CORRUPT PRACTICES AND THE ETHICS OF INTERNATIONAL BUSINESS

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Abstract

With the expansion of the global economy matters of intercultural, economic and business relations have become increasingly important. As close economic relations are established between countries with quite different cultures it becomes more likely that there will be clashes concerning basic assumptions of business economic, political, and social life. These not only have impact upon the way business is conducted but also raise serious issues of business ethics. Philosophical ethics has long been concerned with the problem of relativism -- of the seeming impossibility of reconciling various value systems and sets of ethical norms-- and with the emergence of the world economy these problems have become practical problems of the business environment.

In this article ramifications of these issues are explored by an examination of the foreign Corrupt Practices Act of the United States, a law that bars American corporations from paying bribes to overseas officials, even where such payments are accepted practices and where they may be deeply routed in patronage and other cultural systems. The article examines whether it is appropriate for a person to impose its own ethical standards on a business dealing in a foreign country with a culture and norms different from its own.

Introduction

The development of a global economy and of multinational business firms with operations located in several countries has in recent years transformed the nature of business and has had a substantial impact on the economic policy of virtually every nation of the world. Although international economic relations are not new -- international trade has played an important role since ancient times -- modern advances in communications and transportation has established a very new economic environment in which many of the assumptions that were made in the past no longer hold. This transformation of economic reality may not only demand the development of new business tactics and revised economic policies but a radical rethinking of the underlying principles of economic life.

There is, in fact, strong evidence that changing circumstances are forcing confrontations with basic issues throughout the world. In the United States, for example, a dominant issue of policy debate over the past several years has been whether the ligislature should ratify NAFTA*, the North American Free

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* NAFTA was ratified just prior to publication.

Trade Agreement, which would open up free trade between the United States, Mexico, and Canada. Much of this debate revolves around the question of whether the agreement will have a negative effect on the economy of the United States by encouraging businesses in that country to shift their operations to Mexico, where living standards and thus wages, are considerably lower than in the United States. Opponents of the treaty point to this loss of jobs while proponents argue that the opening up of a developing Mexican economy would in the long run be in the economic interest of the United States.

Ignored in this debate are potential ethical issues concerning distributive justice. Would, for example, maintaining trade barriers between the United States and Mexico constitute an artificial maintenance of a higher standard of living of citizens of the United States at the cost of keeping the citizens of Mexico at a much lower standard of living? Does, that is, the United States have an ethical right (or even an ethical duty) to protect the living standards of its citizens at the cost of making it much more difficult for citizens of a developing country to achieve what is often only a minimal standard of living? Does a nation state in the modern era have an exclusive responsibility to the citizens of its own nation or does it also have a responsibility for contributing to the development of a world order where all human beings will have a decent standard of life? As the economic world shrinks it will become increasingly important to confront such ethical issues.

These issues, however, will be extremely complex and will be made even more complex by the classic philosophical problem of ethical relativism. Ethical relativism is the philosophical view that holds that there are no absolute ethical standards, that all ethical standards are rooted in a subjective view of the world. There are several arguments for this view, some of which involve technical matters concerning the factual status of sentences that make non-empirical claims. However, even aside from such meta-ethical issues there is the simple factual argument that points to what seems to be a pervasive disagreement concerning ethical issues among human beings and cultures and a longstanding inability to find methods of ending such disagreements. In science there are established argumentative and experimental procedures for determining the truth or falsity of a particular claim and this has led to broad areas of agreement among scientific communities in many areas of consideration. In ethics, however, disagreements persist despite centuries of intense argumentation. One possible conclusion may be that there is not one set of ultimate values that should underlie all human conduct but rather there is a range of possible ethical value-systems, each of which may have as strong a foundation as the other..[1] Thus, at least as long each meets minimal standards, the value system espoused by one culture may not be amenable to ethical comparison with the ethical system of another culture. Because cultures do hold differing value systems this will be bound to lead to conflicts in a world of multinational corporations and extensive global trade.

Consider, for example, the questions of distributive justice that were raised above. Suppose that an economically developed country whose economy and culture is oriented towards moderating potential economic and social inequities is developing extensive trade relations with an economically undeveloped country that has traditionally been ruled by an elite that has controlled most of the economic resources of the nation and has maintained its power by distributing economic and social favors to the populace through a patronage system. We can also assume that this patronage system has become deeply embedded within the culture of the less developed nation and it currently is deeply intertwined with the country's customs and perhaps even with its dominant religion. Because of its own superior economic power the developed nation can be assumed to have considerable leverage in defining the terms of the relationship and it turns out that it can choose to institute a trade policy that will emphasize business dealings with the traditional elite or one which will bypass that elite in favor of a small non-traditional middle class population which is in favor of establishing a less stratified economic system. All other factors being equal, what is the ethical duty of the developed nation in this situation?

On the one hand, one could argue that the norms of distributive justice accepted in the developed nation are universal and that by imposing a trade policy that will tend to distribute the economic benefits of trade widely over the population it would be contributing to establishing economic justice in the world.[2]. By this token it may be the economic duty of the developed country to encourage the non-traditional middle class. Adopting such a policy would, however, tend to weaken the traditional elite and thus the traditional culture of which it forms an important part.

A relativist, however, might argue that the developed nation is not so much acting on the basis of a universal standard of economic justice as much as it is paternalistically imposing its own value system on a country whose culture accepts norms that are quite different from those dominant in the liberal democracies of the West. In encouraging the middle class to assert its economic (and presumably social and political) power against the traditional elite the developed nation might therefore be characterized simply as asserting its own superior power in a world characterized by inequality ; somewhat ironically, the relativist may accuse the developed nation who adopts an anti-traditionalist trade policy of using economic power to control another nation in the same manner as a member of the elite of the less developed nation uses his economic power to impose his will on the people of his country. From this perspective, one might argue that it is the duty of the developed nation to respect the traditions of the less developed nation in formulating its policy even if those traditions involve moral values different from its own. Should the developed nation find the traditions of the less developed country unacceptable its only ethical option from this point of view might be to forego the (mutual) benefits that might be derived from trade with that nation (which would, it must be noted, deprive the non-elites even the minimal economic benefits that must be passed down to them).

This type of cross-cultural ethics issue can emerge in many areas of economic and business life. For example, such issues will be raised when a country decides to protect its traditional values by impeding the free flow of goods and information -- for example, foreign television programs that encourage consumers to value individual needs and desires more than those of the overall community. Must a firm whose headquarters is located in a country that upholds strong standards of environmental responsibility abide by those standards when it establishes an operation in a country that places less value on the environment? Is it acceptable for a firm to have workers in a foreign manufacturing facility work under conditions that would not be acceptable in the home country? These, and many others, are difficult questions that raise both practical and theoretical issues.

Solving these problems may, as was suggested above, require rethinking basic concepts and will require a deep philosophical, political, and economic analysis of an ethically appropriate (and politically feasible) basis for the new world order. The scope and ambition of this article, however, is much more limited.

In it I will look at a particular issue facing international businesses -- the use of bribery as a business tool in international affairs -- through the lens of the issues raised in the debate in the United States about the Foreign Corrupt Practices Act of 1977 (FCPA) and will examine the economic, cultural, and ethical ramifications of this law. My purpose here will not so much be to solve the ethical dilemmas involved in international bribery but to illuminate the complexities of the issues as a preliminary step towards establishing appropriate ethical standards for international business endeavors.

The Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act of 1977 was instituted to combat what was felt by many American officials to be a pervasive pattern of using bribes to public officials in foreign countries as a business practice among firms doing business abroad. Aside from the inherent violation of American ethical standards of such behavior it has been suggested that the bribery of foreign officials by American business people might harm American foreign policy objectives, impede the political and economic developmental process of nations in the developing world, and weaken the political structures of major allies. Bribery of public officials is illegal in the United States and violates what are considered to be the basic norms of business ethics and the intent of the FCPA is to expand those legal and ethical norms to the international sphere.

A major impetus for the FCPA was in fact the heightened sensitivity to the ethical issues of business and public affairs that followed the Watergate affair, a political corruption scandal that brought down the presidency of Richard Nixon. In the wake of this event, along with the national controversy over the nation's conduct in the Vietnam War, a series of political assassinations that elicited a questioning of the nation's traditional idealism and optimism, and an increasing awareness of economic and social injustices in the nation and throughout the world, there was an ethical taking of stock that resulted in the adoption of revised standards of behavior in many areas of life[3].

Indeed, the investigations into the Watergate affair were in fact directly responsible for an increased interest in business ethics. In looking for evidence relating to political corruption, investigators found that illegal campaign contributions were typically paid through large corporate slush funds, funds unaccounted for in the corporate books that were designed to be used for illicit purposes ; because these funds were much larger than was needed for payments to domestic political activity, it was presumed that the funds were commonly used to bribe foreign officials.[4]. Such foreign bribes were not illegal under United States law but were deemed to be highly questionable for both ethical reasons and for reasons of public policy.

As an impetus for reform, a program was instituted that asked corporations to audit their books and to voluntarily disclose any bribes that had been paid to foreign officials. In response, over 400 corporations, including 34 with 1974 revenues of over one billion dollars, disclosed such bribes. In some cases these payments were huge. Exxon Corporation had paid out $30 million to foreign officials. In other cases questionable payments constituted a significant part of corporate income. American Home Products disclosed that over 16% of its gross revenues were paid out in bribes. In total, the program uncovered bribes amounting to $800 million[5]. A 1975 survey found that one-half of the Chief Executive Officers of large American corporations believed it was impossible to conduct business in certain parts of the world without bribing government officials[6].

Furthermore, American governmental agencies had previously participated in bribing foreign officials by American corporations. Embassies often advised businessmen concerning the customary bribes and the Department of State and the CIA often used corporate bribes to further foreign policy objectives[7]. For example, the government seems to have known about payments by Exxon Corporation and Mobil Oil Corporation to Italian political parties in the 1960s and early 1970s, and the CIA actively used ITT to provide funds in Chile[8]. The CIA also "combined with U.S. multinationals in achieving clandestine and unpublicized foreign policy objectives"[9]. These examples indicate that bribes by corporations were a means of providing support for political allies in various countries.

Despite the prevalence of these practices, it soon became apparent that they had practical as well as ethical ramifications. This was emphasized during a foreign bribery scandal involving the Lockheed Corporation that brought down the government of Japanese Prime Minister Tanaka. Lockheed had been at the brink of insolvency in the early 1970s and was saved only by a $250 million government loan guarantee. As the firm re-entered the market, it began to market aggressively its aircraft throughout the world, and particularly in Japan. The cancellation of a government helicopter contract and a fear that a coming summit meeting between President Nixon and Prime Minister Tanaka of Japan would result in the reward of a Japanese contract to an American competitor compounded the urgency of this effort. Thus, Lockheed was extremely vulnerable to an attempt to enforce the payment of a bribe. Lockheed was approached about a bribe at a meeting with a Japanese businessman who had close governmental connections and who had previously acted as Lockheed's agent for sales of military equipment. It was clear that the $1.7 million bribe would go to Prime Minister Tanaka and that the contract would not be forthcoming if the bribes were not paid. In the end, Lockheed decided to pay the bribe, which eventually became public, resulting in considerable embarrassment both to the United States and to Japan. Lockheed Chairman Kotchian interestingly characterized his decision in terms of corporate responsibilities :

> **I may have been wrong. But I thought I was doing it in the best interests of the company, its employees and its shareholders. I think that any manager of a large enterprise has a responsibility to look after his employees, and the only thing you can do to keep them working is to sell your product, and that is what I tried to do[10].**

Here Chairman Kotchian, perhaps in a rather self-serving manner, points to the role of the corporation as a provider of livelihood for its workers as the overriding ethical responsibility for business ; as is generally true, participants in business affairs must balance conflicting demands, including conflicting ethical demands.

With the embarrassment of Prime Minister Tanaka, many American lawmakers felt that there was an urgent need to combat the practice of international bribery. One of them summarized the rationale for the Act before a Senate Committee as follows[11] : (1) the payments corrupted the free enterprise system ; (2) they were against American ethical and moral standards ; (3) they led to problems in the pursuit of foreign policy ; and (4) they undermined public confidence in American business both domestically and in other countries. In response, American lawmakers drafted and passed legislation, the FCPA, making it illegal for American firms to pay bribes to foreign officials outside the borders of the United States.

Bribery in International Business

Whatever the ethical ramifications of

bribery, its pervasive existence in the international community cannot be denied. Opportunities for corruption abound in many countries because of the close relationship between business and government. Low-level and higher governmental officials have great control over business in many countries. Routine tasks like passing materials or goods through customs, repatriation of funds and the acquisition of foreign territory are often impossible without facilitating 'grease' payments. Grease payments for services to which the companies have a right are so necessary in certain countries that the FCPA exempts facilitating payments made to low level bureaucrats. Other payments have as their purpose the acquisition of rights, legislative changes or contracts that are not normally available to a corporation by law or regulation. Arrangements for services are made with higher officials who hold discretionary powers, and generally cost substantially more than grease payments. This type of bribe enables a business to obtain significant advantages over its competitors and is at times used to influence the national policy of the host country. Such bribes are not necessarily less institutionalized or more optional than grease payments ; very often they are an expected part of the process of obtaining a contract.

The prevalence of corruption in many parts of the world is dramatically exemplified in a 1976 speech of President Mobutu of Zaire to officials of his country : "If you want to steal, steal a little cleverly, in a nice way. Only if you steal so much as to become rich overnight, will you be caught"[12]. Here Mobutu treats bribery as an accepted practice and only objects to its 'abuse'. For all this pervasiveness, however, every nation in the world has laws against the bribing of its officials. Even in areas such as the Middle East, where bribery is endemic, it is universally illegal. Even President Mobutu, while accepting corruption by public officials as long as they are "clever" about it, acknowledges the danger of bribery :

> **In a word, everything is for sale, anything can be bought in our country. And in this flow, he who holds the slightest cover of public authority uses it illegally to acquire money, goods, prestige, or to avoid all kinds of obligations.[13].**
>
> **Even worse, the citizen who simply asks for his most legitimate rights to be respected is subjected to an invisible tax, which is then openly pocketed by officials....**
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> **Thus our society risks losing its political character and becoming a vast commercial market, subject to the basest laws of influence-peddling and exploitation... In the face of all these evils, we must acknowledge that, all too often, the State and Party have not always succeeded in discouraging the bad and encouraging the good[14].**

Despite this universal rejection of bribery as a business practice, enforcement is often erratic, particularly when high-level officials are involved. Thus, as the ambiguities of Mobutu's statements indicate, official norms and actual practices can often come into conflict[15].

Given this pervasiveness, the FCPA clearly has created great difficulties for American corporations operating overseas. However, the major problem with the Act goes beyond its drafting's inadequacies. It may be that any nation's unilateral act addressing transnational corruption subjects its firms to severe difficulties. Firms of other nations will be freer to adapt their practices to the prevalent norms and will have a competitive advantage over firms working within guidelines provided by acts like the FCPA. Thus, the Act brings up serious questions of jurisdiction. A state is not normally responsible for acts of its citizens which occur outside of its national boundaries and, it has been argued, it is the responsibility of the states in which the bribery occurs to treat the problem. Others have argued that the problem is multinational and that unilateral legislation aimed at American businesses cannot be effective in treating a problem that is in its very nature multilateral. Thus, the FCPA raises serious ethical and practical questions for businesses and policy makers.

The response to the FCPA in the American business community, and in those federal departments concerned directly with commerce, has been negative for the most part. Organizations such as the United States Chamber of Commerce, the Department of Commerce and the Georgetown University Center for Strategic and International Studies have all found the FCPA constituted a serious trade disincentive for American businesses[16]. Moreover, a large number of American corporations have expressed their opinions that a significant number of sales are being lost because of the Act. The GOA survey of 250 American corporations found that 30% said business was lost because of the FCPA (with 50% claiming a loss of business in the aircraft industry)[17]. It has in fact been suggested that American companies may be abandoning markets, particularly in the non-Western world, because the provisions of the FCPA make efficient business practices impossible[18].

Given this negative impact, questions are inevitably raised about its ethical consequences. If foreign trade provides a substantial benefit for the citizens of both countries, impediments to such trade, even if imposed with the best of motivations, might have a deleterious effect on the standard of living of citizens of both countries. It could be argued that even within the imperfect markets imposed by bribery the existence of trade outweighs the negative effects of the corruption. Such utilitarian arguments might allow there to be a purely economic evaluation of bribery[19].

The economic, social and cultural issues which provide a context for ethical decision-making, however, are not clear. Commentaries on the FCPA have generally expressed the point of view of the American firms and American governmental policy. Although the reports have at points noted the laxity of certain nations in enforcing the bribery statutes, at no point has there been a consistent examination of why such laxity exists. Bribery seems to be assumed as a negative, dysfunctional, phenomenon within a political and economic system, and it is also often assumed that it is in the interests of the host nation to have the political payments stopped. Although the Act has been criticized for imposing American moral standards upon other nations, it has rarely been examined within its cross cultural, economic and social context. Without such consideration, however, one cannot properly evaluate the principles behind the FCPA.

The Economic Analysis of Corruption

The ethical utilitarian might advocate that one engages in an economic analysis of the costs and benefits of international bribery as a means of determining the ethical status of such actions. A brief review of the literature, however, indicates that we, as of yet, have no clear knowledge of the nature of such consequences.

From a free-market point of view corrupt practices seem to be inherently dysfunctional ; they distort accepted market procedures and, in almost all instances, are illegal, although the anti-bribery statutes at times are pervasively violated. Moreover, for persons living within bureaucratic societies, where standards of official conduct seek to maximize efficiency and regulation, orientations opposed to bureaucratic rationality seem perverse and necessarily uneconomical. One of the major rationales provided for the FCPA was that it would ensure the functioning of free markets. The value system and assumptions beneath the economic systems of the free world oppose interference with the marketplace by political forces.

This value system is not necessarily as important to the leadership of less developed nations dominated in the international marketplace by nations, and even individual businesses, which are richer and more powerful than they. In the less developed states, where an economic infrastructure has not been developed, a free market may not function in an identical manner with one in a nation with such an infrastructure. Moreover, the norms of efficiency and effectiveness that are important for the modern liberal state may be seen in a different light in a nation whose traditional values do not set as high a value on efficiency. As was noted above, a relativist may argue that the very notion of rationality is in fact a cultural construct and cannot be automatically applied across cultural borders[20]. Moreover, an existence of a free market may look very different from the perspective of an economically weak nation than from that of an economically strong nation. It may be difficult to have an invincible faith in the utilitarian beneficence of the market's invisible hand when the ability to control one's own national destiny and development is in the hands of external economic and political forces.

This conflict of interest provides the context for the corruption within the less developed nations. Thus some economists and political scientists have argued that 'corruption' may not always be dysfunctional for the less developed nations and, while these arguments have not been universally accepted, they do provide a useful perspective from which to evaluate the FCPA[21]. If a country can have laws against corruption and yet accept bribery in everyday life, that corruption may be fulfilling functional needs not met by the existing governmental structure.

Merton, writing of corruption in the United States, finds that corrupt machine politics fulfill "positive functions which are at the same time not adequately fulfilled by other existing patterns and structures"[22]. These implicit functions which are not included within, and which may go against, the dominant values and rules of a social system, are labelled "interstitial" institutions by Bohannan, who notes that they perform necessary functions which may not be performed within the society in any other manner[23]. Highly relevant to the present discussion is the work of Bayley, who finds that bureaucratic corruption plays "a role which is sufficiently important that if it was not played by this device must be played by another or the consequences might severely undermine the pace, but more importantly the character, of the development effort"[24].

If these theoretical approaches are correct, and if international payoffs come within their scope, the foundations of the anti-bribery provisions of the FCPA may be questionable. These provisions were designed to prevent businesses from subverting American foreign policy, to maintain a free economic market, to maintain the reputation of American businesses and to ensure proper ethical standards. However, these ethical standards may be ethnocentric and the assumption that their violation subverts foreign policy interests may be questionable. Moreover, the development of a free market may be of low, or even negative, priority for a less developed nation. If that is the case, the United States would have little right to impose its values upon the nation.

Moreover, it can be argued that corrupt behavior may actually serve to open up a free market in these highly centralized economies. Where there is a strong central allocative mechanism, and a serious breakdown of supply and demand, corruption introduces costs (both in the form of the payments themselves and the risks associated with them) which tend to allocate goods and services to those who are willing to pay what the market will bear. Goods and services are almost by definition scarce within the less developed nations, and one would thus expect corrupt practices to develop. The allocative efficiency of the market for such contracts may itself benefit from corruption. In cases where evaluative mechanisms are weak, bribes can give the strongest firms in the market, who may or may not have the best product, the chance to gain the contract despite those evaluative defects[25]. However, this makes the questionable assumption that the strongest firms are the most likely to engage in corrupt behavior when it is precisely those firms, which by the quality of their product, can successfully resist bribery even where it is prevalent. Indeed, the worst possible case for a corrupt market is that in which the least efficient firm is the most corrupt. In such a case, the advantages given to that company would impair the allocative efficiency of the market.

This last point is crucial to the consideration of unilateral efforts to control international payoffs. Proponents of the FCPA note that it demonstrates American firms are willing to compete purely on the basis of merit. But if these companies are in markets where the allocative mechanism is based on bribes, the refusal to bribe will weaken their market position, even if the American firms have been the strongest competitors in that market. This will both hurt their own revenues and the host nation by making it less likely that the allocative mechanism, as it is actually functioning in the political economy, will operate at a maximum efficiency.

A non-corrupt economic market may well be optimal in that allocations would be based on price and quality, not upon payoffs. However, where such an ideal does not exist, it makes little economic sense for a firm, or all the firms of a particular nation, to refrain from bribery. If corruption is a dysfunctional market factor in the rewarding of contracts (which may not be so in all cases), an effective device for increasing efficiency would have to involve a multilateral agreement governing all major firms in a market. Without such an agreement, and given a pre-existing corrupt market, the economically rational approach requires that a firm engage in bribery. Assuming such a market, this behavior may provide the greatest welfare for both the firm and the host country.

Corruption can also serve the developmental process by aiding in the transition between traditional and modernized norms. Scott has proposed a stage model for the transition between traditional social structures, based upon patterns of deferences, and modern structures, based upon horizontal class relationships.[26]. Between these stages is a transitional stage dominated by vertical relationships and material rewards, in which money becomes the basis of traditional patron-client relationships. Such relationships are corrupt from the modern point of view, but they may provide a needed middle ground between purely traditional relationships and purely economic relationships ; the actions of an official at this stage are neither based upon traditional relationships nor upon bureaucratic or official responsibility, but upon an economic self-interest which overlays the traditional relationship. Scott's primary model for this theory involves machine politics, but the theory clearly has relevance for the less developed countries. Their developmental process, even if not precisely following lines established by the West, still demands cultural transformation, and corrupt behavior may help in such transformation.

On the other hand, the effects of corruption are clearly not wholly favorable to the developmental process. Aspects of these interstitial practices are dysfunctional. It is true that political payments may give access to those who would be otherwise dis-associated from the decisions of the government, whether those persons are citizens or foreign businessmen. This centrifugal influence balanced by a centripetal one in which government officials seek to maximize their gains, by further centralizing their economic and political control ; this may serve to concentrate too much of the nation's resources into the political sphere. Although a resource flow to the elite would, by providing funds to the one class that can save and help prime the economy, patterns of conspicuous consumption are prevalent in the less developed nations, and what savings do occur normally go to foreign banks.

Furthermore, Winston finds that corruption hinders the development effort by misallocating resources into inappropriate technologies[27]. In an analysis of managers in the less developed nations, Winston found that political payments provide incentives for the purchase of imported capital intensive equipment rather than the domestically available labor intensive equipment. Such introduction of technology is very often not an optimal use of a developing country's resources and can impede development. By favoring corporate firms which can offer the highest bribes, corrupt markets thereby tend to distort the developmental process towards a Western model which may not be feasible, even if desirable. This indicates corruption may increase the power of the developed nations within the economies of the less developed nations. When it is necessary to pay a bribe to enter a market, that bribe constitutes a border tax for any firm wishing to enter and will make it impossible for firms without the capitalization to so enter. In a corrupt marketplace where competition exists between small domestic concerns and transnational corporations, the latter will clearly have the advantage. Corruption may thus inhibit domestic economic growth and increase the dominance of the developed world over the less.

To summarize, transnational corruption is a highly complex phenomenon which is not amenable to simple economic analysis. Among the less developed nations, corruption can have both positive and negative effects. It can serve to loosen up governmental structures which are too centralized and rigid to allow for significant innovation, yet it can also encourage the government to tighten its centralizing tendencies, thereby increasing opportunities for corruption. It can serve to create a free market, yet it can also serve to distort that free market. It can be a source for nation-building and participation, yet it also can, when it goes too far, rip a nation apart. There is no simple positive or negative link between corruption and development. Thus, even if one accepts a utilitarian business ethics it will be impossible to make any general judgments about the ethical appropriateness of the United States attempting to regulate bribery in the international business arena.

Culture and the FCPA

It is, however, impossible to understand systems of corruption in the less developed nations in purely economic terms. Their economic practices often remain integrated with traditional cultural patterns. As noted above, an ambivalent attitude towards bribery and corruption typically exists in the less developed nations : bribery is practiced widely, but remains illegal. It "enjoys the status of a condemned but understood prodigality"[29]. It is often tolerated as a part of life but disliked for the inconveniences which it causes for that life. Corruption is often seen as merely a basic aspect of human nature[29]. The quotations from the speeches of Mobutu, railing against corruption yet also telling his officials to steal, but to steal cleverly, clearly indicate such ambivalence.

For the outsider, coming from a culture in which abstract economic relationships are an accepted way of social interaction, the economic and social systems of transitional cultures seem irrational. They have taken on many of the trappings of Western forms, but retain their personalistic dimensions. It is imposible to understand these countries either in terms of their traditional cultures or in terms of the culture of the developed world : they stand between these worlds and must be considered from both perspectives.

The roots of corruption are often to be found in traditional cultural norms. In many of these societies, gift-giving practices, which allowed the leader acquire wealth appropriate to his station, formed a major basis of political relationships. Because such practices are deeply embedded in the society, they can very easily be carried over to relationships within the modern political sector. Many of the leaders of the modern sector are the very same people who held positions of authority in the traditional society. This is, perhaps, one reason for the conspicuous consumption which prevents the wealth obtained from bribes to contribute to the developmental effort. The wealth in the traditional culture was symbolic of honor and glory, and the trappings of that wealth were visible manifestations of that status.

This is not to say that such patterns stand behind every form of corruption in the less developed world. Not all traditional cultures had "big men," and very often the colonial powers set up a hierarchy where none had existed previously[30]. The new elites typically received little pay and were forced to make up for this through accepting and demanding payments from those under them. From these colonial patterns too, one can find the roots of corruption ; indeed, with such a system corruption became the center of administrative life. Without it the system would have simply collapsed. Even when the corruption stems directly from traditional patron-client relations, the historical relationship between the tradition and modern economic life is extremely complex and amenable to no easy generalization. The traditional culture cannot at present be fully separated from international political and economic forces.

For example, in Thai economic culture, as in many developing nations, the traditional economic system did not primarily concern itself with matters of wealth and poverty ; social stratification did exist, but that stratification was premised upon mutual personal exchanges between a patron and his client, not upon abstract economic transactions. Here, traditional culture defined as "corrupt" precisely those purely economic relationships, divested of external personal obligations, upon which Western economic life is based. Again we see that what is perceived by Westerners as corruption may have a very different meaning in a traditional cultural context. In the course of its development, however, traditional Thai culture has been modified. However, the influence of the traditional cultural values remain, providing a new meaning to practices that can be misinterpreted in terms that would be appropriate in the West. Thailand, like many other developing countries, thus straddles two worlds and is confronted with the difficult choices of values. For many, the traditional system, with its gifts, nepotism, and favoritism is corrupt ; for the traditionalist, the favoring of monetary and commodity values over human relationships is corrupt. The typical individual, combining in one person both of these tendencies, finds himself "on the razor's edge," where there are no easy moral choices[31].

A similar moral dilemma confronts the Western businessman as he seeks to work within such a society. Seeking economic relationships, he finds himself confronted with a labyrinth of personal relationships which he neither understands nor desires. The structures with which he works are familiar, but are tinged with an aura of what he takes to be irrationality. Business deals proceed much less efficiently than is typical at home. The system demands that the businessperson acquire an agent who knows the rules of the system and who has the contacts to negotiate within it. Yet this agent is necessarily part of the system, however Westernized he might seem to be.

Implicit in this membership in the host society may be a set of relationships which contradicts the value system and perhaps even the laws of the United States. To work with a more traditional businessperson, he may have to engage in the rituals which affirm that person's status. Such rituals may be perceived in the West as corruption. To refrain from these obligations would not only risk the loss of the deal and a commission, but would also violate a social code. The American may have warned the foreign national agent away from the bribe and warned him that it would make the American subject to substantial criminal penalties, but the agent may perceive this attitude as an indication of the American's ignorance of the ways of the society. True, such bribery is formally illegal even in the host country, but the social codes go much deeper than the formal laws.

This hypothetical anecdote is an oversimplification. The FCPA has frequently been criticized because of the ambiguity of such terms as "corrupt". From the present perspective, however, this may be seen not so much as a defect of the drafting of the bill as much as inherent conceptual difficulties in a law involved in cross-cultural relations. The most subtlety drawn definitions of such terms as corrupt would lose their definition when reflected in the mirrors of a cultural interaction. To say a behavior is corrupt may have little meaning outside the confines of a specific culture. Each tradition will define the term within its own value system, and, as in the case of tradition-oriented Thai culture, one will find cases where corrupt has a meaning almost diametrically opposite the one found in the United States and within the FCPA.

The FCPA came out of the very specific moral milieu which followed the Vietnam War and Watergate. In this milieu, American political values, with their orientation towards efficiency and bureaucratic fairness, were re-emphasized. Yet it can be argued that American moral values cannot be applied to all situations. When an American businessperson operates in a foreign country, he should retain his own sense of ethical integrity, but he should also adjust his behavior to the ways of his hosts. The exact resolution of the dilemma cannot be determined in the abstract but must depend upon a complex set of economic, ethical and cultural circumstances. It is difficult to conceive of a law so finely drawn as to be applicable to the infinite variety of human cultures.

The struggle to develop an adequate definition of "corrupt," even within the bounds of a single culture, is well stated by Von Roy :

> **The heart of the matter thus remains unclear : corruption appears to maintain systemic stability and yet also reflects change ; it seems to be both functional and dysfunctional, equilibriating and disequilibriating, a permanent fixture of an ongoing arrangement and a transient symptom of changing times. Are "corrupt" practices themselves interstitial institutions, serving the system despite, or because of, the vocal opposition of moralists? Or are they the outcome of the opposition of entrenched values to changing institutions?**[32]

Conclusion

It is quite appropriate to the purpose of this article that its body should end with Von Roy's insightful question. The heart of the matter of economic relations between diverse nations -- indeed all relations between them -- does remain unclear. Although philosophers have for centuries sought to discover absolute ethical standards that might transcend local cultural values and practices their efforts have been, unfortunately, not very successful. Although it remains a theoretical option for ethicists to hold that there are absolute moral standards that are binding on every person (and perhaps every rational being), it has been difficult to obtain consensus about exactly what those moral standards might be. One may begin studying ethics in hope of finding clear solutions to difficult ethical problems but after a time one is often willing to settle for insights with somewhat les generality. Indeed, many less optimistic philosophers have held that, ethically, many dilemmas involve basic differences in what is valued and that such differences are not amenable to reconciliation. In the present article it has been suggested that at least at the current stage of our ethical (and economic) knowledge the question of international bribery remains complex. In the abstract, it seems quite clearly inappropriate for any business or governmental official to engage in such behavior. In practice, questions of appropriate behavior are much more complex.

As someone with a strong interest in instructing the business leaders of tomorrow to be more ethically sensitive I have quite mixed feelings about this ambiguous conclusion. On the one hand, I recognize that the complexities do exist and cannot be ignored. On the other, however, I recognize that there will be many who use these complexities to conclude that because "everything is relative" it is generally appropriate to act in accordance with accepted practices. Such moral laxity should, however, not be the message of examinations of ethically complex issues : if we are to establish appropriate norms of action for international business we must all become more sensitive to the relevant issues and begin, both in the classroom and in the business world, to confront the ambiguities and complexities. This article thus is presented not as a solution to a problem but as a means of helping further a dialogue about it.

END NOTES

1. Note that this view would be compatible with one which held that there are certain value systems which, because of their deleterious effect on human life, are unacceptable. One thus could hold that although certain value systems can be ruled out, there remain an indefinitely large number of value systems, none of which has special claim over the others.
2. This universalist position might be premised on an argument that human beings are rational beings and that social and economic systems that provide at least minimal standards of distributive justice have characteristics that make them inherently more attractive to such rational beings. For example, John Rawls has argued that if rational human beings were forced to choose a political/economic system in a situation where they are ignorant of the place they would ultimately occupy in that system they would choose one that has egalitarian standards of economic justice ; it is implied that only those who have prior knowledge that they will be among the privileged would be likely to favor a very stratified system. It should be noted, however, that the relativist very notion of rationality that Rawls accepts might be a result of his status as a Western intellectual; members of a traditional culture could, for example, accept their subservient

status as part of a natural order even if it were in their power to change the make-up of their society. See Rawls, *A Theory of Justice* (1971).

3. See Jimmy Carter, Foreign Policy based on America's Essential Character, *Department of State Bulletin,* 76 (1977), 621-625.

4. See *Foreign and Corrupt Bribes : Hearings on S. 3133 Before Senate Comm. on Banking, Housing and Urban Affairs,* 94th Cong., 2d Sess. 3 (1976), p.237.

5. N.H. Jacoby, P. Nehemkis & R. Eells, *Bribery and Extortion in World Business,* (1977) ,p. 58.

6. Richman, Can We Prevent Questionable Foreign Payments, *Business Horizons,* 22,4 (1979), p. 14.

7. Surrey, The Foreign Corrupt Practices Act : Let the Punishment Fit the Crime, *Harvard International Law Journal,* 20 (1977), pp. 292-293.

8. Lochner, The Criminalization of American Extraterritorial Bribery : The Effect of the Foreign Corrupt Practices Act of 1977, *NYU Journal of International Law and Policy* 13 (1980) 645-647 (1980).

9. Surrey, p. 294.

10. J. Albanese, *Organizational Crime : Why Solutions fail to Political, Corporate, and Organized Crime* (1982), p. 48.

11. Senate Hearings S. 3133.

12. D. Gould, *Bureaucratic Corruption and Underdevelopment in the Third World : the Case of Zaire,* (1982) p. xiii.

13. Suse, Questionable Payments in the Middle East : Potential Liability of American Corporations, *Journal of Comparative Corporate Law and Securities Regulation,* 4 (1982), p. 129.

14. Ibid.

15. The present analysis will emphasize, although not exclusively, the case of bribes provided by businesspersons from the developed world to officials in the less developed world. This should not be taken to imply that this is a problem that is exclusive to the less developed world ; certainly this type of behavior occurs in nations at every level of development. However, because of the differential in economic and political power between the participants, and because less developed nations often have retained more of their traditional cultures, both the economic and ethical issues are particularly outlined in cases involving developing nations.

16. Lochner, p. 646.

17. Georges, The Foreign Corrupt Practices Act Review Procedure : A Quest for Clarity, *Cornell International Law Journal,* 14 (1981), p. 57.

18. U.S. Firms Lose Ground in the Mideast, *Wall Street Journal,* July 2, 1980, p. 19.

19. The ethical equivalent to this type of cost-benefit analysis is the theory of utilitarianism which holds that an act must be judged on its positive and negative consequences. While utilitarianism remains a popular ethical theory it must be briefly noted here that the utilitarian must confront difficult counter-examples to his or her theory. For example, it might be the case that by killing a healthy person and distributing his organs to people who would otherwise die, the total benefits will outweigh the costs incurred by the killed person. Despite this few would argue that it is ethically appropriate to kill the healthy person. An anti-utilitarian business ethicist might use such examples to argue that the ethical appropriateness of actions by a businessperson cannot be guaged by weighing costs and benefits. If illicit payments are wrong, such an ethicist might hold, they should not be entered into even if there are substantial benefits for society in general.

20. Myrdal, speaking specifically about traditional Thailand, writes of a culture where norms of economic rationality are defined differently than in the West. *Asian Drama : An Enquiry into the Poverty of Nations,* 2 : 948.

21. See Johnson, An Economic Analysis of Corrupt Government, with Special Application

to Less Developed Countries, *Kyclos* 28 (1975), p.47 ; Eker, On the Origins of Corruption : Irregular Incentives in Nigeria, *The Journal of Modern African Studies,* 19 (1981) ; Kugel, Yerachmiel & Gryenberg, Criteria and Guidelines for Decision Making : The Special Case of International Payoffs, *Columbia Journal of World Business,* 12 (1977).
22. R. Merton, *Social Theory and Social Structure* (1976), p. 72.
23. P. Bohannan, *Social Anthropology* (1963), p. 373.
24. Bayley, The Effects of Corruption in a Developing Nation, 19 *Western Political Quarterly,* (1966), p. 732.
25. Beenstock, Corruption and Development *World Development,* 17 (1979).
26. Scott, Corruption, Machine Politics, and Social Change, *The American Political Science Review,* 43 (1969), p. 1142.
27. Winston, The Appeal of Inappropriate Technologies : Self-Inflicted Wages, Ethnic Pride and Corruption *World Development,* 7 (1979), p. 835.
28. Gould, p. 17.
29. Eker, p. 176.
30. See Price, Politics and Culture in Contemporary Ghana : The Big-Man Small-Boy Syndrome, *Journal of African Studies,* 1 (1974) p. 179.
31. Von Roy, On the Theory of Corruption, *Economic Development and Cultural Change,* 19 (1970), p. 86.
32. Ibid.