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Legality, discretion and informal practices in China's courts : a socio-legal investigation of private transactions in the course of litigation

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Chapter 4 Understanding the initiation phase – Unveiling the “guanxi-practice”

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4.1. Introduction

In the autumn of 2003, five judges from three different courts in China received identical letters from Zhai Xuejun, a lawyer, who recently started to practice law in Beijing. The letter read, "I would like to have friendly cooperation with you...to share the litigation resources and the profits. You are welcome to introduce me to litigants in cases that you preside over...under the following conditions: 1) the claim of the dispute is more than 300,000yuan; 2) the litigant has not retained a lawyer or it is possible to have that lawyer replaced; 3) the litigant is likely to win the case or to have the damages claimed by the other party reduced...I will let you share 40% of the retainer as your commission fee [author's translation]." Attached to the letters was the lawyer's business card. A couple of months later Zhai was summoned by the Beijing Bureau of Justice, to which the letters had been forwarded by the judges. Not long thereafter an administrative decision was reached by the Bureau disbaring Zhai on the ground of violation of the Chinese Lawyers' Law.²³² After the event, one of the judges, who had handed in the letter, said in an interview: "When I received the letter, I found it funny at first but then felt it was over the top. I knew many people tried to engage in *guanxi*-practice with judges. But the way this lawyer did it is really exceptional."²³³ Apparently, what caught the judge's attention was not the lawyer's attempt to bribe but the "way" it was conducted. It makes one wonder: what makes Zhai's "way" "exceptional"? What is "the way" in which bribery is supposed to be conducted and what makes the so-called *guanxi*-practice special?

These are the questions that are seldom asked and addressed in scholarly literature on corruption in China. Most existing literature focus on the causal relations between corruption and the external political, economic and social environments, such as decentralization,²³⁴ marketization,²³⁵ anti-corruption design,²³⁶ judicial dependence²³⁷

²³² See "Subtle Entanglement between Judges and Lawyers," *21 Century Economic Report*, 30 Jun. 2005.

²³³ Ibid.

²³⁴ Yufan Hao, Michael Johnston, "Reform at the Crossroad: An Analysis of Chinese Corruption," (Dept. of Political Science, Colgate University, 1995).

²³⁵ Ibid. Yan Sun, *Corruption and Market in Contemporary China* (Ithaca and London: Cornell University Press, 2004). Ting Gong, "Forms and Characteristics of China's Corruption in the 1990s: Change with Continuity," *Communist and Post-communist Studies* 30, no. 3 (1997). Tak-wing Ngo, "Rent-Seeking and Economic Governance in the Structural Nexus of Corruption in China," *Crime, Law and Social Change* 49 (2008).

²³⁶ M. Manion, *Corruption by Design: Building Clean Government in Mainland China and Hong Kong* (Harvard University Press, 2004). Andrew Wedeman, "Win, Lose, or Draw? China's Quarter Century War on Corruption," *Crime, Law and Social Change* 49 (2008). F. Sapio, "Shuanggui and Extralegal Detention in China," *China information* 22, no. 1 (2008). Stephen K. Ma, "The Dual Nature of Anti-Corruption Agencies in China," *Crime, Law & Social Change* 49 (2008). Qianwei Zhu, "Reorientation and Prospect of China's Combat against Corruption," *Crime, Law and Social Change* 49 (2008).

and political privilege.²³⁸ The enabling role of corrupt participants seldom attracts academic attention. Enabling in this context means that once the motivation of corruption has been established, corruption actors can also strategically plan their conduct to overcome the legal, moral and cognitive barriers, which are supposed to obstruct corruption. In order to investigate this enabling factor, one has to look into the interacting process of corrupt exchange at the micro-level. This is exactly the point of departure of this chapter. To put it in the overall analytical framework of this thesis, this chapter deals with, in particular, the beginning of the contracting process of corrupt exchange, namely the initiation phase, which is laid out in the previous chapter. More exactly, this chapter will seek to answer the following questions: 1) how exactly does corruption, notably bribery, start between a briber and the bribed; 2) why is corruption being conducted the way it is, and in particular, what role does guanxi-practice play in the process and why?

It is necessary to point out here that the relationship between guanxi-practice and corruption has been debated for a long time, dividing China scholars. However, there seems much less argument about the significance of corruption and the salience of guanxi-practice as two separate social phenomena in China. Neither is there disagreement that the two phenomena are *somehow* connected. Differences of opinion stem from the fact that some scholars believe that guanxi-practice is “part of [the] cultural root” of corruption,²³⁹ fuelling the country’s rampant corruption;²⁴⁰ whereas others insist that guanxi-practice is distinct from corruption.²⁴¹ The latter group of scholars find guanxi-practice distinguishable from corruption since corruption is where two parties “enter into an impersonal relationship” and are “geared up to short-term immediate gain”;²⁴² while guanxi-practice instead is “geared towards the cultivation of long-term mutual trust and the strengthening of relationships”²⁴³ and hence adds “an element of

²³⁷ Hao, "Reform at the Crossroad: An Analysis of Chinese Corruption." p.19. Olivia Yu, "Corruption in China's Economic Reform: A Review of Recent Observations and Explanations," *Crime, Law & Social Change* 50 (2008). p.174.

²³⁸ Shuntian Yao, "Privilege and Corruption: The Problems of China's Socialist Market Economy," *American Journal of Economics and Sociology* 61, no. 1 (2002). Ke Li, et.al., "Institutionalized Corruption and Privilege in China's Socialist Market Economy: A General Equilibrium Analysis," *Pacific Economic Review* 10, no. 3 (2005). Xiaobo Lü, *Cadres and Corruption, the Organizational Involution of the Chinese Communist Party* (Stanford: Stanford University Press, 2000). Hilton Root, "Corruption in China: Has It Become Systemic?," *Asian Survey* 36, no. 8 (1996).

²³⁹ Yu, "Corruption in China's Economic Reform: A Review of Recent Observations and Explanations." p.170.

²⁴⁰ Gold, "An Introduction to the Study of Guanxi." p.3.

²⁴¹ P. Steidlmeier, "Gift Giving, Bribery and Corruption: Ethical Management of Business Relationships in China," *Journal of business ethics* 20, no. 2 (1999). Alan Smart, "Gift, Bribes and Guanxi: A Reconsideration of Bourdieu's Social Capital," *Cultural Anthropology* 8, no. 3 (1993).

²⁴² Carol A.G. Jones, "Capitalism, Globalisation and Rule of Law: An Alternative Trajectory of Legal Change in China," *Social & Legal Studies* 3, no. 1 (1994). p.205. Such opinion is also most famously held by Mayfair Yang. See

²⁴³ Ibid.

humanity to otherwise cold transactions”.²⁴⁴ Following this line of argument, some scholars believe that guanxi features “a culture of civility”²⁴⁵ and functions as a “stabilizing alternative”²⁴⁶ or some kind of social glue fostering social harmony and solidarity²⁴⁷ and “complementing” the incomplete legal system²⁴⁸. This chapter, by investigating how corruption takes place, will also seek to answer the question where and how corruption and guanxi-practice connect, and hence will also endeavor to provide new insights hitherto missing in the above discussion.

Empirical data used in this chapter come from four types of sources. The first is formal and informal focused interviews of some 100 hours’ duration about unreported everyday corrupt practices. These interviews were conducted by the author during 2005-2008. The second is court documents or press release about cases involving bribe-taking, bribe-receiving or intermediating of bribery. The third source consists of numerous online diaries and essays concerning individuals’ personal experience of corrupt practices. Last but certainly not the least, this chapter also draws examples from *Celadon* (*Qingci*, in Chinese), a quasi-autobiography authored by an “insider”. This last source, the book *Celadon* needs a special introduction. The book contains the story of the rise and fall of an owner of an auction house, who obtained lucrative auction commissions from courts through “guanxi-practices”. Matching the story of the protagonist, the author Hu Gang (pen name Fushi), was convicted for bribing three judges with the sum of 490,000yuan in exchange for court auction commissions in 2003.²⁴⁹ Hu wrote *Celadon* in his cell during his one-year incarceration.²⁵⁰ After publication, the book attracted a large readership for it captured “the delicacy” between business and guanxi-practice, which is “worshiped and adeptly utilized by businessmen” in contemporary China.²⁵¹ In an attempt to verify the objectivity of the episodes this chapter drew from the book, the author enquired Hu Gang by email, to which Hu responded as follows, “...the episodes you mentioned are fictional

²⁴⁴ Gold, "An Introduction to the Study of Guanxi." p.3.

²⁴⁵ Ming-cheng M Lo, Eileen M. Otis, "Guanxi Civility: Processes, Potentials, and Contingencies," *Politics & Society* 31, no. 1 (2003). p.143.

²⁴⁶ Jones, "Capitalism, Globalisation and Rule of Law: An Alternative Trajectory of Legal Change in China." p.215.

²⁴⁷ Lo, "Guanxi Civility: Processes, Potentials, and Contingencies." Mayfair Mei-hui Yang, "The Gift Economy and State Power in China," *Comparative Studies in Society and History* 31, no. 1 (1986). ———, "The Resilience of Guanxi and Its New Deployments: A Critique of Some New Guanxi Scholarship," *The China Quarterly* 170 (2002).

²⁴⁸ P.B. Potter, "Guanxi and the P.R.C. Legal System: From Contradiction to Complementarity," in *Social Connections in China: Institutions, Culture, and the Changing Nature of Guanxi*, ed. Thomas Gold, et. al. (2000). pp.194-5.

²⁴⁹ Information is obtained from the court judgment of the criminal case against one of the judges Wang Kuang. Court Judgment, Loudi People’s Procuratorate vs. Wang Kuang, 2nd instance, Criminal Division, Hunan High Court [2005] No.129.

²⁵⁰ Chenggong, "yige paimaihang laobao de mimi yu chanhui [The Secret and Confession of a Boss of an Auction House]," *nanfang zhoumo* [Southern Weekly], 28 Feb. 2007

²⁵¹ Fushi, *Qingci* [Celadon] (Changsha: Hunan Wenyi, 2006). Cover page.

as well as representative and objective as real life examples ... there are probably no other alternatives to obtain real life examples [with detailed information about the performance of bribery] unless you have access to interrogation records of the investigative bodies ... guanxi-practices in court litigation embody more of the hidden social codes of conduct, which most often can only be comprehended in mind but difficult to articulate”.²⁵² Just as Hu had predicted, during the course of this research the author could not find any other source of documentation, which records the intricate interactions between bribers and the bribed more meticulously than *Celadon* does. Nevertheless, the author has attempted to mitigate the limitation inherent in this source of data by employing many real-life examples to confirm the conduct described in the *Celadon*. However, reliance on examples from a quasi-autographical text to underpin some of the arguments deployed in this chapter remains its main limitation.

In this chapter, corruption is defined as the misuse of entrusted power in exchange for private benefits. Among all types of corrupt activities, the focus of this chapter is bribery, which has become the most common as well as damaging type of corruption in China in recent years.²⁵³ Through out this chapter, “bribery” is used as being synonymous with “corruption”. In order to avoid possible confusion which is likely to rise because of the equivocal nature of the term “guanxi”, this chapter uses “guanxi-practice” as an amalgamated concept representing the conduct and the process of conduct of soliciting, receiving, offering or delivering a service by one party to another, which satisfies the following conditions: 1) the service involves the exercise of entrusted power by one party, resulting in favorable treatment to the other, which also means that at least one of the parties is endowed with entrusted power, most notably, from a public entity; 2) the service is delivered either as a reciprocation to a favor previously received from the other party or as an act to generate proper reciprocation from the other party in the specified or unspecified future. “Guanxi-exchange” is occasionally used interchangeably with “guanxi-practice”. The equivalent Chinese expressions of this concept include most phrases, in which “guanxi” is used as an entity on which an agent can act upon, such as “*gao guanxi*”, “*la* (to pull) *guanxi*”, “*zou* (through) *guanxi*”, “*tuo* (to present something through) *guanxi*” or “*guanxi yunzuo* (operation of *guanxi*)” rather than a quality of relatedness, such as “*xing guanxi* (sexual relationship) or “*tongxue guanxi* (classmate relation)”.

The rest of chapter is structured in three parts. The first two parts draws the picture of how corruption at the micro-level takes place between bribers and the bribed through guanxi-practice and gift-giving. The third part answers the question why corruption takes

²⁵² Email communication with Fushi, 4 June 2009.

²⁵³ Guo, "Corruption in Transitional China: An Empirical Analysis." p.357.

place in the way described in the previous sections and what role *guanxi*-practice plays in the process and why.

4.2. *Guanxi-practice in bribery - one example*

If Zhai's approach to bribing was deemed too bizarrely "exceptional" to be acceptable by the judge, as shown in the story introduced at the beginning of this chapter, what, one must ask, would a supposedly acceptable approach consist of? To answer this question, one would need to have direct access to the bribery scene. This requirement would, however, constitute an insurmountable challenge to the researcher since the type of corrupt exchange investigated in this chapter is conducted in clandestine environment, which means that the only witnesses of the exchange are also participants of the exchange. The second-best solution is to rebuild the scene from the practitioners' narrative. In doing that, one needs to be careful in choosing the relevant form of material, providing the narrator maximum space for elaboration and truthful reenactment. *Celadon*, the quasi-autobiography introduced above provides us such a rare opportunity. Centered on the life of Zhang Zhongping, a successful auctioneer, the book draws a vivid portrait of how this allegorical protagonist managed his business through *guanxi*-practices with court officials. Like its author, the protagonist of *Celadon*, Zhang, runs an auction house in a provincial capital city. Zhang's business primarily comes from court commissions. The italicized text is the author's own summary of one episode from the book.

Zhang knew through his contacts that Hou is the judge directly responsible for a pending auction commission. Zhang wants to obtain Judge Hou's endorsement. But at this moment, Zhang is hardly an acquaintance of this judge. During one of his regular visits in the office of the enforcement division Zhang learned that Judge Hou had a drinking habit. Today Zhang is delivering to the judge a full case of "health-preserving" liquor featuring a mysterious aphrodisiac formula presented in fine porcelain. The liquor case is heavy and Judge Hou's apartment is on the 7th floor of a residential complex without a lift. Zhang could have had his assistant deliver the gift. However, he decided to make it personal. When Zhang finally showed up at Judge Hou's doorstep, panting and puffing, the judge was a little surprised and immediately invited Zhang in. Putting down the case, Zhang explained, "It is a gift to me from a friend who runs a liquor manufactory. I don't drink. So I want someone who would actually enjoy it to have it." Judge Hou asked: "How much does it cost?" Zhang said, "The product has not been put on the market yet. So I don't know the price. But I do know that it cost my friend millions just for the trademark and the formula." Hou said nothing. During

the visit Zhang did not mention a word about the court commission. On the same visit Zhang noticed that Hou was quite concerned about his son's calligraphic performance. After the visit, Zhang managed to persuade a famous calligraphist to agree to see the son. Soon the tutorship is arranged. Zhang paid the tuition fee without asking the judge for permission. The judge did not say much. He just patted Zhang on his shoulder.

After having made this tutor arrangement, Zhang is treated almost like a family member by Judge Hou's wife. He can pay casual visits to the judge's home without an appointment. During one such visit, Zhang asked for two pieces of calligraphic exercise of Judge Hou's son, which he put up to an artwork auction held by a company run by his former colleague. He then asked a friend to bid for the calligraphy as he instructed. A few days later, Zhang visited Judge Hou again and brought an envelope. Zhang explained it was some money he earned for Xiaoping, Judge Hou's son. The envelope contains 3,600yuan in cash. Judge Hou appeared angry and said, "Are you kidding me?" Zhang responded: "I am not kidding. It is indeed the market price of Xiaoping's calligraphy." Judge Hou said, "Tell me the truth. Are you behind this operation?" Zhang said, "How is that possible? The auction was not even hosted by my company." Zhang showed Judge Hou the auction certificate and added: "I've even deducted 10% off the income on your behalf as auction commission fee. It can stand any investigation." Zhang put the envelope on the table. Judge Hou asked no further questions.

It was only before Zhang was about to leave that Judge Hou raised the topic of the court auction. "The court would soon decide to which bidding auction house to give the auction", the judge said, "The selection procedure is not clear yet..." Then the judge revealed the name of the manager of the auction applicant. Zhang immediately proposed, "How about we go fishing together another day, you, me and Manager Yan (the auction applicant) ... There will be no agenda and no business talk. We just go out and breathe some fresh air. What do you say?" Hou said, "Boss Zhang, it is not like that I am consulting you on anything... I have never said anything about the auction ... you arrange whatever you want." Zhang said, "Of course, of course."²⁵⁴

Compared with the story introduced at the beginning of this chapter, auctioneer Zhang's career shared many common characteristics with that of lawyer Zhai. They both started their business from scratch, so to speak. Both moved to a new business and a new city.

²⁵⁴ Fushi, *Qingci [Celadon]*. Ch 8.

They both faced the same problem – a lack of clients. Their work was centered on the same institution – the courts. And they both committed the same illicit conduct – seeking to acquire businesses opportunities from judges in an unethical and unlawful manner. Their respective performance, however, is worlds apart. So are the outcomes. Firstly, lawyer Zhai offered the judge a future conditional profit-return, while Zhang provided unconditional gratuities to the judge ahead of any future arrangements. Secondly, lawyer Zhai sent a proposal for an illicit business deal via post to a group of judges, who hardly knew him personally; while Zhang deliberately avoided uttering, let alone putting down in written form, any words that might incriminate his judge. In short, lawyer Zhai took corruption as a simple and straight-forward market transaction while auctioneer Zhang embarked on a painstakingly elaborate process building trust, deploying gifts and gratuities before entering the transaction. In an interview, Hu Gang, the author of *Celadon*, revealed that he had spent half a year to build trust with a high-court judge before he was given the first court commission.²⁵⁵ In colloquial Chinese language, this strategic trust-building process is exactly what *guanxi*-practice is about.

4.3. *Guanxi-practice and gifts*

According to a survey among 100 persons, who were prosecuted for bribe-giving, 94.2% stated that they would “warm up the relationship” first before they would bribe with money.²⁵⁶ The “warm-up” always starts with the offerings of gifts or other gratuitous services for the benefit of the bribed and at the expense of the briber. Gifts foster a sense of indebtedness,²⁵⁷ as experienced *guanxi*-practitioners often say: “The thing is half done once the gift is accepted”.²⁵⁸ When an official accepts a gift, it normally means that the official is willing to repay the debt to the gift-giver in their future encounters. Gift-giving has, therefore, almost become an expert skill of experienced *guanxi*-practitioners, such as, the protagonist of *Celadon*.²⁵⁹ In analyzing this process of gift-giving, it is worthwhile to introduce the following themes.

²⁵⁵ See http://www.csonline.com.cn/news/chsh/200608/t20060806_504840.htm

²⁵⁶ According to the survey report, 85 of the 100 persons responded. The survey was conducted by Haizhu District Procuratorate in Guangdong Province in collaboration with the Clean Politics and Governance Research Center of Qsinghua University. Gufeng Huang, Rui Li, “Haizhuqu Jianchayuan Dui Xinghui Renyuan De Wenjuan Diaocha Baogao [Survey Report of Bribe-Giving Conducted by Haizhu District Procuratorate],” (2006)

²⁵⁷ Marcel Mauss, *The Gift*, trans. Ian Cunnison (New York: Norton, 1967).

²⁵⁸ This is a statement that the author heard very often during her fieldwork in China.

²⁵⁹ Popular self-help books can be easily found on how to have your gifts accepted. By searching on the online bookstore, www.dangdang.com, the key word “gift-offering (*songli*)” hits 203 results. If one puts in the words “*lingdao*(superior)” and “*songli*(gift-giving)” in the search column of www.baidu.com, suggested topics include “how to give gifts to [your] superior”, “what gifts to give to [your] superior”, “what to say when presenting a gift to [your] superior”, “skills of gift-giving to [your] superior” etc.

4.3.1. Choosing a “gift”

A good gift draws the bribed into a relationship. A poor one repels the bribed and invites rejection. Zhang’s first gift to Judge Hou, the case of liquor, is an example for a good gift. First of all, the gift is valuable. “It costs millions just for the trademark and formula”. Yet, the fact that the product has not yet been put on the market results in a sense of ambiguity in terms of its value, which can be employed as a defense for any possible future corruption investigation. Zhang’s meticulous deliberation impressed the judge, who responded in the book, “You really used your brain in choosing this gift. If people from the procuratorate ask about it, we can simply say I am helping you to conduct a pre-market customer evaluation”.²⁶⁰ Zhang’s second gift, the tutorship for Judge Hou’s son, was probably the most appreciated. It is not only because the service is of great value to the judge but also because it demonstrates Zhang’s “sincere” care for the judge’s family. Since then, the trust in the relationship between Zhang and the judge reached a high level. Zhang’s third delivery, consequently, that of the cash, is no longer perceived as threatening and disturbing.

Evidently, what constitutes a good gift varies from case to case and from time to time. What was popular as a gift in the 1960s, such as a basket of eggs or a piece of fine cloth, will now be considered contemptible inappropriate even in rural villages. Twenty years ago banqueting in VIP chambers of restaurants used to be a popular inducement on its own. Nowadays it only serves as a “get-to-know-each-other” exercise.²⁶¹ The contemporary increase of the economic value of gifts seems to be commensurate with the increase of the GDP. In recent years it is international luxury items that frequently appear in the evidence lists in corruption prosecutions.²⁶² At the time of writing, prosecutors in Chongqing City found more than 100 items of international designer’s clothes and 200 pairs of expensive shoes in the residence of a local official, who took bribes worth 1,600,000yuan.²⁶³ According to some studies, the rapid rise of consumption of luxury-products in China, being the third largest in the world,²⁶⁴ is partly attributable to the spreading of corruption.²⁶⁵

Choosing a good gift is not always easy. From a briber’s viewpoint, the first issue to be decided is how much should be spent on the gift. It should not be too expensive so as to

²⁶⁰ Fushi, *Qingci [Celadon]*. Ch.2. p18.

²⁶¹ Interview T.028.

²⁶² Just to name two examples, see the case of Wang Xuebing, former Chairman of China Construction Bank, and the case of Mu Suixin, former Mayor of Shenyang City, Liaoning Province.

²⁶³ See http://news.xinhuanet.com/legal/2008-12/16/content_10510994.htm.

²⁶⁴ It is estimated that China will consume 29% of the world’s luxury goods by 2015, making it second only to Japan. <http://seekingalpha.com/article/81603-luxury-products-in-china>.

²⁶⁵ See http://service.china.org.cn/link/wcm/Show_Text?info_id=128850&p_qry=SARS.

contain the briber's risk of economic loss in case the bribed official fails to deliver the expected service in the future. It certainly should not be too cheap to invite rejection either. A rule of thumb is that the value of the gift should be proportional to the value of the service that one has in mind requesting. Two packs of cigarettes will unlikely go down well if one desires to obtain a public procurement contract worth millions. In fields where corruption takes place regularly, bribes are taken as regular kickbacks, the rate of which is more or less commonly understood by the "insiders".²⁶⁶

Once its value has been decided, the choice of the gift becomes easier to make. After all, the best gift is the gift most appreciated by its recipient. China is no longer an economy of acute scarcity. Ordinary commodities can hardly please sophisticated officials, who already enjoy various privileges and benefits. Some bribers spend a lot of time on investigating and discovering personal preferences of targeted officials. An interviewee told me in confidence: "One has to have *some* kind of hobby".²⁶⁷ Many do. Mai Chongkai, former president of Guangdong High Court, was able to perfect his performance in golf-playing after having played on numerous golf-courses across the country, all as treats from his favor-seekers.²⁶⁸ Hao Heping, the main character in the notorious national drug-safety scandal in 2007, once accepted three golf-club membership cards with a total value of 500,000yuan from pharmaceutical manufacturers in exchange for favors in license application.²⁶⁹ During an anti-corruption campaign in 2000 in Guangdong province,²⁷⁰ the location of 70 golf courses,²⁷¹ 135 golf-club payment-cards were confiscated from officials and five officials were asked to resign from their honorary positions in various golf associations.

Mahjong, a popular gambling game in China, is also often used as a setting for bribing. For a long time, *mahjong*-playing has become a routine program of guanxi-practice after banquets. It is a service provided by almost all tea-houses, nightclubs or other entertaining establishments. While playing the game, bribers can bribe, for instance, by deliberately losing to the targeted official. Bribers call this game-playing as *yewupai* (game-for-business)²⁷², since it is not really a gambling contest if one party contrives to lose. The only problem with this approach to bribing is that the bribed could also attribute

²⁶⁶ For example, according to an internal analytical report on judicial corruption by Huang Jianliang, a journalist of The Procuratorate Daily, some "customary practice (*hanggui*)" has developed among participants of corruption in courts. For instance, the distributing ratio of profit gained from court auctions is known to be 4:3:3, which means that 40% goes to judges involved, 40% goes to the auction house and 30% is spent on expenses of running costs and the cost to "*dadian*" other officials on contingent issues. Excerpt of the report can be seen at <http://news.sohu.com/20061202/n246751848.shtml>.

²⁶⁷ Interview T.028.

²⁶⁸ See <http://www.southcn.com/news/gdnews/gdtdtodayimportant/200312200081.htm>.

²⁶⁹ See <http://sports.sohu.com/20070612/n250528660.shtml>.

²⁷⁰ See http://news.xinhuanet.com/house/2004-05/25/content_1489203.htm.

²⁷¹ Ibid.

²⁷² *Celadon* has an elaborated description of the scene in Chapter 3.

his winning to his own good luck or good skill rather than to the “generous help” from the briber. To avoid this kind of “misunderstanding”, experienced bribers would organize a game for the targeted official with others and provide the official with the betting-money, instead of participating and deliberately losing. If the official wins, the briber would insist that the official keep the win as “*xinkufei*”, meaning allowance for the labor.²⁷³ “*Yingle shi nide, shule shi wode* (whatever won is yours, whatever lost is mine)”, as the briber would say. Bribing-through-gambling has become so popular that this approach to bribing was recently recognized and incorporated in the criminal law against bribery.²⁷⁴ When some officials are no longer content with the challenge of traditional *mahjong* games, they visit Macau, the closest place to mainland China, where professional casinos legally operate.²⁷⁵ One of the notorious gamblers is Ma Xiangdong, former deputy major of Shenyang City, Liaoning Province, who visited Macau 17 times in a period of two and half years. When he lost all his bets, he called in “help” from his briber. Once, when a briber once complained about the liquidity problem of his company, the deputy major, who was in charge of zoning and public construction, waived taxation worth of 12 million *yuan* for a construction project undertaken by the briber’s company. In exchange, Ma was able to “borrow” from the briber 500,000US\$, all being spent in casinos.²⁷⁶ Not surprisingly, these big-spending officials soon became the favorite clients of those casino-owners.²⁷⁷

In comparison to these gamblers, some officials are found amenable to artistic gratification. A few corporation executives once commissioned the State Orchestra to play a symphony composed by Wang Yi, former vice-chairman of the China Securities Regulatory Commission, who, “by accident”, discovered his “talent” in composing in his late 40s during a trip to the Tibet Plateau.²⁷⁸ Compared with Wang’s hobby, art collection is more popular among “artistically minded” officials, which possibly coincides with a significant boost to antique and art markets in China.²⁷⁹ A director of a local police bureau in Wenzhou City, Zhejiang Province, had collected several hundreds

²⁷³ “Former Chief-prosecutor Bribe-taking in Gambling Games and Was Sentenced for 8.5 Years”, Aug. 29, 2007, http://news.china.com/zh_cn/domestic/945/20061029/13707123_3.html. Also see the Defendant’s Statement in the public prosecution against Tian Zixiang, the Director of the Appraisal Center of Agricultural Machinery.

²⁷⁴ “Guanyu Banli Shouhui Xingshi Anjian Shiyong Falü Ruogan Wenti De Yijian [Opinions on the Prosecution and Adjudication on Cases of Bribe-Taking]”, jointly issued by the Supreme People’s Court and the Supreme Procuratorate in 2007. Art.5.

²⁷⁵ See report at <http://news.tom.com/1002/3291/2005121-1785942.html>. Also see “Chinese Officials ‘lost millions’”, BBC News, Jan., 10, 2009 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/7821747.stm>

²⁷⁶ Court judgment: Nanjing City Procuratorate vs. Ma Xiangdong, Criminal Division, Nanjing Intermediate Court [2001] No.110.

²⁷⁷ See report at [http://www.chinanews.com.cn/zhonghuawenzhai/2001-04-01/new/\(12\)%201.html](http://www.chinanews.com.cn/zhonghuawenzhai/2001-04-01/new/(12)%201.html).

²⁷⁸ See the link <http://www.caijing.com.cn/2008-06-12/100069029.html>

²⁷⁹ For a brief history of the development of the art market in China since the economic reform, see http://www.china.com.cn/culture/txt/2008-11/30/content_16875708.htm.

of antique items as presents from “friends”.²⁸⁰ In a poorly monitored auction industry, pieces of art constitute a wise choice of bribe favored by some for their money-laundering function. The usual practice is that firstly the would-be bribed puts a piece of antique of little value up for auction and then the briber buys off the piece in the auction at the agreed price with the agreed terms of payment.²⁸¹ In another case discovered by prosecutors in Nanjing City, a real-estate developer bought off two paintings directly from an official, who was in charge of state confiscation of land. The appraised value of the painting was 3,000yuan, whereas the developer paid 1,000,000yuan.²⁸²

In general, gifts are preferred over pure money at the initial stage of guanxi-practice, when the trust is not yet strong. Meanwhile, a modern invention - shopping-card (*gouwuka*, basically a voucher in the shape of a plastic card with a magnetic stripe, on which information of the credit can be stored) - makes the perfect graft between money and gift.²⁸³ The State Council had issued a regulation prohibiting shopping-card issuance in 2001 but the cards are simply too popular to be banned in practice.²⁸⁴ Usually, such cards are issued by large shopping malls, which offer a wide range of product lines to satisfy diversified needs of card holders. During one of my interviews, an owner of an intermediating company excused herself in the middle of the conversation and told me she had to rush off to deliver some shopping-cards as presents of the upcoming Spring Festival to her “patrons”, who helped her in winning some public procurement biddings that her company represented.²⁸⁵ According to a local procuratorate, 92 percent of the officials prosecuted for bribe-taking in its jurisdiction in 2007 had accepted shopping-cards from bribers, among whom one had taken as many as 45 cards, worth of 110,000yuan. None of these officials had rejected a shopping-card when it was offered them.²⁸⁶ Some officials are completely at ease when receiving piles of shopping cards but feel uncomfortable with money.²⁸⁷ A 5,000yuan bribe was rejected twice by a county official in Shandong Province but was accepted when the same amount was transferred

²⁸⁰ See <http://www.zjol.com.cn/05zjc/system/2006/11/04/007969601.shtml>.

²⁸¹ See <http://finance.sina.com.cn/money/collection/yspmarket/20050413/11231513614.shtml>; also see <http://www.cnhubei.com/200502/ca691716.htm>.

²⁸² See http://news.xinhuanet.com/legal/2008-02/26/content_7670023.htm.

²⁸³ Shopping card is so popular that an online market of swapping and exchanging has been established in some cities. Just to name a few, <http://shop.nnsky.com/zhuanti/card/card.asp> (for shopping-cards issued in Nanning city); http://bj.fenlei168.com/F_MaiMai/17B457S0Q0S0S0S0B0Z1.html (Beijing); <http://sz.ganji.com/gouwuka/> (Shenzhen).

²⁸⁴ See “Notification of the Termination of Issuance and Circulation of Shopping Vouchers” (2001), Issued by the Ministry of Economy and Trade, The People’s Bank and the *Jiufeng* Office of the State Council.

²⁸⁵ Interview M.033.

²⁸⁶ Jinzeng Lu, “Shopping-Card Induces Civil Servant Crimes (*Gouwuka Yi Youfa Zhiwu Fanzui*)”, <http://www.jcrb.com/200707/ca616445.htm>.

²⁸⁷ See prosecutors’ commentary at http://news.xinhuanet.com/legal/2008-02/19/content_7627862.htm

into a shopping-card delivered by the same briber.²⁸⁸ Shopping-cards are accepted as a popular form of bribe because it provides its recipients the discretion to choose or consume the gifts at their own convenience. It is transferable and is accurate in value, which makes it much easier for both bribers and the bribed to register how much has been offered and accepted. In short, it is as good as money but without the latter's projection of venality.

4.3.2. Addressing a "gift"

After a bribe has been chosen, the next step is the delivery. It is only at that point one would realize how to address the bribe becomes "an issue". As Noonan detected, "there is no specific, unambiguous word for bribe" and "no common terms designating and denigrating the briber and the bribee".²⁸⁹ Bribers with some common sense would understand that a bribe should not be addressed as a "bribe" or explained as an "inducement" for an illicit service, since those words project dashing instrumentality of the briber and illegality to its recipient, who is the last person a briber wants to offend. As demonstrated in the story between Zhang and Judge Hou in *Celadon*, the choice of language is all important. Some words shall never be used in any circumstances. Some can be used only in relation to certain persons, with whom a trusting relationship has been established. Risk and trust are both subjective perceptions, which respond to the slightest observation of behavior. This is certainly the case in the Chinese culture, where reading between the lines is a regular communicative practice.²⁹⁰ Therefore, when a term of reference to the bribe is required, euphemism is indispensable. In all the cases investigated in this research, terms such as "bribe (*huijin*)", "bribery (*huilu*)" "bribe-giving/taking (*xinghui/shouhui*)" have never been employed by bribery practitioners for self-references. In this context, euphemism is probably the most noticeable behavioral pattern in the performance of bribery.

In the course of this research, the following common euphemisms have been found, for example, "*yanjiuqian*" (money for cigarettes and liquor), "*yidian xiaoyisi*" or "*yidian biaooshi*" (a little expression [of gratitude]) and *haochu* (benefits). Coded language is employed in circumstances, where a higher degree of discreetness is required. For example, in one scene of delivery, a briber pointed to a shopping bag and said to Tang

²⁸⁸ *supra* note 54.

²⁸⁹ John T. Noonan, *Bribes* (1984).

²⁹⁰ Bob Hodge, Kam Louie, *The Politics of Chinese Language and Culture: The Art of Reading Dragons* (London and New York: Routledge, 1998). ch.5. pp.96-119. Ambiguity of the Chinese language as a linguistic feature was discussed in the following literature: Matthew Ricci, *China in the Sixteenth Century: The Journals of Matthew Ricci 1583-1610* (New York: Random House, 1953), Hui-ching Chang, "The 'Well-Defined' Is 'Ambiguous' - Indeterminacy in Chinese Conversation," *Journal of Pragmatics* 31 (1999). Q. S. Tong, "Inventing China - the Use of Orientalist Views on the Chinese Language," *Inventions* 2, no. 1 (2000).

Jikai, former vice-president of Changsha Intermediate Court, “there is *mi* (refers to cash but literally means rice) in it”.²⁹¹ Euphemisms are also applied when bribers talk about their own act of bribery to a third party. The most frequently used phrases include “*dadian*”,²⁹² “*goudui*”,²⁹³ and most notable of all, the “*guanxi-practice*” expressions as enlisted in the introduction of this chapter. These “*guanxi-practice*” expressions include, for instance, “*zou guanxi*” (go through *guanxi*), “*tuo guanxi*” (to do something through *guanxi*), “*guanxi yunzuo*” (operation of *guanxi*), “*huodong guanxi*” (to activate *guanxi*), etc.²⁹⁴ In some public sectors, in which corruption is pervasive and bribery a common practice, euphemisms become less evasive. “*xiaoyisi* (a little expression)” is substituted by comparatively more direct terms, such as, “*haochufei* (benefit-fee)” or “*xinkufei* (fee for the labor)”, which suggest what is offered is a payment of a service.²⁹⁵

In general, we use euphemisms when we are reluctant to utter some semantically transparent terms to denote unsettling topics.²⁹⁶ In the account of bribery, nothing is more “unsettling” than the concept of corruption and any normative terms related to it. Not to rub something into the face of the bribed is the least a briber can do and the least that would be expected from him by the bribed.²⁹⁷ There is little doubt that no briber wants to present himself as offensive or threatening when he is at the mercy of the bribed.

4.3.3. *Acceptance of a “gift”*

Sometimes when the bribed official has difficulties to settle with a venal image, only employing euphemisms will not be sufficient for the bribe to be accepted. It is especially the case when an official is offered a bribe for the first time.²⁹⁸ Under this circumstance, further persuasion becomes necessary. According to a survey among 100 officials, who

²⁹¹ Court Judgment: Ruanling County Procuratorate vs. Tang Jikai, 2nd Instance, Huaihua Intermediate Court [2006] No.52.

²⁹² Among these expressions, *dadian* is the only one that was inherited from imperial times and still popularly applied. The term “*dadian guanxi*” hit 2,120,000 results when searched on www.baidu.com. (8 Dec., 2007). If one expands the search and include terms, such as “*shangxia* (literally means up and down) *dadian*”, “*qianhou* (literally means front and back) *dadian*”, the number of hits will be even higher.

²⁹³ The term was originally used to refer wine blending. This evolved meaning is more popularly used in the southwest China.

²⁹⁴ As a linguistic phenomenon, the semantic meaning of “*guanxi*” in these phrases has evolved beyond “a status of relatedness” and become an independent entity by itself, which the practitioners can “operate”, “activate” and “do something through”.

²⁹⁵ These terms repetitively appeared in the cases investigated in this research and can be easily located in corruption reports in the media.

²⁹⁶ Matthew S. McGlone, Jennifer A. Batchelor, "Looking out for Number One: Euphemism and Face " *Journal of Communication* 53, no. 2 (2003). p251.

²⁹⁷ Experiments also found that instead of concern for the addressee’s feelings, speakers apply euphemisms “out of concern for themselves for self-presentational purposes”. Ibid.

²⁹⁸ Gufeng Huang, Rui Li, "Haizhuqu Jianchayuan Dui Xinghui Renyuan De Wenjuan Diaocha Baogao [Survey Report of Bribe-Taking Conducted by Haizhu District Procuratorate]," (2006)

were prosecuted for bribe-taking, the most convincing persuasions are “This is what you deserve. Don’t be too humble” and “you are not giving me face if you don’t accept it”.²⁹⁹ Another common but somewhat circuitous tactic consists of setting up an imaginary straw man first and then to claim that the bribe is to cover the expense of engaging the straw man rather than the bribed to carry out the necessary corrupt acts. For example, one of my interviewees reported that she had once invited an official to dinner, to whom she had submitted an application for a residence permit. After dinner she handed the official an envelope containing cash. At first, the official declined to accept it. My interviewee insisted, saying, “Please take it. What I requested is not an easy task. This (the money in the envelope) is not for you but for you to *dadian*³⁰⁰ other officials. This is just to cover your expenses.”³⁰¹ As she expected, the envelope was then accepted.

The auction house owner Zhang in *Celadon* excelled in this art of performance. In order to avoid possible rejection of the gift or gratuity that he offered, Zhang always thoughtfully provided the judge with alternative reasons for acceptance, thereby neutralizing the venality projected by the gift. For example, during his first visit, Zhang stage-managed the scene by carrying the heavy liquor-case all the way up to the judge’s apartment on the seventh floor. When the judge saw Zhang appear at his doorstep, next to the liquor-case, heavily-breathing, the judge said, “I shall accept your kind intent...If I don’t accept your gift and insist that you carry it all the way back downstairs, you would curse me in your mind, wouldn’t you?” In this twisted discourse, it looks as though the judge had decided to accept the gift not because it was a gift which he would actually enjoy having but because he did not want to be “*bujin renqing*” (behaving without any consideration for the other party). In fact, the judge appeared to be actually doing Zhang a favor by accepting his gift.

Great resemblance is found in a similar speech of the Empress Dowager over a century ago when she accepted gifts at her extravagant 60th birthday party, which took mandarins two years to prepare. Having announced previously that she did not want anything costly in view of the hardship of foreign wars inflicted upon the country at that moment, nevertheless, the Empress decided to take the treasures sent in from all corners of the country. In her acceptance speech, she said, “The gifts were presented by officials, who want to comply with tradition. Their intent is sincere. If I don’t accept them ... it will be me being unreasonable ... I will grant them a favor and accept the gifts.”³⁰²

²⁹⁹ Ibid.

³⁰⁰ See footnote 60.

³⁰¹ Interview H.022.

³⁰² Hengjun Ren, *Rules in the Officialdom of Late Qing Dynasty [Wanqing Guanchang Guize Yanjiu]* (Haikou: Hainan, 2003), pp.125-6.

In order to reduce the venality of bribe-taking, many bribers choose to deliver the gifts at traditional holidays or other ritual occasions, including weddings and funerals in the family of the targeted official, when gifts are customarily exchanged. According to the aforementioned survey conducted by Haizhu Procuratorate among 100 bribers, 45.8% of the respondents said they would choose to bribe during the spring festival.³⁰³ Such occasions seem to have provided more legitimacy to cash-bribes, addressed as “*lijin*” (gift-money) wrapped in red envelopes (*hongbao*). When the competition for favor is intense, in order to maintain a good relationship with the targeted official, bribers feel compelled to send *hongbao* on any occasion which entails financial costs for the family of the targeted official, such as traveling, illness, moving, and opening of school-terms of the official’s children. According to the same survey among 100 bribers mentioned above, 50.2% of the respondents had chosen to bribe during the months of August and September, the time of the commencement of new school terms.³⁰⁴

For risk-conscious officials, whether to accept a bribe does not only involve an issue as to *what* is offered but also as to *who* offers it. According to the previously mentioned survey among bribe-taking officials, 80% of the respondents stated that they would choose to accept bribes selectively depending on who the bribers are. 47% chose to accept from “people who look loyal and trust-worthy”; 40% chose to accept from “people who look rich”.³⁰⁵ The weight of these “extra variables” increases as the value of the public resources that an official is entrusted to allocate increases. It is because these officials are usually “chased after” by many bribers.³⁰⁶ Hence they can afford to be “picky” and choose to exchange only with bribers, who are not only generous with “gifts” but also have “likable” disposition. It will be over-ambitious to attempt to generalize the qualities required for the “likableness”. However, in the context of bribery, a few characteristics are quite identifiable, for example, generosity, loyalty and discreetness, all as indications of whether the briber is likely to act opportunistically. This is exactly why in situations where *guanxi*-practice is called for, the participants would emphasize the importance of the quality of the personal relationship between the favor-seeker and the favor-grantor. This is also why “*guanxi*-practice” phrases are named after the word “*guanxi*”, which indicates the existence of a personal relationship. The quality of this relationship (*guanxi*) is a variable that affects the decision of the person concerned on whether he would engage in a certain exchange.

³⁰³ *Supra* note 24.

³⁰⁴ *Ibid.*

³⁰⁵ Gufeng Huang, Rui Li, "Haizhuqu Jianchayuan Dui Xinghui Renyuan De Wenjuan Diaocha Baogao [Survey Report of Bribe-Taking Conducted by Haizhu District Procuratorate]," (2006)

³⁰⁶ For example, Xu Guoyuan, former major of Chifeng City confessed that people who had bribed him were so many that it was easier for him to recollect the names of those who had not bribed him rather than those who had. See <http://china.huangjiu.com/roll/2009-08/534042.html>.

4.4. *Guanxi-practice and corruption*

Research shows that corruption in China is becoming more “intensified” and “institutionalized”;³⁰⁷ that corrupt activities are more secretive; and that they involve greater economic value and complex arrangements.³⁰⁸ Such corrupt operations are certainly not the same as a traffic officer receiving 50yuan from an offender in exchange for dropping a ticket, an operation which is simple, finishes on the spot and leaves little evidence. Judicial corruption for example can not finish with a single act; it is regulated by more complicated procedures; it involves multiple players and its completion takes a much longer period of time. Corruption becomes more risky as the problem of corruption has been moved to the top of the political agenda and anti-corruption campaigns have become more intensive. Even though the overall apprehension rate is low, officials are facing the risk of more severe punishment than in many other countries, if detected and convicted.³⁰⁹

This illicit feature of corrupt exchange entails two risks for its participants. The first is the risk of external exchange safety, which refers to detection and punishment. The second is the risk of internal exchange safety, which rises when one of the exchange parties behave opportunistically. Such risk occurs, often enough, when the performance of two parties does not take place simultaneously, which is exactly the case of the more complex type of corrupt conduct just explained above. The party who performs first bears the risk of non-performance of the other party. Compared with legal transactions, the risk of opportunism in corrupt transactions is more significant since the loss resulting from non-performance can not be redressed through legal institutions because of the illegality of the exchange.

Sentiments of moral repugnance and censure towards corruption are, presumably, not as prevalent in China as in western countries since the boundary between state and society is rather “blurred” and the concept of public interest has not yet taken root. Nevertheless, individuals are certainly more aware of public ethics today especially since the government adopted a strategy of identifying with anti-corruption dissidents in the

³⁰⁷ Andrew Wedeman, "The Intensification of Corruption in China," *The China Quarterly* 180 (2005). p.920. Guo, "Corruption in Transitional China: An Empirical Analysis." p.364. Ren, "Institutionalized Corruption: Power Overconcentration of the First-in-Command in China."

³⁰⁸ Ting Gong, "Dangerous Collusion: Corruption as a Collective Venture in Contemporary China," *Communist and Post-communist Studies* 35 (2002). Haibin Ma, "Dangqian Zhiwu Fanzui De Tedian Yuanyi He Fasheng Fazhan Qushi Jiqi Fangfan Duice [Characteristics, Causes, Trends and Counter-Measures Regarding White-Collar Crimes in Contemporary China]," in *Zhongguo Zhiwu Fanzui Yufang Diaocha Baogao [Investigative Report on Professional Crimes and Its Prevention of China]*, ed. Criminology Research Society of China (2004).

³⁰⁹ The most severe sentence of bribe-taking and embezzlement is death penalty. Chinese Criminal Law. Art.383, 385.

official political narratives as a means to “retain and even strengthen its political legitimacy”.³¹⁰ Cognitive dissonance, related to moral censure, also constitutes a barrier to the contracting process of corrupt exchange. Cognitive dissonance is the psychological experience of discomfort and unease caused by the disparity of one’s related cognitions.³¹¹ In the context of bribery, it consists of a contradiction of what one claims in public and what one does in private. For example, most people would normally feel a sense of unease taking a bribe after having delivered a public speech promising honest conduct in office.

The risk of detection and punishment, the risk of opportunistic behavior of the other exchange party, the moral costs and the cognitive dissonance constitute the main barriers, impeding the contracting process of corrupt exchange. A direct manifestation of such obstacles is the cumbersome initiating process involving the exhibition and communication of the intent to conduct corrupt exchange, a prerequisite for any transaction to take place. We tend to be blind to the significance of exhibition and communication of intent to exchange because firstly we exchange most things we need in established market-places, where the intent to exchange is evidently displayed and secondly in day-to-day non-corrupt social contexts such intent to exchange can be naturally expressed. However, in corruption, unscrupulous revelation of one’s intent to exchange something which should not be subject to exchange can be incriminating, which raises the risk of exposure and sanction. Moral awareness and cognitive dissonance will also hold potential corrupt participants back from manifesting their intent.

However, these barriers are placed asymmetrically between the bribers and the bribed. Firstly, the bribed are facing more severe legal sanction than the bribers if the corrupt activities are detected. According to the Chinese Criminal Law (1997), the offense of giving a bribe is subject to prosecution only when the value of the bribe exceeds 10,000yuan, whereas for the offense of taking a bribe the threshold is half of that amount, i.e. 5,000yuan. The highest sentence for the offense of giving a bribe is life imprisonment, while for taking a bribe it is the death penalty. Bribers are not subject to prosecution if their bribe is turned down; however, bribe-solicitation, regardless of its result, is an

³¹⁰ Carolyn L. Hsu, "Political Narratives and the Production of Legitimacy: The Case of Corruption in Post-Mao China." p.52.

³¹¹ Cognitive dissonance is “one of the most influential theories” in social psychology. The gist of this theory is that when two cognitions are relevant to one another, they are either consonant or dissonant. Two cognitions are consonant if one follows the other and they are dissonant if one implies the opposite of the other. Psychologically, people feel more comfortable when their cognitions are consonant or consistent. The theory proposes that people have a motivational drive to reduce dissonance by changing their attitudes, beliefs, behavior or by justifying or rationalizing their attitudes, beliefs or behavior. Leon Festinger, *A Theory of Cognitive Dissonance* (Stanford, CA: Stanford University Press, 1957). Eddie Harmon-Jones, Judson Mills, "Chapter 1: An Introduction to Cognitive Dissonance Theory and an Overview of Current Perspectives on the Theory," in *Cognitive Dissonance: Progress on a Pivotal Theory in Social Psychology*, ed. Eddie Harmon-Jones, Judson Mills (1999).

indictable and more serious offence than passive bribe-taking.³¹² The success or failure of anti-corruption campaigns is always measured by reference to the number and the rank of the bribed officials that are convicted and punished but not by that of the bribers. Far fewer bribers than the bribed are prosecuted and punished despite the fact that each act of bribe-taking has to correspond to an act of bribe-giving.³¹³ Even when bribers are prosecuted, lighter sentences including exoneration of punishment or even withdrawal of charges are frequently offered them, if they agree to expose and to testify against the official they bribed.³¹⁴

Secondly, the moral scrutiny is stronger for the bribed than the bribers. The reason is that the public is generally more inclined to be sympathetic to and to identify with bribers, who are often perceived as victims of the predatory conduct of the officialdom in an authoritarian culture. The act of bribe-giving is more likely to gain empathy from the public and to be considered as an act induced by duress. In contrast, the bribe-taking officials are generally considered privileged, venal and greedy. Such perception is only reinforced by the governmental propaganda strategy, which tends to demonize corrupt convicts and attributes corruption to individual moral decay rather than dysfunctional institutions.

Thirdly, the bribed is expected to experience stronger cognitive dissonance compared with the bribers. Between bribers and the bribed, it is the latter that need to address their dedication to public interests and their moral excellence in public office to maintain the legitimacy of their office. Inevitably, such a moral and upright image will be debunked at the scene of corrupt exchange, which will bring about unappealing psychological experience.

Similar to the asymmetric placement of the barriers between bribers and the bribed, the bargaining powers of bribers and the bribed are unevenly distributed as well, only that this time the bribed is placed in an advantaged position. Such imbalance is primarily the result of the gap between the supply of valuable public resources controlled by a few and the demand of many for the supply of these resources.³¹⁵ In other words, there are usually more potential bribers than bribed. Hence, the bribed generally has much greater discretion in choosing his exchange parties compared to the bribers. Information asymmetry is another factor attributable to the imbalance due to the wide discretion

³¹² Chinese Criminal Law (1997). Art. 386, 383, 390.

³¹³ For example, according to The Procuratorate Daily, the numbers of persons prosecuted for bribe-taking and bribe-giving were 12:1 during Jan. 1999 - Jun. 2000 in Jiangsu Province. In Guangzhou City, the ratio was 10:1 in 2000-2001 and 6:1 in 2002. Shuming Li, "Yaobuyao Dui Xinghui 'Wangkaiyimian' [Shall We Show Leniency to Bribers?]," *The Procuratorate's Daily*, 17 Oct. 2007.

³¹⁴ Chinese Criminal Law (1997). Art.68, 390.

³¹⁵ Ren, "Institutionalized Corruption: Power Overconcentration of the First-in-Command in China."

enjoyed by officials in interpreting vague rules, regulations and inconsistent procedures prevalent in the legal and administrative system of the country. In the process of corrupt exchange this opaque state of affairs can be easily manipulated to the officials' advantages.³¹⁶

What is observed in the scenes of bribery and the process of *guanxi*-practice reflects a mutual recognition by the bribers and the bribed of the asymmetric distribution of the legal, moral and cognitive barriers and of the unequal distribution of the bargaining power between them. Pressurized by their disadvantaged bargaining position and encouraged by the lesser risk and lower possibility of legal sanction, bribers often take a proactive role in taking the initiative to communicate the corrupt intent. They are sensitive to cues and opportunities presented to them. In contrast, the bribed often choose to remain passive and responsive as an optimal strategy. However, being passive does not mean being weak. On the contrary, as this chapter has demonstrated, the bribed usually have the control of whether, at which point and to which extent he would commit himself, promise and deliver the requested service, depending on whether the exchange safety is safeguarded and whether the above mentioned legal, moral and cognitive barriers are properly dealt with.

Guanxi-practice is a trust-building process, which is designed to remove the barriers mentioned above. Regarding the legal barrier, experienced bribers carefully control the contracting process and deliberately create some time lapse between gift-giving and favor-seeking. During the corruption investigation against the deputy major of Suzhou city, who was later convicted of taking bribes worth of 100 million *yuan*, a briber confessed to the investigator that the money he gave the deputy major was a gift not attached to any specific request. The briber continued, it would be too "vulgar" if one only thought of gift-giving at the advent of a specific request.³¹⁷ By placing a chronological distance between the two acts, bribers help to loosen the causal link between bribe-giving/taking and the delivery of corrupt service, which hides the corrupt intent and at the same time generates an alternative classification of the exchange conduct as a product of an affective relationship, such as "*renqing wanglai*" (exchange of favors), rather than the materialization of the intent to abuse public power. In some regions and public sectors, officials taking cash from bribers on ritual occasions (*lijin*) has seemingly become such a normal practice that moral justification is not even called for.³¹⁸

³¹⁶ Shige Song, "Quanli Zhuanhuan De Yanchi Xiaoying: Dui Shehuizhuyi Guojia Xiang Shichang Zhuanbian Guocheng Zhong De Jingying Zaisheng Yu Xunhuan De Yizhong Jieshi [the Lapsing Effect of Power-Transfer: An Interpretation of the Elite Reproduction and Recycle in the Process of Market Transition of Socialist Countries]," *China Sociology* 4 (2005).

³¹⁷ See <http://news.sina.com.cn/c/2008-11-21/095616699381.shtml>.

³¹⁸ For example, see the policy notification issued by Anhui CCP authorities in an attempt to stop the trend of *lijin* offering and taking. http://www.ah.xinhuanet.com/xinwen/2004-01/21/content_1532929.htm

At the same time, *guanxi*-practice also solves the internal exchange safety problem for the officials. As shown in the chapter, the practice almost always starts with the favor-seekers providing gifts and other gratuities to the targeted officials, showing their commitment. The process could be lengthy and costly. The author of *Celadon* revealed that he spent 200,000 *yuan* in *guanxi*-building in the first year of his business operation.³¹⁹ Recently, an excel spreadsheet was accidentally discovered by internet users, which listed the proposed expenditure on “public relationship building (*gongguanfei*)” of a small Chinese company to bribe local officials and other stake holders in a provincial city in 2009. The total cost amounts to 1.06 million *yuan*.³²⁰ These gifts and treats serve as a “down payment”, which helps to limit the damages of possible future opportunistic behavior of the bribers for the benefit of the bribed.

Guanxi-practice also helps the bribed to overcome the moral and cognitive barriers. For example, in *Celadon*, Zhang’s premeditated acts made judge Hou’s acceptance of the liquor, the tutorship and the cash look natural rather than inappropriate. Zhang successfully replaced a context in which a gift is prohibited by prescribed formal rules with a context in which acceptance of a gift is expected, in compliance with tradition and social convention. An otherwise venal and unlawful context of bribery was transformed into one filled with sentiments of kindness, care and understanding. In the process, intent to exchange is implied and communicated through acknowledgment and endorsement of friendship, goodwill and gifts.

In this changed context, the meaning of gift is no longer that represented in the traditional gift-exchange custom. Its disguise as private inducement for illicit service is not very difficult to recognize. Firstly, such *guanxi*-practice always takes place in a principal-agent-client relationship. In other words, the gift-receiver always holds an entrusted office, mostly public office, from whom the gift-giver has obtained or expects to obtain favored treatment. Secondly, the direction of the flow of gifts is one-way traffic, namely, from the one with lower or no power and authority to the one with higher power and authority. Thirdly, the gift is no longer a “token” of friendship or affection, but bears great economic value, which far exceeds that involved in traditional gift-exchange. For example, Mu Suixin, former Mayor of Shenyang City, had accepted in two years’ time three luxury Swiss watches, one gold *shoutao* (a type of peach symbolizing longevity), 20,000 *yuan*, 60,000 HK\$ and 10,000 US\$, all presented as “gifts”, from Liu Baoyin, a corporate chief director.³²¹ Fourthly, the benefits returned to the briber is always of

³¹⁹ See http://www.csonline.com.cn/news/chsh/200608/t20060806_504840.htm

³²⁰ The spreadsheet can be found at https://spreadsheets.google.com/ccc?key=p8HQ5LYG2qBA3YU3B_gSLfA.

³²¹ Dalian City Procuratorate vs. Mu Suixin, Criminal Division, Dalian Intermediate Court [2007] No.153.

greater value than the value of the gift(s) given (otherwise, the exchange will be pointless), not at the costs of the favor-grantor but of a public collectivity – the principal.³²² For example, in the aforementioned example of Liu Maoyin, in exchange for his Swiss watches and other gifts, the favors returned to him from the mayor included the release of fifteen cars, smuggled by Liu and seized by the local police, a public procurement contract for the purchase of eight luxury cars from Liu's company and a waiver of taxation of a construction project of Liu's company.³²³

Nevertheless, guanxi-practice only functions on the condition that a mutual understanding of the evolved meanings of the gift-giving process is shared by the gift-givers and the gift-receivers. In this sense, guanxi-practice is a conspiracy between its practitioners to overcome the legal, moral and cognitive barriers by utilizing the social institutions of reciprocity and custom of gift-giving in order to facilitate the contracting process of an illicit activity. The process of gift-giving serves not only as a tacit expression of the intent to engage in corrupt-exchange but also as a demonstration of the briber's trustworthiness and commitment to the exchange relationship.

4.5. Conclusion

Coming back to the story mentioned earlier in the introduction, it is not surprising that lawyer Zhai failed to obtain endorsement of his corrupt initiative from the targeted judges by simply posting them a written proposal. Instead of seeing it as a victory of anti-corruption efforts, this chapter employs this example to present a different perspective on the understanding of corruption. As this chapter has demonstrated, failure or success of corrupt transactions is not only contingent upon the external environment but also upon the internal transactional mechanism. In this sense, lawyer Zhai failed his quest not necessarily because judges in China are not corruptible but more likely because he misunderstood how corruption was conducted. He mistook corrupt exchange for a legal market transaction and expected the targeted judges, who hardly knew him, to risk their careers by acknowledging and endorsing a corrupt conspiracy. Doing so, he skipped the trust-building process and provided insufficient commitment while manifesting his ignorance of the judges' legal and exchange safety concerns. Moreover, he failed to observe customary etiquettes and codes of conduct, which are supposed to help the judges to remove their moral and cognitive barriers to bribe-taking. His plan was poorly thought through and devoid of any understanding of how corrupt exchange operates. Lawyer Zhai's misunderstanding stems from his lack of awareness that corruption is more than bribes changing hands. The attempt to draw academic attention to this

³²² For a more comprehensive analysis of the social cost of guanxi-practice, see Ying Fan, "Guanxi's Consequences: Personal Gains at Social Cost," *Journal of Business Ethics* 38, no. 4 (2002).

³²³ *supra* note 89.

endogenous feature of corruption is an attempt to improve our understanding of how corruption operates and accordingly seek for more effective solutions to control it.

By investigating the interactions between bribers and the bribed in the process of initiating corrupt transactions, this chapter finds that the illegality of corruption compels its practitioners to resort to “alternative operating mechanisms” to break down the legal, moral and cognitive barriers so that the contracting process can proceed. Guanxi-practice functions exactly as this “alternative operating mechanism”. It facilitates the contracting process of an illegal transaction not only by minimizing the otherwise prohibitively high transactional costs created by the legal barrier, but also by removing the moral and cognitive constraints of the bribed. Gifts, its main prop, are used as an initial payment from the briber, to demonstrate the briber’s commitment, to close his distance to the targeted official and to set up an alternative social context, in which the exchange activities can be rationalized and re-defined. Performed with tactics and etiquettes, guanxi-practice seamlessly grafts a corrupt and legally unenforceable agreement upon a social setting, in which venality is neutralized and rationalized. In this re-defined social reality of corruption, an instrumental relationship is perceived or at least presentable as a reciprocal relationship based on social commitment.

Therefore, this chapter contends that corruption, in particular bribery, is not a “cold”, “impersonal” transaction, oriented at immediate short-term gain, but an exchange with a rather “human” interface between its practitioners, which is designed to prepare the bribed to overcome the legal, moral and cognitive barriers that will otherwise obstruct the exchange from taking place. It is rather ironic that contrary to the views advanced by some western China scholars, who attempt to distinguish gifts from bribes, and guanxi-practice from corruption, guanxi-practitioners are striving to blur these boundaries. The very existence of equivocation, excuses and camouflage, so characteristic of guanxi-practice, demonstrates a shared sense of awareness of the illegality and impropriety of the conduct. Were it not for this awareness, such a heavy-loaded masquerade would be meaningless. In fact, the very term of “guanxi-practice” is a euphemism, used to conceal the confrontation with the “unsettling topic” of corruption.

This chapter has demonstrated how the social and cultural institution of “guanxi-practice” has “smoothed” the otherwise cumbersome initiating phase of the contracting process of corrupt exchange. However, it only marks the start of the contracting process. In the next two chapters, I will explain how corrupt service is delivered by judges or court officials in the litigating process, which lies in the center of the contracting process, namely, the contractual performance phase.

