitors and finally takes responsibility for the organisation’s performance.’\textsuperscript{166} As noted that is an ever growing list of theories prescribe by various disciplines - each discipline draws from its own bounded set of assumptions and methodology to derive at conclusions or normative sets of prescriptions.\textsuperscript{167} Even if some of those theories are over simplistic or unrealistic, it adds a piece to the puzzle of what corporate governance encompasses. More important, all the theories attest to the underlying object of governance is accountability of directors. Even though, it sounds easy the board performs many functions and this paper has pigeon holed them into three key areas. While we can put in place more structures, add new protocols and processes to ensure greater transparency and procedural fairness, relational matters are dynamic and often culturally influenced. Although fiduciary duties mandate directors to be loyal to the company, the notion of loyalty and more importantly conflicts of interests is quite different in China and Hong Kong from those in the West.

\textsuperscript{167} Michael Adams and Angus Young, ‘Regulating Corporate Governors: Rethinking board responsibilities and liability’ (2007) 59(1), \textit{Keeping Good Companies}, 11 at 12
Paternalistic governance in China and Hong Kong is a product of Chinese traditional values, namely from a Confucian doctrines. The concept of sangang presents a clear hierarchical order in the Confucian universe. This order gives unprecedented power (compared to Western concepts) to the in-charge, namely the King over his subjects, a husband over his wife, and a father over the children. Thus in Chinese family-owned businesses, the father who is usually the founder and chair/CEO reigns all matters in company liken a King over his subjects. Whilst this might be an extreme account of the father’s control in a Chinese family-owned businesses, the decisions of the chair/CEO is often unquestioned by others members of the family on the board. Notions of conflicts of interest might not register as an important matter because the Chair/CEO might think his actions are for the interest of his family and justifies it as benevolent. But upon closer scrutiny Confucian values are morally based, where concepts of li and ren forms the core values of benevolent leadership. From this perspective conflicts are unacceptable behaviour, thus should either be avoided or resolve to the satisfaction of parties involved.

As noted meta-regulation is a new regulatory innovation adopted across many modern Western countries, like the UK, Australia, New Zealand, and the US. This is a system of self regulatory frameworks where a broader view of regulation is embraced. This came out of the realisation that command and control type regulation is ineffective in particular, in the field of commercial regulation. It takes into account norms and values, as well as the role of various stakeholders with vested interested in regulating the behaviour of the targeted regulatees. Since the regulation of trade and commerce in ancient China was predominantly self regulatory through customs inspired by Confucian ethics focusing on self discipline as a regulatory mechanism to shape behaviour and norms, hence a clear benefit for adopting meta-regulatory framework in modern China and Hong Kong - it is not an entirely alien concept. Besides, Confucian ethics would enhance regulation with the use of an ethical code of conduct or guidelines as a form of ‘soft law’. This would not only improve regulatory compliance, but also allow these codes or guidelines to include Confucian doctrines. Therefore, by aligning China and Hong Kong’s norms and values in the form of soft laws with the hard laws (e.g. director’s fiduciary duties), the anticipated outcome is a more responsive and integrated regulatory regime.
Figure 5

Key domestic actors
- International & local market pressures
- Political factors
- Social/cultural norms
- Moral values

Ownership structure

Board level

Relational Operational Structural

Individual level

Director

Director

Director

Internal dynamics of an organisation

Regulatory instruments

Contextual considerations – taking into account the number of diverse interests

Fiduciary duties

Regulators & Regulatory institutions

Interactions

Professional bodies & commercial associations

Interactions

Investors, auditors, bankers, lawyers & other stakeholders

Hybrids & Soft law

Feedback loop

- Regulatory instruments

- Contextual considerations – taking into account the number of diverse interests

- Internal dynamics of an organisation

- Fiduciary duties

Paper by Angus Young