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No Need for Asia to be Woke: Contextualizing Anglo-America's 'Discovery' of Corporate Purpose

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I am grateful to Umakanth Varottil for generously allowing me to use his ECGI Blog post, "Responsible Capitalism and Corporate Purpose: The India Way" <https://ecgi.global/blog/responsible-capitalism-and-corporate-purpose-india-way> as the primary substantive content for the section on India in this article (see, Part II(C) below). This Article builds on my ECGI Blog post, "No Need for Asia to be Woke: Responsible Capitalism Through an Asian Lens" <https://ecgi.global/blog/no-need-asia-be-woke-responsible-capitalism-through-asian-lens>. I am also grateful for extremely helpful feedback on earlier drafts of this article from Afra Afsharipour, Gary F Bell, Brian R Cheffins, Michael Dowdle, Gen Goto, Amir N Licht, Hisashi Harata, Tamane Harata, Christian Hofmann, Dionysia Katelouzou, Kon Sik Kim, Alan K Koh, Lin Lin, Roza Nurgozhayeva, Mariana Pargendler, Elizabeth Pollman, Samantha S Tang, and Umakanth Varottil. Any errors remain my own.

Abstract

Viewed through an Anglo-American lens, corporate governance around the world is living a woke moment. Anglo-America's recent "discovery" that corporations have stakeholders (other than shareholders) and purposes (other than maximizing shareholder value) is hailed as a corporate governance solution that can deliver global prosperity. However, this article demonstrates that long before Anglo-America's "discovery" of corporate purpose, Asia was already awake to it. It describes how Asia's most important and dynamic economies – which are the world's engine for economic growth – have been built on systems of corporate governance where corporate purpose and stakeholderism reign supreme. This positive claim has important normative implications. The Anglo-American movement to push corporations around the world to be more purposeful is likely to have deleterious effects in Asia where corporations already tend to have too many purposes. Under the guise of embracing the Anglo-American corporate purpose movement, entrenched stakeholders may resist reforms to reduce rent seeking, wealth tunnelling, and protect (minority) shareholder interests. A proper understanding of the history of corporate purpose in Asia demonstrates that different jurisdictions have different understandings of the purpose that corporations should serve and that there is no one model that fits all. At any given time, each jurisdiction will be at a different point along the shareholder-primacy/stakeholderism continuum. How this is achieved will vary from jurisdiction to jurisdiction and within each jurisdiction over time. Ultimately, prosperity requires diversity.

Keywords: Corporate purpose, shareholder primacy, Friedman doctrine, stakeholders, comparative corporate law, Asian law, Anglo-American, prosperity, diversity

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16 June 2022 Draft

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A proper understanding of the history of corporate purpose in Asia demonstrates that different jurisdictions have different understandings of the purpose that corporations should serve and that there is no one model that fits all. At any given time, each jurisdiction will be at a different point along the shareholder-primacy/stakeholderism continuum. How this is achieved will vary from jurisdiction to jurisdiction and within each jurisdiction over time. Ultimately, prosperity requires diversity.

* Dan W Puchniak is a Professor in the Yong Pung How School of Law at Singapore Management University and a Research Member of the European Corporate Governance Institute (ECGI). I am grateful to Umakanth Varottil for generously allowing me to use his ECGI Blog post, "Responsible Capitalism and Corporate Purpose: The India Way" <https://ecgi.global/blog/responsible-capitalism-and-corporate-purpose-india-way> as the primary substantive content for the section on India in this article (see, Part II(C) below). This Article builds on my ECGI Blog post, "No Need for Asia to be Woke: Responsible Capitalism Through an Asian Lens" <https://ecgi.global/blog/no-need-asia-be-woke-responsible-capitalism-through-asian-lens>. I am also grateful for extremely helpful feedback on earlier drafts of this article from Afra Afsharipour, Gary F Bell, Brian R Cheffins, Michael Dowdle, Gen Goto, Amir N Licht, Hisashi Harata, Tamane Harata, Christian Hofmann, Dionysia Katelouzou, Kon Sik Kim, Alan K Koh, Lin Lin, Roza Nurgozhayeva, Mariana Pargendler, Elizabeth Pollman, Samantha S Tang, and Umakanth Varottil. Any errors remain my own.

Contents

I. Introduction

In 2018, Colin Mayer, a stalwart of the British Academy, published "Prosperity".[1] The Book is the new "bible" of corporate governance that "is destined to change the world", says Martin Lipton, a prolific prophet for America's white-shoe lawyers.[2] The Book's revelation is that corporations should no longer be governed for the sole purpose of maximizing shareholder value. In 2019, the Business Roundtable, a club of America's elite CEOs, reportedly "made headlines around the world" by releasing its new statement on corporate purpose.[3] The statement's epochal epiphany echoed Mayer's clarion call for corporations to have a purpose other than maximizing shareholder value: corporations no longer exist principally to serve shareholders but "for the benefit of all stakeholders—customers, employees, suppliers, communities and shareholders".[4] In 2020, Larry Fink, founder and chief executive of the American-cum-global investment goliath BlackRock, issued a letter to CEOs around the world imploring them to govern corporations to embrace "purpose and [serve] all stakeholders" – ostensibly spelling an end to the shareholder primacy obsession.[5] The same year, the World Economic Forum, an international organization comprising major global corporations and thought leaders, "issued a manifesto urging companies to abandon the traditional model of 'shareholder capitalism'" and its executive chairman likened "the session focusing on the subject to 'the funeral of shareholder capitalism'".[6]

Viewed through an Anglo-American lens, corporate governance around the world is living a woke moment.[7] The "discovery" that corporations have stakeholders (other than shareholders) and purposes (other than maximizing shareholder value) promises to deliver global corporate governance from Tartarus to Elysium – or as Mayer describes it, perhaps drawing on Hinduism for

[1] Colin Mayer, *Prosperity* (OUP, 2018).
[2] Colin Mayer, *Prosperity* (OUP, 2018) viii.
[3] Jill E Fisch, 'Purpose Proposals' (ECGI Law Working Paper 638/2022, April 2022) < https://ecgi.global/working-paper/purpose-proposals> accessed 14 May 2022, 8.
[4] 'Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans'' (*Business Roundtable*, 19 August 2019) < https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans> accessed 14 May 2022.
[5] Larry Fink, 'A Fundamental Reshaping of Finance' (*Harvard Law School Forum on Corporate Governance*, 16 January 2020) <https://corpgov.law.harvard.edu/2020/01/16/a-fundamental-reshaping-of-finance/> accessed 14 May 2022.
[6] Lucian A. Bebchuk and Roberto Tallarita, 'The Illusory Promise of Stakeholder Governance" [2020] 106 *Cornell Law Review* 91, 107.
[7] For an excellent nuanced comparative analysis that unpacks the complexities of the purpose debate see, Amir N. Licht, 'Varieties of Shareholderism: Three Views of the Corporate Purpose Cathedral' in Elizabeth Pollman & Robert Thompson (eds.), Research Handbook on Corporate Purpose and Personhood (Edward Elgar 2021).

global effect, corporate "nirvana".[8] Mayer tells us that this woke moment has the potential to emancipate the global community from the "Friedman Doctrine", which posits that the corporation's sole purpose is maximizing shareholder value. In Mayer's words, the Friedman Doctrine "has been a powerful concept that has defined business practice and government policies around the world for half a century".[9] Not so fast.

That the Friedman Doctrine has played a central role in shaping *Anglo-American* corporate governance is beyond reproach. Despite their myriad differences, until recently, modern corporate law and governance in the United Kingdom and United States has, in theory and practice, been defined by shareholder primacy. Recognition of the interests of other corporate stakeholders (aside from shareholders) has largely been on the margins of corporate law and governance in both systems – with "shareholder primacy" at the core.[10] At the dawn of the new millennium, two of America's preeminent law professors, Henry Hansmann and Reinier Kraakman, in their pugnaciously titled article "The End of History for Corporate Law", boldly claimed that "[t]he triumph of the shareholder-oriented model of the corporation over its principal competitors is now assured".[11] In the echo of such Anglo-American shareholder primacy triumphalism, perhaps the iniquities of those who now suggest that the Friedman Doctrine is a powerful concept that has defined business practice and government policies in Asia (and everywhere else) over the last fifty-years can be forgiven.

What seems to have been forgotten is that the Friedman Doctrine is as autochthonous to Asia as the fortune cookie.[12] Asian economic miracles have propelled the world's economic growth for half a century.[13] However, they have not been built on the Friedman Doctrine. Instead, for better or worse, the corporate governance systems in Asia's most important economies have been driven by a variety of purposes – with neither the Friedman Doctrine nor its corporate law incarnation in the form of "shareholder primacy" reigning supreme.

This is a positive observation with normative implications. As illuminated below, the failure to accurately understand the purposes corporations have served – and do serve – in Asia has real-world consequences. It risks the well-intentioned Anglo-American-cum-global corporate purpose movement providing cover for rent-seekers in Asia – who are (or should be) disciplined by shareholder wealth maximization – in systems long steeped in corporate purpose. It may hinder efforts to address climate change as repurposing corporations for this task requires understanding what their core purpose is to begin with. It cancels convincing evidence that corporate governance without shareholder primacy can produce economic success; and, in some cases, spawn economic

[8] Colin Mayer, *Prosperity* (OUP, 2018) 35-37.

[9] Colin Mayer, *Prosperity* (OUP, 2018) 2. It should be noted that Mayer's claim about the Friedman Doctrine may even be incorrect in the context of the United States as a leading corporate law professor has convincingly explained how it is erroneous to blame (or credit) Milton Friedman for the rise of shareholder primacy in corporate America. Brian R. Cheffins, 'Stop Blaming Milton Friedman!' (ECGI Law Working Paper 523/2020, June 2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552950> accessed 6 June 2022.

[10] For an excellent overview of this topic in the Anglo-American context see, Lucian A. Bebchuk and Roberto Tallarita, 'The Illusory Promise of Stakeholder Governance" [2020] 106 *Cornell Law Review* 91, 103-108.

[11] Henry Hansmann and Reinier Kraakman, 'The End of History for Corporate Law' (2001) 89 *Georgetown Law Journal* 439, 468.

[12] What is commonly known as the "fortune cookie" is ubiquitous in Chinese restaurants in the United States and now in Chinese restaurants in several other Western countries. It was most likely created by Japanese immigrants in California in the late 19th or early 20th century. The fortune cookie appears to have nothing to do with traditional Chinese culture – as is often erroneously assumed. These cookies may have drawn some inspiration from different cookies historically produced in Japan – but which are different from the American fortune cookie. 'Fortune cookie' (*Wikipedia*) <https://en.wikipedia.org/wiki/Fortune_cookie> accessed 16 May 2022.

[13] Dan W Puchniak, 'Multiple Faces of Shareholder Power in Asia: Complexity Revealed' in Jennifer G Hill and Randall S Thomas (eds), *Research Handbook on Shareholder Power* (Edward Elgar Publishing, 2015) 511, 511-512.

miracles that lift hundreds of millions of people out of poverty, produce world leading innovations, and build stable and safe societies. It masks the dark sides of Asia's economic miracles, in which corporations with core purposes other than shareholder wealth maximization can produce – and have produced – societal ills, which other countries would do well to avoid.

II. A Brief History of Corporate Purposes in Asia Usurping Shareholder Primacy

Asia is diverse. With over four billion people, two thousand languages, and around fifty countries, one should almost never make claims about Asia as a whole. However, when it comes to economic power and financial markets a handful of countries in Asia dominate.[14] For this short article, it makes sense to consider Asia's three largest economies respectively – China, Japan, and India – which comprise three of the four largest economies in the world.[15] It is also instructive to consider Singapore as it is one of the world's wealthiest economies – which as a Commonwealth, English speaking, international financial centre would be the jurisdiction that one may predict should have embraced shareholder primacy more so than anywhere else in Asia.

A. Understanding Stakeholderism With Chinese (Communist Party) Characteristics

Two decades ago, the United Sates had almost twenty times as many Fortune Global 500 Companies as China. Today, the number of Fortune Global 500 Companies in China (124) has surpassed the United States (121). China's listed companies are leaders in many of the world's most important industries, a fact that was unthinkable at the dawn of the new millennium. China now has the world's largest market for initial public offerings and the world's second largest stock market, which has grown five-fold in the past decade.[16]

These facts help explain how China has enjoyed decades of economic success which have lifted hundreds of millions of people out of poverty, placing it on a trajectory to be the world's most powerful economy. To Western observers, claims that China has achieved its economic success at the expense of Western democracy, individual liberties, and human rights are well-known. That the Chinese economy is on the precipice of imploding has been repeated ad nauseam for decades – but has not (yet) transpired. Given China's global economic superpower status and Anglo-America's corporate purpose obsession, including China in the corporate purpose debate would seem unavoidable. This is especially so considering claims of the Friedman Doctrine's global ubiquity and the declaration that world domination of Anglo-American shareholder-primacy

[14] Dan W Puchniak et al., 'Introduction' in Dan W Puchniak et al. (eds), *Independent Directors in Asia: A Historical, Contextual and Comparative Approach* (CUP 2017) 7-8; Dan W. Puchniak at al., 'The Complexity of Derivative Actions in Asia: An Inconvenient Truth' in Dan W. Puchniak et al. (eds.), *The Derivative Action in Asia: A Comparative and Functional Approach* (CUP 2012) 98.

[15] Measured on a Purchasing Power Parity basis (PPP) the largest economies in the world based on 2020 data are: China (1); United States (2); India (3); and, Japan (4) ('The World Bank Data, GDP, PPP' (*The World Bank Data*) <https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?most_recent_value_desc=true> accessed 14 May 2022. Measured in US Dollars the largest economies in the world based on 2020 data are: United States (1); China (2); Japan (3); Germany (4); United Kingdom; (5) and, India (6) ('The World Bank Data, GDP, (current US$)' (*The World Bank Data*) <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true > accessed 14 May 2022.

[16] For the original text with the sources supporting this paragraph see, Lin Lin and Dan W. Puchniak, 'Institutional Investors in China: Corporate Governance and Policy Channeling in the Market Within the State' (2022) 35 *Columbia Journal of Asian Law* 74, 77.

marked "the end of history for corporate law". Yet, the leading Anglo-American-cum-global corporate purpose literature barely considers China at all.

Based on a conventional understanding of stakeholderism, Chinese corporate law and governance ticks all the boxes. From the inception of China's modern PRC Company Law in 1994, employees have been recognized as important corporate stakeholders. Employee board representation has always been enshrined in the company law and the requirement that employees must play a meaningful role in corporate decision making has always been made explicit.[17] More broadly, from its inception the PRC Company Law has included provisions that have been all about purpose – exhorting companies to act ethically, strengthen China's socialist society, and to be accountable to the wider community.[18] In 2006, the PRC Company Law was amended to explicitly require companies to "undertake social responsibility".[19] The newly issued draft of the revised PRC Company Law is as purposeful as ever; Article 19 states that "companies should fully consider the interests of the company's employees, consumers and other stakeholders, as well as ecological and environmental protection and other social public interests, to assume social responsibility. The State encourages companies to participate in social welfare activities and publish social responsibility reports."[20]

In 2002, China joined one of the most significant international corporate governance trends in modern times: adopting a UK-style corporate governance code. One may have thought that this would be a catalyst for China to join "the end of history for corporate law" by implementing a shareholder primacy corporate governance model. Instead, the inaugural 2002 Chinese Corporate Governance Code (CCGC) reads like it was woke in 2022. It encouraged listed companies to "be concerned with the welfare, environmental protection, and public interests of the community" and to "pay attention to the company's social responsibilities".[21] The 2018 CCGC goes even further by encouraging listed companies to "actively implement the concept of green development, integrate ecological and environmental protection requirements into the development strategy and corporate governance process, actively participate in the construction of ecological civilization, and play an exemplary role in pollution prevention, resource conservation, and ecological protection".[22] As if that were not purposeful enough, it encourages listed companies to assist "poverty-stricken counties or villages, and actively connect with and earnestly support poverty-stricken areas to develop local industries, train talents, and promote employment". [23]

China was clearly awake to corporate purpose long before Mayer penned "Prosperity" or Fink proclaimed the end of shareholder-primacy; at least on paper, Chinese corporate law and

[17] Li-Wen Lin, 'Corporate Social Responsibility in China: Window Dressing or Structural Change?' (2010) 28 *Berkeley Journal of International Law* 64, 68. Li-Wen Lin, 'Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China', (2020) 68 *American Journal of Comparative Law* 576, 582.

[18] Li-Wen Lin, 'Corporate Social Responsibility in China: Window Dressing or Structural Change?' (2010) 28 *Berkeley Journal of International Law* 64, 69. Li-Wen Lin, 'Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China', (2020) *68 American Journal of Comparative Law* 576, 582.

[19] PRC Company Law (2006), art. 5. For an excellent analysis of this development see, Li-Wen Lin, 'Corporate Social Responsibility in China: Window Dressing or Structural Change?' (2010) 28 *Berkeley Journal of International Law* 64, 71-72.

[20] Revised Draft of PRC Company Law, issued on 24 Dec 2021, art. 19 < https://npcobserver.com/wp-content/uploads/2021/12/Company-Law-Draft-Revision.pdf > accessed 14 May 2022.

[21] Code of Corporate Governance for Listed Companies 2002, art 86.

[22] Code of Corporate Governance for Listed Companies 2018, art 86.

[23] Code of Corporate Governance for Listed Companies 2018, art 87.

governance is as purposeful as can be.[24] What is less clear, is whether Chinese companies can fulfil these lofty purposes. Another question that looms large is: Can Chinese companies stay on their world changing trajectory in an economy where the Chinese Communist Party (CCP) appears to be ratcheting-up its control over which purposes companies may serve?

If President Xi's "common prosperity" campaign is to be taken at face value, companies' purposes are being defined by the government for the public good – whether it involves effectively banning trading on cryptocurrency and for-profit tutoring, restricting gaming for children, or cajoling prominent companies to make large charitable donations. [25] If one is more cynical, the CCP's role as China's *de facto* largest controlling shareholder, its informal control over private corporations and institutional investors, and its campaign to formalize its control over corporate management by having it formally inserted into corporate charters, suggest that the real purpose of corporate governance in China is to reinforce the CCP's ultimate control.[26] From either perspective, considering the CCP's more assertive role in restricting and controlling corporate purpose, it appears that fewer purposes and a narrower focus on maximizing shareholder value may be exactly what is required in China at this moment – the opposite of what Anglo-America's awakening prescribes.

B. "Company Community" Defines Corporate Purpose in Post-war Japan

After more than three decades of tepid economic growth, it is easy to forget that in the late 1980s Japan was, by many measures, the richest country in the world. It had the world's highest per capita Gross National Product, largest net holdings of foreign assets, and by far the largest stock market capitalization and highest property values. Japan's rise to the zenith of the world economy was even more extraordinary considering that merely a few decades earlier its devastating defeat in World War II had reduced it to the level of a poor developing country.[27] Japan's post-war economic miracle produced growth rates unseen in human history. It was the first time an economy had ever

[24] See, Dan W Puchniak and Lin Lin 'Institutional Investors in China: An Autochthonous Mechanism Unrelated to UK-cum-Global Stewardship' in *Global Shareholder Stewardship* (Dionysia Katelouzou and Dan W. Puchniak eds, CUP 2022), 416.

[25] For a critical Western perspective discussing President Xi's "common prosperity" campaign see, 'China's new reality is rife with danger' *The Economist* (2 October 2021) < https://www.economist.com/leaders/2021/10/02/chinas-new-reality-is-rife-with-danger> accessed 14 May 2022; 'Xi Jinping's talk of "common prosperity" spooks the prosperous' *The Economist* (28 August 2021) < https://www.economist.com/finance-and-economics/xi-jinpings-talk-of-common-prosperity-spooks-the-prosperous/21803895> accessed 16 May 2022.

[26] For an excellent analysis of the CCP's role as China's de facto largest controlling shareholder see, Li-Wen Lin and Curtis J Milhaupt, 'We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China' (2013) 65 *Stanford Law Review* 697. For insight into the CCP's control over private corporations see, Curtis J Milhaupt and Wentong Zheng, 'Beyond Ownership: State Capitalism and the Chinese Firm' (2015) 103 *Georgetown Law Journal* 665. For a detailed analysis of the CCP's formal and informal control over institutional investors in China see, Lin Lin and Dan W. Puchniak, 'Institutional Investors in China: Corporate Governance and Policy Channeling in the Market Within the State' (2022) 35 *Columbia Journal of Asian Law* 74. For an empirical analysis of the CCP's campaign to formalize its control over corporate management in corporate charters see, Lauren Yu-Hsin Lin and Curtis J Milhaupt, 'Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance' (2021) 50(1) *Journal of Legal Studies* 187. For a fascinating analysis of the possible risks and benefits of the CCP using China's corporate social credit system (CSCS) to shape the purpose that Chinese companies fulfil see, Lauren Yu-Hsin Lin and Curtis Milhaupt, 'China's Corporate Social Credit System and the Dawn of Surveillance State Capitalism' (ECGI Law Working Paper 610/2021, October 2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3933134> accessed 6 June 2022.

[27] For original text with the sources supporting this paragraph see, Dan W Puchniak and Masafumi Nakahigashi, 'The Enigma of Hostile Takeovers in Japan: Bidder Beware' (2018) 15 *Berkeley Business Law Journal* 4, 10.

doubled in size in under a decade – which set the stage for other Asian economic miracles that transformed Asia into the world's engine of economic growth.[28]

It is well-known that Japan's post-war economic miracle transpired in a corporate governance environment defined by stakeholderism.[29] Prior to the burst of the economic bubble in the early 1990s, the world marvelled at Japan's unique system of corporate governance – in which shareholder voice was scant. As if taken from the pages of "Prosperity", Japan's corporate governance model was referred to as the "company community" – in which boards were overwhelmingly staffed by lifetime employees.[30] Japan's comparatively small wage gap between senior executives and average workers appeared to be the embodiment of woke egalitarianism.[31] Rather than hostile takeovers, Japan's success was credited to "the efficiency of friendliness" in which friendly mergers rather than hostile takeovers produced corporate governance efficiency.[32] Informal corporate groups, called *Keiretsu*, produced innovative and high-quality products, without the need for detailed contracts, which used "just-in time" production to dominate global product markets.[33] Shares were held between *Keiretsu* members and their "main bank" (a feature coined "cross-shareholding") as informal symbols of commitment to the *Keiretsu* members and to act as a defence against hostile takeovers – but not to reap profits by maximizing their value.[34] When things went wrong in companies, the main bank (not shareholders) would efficiently sort things out.[35] Researchers and pundits wondered whether the world would converge on Japan's woke model of corporate governance.[36] But, then, in the early 1990s, Japan's economic bubble burst.

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[28] Michael Spence, *The Next Convergence: The Future of Economic Growth in a Multispeed World* (Farrar, Straus and Giroux 2011) 14. See generally, Dan W Puchniak, 'Multiple Faces of Shareholder Power in Asia: Complexity Revealed' in Jennifer G Hill and Randall S Thomas (eds), *Research Handbook on Shareholder Power* (Edward Elgar Publishing, 2015) 511, 511.

[29] Gen Goto, The Japanese Stewardship Code: Its Resemblance and Non-resemblance to the UK Code, in *Global Shareholder Stewardship* (Dionysia Katelouzou and Dan W. Puchniak eds, CUP 2022) 223; Gen Goto et al., 'Diversity of Shareholder Stewardship in Asia: Faux Convergence' (2020) 53 *Vanderbilt Journal of Transnational Law* 829, 834; Dan W Puchniak, 'Multiple Faces of Shareholder Power in Asia: Complexity Revealed' in Jennifer G Hill and Randall S Thomas (eds), *Research Handbook on Shareholder Power* (Edward Elgar Publishing, 2015) 511, 521; Dan W Puchniak, 'The Japanization of American Corporate Governance? Evidence of the Never Ending History for Corporate Law' (2007) 9 *Asian-Pacific Law & Policy Journal* 7, 51-69. For an interesting comparative analysis of other forces that may have driven these corporate governance changes see, Mariana Pargendler, 'The Grip of Nationalism on Corporate Law' (2020) *95 Indiana Law Journal* 533, 559.

[30] Zenichi Shishido, 'Japanese Corporate Governance: The Hidden Problems of Corporate Law and Their Solutions' (2000) 25 *Delaware Journal of Corporate Law* 189, 201-214.

[31] For an analysis that sees Japan's low wage gap as a positive feature of its system of corporate governance see, Alberto R Salazar and John Raggiunti, 'Why Does Executive Greed Prevail in the United States and Canada but Not in Japan? The Pattern of Low CEO Pay and High Worker Welfare in Japanese Corporations' (2016) 64 *American Journal of Comparative Law* 721. For another perspective see, 'Japanese executive pay: Spartan salarymen' (*The Economist*, 30 June 2010) <https://www.economist.com/newsbook/2010/06/30/spartan-salarymen> accessed 25 May 2022.

[32] Dan W Puchniak, 'The Efficiency of Friendliness: Japanese Corporate Governance Succeeds Again Without Hostile Takeovers' (2008) 5 *Berkeley Business Law Journal* 195.

[33] For an overview of how the Keiretsu were seen to improve corporate governance, contracting and productive efficiency see, Ronald J Gilson and Mark J Roe, 'Understanding the Japanese Kieretsu: Overlaps Between Corporate Governance and Industrial Organization' (1993) 102 Yale Law Journal 871.

[34] Dan W Puchniak and Masafumi Nakahigashi, 'The Enigma of Hostile Takeovers in Japan: Bidder Beware' (2018) 15 *Berkeley Business Law Journal* 4, 17.

[35] For an explanation of the classic Japanese main bank model see, Masahiko Aoki, 'The Japanese Main Bank System: An Introductory Overview', in *The Japanese Main Bank System: Its Relevance for Developing and Transforming Economies* (Masahiko Aoki and Hugh Patrick eds., OUP 1994) 1-50.

[36] Dan W Puchniak, 'Multiple Faces of Shareholder Power in Asia: Complexity Revealed' in Jennifer G Hill and Randall S Thomas (eds), *Research Handbook on Shareholder Power* (Edward Elgar Publishing, 2015) 511, 521; Dan W Puchniak, 'The Japanization of American Corporate Governance? Evidence of the Never Ending History for Corporate Law', 9 *Asian-Pacific Law & Policy Journal* 7, 17-18.

In the post-bubble period, an era of American hegemony transpired in which legions of academics and pundits predicted that Anglo-American-style shareholder-primacy would emerge as the dominant corporate governance model in Japan.[37] These predictions were not without reason. Japan's post-war corporate law had (and still has) strong legal protections for minority shareholders that lay moribund for decades before the bubble burst.[38] At least empirically, the shareholding in Japan's large public companies was (and still is) as widely dispersed as in the United Kingdom and United States – a fact that is often overlooked because historically a majority of the "dispersed-shares" were held in informal cross-shareholding arrangements.[39] In the decades following the bubble's burst, economic stagnation forced banks and *keiretsu* members to "unwind" their cross-shareholdings and the main bank system of monitoring management withered. Foreign ownership of Japanese listed companies spiked, and activist shareholder campaigns emerged.[40] A bevy of legal reforms that appeared as if they would usher in American-style shareholder primacy were enacted, including making derivative actions less costly,[41] providing companies with the option to adopt American-style boards with independent directors,[42] and ostensibly developing a Delaware-style regulatory framework for hostile takeovers.[43]

However, over three decades have passed, economic stagnation has continued to stimulate repeated reforms, but American-style shareholder primacy has not yet emerged. Until the 2010s, independent directors were absent on the boards of most Japanese listed companies and even though the number of independent directors has increased in recent years, lifetime employees still dominate corporate boardrooms.[44] Despite a wave of shareholder activism in the 2000s, Japan remained an oddity among large-developed-economies as the only one without a successful hostile

[37] Dan W Puchniak, 'Multiple Faces of Shareholder Power in Asia: Complexity Revealed' in Jennifer G Hill and Randall S Thomas (eds), *Research Handbook on Shareholder Power* (Edward Elgar Publishing 2015) 511, 521-522.

[38] Gen Goto, 'Legally "Strong" Shareholders of Japan' (2014) 3 *Michigan Journal of Private Equity & Venture Capital Law* 125. For an analysis of how the derivative action lay moribund before Japan's economic bubble and exploded after the burst see, Dan W Puchniak and Masafumi Nakahigashi, 'Japan's Love for Derivative Actions: Irrational Behavior and Non-economic Motives as Rational Explanations for Shareholder Litigation' (2012) 45 Vanderbilt Journal of Transnational Law 1, 2.

[39] Dan W Puchniak and Masafumi Nakahigashi, 'The Enigma of Hostile Takeovers in Japan: Bidder Beware' (2018) 15 *Berkeley Business Law Journal* 4, 15-16; Dan W Puchniak, 'Multiple Faces of Shareholder Power in Asia: Complexity Revealed' in Jennifer G Hill and Randall S Thomas (eds), *Research Handbook on Shareholder Power* (Edward Elgar Publishing, 2015) 511, 521.

[40] Gen Goto, 'Legally "Strong" Shareholders of Japan' (2014) 3 *Michigan Journal of Private Equity & Venture Capital Law* 125; Dan W Puchniak and Masafumi Nakahigashi, 'The Enigma of Hostile Takeovers in Japan: Bidder Beware' (2018) 15 *Berkeley Business Law Journal* 4.

[41] Dan W Puchniak and Masafumi Nakahigashi, 'Japan's Love for Derivative Actions: Irrational Behavior and Non-economic Motives as Rational Explanations for Shareholder Litigation' (2012) 45 *Vanderbilt Journal of Transnational Law* 1, 34-36, 64-65 (explaining the legal changes that lowered the cost of derivative actions after Japan's economic bubble burst and how irrational behaviour and non-economic forces must also be understood to accurately understand derivative actions in Japan).

[42] Gen Goto et al., 'Japan's Gradual Reception of Independent Directors: An Empirical and Political-Economic Analysis' in Dan W Puchniak et al. (eds*), Independent Directors in Asia: A Historical, Contextual and Comparative Approach* (CUP, 2017) 135, 138; Dan W. Puchniak, 'The 2002 Reform of the Management of Large Japanese Corporations: A Race to Somewhere?' (2003) 5 *The Australian Journal of Asian Law* 42.

[43] Dan W Puchniak and Masafumi Nakahigashi, 'The Enigma of Hostile Takeovers in Japan: Bidder Beware' (2018) 15 *Berkeley Business Law Journal* 4.

[44] Gen Goto et al., 'Japan's Gradual Reception of Independent Directors: An Empirical and Political-Economic Analysis' in Dan W Puchniak et al. (eds), *Independent Directors in Asia: A Historical, Contextual and Comparative Approach* (CUP 2017) 135, 146 (showing the percentage of independent directors in Japanese listed companies); Dan W Puchniak and Masafumi Nakahigashi, 'The Enigma of Hostile Takeovers in Japan: Bidder Beware' (2018) 15 *Berkeley Business Law Journal* 4, 38-41 (explaining the resilience and importance of lifetime employees in Japanese corporate governance).

takeover – until its first occurred last year.[45] Although some cross-shareholding has unwound and foreign shareholders have increased, the regulatory regime for hostile takeovers has turned out to look nothing like Delaware.[46]

It is noteworthy that in the 2010s, as part of former Prime Minister Abe Shinzo's hallmark economic policy to revitalize the Japanese economy after two "lost decades", Japan adopted UK-style Stewardship and Corporate Governance Codes, but with Japanese characteristics.[47] The goal of these codes was to shift Japan's traditional stakeholder-oriented corporate governance system to a more shareholder-oriented system – but this never fully materialized. Now Abe's successor, Prime Minster Kishida Fumio, under the slogan of "new capitalism", "talks about the importance of other stakeholders in businesses, such as workers and customers, evoking the Edo-era merchant philosophy of *sanpō-yoshi*, or "three-way good" for buyers, sellers and society".[48] Many experts believe that Japan should still work to move away from its stakeholder-centred approach towards having a more shareholder primacy focus – the opposite of what Anglo-America's awakening prescribes.

C. A Long History of Stakeholderism in India – But Still a Work in Progress

With the rapid rise of China, India's economic importance is sometimes erroneously overlooked. As the world's fourth largest economy, with 1.4 billion people, and growth projected to be the highest among all major economies in 2022, what happens in India clearly has global consequences.[49] With approximately 5 million people working in tech, about 100 unicorns (unlisted start-ups worth over US $1 billion), the world's fourth largest stock market (behind only the United States, China and Japan), India's future appears bright.[50] Distinct from China and Japan, India is a common law country and is part of the Commonwealth. As the most cited empirical scholarship in comparative corporate law posits that common law countries provide stronger protection for

[45] Dan W Puchniak and Masafumi Nakahigashi, 'The Enigma of Hostile Takeovers in Japan: Bidder Beware' (2018) 15 *Berkeley Business Law Journal* 4 (explaining why Japan was an outlier with no hostile takeovers); Stephen Givens, 'Murakami vindicated by Japan's first successful hostile takeover' *Nikkei Asia* (August 11, 2021) < https://asia.nikkei.com/Opinion/Murakami-vindicated-by-Japan-s-first-successful-hostile-takeover#:~:text=At%20the%20end%20of%20July,first%20successful%20hostile%20corporate%20takeover> accessed 14 May 2022.

[46] Dan W Puchniak and Masafumi Nakahigashi, 'The Enigma of Hostile Takeovers in Japan: Bidder Beware' (2018) 15 *Berkeley Business Law Journal* 4. However, it should be noted that recently there has been an increase shift towards more shareholder activism and a unique environment triggering more hostile takeover activity in Japan. See, Leo Lewis and Kana Inagaki, 'Japan's icy climate for hostile takeovers starts to thaw', *The Financial Times* (22 December 2020) < https://www.ft.com/content/fc4ea0f4-d54e-4b59-ae4b-da2e32fce286> accessed 6 June 2022; Stephen Givens, 'Murakami vindicated by Japan's first successful hostile takeover' *Nikkei Asia* (August 11, 2021) < https://asia.nikkei.com/Opinion/Murakami-vindicated-by-Japan-s-first-successful-hostile-takeover#:~:text=At%20the%20end%20of%20July,first%20successful%20hostile%20corporate%20takeover> accessed 14 May 2022.

[47] Gen Goto et al., 'Japan's Gradual Reception of Independent Directors: An Empirical and Political-Economic Analysis' in Dan W Puchniak et al. (eds), *Independent Directors in Asia: A Historical, Contextual and Comparative Approach* (CUP 2017) 135-172 (discussing independent directors and Japan's corporate governance code); Gen Goto, The Japanese Stewardship Code: Its Resemblance and Non-resemblance to the UK Code, in *Global Shareholder Stewardship* (Dionysia Katelouzou and Dan W. Puchniak eds, CUP 2022), 222-238 (discussing Japan's stewardship code).

[48] 'Kishida Fumio's "new capitalism" is many things, but it is not new' (*The Economist*, 12 February 2022).

[49] Measured on a Purchasing Power Parity basis (PPP) the largest economies in the world based on 2020 data are: China (1), United States (2), India (3) and Japan (4) ('The World Bank Data, GDP, PPP' (*The World Bank Data*) <https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?most_recent_value_desc=true> accessed 14 May 2022.

[50] 'India is likely to be the world's fastest-growing big economy this year' (*The Economist*, 14 May 2022) <https://www.economist.com/briefing/2022/05/14/india-is-likely-to-be-the-worlds-fastest-growing-big-economy-this-year> accessed 14 May 2022.

minority shareholders than civil law countries, one may anticipate that India has been a bastion for shareholder primacy.[51]

To the contrary, stakeholderism has a long history in India that has accelerated in recent times.[52] Several age-old business groups have long inculcated broader corporate responsibility as part of their business motto over more than a century.[53] However, in recent decades, the push towards a stakeholder orientation in corporate governance has been driven largely by the government. In the years following India's independence in 1947, and consistent with the socialist economic policies of the time, company law underwent amendments that incorporated the requirements for companies to act not only in the interest of their shareholders, but also in the "public interest".[54] In the 1980s, the Supreme Court of India enunciated that "a company is now looked upon as a socio-economic institution wielding economic power and influence on the life of the people".[55] No longer was the company a private contractual construct between the entity and its shareholders, but one that took on wider form given its larger societal impact.

If there was even any doubt regarding the purpose focus for Indian companies, that has been set to rest with the enactment of the revamped Companies Act in 2013. Section 166(2) imposes duties on directors of a company to act "in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment". As evident, shareholders are only one among several constituencies that deserve the attention of directors. This embodies the pluralist approach which places the interests of all stakeholders (whether shareholders or others) on par without creating any hierarchy among them.[56]

The judiciary too has rendered an expansive reading of the duty. For instance, the Supreme Court's interpretation of the expression "environment" in section 166(2) is adequately capable of accommodating the risks corporations face due to climate change.[57] Hence, a consideration of matters such as climate risk and sustainability is not merely an option for directors on Indian companies that they may account for on a voluntary basis, but it is an obligation, which they can afford to ignore only at risk of liabilities for breach. Overall, the jurisprudence surrounding corporate law in India suggests that directors ought to consider the long-term interests of the

[51] For the most cited literature claiming that common law countries provide stronger protection for minority shareholders than civil law countries, which has a significant impact on economic development and stock markets see, Rafael La Porta et al., 'Law and Finance' (1998) 106 *Journal of Political Economy* 1113; Simeon Djankov et al., The Law and Economics of Self-Dealing, 88 *Journal of Financial Economics* 430 (2008). For critiques of this scholarship see, Holger Spamann, 'The "Antidirector Rights Index" Revisited' (2010) 23 *Review of Financial Studies* 467; Dan W Puchniak and Umakanth Varottil, 'Related Party Transactions in Commonwealth Asia: Complicating the Comparative Paradigm' (2020) 17 *Berkeley Business Law Journal* 1.

[52] The following five paragraphs have been reproduced with permission from the author: Umakanth Varottil, 'Responsible Capitalism and Corporate Purpose: The India Way' (*ECGI Blog*, 26 April 2022) < https://ecgi.global/blog/responsible-capitalism-and-corporate-purpose-india-way > accessed 14 May 2022.

[53] Colin Mayer, *Firm Commitment* (Oxford: Oxford University Press, 2013), 195-197.

[54] Umakanth Varottil, 'The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony' (2016) 31 American University International Law Review 253, 278-280.

[55] *National Textile Workers v. P.R. Ramakrishnan*, (1983) 1 S.C.R. 9 (India).

[56] Umakanth Varottil, 'The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony' (2016) 31 American University International Law Review 253, 315-316.

[57] M.K. Ranjitsinh v. Union of India, (2021) SCC Online SC 326, as discussed in Shyam Divan, Sugandha Yadav & Ria Singh Sawhney, 'Legal Opinion: Directors' obligations to consider climate change-related risk in India' (7 September 2021) < https://ccli.ubc.ca/wp-content/uploads/2021/09/CCLI_Legal_Opinion_India_Directors_Duties.pdf> accessed 16 May 2022.

company. Conduct that involves sacrificing the long-term interests of the company in favour of short-term profitability would militate against the statute.[58]

It is clear, therefore, that the legislative duties and responsibilities of directors clearly define the corporate purpose for Indian companies that is altogether stakeholder oriented. At the same time, it is worth noting that the corporate purpose debate in the Indian context tends to be enmeshed with the statutorily mandated corporate social responsibility (CSR) requirements under corporate law. This requires companies to spend at least two percent of their average net profits made during three immediately preceding financial years towards earmarked social purposes.[59] However, this generates some amount of conceptual murkiness in the context of the corporate purpose debate as the CSR provisions in India veer towards corporate philanthropy through mandatory spending rather than the all-inclusive view that company managements must adopt on how their business operations impact society.[60] In that sense, while the CSR regime supplements the corporate purpose stance in India, it ought not to drive the discourse.

The government has trained its focus largely on ensuring compliance with the CSR requirements in terms of corporate spending rather than addressing the broader questions of corporate purpose. Despite the perceived lucidity in aspirations of the Indian corporate legal system towards stakeholder capitalism, there could be several hurdles in operationalizing the idea. First, there is a lack of clarity regarding the enforcement of directors' duties to consider stakeholder interests.[61] Second, the government has trained its focus largely on ensuring compliance with the CSR requirements in terms of corporate spending rather than addressing the broader questions of corporate purpose.[62]

In sum, India appears like a textbook case of having a long history of a corporate governance philosophy with stakeholderism at its core. This philosophy has also been operationalized by clearly articulating stakeholderism in the legislative design of Indian corporate law. Obviously, India does not need to be woke by Mayer's prophesy that purpose can be the path to "nirvana". However, implementing stakeholderism to work in practice has been a challenge for India and it is possible that even more rhetoric about stakeholderism – with less focus on protecting minority shareholders in India's concentrated shareholder environment, may exacerbate India's corporate governance challenges.[63] Yet again, given India's context, Anglo-America's prescription for a more purposeful approach to corporate law and governance appears to be bad medicine.

D. Profit Making State Owned Enterprises and Family Firms as Models for Purpose – The Singapore Story

In 1965, Singapore was a poor developing country with no significant natural resources. Today, its GDP per person is double Japan's and significantly higher than every G7 country. Singapore has a

[58] Umakanth Varottil, 'Directors' Liability and Climate Risk: White Paper on India', *Commonwealth Climate and Law Initiative* (4 October 2021) < https://ccli.ubc.ca/wp-content/uploads/2021/10/Directors-Liability-and-Climate-Risk-White-Paper-on-India.pdf> accessed 16 May 2022.
[59] Companies Act, 2013, s. 135(5).
[60] See Afra Afsharipour, 'Redefining Corporate Purpose: An International Perspective' (2017) 40 Seattle University Law Review 465, 469-470.
[61] Mihir Naniwadekar and Umakanth Varottil, 'The Stakeholder Approach towards Directors' Duties under Indian Company Law: A Comparative Analysis' in Mahendra Pal Singh (ed), *The Indian Yearbook of Comparative Law 2016* (OUP 2016).
[62] Akshaya Kamlnath, 'A Post Pandemic Analysis of CSR in India', ANU College of Law Legal Studies Research Paper Series < https://ssrn.com/abstract=3826832> accessed 16 May 2022.
[63] For an excellent in-depth analysis of this risk see, Afra Afsharipour, 'Lessons from India's Struggles with Corporate Purpose' in Elizabeth Pollman & Robert Thompson (eds.), Research Handbook on Corporate Purpose and Personhood (Edward Elgar 2021).

strong common law legal system and has historically led the Commonwealth in its protection of minority shareholder rights. Its company law jurisprudence and legislation have been heavily influenced by the United Kingdom, as well as Australia, Canada and New Zealand.[64] Its corporate governance code,[65] stewardship code for institutional investors[66] and takeovers law[67] were modelled on the United Kingdom's equivalent legislation.[68] Singapore's listed companies have long had boards with a majority of independent directors and directors have a duty to act in the interests of the company, which in solvent companies generally means maximizing the long-term shareholder value of the company.[69]

These facts suggest Singapore should be a bastion for shareholder primacy in Asia. However, if one drills-down deeper, in many respects, Singapore is the antithesis of the Friedman Doctrine. In Singapore, the state is the largest shareholder of public listed companies.[70] This relatively new form of capitalism combines the state as the controlling shareholder, with private investors as minority shareholders, in what has come to be known as "mixed-ownership" companies. Singapore's mixed-ownership companies have consistently delivered strong corporate performance and good corporate governance for decades – resulting in them trading at a premium, with exceptional rates of return on capital. As a result, other countries, particularly China, have looked to Singapore as a potential corporate governance model.[71]

Ironically, the secret to the success of mixed-ownership companies in Singapore is the unique institutional architecture it has developed to ensure that profit maximization – and not politics – drives how its mixed-ownership listed companies are governed.[72] However, as the government benefits from the success of these companies and Singapore citizens in turn benefit from the government's social programs, Singapore's mixed-ownership model may ultimately be the most

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[64] Meng Seng Wee and Dan W Puchniak, 'Derivative Actions in Singapore: Mundanely Non-Asian, Intriguingly Non-American and at the Forefront of the Commonwealth' in Dan W Puchniak et al. (eds), *The Derivative Action in Asia: A Comparative and Functional Approach* (CUP 2012) 326-330, 359.

[65] Dan W Puchniak & Luh Luh Lan, 'Independent Directors in Singapore: Puzzling Compliance Requiring Explanation' (2017) 65 *The American Journal of Comparative Law* 265, 267.

[66] Dan W Puchniak and Samantha Tang, 'Singapore's Puzzling Embrace of Shareholder Stewardship: A Successful Secret' (2020) 53 Vanderbilt Journal of Transnational Law 989, 992.

[67] Wai Yee Wan and Umakanth Varottil, Mergers and Acquisitions in Singapore: Law and Practice (Singapore: LexisNexis, 2013), 90.

[68] Dan W Puchniak & Luh Luh Lan, 'Independent Directors in Singapore: Puzzling Compliance Requiring Explanation' (2017) 65 *The American Journal of Comparative Law* 265, 267

[69] Dan W Puchniak & Luh Luh Lan, 'Independent Directors in Singapore: Puzzling Compliance Requiring Explanation' (2017) 65 *The American Journal of Comparative Law* 265 (provides an in-depth analysis of independent directors in Singapore). *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others* [2010] SGHC 163 (High Court, Singapore), paras. 163-164 (articulating that acting in the interests of the company normally equates to acting in the long-term interests of its shareholders). See generally, Pearlie MC Koh, *Company Law* (3rd edn, LexisNexis 2017) 107. It should also be noted that the first sentence of the Singapore Code of Corporate Governance (2018) states that: "Corporate governance refers to having the appropriate people, processes and structures to direct and manage the business and affairs of the company to enhance long-term shareholder value, whilst taking into account the interests of other stakeholders." See "Code of Corporate Governance 2018" (*Monetary Authority of Singapore*, 6 August 2018) <https://www.mas.gov.sg/~/media/MAS/Regulations%20and%20Financial%20Stability/Regulatory%20and%20Supervisory%20Framework/Corporate%20Governance%20of%20Listed%20Companies/Code%20of%20Corporate%20Governance%206%20Aug%202018.pdf> accessed 20 May 2022. See also, Walter Woon, *Walter Woon on Company Law* (Tan Cheng Han ed, 3rd rev edn, Sweet & Maxwell 2009) para 8.22 & 8.25.

[70] Tan Cheng Han et al., 'State-Owned Enterprises in Singapore Model: Historical Insights into a Potential Model for Reform' (2015) 28 Columbia Journal of Asian Law 61, 67.

[71] Tan Cheng Han et al., 'State-Owned Enterprises in Singapore Model: Historical Insights into a Potential Model for Reform' (2015) 28 Columbia Journal of Asian Law 61, 67-69.

[72] Dan W Puchniak & Luh Luh Lan, 'Independent Directors in Singapore: Puzzling Compliance Requiring Explanation' (2017) 65 *The American Journal of Comparative Law* 265, 305-17.

purposeful of all. That its success lies in the unique institutional architecture that ensures state controlled companies have a focus on profit maximization runs counter to Mayer's call to "Prosperity" and Fink's proclamation.[73]

The other significant type of company in Singapore's highly concentrated shareholder environment are family-controlled listed companies. In Singapore, listed companies with family-controllers have consistently outperformed non-family companies and are the most common type of company listed on the stock exchange.[74] The purpose of these family companies is the family's prosperity – which some have posited is reinforced by Singapore's culture.[75] Singapore is unique in that it is the only country in the world that has a stewardship code for family companies. The code does not seek to displace family ownership. Rather it aims to ensure that family-controlled companies are governed in a way that ensures their longevity and that the family's longevity benefits all corporate stakeholders and the entire community.[76] Once again, Singapore's family companies do not need to be woke.

III. Risks of Failing to Recognize Asia's Purposes and the Prosperity of Diversity

Long before Anglo-America's "discovery" of corporate purpose, Asia was already awake to it. This positive claim has important normative implications as Anglo-America's call to become more purposeful sweeps the globe. In Asia, it risks providing cover for the CCP in China to use purpose to stray further from shareholder maximization for its own self-interested purposes. It has the potential to provide a justification for Japan's old guard to roll back hard-fought moves towards delivering more value for shareholders, in a corporate governance system built for an earlier age. It has the potential to allow India to bask in its purposeful legislation, without tackling the problems of implementation nor focusing on its core corporate governance problem of controlling controlling shareholders.[77] It may disrupt Singapore's successful mixed-ownership model by allowing politics to enter corporate boardrooms under the guise of purpose.[78]

The failure to understand how Asia has been built on systems where corporations have had purposes other than maximizing shareholder value also cancels convincing evidence that corporate governance without shareholder primacy can produce economic success. It is undeniable that China's system of corporate governance, which is the antithesis of the Friedman Doctrine, has helped lift hundreds of millions of people out of poverty. Japan has built a remarkably successful, safe, innovative, peaceful, and free post-war society, with a system of corporate governance where lifetime employees, not shareholders, have been at the core. Singapore is one of the wealthiest, healthiest, safest, cleanest, and most educated countries in the world, with a state-ownership model

[73] See, Curtis Milhaupt & Mariana Pargendler 'Governance challenges of listed state-owned enterprises around the world: National experiences and a framework for reform' (2017) 50 *Cornell International Law Journal* 473, 518-524, 535-536.

[74] Dan W Puchniak & Luh Luh Lan, 'Independent Directors in Singapore: Puzzling Compliance Requiring Explanation' (2017) 65 *The American Journal of Comparative Law* 265, 296-298.

[75] Dan W Puchniak & Luh Luh Lan, 'Independent Directors in Singapore: Puzzling Compliance Requiring Explanation' (2017) 65 *The American Journal of Comparative Law* 265, 302-303.

[76] Dan W. Puchniak and Samantha S. Tang 'Singapore's Embrace of Shareholder Stewardship: A Puzzling Success' *Global Shareholder Stewardship* (Dionysia Katelouzou and Dan W. Puchniak eds, CUP 2022), 310-313.

[77] See, Afra Afsharipour, 'Redefining Corporate Purpose: An International Perspective' (2017) 40 Seattle University Law Review 465, 491-495.

[78] Interestingly, it appears that Temasek Holdings Private Limited (Temasek) – the privately incorporated company that is wholly owned by the Singapore government and controls the voting rights in most of Singapore's largest listed companies – is acutely aware of this risk. Although Temasek has embraced a purposeful approach as an investor, it also realizes the need to keep politics out of the boardroom. Stephen Forshaw 'Letter to the Editor: Responsible companies must deliver sustainable value over the long term' (*ECGI Blog*, 22 March 2022) <https://ecgi.global/blog/letter-editor-responsible-companies-must-deliver-sustainable-value-over-long-term> accessed 16 May 2022.

that would make Friedman roll in his grave. Cancelling this history to feign an Anglo-American discovery is simply sad.

However, Asia's purposeful systems of corporate governance have been far from perfect. China's system has emboldened the CCP which risks turning its rule even more towards party tyranny than common prosperity.[79] Japan's lifetime employment system has counterintuitively created one of the harshest work environments in the world where lifetime employees die from overwork and women have been largely excluded.[80] India has had enviable purposeful ambitions for generations, but its enormous human potential has too often been squandered, while too few reap enormous rewards among toiling masses.[81] The limits of Singapore's mixed-ownership model will be tested as it is not yet known whether the next generation of political leadership will be as disciplined as the past in keeping politics out of corporate boardrooms – a reality that Covid may have made more difficult as government support for critical industries was required. Asia's purposeful approaches demonstrate that the absence of the Friedman Doctrine is not a panacea – in and of itself.

The point is not that a move away from shareholder primacy towards purpose is good or bad. The point is that context matters. Asia demonstrates that different jurisdictions have different understandings of the purpose that corporations should serve and that there is no one model that fits all. Also, at any given time each jurisdiction will be at a different point along the shareholder-primacy/stakeholderism continuum.[82]

However, this much is certain: corporations must be governed, within the context of *their* environment, in a way that benefits the public good. How this is achieved will vary from jurisdiction to jurisdiction and within each jurisdiction over time.[83] Responsible capitalism and good corporate governance mean ensuring that the purpose that corporations (should) serve is aligned with maximizing the public good in each jurisdiction at any given time.

What is also certain is that the existential threat of climate change can only be successfully addressed through intervention on a global scale. Global action will require accepting diversity in approaches, allowing each system to achieve climate change goals in their own way. As such, *outcomes* should be the focus of good corporate governance and the purpose corporations serve, not prescribed methods of achieving those outcomes. Ultimately, prosperity requires diversity.

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[79] 'Xi Jinping's talk of "common prosperity" spooks the prosperous' *The Economist* (28 August 2021) < https://www.economist.com/finance-and-economics/xi-jinpings-talk-of-common-prosperity-spooks-the-prosperous/21803895> accessed 16 May 2022.

[80] 'Death by work: Japan's habits of overwork are hard to change' *The Economist* (2 August 2018) < https://www.economist.com/asia/2018/08/02/japans-habits-of-overwork-are-hard-to-change> accessed 16 May 2022.

[81] 'Compounding inequality: India's super-rich are getting much richer' *The Economist* (3 December 2020) <https://www.economist.com/asia/2020/12/03/indias-super-rich-are-getting-much-richer> accessed 16 May 2022. For an excellent analysis of the risks of corporate purpose in India see, Afra Afsharipour, 'Lessons from India's Struggles with Corporate Purpose' in Elizabeth Pollman & Robert Thompson (eds.), Research Handbook on Corporate Purpose and Personhood (Edward Elgar 2021).

[82] For an interesting analysis that generally supports this observation see, Ronald J. Gilson and Curtis J. Milhaupt, 'Shifting Influences on Corporate Governance: Capital Market Completeness and Policy Channeling' (ECGI Law Working Paper 546/2020, January 2021) <https://ecgi.global/working-paper/shifting-influences-corporate-governance-capital-market-completeness-and-policy> accessed 23 May 2022, 76-77.

[83] For an analysis about how good corporate governance is about adaptation, and not any particular model see, Dan W Puchniak, 'The Japanization of American Corporate Governance? Evidence of the Never Ending History for Corporate Law', 9 *Asian-Pacific Law & Policy Journal* 7, 15-16, 69-70 (2007).

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