

A Merry Chase Around the Gift/Bribe Boundary

by

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B.A., University of Victoria, 1982  
LL.B., University of Victoria, 1982

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## ABSTRACT

### **Supervisory Committee**

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This thesis questions whether it is possible to locate a boundary between gift and bribe that can survive comparison across cultures and history. This question is addressed in a multidisciplinary way, engaging the literature on the current use and the history of the language of bribery, studies of gifting and reciprocity, and the anthropological and philosophical literature on relativism. The approach is non-linear—like a hound on a chase, stopping in medieval England, ancient Athens and various societies in the modern world.

It is concluded that if there is a universal gift/bribe boundary, it is likely based on a norm of reciprocity rather than on a foundation of assumptions that incorporate modern capitalism and Weberian bureaucracy. This implies that global anti-bribery initiatives, as presently conceived, are ill founded. An alternative account, founded on reciprocity and conventionalism, is postulated as a more secure foundation for locating a gift/bribe boundary.

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Finally, but most importantly, I am grateful to and for my wife Gail and my daughter Danielle. I am so privileged to have their constant love and support.

**DEDICATION**

For Danielle

## CHAPTER ONE

### A BEAGLE, GREAT DICTIONARIES AND PARDONERS' SINS

Many months ago I sat at my desk, determined to look at some papers on my thesis question—my research examines the boundary between gifts and bribes. The trouble is that as a researcher, I am a beagle. I get a sniff of something that interests me and I wander off the path. Sometimes I wander so far off the path that I have a devil of a time making my way back. And this time I became entangled in a thicket of etymology, Chaucer's *Canterbury Tales* and the history of medieval England.

As always, it started out so innocently—even logically. I looked up the word *bribe* in the *Concise Oxford Dictionary*:<sup>1</sup>

**bribe** n. money etc. offered to procure (often illegal or dishonest) action or decision in favour of giver.

Yawn. I was just about to return to the papers and carry on down the path when my eye caught the note further down in the same entry: “ME f. OF *briber*. . . beg, of unkn. orig.” This was curious. It seemed to call for a look in the “holy book” of English words, the *Oxford English Dictionary*. There, in Volume 2, it confirms that the words *bribe* and *bribery* are thought to have an Old French pedigree, and “Cotgr.” is the reference given.<sup>2</sup> That did it. The chase was on.

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<sup>1</sup>*The Concise Oxford Dictionary of Current English*, 7th ed., s.v. “bribe.”

<sup>2</sup>*The Oxford English Dictionary*, 2nd ed., s.v. “bribe” and “bribery.”

I had no idea what “Cotgr.” referred to and I knew that it would not take long to find out: “Cotgr.” is Randle Cotgrave, an English lexicographer who, in 1611, prepared *A Dictionarie of the French and English Tongues*.<sup>3</sup> These are his relevant entries:

**Bribe:** f. A peece, lumpe, or cantill of bread giuen vnto a begger

**Briber:** To beg his bread; also, to rauine, deuoure, eate greedily; (from the sound made by the lips of a horse that eats prouender.)

**Bribeur:** m. A begger, a scrap-crauer; one that begs victuals from doore to doore; also, a greedie deuourer, a rauinous feeder.

The *Concise Oxford Dictionary of English Etymology* has an entry to the same effect: to be a *briber* was, in Old French, to “be a mendicant.”<sup>4</sup> For the word *bribe* to have undergone a transition in meaning from being the subject of an altruistic act to the subject of a corrupt act is quite remarkable, and, I told myself—surely it was not entirely a rationalization—that this is a matter that justifies further investigation.

If the modern notions of gift and bribe are viewed as a dichotomy, it is quite extraordinary that the word *bribe* once described a morsel of food given to a beggar; we might say that the meaning of the word has reversed: what was white is black. But this dichotomy is too stark. Instead, let us define the modern *bribe* as a type of gift—a nefarious form of gift. Envision, then, a continuum of gifts. And let us put Purely Altruistic Gifts (rare as they may be) at one end of this gift spectrum and Thoroughly Corrupt Gifts (probably less rare) at the other. Using this model, a *bribe* defined as a morsel of food given to a beggar would be the subject of an act at the Purely Altruistic

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<sup>3</sup>R. Cotgrave, *A Dictionarie of the French and English Tongues* (Amsterdam: Da Capo, 1971).

<sup>4</sup>T. F. Hoad, ed., *The Concise Oxford Dictionary of English Etymology* (Oxford: Oxford University Press, 1996), s.v. “bribe.”

end of our gift scale.<sup>5</sup> And in modern times, if we say that a *bribe* has been paid, we mean by this label that an act of corruption has occurred. And so, what was white has at the least turned very grey, if not black.

I stopped to contemplate a return to the path, while it was still in plain view. I was thinking that maybe, before I became hopelessly lost, I should heed a caution attributed to Voltaire: in etymology the consonants count for little and the vowels count for nothing.<sup>6</sup> But I was having trouble letting go of the idea that this change in the meaning of *bribe* was something more than a stray etymological curiosity. I might have been able to call off the chase if I had resisted taking one more glance at the *OED*.

The word *brybe* first appeared in English writing in the fourteenth century, and the dominant meaning until the latter part of the sixteenth century (when its common meaning became the modern meaning) was a “thing stolen or robbed. . . spoil, plunder.”<sup>7</sup> How might alms for the poor have become spoil and plunder? The *OED* answer is cryptic and tentative:

The ulterior history is quite unknown; if the sense of [Old French] *bribe* is the original, the order of development would appear to have been ‘piece of bread’,

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<sup>5</sup>I acknowledge that there may be motivations for giving the morsel of food that might move this gift off of the Purely Altruistic end of the scale, but it would not be moved far enough to impact my argument.

<sup>6</sup>From G. Hughes, *Words in Time: A Social History of the English Language* (Oxford: Basil Blackwell, 1988). The origin of this turn of phrase is not entirely certain. Fowkes reported (in 1959) that nobody seems to have found it in Voltaire’s works although it was attributed to Voltaire by Max Müller in 1864: see R. A. Fowkes, “Review: A New Etymological Dictionary of English,” *American Speech* 34, no. 3 (1959): 194. I have overcome the temptation to try to chase down the answer to this particular mystery.

<sup>7</sup>There is evidence that *brybe* had more than one meaning in late medieval England. Its dominant meaning was in the “theft” sense but it was also used, albeit less commonly, with the same or similar meaning as the modern sense. See, for example, the *Oxford English Dictionary*, s.v. “bribe” and “briber”; J. Gairdner, ed., “Historical Memoranda of John Stowe: On Cade’s Rebellion (1450),” *Three fifteenth-century chronicles: With historical memoranda by John Stowe* (1880), <http://www.british-history.ac.uk/report.aspx?compid=58664> (accessed August 2, 2008); and especially G. P. Marsh, *Lectures on the English Language* (New York: Charles Scribner, 1860), 250n.

'alms', 'living upon alms', 'professional begging'. Hence, app[arently] from practical association, the English sense 'to steal, plunder'.<sup>8</sup>

The stark difference in meaning from Old French to Middle English has also caused other authoritative commentators to question whether there is in fact a connection between the Middle English *brybe* and the Old French *bribe*. For instance, Marsh, in his *Lectures on the English Language*, said: "The English word *bribe* and its derivatives, generally, but perhaps erroneously, traced to the French [*bribe*], a morsel of bread, a scrap or fragment."<sup>9</sup>

On the one hand, we have the striking difference in meaning between the Old French *bribe* and the Middle English *brybe*. On the other hand, it is recognized that Old French played a very significant role in formation of English language in the years known as the Middle English period (from the Norman Conquest in 1066 to about 1475),<sup>10</sup> and there is the manifest similarity between *bribe* and *brybe*. But could this word pair be an example of what etymologists call *faux amis*?<sup>11</sup>

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<sup>8</sup>And for another similar theory, see J. Ayto, *Dictionary of Word Origins* (New York: Arcade, 1990), s.v. "bribe":

The origin of *bribe* is obscure, and its semantic history is particularly involved. The word first turns up in Old French, as a noun meaning 'piece of bread, especially one given to a beggar.' From this, the progression of senses seems to have been to a more general 'alms'; then to the 'practice of living on alms'; then, pejoratively, to simple 'begging.' From there it was a short step to 'stealing,' and that was the meaning the verb had when first recorded in English.

I do not see the step from beggar to thief as a short one—it is long enough, surely, to call for some explanation. One explanation, presented in C. Richardson, *A New Dictionary of the English Language* (London: William Pickering, 1839), s.v. "bribe," is based on a postulated sequence of mispronunciations: "A *bribour* or *bribeur*, is a *be-reaver* or *be-river*, a *be-ribber* or *be-robber*; a *briber* or *robber*: and To *bribe* is to *rob* or take away." This seems to me a long, long bow to draw and I hope that it will be concluded that the explanation I will offer is more plausible.

<sup>9</sup>Marsh, *Lectures on the English Language*, 249.

<sup>10</sup>W. Rothwell, "The Legacy of Anglo-French: *Faux Amis* in French and English," *Zeitschrift für romanische Philologie* 109 (1993): 16-46.

<sup>11</sup>By this I mean the particular category of *faux amis* that describes a word pair that have a phonetic resemblance but are in fact etymologically unrelated. See V. Lucchesi, "Review: Les Pièges Du Vocabulaire

In the pages that follow I argue that the Old French *bribe* (alms) is very probably the source for the medieval English *brybe* (plunder) and to this end I will offer what I say is a plausible explanation, rooted in the social history of medieval England and supported by examples of late medieval verse, for how and why the meaning of the word changed so dramatically.<sup>12</sup> To put it in the terms employed in the *OED* etymological entry, I claim to provide the “practical association” so as to link the Middle English *brybe* to the Old French *bribe*.

### “Feynynge a cause, for he wolde brybe”

The English word *brybe* and its derivatives begin to appear in the late fourteenth century, shortly after the date of onset of the use of the English language in writing.<sup>13</sup>

The first reference to be noted in the medieval literature is from the 1370s, in William Langland's, *Piers the Plowman*:

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Italien by Louis Dupont," *The Modern Language Review* 63, no. 4 (1968): 984-85; Rothwell, "Faux Amis in French and English."

<sup>12</sup>There are other notable shifts in meaning, but space does not permit adequate exploration. The first is that a *briber* or *brybour* in late medieval England was, as will be seen from the examples cited later in this chapter, the person who took the item of value. In modern English, the *briber* is the person who gives the item of value. For a theory about this shift, see the *OED*, s.v. "bribe"; and also Marsh, *Lectures on the English Language*, 249-50. The second "shift" is the disappearance in the second half of the sixteenth century of the dominant (theft) meaning of *brybe* in favour of the modern meaning. The timing of this disappearance is relevant to my argument and will be referred to later in this chapter. More generally on this second "shift," I take the view that this is not properly regarded as a change in meaning. If the modern meaning of the word coexisted with the dominant meaning (see note 7), then it is not a matter of the meaning of the word changing—rather, one usage of the word becomes obsolete while the less common usage (the modern one) carries on. On the other hand, if the modern meaning of the word did not coexist with the "theft" usage, then an explanation for a shift in meaning is called for and explanations have been proffered: for one example, see Marsh, *Lectures on the English Language*, 249.

<sup>13</sup>On the dating of the onset of the use of the English language in writing, see J. A. F. Thomson, *The Transformation of Medieval England, 1370-1529* (London: Longman, 1983), 76-77. Thomson gives us the following examples (amongst others): late in the reign of Edward III (1327-1377), English replaced Latin and French as the language of the Convocation of Canterbury; from 1395, the use of English became more common in wills; and major authors, beginning with Langland and Chaucer, start to write in the vernacular near the end of the fourteenth century.

Alle othere in bataille ben yholde bribours,  
Pilours and pykehernois in eche a place ycursed.<sup>14</sup>

The employment of *bribours* by Langland *ejusdem generis* with *pilours* (i.e., those who engaged in pillaging and in particular stripping of the dead) and *pykehernois* (i.e., those who stole armour from the slain in battle)<sup>15</sup> is consistent with *bribours* carrying a connotation of thievery—and inconsistent with a connotation of inducement.

Another passage that stands as evidence that *bribe* meant thievery or extortion is in Chaucer's *The Friar's Tale* (1386):

Certeyn he knew of bryberyes mo  
Than possible is to telle in yeres two,  
For in this world nys dogge for the bowe  
That kan n hurt deer from an hool knowe  
Bet than this somnour knew a sly lecchour  
Or an auouter or a paramour.  
And for that was the fruyt of al his rente,  
Therefore on it he sette al his entente.  
And so bifel that ones on a day  
This somnour euere waityng on his pray,  
For to somne an old wydewe, a ribibe,  
Feynyng a cause, for he wolde brybe.<sup>16</sup>

This passage describes a Church official, a summoner. The summoner's job was to bring sinners to ecclesiastical court. This summoner, "ever waiting on his prey," was serving a

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<sup>14</sup>Langland, *Piers the Plowman*, B-text, Passus 20, lines 260-61. There are multiple versions of this poem reflecting revisions over time; the A-text is the product of the 1360s, the B-text is mainly to be assigned to the 1370s, and the C-text was probably complete by 1387. D. Pearsall, *Piers Plowman by William Langland: An Edition of the C-Text* (London: Edward Arnold, 1978), 9.

<sup>15</sup>The definitions of *pilours* and *pikhehernois* are from W. W. Skeat, *Piers the Plowman and Richard the Redeless, William Langland* (Oxford: Oxford University Press, 1886), 2:282.

<sup>16</sup>Chaucer, "The Friar's Tale," *Canterbury Tales*, lines 1367-78.

summons on an old widow, pretending to have a case so that he could extort money from her.<sup>17</sup>

The following is an extract from Berners, *A trefyse of fysshynge wyth an Angle* (1421); she tells us that it is a *brybour* that would steal fish from another man's pond, and such a scoundrel could expect to be "punished for their evil deeds by the neck and otherwise" when caught:

Ne to take the fysshe awaye that is taken in theym. For after a fysshe is taken in a mannys gynne yfthe gynne be layed in the comyn waters: or elles in suche waters as he hireth it is his owne propre goodes. And yf ye take it awaye ye robbe hym: whyche is a ryght shamfull dede to ony noble man to do that that the uys & brybours done: whyche are punysshed for theyr euyll dedes by the necke & otherwyse whan they maye be aspyred & taken.<sup>18</sup>

And, in a similar vein to the *trefyse of fysshynge*, the preamble to the 1482 statutory provision that addressed the subject of "Swans in the Hands of Yeomen and Husbandmen" makes mention of persons who have "stolen [and bribed] Cygnets."<sup>19</sup>

There are other references that clearly define *brybe* as a form of theft, trickery or extortion, but one more example will suffice. In 1549 and 1551 Cranmer introduced his

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<sup>17</sup>N. F. Blake, ed., *The Canterbury Tales by Geoffrey Chaucer* (London: Edward Arnold, 1980), 220. J. T. Noonan, *Bribes* (New York: Macmillan, 1984), 284n63, postulates that this usage by Chaucer was responsible for transforming the meaning of the word *bribe*:

Chaucer's use of "brybe" as a verb appears to be a metaphorical adaptation of the French *briber*, to eat greedily, to beg bread; see Randall Cotgrave. . .at *briber*. In making a transformation of the verb, Chaucer's usage begins a new career for the word; in French, the noun *une bribe* meant only a piece of bread given to a beggar.

However, this seems doubtful. First, there is no basis on which it may be properly inferred that Chaucer is using *brybe* in a metaphorical rather than literal sense. Second, the words from *Piers Plowman* (quoted above) were written earlier than *The Friar's Tale*, and Langland did not use *bribour* in a metaphorical sense. I submit that it is highly unlikely that Chaucer's usage began a "new career for the word"; rather, he was using *brybe* to signify what it had come to mean by the time he wrote *The Friar's Tale*.

<sup>18</sup>J. Berners, "A trefyse of fysshynge wyth an Angle," in *The Booke of haukyng, huntyng and fysshynge, with all necessary properties and medicines that are to be kept*, transcribed by R. S. Bear (Eugene: University of Oregon, 2002), <http://www.uoregon.edu/~rbear/berners/berners.html> (accessed August 2, 2008).

<sup>19</sup>22 Edw. IV, c. 6. The square brackets are not added; they appear in the statute book.

*Introduction of Prayer* books, and he wrote, “But they that delyght in superfluitie of gorgyous apparel and deynty fare. . .commenly do deceaue the nedye, brybe and pyle from them.”<sup>20</sup>

After this time (i.e., the mid-1500s) there is no evidence of use of *brybe* or *bribe* that is unequivocally in the “theft” sense. The references in the *OED* to the usage of *brybe* or *bribe* after the mid-1500s have the word used in its modern sense.<sup>21</sup> In summary, then, the weight of the evidence is that the dominant usage of the word *brybe* and its derivatives in late medieval England (up until the mid-sixteenth century) was in the sense of theft or plunder. After the mid-sixteenth century, the dominant definition turns away from the theft connotation in favour of the modern meaning.

### **Doctrine: Purgatory and Pardons**

In this section, I will underline some critical aspects of the social history of England in the period from the Norman Conquest, when the French language began its period of great influence on the English language, until the mid-sixteenth century (when the “theft” or “plunder” usage of the word *bribe* drops away).

The first point to be emphasized is the central role that religion played in the life of the English, of all classes, in this period. The following paragraph from Ellis, *The Making of the British Isles*, provides an excellent description of the extent to which religion was interwoven with social and political life in pre-Reformation England:

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<sup>20</sup>Marsh, *Lectures on the English Language*, 250n.

<sup>21</sup>There is one equivocal reference from the *OED*, s.v. “bribe”—the citation is to Prynne, *The Sovereigne Power of Parliaments and Kingdomes* (1643): “Great taxes and summes of money. . . spent vainly and riotously, and bribed out of the Kings Coffers.” If there is an occasional or stray reference after the mid-1500s that uses *bribe* in the sense of stealing, but the dominant usage after the mid-1500s is in the modern sense, this is sufficient for the purposes of my argument.

Religious beliefs were a central aspect of people's lives in early modern times. The ceremonies associated with the ritual year shaped work and holidays for the rich and poor alike. People attended their parish churches regularly for mass, matins and evensong on Sundays and feastdays, less frequently for the ceremonies associated with births, marriages and deaths, annually at Easter for confession and communion. These activities were regulated by the church, but the secular authorities too had a particular interest in the practice of religion. They cooperated closely with the church hierarchy in the enforcement of traditional Christian norms and values. Specifically, princes were concerned with the enforcement of obedience to authority, since theories of political obligation were overwhelmingly religious in the Renaissance period. God had ordained princes to rule, and princes were answerable solely to God for their actions: therefore, disobedience to lawful authority was not only a secular offence, it was also a sin against God. In addition, princes depended heavily on the church for the enforcement of orders and statutes and to disseminate information, because announcements by the priest to parishioners at Sunday mass were the usual and easiest means of reaching ordinary subjects.<sup>22</sup>

Davies, in his chapter on religious life on the eve of the Reformation, reminds us how times have changed:

In our secular age it seems natural enough to concentrate on man's painful attempts to feed and clothe himself, and to organize society to minimize violence. Economics and politics are the fundamental issues; all else is top-dressing. This order of priorities would not have been intelligible in the fifteenth century, or, indeed, three centuries later. Men may frequently have been lax in their religious duties, may sometimes have scoffed at the church's doctrines or regarded the pretensions of priests with scepticism. Nevertheless, they were locked into a system of belief in the supranatural by the brute facts of life; a hazardous, unpredictable world could only be understood in terms of the operation of possibly arbitrary spiritual forces.<sup>23</sup>

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<sup>22</sup>S. G. Ellis, *The Making of the British Isles: The State of Britain and Ireland, 1450-1660* (Harlow, UK: Pearson Education, 2007), 121. And see Thomson, *Transformation of Medieval England*, 340-46, where the point is made that one must not lose sight of the importance of religion to the people when considering instances of anti-clericalism. In the decades just before the Reformation, A. G. R. Smith, *The Emergence of a Nation State: The Commonwealth of England, 1529-1660* (London: Longman, 1984), 16, describes the situation this way: "A perceptive observer in 1529, unconscious of the dramatic developments of the following decade, would probably have stressed the continuing traditional piety of most Englishmen rather than the influence of heretical ideas or the strength of anticlericalism."

<sup>23</sup>C. S. L. Davies, *Peace, Print and Protestantism, 1450-1558* (London: Hart-Davis, MacGibbon, 1976), 134. Also see E. Duffy, "Religious Belief," in *A Social History of England, 1200-1500*, ed. R. Horrox and W. M. Ormrod (Cambridge: Cambridge University Press, 2006).

For the purposes of my argument, the Church doctrine of purgatory and its application in medieval England—including, particularly, the practice of the sale of indulgences (called “pardons” in England)—is of particular relevance. The doctrine of purgatory<sup>24</sup> holds that following death, the souls of those dying in a state of grace (i.e., eligible for admission to heaven and eternal salvation) need to be purged of guilt for their venial sins and suffer the penalty for man’s original sin and for these purposes entered into purgatory. Unlike those who committed mortal sin, those in purgatory were eligible for eternal salvation, but purgatory was envisioned to last thousands of years. The purging process was envisioned as torturous, and depicted in this way even by a writer such as Thomas More, a man who by reputation was not given to hyperbole: “If ye pity any man in pain, never knew ye pain comparable to ours; whose fire so far passeth in heat all the fires that ever burned upon earth, as the hottest of all those passeth a feigned fire painted on a wall.”<sup>25</sup>

Prayers of the living could mitigate the length to which a soul was sentenced to this state of purgatory. Accordingly, Archbishop Courtenay, who died in 1396, purchased 10,000 masses to be said for his soul after his death. It was also common for those of lesser means to make provisions in their wills of a significant sum for the saying of masses.<sup>26</sup>

Another important way of reducing the pains of purgatory was through the purchase of indulgences:

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<sup>24</sup>G. Harriss, *Shaping the Nation: England, 1360-1461* (Oxford: Clarendon, 2005), 365.

<sup>25</sup>Davies, *Peace, Print and Protestantism*, 146.

<sup>26</sup>Harriss, *Shaping the Nation*, 365.

Christ's sacrifice, being sufficient sacrifice for the sins of mankind throughout all ages, constituted an infinite treasury, or store, of grace or merit, which His successors in the chair of St Peter had power to administer. Since the penances to be undergone in purgatory were measured in terms of days and years, indulgences would remit specific lengths of time to those who performed meritorious acts on earth. . . The popes delegated a limited authority to bishops to issue such, which were hawked by licensed pardoners at established rates.<sup>27</sup>

From the first few years of the twelfth century, the time that indulgences first began to be sold in England,<sup>28</sup> until the Reformation,<sup>29</sup> they were marketed with a considerable amount of organization and zeal.<sup>30</sup> The next section of this chapter focuses on those who were selling the pardons, and how they were viewed, and the following quotation introduces this subject by providing a broad and vivid perspective:

The indulgences which [pardoners] hawked from parish to parish were equally ubiquitous, advertised by all and sundry from the popes to the humblest of individuals. Wherever there was a need, there was an indulgence to fit the case: to solicit alms on behalf of the sick and homeless, for widows or for prisoners of the Turks, for leper hospitals and for bridge- and harbour-builders, to encourage attendance at the mass or at particular sermons, to accompany the reading of the psalter or the veneration of religious images, to solicit alms for the poor or prayers for souls in purgatory. Displayed on tombstones and monumental brasses, in elaborately decorated flysheets sealed and sold by popes and bishops, read out from more humdrum schedules passed from church to church, recorded in private missals and letters of pardon which the faithful might elect to carry with them to the grave, indulgences were as common in the fourteenth and fifteenth century as

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<sup>27</sup>Harriss, *Shaping the Nation*, 366. For a more detailed examination of the doctrinal basis for and nature of indulgences, see A. L. Kellogg and L. A. Haselmayer, "Chaucer's Satire of the Pardoner," *PMLA* 66, no. 2 (1951): 251-77.

<sup>28</sup>N. Vincent, "Some Pardoners' Tales: The Earliest English Indulgences," *Transactions of the RHS* 12 (2002): 36-38.

<sup>29</sup>The royal injunctions of 1536 ordered the clergy not to "set forth or extol any images, relics or miracles for any superstition or lucre," and the last of the Ten Articles of 1536, the statement of doctrine issued by the King's authority as head of the Church, chipped away at the full doctrine of purgatory. At times the doctrinal pendulum swung back against the reformers in the latter part of the reign of Henry VIII, but the impact of Protestant ideas never entirely lost momentum during the reactions and after Henry's death in 1547, the Protestants "came into their own." Smith, *Emergence of a Nation State*, 30-34.

<sup>30</sup>R. N. Swanson, *Indulgences in Late Medieval England: Passports to Paradise?* (Cambridge: Cambridge University Press, 2007).

the charitable appeals, harrowing or disingenuous as the case may be, that arrive today through the letterboxes of every modern English home.<sup>31</sup>

### **The Players: Pardoners and Mendicants**

The Church assigned the pardoner, more formally known as a *quaestor*, a narrowly defined role. Clement V at the Council of Vienne (1311-1312) made it clear that pardoners had a limited jurisdiction: "Their sole concern is to communicate to the people the indulgences confided to them and to humbly request alms."<sup>32</sup> By canon law, the pardoner was to bear papal or episcopal letters, and to be examined and licensed by the bishop. If he was permitted to enter the churches of the diocese, he was forbidden to do more than read his letters and collect alms. The bishop was to punish transgressions.<sup>33</sup> It seems that the canon law in this respect might have been honoured more in the breach than in the observance:

Enforcement, however, was a very different matter. Churches and bridges were built, the poor fed, the sick healed, all on the proceeds of indulgences. . . There was always a temptation on the part of the regular clergy who operated the great hospitals to avoid the regulations. . .and to employ less worthy but more productive brothers. There was likewise pressure to farm out collection rights to groups of professional questors who were willing to pay a good round sum for making unrestricted use of the indulgences granted the hospital.<sup>34</sup>

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<sup>31</sup>Vincent, "Some Pardoners' Tales," 24-25.

<sup>32</sup>Kellogg and Haselmayer, "Chaucer's Satire of the Pardoner," 253, quoting from *Corpus Juris Canonici*, II, 1190.

<sup>33</sup>Ibid.

<sup>34</sup>Ibid. And for detail on the farming out of pardoner's licenses, see Swanson, *Indulgences in Late Medieval England*.

Martin Luther is the most famous critic of indulgences and those that peddled them, but in this respect he was following a long line of predecessors. And some of the most vociferous critics were powerful people in the Church:

To men of deep religious feeling everywhere the corruption which the pardoner spread wherever he went, the error he poured into the people, the shadow of ridicule he cast upon the Church were bitter. One finds this feeling iterated and reiterated in Church council after Church council; one finds it also in the utterances of such outspoken Bishops as John de Grandisson, Bishop of Exeter [1327-1369], and William Durandus, Bishop of Mende [1286-1296].<sup>35</sup>

This is not to say, of course, that all pardoners were corrupt. And some commentators have argued that the pardoners were monitored fairly effectively and that it is going too far to portray them as “a class of ne’er-do-wells best known for fleecing the hardworking peasantry.”<sup>36</sup> For my purposes, however, I am prepared to concede that some, many, or even all of the pardoners were honest men.<sup>37</sup> What matters for my argument is the less-than-upright reputation, even if the reputation was not fully

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<sup>35</sup>Kellogg and Haselmayer, "Chaucer's Satire of the Pardoner," 276.

<sup>36</sup>R. W. Shaffern, "The Pardoner's Promises: Preaching and Policing Indulgences in the Fourteenth-Century English Church," *The Historian* 68, no. 1 (2006): 5; this claim is more fully developed in R. W. Shaffern, *The Penitent's Treasury: Indulgences in Latin Christendom, 1175-1375* (Scranton, PA: University of Scranton Press, 2007). This argument, of course, cuts both ways: the evidence that pardoners were disciplined by the Church is also evidence of pardoners' transgressions. Kellogg and Haselmayer, "Chaucer's Satire of the Pardoner," 259, conclude that the monitoring was ineffective, with the best controlled of the abuses being the peddling of false relics.

<sup>37</sup>This is not a concession that the lawyer Simon Fish would have made. In 1529, he published *Supplication for the Beggars* in the form of a petition from the poor to Henry VIII, which reads in part as follows (quoted in Smith, *Emergence of a Nation State*, 14):

These are not the [shep]herds but the ravenous wolves going in [shep]herds' clothing, devouring the flock: the bishops, abbots, priors, deacons, archdeacons, suffragans, priests, monks, canons, friars, pardoners and summoners. And who is able to number this idle, ravenous sort which (setting all labour aside) have begged so importunately that they have gotten into their hands more than the third part of all your realm.

The use by Fish of the adjective “ravenous” harkens to Cotgrave’s definition of the Old French *bribeur*, “a greedie deuourer, a rauenous feeder,” supra, note 4. Fish’s pamphlet caused Thomas More to publish a lengthy response, *Supplication of Souls*, that same year: Thomson, *Transformation of Medieval England*, 370.

deserved, of those that sold indulgences and otherwise were seen to be abusing their religious positions for material gain.

There is abundant evidence from sources within the Church that the pardoners had a poor reputation. Vincent reviews and summarizes this evidence, and writes:

Whether through greed, as with the fund-raising for St Peter's Rome that brought Martin Luther to the church door at Wittenburg, or through the entirely laudable desire to distribute mercy, the period after 1280 or so witnessed a vast outpouring of indulgences, and with it a corresponding polemic that attacked such awards as positively damaging to Christian faith. In official circles, much of the blame for the system's excesses was assigned not to the papacy or the bishops, but to ignorant or mendacious pardoners, the travelling-salesmen of indulgences. Foreigners, or illiterate laymen and women, preaching with the aid of preposterous false relics—feathers of the Archangel Gabriel and bread which had been chewed on by Christ's own teeth—pardoners are as frequently criticised in diocesan and conciliar legislation as they are satirised in fiction.<sup>38</sup>

The great Dutch humanist scholar Erasmus was a particularly influential early sixteenth century critic of the sale of indulgences and related abuses. Erasmus wrote *The Praise of Folly* in 1509 during his three years in England. His character Folly had this to say:

The more far-fetched the tales, the more eagerly they are accepted, and the more they tickle the ears of the devotee. For they serve not only to pass the time but also to coin money, especially when recited by pardoners and preachers. . . What's to be said of those who happily delude themselves with forged pardons for real sins, measuring out time to be spent in purgatory as if on a chronometer?

And:

For the whole life of Christians everywhere is infected with idiocies of this sort; yet priests tolerate them without misgivings, and even encourage them, being well aware how much money can be coined out of them.<sup>39</sup>

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<sup>38</sup>Vincent, "Some Pardoners' Tales," 26.

<sup>39</sup>R. M. Adams, ed., *Desiderius Erasmus: The Praise of Folly and Other Writings* (New York: W. W. Norton, 1989), 41-44.

The Church itself, at the highest level of authority, explicitly acknowledged that there had been “widespread corruption” when, in 1563, following the Twenty Fifth Session of the Council of Trent, under Pius IV, it issued a decree which addressed the subject of indulgences. The decree deplored the fact that despite the remedies prescribed by earlier Councils, the traders in indulgences continued their “nefarious practice,” and ordained that the method of these traders should be entirely abolished. Four years later, in 1567, Pius V cancelled all grants of indulgences that involved fees or other financial transactions.<sup>40</sup>

Others connected to the Church shared the poor reputation of pardoners in late medieval England.<sup>41</sup> The monasteries had been successful since the expansion of the monastic orders in the eleventh and twelfth centuries; monasteries multiplied and became conspicuously wealthy. Scandals occurred, but

[t]he monasteries as a whole were not dens of iniquity. The trouble was rather that the scandals and defects which might be expected in any institution were not counter-balanced by many very striking examples of spiritual exertion. The high ideals of a movement soon dissipated.<sup>42</sup>

In the early thirteenth century, when the new orders of friars (principally mendicant orders) arrived in England, they dedicated themselves to a less cloistered life than the monks, and more to preaching and ministering. By comparison to those in monastic orders, the friars were poor and depended on begging charity. But by the fifteenth century, the original idealism was substantially diluted:

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<sup>40</sup>C. G. Hebermann et al., eds., *The Catholic Encyclopedia* (New York: Robert Appleton, 1910), 7:787.

<sup>41</sup>For the overview that follows on monks and friars, I rely upon Davies, *Peace, Print and Protestantism*, 139-41.

<sup>42</sup>*Ibid.*, 140.

The monastic temptation was idleness, cushioned by wealth. The friar, by contrast, had to be shrewd, sharp, on the make. His life necessarily involved competition with the parish clergy, an influential group in a good position to get their own back by spreading tales of the friars' iniquities.<sup>43</sup>

And expression of resentment of the monks and friars was not restricted to private grumbling. In a 1382 sermon, Nicholas Hereford said "monks and possessioners will never be humble until their possessions are taken away, nor will mendicant friars ever be good until their begging is prevented."<sup>44</sup> It is not surprising, I suggest, that both *Piers Plowman* and *The Canterbury Tales* feature friars and monks traveling alongside pardoners and that all these estates suffered the same fate—they were pilloried by satiric verse.

### Langland and Chaucer

The methods of the pardoners, monks and friars may have been unpopular with the clerical and scholarly elite, but did the parishioners share this opinion? It stands to reason that the usual victims, the populace at large, would be resentful of what the Church itself called the "nefarious practice" of the pardoners and the manifest hypocrisy of the monks and mendicants.

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<sup>43</sup>Davies, *Peace, Print and Protestantism*, 141. Although the friars may have been poor by comparison to those in monastic orders, they were often not living in the poverty they professed. See Duffy, "Religious Belief," 322:

The fresh bloom had come off the mendicant ideal too. Dominant in the two universities, and increasingly conforming to the patterns of the older religious orders, the radical simplicity and austerity of the early friars had given way to establishment status. From about 1270 the buildings of the Franciscans in England had become increasingly monasticised and increasingly grandiose.

<sup>44</sup>W. Scase, *Piers Plowman and the New Anticlericalism* (Cambridge: Cambridge University Press, 1989), 102. Hereford, a follower of Wyclif, was excommunicated this same year; ironically, he later took retirement as a monk at Coventry: B. D. Whitney, "Religious Movements in the Fourteenth Century," in *The Cambridge History of English and American Literature*, ed. A. W. Ward and A. R. Waller (New York: Putnam, 1908), 2:69.

It bears emphasizing that the hawking of indulgences and related abuses were a double-edged extortion. First, the parishioners believed that failure to purchase masses or pardons exposed them to spiritual consequences: an extension of purgatory time. Second, the failure to purchase could occasionally lead to temporal consequences, and Hunne's case is an excellent example of this.<sup>45</sup> Richard Hunne was a London merchant. In 1511, his infant son died. Hunne refused to pay the customary mortuary fee, and his rector sued successfully to enforce payment. Hunne responded with his own suits against the rector and several of his associates. Hunne was thereafter arrested on a charge of heresy, and was found hanging from a beam in the Lollards' Tower, the Bishop of London's prison. A coroner's jury found a verdict of wilful murder against the Bishop's chancellor and two of his associates including the gaoler who was a defendant in one of Hunne's suits. Meanwhile, an ecclesiastical court presided over by the Bishop pronounced Hunne a heretic and handed over his body to be burned.

The late fourteenth century poems of Langland and Chaucer support the conclusion that the pardoners suffered from a widespread reputation for deceit. In the prologue to *Piers Plowman*, Langland accused the pardoner of impoverishing the people in exchange for his promises of pardon (assoilen):

There preched a pardonere as he a prest were,  
And broughte forth a bulle with bischopes seles,  
And seide that hym-self myghte assoilen hem alle  
Of falshed of fastyng of vowes ybroken.  
Lewed men leued hym wel and lyked his wordes,  
Comen vp knelyng to kissen his bulles.

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<sup>45</sup>A. G. Dickens, *The English Reformation*, 2nd ed. (London, B. T. Batsford, 1989), 113-14.

And:

Were the bischop yblissed and worth bothe his eres,  
 His seel shulde nought be sent to deseyue the peple.  
 Ac it is naught by the bischop that the boy precheth,  
 For the parisch prest and pardonere parten the siluer,  
 That the poraille of the parisch sholde haue ghif thei nere.  
 Persones and parisch prestes pleyned hem to the bischop,  
 That here parissches were pore sith the pestilence tyme,  
 To haue a lycence and a leue at London to dwelle,  
 And syngen there for symonye for siluer is swete.<sup>46</sup>

In the prologue to *The Canterbury Tales*, Chaucer pulls no punches. He describes the pardoner as laden with relics such as what he claimed to be a piece of the Virgin's veil and part of Saint Peter's seal, and pigs' bones (instead of bones of the saints), and by selling pardons made more in a day than a parson earned in two months:

But of his craft fro Berwyk into Ware  
 Ne was ther swich another pardoner.  
 For in his male he hadde a pilwebeer,  
 Which, that he seyde was oure lady veyl.  
 He seyde he hadde a gobet of the seyl  
 That seint Peter hadde whan that he wente  
 Vpon the see till Iesu Crist hym hente.  
 He hadde a cros of laton ful of stones,  
 And in a glas he hadde pigges bones.  
 But with thise relykes whan that he foond  
 A poure person dwellyng vpon lond,  
 Vpon a day he gat hym moore moneye  
 Than that the person gat in monthes tweye.<sup>47</sup>

And in the prologue to *The Pardoner's Tale*, we are told that the pardoner was not about to follow the example of the apostles and labour with his hands; instead, he will go on

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<sup>46</sup>Langland, *Piers the Plowman*, B-text, prologue, lines 68-73 and 78-86.

<sup>47</sup>Chaucer, "Prologue," *The Canterbury Tales*, lines 692-704. And for an excellent discussion of the place of the pardoner in Chaucer's work, see J. Mann, *Chaucer and Medieval Estates Satire* (Cambridge: Cambridge University Press, 1973), 145-52.

begging and have the proceeds even if he has to extract it from the poorest widow in the village:

For I wol preche and begge in sundry landes.  
 I wol nat do no labour with myne handes  
 Ne make baskettes and lyue therby  
 By cause I wol nat beggen ydelly.  
 I wol none of the apostles countrefete.  
 I wol haue moneye, wolle, chese, and whete,  
 Al were it yeuen of the pourest page  
 Or of the pouereste widwe in a village,  
 Al sholde hir children sterue for famyne.  
 Nay. I wol drynke licour of the vyne  
 And haue a ioly wenche in euery toun.<sup>48</sup>

Protest has been raised that it would be unwise to take too much from satirical verse:

One way of assessing how far the regular clergy were meeting the standards expected of them is to consider contemporary opinions of them, but it is necessary not to rely overmuch on the writings of men such as Chaucer, whose *Prologue* is sometimes cited by historians as though he were a dispassionate reporter for posterity on the Church of his day rather than a literary artist with a strong satirical bent. No doubt there were monks, friars and prioresses who correspond to his characters—had there not been, the satire would have lacked bite—but one is not entitled to assume that they were typical, any more than a bumbling vicar in a twentieth-century farce can be taken as an accurate picture of a modern churchman.<sup>49</sup>

Again, for the purposes of my argument I am interested in the perception in England at the time, rather than the reality of whether or not abuse was occurring or how widespread that abuse was. And, in terms of perception, Scase makes a compelling argument in her

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<sup>48</sup>Chaucer, "Prologue to the Pardoner's Tale," *The Canterbury Tales*, lines 443-53. This example is restricted to pardoners but the monk and friar make out scarcely better by Chaucer's pen. One commentator on Chaucer said that, "Between monks, friars, clerks, and summoners, it is pretty clear that even after the satirist's or humorist's license has been handsomely allowed for, life in England must have been honeycombed with ecclesiastical meddling." M. Browne, *Chaucer's England* (London: Hurst and Blackett, 1869), 2:226-27.

<sup>49</sup>Thomson, *Transformation of Medieval England*, 336.

book, *Piers Plowman and the New Anticlericalism*, that Langland's satire was an accurate reflection of the anti-clerical opinions extant amongst the populace in late medieval England.<sup>50</sup>

### **Taking Stock: A Pause in the Chase**

This chase began with Cotgrave, and his translation of *bribe* as a piece of bread given to a beggar. Along the way, to this point, I have found that the pardoners and friars who were begging alms in late medieval England had a reputation for thievery, deceit and hypocrisy. The depth of feeling about religious matters generally in those times, taken together with the double-edged extortion of alms, makes it thoroughly understandable that the people would have greatly resented these Church officials. When people feel betrayed by others or institutions that are most important to them, they tend to react sharply; I do not claim this as insight: it is self-evident. This depth of feeling, taken together with the breadth of that feeling across English society produced an intense mass of resentment.<sup>51</sup>

It is likely that the alms—Old French *bribes*—paid by parishioners to the peddlers of pardons and mendacious mendicants<sup>52</sup> would have come to be seen by the parishioners not as charity but as spoil and plunder. And thus, a *bribeur* (beggar) became a *briber*

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<sup>50</sup>Supra, note 44. Also see A. G. Dickens, *Late Monasticism and the Reformation* (London: Hambleton, 1994), which contains a chapter, “The Shape of Anticlericalism and the English Reformation,” that vigorously and persuasively rebuts the claim that late medieval England's anti-clericalism is an invention of modern-day historians.

<sup>51</sup>In fact, the abuse or perceived abuse surrounding the sale of indulgences and like practices is credited by leading historians as being an important contributing factor to the English Reformation. See, for example, A. G. Dickens, *The English Reformation*.

<sup>52</sup>The learned editors of the *OED* advise that *mendacity* and *mendicity* (and therefore *mendicant*) have entirely different Latin parentage—in other words, they are *faux amis*.

(thief). This, I submit, is a plausible “practical association” by which the Old French *bribe* became the *bribour* and *brybe* of Langland and Chaucer. And, with the onset of the English Reformation which put an effective end to pardoners and mendicant orders, I suggest that it is not coincidental that *brybe* soon stops being common usage to signify spoil or plunder.

So, where am I now? Does this semantic-historical trail I have followed in this introductory chapter connect to the main path? Is there a connection to the questions around the boundary between gifts and bribes? I think there is. One way of looking at the gift/bribe boundary is to examine it across space. That is, the question can be posed in a modern setting (or any fixed time in history) and behaviour can be examined in different societies to see if a viable cross-cultural definition of bribery can be established. But another way of examining the boundary is to view it in one society (as I have done with England)<sup>53</sup> through time: how has the definition of bribery changed through history? It seems to me that there are at least two aspects to this question. The first is a behavioural issue, an issue of substance: have norms changed? A second issue is a semantic question, an issue of form: has the way in which the word *bribe* has been used in this one society stayed constant or has it changed over time? If it has changed, how and why has it changed? It is this semantic issue that I have stumbled upon in my beagle-like wanderings.

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<sup>53</sup>I acknowledge that it might be argued that England is not and never has been “one society.” But dating back to the fifteenth century there was a widespread imagining of an English state, both within England and without. A Venetian visitor of the time put it this way: “[T]he English are great lovers of themselves and everything belonging to them; they think that there are no other men than themselves, and no other world but England; and whenever they see a handsome foreigner, they say ‘he looks like an Englishman’,” quoted in Thomson, *Transformation of Medieval England*, 77.

The second chapter takes up the other temporal issue (changing norms) by considering an example of traditionally ethical gifting behaviour being redefined, over time, as bribery. In Chapter 3, the focus turns to the gift/bribe boundary in various modern societies and examining the Western bribery and corruption discourse. Chapter 4 pauses to consider whether moral relativism rules out the idea of locating a universal gift/bribe boundary. The concluding chapter addresses the shortcomings of the global anti-corruption projects of organizations such as the UN, IMF, World Bank, OECD and Transparency International (including their law reform initiatives), and sketches out an account that might form a better foundation for locating the gift/bribe boundary than the premises and assumptions presently underlying these anti-corruption projects.

## CHAPTER TWO

### *XENIA AND THE POLIS*

The subject of this chapter is a case of traditionally entrenched gifting behaviour that comes, over a period of time, to be labelled as bribery because of changing political and economic circumstances. The setting is ancient Athens in the archaic and classical periods—from approximately 800 BCE, when monarchies began to be replaced by aristocratic republics, to about 330 BCE and the reign of Alexander the Great.<sup>54</sup>

These five centuries, and particularly the classical period comprising the latter two centuries, see the increasing influence of commodity exchange. More importantly, during this age, Athenians witness the maturation of the state institutions of the *polis*, and their superimposition on a society with a rich ethical tradition of reciprocity and of *xenia*, a form of ritualized friendship with outsiders. The gifts and favours customarily exchanged by *xenia*, long regarded as a necessary and proper part of this venerable aristocratic tradition, were, during the latter part of this period, often redefined as evidence of the worst kind of vice—treasonous bribery.

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<sup>54</sup>Of ancient Greece it has been said that it “in various respects forms a bridge between societies of primitive technology and ourselves.” R. Seaford, "Introduction," in *Reciprocity in Ancient Greece*, ed. C. Gill, N. Postlethwaite, and R. Seaford (Oxford: Oxford University Press, 1998), 1, where "ourselves" presumably signifies modern, liberal democratic societies, with advanced capitalist economies.

### Setting the Political and Economic Stage

Greece is said to have emerged from its “dark age” in the eight century BCE when the “characteristic political unit, the *polis*, dotted the Greek peninsula.”<sup>55</sup> These city-states were economic, political and social communities that demanded and received the loyalty of their citizens. The *polis* made law and guaranteed social order, and Aristotle held that man is *zoon politikon*—it is man’s nature to live in a *polis*.<sup>56</sup>

In his study, *Polis: An Introduction to the Ancient Greek City-State*, Hansen speaks to the ancient Greek usage of the word *polis*:

[T]he word had two main senses: (1) settlement and (2) community. As settlement a *polis* consisted of houses; as community it consisted of people: one is a concrete physical sense, the other more abstract and personal. Moreover, the sources show that not every settlement or community was a *polis*. As settlement, a *polis* was primarily a large nucleated settlement, i.e. a city; as community it was an institutionalized political community, i.e. a state.<sup>57</sup>

The three essential characteristics of a state are a defined territory, a defined people, and a system of political institutions with the sole right to define and enforce a legal order upon the people in the territory, and the *poleis* met these criteria.<sup>58</sup> “Furthermore, both

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<sup>55</sup>P. Gay and R. K. Webb, *Modern Europe to 1815* (New York: Harper & Row, 1973), 10. I have relied upon the part of this work subtitled “The Greek Achievement” in preparing this very brief overview of the history of ancient Greece.

<sup>56</sup>Aristotle, *Politics*, 1253<sup>a</sup>, and note also at 1252<sup>a</sup>, Aristotle’s idealized history of the *polis*: the first union is between man and woman resulting in the formation of the household, which subsequently combine into villages, and villages unite into *poleis*. For the divisions of the citizen body (*demos*) in Athens, see R. Osbourne, “The *Demos* and Its Divisions in Classical Athens,” in *The Greek City: From Homer to Alexander*, ed. O. Murray and S. Price (Oxford: Clarendon, 1990).

<sup>57</sup>M. H. Hansen, *Polis: An Introduction to the Ancient Greek City-State* (Oxford: Oxford University Press, 2006), 56.

<sup>58</sup>*Ibid.*, 63-64. Hansen does make note of the contrast with the modern nation-state, wherein ethnic and national identity is an essential aspect of political identity:  
In the *polis*, political identity was something entirely different from ethnic or national identity. The citizens of a *polis* shared their ethnic identity (language, culture, history, religion) with the

the state and the *polis* are not just the sum of the three elements: territory, people and government; both are also conceived as an abstract public power above the ruler and ruled.”<sup>59</sup>

The Greeks wavered between two broad conceptions of the *polis*. Sparta was a dictatorship where military discipline was a high ideal. And there was Athens, on the other hand, with its form of democracy<sup>60</sup> and brilliant cultural life. In the fourth century BCE, Athens could boast of playwrights such as Sophocles and Euripedes, philosophers Socrates, Plato and Aristotle, and the building of the Parthenon.

Early in the fifth century BCE, the Greek *poleis* combined to overcome Persian invasion. But when that threat was repelled, Spartans and Athenians engaged one another. The Peloponnesian War began in 431 BCE, and culminated in Athens’ surrender to Sparta twenty-seven years later. The first half of the fourth century featured warfare between rival Greek leagues, and,

by the 340s, Philip II of Macedonia found the Greeks easy prey for his shrewd policy of diplomacy, bribery, war—and patience. By 336 B.C., the year of his death, Philip was master of Greece. Alexander, his son and successor, continued and expanded his father’s work. The age of the *polis* was over.<sup>61</sup>

Let us step back and examine some of the economic changes that occurred in Greece during the age of the *polis*. The Greek economy was “the first in history to be

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citizens of other city-states within the region, whereas their sense of political identity (including patriotism) was centred on the *polis* itself and separated any *polis* from all its neighbours.

<sup>59</sup>Hansen, *Polis*, 64.

<sup>60</sup>Albeit a “democracy” that excluded persons of foreign birth, women and slaves: see Gay and Webb, *Modern Europe to 1815*, 11n. Aristotle described the *polis*, in its sense as political community, as a community of *politai*, i.e., adult male citizens: *Politics*, 1257<sup>a</sup> and 1326<sup>a</sup>; and see Hansen, *Polis*, 57.

<sup>61</sup>Gay and Webb, *Modern Europe to 1815*, 11-12. There is some controversy on the subjects of when the age of the *polis* began and when it ended: see Hansen, *Polis*, 31-32.

pervaded by coinage (in the advanced city-states from the fifth century BC).”<sup>62</sup>

Commercial exchange, as distinguished from an economy founded on the positive reciprocity of gift exchange, became increasingly important over this period, but it is important to understand that the rise of commercial exchange did not produce a system of economic institutions “nor pervaded and transformed social relations to the extent characteristic of advanced capitalism.”<sup>63</sup>

These political and economic changes occurred in a Greek society that had very firmly established ethical traditions, which intersected in important ways with political and economic life. The following section of this chapter describes the *ethos* of friendship, reciprocity and gift exchange in ancient Greece.

### **Ritualized Friendship, Reciprocity and Gift Exchange**

#### ***Friendship Defined and Categorized***

Aristotle’s *Nicomachean Ethics* provides us with insight into the nature of friendship (*philia*) in classical Athens. Aristotle opens Book 8 by saying that friendship

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<sup>62</sup>Seaford, "Introduction," in *Reciprocity in Ancient Greece*, 6.

<sup>63</sup>Ibid., 12. Seaford says that in this period in ancient Greece the economy “remained to some extent *embedded* (as in other pre-modern societies) in non-economic social relations and practices.” In this he follows Polanyi and reflects the substantivist side of the formalist-substantivist debate in the economic anthropology literature. The economists who rally to the formalist banner would deny that the economy was in any sense embedded in ancient Greek society—in fact, they would argue that utility maximization played as large a role in the ancient Greek economy as in the modern economy and that, in fact, society was embedded in the economy. For a good summary on this interesting (but for present purposes tangential) subject, see R. R. Wilk and L. C. Cliggett, *Economies and Cultures: Foundations of Economic Anthropology*, 2nd ed. (Boulder: Westview, 2007), 3-14.

“is a virtue, or involves virtue.”<sup>64</sup> And his definition of friendship emerges in the discussion on the object of friendship:

Now love for an inanimate thing is not called friendship, since there is no mutual loving, and no wishing of good to it. For it would presumably be ridiculous to wish good things to wine; the most you wish is its preservation so that you can have it. To a friend, however, it is said, you must wish goods for his own sake. If you wish good things in this way, but the same wish is not returned by the other, you would be said to have [only] goodwill for the other. For friendship is said to be *reciprocated* goodwill. . . . But perhaps we should add that friends are aware of the reciprocated goodwill. For many a one has goodwill to people whom he has not seen but supposes to be decent or useful, and one of these might have the same goodwill toward him. These people, then, apparently have goodwill to each other, but how could we call them friends, given that they are unaware of their attitude to each other? [If they are to be friends], then, they must have goodwill to each other, wish goods and be aware of it.<sup>65</sup>

Aristotle categorizes friendship into three types: friendship for utility, friendship for pleasure, and complete friendship. The following excerpt addresses friendships for utility or pleasure:

Those who love each other for utility love the other not in his own right, but insofar as they gain some good for themselves from him. The same is true of those who love for pleasure; for they like a witty person not because of his character, but because he is pleasant to them. Those who love for utility or pleasure, then, are fond of a friend because of what is good or pleasant for themselves, not insofar as the beloved is who he is, but insofar as he is useful or pleasant. . . . And so these sorts of friendships are easily dissolved, when the friends do not remain similar [to what they were]; for if someone is no longer pleasant or useful, the other stops loving him. . . . *The friendship of hosts and guests [xenia] is taken to be of this type too.*<sup>66</sup> [emphasis added]

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<sup>64</sup>Aristotle, *Nicomachean Ethics*, 1155<sup>a</sup>. And the best good (*eudaimonia*) is a human function: “activity of the soul in accord with reason” (1097<sup>b</sup>-1098<sup>a</sup>); and “each function is completed well by being completed in accord with the virtue proper [to that kind of thing]” (1098<sup>a</sup>). “And so the human good proves to be activity of the soul in accord with virtue,” and the example provided by Aristotle of the harpist makes it clear that to act in accord with virtue is to do things “well and finely” (1098<sup>a</sup>).

<sup>65</sup>*Ibid.*, 1155<sup>b</sup>-1156<sup>a</sup>. And it will be seen, when Aristotle distinguishes “complete friendship” from lesser forms of friendship, that he is speaking here of “complete friendship” and not the lesser forms.

<sup>66</sup>*Ibid.*, 1156<sup>a</sup>. The reference to the friendship of “hosts and guests” is to *xenia*, i.e., ritualized friendship—see the translator’s note in Aristotle, *Nicomachean Ethics*, trans. T. Irwin, 2nd ed. (Cambridge: Hackett, 1999).

Aristotle distinguishes between friends for utility and pleasure and true friends:

But complete friendship is the friendship of good people similar in virtue; for they wish goods in the same way to each other insofar as they are good, and they are good in their own right. Now those who wish goods to their friend for the friend's own sake are friends most of all; for they have this attitude because of the friend himself, not coincidentally. Hence these people's friendship lasts as long as they are good; and virtue is enduring.<sup>67</sup>

The focus in this chapter is on friendship for utility, and in particular, what is referred to variously as the "friendship of hosts and guests," "*xenia*," or, more broadly, "ritualized friendship." In addition to identifying *xenia* as a form of friendship for utility, as he did in the penultimate passage cited above, Aristotle said *xenia* is akin to friendship of citizens, tribesmen and voyagers, and that these friendships "appear to reflect some sort of agreement."<sup>68</sup>

And it is clear from the ancient sources that it was a hallmark of the *xenia* relationship that there was a special relationship of loyalty and reciprocity between those in the relationship, and that it was between men from different locales:

Thus, it appears that a *xenos*, whether he came from a city, tribe, *ethnos*, or some other social unit, always had a group identity distinct from that of his partner. In other words, each individual in a *xenos*-dyad was an outsider with respect to his partner's group. In the extant sources, no two people with the same group identity are ever referred to as *xenoi*. . . Within Athenian territory, friends who came from

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<sup>67</sup>*Nicomachean Ethics*, 1156<sup>b</sup>. D. Konstan, "Reciprocity and Friendship," in *Reciprocity in Ancient Greece*, ed. C. Gill, N. Postlethwaite, and R. Seaford (Oxford: Oxford University Press, 1998), 286, claims that Aristotle is authority for the proposition that friends for utility or pleasure will tend to wish for and be willing to act in the interest of the other person's good, independently of consideration of their own welfare or pleasure. This would blur the bright line that Aristotle seems to be at pains to draw between "complete friendship" and the lesser types. I submit that Konstan's claim is very hard to square with the following sentence from *Nicomachean Ethics*, 1157<sup>a</sup>: "Those who are friends for utility dissolve the friendship as soon as the advantage is removed; for they were never friends of each other, but of what was expedient for them."

<sup>68</sup>*Nicomachean Ethics*, 1161<sup>b</sup>. There is abundant literature in anthropology on the categorization of relationships between people in various societies. The seminal work is E. R. Wolf, "Kinship, Friendship, and Patron-Client Relations in Complex Societies," in *Friends, Followers, and Factions: A Reader in Political Clientelism*, ed. S. W. Schmidt, et al. (Berkeley: University of California Press, 1977). Wolf distinguishes two kinds of friendship: "expressive or emotional" and "instrumental."

different demes, *trittyes*, or tribes, would call each other *philoï*, *hetairoi*, or *epitedeioi*, never *xenoi*.<sup>69</sup>

*Xenia* was “an overwhelmingly upper-class institution” between social equals, and the involvement of women was extremely rare.<sup>70</sup> The equality of social rank was represented at the beginning of the relationship by the exchange of gifts.<sup>71</sup> *Xenia* “originally belonged to the Homeric world of aristocratic heroes, and the Homeric epics are peppered with references to *xenoi*,”<sup>72</sup> and this marks this cultural mainstay as a longstanding tradition by the time of classical Athens: “The institution of *xenia* persisted into the fifth and fourth centuries. . .and remained substantially unaltered in the ritual that surrounded it and the expectations that arose from it.”<sup>73</sup> And this is how Finley summed up its importance to those in such a relationship:

Guest-friendship was of an altogether different order and conception [than a relationship between traders or merchants]. The stranger who had a *xenos* in a foreign land—and every other community was foreign soil—had an effective substitute for kinsmen, a protector, representative, and ally. He had a refuge if he were forced to flee his home, a storehouse on which to draw when compelled to travel, and source of men and arms if drawn into battle.<sup>74</sup>

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<sup>69</sup>G. Herman, *Ritualised Friendship and the Greek City* (Cambridge: Cambridge University Press, 1987), 11-12.

<sup>70</sup>*Ibid.*, 34-36.

<sup>71</sup>L. G. Mitchell, *Greeks Bearing Gifts: The Public Use of Private Relationships in the Greek World, 435-323 BC* (Cambridge: Cambridge University Press, 1997), 13.

<sup>72</sup>*Ibid.*, 12.

<sup>73</sup>*Ibid.*, 13.

<sup>74</sup>M. I. Finley, *The World of Odysseus* (New York: Viking, 1954), 107.

### *Xenia, Reciprocity and Altruism*

Aristotle was surely referring to reciprocity's central role when he said that *xenia* relationships "appear to reflect some sort of agreement." Indeed, there are both explicit and implicit references in *Nicomachean Ethics* that indicate that Aristotle considered reciprocity to be of crucial importance to the success of *xenia*. Remembering that *xenia* is a "friendship for utility," perhaps the most explicit statements are the following:

The friendships we have mentioned [friendships of utility or pleasure] involve equality, since both friends get the same and wish the same to each other, or exchange one thing for another—for instance pleasure for benefit.<sup>75</sup>

And:

Friendship [for utility] that depends on character is not on explicit conditions. Someone makes a present or whatever it is, as to a friend, but expects to get back as much or more, since he assumes that it is not a free gift, but a loan. . . We should, if we can, make a return worthy of what we have received, [if the other had undertaken the friendship] willingly. . . We should consider at the beginning who is doing us a good turn, and on what conditions, so that we can put up with it on these conditions, or else decline it.<sup>76</sup>

And it seems from the following passage, at least by implication, that reciprocity is critical to the preservation of friendships for utility:

Those who are friends for utility dissolve the friendship as soon as the advantage is removed; for they were never friends of each other, but of what was expedient for them. . .and among good people there is trust, the belief that he would never do injustice, and all the other things expected in a true friendship. But in the other types of friendship [distrust] may easily arise.<sup>77</sup>

Aristotle also said this:

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<sup>75</sup>*Nicomachean Ethics*, 1158<sup>b</sup>.

<sup>76</sup>*Ibid.*, 1162<sup>b</sup>-1163<sup>a</sup>. Also, in Book 9, 1165<sup>a</sup>: "As we have said, then, we should, generally speaking, return what we owe," and, "To kinsfolk, fellow tribesmen, fellow citizens, and all the rest we should always try to accord what is proper, and should compare what belongs to each, as befits closeness of relation, virtue or usefulness."

<sup>77</sup>*Ibid.*, 1157<sup>a</sup>.

[D]istance does not dissolve the friendship without qualification, but only its activity. But if the absence is long, it also seems to cause the friendship to be forgotten; hence the saying, ‘Lack of conversation has dissolved many a friendship’.<sup>78</sup>

By analogy, the important “conversation” that occurred between *xenia* (who were by definition separated by distance) is not the exchange of words but the positive reciprocity of the exchange of gifts and especially favours. And when this “conversation” of gifts and favours ended, these friendships for utility dissolved.

There is a lively debate in the literature on the subject of whether the impact of reciprocity has been overstated in the consideration of *xenia*, at the expense of affection. We have seen that Aristotle has portrayed *xenia* as an instrumental relationship, and, of course, the nature of the relationship did not change if instrumental motives were “hidden behind a polite veneer.”<sup>79</sup> Herman summarizes the situation thus:

The partners involved in ritualised friendship—and through them, their families—were presumed to be bound by mutual affection. This affection, however, imitated the outward manifestations but not the inward spirit of kinship: ritualised friends were not supposed to love each other, but to behave as if they did.<sup>80</sup>

Foxhall has reacted against the tendency in the scholarly consideration of Greek friendship to minimize the role of affection,<sup>81</sup> and, after summarizing Foxhall’s thesis, Mitchell stakes out a middle ground:

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<sup>78</sup>*Nicomachean Ethics*, 1157<sup>b</sup>.

<sup>79</sup>Mitchell, *Greeks Bearing Gifts*, 8. There is a close parallel here to a contemporary question: whether gifts by Western businessmen to foreign counterparts or foreign government officials are bribes or not. This question is pursued in Chapter 3, *infra*.

<sup>80</sup>Herman, *Ritualised Friendship*, 17.

<sup>81</sup>L. Foxhall, “The Politics of Affection: Emotional Attachments in Athenian Society,” in *Kosmos: Essays in Order, Conflict, and Community in Classical Athens*, ed. P. Cartledge, P. Millett, and S. von Reden (Cambridge: Cambridge University Press, 1998).

There is no doubt that Aristotle envisages his perfect *philia* as combining both reciprocity and affection. In a similar way, Roman *amicitia* also contained an affective element which could become politicised, rather than being a relationship which was purely instrumental in character. The fact of the matter is that some friendships were more affectionate and some less so, and that friendships worked on a sliding scale of affection and utility with some inclining more towards the affective (and altruistic?) end, and some towards the side of simple advantage. . . . *Xenia* (guest-friendship or ritualised friendship) was a specialised and institutionalised relationship following a pattern of balanced exchanges, and was often, although not always, at the utilitarian end of the scale.<sup>82</sup>

Konstan seems to take a similar tack:

The ancient thinkers were in general less abashed than moderns about the utilitarian benefits that derive from the possession of friends. . . Nevertheless, classical treatments of friendship also posit selflessness or altruism as constitutive of the bond between friends. Aristotle, for example, in his discussion of friendship at the beginning of *Nicomachean Ethics* 8, stipulates that friends must desire the good of the other for the other's sake rather than their own. Self interest and disinterestedness seem to meet upon the terrain of friendship.<sup>83</sup>

The problem with the Mitchell and Konstan accounts is that it is difficult to reconcile their positions with Aristotle's words.<sup>84</sup> As noted above, the very basis upon which Aristotle draws the distinction between complete friendship and the lesser friendships (for utility or pleasure) is that "[T]hose who wish goods to their friend for the friend's own sake are friends most of all; for they have this attitude because of the friend himself, not coincidentally," and, "Those who love for utility or pleasure, then, are fond of a friend because of what is good or pleasant for themselves, not insofar as the beloved is who he is, but insofar as he is useful or pleasant." It is problematic to purport to follow

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<sup>82</sup>Mitchell, *Greeks Bearing Gifts*, 8 and 12.

<sup>83</sup>Konstan, "Reciprocity and Friendship," 282.

<sup>84</sup>But Foxhall's argument is not subject to this objection since she does not attempt to ground her claims in Aristotle's philosophy of friendship.

Aristotle and yet make room for the presence of a necessary element of genuine affection in a friendship for utility or pleasure.

I do not argue that Mitchell's affection-utility continuum is not a useful theoretical construct—on the contrary, I think it has appeal. But he cannot get there, as he purports to, by following the Aristotelian definition/categorization of friendship. And when Konstan asserts that “Self-interest and disinterestedness seem to meet upon the terrain of friendship,” I agree that this was (and is today) probably so, but I cannot reason my way there using the Aristotelian friendship definition and categorization.

There is the related question of whether the Greeks admired altruism independent of the moral framework provided by reciprocity. Gill argues that there is not much room for altruism, standing alone from reciprocity, in the Greek way of thinking, including Aristotle's thinking.<sup>85</sup> For reasons that I have already stated, that is, the description of “complete friendship” and the basis of the distinction that Aristotle drew between it and the lesser forms, I read Aristotle as describing complete friendship (but not the lesser forms) in essentially altruistic terms; and it is noteworthy that he said that “These kinds of friendships are likely to be rare, since such people [those who are good without qualification] are few.”<sup>86</sup>

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<sup>85</sup>C. Gill, "Altruism or Reciprocity in Greek Ethical Philosophy," in *Reciprocity in Ancient Greece*, ed. C. Gill, N. Postlethwaite, and R. Seaford (Oxford: Oxford University Press, 1998), 308.

<sup>86</sup>*Nicomachean Ethics*, 1156<sup>b</sup>. I say “essentially altruistic” because there is an egoistic foundation for all Aristotelian virtues, including friendship, in the sense that being virtuous contributes to one's own *eudaimonia*—I am indebted to Scott Woodcock for this insight. On the issue of the rarity of complete friendship, Konstan, “Reciprocity and Friendship,” 281, takes notice of the claim by eighteenth century liberal philosophers, including Adam Smith, that true friendship is enabled by the universalization of commercial relations characteristic of commodity capitalism. The argument, consideration of which is outside the scope of this thesis, is that an independent realm of economic relations governed by egoistic market rules makes space for personal ties that are not interwoven with economic interests.

Herman points to the enormous sums paid by Athenians in the form of liturgies, for purposes such as financing the equipping a trireme or paying for performances of theatrical shows at state festivals; he concludes that this is evidence of altruism, but only after defining altruism in such a way as to strip the word of its usual sense of acting or giving to others with no regard for one's own position.<sup>87</sup> His definition of "altruistic behaviour" includes acts that "*may be detrimental to the person who performs the acts, whether physically or economically*" [emphasis added]. If the chance of detriment is slight, or, more to the point, there is likely to be no net detriment—if, for instance the benefits from the act outweigh the costs—then the altruism fades from view.

The liturgies Herman relies upon were an institution of the classical Athenian polis, and these gifts became compulsory. Mitchell, *Greeks Bearing Gifts*, describes them as an institutionalized version of the patronage system, where the giving created *philotimia* (glory); "[A]lthough the relationship was not with an individual but a collective, liturgies still amounted to giving for a return: something was expected back for what had been given." And van Wees locates in anthropological theory this sort of bestowing of benefits on the community by the rich:

This form of reciprocity, known as 'euergetism', in which public benefactions, often on a grand scale, and often repaid with collectively granted honours, serve to legitimate the wealth and power of élites, at all levels, from local to imperial, is very widespread and was highly prominent throughout antiquity.<sup>88</sup>

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<sup>87</sup>G. Herman, "Reciprocity, Altruism, and the Prisoner's Dilemma: The Special Case of Classical Athens," in *Reciprocity in Ancient Greece*, ed. C. Gill, N. Postlethwaite, and R. Seaford (Oxford: Oxford University Press, 1998), 217-19.

<sup>88</sup>H. van Wees, "The Law of Gratitude: Reciprocity in Anthropological Theory," in *Reciprocity in Ancient Greece*, ed. C. Gill, N. Postlethwaite, and R. Seaford (Oxford: Oxford University Press, 1998), 45.

I expect that Mitchell and van Wees would doubt that the public donations referred to by Herman could safely be relied upon as evidence of altruism, even using Herman's diluted definition of the concept.

Seaford suspects that the centrality of the egoism-altruism distinction in ethical debate, with its abstraction from consideration of reciprocity, arises from the modern development of commercial exchange and the corresponding marginalization of reciprocity in social and economic relations. His point is that modern focus on altruism arises because of the pervasiveness of its opposite, absolute egoism, and this is why altruism was not foregrounded in pre-modern times—it simply formed a part of the reciprocity framework.<sup>89</sup> I agree with Seaford only to the extent that context is critical to the *appearance* of a transaction: in a reciprocity setting versus a commercial exchange setting, the transaction may seem to be of a different character. But my view is that if one scratches the surface of almost every reciprocity transaction—be it primitive, ancient, medieval or modern—one will find more egoism than altruism: the display of altruism used to provide assurance of future reciprocity simply, and often quite effectively, disguises the egoism.<sup>90</sup>

In any event, as Millett reminds us, whatever the importance of Aristotle's definition of complete friendship in the history of ethical theory (and I would add, whatever the role that affection or altruism might play in a more general consideration of friendship), if we want to understand Athenian social relations, then we do well to focus on what Aristotle said was the most common kind of *philia*—and that is friendship for

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<sup>89</sup>Seaford, "Introduction," in *Reciprocity in Ancient Greece*, 5-6.

<sup>90</sup>I discuss further aspects of reciprocity and the presence of egoism/altruism in Chapters 3 and 5, *infra*.

utility.<sup>91</sup> And the theory of reciprocity and gift exchange, which is the subject of the next section of this chapter, when considered alongside Aristotle’s conception of “friendship for utility,” will provide useful context for understanding how it was that during the age of the *polis*, gifts and favours exchanged between *xenia* often came to be seen as evidence of treachery.

### ***Reciprocity and Gift Exchange***

“Gifts are like hooks.”<sup>92</sup> In these four words, the Latin epigrammist Marcus Valerius Martialis (40-103 AD) gave to us an admirably succinct summary of so much theory of gifts and their exchange. But it is Mauss, the nephew and distinguished pupil of Durkheim, who is credited with producing the seminal work on gift exchange.<sup>93</sup> One of the principal themes of his book is that no gift is truly free. (Of course, as we have seen in the context of friendships for utility, Aristotle was there before Mauss: “We should consider at the beginning who is doing us a good turn, and on what conditions, so that we can put up with it on these conditions, or else decline it.”)<sup>94</sup> The obligation to give something in return for the gift results in a three-ply structure of giving, receiving and

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<sup>91</sup>P. Millett, *Lending and Borrowing in Ancient Athens* (Cambridge: Cambridge University Press, 1991), 115-16.

<sup>92</sup>Martialis, 5.18.7.

<sup>93</sup>M. Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies*, trans. I. Cunnison (London: Cohen & West, 1925). Interestingly, Mauss (at 52) makes a rather bald claim that the Greeks “passed beyond that antiquated and dangerous gift economy, encumbered by personal considerations, incompatible with the development of the market, trade and productivity—which was in a word uneconomic.” This is contested by van Wees, “The Law of Gratitude,” 49; he says that this excerpt is “vague on chronology and detail, and, in all probability wrong.” In fact, one could go further than van Wees and argue that even modern liberal democracies with advanced capitalist economies, including modern Greece, have not passed beyond a gift economy—non-market exchanges continue alongside the market economy.

<sup>94</sup>*Nicomachean Ethics*, 1163<sup>a</sup>.

reciprocating. The key insight from Mauss is that gift exchange is not about gifts but about the social alliances created or reinforced by their exchange—and it is the gap in time between the gift and the act of reciprocity that creates the relationship.<sup>95</sup> Sahlins credits Mauss with allowing us to understand that the “primitive analogue of social contract is not the State, but the gift,” and, “The gift is the primitive way of achieving the peace that in civil society is secured by the State.”<sup>96</sup>

Sahlins added to the conceptual framework by distinguishing three types of reciprocity: generalized, balanced and negative.<sup>97</sup> Generalized reciprocity describes a system of giving without tracking the amount, on the assumption that eventually something will be given back. Most generalized reciprocity takes place in the closest social relationships such as households and families. Balanced reciprocity occurs at a more distant social level, for instance, amongst friends or extended kin, and describes direct exchange: something is given with the expectation that something of approximately equal value will be returned in a fairly short time frame. And Sahlins uses the notion of negative reciprocity to denote an attempt to “get something for nothing”—theft being the most extreme example.<sup>98</sup> It is apparent that gift or favour exchange between *xenia* would be, using this analysis, an example of balanced reciprocity.

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<sup>95</sup>And if there is a failure to complete the gift exchange, there is a change of relative power in the relationship: “To accept without returning or repaying more is to face subordination, to become a client and subservient.” Mauss, *The Gift*, 72.

<sup>96</sup>M. Sahlins, *Stone Age Economics* (London: Tavistock, 1972), 169. The stabilizing role of reciprocal exchange is also emphasized in A. W. Gouldner, “The Norm of Reciprocity: A Preliminary Statement,” in *Friends, Followers, and Factions: A Reader in Political Clientelism*, ed. S. W. Schmidt, et al. (Berkeley: University of California Press, 1977). And see van Wees, “The Law of Gratitude.”

<sup>97</sup>Sahlins, *Stone Age Economics*, 191-96.

<sup>98</sup>This part of Sahlins’ theory, i.e., the use of the phrase “negative reciprocity” to describe non-reciprocal transactions, may lead to confusion because Gouldner, “The Norm of Reciprocity,” uses the same

There is a consensus about the importance of reciprocity,<sup>99</sup> and this consensus has existed for a very long time. I have already cited extracts from *Nicomachean Ethics* that show that Aristotle viewed reciprocity as critical to the success of friendships. And in Book 5, when speaking of “Justice in Exchange,” Aristotle said:

In communities for exchange, however, this way of being just, reciprocity that is proportionate rather than equal, holds people together; for a city is maintained by proportionate reciprocity. For people seek to return either evil for evil, since otherwise [their condition] seems to be slavery, or good for good, since otherwise there is no exchange; and they are maintained [in a community] by exchange.<sup>100</sup>

Cicero said it was a good man’s option whether to do a kindness, but his duty to requite one.<sup>101</sup> Hobbes elevated gratitude to the level of a “Law of Nature.”<sup>102</sup> Hobhouse called

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phrase in a way that seems more intuitively sound: Gouldner uses “negative reciprocity” to denote the reciprocity of injury, in opposition to the positive reciprocity of benefit. This chapter focuses on friendship, but the other side of the same equation is enmity and Mitchell, *Greeks Bearing Gifts*, 14-15, describes the ethical landscape in ancient Greece on this issue in a way that fully meets Gouldner definition of “negative reciprocity”:

The flip side of the *philia* coin was enmity (*echthra*), and popular concepts of justice were founded on the belief that one should help friends and harm enemies (*echthroï*). . .

Xenophon’s Socrates says that doing good to one’s friends and harm to one’s enemies is the mark of a virtuous man, and Isocrates moralistically declares: ‘consider it disgraceful to be beaten by your enemies in doing evil, and surpassed by your friends in benefactions.’ Just as one repaid a friend good for good, so one paid back one’s enemy bad for bad.

It is positive (sometimes also called “beneficial”) reciprocity that is directly relevant to my work and in the discussion that follows, I adopt what seems to be the convention in the literature by using *reciprocity* without a modifier to signify positive reciprocity.

<sup>99</sup>Gouldner, “The Norm of Reciprocity,” 28-29.

<sup>100</sup>*Nicomachean Ethics*, 1132<sup>b</sup>-1133<sup>a</sup>.

<sup>101</sup>Cicero, *De Officiis*, 1.15.48.

<sup>102</sup>Hobbes, *Leviathan*, 1.15.16. And the context in which Hobbes uses the word *gratitude* makes it clear that he has reciprocity in mind:

As justice dependeth on antecedent covenant, so does GRATITUDE depend on antecedent grace, that is to say, antecedent free gift, and is the fourth Law of Nature, which may be conceived in this form: *that a man which receiveth benefit from another of mere grace endeavour that he which giveth it have no reasonable cause to repent him of his good will.* For no man giveth, but with intention of good to himself.

reciprocity the “vital principle of society.”<sup>103</sup> Westermarck said, “To requite a benefit, or to be grateful to him who bestows it, is probably everywhere, at least under certain circumstances, regarded as a duty.”<sup>104</sup> Gouldner follows Westermarck and postulates that a norm of reciprocity is universal.<sup>105</sup> And Noonan goes one step further: “Reciprocity is in any society a rule of life, and in some societies at least it is *the* rule of life.”<sup>106</sup>

### *Dora and Charites Versus Commercial Exchange*

Seaford compares and contrasts reciprocity with commercial exchange, as follows:

Commercial exchange may, like reciprocity, seem to involve voluntary requital, for it is generally voluntary and involves requital. But in fact of course the *requital* is *not* voluntary. You purchase my car voluntarily, but if you receive it from me by ‘purchase’, then there is nothing voluntary about your requiting me for it by ‘payment’. If you do not pay, I can invoke a third party (the law) to force you to do so or to return the car. The requital to which our definition of reciprocity refers, on the other hand, can be enforced neither by the other party to the exchange nor by any third party, however strongly it is encouraged by an ethical code. . . . [C]ommercial exchange *qua* commercial exchange. . . creates no relationship between the parties to it, is instantaneous (the transaction, though not necessarily the payment), and involves precise equivalence between the items exchanged.<sup>107</sup>

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<sup>103</sup>L. T. Hobhouse, *Morals in Evolution: A Study in Comparative Ethics* (New York: Henry Holt, 1906), 1:12.

<sup>104</sup>E. Westermarck, *The Origin and Development of the Moral Ideas* (London: Macmillan, 1908), 2:154.

<sup>105</sup>Gouldner, "The Norm of Reciprocity," 35.

<sup>106</sup>Noonan, *Bribes*, 3. See *infra*, note 180, where reference is made to modern empirical research that supports the postulated universality of the norm of reciprocity.

<sup>107</sup>Seaford, “Introduction,” in *Reciprocity in Ancient Greece*, 2-3. For a useful summary of the literature on the distinction between gift and commodity, see G. M. Herrmann, “Gift or Commodity: What Changes Hands in the U.S. Garage Sale?” *American Ethnologist* 24, no. 4 (1997): 910-30.

In ancient Greece, the gifts in an exchange were either *dora* (gifts) or *charites* (favours). The *xenia* relationship was initiated by the exchange of *dora*, but it was the exchange of *charites* that gave the relationship its importance.<sup>108</sup> For my purposes, one particularly important distinction between *dora* or *charites* and commercial exchange is that the exchange of gifts, and especially favours, left room for ambiguity and interpretation.<sup>109</sup> It was this room for ambiguity together with the evolution of the *polis* institutions that created the opportunity to characterize as bribery the *dora* and *charites* exchanged between *xenia*.

### **Bribery by Redefinition: *Xenia*, Reciprocity and the New Politics**

Consistent with his pronouncements in the *Politics* with reference to the history of the *polis*,<sup>110</sup> and reflective of the growing extent of the citizen's obligation to the *polis*, Aristotle clearly subordinates the obligations of friendship, and the virtue that accompanies friendship, to a citizen's obligation to the political community:

All the communities, however, would seem to be parts of the political community. For people keep company for some advantage and to supply something contributing to their life. And the political community as well [as the others] seems both to have been originally formed and to endure for advantage; for legislators also aim at advantage, and the common advantage is said to be just. . . . But all these communities [kin, friends, fellow travellers, fellow soldiers, or fellow members of a tribe or *deme*] would seem to be subordinate to the political community, since it aims not at some advantage close at hand, but at advantage for the whole of life. . . . All the types of community, then, appear to be parts of the

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<sup>108</sup>Mitchell, *Greeks Bearing Gifts*, 18-21; and *supra*, note 74.

<sup>109</sup>Sahlins, *Stone Age Economics*; Mitchell, *Greeks Bearing Gifts*, 20-21.

<sup>110</sup>*Supra*, note 56.

political community, and these sorts of communities imply the appropriate sorts of friendships.<sup>111</sup>

The potential conflict is thus made clear. The timeless tradition of *xenia*, with its obligations of loyalty and reciprocity, was bound to intersect with the new politics, particularly the doctrine that obligation to community trumps all other obligations.<sup>112</sup>

Herman summons up two excellent illustrations of the implications of these conflicting duties between the traditions of *xenia* and the new politics. The first example is Pericles in 431 BCE; a Spartan invasion was imminent, and Pericles had a personal bond of *xenia* with King Archidamos of Sparta. Pericles anticipated that Archidamos might lay waste to most of Attica but spare Pericles' estates. Pericles converted his estates to public property so as to avoid potential embarrassment and scandal.<sup>113</sup> In fact, on his entry into public life, Pericles was said to have withdrawn from his *philoï*, allowed himself to be seen only on the street that led to the *agora* and the council chamber, and turned down all dinner invitations, all so that he could present himself as an impartial public servant.<sup>114</sup> Herman's second example is the dispute between Demosthenes and Aeschines:

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<sup>111</sup>*Nicomachean Ethics*, 1160<sup>a</sup>.

<sup>112</sup>Herman, *Ritualized Friendship*, 2, takes note of this conflict in duties, and says, "[U]nlike the obligations of guest-friendship, which arose only from morality, civic obligations were legally enforceable." Legal pluralists would be troubled by this narrow approach. They would argue that there was non-state law in play that enforced the *xenia* obligations, in the form of the prevalent and powerful *ethos* of negative reciprocity in ancient Greece—supra, note 98. And see the brief discussion of legal pluralism in Chapter 5, infra.

<sup>113</sup>*Ibid.*, 3.

<sup>114</sup>Mitchell, *Greeks Bearing Gifts*, 44. For further examples of what at the time was a novel approach to reciprocity and politics in ancient Athens, see A. Missiou, "Reciprocal Generosity in the Foreign Affairs of Fifth-Century Athens and Sparta," in *Reciprocity in Ancient Greece*, ed. C. Gill, N. Postlethwaite, and R. Seaford (Oxford: Oxford University Press, 1998), 193-96.

Demosthenes. . .while priding himself on having preferred the common interest of Greece to the gifts and *xenia* of Philip of Macedon, accused Aeschines of having put his (that is Aeschines') *xenia* and *philia* with Philip above the fate of the city. Two competing moral systems were involved: one archaic and pre-political, and the other stemming from the *polis* structure. It was by no means clear which one would exercise the stronger appeal on the minds of the citizens. Aeschines alleged—or perhaps insinuated—that Demosthenes was guilty of an impious crime: in the name of the city, Demosthenes had arrested, tortured and put to death one of his own *xenoi*, a man whose only crime was to have come to Athens to purchase goods for the queen of Macedonia. Demosthenes retorted by saying that as a matter of fact the man was a Macedonian spy; by executing him, he had merely “held the city’s salt as more important than the table of his own *xenos*.”<sup>115</sup>

Records of the classic orations of fifth and fourth century Athens reveal that the charge of taking bribes was regularly made and “as stereotyped in use as ‘Your father was a slave,’ or ‘Your mother was a prostitute’.”<sup>116</sup>

Herman sums up the new political reality created by the superimposition of the overriding obligation to the *polis* on the deeply rooted gift exchange traditions:

[G]ift exchange with an outsider quickly came to be viewed as a mark of misguided solidarity. For outsiders were by definition enemies, and a nexus with an enemy might become a threat to the whole community. Hence the easy association between bribery and treason. . . . There was thus an ideological conflict focussed around the practice of gift-exchange, between the old and the new, and between the *polis* and the a-political world outside it. For there can be little doubt that the *polis* was the exception, and the outside world the norm. There, nothing had changed. Persian potentates, for example, seem never to have grasped that the Greek city did not obey the rules of gift-exchange. Repeatedly, they seem to send monies to leading Greek politicians in the name of ‘friendship’, being apparently unaware that the noble practice had there become an offence punishable by death.<sup>117</sup>

This is a convenient place for brief etymological stop. There was in the Greek language no vocabulary of bribery distinct from that of gift exchange, and the absence of

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<sup>115</sup>Herman, *Ritualized Friendship*, 3.

<sup>116</sup>Noonan, *Bribes*, 713.

<sup>117</sup>Herman, *Ritualised Friendship*, 79-80.

a distinct vocabulary of bribery makes perfect sense given that the concept of bribery came into existence only as a result of the evolution of the *polis* institutions. The words *doron*, *dora*, *dorea*, *dorema*, *dorodokia*, and other derivatives and combinations could mean gift or bribe in classical Athens. But the meaning was made clear by context—and the context that converted *doron*-gift to *doron*-bribe was the notion of conflict with communal interest.<sup>118</sup> This is why, in ancient Athens, accusations of bribery were always connected to accusations of treason.<sup>119</sup>

### **Taking Stock: Another Pause in the Chase**

The goal of this chapter was to study a case of the change over time, in one society, of ethical norms related to gifting and bribery. In the age of the *polis*, Athenians witnessed the decreasing role of reciprocity in economic life in favour of the increasing influence of commercial exchange and, most importantly, they witnessed the maturation of the idea that a citizen's obligation to the community trumped all other duties—including the almost sacred duty to reciprocate gifts and favours received from friends. In the result, gift and favour exchange between *xenia*, long considered necessary and perfectly ethical behaviour, began to give rise to allegations of bribery and treachery. In other words, the gift/bribe boundary shifted in Athens during the age of the *polis* so as to redefine some instances of traditionally proper gifting as unethical and illegal. This

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<sup>118</sup>Herman, *Ritualised Friendship*, 75; Noonan, *Bribes*, 713.

<sup>119</sup>Mitchell, *Greeks Bearing Gifts*, 182. And Mitchell points to the logical consequence: innocence or guilt on a charge of bribery came down not to whether gifts or favours were accepted, but to the subjective judgement of whether the actions of the accused, including the acceptance of the gifts or favours, were in the interest of the *polis*.

study has underscored that in attempting to locate the gift/bribe boundary, even in a single society, I am likely chasing a moving quarry.

## CHAPTER THREE

### ACROSS AND BETWEEN CULTURES

There has been a frenzy of anti-corruption activity in the past 15 years on the part of organizations seeking to reduce what they see as corrupt activity in non-Western markets,<sup>120</sup> and there is a Western discourse of corruption and bribery. The examination of this discourse in the first part of this chapter will provide useful background for what follows. The next section of this chapter is a review of the studies that have been done on the subject of “gift versus bribe” in various societies including Java, China, and Russia; and the case of gift giving by Western businesses is examined. Finally, taking account of the foregoing, I will consider a particular complexity at the gift/bribe boundary.

#### The Western Discourse of Bribery and Corruption

The words “corruption” and “bribery” have unmistakable moral overtones, and to use them to describe behaviour can be limiting. Visvanathan and Sethi develop this argument in their lyrical introduction to their book on corruption in India:

The English word corruption sounds too provincial, too puritan, too restricted, too knee-jerk. It has a sense of arid prose that cannot capture the labyrinthine

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<sup>120</sup>For a good summary of the high-profile projects, see M. Bukovansky, "The Hollowness of Anti-Corruption Discourse," *Review of International Political Economy* 13, no. 2 (2006): 181-209. And these projects have been accompanied by law reform initiatives: B. Michael, "Drafting Implementing Regulations for International Anti-Corruption Conventions," in *QEH Working Paper Series* (Oxford: University of Oxford, Department of International Development, 2007), <http://www3.qeh.ox.ac.uk/pdf/qehwp/qehwps150.pdf> (accessed August 2, 2008); V. Taylor, "The Law Reform Olympics: Measuring the Effects of Law Reform in Transition Economies" (2005), <http://ssrn.com/abstract=893682> (accessed August 2, 2008). The obstacles faced by these law reform initiatives and, in particular, the reasons underlying the difficulty of transplanting Western anti-corruption laws, are the subjects of a brief discussion in Chapter 5, *infra*.

quality of this world. It is like comparing an election survey with a Dantesque view of hell. There are layers to be unravelled.

There is the piety of social science implicit in the English word corruption. 'It is bad.' 'It is not me alone.' 'It is others who do it.' 'It is something transient that you stop doing as the economy grows.' 'It is a Third World fixation.' And if you mention Italy, you are told it is the Third World of Europe.

But once you see it as a conversation, a ritual, once you sense the richness of language, the variety of metaphors it encompasses and employs, you realize that you need more than an impoverished English thesaurus. Think of the strange magic of all the local words. A bribe is *haq, dakshina, baksheesh, chaipaani, upari*. Even the pidgin English phrase 'oblige *kar dijiye*', conveys so much. Somehow it retains at the very moment of perversion the sense of the noblesse. There is a sense of gift, of payment, of service, of hospitality, of entitlements. . . . The English word 'corruption' conveys a sense of biology, of something negative, rotten, sickly, parasitic, smacking of decay, without the possibilities of composting. It suggests a culture being eaten up by nature. Such a word blinds one to the inventiveness, the survival quality of corruption or even as a strategy of mobility. When you see corruption as a service, an activity, you see it prosaically as a form of work.<sup>121</sup>

Polzer makes a similar point.<sup>122</sup> She notes that the English word "corruption" does not have a simple correspondent in most languages, and she argues that this is sufficient to show that "the connotations of the English word are not self-evidently shared around the world."<sup>123</sup> Her paper relies on the work of Foucault to deconstruct the World Bank anti-corruption discourse. One of her principal findings is that "corruption" as a word is an "othering" tool: it is not so much descriptive of a specific action as it is a negative evaluative concept that tells us more about the person or institution attaching the label than the behaviour itself. Using the word allows the World Bank to position itself on the

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<sup>121</sup>S. Visvanathan and H. Sethi, "By Way of a Beginning," in *Foul Play: Chronicles of Corruption, 1947-97*, ed. S. Visvanathan and H. Sethi (New Delhi: Banyan, 1998), 3-4.

<sup>122</sup>T. Polzer, "Corruption: Deconstructing the World Bank Discourse," in *Working Paper Series* (London: Development Studies Institute, London School of Economics and Political Science, 2001), <http://www.lse.ac.uk/collections/DESTIN/workingPapers.htm> (accessed August 2, 2008).

<sup>123</sup>*Ibid.*, 11.

side of the righteous, and to implicitly assert that good societies are modernizing societies while corrupt societies are those that inhibit economic development.

Polzer claims that the World Bank discourse is founded on faulty assumptions of the existence in the “developing countries” of a professional, disciplined “Weberian” bureaucracy and a bright line separation of public and private life. Both are seen as decidedly European conceptions.<sup>124</sup> Moreover, she finds that the spheres of knowledge accepted by the World Bank are universalizing, empirical, quantitative and institutional. Institutional reform is emphasized—the corrupt individual is constructed as a rational maximizer rather than as a moral agent.

The discourse of bribery and corruption may mask agendas. At the least, it masks or impedes the examination of the moral issues that are properly raised by the subject. Bukovansky examined the anti-corruption language of the UN, IMF, World Bank, OECD and Transparency International, and asserts that these organizations’ liberal-rationalist approach, emphasizing economic issues over moral issues, evades and obscures core problems of politics and ethics.<sup>125</sup> The ends of modernity—particularly economic development and governance structures emphasizing the rights of individuals—are taken

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<sup>124</sup>Polzer acknowledges significant reliance on the insights of both Escobar and Moore, each of whom has adapted Foucault’s work to the study of the discursive aspects of “development”: A. Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 1995); D. B. Moore, "Development Discourse as Hegemony: Toward an Ideological History—1945-1995," in *Debating Development Discourse: Institutional and Popular Perspectives*, ed. D. B. Moore and G. J. Schmitz (London: Macmillan, 1995). A. Gupta, "Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State," *American Ethnologist* 22, no. 2 (1990): 375-402, illustrates the fallacy of the public/private dichotomy in an Indian setting; and also see Visvanathan and Sethi, "By Way of a Beginning."

<sup>125</sup>Bukovansky, "The Hollowness of Anti-Corruption Discourse." And see J. Everett, D. Neu, and A. S. Rahaman, "The Global Fight against Corruption: A Foucaultian, Virtue-Ethics Framing," *Journal of Business Ethics* 65 (2006): 1-12.

as given.<sup>126</sup> Economists and political scientists, and particularly those favouring rational choice theory, “dominate this discursive territory.” And by linking the problem of corruption to the problem of underdevelopment, advanced industrial countries unjustifiably seize the high moral ground.

Gupta strikes many of the same chords as Polzer and Bukovansky. Consider this passage from his paper, “Narrating the State of Corruption”:

‘Corruption’ might also be such a fecund signifier because it serves as a site for debates prompted by conflicting systems of moral and ethical behaviour. Any discussion of corruption necessarily assumes a standard of morally appropriate behaviour against which ‘corrupt’ actions are measured. But what single scale is to be employed to determine what is morally right? When social scientists employ such a scale, is it built on the model of the Weberian bureaucrat—the role-fulfilling, disinterested professional occupying a location in an organizational structure solely due to professional competence and merit? Such an individual, of course, is as much a figment of a modernist imagination as his or her counterpart—the role-blurring, unprofessional person who has gained his or her position through hereditary means, political connections or other morally dubious methods, like buying a public office. Although modernist imaginations sometimes appear commonsensical or uninteresting, in fact, there is an important element of fantasy and Othering present even in the most banal representations of such ‘traditional’ practices and societies. (For this, the Other need not be explicitly present in the discussion, but merely be an absent presence at the opposite pole of modernity.) In a social situation where there is no widespread social agreement about which scale is to be used to judge ‘correct’ ethical behaviour, the analysis of corruption itself becomes, so to speak, corrupted.<sup>127</sup>

Some of the commentators who argue that the language of anti-bribery and anti-corruption masks an underlying neo-liberal and globalizing agenda, or otherwise criticize

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<sup>126</sup>This, as Bukovansky acknowledges, is Euben’s point: the debate over what society is and ought to be has been stifled by the assumptions that the model of the correct society has already been discovered (i.e., capitalism and liberal democracy) and what really needs doing is to get on with the job of more efficient implementation. See P. Euben, “Corruption,” in *Political Innovation and Conceptual Change*, ed. T. Ball, J. Farr, and R. Hansom (Cambridge: Cambridge University Press, 1989). I return to this subject in Chapter 5, *infra*.

<sup>127</sup>A. Gupta, “Narrating the State of Corruption,” in *Corruption: Anthropological Perspectives*, ed. D. Haller and C. Shore (London: Pluto, 2005), 175.

this discourse, express concern that their work will give succour to the moral relativists—those who would define an act as corrupt only if the surrounding society condemns it.<sup>128</sup>

Qizilbash puts the concern about relativism this way:

Relativist arguments are, thus, easily exploited by members of elites within certain countries, whose positions are supported by existing norms, and who benefit from the persistence of these norms. Relativism can thus undermine the agenda of human development, especially when this contains some commitment to equity. . . Taking bribes might be “normal” for bureaucrats, but regarded as very unjust by those, especially among the poor, who pay the bribes.<sup>129</sup>

Harrison clearly identifies the dilemma:

[D]oes a deconstruction of the anti-corruption agenda divert attention away from the real problems of corruption for those who experience it most acutely? There is an uneasy tension between an appreciation of the fact that the meaning of “corruption” may vary and the harsh realities of being unable to get access to electricity, land, or a job, without a bribe.<sup>130</sup>

Polzer, in the midst of her deconstruction of World Bank discourse, evidently felt this tension and she issued a caveat: “Arguing that discourses about fighting corruption are partial, biased or even self-serving runs the risk of appearing to say that corruption is not really as damaging as it is portrayed. This is certainly not my intention.”<sup>131</sup>

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<sup>128</sup>R. Wraith and E. Simpkins, *Corruption in Developing Nations* (London: G. Allen, 1963). See Chapter 4, *infra*, for a discussion of some aspects of moral relativism.

<sup>129</sup>M. Qizilbash, "Corruption and Human Development: A Conceptual Discussion," *Oxford Development Studies* 29, no. 3 (2001): 275. For a comprehensive discussion of cultural relativism, see E. Hatch, *Culture and Morality: The Relativity of Values in Anthropology* (New York: Columbia University Press, 1983).

<sup>130</sup>E. Harrison, "Unpacking the Anti-Corruption Agenda: Dilemmas for Anthropologists," *Oxford Development Studies* 34, no. 1 (2006): 16.

<sup>131</sup>Polzer, "Deconstructing the World Bank Discourse," 5-6.

Other scholars have not felt the pinch of this dilemma. In fact, there is a significant body of work arguing that the effects of corruption are good, not bad. Leff claimed that conclusions that the effects of corruption are negative are falsely premised on the assumption that government, and its agent, the bureaucracy, desire economic development.<sup>132</sup> He argued that this is not so; bureaucracies pay lip service to economic development goals and are actually interested in preserving the status quo—they do not want to advance a new entrepreneurial power base. Corruption is good, the argument goes, because graft can provide the direct incentive necessary to mobilize the bureaucracy for more energetic action on behalf of entrepreneurs. And where there is economic and political uncertainty, corruption can give the entrepreneur the tools to reduce this uncertainty, and the result is increased investment and economic growth.

While making a claim that is not wholly dissimilar to Leff's—that "corruption in developing nations is not necessarily antipathetic to the development of modern economic and social systems" and "corruption serves in part at least a beneficial function in developing societies"—Bayley presents a more balanced view of the question of beneficial versus harmful effects of corruption.<sup>133</sup> He acknowledges that corruption does have undesirable effects, including:

1. Achievement of government objectives is undermined.
2. The taxpayer pays twice: both taxes and bribes for the same service.
3. Kickbacks mean that only some of the allocated sums are going to public purposes.

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<sup>132</sup>N. H. Leff, "Economic Development through Bureaucratic Corruption," *American Behavioral Scientist* 8, no. 3 (1964): 8-14.

<sup>133</sup>D. H. Bayley, "The Effects of Corruption in a Developing Nation," *Western Political Quarterly* 19, no. 4 (1966): 719-32.

4. The courage needed to adhere to high standards of propriety is eroded, with each person asking why they should be the only moral one.
5. Respect for authority is lessened.
6. If the elite who occupy government office are believed corrupt, each person will see little reason why they should not grab what they can for themselves.
7. The amount of time engaged in making contacts necessary to succeed in a corrupt setting could be used for more productive purposes.
8. The poor with urgent requests and needs are disempowered by their inability to pay graft.

Each of these points may be arguable, in any particular setting. And some of the suggested detrimental effects resonate more strongly than others. But I submit that there is sufficient strength to this compilation that it can be fairly conceded that corruption has some bad effects in virtually all settings.

Bayley went on to list some beneficial effects of corruption:

1. If the effects produced by corruption are better than government policy, then corruption has beneficial effects: e.g. bribery breaking down caste barriers or quota systems or trade barriers.
2. It may increase the quality of the bureaucracy by providing a needed increase in pay. The corrupt do not always lack ability or patriotism.
3. Corruption can give those otherwise without a stake in the system, a tie to it, and thus reinforce public order.
4. Human contact through corruption may make for a more understandable system for those in some societies.

In my view, there are compelling arguments that bribery and other forms of corruption may have both good and bad effects, both economic and non-economic.

However, my aim is not to settle a debate framed by the question, “Corruption: Good or Bad?” Rather, the point is to make room for an examination of the “corrupt” act in

context, and to avoid the trap of being limited by the language of corruption and bribery by pointing out that what is taken for granted by the discourse—“corruption is bad”—is in fact a matter of nuance and the subject of debate. While this nuance is not reflected in the discourse of institutions like the World Bank, there is evidence that those who are living with “corruption” appreciate the point. Lomnitz, in his study of corruption in Mexico, concludes that the rural populace does not see “corrupt” acts as immoral if there is sufficient sharing of the spoils by patrons, such as by holding fiestas for the people.<sup>134</sup> Verhezen made a similar finding in a Javanese context: a “corrupt” village chief who shares with his people is regarded as more fair than an honest but hoarding chief.<sup>135</sup> It seems that people are well aware that there are degrees or shades of corruption and they distinguish between “correct” and “incorrect” corruption.<sup>136</sup>

Perhaps the most useful analytical framework is to look at the subject from the perspective of power. We have seen how powerful institutions may be furthering the agendas of powerful economic interests under cover of an anti-corruption discourse. But even if we take multinational institutions out of the equation, there remain questions of power. Scott said, “Much of what we consider as corruption is simply the ‘uninstitutionalised’ influence of wealth in a political system”; and he argued that its

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<sup>134</sup>C. Lomnitz, "Ritual, Rumor and Corruption in the Constitution of Polity in Mexico," *Journal of Latin American Anthropology* 1, no. 1 (1995): 41.

<sup>135</sup>P. Verhezen, "Gifts and Alliances in Java," *Journal of the European Ethics Network* 9, no. 1 (2002): 7-8.

<sup>136</sup>Shore and Haller, "Sharp Practice," 13. The use of words like *corrupt* or *bribe* are so loaded with moral judgement that it might be better to say, in the case of Lomnitz's rural Mexicans, that the acts are not seen as corrupt rather than to say that the corrupt acts are not seen as immoral. I am indebted to Michael M'Gonigle for this observation. This idea of degrees or shades of corruption is connected, at one end of the spectrum, to the notions of “good bribes” and “noble cause corruption” which are the subject of a brief reference infra, at note 159.

effects with regard to a society's class structure are highly conservative.<sup>137</sup> For the most grounded and eloquent description of the role of power can play in corrupt transactions, I return to Visvanathan and Sethi:

It came to me once like a riddle. What is as intimate as a seduction and as coercive as rape? A bribe. In fact, after one pays it, the man asks you 'What are you feeling sad about?' You feel like a lemon in a squeezer and he makes it sound like a friendly initiation rite.

Wielding this extraordinary power is the clerk, a "little Leviathan" who becomes totalitarian within his department. "As a cog in the big machine, he was impotent, [b]ut as a spanner in the works, he could be devastating."<sup>138</sup>

And, as I now move on to consider the subject of gifts and bribes in diverse societies, these further words from Visvanathan and Sethi are particularly apt:

"Corruption is never presented as naked power. It makes its appearance wrapped in indigenous idioms of reciprocity, hospitality and gift."<sup>139</sup>

### **Gifts and Bribes in Diverse Societies**

Scholars have tried to shed light on the distinction between gifts and bribes by examining conduct in particular societies. In this section, I will review a selection from this literature, including studies of this subject focusing on Java, China and Russia. Following this, I will turn to the case of gift giving by Western business people operating in foreign markets.

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<sup>137</sup>J. C. Scott, *Comparative Political Corruption* (Englewood Cliffs, NJ: Prentice Hall, 1972), 33.

<sup>138</sup>Visvanathan and Sethi, "By Way of a Beginning," 2.

<sup>139</sup>*Ibid.*, 7.

Verhezen contrasts the role of the gift in traditional Javanese society with what he sees as thinly disguised bribes occurring in contemporary urban Java.<sup>140</sup> Traditional Java society was structured such that the village chief, regional governor, or king was required to provide for the community, and power was maintained only by sharing accumulated wealth through gift mechanisms. Harmony and respect were the values that permeated traditional society. The choice of gift objects, words, and gesture all reinforced these norms. The superior would demand loyalty, tax payments and service—in return, his subordinates expected protection and moral guidance. One’s reputation depended on acting “correctly” according to the place they occupied in the community. “The individual aspirations were strictly embedded within the village constellation of consensus, hierarchy, respect and reciprocity.”<sup>141</sup>

In contemporary Java, particularly in urban areas, he found traditional social principles in decline. The traditional norms of harmony and respect have been replaced by economic values encouraging individualistic materialism. The drive is for consumption and accumulation rather than sharing of material wealth. Traditional relationships and alliances have gradually shifted to a form of exchange and have become more economic than social.

In contemporary Java, the traditional gift ritual is used to exchange objects and favours rather than to establish a genuine alliance to maintain social harmony. “The logic of the gift and its inherent three-fold structure of obligation are used for personal gain,

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<sup>140</sup>Verhezen, “Gifts and Alliances in Java.”

<sup>141</sup>Ibid., 7-10. Verhezen takes care to avoid presenting an overly romanticized account of the past by acknowledging that the concepts of harmony and respect might have been nothing more than a way of preserving the power positions of the kings and nobles in traditional Java.

not maintaining a social order.”<sup>142</sup> He asserts that the elite, inspired by alienated individualistic consumerism, are taking advantage of a society in transition, a society that has unclear rules, weak commitment and enforcement of these rules. “The rhetoric and ceremonial forms of a traditional culture are used to camouflage what are in fact business or commercial, and in extreme cases even extortionary, relationships.”<sup>143</sup> Traditional gifts, reciprocal by nature, did not require individual accountability or transparency since the individual in Java was “encapsulated in a well-organized hierarchy.”

Verhezen distinguishes gifts from bribes dressed up by “pseudo-traditional rituals” primarily by reference to the bribe’s disregard of the social orientation of the gift mechanism. The bribe “disregards the ambiguity of the gift,” and uses the gift’s “hierarchical element of respect” for its own corrupt purposes. “The logic of the gift as applied in traditional Java has been transformed into a cultural gimmick for personal gains in contemporary Java.”<sup>144</sup>

Smart has examined the boundary between gift and bribe in China.<sup>145</sup> He makes use of Bourdieu’s theory of the “economy of practices” and the work of Appadurai to

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<sup>142</sup>Verhezen, “Gifts and Alliances in Java,” 12.

<sup>143</sup>Ibid.

<sup>144</sup>Ibid., 1.

<sup>145</sup>A. Smart, “Gifts, Bribes, and *Guanxi*: A Reconsideration of Bourdieu’s Social Capital,” *Cultural Anthropology* 8, no. 3 (1993): 388-408. I am obliged to Gerry Ferguson for the reminder that since Smart published this paper, there has been much activity by Chinese government institutions to attempt to combat corruption in China. Whether the traditional boundary between gift and bribe referred to herein has shifted in China as a result of new laws, regulations, enforcement practices and institutions is an open question that is beyond the scope of this work. However, for the reasons expressed in Chapter 5, *infra*, and in particular the apparent weakness of law as an instrument at the leading edge of cultural change, I would be surprised if the answer is in the affirmative.

examine the customs of gift exchange and the “art of *guanxi*.”<sup>146</sup> He summarizes Bourdieu’s conception of capital as including four basic forms: economic, symbolic, social, and cultural. Economic capital is money, commodities, means of material production and other material assets. Symbolic capital is the prestige associated with a family and a name. Social capital is the obligations, advantages and trust gained as a result of established social networks. Cultural capital consists of what the agent knows and is capable of doing. Of these, social capital is the most relevant form in relation to gifts, and it is the most tentative and least secure; such things as obligations and trust are by their nature not measurable. There is no certainty that an obligation to reciprocate a favour or gift will be fulfilled or in what form—until a person tries to use it, it is not possible to determine how much social capital they have accumulated.

Smart follows Appadurai in two ways. First, he suggests that the tendency to distinguish sharply between gifts and other forms of exchange is problematic. Second, he asserts that the distinguishing feature of a gift is determined from the ritual involved rather than from the character of the social relations between the actors involved in the exchange.

He argues that in China, gift exchange and market exchange are not seen as opposites, but as potentially complementary. *Guanxi* is a blend of symbolic and social capital. It is built on relationships—including classmates, people from the same place, relatives, people in the same workplace, and others. It is principally built through the exchange of gifts and favours. While it can be and is used for instrumental purposes, “it is

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<sup>146</sup>P. Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977); A. Appadurai, "Introduction: Commodities and the Politics of Value," in *The Social Value of Things: Commodities in Cultural Perspective*, ed. A. Appadurai (Cambridge: Cambridge University Press, 1986).

referred to as the *art* of *guanxi*, because the style of exchange and the appropriateness of the performance are critical to its effectiveness.”<sup>147</sup>

Yang is cited by Smart for the proposition that the form of the exchange determines the line between gift and bribe.<sup>148</sup> In Smart’s words:

The relationship must be presented as primary and the exchanges, useful though they may be, treated as only secondary. If, instead, it becomes apparent that the relationship involves only material interest and is characterized by direct and immediate payment, the exchange is classified as one of bribery.<sup>149</sup>

His conclusion is that the distinction between gift and bribe, in the Chinese setting, depends on whether there is “adherence to the forms and social etiquette” and whether the building of the relationship is a primary objective or regarded as an incidental expense or inconvenience.

This description of the customs in China bears some similarity to the description by Rivkin-Fish of “unofficial payments” in the post-Soviet health care system:

Unravelling the distinctions between gifts of thanks and bribes required attention to the nuances of interpersonal behaviours and practices. Chocolate, alcohol, and flowers were not only typical gifts of thanks in Russia, but also frequently the assumed ‘requirements or ‘payments’ for services rendered or speeded up, in short for the special access and privileges known as *blat*. Consequently, subtle distinctions in the way the objects were presented became signifiers for the kind of exchange being conducted. On the one hand, words of thanks or emotional warmth conveyed through a smile and gentle insistence helped frame the exchange as a ‘gift’, as when Sonia gave Natalia Borisovna the waffle cake. On the other hand, Liudmila’s serious face, awkward glance and uncomfortable mutter reflected her own interpretation of the exchange as an illegal payment. Moreover, . . .the timing of the exchange also had significance. Offered *before* a

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<sup>147</sup>Smart, "Gifts, Bribes, and *Guanxi*," 399.

<sup>148</sup>M. Yang, "The Gift Economy and State Power in China," *Comparative Studies in Society and History* 31 (1989): 25-54.

<sup>149</sup>Smart, "Gifts, Bribes, and *Guanxi*," 399.

woman gives birth, a box of chocolates appeared closer to a bribe; given afterwards, it was unmistakably a gift of thanks.<sup>150</sup>

The concept of *blat* is defined by Ledeneva, who has done a considerable amount of ethnographic study in Russia on the subject of “informal practices” both before and after the fall of the Soviet Union, as follows: “use of personal networks for obtaining goods and services in short supply and for circumventing formal procedures.”<sup>151</sup> The unwritten rules of *blat* involve expectations of mutual help shared by friends or acquaintances. These personal networks are used to access those in charge of the distribution of the goods and services. Russians say, “Do not have a hundred rubles, have a hundred friends.”<sup>152</sup>

Philips considers the interesting question of business gifts in the interaction between different cultures.<sup>153</sup> In particular, in the context of trying to sort gifts from bribes, he addresses the issue of American executives presenting gifts to their foreign counterparts or foreign government officials. First, however, he demonstrates that he has a firm grasp on the complexity of doing business in a different cultural milieu:

[I]n cultures in which a more formal exchange of gifts may be partly constitutive of a special relationship between persons, namely, something like friendship. . . . to make such exchanges is to enter into a system of reciprocal rights and duties. . . . Where the relationships in question are genuine and the laws of the relevant society are such that the official duties of the relevant officials do not prohibit favoritism, this practice of gift giving cannot be called bribery. For in this case there is no question of the violation of duty. All that can be said here is that such societies condone different ways of doing business than we do. Specifically, they

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<sup>150</sup>M. Rivkin-Fish, "Bribes, Gifts and Unofficial Payments: Rethinking Corruption in Post-Soviet Russian Health Care," in *Corruption: Anthropological Perspectives*, ed. D. Haller and C. Shore (London: Pluto, 2005), 59-60.

<sup>151</sup>A. V. Ledeneva, *How Russia Really Works: The Informal Practices That Shaped Post-Soviet Politics and Business* (New York: Cornell University Press, 2006), 1.

<sup>152</sup>*Ibid.*, 16.

<sup>153</sup>M. Philips, "Bribery," *Ethics* 94, no. 4 (1984): 621-36.

do not mark off a sphere of business and/or bureaucratic activity in which persons are supposed to meet as “abstract individuals,” that is, in which they are required to ignore their social and familial ties. . . . This is not to say that one cannot bribe an official in such a society. One does this here, as elsewhere, by entering into an agreement with him such that he violates his official duties for payment. The point is just that favoritism shown to friends and kinsmen is not necessarily a violation of duty in such societies.<sup>154</sup>

And he makes a critical point, similar to the one made by Verhezen:

Of course, all this is so only when the relationships in question are genuine. In some cases, however, the rhetoric and ceremonial forms of a traditional culture may be used to camouflage what are in fact business relations of the standard Western variety. To the extent that this is so, the favoritism in question may in fact be bribery in an ethnic dress.<sup>155</sup>

From there, he draws what I submit are the correct conclusions. When American executives present gifts to foreign business people or foreign government officials, they have no intention of entering into a system of reciprocity that may obligate them in the future to act contrary to their interests—they “perform the required ceremonies” in order to buy favouritism. The relationship is not “genuine.” And, he says, typically both parties recognize that this is a bribe.<sup>156</sup>

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<sup>154</sup>M. Philips, “Bribery,” 635. When Philips speaks of the “laws of the relevant society,” he makes it clear that he is speaking of “laws” in a pluralistic way. That is, it is necessary to consider more than the written law: if the “social and political practice” routinely violate these written laws, and “few members of the legal and nonlegal community believe that anything ought to be done about it, it is arguable that these codes are dead letters.” See the brief discussion of legal pluralism in Chapter 5, *infra*.

<sup>155</sup>*Ibid.*, 636.

<sup>156</sup>*Ibid.* While I submit that this conclusion is sound, I would not adopt his definition of *bribe*, which requires that the recipient be induced to do what is desired of them. Philips asserts that if the recipient does not follow through, there is no bribe, even if something of value is accepted and there is no question of the malignant intent of the payer. This definition demands too much symmetry: surely one can be said to have offered a bribe in circumstances where the official considered what she accepted was a gift. And the difficulty with his definition is illustrated by one of his own examples (at 633):

Indeed, it seems to me that it is improper to say that she accepts a bribe even when she recognized the intent of the inducement and believes that accepting it is likely to influence her. There is a distinction between accepting a drink with the understanding that one is agreeing to

### **A Conceptual Complexity at the Boundary**

The Western executive distributing gifts to potential customers abroad is a conceptually easy case. This is simply an example of a strategy that is well summed up by the maxim, “When in Rome, do as the Romans do.” It is an attempt to adapt, and adapt instrumentally, in an effort to influence the market. This can fairly be called disguised bribery.

It is more difficult in other cases to discern the boundary between gift and bribe. The bribe label is often attached to economic practices that, in the particular cultural setting, call for gift exchange. And by so labelling these traditional practices, there is suspicion that Western business interests are doing so for the purpose of breaking down the traditional ways of doing business—these traditional ways present barriers to Western business’ entry into these markets. That said, there is no question that as some traditional economies where gift exchange has been a paramount feature make a transition to market economies, there will be instances of bribery in “an ethnic dress” or “wrapped in indigenous idioms of reciprocity, hospitality and gift.”

I would not wholly exclude neoclassical economics in the effort to locate the gift/bribe boundary, even in traditional gift exchange economies. If one sees the utility being maximized as capital, in the expanded sense that Bourdieu uses the word, then giving gifts or reciprocating in this traditional economic setting will build symbolic and social capital. The goal in the particular instance may be to build a reserve of symbolic and social capital (either for the purpose of accumulation of prestige or the purpose of

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be seduced and accepting a drink with the knowledge that so doing will make one’s seduction more likely. To be bribed is to be bought, not merely to be influenced to do something. To be influenced to do something one is not otherwise inclined to do by accepting an inducement should, in my opinion, be regarded as a sufficient condition to meet the definition of bribery.

having a reserve that can ultimately be available for conversion to economic capital) or it may be for the purpose of directly accumulating economic capital (the expectation being that the gift will be reciprocated in the short run with an economic favour). In any of these cases, it can be postulated that gift givers or reciprocators are acting so as to maximize utility—that is, their chosen mix of different sorts of capital. Alternatively, it can be postulated that the gift givers or reciprocators are seeking to maximize power, if one accepts, as asserted by Bourdieu, that power is a proxy for capital as he defines capital.<sup>157</sup>

If this analysis is sound, then there is a conceptual complexity at the border between gift and bribe. In any economic setting, if others' interests are sufficiently compromised, the effort to directly accumulate economic capital by using gift giving as a strategy properly attracts the "bribe" label. But in some economic settings, symbolic and social capital may be more highly valued prizes than economic capital. Why, then, should giving or reciprocating in these circumstances for the purpose of accumulating symbolic or social capital be regarded as gifting rather than bribery?

"Whose ox is being gored?" The cynic might be forgiven for wondering if this is the question that really matters when a transaction is labelled gift or bribe. Is it possible that it is as simple as this: a gift becomes a bribe when the interests of those with more power are compromised? Perhaps. But, on the assumption it is not, we might move closer to understanding the boundary between gift and bribe by examining the moral philosophy that is embedded in different approaches to the categorization of reciprocity

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<sup>157</sup>See Smart, "Gifts, Bribes, and *Guanxi*."

transactions.<sup>158</sup> After all, to label an act as “bribery” or “corruption” is to say that it is immoral.<sup>159</sup> But could it be that there is no single ethical platform for the search for the boundary? The troubling question of moral relativism is the subject of the following chapter.

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<sup>158</sup>Various prominent traditions in ethical philosophy are represented in the accounts of those who have studied corruption and bribery, and there is a brief summary of this literature in Chapter 5, *infra*.

<sup>159</sup>I acknowledge but put aside the fascinating question of “good bribes”—the paradigm example in modern times may be Oskar Schindler’s bribery of Nazi officials to allow transportation of Jews to his factory, a safe haven. Crito’s bribery of Socrates’ prison guards may be thought an apt ancient example. For an overview on the subject of “noble cause corruption,” see S. Miller, “Corruption,” *The Stanford Encyclopedia of Philosophy (Fall 2005 Edition)*, E. N. Zalta, ed., <http://plato.stanford.edu/archives/fall2005/entries/corruption/> (accessed August 3, 2008). This subject should be distinguished from the discussion earlier in this chapter about the good and bad effects of corruption, although I suppose that on a purely consequentialist view, if bribes and “corrupt” acts are seen as having good effects as Leff argued, then the two subjects might collapse into one another.

## CHAPTER FOUR

### AN INSURMOUNTABLE OBSTACLE?

This chase began in an accidental and clumsy way, and even a casual reader will readily conclude that it has not been pursued in a linear fashion. I have wandered wherever the scent has taken me, trying to locate evidence for or against a boundary between gift and bribe that makes sense for the past, present and future, and for here and for there. And as I have meandered about, my mind has at times echoed with a mocking laughter. It took me a long while to recognize the source of this unsettling sound—but it has come to me that it is the snickering of the moral relativists, amused by what they regard as my naïveté.

The moral relativist claim is that there is no single true morality—rather, there are many different moral frameworks, none of which is more correct than the others.<sup>160</sup> If this claim is accurate, it necessarily follows that the project of attempting to locate an ethical boundary between gift and bribe that survives historical and cross-cultural examination is stillborn—and I am on a wild-goose chase. The moral judgement implicit in dividing gifts from bribes would in each case only be relevant to the particular moral

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<sup>160</sup>This is the essential part of the definition provided by the philosopher Gilbert Harman, a prominent defender of a strong form of the moral relativist thesis: G. Harman and J. J. Thomson, *Moral Relativism and Moral Objectivity* (Oxford: Blackwell, 1996), 5.

framework in place at the particular point in history and in the particular society where the transfer (gift or bribe) is being made.<sup>161</sup>

I acknowledge the simple reality that I am not sufficiently equipped, even if I were not hamstrung by time and space constraints, to tackle this important question in the sense of trying to reach a verdict on what is an age-old debate between the moral relativists and the moral objectivists and what is one of the fundamental questions of the social sciences and humanities. What follows instead is a necessarily brief overview of moral relativism, followed by an argument (on narrow grounds) that outlines one way to tunnel through this obstacle that moral relativists see as blocking my path.<sup>162</sup>

### **A Capsule History of Moral Relativist Thinking**

It is convenient to begin the substance of this moral relativism discussion with some historical context.<sup>163</sup> The topic has ancient origins. In classical Greece, the historian Herodotus (c. 484–425 BCE) and the sophist Protagoras (c. 490–420 BCE) endorsed forms

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<sup>161</sup>M. A. Alzola, "Corruption at the Boundaries of Morality: Navigating Moral Imperialism, Cultural Relativism and Tolerance," in *The Third ISBEE World Congress: Freedom and Responsibilities in Business—Ethics, Leadership and Corporate Governance in a Global Economy*, Melbourne, Australia, 2004, [http://www.isbee.org/index.php?option=com\\_docman&task=cat\\_view&gid=19&Itemid%20-%2053k%20-](http://www.isbee.org/index.php?option=com_docman&task=cat_view&gid=19&Itemid%20-%2053k%20-) (accessed August 2, 2008), 7, makes the thoroughly practical point that “ethical relativism is only feasible when cultures do not have to interact with one another.” And so, whether moral relativism is true or not, in the limited case of intercultural gift exchange the search for a boundary cannot be abandoned.

<sup>162</sup>There is an enormous body of literature on moral relativism. I have relied upon the following works to get a sense of the arguments of the proponents and opponents of various forms of the theory of moral relativism: D. B. Wong, *Natural Moralities: A Defense of Pluralistic Relativism* (Oxford: Oxford University Press, 2006); C. Gowans, "Moral Relativism," *The Stanford Encyclopedia of Philosophy (Summer 2008 Edition)*, ed. E. N. Zalta, <http://plato.stanford.edu/archives/sum2008/entries/moral-relativism/> (accessed August 2, 2008); M. J. Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism* (New York: Random House, 1972); Hatch, *Culture and Morality*; and R. Rorty, *Objectivity, Relativism, and Truth* (Cambridge: Cambridge University Press, 1991).

<sup>163</sup>This historical outline relies in large measure on Gowans, "Moral Relativism"; and Hatch, *Culture and Morality*.

of relativism. The Taoist philosopher Zhuangzi (370–301 BCE) was a relativist. But the subject of moral relativism, as distinguished from skepticism,<sup>164</sup> comes into prominence in modernity, as a reaction to eighteenth century Enlightenment thought that the course of human history is one of continuous advancement from savagery, through barbarism and, eventually, arrival at cultured civilization. The medieval Christian notion of a Great Chain of Being<sup>165</sup> slowly gave way to a secular reformulation of progress governed by scientific laws of evolutionary development. The greatest minds of the Enlightenment (including Voltaire, Montesquieu, Rousseau, and Smith) set out to improve civilization by formulating new theories of education, politics and economics.<sup>166</sup> There was a consensus amongst Western intellectuals that man was superior to all other creatures and that modern industrialized society was superior to all other cultures.

Hatch dates the modern emergence of a radically different view to the economic depression of the 1890s and the work of Freud and Durkheim who held that human beings are not consciously and rationally in control of society. Rather, non-rational forces, unconscious drives and sentiments govern human affairs. Relativism denied to Western society the mantle of social, moral and intellectual pre-eminence—the true

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<sup>164</sup>Moral relativism is to be contrasted with moral objectivism, which maintains that moral judgments are true or false in an absolute or universal sense. Moral skepticism says that we are never justified in accepting or rejecting moral judgments, and it is one way of challenging objectivism. Other objections (non-cognitivism, anti-realism, nihilism) contend that moral judgments lack truth-value. Moral relativism does not deny truth-value outright so much as affirming a relative form of the truth or justification. See Gowans, "Moral Relativism," under "Forms and Arguments."

<sup>165</sup>"The metaphysical belief that the underlying structure of the universe, both material and social, might be explained in terms of a cosmic hierarchy rising through imperceptible steps from the simplest to the most complex of existences." M. Myers, *The Soul of Modern Economic Man* (Chicago: University of Chicago, 1983), 46. And see A. O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea* (New York: Harper & Row, 1960).

<sup>166</sup>Hatch, *Culture and Morality*, 20.

principle underlying our position versus other societies is the principle of equality.

William James was a philosopher of the late nineteenth and early twentieth centuries. He rejected the idea that we can ever know what is true in the ultimate sense, but regarded an idea as true if it works or is expedient (i.e. pragmatism). Truth is not to be located, but is always being constructed; it is not single and absolute, but plural and contingent. The thinking of Freud, Durkheim and James clearly presented a challenge to the conventional wisdom that in relation to any ethical question there is one moral truth “out there,” waiting for discovery by rational thinking.<sup>167</sup>

The assault on the notions of progress and beliefs about cultural moral superiority gathered further momentum in the twentieth century with the work of anthropologists, particularly Boas and his pupils Benedict and Herskovits. In a paper published in 1904, Boas argued that our vision is obscured by a bias “which leads us to ascribe the highest value to that which is near and dear to us.”<sup>168</sup> The Boasians rejected a cultural evolution model (i.e., savagery to barbarism to civilization) and rejected the evolutionists’ premises. The first evolutionist premise is historical: that societies pass through these stages. The second premise is that those lower on this scale are inferior in all senses, including moral development.<sup>169</sup>

The Boasians rejected the historical evolutionary premise on the basis that the true pattern was not a series of inventions resulting in progress, but the diffusion of cultural

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<sup>167</sup>Hatch, *Culture and Morality*, 26-32.

<sup>168</sup>G. W. Stocking, *A Franz Boas Reader: The Shaping of American Anthropology, 1883-1911* (Chicago: University of Chicago Press, 1969), 26.

<sup>169</sup>Hatch, *Culture and Morality*, 42.

traits: while all societies claim to have originated a few traits in their inventory, the vast majority are borrowed.<sup>170</sup> The borrowing depended on contingent matters such as whom are neighbours and the nature of the relationship with the lending culture. But Boasian theory held that diffusion was only one force—the other important force was the genius of particular people, their own cultural style. These forces acted upon each other to result in the particular direction that a society moved in, a thesis known as the “selectivity of cultures”:

Every human society everywhere has made such selection in its cultural institutions. Each from the point of view of another ignores fundamentals and exploits irrelevancies. One culture hardly recognizes monetary values; another has made them fundamental in every field of behaviour. In one society technology is unbelievably slighted even in those aspects of life which seem necessary to ensure survival; in another, equally simple, technological achievements are complex and fitted with admirable nicety to the situation. One builds an enormous cultural superstructure upon adolescence, one upon death, one upon after-life.<sup>171</sup>

The Boasians rejected the idea that high technology cultures are superior, morally or otherwise. Societies cannot be ranked because there are no criteria or values that transcend cultures.<sup>172</sup> The degree of influence of the Boasians amongst anthropologists in the first half of the twentieth century was made clear by the fact that in 1947, on the occasion of the United Nations debate about universal human rights, the American Anthropological Association issued a statement declaring that moral values are culturally relative.<sup>173</sup>

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<sup>170</sup>Hatch, *Culture and Morality*, 42-43. The classic work in the social sciences on the subject of diffusion of knowledge is E. M. Rogers, *Diffusion of Innovations*, 5th ed. (New York: Free Press, 2003).

<sup>171</sup>R. Benedict, *Patterns of Culture* (Boston: Houghton Mifflin, 1934), 24.

<sup>172</sup>Hatch, *Culture and Morality*, 47.

<sup>173</sup>W. E. Washburn, "Cultural Relativism, Human Rights and the AAA," *American Anthropologist (New Series)* 89, no. 4 (1987): 939-43. The apparent consensus (amongst anthropologists) supporting

### Objections to Moral Relativism

If most anthropologists were in the relativist camp,<sup>174</sup> most philosophers were not and they have mounted stiff challenges to the moral relativist position. Broadly speaking, we can classify the objections into two types: first, the objections that attack the empirical premise that there is in fact a variety of moral outlooks, that is, objections to “descriptive moral relativism,” and second, the objections that confront moral relativism on a metaethical plane. Gowans provides a useful definition of “metaethical moral relativism”:

The truth or falsity of moral judgments, or their justification, is not absolute or universal, but is relative to the traditions, convictions, or practices of a group of persons.<sup>175</sup>

The proponents of metaethical moral relativism argue that the standards of justification in different societies differ and that there is no rational basis for resolving these differences. Importantly for my purposes, Gowans makes the following point:

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relativism has, according to Washburn (at 941), dissolved since the 1947 declaration, and been replaced by “an embarrassed and skeptical unease concerning the doctrine”—but he does make mention of the notable exception of Clifford Geertz, who has forcefully argued a relativist position. See, for example, C. Geertz, “Distinguished Lecture: Anti Anti-Relativism,” *American Anthropologist (New Series)* 86, no. 2 (1984): 263-78. Other anthropologists interpret the Boasians as cultural relativists in method only; i.e., cultural relativism is an objective approach to fieldwork and analysis, and is in no way the equivalent of ethical or moral relativism: T. H. Johnson, “Cultural Relativism: Interpretations of a Concept,” *Anthropological Quarterly* 80, no. 3 (2007): 791-802. Johnson specifically enlists Herskovits in support of his plea that anthropologists are misunderstood in this respect by philosophers, but it was Herskovits, *Cultural Relativism*, 101, who wrote:

[Cultural relativism] holds that there is no absolutely valid moral system. . . . [This] is a very tough-minded point of view. It has proved to be difficult to grasp, let alone accept. This has been particularly the case with the philosophers, who have been trained in terms of the Greek tradition, which brings them to certain conclusions that are based on principles that are not borne out when submitted to the cross-cultural test. One thus takes either the scientific position or the philosophical one.

<sup>174</sup>I will not attempt to catalogue the various objections to moral relativism. Instead, I will focus on those objections that hold particular promise for my argument that in the particular context that I am concerned with—reciprocity, gifting and bribery—there is a way to overcome the moral relativism obstacle.

<sup>175</sup>Gowans, “Moral Relativism,” under “Forms and Arguments.”

Most discussions of moral relativism begin with, and are rooted in descriptive moral relativism. Though this is not sufficient to establish metaethical moral relativism, the most common rationale for metaethical moral relativism would be undermined if descriptive moral relativism were incorrect.<sup>176</sup>

My argument, in a nutshell, is (1) there are particular objections to descriptive moral relativism that, taken individually or together, make room for the possibility that in the theoretical realm of reciprocity, gifting and bribery, descriptive moral relativism does not apply; and (2) therefore, because the rationale for metaethical moral relativism is underpinned by descriptive moral relativism, the case for metaethical moral relativism in this theoretical realm of reciprocity, gifting and bribery is subject to doubt.

Of the various objections made to descriptive moral relativism, there are two that hold out particular promise for my argument. Gowans summarizes the first of these:

[A]nthropologists have tacitly and mistakenly assumed that cultures are rather discrete, homogenous, and static entities – rather like the shapes in a Piet Mondrian painting or a checkerboard. In fact, according to this contention, cultures typically are rather heterogeneous and complex internally, with many dissenting voices. Moreover, they often interact and sometimes influence one another, and they may change over time. From this perspective, the world of cultures is closer to an animated Jackson Pollock painting than to the unambiguous configuration suggested by the first image. If these contentions were correct, then it would be more difficult to know the moral values of different cultures and hence to know whether or not [descriptive moral relativism] is true.<sup>177</sup>

In the earlier chapter on the Athenian *polis*, we have seen a relevant example of one culture's moral values apparently changing over time: gift exchange between *xenia*, traditionally seen as evidence of virtue, became redefined in some circumstances as a treasonous bribe—regarded as the worst kind of vice in a *polis*. Add to this the possibility

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<sup>176</sup>Gowans, "Moral Relativism," under "Descriptive Moral Relativism." I have altered this quotation by substituting full phrases for the acronyms "DMR" and "MMR."

<sup>177</sup>Ibid.

of a shift in the language used to describe bribery, such as was described in the earlier chapter focusing on medieval England, and there is a further layer of doubt about whether we can “know the moral values of different cultures and hence to know whether or not descriptive moral relativism is true”—at least in the context of gifting and bribery.

While relevant and logically coherent, I do not wish to place undue emphasis on this objection. It allows us, in the context of reciprocity, gifting and bribery, to reply as follows to the advocates of descriptive moral relativism: “Cultures are heterogeneous, their norms might change over time, and the language used to describe key concepts might change over time, so how can you be confident that you can know the moral values of different cultures well enough to know whether or not descriptive moral relativism is true?” This objection, in essence, is an argument about the burden of proof. The objector says to the advocate of descriptive moral relativism: “You have made an empirical assertion that descriptive moral relativism is true, that is, that there is in fact a variety of moral outlooks. And heterogeneity, changing circumstances and changing language gives you insurmountable problems of proof of your assertion.”

Other objectors join issue with the moral relativists on a more substantial basis: they make an empirical argument that there is evidence for significant cross-cultural moral agreement. For instance, it has been variously contended that formulations of the Golden Rule have been prominent in Western and Eastern ethical frameworks, that basic moral prohibitions against lying and killing other human beings are found in diverse societies, and that the existence of the international human rights movement supports the

thesis of substantial moral agreement. Philosophers such as Bok, Walzer, and Küng have argued for the presence of a universal minimum morality.<sup>178</sup>

I submit that a strong argument in this respect can be mounted with regard to reciprocity, gifting and bribery: recall the conclusions of Westermarck and Gouldner, amongst others, that there is a universal norm of reciprocity.<sup>179</sup> Beinhocker provides a useful summary of modern empirical research and how it impacts on the question of the universality of reciprocity:

For centuries, the question of the self-regarding versus the altruistic nature of humankind was a philosophical question and ultimately a matter of opinion. Since the 1980s, however, it has become a scientific question. A substantial body of evidence of controlled experiments, empirical studies, anthropological field work, and the application of game theory has now yielded an answer. . . Human beings are neither inherently altruistic nor selfish; instead they are what researchers call *conditional cooperators* and *altruistic punishers*. Gintis and his colleagues refer to this type of behavior as *strong reciprocity*. . . The universality of strong reciprocity behavior is staggering [and] no society has been found that does not exhibit some form of it.<sup>180</sup>

For my purposes, this is a particularly promising avenue of exploration.

Reciprocity is the theoretical concept underpinning gifting.<sup>181</sup> If the norm of reciprocity

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<sup>178</sup>Gowans, "Moral Relativism," under "Descriptive Moral Relativism."

<sup>179</sup>Chapter 2, *supra*. Gouldner, "The Norm of Reciprocity," 36, takes care to make the important point that the norm of reciprocity, although universal, functions differently in some degree in different cultures. He uses the example of the *compadre* system in the Philippines, which pervades societal institutions. *Compadres* are bound by a norm of reciprocity to the extent that bureaucratic impersonality is undermined. He contrasts it with the United States where, although such tendencies are weaker because friendship relationships are less institutionalized, there remains a very real influence of the norm of reciprocity on the operation of bureaucracies, albeit less legitimate and overt.

<sup>180</sup>E. D. Beinhocker, *The Origin of Wealth: Evolution, Complexity, and the Radical Remaking of Economics* (Boston: Harvard Business School Press, 2006), 419. In the same vein, see L. C. Becker, *Reciprocity* (London: Routledge & Kegan Paul, 1986), 346: "The empirical evidence of a social norm of reciprocity is overwhelming." And see H. Gintis, *Game Theory Evolving: A Problem-Centered Introduction to Modeling Strategic Behavior* (Princeton: Princeton University Press, 2000) for a summary of game theory and reciprocity.

<sup>181</sup>See Chapter 2, *supra*.

is universal, then it may be that in the sphere of inquiry with which I am concerned, descriptive moral relativism is ruled out. If reciprocity is, as Noonan puts it, a “rule of life” in every society, then it may be postulated that it is at least a theoretical possibility that there is a gift/bribe boundary that is locatable and applicable to every society. To turn the coin over, if the strong versions of the descriptive moral relativism thesis are true, then there would be no reason to expect that the line between ethical gifts and unethical gifts would be located in a similar place in different societies. But if descriptive moral relativism is ruled out in the area of reciprocity and gifting, this makes room for the possibility that the gift/bribe boundary might be similarly located in different places and times.

Of course, even if descriptive moral relativism is discredited, whether generally or in the limited case of reciprocity, it does not follow that the gift/bribe boundary *will be* similarly located in different societies and/or at different times in a society’s history. But it *might be*, and this is sufficient for the purposes of my argument since the possibility of a gift/bribe boundary that survives cross-cultural and historical comparison is not ruled out.

### **Is Metaethical Moral Relativism Premised on Descriptive Moral Relativism?**

My argument follows Gowans’ observation that the preponderance of accounts of metaethical moral relativism are rooted in and founded on the premise of descriptive moral relativism. Intuitively, it seems right that the best arrow in the moral relativist’s quiver is the apparent existence of a variety of moral frameworks. (“Apparent” because whether there is in fact a variety of moral frameworks is contested and central to the

debate.) Without descriptive moral relativism, the moral relativist is forced onto difficult ground, at least in the context of a universal norm of reciprocity.

Nielsen, a particularly committed relativist, argued that even if there is universality of a moral belief or attitude, the belief or attitude might not rest on rational grounds but “on a contingent and fortuitous similarity or uniformity in what is approved,” and “the rather common assumption that if men share moral beliefs then conventionalism and ethical relativism is false is itself false.”<sup>182</sup> On the contingency and coincidence aspect, I am content to rely on the law of probability that says that the likelihood of coincidence is inversely proportional to the size of the sample. When we are speaking of a universal in the sense of a moral code that crosses all cultures, as is postulated for the norm of reciprocity, it would be an astounding coincidence for all societies<sup>183</sup> to have arrived at the same irrational destination even if we assume a high degree of diffusion of the norm between cultures.

If all societies share a moral belief such as the norm of reciprocity, then in relation to this norm is there room for moral relativism? The Nielsen response, it seems, is that there is, based on the possibility that the norm does not rest on rational grounds.<sup>184</sup> This seems to me to essentially be a version of an “is/ought” objection: that is, just because all societies do have a norm of reciprocity does not necessarily mean that all societies ought

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<sup>182</sup>K. Nielsen, “Ethical Realism and the Facts of Cultural Relativism,” *Social Research* 33 (1966): 539.

<sup>183</sup>The *Encyclopedia of World Cultures*, ed. D. Levinson, 10 vols. (Boston: G. K. Hall, 1991-1996), has entries on over 1500 different cultures.

<sup>184</sup>For the relativist I presume that the rational grounds to be properly resorted to would necessarily be different in each cultural setting, and different cultures would, according to the moral relativist, rationally produce different norms. It seems that the argument that I am confronting becomes very close to being circular at this point.

to have this norm.<sup>185</sup> At this level, the objection seems to have little more than a trivial connection with moral relativism.

For the purposes of my argument, I have the luxury of being able to concede the “is/ought” point.<sup>186</sup> If the assertion that there is a universal norm of reciprocity is correct (or even if it might be true), then if I concede the *possibility* that there ought not to be a universal norm of reciprocity, I am not conceding that there *necessarily* ought not to be this universal norm. In other words, once it is established that there is a meaningful chance that there is a universal norm of reciprocity, then there is room for argument that this norm ought to be universal. And, if there is a chance that a universal norm of reciprocity does exist and ought to exist, then there is a chance that there is a universal gift/bribe boundary that exists and ought to exist.

### The Tunnel Through

To sum up, I argue that:

1. It is difficult, because cultures are heterogeneous and their norms and language might change over time, for the proponents of descriptive moral relativism to prove their case.
2. Moreover, the weight of the evidence is that there is a universal norm of reciprocity.

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<sup>185</sup>This passage from D. Hume, *A Treatise of Human Nature*, ed. D. F. Norton and M. J. Norton (Oxford: Oxford University Press, 2000), 302, is regarded as the classic statement of the “is/ought” problem: In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary ways of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when all of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is however, of the last consequence. For as this *ought*, or *ought not*, that expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason shou'd be given; for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it.

<sup>186</sup>I return to the “is/ought” problem in Chapter 5, *infra*.

3. If there is a universal norm of reciprocity, then, at least insofar as reciprocity is concerned, descriptive moral relativism is rebutted. And the case for metaethical moral relativism depends for its strength on descriptive moral relativism.
4. Reciprocity is the conceptual foundation of gifting, and a conceptual foundation for the discussion of whether a particular transaction is a gift or a bribe.
5. It follows from the foregoing that moral relativism does not preclude the possibility that there is a gift/bribe boundary that can survive cross-cultural and historical comparison.

Accordingly, I now see a tunnel through this moral relativism obstruction that sits on the path ahead of me, a tunnel that is at least as wide as the reach of the norm of reciprocity.

And I am enjoying a bit of respite from that disquieting laughter.

## CHAPTER FIVE

### THE END OF THE BEGINNING

I conclude with some embarrassment that I am not much closer to locating a universal boundary between gift and bribe (or even determining whether such a boundary exists) than when I began. It is apparent to me that my chase has barely begun, and this concluding chapter—the “end of the beginning” of this chase<sup>187</sup>—takes the form of an essay that builds on the preceding chapters and sketches my preliminary views on what it is that underpins the boundary between gift and bribe. Thus, this concluding essay is a mixture of conclusions, implications arising out of the ground covered to this point and indications of avenues for further research.<sup>188</sup>

#### Multiple Boundaries

I have concluded that the search for a cross-cultural and trans-historical boundary between gift and bribe is not ruled out by moral relativism, and this finding is rooted in the premise that the postulated universality of reciprocity makes room for the possibility of the existence of a singular boundary. I return now to the “is/ought” distinction, which was the subject of discussion in Chapter 4, and I submit that whether one looks at the

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<sup>187</sup>This turn of phrase is, of course, Churchill’s. It is from a speech given on November 10, 1942, after the victory over the Afrika Korps at the Second Battle of El Alamein, at the traditional annual banquet of the Lord Mayor of London: “Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.” R. J. Jenkins, *Churchill: A Biography* (New York: Farrar, Straus and Giroux, 2001), 702.

<sup>188</sup>It is humbling to have expended as much time and paper as I have, yet be left with the sense that I am just now, at the conclusion, “toeing the starting line” on a useful inquiry.

medieval example of the pardoners' sins changing the definition of the word "bribe" or the evolution of *polis* institutions resulting in the redefinition of a transaction from virtuous gift to vicious bribe in classical Athens or the apparent incongruence of the concept of bribery across cultures, the evidence points to the conclusion that the boundary between gift and bribe *is* located differently according to place and time. (In a later section of this chapter, I will address the subject of whether, notwithstanding the apparent multiplicity of boundaries, there *ought* to be one boundary.)

I suggest there are at least two reasons to account for dissimilar boundary locations, despite the postulated universality of the norm of reciprocity. First, it is probable that the location of the boundary in any particular instance is influenced by the *degree of reciprocity* in the economy.<sup>189</sup> Other than in economic models or philosophical thought experiments, economies are not wholly based on reciprocity or wholly based on commodity exchange. With the rise of a more impersonal (commodity exchange) economy and the corresponding decline of reciprocity in modern capitalist societies, and the attendant rise of the nation-state and Weberian bureaucracy, the line between legitimate and illegitimate gifts has moved. To put it another way, there is less room in the modern capitalist economies (but there still remains significant room) for using gifting to create obligations and business opportunities.

Second, the location of the line between permissible and impermissible reciprocity is influenced by the distribution of wealth and power. Scott's pithy sentence bears repeating in this context: "Much of what we consider as corruption is simply the

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<sup>189</sup>For an example of different degrees of reciprocity, recall Gouldner's example contrasting the Phillipines and the U.S.A., *supra*, note 179.

‘uninstitutionalised’ influence of wealth in a political system.” And the cases I have studied provide ample support for this conclusion. For instance, the emerging influence and power of the city-state in classical Athens moved a solidly entrenched traditional boundary between *xenia*-gifting and *xenia*-bribery. Today, the powerful interests behind the global anti-corruption initiatives are attacking traditional gift/bribe boundaries, providing another example.<sup>190</sup> And the traditional gift/bribe boundaries under attack are themselves likely reflective of local power matrices: as Verhezen cautioned, in the Javanese setting, the concepts of harmony and respect which framed the reciprocal transactions in the traditional economy might have been nothing more than a way of preserving the power positions of the kings and nobles.<sup>191</sup>

### **Anti-Corruption Initiatives**

Still on the *is* as opposed to the *ought* side of the ledger, if the boundary is in different places because of a different weighting of the norm of reciprocity or the effect of the influence of power (or other cultural, economic or historical reasons), then the same gifting behaviour may be regarded as a bribe in one society but not another. If the gift/bribe boundary is located differently according to time and place, this hardly amounts to a revelation—indeed, it is fair and necessary to ask: “So what?” Yet, I suggest that this less-than-surprising conclusion gives rise to an important implication: the determination of whether a transaction *is* a bribe (but not necessarily whether it *ought* to be considered a bribe) must be made locally.

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<sup>190</sup> Although these initiatives have had limited success to date in changing norms: *infra*, note 197.

<sup>191</sup> *Supra*, note 141.

Does this put in question the global anti-corruption projects of the UN, IMF, World Bank, OECD and Transparency International, based as they are on a Western conception of the boundary between gift and bribe? This is where we transition from *is* to *ought*. As Euben, Bukovansky and Gupta all observed, the debate over what ought to be has been stifled by the assumptions that the model of the correct society has already been discovered (i.e., capitalism and liberal democracy) and what really needs doing is to get on with the job of more efficient implementation.<sup>192</sup> In other words, the anti-corruption projects are not about bringing about compliance with existing norms (what *is*) in non-Western societies; instead, these projects are about changing existing norms (what *ought* to be).

It has become fashionable, as part and parcel of these anti-corruption, norm-changing initiatives, to transplant anti-corruption laws from western democracies to other societies.<sup>193</sup> (The hubris of these efforts brings to mind a passage from George Bernard Shaw's play, *Caesar and Cleopatra*; Julius Caesar, when speaking of a Briton, said, "[H]e is a barbarian, and thinks that the customs of his tribe and island are the laws of nature."<sup>194</sup>)

When laws are transported from one society to another, the new laws do not meet the vacuum of an empty vessel but, rather, a framework of "unofficial laws."<sup>195</sup> *Legal pluralism* describes this situation where more than one law or scheme of laws occupies

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<sup>192</sup>Chapter 3, *supra*.

<sup>193</sup>Taylor, "Law Reform Olympics"; Michael, "International Anti-Corruption Conventions"; M. Bukovansky, "The Hollowness of Anti-Corruption Discourse."

<sup>194</sup>*The Oxford Dictionary of Quotations*, 3rd ed., 496.

<sup>195</sup>S. E. Merry, "Legal Pluralism," *Law and Society Review* 22 (1988): 869-71.

the same field.<sup>196</sup> The typical strength of the framework of local, unofficial laws is well-captured by the adage, variations of which exist in many societies, that “the law of the Emperor stops at the village gate.” And this, in turn, helps explain why transplanted anti-corruption laws have had little impact.<sup>197</sup>

Legal pluralism scholarship helps us to understand why the Emperor’s law stops at the village gate. As Merry says:

Law is not simply a set of rules exercising coercive power, but a system of thought by which certain forms of relations come to seem natural and taken for granted, modes of thought that are inscribed in institutions that exercise some coercion in support of their categories and theories of explanation.<sup>198</sup>

Law, defined in this way so as to include non-state law, includes much of the behaviour that has come to be taken for granted “inside the gate.” And, when one looks at the issue of the reception of western anti-corruption laws from this perspective, it is not surprising that these laws have failed to significantly influence behaviour in the village—whether one sees the village literally or metaphorically.

Understanding the relationship between the multiple legal spheres is critical. This is the subject of what de Sousa Santos calls “inter-legality”<sup>199</sup> and what Melissaris terms

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<sup>196</sup>Merry, “Legal Pluralism,” 871.

<sup>197</sup>Michael, “International Anti-Corruption Conventions,” presents empirical evidence and concludes that, for the ten-year period up to publication of her paper in 2007, adopted legal measures have had little impact. And see Taylor, “Law Reform Olympics.”

<sup>198</sup>Merry, “Legal Pluralism,” 890. This pragmatic approach may be likened to Oliver Wendell Holmes’; he saw law as constituted of human practices rooted in custom and shared expectations: *The Common Law* (Boston: Little, Brown, 1881). Merry (at 879) recognizes that defining law in such broad terms may lead to conceptual difficulty: “Where do we stop speaking of law and find ourselves simply describing social life?” I am indebted to Merry and others who define *law* so broadly—such a definition authorizes, perhaps even requires, expansive and multidisciplinary inquiries. In any event, for me it was the ready excuse to wander far afield of narrow doctrinal study.

<sup>199</sup>B. de Sousa Santos, “Legal Plurality,” in *Toward a New Legal Common Sense: Law, Globalization and Emancipation* (London: Butterworths, 2002).

the “intertwining of normativities.”<sup>200</sup> What happens at the boundaries between the multiple legal spheres determines outcomes. Early studies concluded that state law has the power to reshape the social order and that law is a useful tool for modernization in Third World countries, but more recent work has concluded that often the consequences were unexpected or negligible.<sup>201</sup> One interesting example is the drastic law reform introduced into Turkish society in 1926, replacing Islamic law with the Swiss civil code. According to Starr and Pool, the vast majority of the population continued to follow customs incompatible with the new code, and there was little change in the normative ordering of local villages.<sup>202</sup>

The anti-corruption movement has also championed institutional reform as one of its principal strategies designed to create change.<sup>203</sup> But there is skepticism about whether institutional redesign can be effective. Elster writes that:

Although it is hard to prove, I believe that the variation in corruption across countries is explained largely by the degree of public-spiritedness of their officials, not by the cleverness of institutional design. Morality and social norms seem to count for more than enlightened self-interest. Desires matter more than opportunities. . . [I]nstitutions are not monolithic entities that can be counted on to transmit and then carry out decisions from the top. Talk about institutions is just shorthand for talk about individuals who interact with one another and with people outside the institutions. Whatever the outcome of the interaction, it must be explained in terms of the motives and the opportunities of these individuals.<sup>204</sup>

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<sup>200</sup>E. Melissaris, "The More the Merrier: A New Take on Legal Pluralism," *Social and Legal Studies* 13, no. 1 (2004): 57-79.

<sup>201</sup>See Merry, "Legal Pluralism," where these studies are cited and summarized. Also see W. Twining, "Diffusion of Law: A Global Perspective," *Journal of Legal Pluralism* 49 (2005): 1-45.

<sup>202</sup>J. Starr and J. Pool, "The Impact of a Legal Revolution in Rural Turkey," *Law & Society Review* 8, no. 4 (1974): 533-60.

<sup>203</sup>Taylor, "Law Reform Olympics."

<sup>204</sup>J. Elster, *Nuts and Bolts for the Social Sciences* (Cambridge: Cambridge University Press, 1989), 158.

Perhaps these anti-corruption projects, with their anti-bribery laws that attempt to redefine gifting (viewed locally as legitimate) as corruption, and institutional and governance reforms, have an opaque purpose. Maybe they are an effort to help business interests penetrate Third World markets. Or maybe they are part of an idealistic “governance” initiative—a sort of economic/political crusade to remake the laws and institutions in other societies in a Western image. Regardless, whether these anti-corruption initiatives are legitimate exercises of power depends in part<sup>205</sup> on the accuracy of the (almost always unstated) premise that the line between gift and bribe dictated by the neo-liberal societal model *ought* to be similarly located in the particular society under examination. That is, there is the normative question to consider: it is one thing if a anti-bribery project is seeking to redraw the line and put it in the right place—where it ought to be—but it is quite another if the project is seeking to put it in the wrong place.

Alzola makes the point that, “[T]he international crusade against corruption unequivocally adheres to the universalist thesis.”<sup>206</sup> But, one would think that if there were a universalist basis for the development of a consensus, it would be on the basis of reciprocity and not on the basis of a market economy with a Weberian bureaucracy. What is happening, then, if we are to be charitable and discount the cynical view that these global initiatives are simply running interference for Western business interests, is that the universalist basis of these initiatives is rooted in the ethnocentric view that the

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<sup>205</sup>I say “in part” because even if the projects are not illegitimate on account of their influence on the gift-bribe boundary, there may be other objections: e.g., some would take issue with them as a form of colonialism, or object to the part they play in globalization of the economy. See, for example, B. Rajagopal, “Corruption, Legitimacy and Human Rights: The Dialectic of the Relationship,” *Connecticut Journal of International Law* 14, no 2 (1999): 495-507; S. Salbu, “Bribery in the Global Market: A Critical Analysis of the Foreign Corrupt Practices Act,” *Washington & Lee Law Review* 54, no. 1 (1997): 229-87.

<sup>206</sup>Alzola, “Corruption at the Boundaries of Morality,” 6.

governance (economic and political) structures in the Third World (reciprocity high, market economy low) ought to be re-formed to resemble the governance structures in the West (reciprocity low, market economy high). And so, it does not matter from this ethnocentric perspective that history and culture may have shaped a particular economy or society in such a way that the norm of reciprocity is critical and the influence of commodity exchange is slight.

### **Ethics**

An expansive area for further inquiry springs from this idea that the legitimacy of the global anti-corruption projects might depend on where the gift/bribe boundary *ought* to be. Where it ought to be is a question of ethics, a branch of moral philosophy, and the question should be subjected to the inquiry and debate called for by Euben, Bukovansky and Gupta. Are the answers to be found in a consequentialist or Kantian account of one form or another? Or is the answer elsewhere, in approaches that might flow from a contractarian analysis or virtue ethics approach? These questions deserve a thorough threshing-out, and I cannot do them justice in this brief concluding essay. I will, however, before offering my own tentative views in the next section, summarize various approaches that others have adopted or proposed.<sup>207</sup>

The most common approach to consideration of questions of bribery and corruption is a crude variety of consequentialism. It is usually embedded in the analysis and not explicitly asserted. A representative example of this approach is the Leff paper

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<sup>207</sup>There is much to be said for and against each of the theoretical approaches that I will summarize. However, because I am now at the end of the beginning, the critical analysis of these approaches, which I see as an important part of this expansive area for further inquiry, will have to wait.

referred to in Chapter 3.<sup>208</sup> A cost-benefit analysis is the approach adopted, with income as the “good” to be maximized. Qizilbash criticizes this narrow approach on the basis that it “fetishizes income”; he advocates a different form of consequentialism.<sup>209</sup> Rather than using an economic yardstick, he argues that it is better to assess outcomes using “human development.” Central to the author’s notion of this “good” is a concern with human beings as ends in themselves, not just as the “means of development,” which adds a Kantian flavour to his consequentialist account.<sup>210</sup> The central focus, Qizilbash says, ought to be on “improving the quality of human lives.” Concepts such as equity and participation in democratic processes are in play. Qizilbash concludes that by shifting focus in this way, we are able to see that the case for thinking that corruption is good for development is weakened.

Smart’s analysis of the “art of guanxi” also contains Kantian elements. Smart, in attempting to mark off the boundary between gifts and bribes in China, said:

A critical social capital of trust, not just obligation, is created through the repeated exchange of gifts and favors. Where the concern of the exchange is not to create such relationships, but simply to achieve some immediate objective for which the relationship would be a useful means, then although the form of the gift may be outwardly followed, its content is different—a deal or a bribe rather than a gift exchange. . . Manipulation and exploitative use of gift exchange is made possible only by the existence of forms of gift exchange that attach priority to the

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<sup>208</sup>Supra, note 132. And there are more extreme examples of this approach; for instance, see S. N. S. Cheung, “A Simplistic General Equilibrium Theory of Corruption,” *Contemporary Economic Policy* 14 (1996): 1-5. For a useful summary of various studies that have used a consequentialist approach, see Qizilbash, “Corruption and Human Development: A Conceptual Discussion.”

<sup>209</sup>Qizilbash, “Corruption and Human Development: A Conceptual Discussion.”

<sup>210</sup>There is an echo here of one formulation of the categorical imperative, the formulation of humanity: “Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means.” I. Kant, *Grounding for the Metaphysics of Morals*, trans. J. W. Ellington, 3rd ed. (Indianapolis: Hackett, 1993), 36. Like Smart, Philips (supra, note 154) also focuses on the genuineness of the relationship as a key element of the test.

relationship as opposed to the immediate instrumental objectives. Were all exchange partners to attempt to exploit the form of gift exchange, their attempt would necessarily fail, because the trust that is a crucial component of the relationship would not emerge.<sup>211</sup>

Bukovansky, on the other hand, engages Aristotelian notions of human nature and the republican positions articulated in Machiavelli's *Discourses*, in order to question the liberal, individualist rationalism that underlies the usual studies of corruption. The following excerpt captures the flavour of his approach:

Corruption is a term which, according to Quentin Skinner, 'the republican theorists habitually use to denote our natural tendency to ignore the claims of our community as soon as they seem to conflict with the pursuit of our own immediate advantage.' The problem with this, from the point of view of republican theorists, is that such pursuit of 'immediate advantage' can lead a community to ruin. . . . In contrast to the often asocial individualism of liberal discourse (as represented by Thomas Hobbes' view of human nature), republican theorists deploy an Aristotelian notion of human nature as essentially social and political. . . Civic virtue entails behaviour on the part of leaders and citizens which is geared toward maintaining a thriving and free political community. To do so, people must restrain their more narrowly focused passions.<sup>212</sup>

I will close this section with a summary of a comprehensive effort by Donaldson and Dunfee to ground the search for the gift/bribe boundary (and other matters of business ethics). They have given the label "integrative social contracts theory" to their contractarian account.<sup>213</sup> Their work is informed by the traditional social contract arguments of Locke, Rousseau, Hobbes and Rawls. They assert that social contracts that

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<sup>211</sup>Smart, "Gifts, Bribes, and *Guanxi*," 403. The last sentence of the quotation seems an adaptation of another formulation of the categorical imperative, the formulation of universal law: "Act only according to that maxim whereby you can at the same time will that it should become a universal law." I. Kant, *Grounding*, 30.

<sup>212</sup>Bukovansky, "The Hollowness of Anti-Corruption Discourse," 199-200.

<sup>213</sup>T. Donaldson, and T. W. Dunfee, *Ties That Bind: A Social Contracts Approach to Business Ethics* (Boston: Harvard Business School Press, 1999); idem, "Précis for: *Ties That Bind*," *Business and Society Review* 105, no. 4 (2000): 436-43.

arise in specific cultural contexts have legitimacy, but only to the point that they do not trespass on “key transcultural truths” which they label “hypernorms”—the claim is that these hypernorms are discernable in a “convergence of religious, political and philosophical thought.” They locate their theory “midway on the spectrum of moral belief separating moral relativism from absolutism.”

### **Bumbling Along**

Based on where this chase has taken me, I venture in the following paragraphs to outline my own tentative account of the philosophical basis for location of the gift/bribe boundary. This account is, at this early stage, little but bare bones—it is offered as a form of hypothesis to be tested by further research, inquiry and reflection.

As a starting point, I submit that if there is an ethical foundation for locating where the gift/bribe boundary *ought* to be (i.e., assuming moral relativism has no application), then it is more likely to be found by focusing on reciprocity (with its claim to a natural universalism) than by looking to, say, Marxism or neo-liberalism, or any other ultra-rationalist conception of the way the world should be ordered. I say this because I am content to follow those such as Dennett who argue that our ethics, our justice, our boundary between gift and bribe, should be rooted in who we are as humans—in our fundamental nature:

Ethics must somehow be based on an appreciation of human nature—on a sense of what a human being is or might be, and on what a human being might want to have or want to be. If that is naturalism, then naturalism is no fallacy. No one could seriously deny that ethics is responsive to such facts about human nature. We may just disagree about where to look for the most telling facts about human nature—in novels, in religious texts, in psychological experiments, in biological

or anthropological innovations. The fallacy is not naturalism, but rather, any simple-minded attempt to rush from facts to values.<sup>214</sup>

I am attracted by Adam Smith's views on human nature.<sup>215</sup> Smith agreed with the views of predecessors such as Shaftesbury, Butler and Hutcheson that a man has an ability to reach correct moral decisions, but he disagreed with these earlier philosophers about the process by which this occurs. Smith refused to accept a view of man as coming into the world fully equipped to make correct moral decisions. He argued that this ignores the everyday process by which decisions are made. Smith's theory was based on the common feeling of "sympathy," the power of placing oneself in the position of another and, after this occurs, to see oneself from the viewpoint of this other.<sup>216</sup>

Smith said that man is "by nature, first and principally recommended to his own care" and "therefore, is much more deeply interested in whatever immediately concerns himself than in what concerns any other man."<sup>217</sup> In the result, man must lower his passions for self, and "bring it down to something which other men can go along with."<sup>218</sup> It is through the principle of sympathy that man is enabled to adjust his feelings

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<sup>214</sup>D. C. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* (New York: Simon & Schuster, 1995), 468.

<sup>215</sup>A. Smith, *The Theory of Moral Sentiments* (New York: A. M. Kelly, 1966); and see Myers, *The Soul of Modern Economic Man*.

<sup>216</sup>A. Smith, *The Theory of Moral Sentiments*, 162. In current parlance, I suggest that this is closer to *empathy* than *sympathy*.

<sup>217</sup>*Ibid.*, 119.

<sup>218</sup>*Ibid.*, 120.

and actions to a socially acceptable level. These adjustments occur by continual emotional interactions and adjustments amongst individuals.<sup>219</sup>

The message of *The Wealth of Nations* is that if a nation is to develop economically, it must promote the principle of specialization in its labour force, and promote economic policies.<sup>220</sup> Smith put this in human terms. He wrote that the division of labour is not originally the effect of any human wisdom but arises from a “propensity in human nature. . .to truck, barter and exchange one thing for another.”<sup>221</sup> He said that this is unique in man—a point he colourfully illustrated with the observation that “Nobody ever saw a dog make a fair and deliberate exchange of one bone for another with another dog.”<sup>222</sup> Smith asserted that the desire to trade emanates from deep within man’s character, common to all mankind. As the division of labour advances, every man lives by exchanging and becomes in some measure a merchant. These trading transactions engage self-interest: “It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest.”<sup>223</sup> The division of labour arises from a desire to serve one’s self-interest but in a

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<sup>219</sup>Evidently I will not be able to turn to Kant for kind words in support of this sort of empiricism: “[S]uch a procedure turns out a disgusting mishmash of patchwork observations and half-reasoned principles in which shallowpates revel.” I. Kant, *Grounding*, 21.

<sup>220</sup>A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. E. Cannan (New York: Modern Library, 1937).

<sup>221</sup>*Ibid.*, 13. And modern empirical research supports what Adam Smith says that we know intuitively: trade and reciprocity are beneficial, *supra*, note 180.

<sup>222</sup>*Ibid.*

<sup>223</sup>*Ibid.*, 14.

way as to engage the self-interest of others. It is at base connected with the emotions, that part of human nature that Smith says is the mechanism for human action.<sup>224</sup>

Let us add a layer of complexity by connecting the theoretical constructions of friendship outlined in Chapter 2 to Adam Smith's conception of human nature (i.e., as self-interested traders and reciprocators with a capacity for sympathy and emotional interaction). To have a useful model to help locate a practical gift/bribe boundary, I suggest that it is necessary to account for the role of friendship. Aristotle summed up the importance of friendship, thus:

[I]t is most necessary for our life. For no one would choose to live without friends even if he had all the other goods. . . . Further, if people are friends, they have no need of justice, but if they are just they need friendship in addition; and the justice that is most just seems to belong to friendship.<sup>225</sup>

If we use Aristotle's friendship categories, it is convenient to put aside the pure form of friendship (complete friendship) on the basis that it is so rare.<sup>226</sup> We have seen that the other two forms, friendships for utility and for pleasure, depend on reciprocity for their establishment and continuation.<sup>227</sup> And one important form of reciprocity between friends for utility or pleasure is exchange of gifts and favours.

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<sup>224</sup>Smith is credited with fashioning one of the social scientists' favourite straw men, *Homo economicus*. Smith underscored the important role of empathy and continual emotional interactions in his theory; yet, unlike Pinocchio, who in time turned from a puppet into a real boy, *Homo economicus*, with his realistic outlook and empathetic soul, has too often been turned into a wooden form and a whipping boy.

<sup>225</sup>*Nicomachean Ethics*, 1155<sup>a</sup>.

<sup>226</sup>Supra, note 86.

<sup>227</sup>Supra, notes 75-78. My argument is on the same footing if, instead of Aristotle's theory, I use Wolf's categories (supra, note 68) or Mitchell's affection-utility continuum (supra, note 82). In the latter case, reciprocity will be necessary to all relationships on the continuum, with the possible exception of those at or near the Affection pole (the equivalent of Aristotle's rare "complete friendship").

In short, I argue that a coherent account of the foundational concepts for locating the boundary between gifting and bribery must have regard to (1) man's nature as a trader and reciprocator (whether the subject of reciprocation be economic capital, or symbolic or social capital), and as a social creature inclined to establish friendships, (2) the central role of reciprocity in all but the rarest forms of friendships, and (3) the important function that exchange of gifts and favours plays in the reciprocity necessary to establish and maintain friendships.

I follow Adam Smith in seeing a good person as someone who looks out for their own interest and that of their family;<sup>228</sup> they have empathy for others and are capable of taking account of these others' interests, and they see clearly the benefits to themselves and their family (and tribe for that matter) of cooperation with others. For the vast majority of people in most societies, life is hard. It follows that the focus of most good persons will be on acquiring necessities: food, shelter and security. The necessities are acquired by reciprocating and trading, by reaching agreements and arriving at conventions. This conception of human nature is grounded in the way that Dennett described, and leans away from conceptions that would require a good person to be stuck on rational—as I perceive a true Kantian or, in some extreme forms, an act utilitarian must be.

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<sup>228</sup>There is a parallel here to Boas' claim, made in a different context, that there is a bias "which leads us to ascribe the highest value to that which is near and dear to us," *supra*, note 168. A realistic account must, in my opinion, give weight to the reality of a keener interest in the welfare of self, family and friends than in the welfare of others. "Nothing is more certain, than that men are, in a great measure, govern'd by interest, and that even when they extend their concern beyond themselves, 'tis not to any great distance; nor is it usual for them, in common life, to look father than their nearest friends and acquaintance." Hume, *A Treatise of Human Nature*, 342.

This account of human beings obtaining food, shelter and security by reciprocating with one another brings to mind Aristotle's observation about friendship of citizens, tribesmen and voyagers; that is, these friendships "appear to reflect some sort of agreement."<sup>229</sup> How is it that these agreements or conventions come about? Hume provides his answer in the course of addressing the origin of justice and property:

This convention is not of the nature of a *promise*: For even promises themselves . . . arise from human conventions. It is only the general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules. I observe, that it will be for my interest to leave another in the possession of his goods, *provided* he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common sense of interest is mutually express'd, and is known to both, it produces a suitable resolution and behaviour. And this may properly enough be call'd a convention or agreement betwixt us, tho' without the interposition of a promise; since the actions of each of us have a reference to those of the other, and are perform'd upon the supposition, that something is to be perform'd on the other part. Two men, who pull the oars of a boat, do it by an agreement or convention, tho' they have never given promises to each other. . . In like manner are languages gradually establish'd by human conventions without any promise. In like manner do gold and silver become the common measures of exchange, and are esteem'd sufficient payment for what is of a hundred times their value.<sup>230</sup>

Alzola summarizes this "theory of tacit convention" as follows:

In Hume some aspects of morality rest on convention: someone adheres to certain principles because with their practice come benefits, which depends on expectations that the other party will comply. The original motive to comply with convention would be 'natural' rather than moral, as a self-indulgent reason. Later, conventions become habitual and action based on these principles becomes automatic, or 'moral'. These norms may be critically questioned and, in fact, are respected and accomplished if they promote social utility.<sup>231</sup>

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<sup>229</sup>Supra, note 68.

<sup>230</sup>Hume, *A Treatise of Human Nature*, 314-15.

<sup>231</sup>Alzola, "Corruption at the Boundaries of Morality," 4.

Applying this framework to the gift/bribe boundary, we would expect to see conventions develop on the limits of engaging in reciprocity: gift exchange is permitted and even encouraged up to the point that the community interest is adversely affected (and sufficiently affected that there is a push-back to establish the limit or redefine the boundary, such as occurred in classical Athens). And these conventions, norms, and laws will change—the boundary will move—as the society changes (to put it in neutral terms) or as the power shifts within society (if one takes the view that the powerful will see to it that the conventions, norms and laws will reflect their interests, even at the expense of the community).

I am partial to this sort of conventionalism. It describes the sort of accidental, bumbling along that in my view is deeply rooted in who we are: empathetic reciprocators, inclined to give and happily receive gifts and favours, and usually focused on day-to-day struggles. All of this will reflect what *is*. It reflects where the gift/bribe boundary is as a result of the operation of economic and political forces and conventions made between agents. But what about where the boundary *ought* to be? It seems clear that whether the boundary is where it ought to be depends on whether there are sufficient constraints on powerful interests.

If Smith is right about our empathetic nature, then it seems possible that there would be enough of us capable of placing ourselves behind Rawls' hypothetical "veil of ignorance"—or at least take a few steps in that direction:

In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. Among the essential

features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain.<sup>232</sup>

If those capable of taking this empathetic approach prevail, the conventions and norms will reflect consideration for those less powerful. And so it seems to me that the boundary between gift and bribe *ought* to be where it *is* by convention—if good people prevail. And there will be different conventions in different societies, reflecting the effect of the importance of reciprocity in the economy, how wealth and power are distributed in the society, and contingency: and this is natural and just.

And it follows that in intercultural economic matters, including the rules related to gifting and bribery, conventions may be gradually established as part of a slow increase in the scope of established conventions. In order for the conventional boundary between gift and bribe to be located where it ought to be in cases of transactions between members of different cultures, it will be necessary that members of each society take proper account of the interests of the other. To the extent that the current global anti-corruption projects favour the interests of the economically dominant societies, the result could be the unjust manipulation of the boundary between gift and bribe. But it is important at this juncture to remember what observers like Michael and Taylor have concluded: the anti-

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<sup>232</sup>J. Rawls, *A Theory of Justice*, rev. ed. (Oxford: Oxford University Press, 1999), 11. Being behind Rawls' veil of ignorance would be one step further along than Adam Smith's principle of sympathy: "We endeavour to examine our own conduct as we imagine any other fair and impartial spectator would examine it." Smith, *Moral Sentiments*, 162. Smith saw this approach as possible and necessary. On the other hand, Rawls was clear that his conception was to be "understood as a purely hypothetical situation."

corruption projects are not making much headway. It may be that these projects are not taking sufficient account of the interests of members of non-Western societies, and this accounts for the failure to change norms.<sup>233</sup>

Change might come. But, particularly in the case of changes in intracultural norms, it is likely to arrive in the form of conventions arrived at contingently—as a result of “bumbling around”—rather than through grand anti-corruption projects. Law at the leading edge of cultural change is problematic. I see wisdom in these words of David and Brierly, written 40 years ago:

With the possible exception of revolutionary upheavals, there are features of the law which can only be changed at the slow rhythm at which the civilisation of the country itself, the sense of justice of its citizens, its economic structure, language and social manners themselves are changed.<sup>234</sup>

Cotterrell puts it this way: “Law that does not resonate in the experience or consciousness of those it purports to regulate is not law *in society*, hardly law at all.”<sup>235</sup> I arrive, at the end of the beginning, with a firm belief that he has it right.

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<sup>233</sup>Of course, the global anti-corruption initiatives are not restricted to trying to influence intercultural norms. It may be that if this were their focus, as opposed to attempting to change intracultural norms in non-Western societies, the initiatives would meet with more success.

<sup>234</sup>R. David and J. E. C. Brierley, "Introduction," in *Major Legal Systems in the World Today: An Introduction* (London: Stevens, 1968), 19.

<sup>235</sup>R. Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Aldershot, UK: Ashgate, 2006), 34.

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