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Bribery or gift exchange? How renqing plays a role in corruption crimes in China

Shuo WANG
Associate Professor, School of Humanity and Law, Beijing University of Chemical Technology, China.

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*Corresponding Author: Shuo WANG, Associate Professor, School of Humanity and Law, Beijing University of Chemical Technology, China.
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Abstract

The traditional gift exchange in China is based on renqing (personal feelings) and is a means of developing and maintaining renqing. However, sending a gift to a public official is intended to profit from his powers rather than merely to express sentiments, and is therefore a typical bribery. According to the rules of gift exchange in China, the acceptance by a public official of a gift whose value far exceeds his official wages may constitute corruption and should be treated as a crime, because the obligation to repay with power in the future has thereby been established. Eliminating the element of "in return for securing benefits" from Article 385 of the China Penal Code could not reduce the misconduct of officials who accept gifts. Considering the existing structure of crimes in the China Penal Code, it is suggested that a new crime of accepting gifts worth more than a certain amount should be established in the Code.

Keywords: Bribery; Corruption Crimes; Gift Exchanges; Renqing

Introduction

Since the 18th National Congress of the Communist Party of China, the Chinese government has stepped up efforts to crack down on corruption among public officials. The Report of the 18th National Congress of the Communist Party of China (CPC) proposed "to comprehensively promote the rule of law" and to make the fight against official corruption a focus of its work. Multiple rounds of inspections (xunshi) have been conducted by the Central Leading Group for Inspection Work (zhongyang xunshizu) of the Commission for Discipline Inspection of the Central Committee of the CPC (zhongguo gongchandang jilv weiyuanhui), and various corruption cases have been prosecuted. Until April 2021, there were 212 officials of or above provincial and ministerial level (shengbuji) who had been sentenced for crimes of corruption, including state-level officials (guojiaji) such as Zhou Yongkang, the former member of the 17th Political Bureau of the CPC Central Committee [1]. The feedback of the Central Leading Group for Inspection Work pointed out that the phenomenon of "renqing corruption", that is, accepting Chinese traditional monetary gifts (shoushou lijin) in festivals and other special occasions such as weddings and funerals, is widely observed in many inspection areas and units (danwei) [2]. Although the *Regulations on the Disciplinary Actions of the Communist Party of China and the Guidelines for the Integrity of the Communist Party* Members of the Communist Party of China contain specific provisions on the acceptance of traditional monetary gifts by members and cadres of the CPC, the Penal Code of China does not clearly address this act, which has given rise to a controversy in judicial practice over whether the misconduct of accepting traditional monetary gifts should be considered a crime.

According to Article 385 of the Penal Code, besides the act of extorting money and property from another person, the act of accepting money or property can be recognized as the crime of bribery if it satisfies the additional element of "in return for securing benefits". Both the *Direction on Register of Cases of People's Procuratorates (Trial)* issued by the Supreme People's Procuratorate on September 16, 1999, and the *Summary of Symposium on Economic Crime Cases Handled by National Courts* issued by the Supreme People's Court on November 13, 2003, provide that the process of "in return for securing benefits" comprises three steps, namely, promising to secure benefits, implementing the securing of benefits and accomplishing the securing of benefits. As long as either one of the three steps has been carried out by the public official, the element of "in return for securing benefits" is satisfied. In relation to the promise to secure benefits, these instruments provide that where a public official accepts traditional monetary gifts knowing that the giver has a specific request for benefits, the acceptance is considered a promise to secure benefits even if the official makes no explicit response at the time.

Therefore, no matter in ordinary days or special occasions such as festivals, weddings or funerals, if a public official merely accepts traditional monetary gifts from others in an ordinary manner and

without any request by the giver, it is impossible to conclude that the acceptance constitutes the crime of accepting bribes. Even if it can be recognized as a crime of accepting bribes, how to determine the amount of bribes is also a difficult problem for the judiciary. For example, suppose that someone has given traditional monetary gifts to a public official continuously during festivals without any request for benefits, and that a request is finally made on the last occasion. Although the conduct then meets the requirement of "in return for securing benefits" and can be considered a crime of accepting bribes, the question is whether the amount of the bribe should be determined only by the value of the gifts given with the definite request, or by the entire amount accepted by the official, including the earlier gifts which should be considered an "investment of renqing".

Some scholars have already been aware of this problem [3-6]. Liu [4] argued that criminalization of accepting Chinese traditional monetary gifts would extend the application scope of criminal punishment which may affect the stability of the civil service. However, this discussion within a small scope did not attract the attention of legislators and the authorities until the Central Leading Group for Inspection Work revealed how serious this problem is. In particular, before the announcement of the draft of Criminal Amendment IX, there was news that this crime would be added to the Penal Code through the amendment [7], which made the topic a focus of academic debate [8]. The proposal to create a new crime has been supported by many scholars [3, 6]. However, this appeal has not been accepted by all scholars, and many counter-arguments have been advanced [9-11]. If the act is indeed a form of corruption, why should it not be punished by the criminal law [9]? Che [12] and Wang [10] are worried that the misdemeanor might be a legal loophole for mitigating the acts that should have been punished as bribery. Wang and Ke [11] and Dan [13] believe that the element of "in return for securing benefits" is the key reason for the dilemma and should be eliminated from Article 385, since neither the United Nations Convention against Corruption nor the legislation of many countries requires this element for the crime of bribery. The intense dispute surrounding Criminal Amendment IX, which was originally intended to establish the crime of accepting gifts, ultimately led to the issue being omitted altogether, even from the drafts of the three deliberations.

The aim of this article is to solve this dilemma through a thorough analysis of the nature of traditional monetary gifts and the operational mechanism of the gift exchange from the perspective of Chinese etiquette. Section 2 reviews the existing scholarship on gift exchange, the legal debate on criminalizing the acceptance of monetary gifts and comparative legal materials, and identifies the dialogue of this article with that research. Sections 3 and 4 analyse the modes of gift exchange and the roles of the parties, and classify the givers and receivers according to the nature of the public power involved and their social relationship foundations. Section 5 identifies the dilemma explicitly and proposes an operable value-based standard for distinguishing renqing-based gift exchange from bribery. Section 6 argues for a new crime of accepting gifts in the Penal Code. Section 7 reflects critically on the limitations and boundary conditions of the analysis. Section 8 concludes.

Literature review

Gift exchange, renqing and reciprocity in China

The study of gift exchange has a long intellectual pedigree in anthropology and social theory. Mauss [14] famously argued that in archaic societies gift-giving is a "total social phenomenon" that creates a triple obligation to give, to receive and to reciprocate, thereby binding persons and groups into enduring relations of mutual dependence. Malinowski [15] observed that reciprocity operates as a fundamental mechanism of social order in societies in which law is not separated from kinship and friendship, a point of direct relevance to the Chinese context discussed below. Building on this tradition, Blau [16] showed that exchange relations serve as a mechanism of social regulation and group formation even in modern societies, and Liebersohn [17] traced the global history of the gift as an idea that repeatedly returned to the centre of Western social thought. More recently, Gill and Thomas [18] argue that gift giving is dynamically efficient: practices involving sacrifice, reciprocity, publicness and ritual generate generalized trust, which explains why reciprocal exchange persists as a central institution even in market economies. In the Chinese context, Fei [19] characterized Chinese social structure as a "differential pattern" (chaxu geju) and Chinese society as an "acquaintance society", in which interpersonal conduct is organized around concentric circles of intimacy rather than universal rules. Yang [20] demonstrated that the "art of social relationships" (guanxi) is enacted through gifts, favours and banquets, and that the moral debt of renqing lies at the core of this art. Huang [21, 22] and Zhai [23, 24] further theorized renqing, mianzi and the norm of repay (bao) as the normative grammar of Chinese social life, while Song [25] documented the logic of favours in contemporary rural China.

Recent empirical work confirms the continuing vitality of these institutions and, importantly for this article, their connection to the boundary between gifts and bribes. In three experimental studies with Chinese participants, Li, Sun and Taris [26] found that a present was significantly more likely to be perceived as a bribe rather than as a gift when the giver and the recipient were connected by a relationship of high "guanxi utility", when the present had high economic value, and when the motivation for giving was instrumental. These findings provide systematic evidence for the two variables — the value of the gift and the purpose of the exchange — that the present article treats as the decisive criteria for distinguishing renqing-based gift exchange from bribery. They also suggest that ordinary social perception already operates with a threshold logic similar to the one proposed below. Complementary laboratory evidence shows that social ties themselves can induce favouritism in the allocation of rewards, and that such relationship-based favouritism is replaced by bribe-based corruption once bribes become possible [27]. This suggests that a strong renqing bond and a bribe operate as substitutable channels for influencing official decisions, so that the boundary between gift and bribe cannot be drawn by reference to the relationship alone.

The legal debate on criminalizing the acceptance of monetary gifts

Within Chinese criminal law scholarship, the question of whether the mere acceptance of traditional monetary gifts (lijin) by public officials should be criminalized has generated a long-standing controversy. Early contributions examined the function of the element of "in return for securing benefits" in Article 385 and its judicial extension [4, 28], and the debate intensified after the Central Leading Group for Inspection Work identified "renqing corruption" as a widespread phenomenon [2]. A first wave of scholarship proposed a new crime: Zhao [6] and Hao [3] argued that the existing structure of bribery could not capture the act of accepting monetary gifts without a specific request, and Sun and Sun [7] maintained that the reciprocity behaviours of public officials should be criminalized. A second wave objected. Shu [9] questioned the logic of leaving a recognized form of corruption outside the criminal law. Che [12] and Wang [10] warned that a separate, more lenient crime might become a legal loophole that mitigates acts which should already be punished as bribery. Wang and Ke [11] and Dan [13] argued instead that the element of "in return for securing benefits" should be eliminated altogether, since neither the United Nations Convention against Corruption nor the legislation of many countries requires this element. The controversy peaked before the deliberations on Criminal Amendment IX, which originally intended to establish the crime of accepting gifts; in the end the issue was not mentioned at all in the amendment.

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The debate has continued with renewed sophistication after 2020. Fu [29] and Ma [30] analysed the systematic status of "securing benefits for others" in relation to the legal interest protected by the crime of bribery. Jiang [31] and Ji [32] proposed that the legal interest of bribery is best understood as public trust in the incorruptibility of official functions, a conception that supports punishing "emotional investment" even in the absence of a specific request. Lao [33] reconceptualized the actus reus of bribery, arguing that the element of "securing benefits for others" is a subjective motivational element rather than part of the conduct. Luo and Chen [34] systematized the three elements of the "emotional investment" provision of the 2016 judicial interpretation, namely the object element, the amount element and the official-power element. Ma [35] interpreted that provision as a legal presumption that extends the reach of bribery from actual harm to concrete endangerment, and described the acceptance of property beyond the scope of ordinary courtesy as assuming an obligation to repay with power. Wang and Xie [36] examined the reasoning divergence across 300 judgments concerning "possibly affecting the exercise of official power", and Cao and Li [37] analysed the remaining judicial difficulties of emotional-investment bribery. Liu [38], from a criminal-policy perspective, urged the equal and parallel punishment of offering and accepting bribes under the policy of investigating bribery and its acceptance together. Notably, none of these studies resolves the specific dilemma analysed here: the act of accepting monetary gifts without any request, and without any ascertainable link to a specific official duty, remains largely outside the reach of Article 385, and the 2016 judicial interpretation reaches it only within the narrow circle of subordinates and administratively managed persons.

Comparative legal scholarship

Comparative materials show that most legal systems criminalize the acceptance of benefits by officials in connection with their duties without requiring proof of a specific quid pro quo. Section 331 of the German Penal Code punishes a public official who "demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty" [39]. Article 197 of the Japanese Penal Code punishes a public employee who "accepts, solicits or promises to accept a bribe in connection with his/her duties" [40]. Section 2 of the Bribery Act 2010 of the United Kingdom criminalizes the acceptance of a financial or other advantage where the acceptance itself constitutes the improper performance of a relevant function [41]. In the United States, the debate triggered by the Supreme Court's decision in McDonnell concerned the breadth of the "official act" requirement, but the quid pro quo framework remains narrower than the German and Japanese approach [42]. The Supreme Court's subsequent decision in Snyder v. United States [43] narrowed this framework further, holding that the federal statute at issue does not criminalize after-the-fact gratuities to state and local officials, while expressly distinguishing such rewards from corrupt payments agreed upon before the official act. Scholarship on corruption governance emphasizes that legal rules cannot succeed without institutional enforcement capacity [44]. More recent work emphasizes that corruption is frequently sustained by social norms that formal legal rules alone cannot dislodge, so that effective anti-corruption strategies must also address the normative expectations surrounding gift-like exchanges [45]. The comparative picture suggests that China's requirement of "in return for securing benefits" is stricter than the approach of most comparable systems — a point that both supporters and opponents of criminalization have invoked in the domestic debate.

The dialogue of this study with existing research

This article joins the debate from the perspective of Chinese etiquette and social theory rather than from doctrinal analysis alone. Existing scholarship has asked whether and how to criminalize the acceptance of monetary gifts, but it has not explained, from within the logic of gift exchange itself, why a public official who accepts a gift of excessive value has already assumed an obligation to repay with power, and why that obligation — rather than a specific request — is the proper touchstone of criminalization. By distinguishing expressive, instrumental and mixed modes of gift exchange, by classifying the parties to the exchange according to their social relationship and the nature of the public power involved, and by deriving an operable value-based standard from the internal rules of Chinese gift exchange, this study aims to supply the missing link between the sociology of renqing and the criminal law doctrine of bribery. It also responds to the empirical finding that ordinary Chinese citizens already classify high-value, instrumentally motivated giving as bribery [26], and to the doctrinal position that "emotional investment" bribery should be treated as concrete endangerment of the incorruptibility of official functions [35].

Traditional gift exchanges in China

Renqing in China

In recent years, a strange phenomenon has emerged in many rural areas of China that may make people feel embarrassed. After the death of an elder, the family's descendants sometimes hire a striptease performance for the funeral in order to attract the villagers [10]. An ordinary funeral performance such as professional mourning (kusang) costs only about one thousand yuan (roughly 150 dollars) in China, whereas a striptease performance may cost three or four thousand yuan (roughly 450 to 600 dollars). Many people are puzzled by this phenomenon. Why do the descendants organize such an obscene performance — a manifestation of an extreme collapse of the social ethos — on an occasion supposed to pay tribute to the ancestors? It is undeniable that the phenomenon is indecent, but what is the fundamental reason? Is it really caused by the collapse of the social ethos?

Since a striptease performance costs much more than an ordinary funeral service, only the more affluent families, rather than all rural villagers, can afford it. Moreover, such a performance usually takes place in the streets or in the open air in front of the house where the funeral is to be held. There is no charge for the audience, and no money is collected from them. The villagers who organize the performance cannot profit from doing so. As the saying goes, it is "losing money to earn prestige". The purpose of organizing a striptease show is to attract more people to get together around the house. The more people come, the more decent the funeral is. Because more people attending the funeral means that the deceased had many friends and a broad social network of good relationships in the village. In the contemporary Chinese countryside, funeral performances are increasingly designed with exciting content, lively scenes and novel forms in order to attract audiences and gain face (mianzi) and popularity; as a result, vulgar and obscene performances have continuously developed and spread widely [25]. This way of thinking — driven by renqing and sensitive to mianzi — gives rise to such deformed phenomena. China seems to be a country of renqing, Chinese society a society full of renqing, and Chinese people always proud of the strong renqing [22], which is the foundation and essence of gift exchange among the Chinese.

Fei [19] defined the Chinese social structure as a "differential pattern" (chaxu geju) and positioned the Chinese society as an "acquaintance society" (shuren shehui). The daily behaviour of Chinese people is based on this mindset of acquaintances. With the development of Chinese society, the acquaintances defined by Fei [19] as based on blood and geopolitical ties (diyuan, xueyuan) have gradually expanded to include relationships based on blood, geography, friendship (youyuan), career (yeyuan) and academic affiliation (xueyuan). Modern Chinese society is therefore also called

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a "society of renqing" (renqing shehui). Gift exchange in China generally occurs between people who are familiar with each other. The gifts sent at festivals, weddings, funerals and other special occasions are instruments for maintaining and developing renqing among acquaintances. Elements of mutual trust and obligation, which are part of the notion of familiarity, pave the way for guanxi by ensuring a sympathetic ear to guanxi proposals [20]. For lack of these two factors, strangers will not exchange gifts and will not develop renqing. However, in the modern Chinese interpersonal network, internal groups do not exclude external groups but expand outward through them [24]. To expand the relationship between two strangers, it may be necessary to introduce them through a middleman with whom both parties are familiar.

Gift exchange is not a remnant of a backward society but a special form of spontaneous social organization alongside the formal organization based on state power. When people are thrown together, and before common norms, goals or role expectations have crystallized among them, the advantages to be gained from entering into exchange relations furnish an incentive for social interaction, and the exchange processes serve as a mechanism for regulating social interactions, thus fostering the development of a network of social relations and a rudimentary group structure [16]. Gift exchange has an inevitability of its own, and some of its common rules are shared by the whole world. Especially in communication between different cultures, the more unfamiliar the cultures are to one another, the greater the importance of the gift, as verbal language becomes difficult to use and gestures fail to convey intentions [17]. However, with the development of society, the forms of gifts vary from country to country, and the interpretation of the term "gift" should be correspondingly broader. For example, inviting others to dinner or coffee, donating money to a university, and so on, could all be regarded as gifts.

The obligation of repay in traditional Chinese gift exchanges

The norm of repay (bao) prevails in all human societies and is the basic moral law of any culture [21]. Although China regards itself as a state of etiquette, and although there is a saying that "do not expect repayment when you give someone a gift", gifts in China are not purely gratuitous. Accepting the gift means accepting an obligation to repay the giver, and the giver is full of expectations of repayment from the outset. Not only does this obligation of repayment not violate Chinese traditional moral values, it is also regarded as a requirement of Chinese etiquette, namely, "never forget to repay when you accept a gift from others".

In Chinese, the word for gift (liwu) consists of two parts, namely etiquette (li) and item (wu). It can thus be interpreted literally: in the Chinese context, a gift is an item that conforms to the requirements of etiquette. How can an item meet the requirements of the etiquette to be a gift? The classic The Book of Rites: Qu Li states clearly that the value of propriety (li) lies in reciprocity. "If I send out a gift and nothing comes in return, that is contrary to the propriety; if the thing comes to me, and I give nothing in return, that also is contrary to propriety". It illustrates that one should respond to the goodwill of others: accepting the goodwill of others without any response does not meet the requirements of etiquette, and acting in good faith towards others without receiving any response likewise violates etiquette. According to the requirements of etiquette, items can be considered gifts only if they carry the obligation of repay on the part of the recipient. Thus, in China, a gift also implies an obligation of repay, and gift exchange requires the recipient to become a gift giver in the future.

Etiquette has penetrated the daily life of Chinese people as a generalized norm of behaviour in Chinese society [24], and has become the standard and requirement for maintaining and developing renqing. The same is true for the gift exchange in China. Although few people explicitly ask for repayment when giving gifts, the obligation of repay is constantly practised in Chinese gift exchange and has become an internalized requirement of interpersonal communication. For example, at a Chinese wedding, the gift given to the newly-wed couple matters greatly to the invitee. The bride (A) plans to invite her friends to her wedding. One of them, B, is already married but either did not hold a banquet or held one without inviting A; A will then very likely not invite B to her wedding, because B did not receive a gift from A when she married. This is not revenge against B for the earlier incident, and B would not be angry either. The truth is that if A invited B to her wedding, B would need to give a gift to A, yet A would have no similar opportunity to reciprocate, since B is unlikely to marry again. For the same reason, in ancient China some poor Confucian scholars (ru) often refused all banquet invitations because they could not afford a proper repayment to the inviter [20].

Giving a gift means that the giver makes a request to develop a relationship with the other person, while accepting the gift means accepting the giver's request and agreeing to assume the obligation of repay, which marks the beginning of the renqing interaction between the two parties. In the future, the recipient repays the giver with a gift and becomes the new gift giver, while the former giver becomes the new recipient, accepting a new obligation of repay in the second round of gift exchange. Renqing between the two parties gradually develops through continuous rounds of giving and repaying. If a person refuses to accept the gift, this means that he refuses to repay, and the subsequent rounds of gift exchange cannot proceed, making it impossible to develop and maintain renqing between the parties.

The rules of repay in traditional Chinese gift exchange

The obligation of repay in Chinese gift exchange is not without standards. To develop or maintain renqing between the two parties effectively, the repayment must satisfy certain rules.

Rule No.1: Repaying a gift of higher value

The saying "give a plum in return for a peach", which originates from the chapters "Daya" and "Yi" in The Book of Songs, illustrates a ritual of friendship and gift exchange for the Chinese people. In fact, the chapter "Mugua" is more widely read than the chapter "Yi", and the idiom "give a jade in return for a fruit", derived from "Mugua" in "Guofeng • Weifeng", more clearly reflects the rule of traditional Chinese gift exchange. The original lines are

> "I will return you a jade if you give me a melon, which is not just for thanks but for our friendship forever. I will return you a jade if you give me a peach, which is not just for thanks but for our friendship forever. I will return you a jade if you give me a plum, which is not just for thanks but for our friendship forever"

It shows not only that the purpose of repayment in gift exchange is to cherish the friendship expressed by the gift giver, but also that the value of the returned gift should exceed the value of the gift received. Other well-known Chinese sayings also confirm this rule, such as "you honour me with a foot; I honour you with a yard" [46] and "receive a drop of generosity; repay like a gushing spring".

When the Chinese exchange gifts in daily life, they actually fulfill this rule of repay. Take Chinese marriage as an example. In some parts of China, before the wedding, the bridegroom's family should send betrothal gifts to the bride's family. The bride's family should prepare a dowry for the bride to bring to the bridegroom's family. The value of the dowry should be higher than that of the betrothal gifts; otherwise the arrangement does not meet the requirements of etiquette and the bride will be looked down upon by the bridegroom's family. With regard to the monetary gifts given by relatives and friends, both families keep a detailed record of the gifts received at the wedding banquet, so that they can return monetary gifts to these

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relatives and friends when the latter hold weddings or similar celebrations in the future. As a general rule, the amount of the returned monetary gifts must be a little higher than what one accepted at the earlier banquet; otherwise one will be criticized by relatives and friends as someone who "does not know how to behave like a person" or "does not understand renqing".

By giving a gift and benefiting others, the giver occupies a position of moral advantage, while the recipient, by accepting the gift, is placed in a morally disadvantaged position and carries the so-called "debt of renqing" (renqingzhai). To repay this "debt of renqing", a gift of equal value would suffice. However, repaying with a gift of equal value amounts to "counting" (suanzhang) and "liquidation" (qingsuan). "In the context of Chinese interpersonal interactions, accounting or liquidation implies breaking off the relationship, since if people do not owe renqing to each other, they have no need of further interactions in the future"[19]. It is impossible to maintain or deepen renqing between the two parties if neither the giver nor the recipient owes the other a "debt of renqing". In order to repay the "debt of renqing" imposed by the giver and to place himself in a position of moral advantage, burdening the giver with a new "debt of renqing", the recipient returns a gift of higher value. After accepting the returned gift in the first round of gift exchange, the original giver's role changes from creditor to debtor of the "debt of renqing"; he will become the gift giver again in the next round, with an obligation to repay a gift of higher value. Through this process, continuous rounds of gift exchange proceed. As the value of the gifts continues to increase, renqing between the two parties constantly escalates.

Rule No.2: Considering the social statuses between two parties

In practice, it is normally the person with lower social status who gives gifts to the person of higher social status, so as to initiate continuous gift exchange between the two. This is because there is an interaction between the individual's social status and moral status. Social superiority offsets moral inferiority, and social advantage cancels out moral disadvantage. Therefore, in order to burden the other person with a "debt of renqing", the value of the gift must also take into account the difference in social status between the two sides. The higher the social status of the person is, the more generous the giver needs to be. The moral superiority created by the more valuable gift tends to ensure that the socially superior recipient will bear a "debt of renqing". Through this tactical movement of moral subordination in the art of guanxi, donors are able to influence a symbolic reversal of the larger social hierarchy, a reversal with material consequences [20].

Rule No.3: Repaying at the rightful time

In addition to the rule on the value of the returned gift, Chinese traditional gift exchange requires a certain time interval for repayment: there are no fixed rules for the exact time, and repayment does not tend to be immediate. Although bearing the "debt of renqing" makes the recipient morally inferior, the long-term sustainable development of renqing in essence requires deferring repayment of the debt. The cultivation of renqing requires the continuation of the "debt of renqing", which gives the giver sufficient time to make demands or requests to the recipient for repayment. The willingness to bear the other's "debt of renqing" reflects a stable relationship and sustained confidence between the giver and the recipient, which are the basis for the continuous development of renqing between the parties. An immediate repayment makes gift exchange between the two parties resemble a spot transaction rather than an exchange of sentiments. Renqing between the two parties does not have sufficient time to develop and mature in such a short-lived exchange. The unwillingness to carry the "debt of renqing" imposed by the other person would leave renqing no space for further development.

The nature of accepting monetary gifts by public officials

Different modes of gift exchanges

As mentioned above, traditional Chinese gift exchange is based on renqing, and its purpose is to maintain and develop renqing between the giver and the recipient. Figure 1 shows the structure of the traditional Chinese gift exchange.

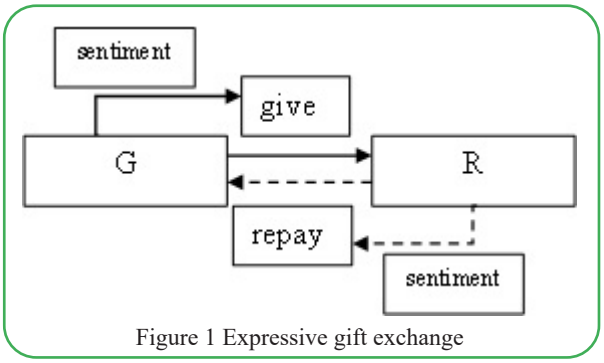


Figure 1 Expressive gift exchange

Similarly, the crime of accepting bribes stipulated in Article 385 of the China Penal Code has the same give-repay structure, as shown in Figure 2, but with one key difference: the element of "in return for securing benefits". Although the structures are similar, there are obvious differences between the two give-repay mechanisms: the core driving force of the former is renqing, while that of the latter is benefits. Since bribes can also take the form of gifts, the traditional Chinese gift exchange can be called an expressive gift exchange, and the crime of accepting bribes an instrumental gift exchange, in order to distinguish these two similar give-repay structures.

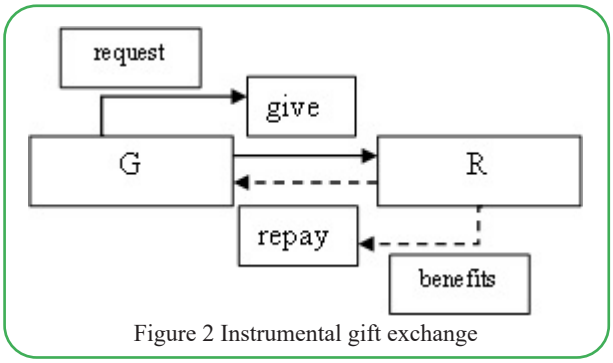


Figure 2 Instrumental gift exchange

Firstly, the relationships between the giver and recipient are different. In traditional Chinese gift exchange, the giver and the recipient are normally relatives or friends with a strong renqing connection. The interactions between the two parties are exchanges of sentiments, and the recipient will repay the relative or friend with a gift in the future. In the crime of accepting bribes, the giver and the recipient are generally strangers, and the purpose of the interaction is the exchange of benefits. The recipient, as a power holder, repays the giver with the benefits the giver requests.

Secondly, the purposes of the interactions between the giver and the recipient are not the same. In the expressive gift exchange, the purpose is to promote the renqing between two persons. The obligation of the recipient is only to repay with a gift expressing sentiment. In the instrumental gift exchange, the gift carries the giver's request for benefits. The recipient takes advantage of his social position to secure benefits for the giver, thereby fulfilling his obligation of repay. The parties to the exchange do not expect any sentimental exchange between them in the future [47].

Thirdly, the meaning of the value of gifts differs between the two modes. In the expressive gift exchange, the gift is a simple item of sentiment, and its value simply reflects the degree of development of

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of renqing between the two parties. The more valuable the gift, the stronger the renqing between the giver and the recipient. In the instrumental gift exchange, by contrast, the value of the gift reflects the expected extent of the return of power. The more valuable the gift, the stronger the giver's desire to obtain a greater response of power from the recipient.

Thus, the core concern of scholars about the criminalization of accepting monetary gifts by public officials is the ambiguous scope of criminalizing the act of accepting gifts. It is improper either to treat traditional Chinese reciprocity as a crime or to decriminalize an act that should be punished as bribery.

On the one hand, the essence of the concern about improperly criminalizing traditional Chinese reciprocity is that doing so would bring expressive gift exchange within the scope of the criminal law, excessively invading people's social life and interfering with the exchange of sentiments among the Chinese. "If we mean by law a body of rules enforced by an authority independent of personal ties of kinship and friendship, such an institution is not compatible with their social organization" [15]. As a form of spontaneous social organization, gift exchange is inevitable, especially in China. It is unrealistic to forbid public officials from engaging in gift exchange altogether in their social life. On the other hand, instrumental gift exchange should be effectively punished, and the acts of trading power for money severely cracked down on, because personal repayment is likely to result in favouritism [20].

However, as mentioned above, there are significant differences between the expressive and the instrumental gift exchange in terms of the relationship between the parties, the purpose of the interaction and the time of repayment. It may seem a simple task to distinguish these two modes of gift exchange — in other words, traditional reciprocity behaviour and bribery. Why, then, has the dispute over the criminalization of accepting monetary gifts caused such controversy? The reason is that in practice the two modes of gift exchange can be mixed.

Deciding the nature of the gift giver

Compared with the expressive gift exchange, the instrumental gift exchange, which includes a request for benefits, resembles an ordinary commodity transaction. However, this kind of transaction is often scorned by public officials — power holders of the educated upper class — which makes a purely instrumental gift exchange difficult for them to accept. Moreover, it is too easy for the judiciary to identify a purely instrumental gift exchange as bribery, which is also a strong deterrent to public officials. In order to avoid these unfavourable factors and to make the instrumental gift exchange psychologically acceptable to public officials, the gift giver covers it with a veneer of renqing, hiding its bare trading features so that it comes to resemble the expressive gift exchange with its exchanges of sentiments.

The gift giver gives up proposing a request for benefits at the moment of giving the gift to the official; instead, he turns to maintaining a long-term relationship. Before any request for benefits is proposed, a series of gifts is given without any request for benefits, on festival days such as Chinese New Year and on special occasions such as weddings and funerals — occasions used by the Chinese to maintain renqing — rather than on ordinary days of no special significance. In this way, the direct link between the gift and the benefits is intentionally weakened and disguised, so that the gift is regarded as an item of renqing exchange between the two parties. The essence of its instrumental character is perfectly concealed by the form of the expressive gift exchange. These occasions are especially suitable for deploying guanxi gift-giving because the instrumental nature of the gift is submerged in its renqing features, and appealing to qing is often a much more effective way of indebting someone [20].

Moreover, conducting the instrumental gift exchange in the form of an expressive gift exchange can deliberately extend the recipient's time of repayment and increase the possibility and richness of the repayment. The two parties create an opportunity to establish a long-term renqing relationship through this extended courtesy. As in gift-giving in which the instrumental nature of the gift must be masked, the extension of the time before repayment emphasizes the strength and continuity of the personal tie rather than the objects or favours exchanged through the tie [20].

Determining the repay role of the gift receiver

Everyone plays many different social roles in different circumstances in daily life. One person may play the role of a leader in his working department. When he gets off work and meets someone familiar, he is a friend. When he returns home, he is a father to his children and a son to his parents. A leader, friend, father and son here are all the social roles he plays in his daily life. The social role is a set of rights and obligations that are consistent with people's social status and identity. It is the behavioural expectation of people with specific identities and forms the foundation of social groups or organizations [48]. People are expected to play the appropriate social role on different occasions; otherwise it will undermine their normal lives. For example, when interacting with friends, one should play the role of a friend; if one mistakenly plays the role of a leader, interpersonal communication is likely to suffer and the friendship to be damaged. The mismatch between the social role one is supposed to play and the role actually played leads to conflicts between the corresponding rights and obligations and actual behaviour.

As mentioned above, the relationship between the giver and the recipient differs across the modes of gift exchange, which leads the recipient to play different roles in the different modes. In the expressive gift exchange, the recipient is an acquaintance with strong renqing with the giver; in the instrumental gift exchange, he is a power holder without renqing. Because the instrumental gift exchange proceeds under the camouflage of the expressive gift exchange, a special relationship exists between the giver and the recipient: more familiar than that of the instrumental exchange, yet less so than that of the expressive exchange. The two parties know each other and share a certain degree of renqing, but the relationship is not as deep as that within the primary social group, where sincerity can be expressed at will [47]. The recipient appears to repay in the role of an acquaintance for the purpose of renqing exchange, but in essence he may play the role of a power holder who takes advantage of his position to secure benefits for the giver as the repayment. Public officials, as holders of power, are expected to act in accordance with the responsibilities and norms required by their office, which may conflict with the role of acquaintance and make it difficult to abide by the norms and act rightfully according to the duties and responsibilities determined by that role [23].

Therefore, a new mixed mode of gift exchange emerges. In this gift exchange mode, the gift accepted by the recipient is not simply an expressive gift, nor an instrumental one. It is a mixed mode of exchange that achieves an instrumental purpose concealed behind the form of an expressive gift. At the same time, the role in which the recipient repays is that of a power holder disguised as an acquaintance. Specifically, the manner of giving gifts in this mode resembles that of an expressive gift exchange, while the manner of the desired repayment is the same as that of an instrumental gift exchange, as shown in Figure 3.

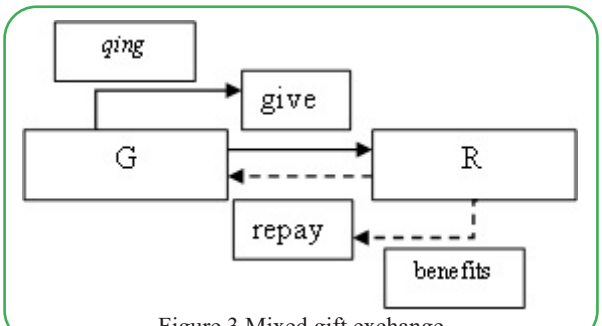


Figure 3 Mixed gift exchange

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A typology of gift givers and gift receivers

The preceding analysis distinguishes modes of gift exchange by the relationship between the parties, the purpose of the exchange and the value of the gift. To make the criminalization proposal below targeted and self-consistent, it is necessary to classify the parties themselves according to the nature of the public power involved on the side of the receiver and the social relationship foundation on the side of the giver.

On the side of the giver, five types can be distinguished. G1 comprises family members and close friends whose relationship with the official rests on deep renqing and is independent of the exercise of official power. G2 comprises ordinary acquaintances within wider social networks, such as colleagues, neighbours and fellow townsmen, with whom the official maintains a limited but genuine renqing relationship. G3 comprises subordinates and persons under the administrative management of the official, whose relationship is structurally subordinated to his power. G4 comprises business counterparts and other persons whose interests depend on the official's discretionary or supervisory power; their relationship with the official is power-dependent even where a veneer of friendship exists. G5 comprises collective or institutional givers, such as work units (danwei), associations and companies, whose gifts are typically channelled to the official qua office holder.

On the side of the receiver, four types can be distinguished according to the nature of the public power held. R1 comprises officials with direct discretionary power over scarce resources, such as approvals, procurement and contracts. R2 comprises officials with supervisory, regulatory or enforcement power, such as inspectors and disciplinary officers. R3 comprises officials whose power is indirect or influence-based, such as coordinators and intermediaries who can exercise influence over other public bodies. R4 comprises officials whose duties have no meaningful connection with the giver's interests, such as those in ceremonial or purely internal roles.

The criminalization-relevant combination is the pairing of giver type and receiver type. When a G1 or G2 giver exchanges gifts with an R4 receiver, the exchange is presumptively expressive, however frequent it may be. When a G3 or G4 giver gives gifts to any power-bearing receiver (R1, R2 or R3), the value threshold proposed below should be applied strictly, because the relationship foundation is power-dependent and the instrumental potential is high. This is consistent with recent evidence that social proximity and network centrality sustain implicit favour exchanges between citizens and public officials, so that favour-based and payment-based corruption rely on the same enforcement mechanisms [49]. The clearest case for the proposed crime is a G3 or G4 giver giving gifts above the value threshold to an R1 or R2 receiver without any specific request; in such cases the official has accepted an obligation to repay with power even though no request has been articulated. Conversely, a G1 giver's customary gifts to a power-bearing receiver should remain protected within the limits of normal courtesy, unless the value exceeds the threshold and the relationship cannot plausibly support it. This classification also refines the scope of the 2016 judicial interpretation, which currently reaches only the G3 category of subordinates and administratively managed persons, leaving G4 givers outside its reach.

The dilemma and its solution: the value of gifts as an operable standard

The dilemma

As mentioned above, under Article 385 of the China Penal Code, the extortion-type bribery crime does not require the element of "in return for securing benefits", whereas the acceptance-type requires this element for conviction. Thus, for a passive act of acceptance, the key question is whether a public official who accepts traditional monetary gifts can be recognized as accepting bribes, which depends on whether he will secure benefits for the giver in return in the future. Specifically, can the judiciary confirm that the public official has promised to secure benefits for the giver?

How are the expressive gift exchange and the mixed gift exchange, which both take the form of the expressive exchange, to be distinguished? In practice, one may indeed give a monetary gift to a close relative or friend who happens to be a public official. Is this a purely expressive gift exchange expressing sentiment, or a mixed gift exchange that achieves benefits behind the form of an expressive exchange? What is the standard of distinction? To respond to this dilemma rooted in Chinese etiquette, the rules of Chinese etiquette are the key, and the value of the gift provides the answer.

The dilemma is not hypothetical. In a recent disciplinary case analysed by the Central Commission for Discipline Inspection, a deputy secretary-general of a municipal people's congress repeatedly received shopping cards worth a total of 18,000 yuan from private entrepreneurs over a period of ten years; because no specific request accompanied the gifts and the official was not in a subordinate or administratively managed relationship with the givers, the conduct was classified as a disciplinary violation under Article 97 of the Regulations on Disciplinary Actions of the Communist Party of China rather than as the crime of accepting bribes [50]. The case illustrates the two structural limits of the existing law: the element of "in return for securing benefits" cannot be established without a specific request, and the "emotional investment" provision of the 2016 judicial interpretation applies only to subordinates and administratively managed persons, leaving the far more common relationship between officials and private entrepreneurs outside its scope. The dilemma, in short, is that an act which the public regards as corruption in the making escapes the criminal law whenever the instrumental purpose is concealed behind renqing.

The solution: an operable value-based standard

That one must repay in any kind of gift exchange is a duty universally recognized in the Chinese context. Accepting a gift from others means that the recipient accepts the obligation of repay and agrees to repay the giver at some future moment. Whether the exchange is expressive or instrumental — despite their differing essential natures — the obligation of repay is the same. The mixed gift exchange, which conceals its instrumental essence behind the form of the expressive exchange, as a special form of gift exchange still bears a duty to repay. Whatever the circumstances, when a public official accepts money or property as a gift, he recognizes and agrees to the obligation of repay — that is, to repay the giver in some way at some time in the future. If the exchange is expressive, the repayment will be a gift carrying sentiment; if it is mixed, the repayment will take the form of securing benefits with his power. Although it may happen in an expressive gift exchange between relatives or friends that the public official takes advantage of his position to secure benefits, what is directly connected with this "securing of benefits for the person" is not the gift itself but the renqing carried by the gift. The public official secures benefits for others not because of the gift but because of the renqing between the two parties, even though that renqing is maintained and developed through the exchange of gifts. In the expressive gift exchange, the possible link between the abuse of power by the public official and the gift is unconscious, while that in the mixed gift exchange is conscious, and this consciousness is directly related to the value of the gift.

First, a gift of great value signals a difference in social status between the two parties. The public official, who accepts either expressive gifts or instrumental gifts, accepts the obligation of repay in the future. However, as mentioned above, the social role played by the recipient differs between the two types of gift exchange. In the expressive gift exchange, the recipient repays the giver in the role of a relative or friend; in the instrumental gift exchange, he repays in the role of the public official that the giver expects. The different social

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roles imply a difference in the social-status relationship between the giver and the recipient. In the expressive gift exchange, the social statuses of the two parties are equal or differ only slightly within the family or clan, with no obvious gap in the social hierarchy. However, the possession or lack of power creates an apparent difference in social status between the two parties. In order to eliminate the gap between their social statuses, the giver in a mixed gift exchange must be more generous, and the value of the gift must far exceed that of an expressive exchange, owing to the interaction between the value of the gift and the social statuses of the parties mentioned above.

Second, a gift of great value indicates that renqing is not the core of the exchange. The core of the expressive gift exchange is the exchange of renqing, which determines that both parties do not regard the value of the gift as an important matter. As the well-known verse goes, "the gift itself may be light as a goose feather, but sent from a thousand miles away, it conveys a very deep sentiment", which indicates that a gift is an item on which renqing rests. Thus, the gifts exchanged between the two parties are usually not very valuable. However, targeting the power of the public official, the giver expects the official to take advantage of his position in the future and to secure the benefits as repayment. The state power possessed by the public official — an important and scarce social resource not wielded by everyone — can bring tremendous benefits to those who obtain it. In order to obtain repayment in the form of social power, the gift giver must present an item of great value. The more significant the benefit requested is, the more valuable the gift should be [22].

Finally, a gift of great value requires a more valuable repayment. The requirements of gift exchange demand that the repayment be appropriate — generally higher than the value of the gift, and at least not less than it. Since the core of the expressive gift exchange is the renqing between the parties, the gift giver should take the recipient's ability to repay into account when deciding the value of the gift. Otherwise, it may result in a serious moral issue for the recipient. If the recipient declines the gift because he cannot repay with a gift of higher value, the renqing between the parties will be seriously hurt. If the recipient repays with a gift of lower value, the giver will be upset, believing that the recipient does not cherish the renqing between them. In the mixed gift exchange, the power of the recipient is the target of the giver. To ensure that the recipient can repay only with state power rather than with other gifts of higher value that he could afford, the giver offers a gift exceeding the recipient's normal economic capacity, so that the recipient cannot repay within his own economic means and must resort to the state power of his position.

Therefore, a public official who accepts money or property as a gift accepts the obligation of repay. If the amount of the gift exceeds a reasonable limit, the gift exchange is not for maintaining renqing but for achieving a benefits purpose, and the recipient is not playing the role of a relative or friend but the role of a public official. By accepting a gift of great value, the recipient agrees to repay with the state power he possesses. Even without explicit requests for benefits, the connection between the property and the official duty [28] may lead to corruption and the abuse of power in the future.

The analysis above yields an operable standard. Because the recipient of a gift in any mode of exchange assumes an obligation of repay, and because in the mixed mode that obligation can only be discharged with the power of office, the value of the gift functions as the observable indicator of the mode of exchange. The standard has two components. First, a ceiling of customary gift value: a gift whose value exceeds what the parties' economic levels, local customs and the official's wages would permit for an ordinary courtesy is presumed to be beyond the scope of renqing exchange. Operationally, this can be expressed as a multiple of the official's wages, or as a statutory monetary amount calibrated to regional economic levels, with the 30,000-yuan benchmark of the 2016 judicial interpretation as one possible reference point. Second, a set of supplementary factors that confirm or rebut the presumption: the depth of the renqing relationship between the parties, the difference in their social statuses, the existence or absence of any request, the frequency and occasion of the gifts, and whether the giver's interests depend on the official's power. Where the value of a gift exceeds the ceiling and the supplementary factors indicate a power-dependent relationship, the exchange is presumptively instrumental and the official is deemed to have accepted the obligation to repay with power, regardless of whether any request has been articulated.

This standard also resolves the case of mutual gift exchanges of roughly equivalent value, which the literature has found difficult to classify. Where two parties of equal social status exchange gifts of roughly equal value within the customary ceiling, the exchange is expressive: it maintains renqing through continuous reciprocity, and no moral debt accumulates because the values balance. Such exchanges are common between relatives and friends and are fully protected. Where, however, the values exchanged are roughly equal but exceed the customary ceiling — for example, where the recipient is a public official whose salary could not support the corresponding repayment within his own means — the equality of the two values is itself a camouflage. The reason is that in the mixed mode the true repayment is not a gift of equivalent value but the power of office: the giver does not need to outbid the official's future gift, because the official will repay with benefits that cannot be purchased at the price of a customary gift. The empirical study of Li, Sun and Taris [26] supports this reading: high economic value, together with an instrumental motivation, led Chinese respondents to classify a present as a bribe even where the relationship was familiar. Laboratory evidence likewise cautions against treating familiar relationships as an automatic safe harbour: social ties alone can induce favouritism, and relationship-based and bribe-based corruption substitute for each other [27]. The value standard proposed here therefore does not criminalize equal-value reciprocity as such; it criminalizes only reciprocity whose value exceeds the ceiling of what the parties' social statuses and the official's means can plausibly sustain.

The need for adding the crime of accepting gifts in the China Penal Code

The judicial interpretation on criminal cases of corruption issued by the Supreme People's Court and the Supreme People's Procuratorate in 2016 stipulates that where a public official accepts money or property of more than 30,000 yuan (about 4,300 dollars) from subordinates or persons under his charge, and the acceptance may affect the lawful exercise of power, it should be considered a promise to secure benefits for others. This provision enables the act of a public official who accepts money or property without any request from the giver to be punished under Article 385 of the China Penal Code. However, this interpretation cannot solve the problem of accepting monetary gifts because of its restrictive conditions. First, the gift giver must be a subordinate or a person under the control of the public official — that is, the giver must be susceptible to the state power the official possesses — which limits the application of the provision to a narrow circle of people. Another restrictive feature is that the provision creates further difficulty for the judiciary. How can the judiciary determine whether an act of accepting gifts may affect the public official's exercise of state power? These problems of the judicial interpretation, which the judiciary must resolve, still make it ineffective for dealing with the act of accepting monetary gifts.

Nor have the legislative and judicial developments after 2020 resolved the dilemma. The Criminal Law Amendment (XII), adopted on 29 December 2023 and effective on 1 March 2024, strengthened the punishment of offering bribes by listing seven categories of serious bribery to be punished with aggravating circumstances and by raising the penalties for unit bribery [51]; it did not, however, touch the structure of Article 385. The Interpretation (II) on Several Issues concerning the Application of Law in Handling Criminal

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Cases of Embezzlement and Bribery (Fa Shi [2026] No. 6), issued on 10 April 2026 and effective on 1 May 2026, refined the standards for unit bribery, indirect bribery and the valuation of expected gains, but likewise retained the element of "in return for securing benefits" and the limited scope of the "emotional investment" provision [52]. The scale of enforcement has meanwhile intensified: according to the work report of the Supreme People's Procuratorate delivered in 2026, in 2025 [53] procuratorial organs received 30,500 duty-crime cases transferred by supervisory organs and prosecuted 29,000 persons, increases of 10.8 per cent and 20.5 per cent respectively, and prosecuted 3,292 persons for offering bribes, an increase of 7.3 per cent [54]. The persistent gap between the intensity of anti-corruption enforcement and the narrow reach of Article 385 confirms that the problem of accepting monetary gifts cannot be solved by interpretation alone. Empirical research on firms further shows that the anti-corruption campaign has changed the value of managerial and political ties for new ventures [55], yet the boundary of Article 385 has remained unchanged — evidence that the relationship-based channel persists even as enforcement intensifies.

Dan [13] proposes that modifying Article 385 — that is, eliminating the element of "in return for securing benefits" — would be enough to regulate the illegal act of acceptance, and that no new crime needs to be created in the Penal Code. Similar provisions are found in the penal codes and acts of many other countries. For example, Article 331, paragraph 1 of the German Penal Code stipulates that "a public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine" [39]. Article 197, paragraph 1 of the Japanese Penal Code stipulates that "a public employee who accepts, solicits or promises to accept a bribe in connection with his/her duties shall be punished by imprisonment with work for not more than 5 years; and when the employee agrees to perform an act in response to a request, imprisonment with work for not more than 7 years shall be imposed" [40]. Section 2, paragraph 3 of the Bribery Act 2010 of the United Kingdom stipulates that "Case 4 is where (a) R requests, agrees to receive or accepts a financial or other advantage, and (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity" [41]. However, even without the element of "in return for securing benefits", there is no doubt that the acceptance of gifts must be connected with the duties of the official. The Chinese scholar who proposes eliminating the element of "in return for securing benefits" also agrees to retain the element of "taking advantage of his position" [13].

However, in the mixed gift exchange, the connection between the acceptance and the duties of the official is disguised by Chinese etiquette through its specific forms. Meanwhile, the purpose of obtaining benefits repaid by the official lies in the future and is neither specific nor clear at the time the gifts are given. This makes it difficult to confirm, through specific evidence, the link between the acceptance and the duties of the official. It is therefore impossible to regulate the acceptance of gifts by officials effectively merely by eliminating the element of "in return for securing benefits". Considering China's sanction system, its criminal policy and the differences in harmfulness, establishing a new crime for this particular act in the Penal Code would be the best approach.

First, China's sanction system adopts a binary mode of dealing with violations: crimes are punished by the criminal law, while violations of public order are regulated by administrative law [56]. Under this special mode, the China Penal Code sets a high threshold for criminalization. In recent years, however, there has been an evident tendency to lower this threshold, to extend the scope of crimes and to advance the time of intervention. Many violations of public order have been criminalized, and a number of endangerment offenses have been added to the Penal Code. Considering the liberty-depriving character of administrative violations, this tendency of criminalization — a consequence of the reconstruction of state power that extends judicial power to restrain administrative power — complies with the requirements of the rule of law. The link between the acceptance and the duties has been specifically stipulated in Article 385 of the China Penal Code, while that link is abstract when a gift is accepted without any request for benefits, becoming specific only in the future repayment. The former causes actual damage to society, while the latter causes potential damage. Criminalizing the act of accepting a gift without any request therefore fits the current criminalization tendency in China.

Second, the criminal law should respond to the challenges posed by corruption crimes with a zero-tolerance attitude [57]. According to the broken-window theory, if minor violations are connived at, more serious violations will be committed, and felonies will spread. Compared with the typical act of bribery stipulated in Article 385 of the China Penal Code, the act of accepting gifts without any request from the giver is a less serious violation. If we refuse to treat it as a crime merely because it has no substantive harmfulness and has long been tolerated by society, the absence of a zero-tolerance attitude will undermine the realistic basis of zero-tolerance legislation [58], and the conduct will develop into the typical bribery stipulated in Article 385, seriously affecting the stability of society and the state.

Thirdly, there is a remarkable difference in the harmfulness between the typical bribery and the act of accepting gifts. Incorporating the act of accepting gifts into Article 385 by eliminating the element of "in return for securing benefits", and applying the same mandatory statutory sentence, would lead either to a punishment range too broad to satisfy the requirement of certainty under the principle of nulla poena sine lege, or to one too narrow to distinguish differences in harmfulness — failing to comply with the requirement that the penalty be proportionate to the degree of responsibility and to the facts. Neither outcome is effective in punishing and preventing corruption.

The Ethics Norms for Civil Servants of Taiwan can serve as a reference: the act of accepting money or property of a certain amount — whether received from one person at one time or accumulated within a year — could be criminalized with a lenient statutory sentence, with the amount clarified through judicial interpretation. Specifically, accepting money or property as gifts, where there is no request from the giver and no act of taking advantage of one's position to secure benefits for the giver, should be convicted of the crime of accepting monetary gifts. If the giver has made a specific request and the official has taken advantage of his position to secure benefits for the giver, the conduct should be treated as the crime of accepting bribes, and all the money or property given by the same person before the request should be included in the amount of the bribe.

Critical reflection: limitations and boundary conditions of this analysis

The argument of this article rests on an interpretive analysis of Chinese etiquette, supplemented by qualitative observations of social practice and, where available, empirical and judicial material. It is therefore subject to several limitations that should be stated frankly. First, the cultural materials used — the classical texts, proverbs and poems cited in Section 3 — are treated as illustrations of the normative expectations of Chinese gift exchange, not as proof of how officials actually behave. The caution that cultural rhetoric cannot replace legal and social-scientific argumentation is well taken; the present revision has accordingly supplemented these materials with empirical findings [26], enforcement statistics [54] and adjudicated and disciplinary cases [50]. Nevertheless, a systematic quantitative study of gift flows to public officials in China remains to be done and is beyond the scope of this article.

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Second, the value-based standard proposed in Section 5 is a normative proposal, not an operational rule. The specific threshold — whether expressed as a multiple of official wages or as a statutory amount — requires calibration by the legislature with reference to regional economic levels, local customs and wage data, none of which this article empirically measures. The presumption created by the standard is rebuttable, and borderline cases will remain judgment-intensive; the standard narrows the margin of discretion but does not eliminate it. Third, the typology of givers and receivers in Section 4.4 is ideal-typical. Real cases frequently mix the categories — a business counterpart may also be a classmate, a subordinate may also be a friend — and the typology is an analytical device for ordering the inquiry, not an exhaustive empirical description.

Fourth, the comparative observations in Section 2.3 are selective. Germany, Japan, the United Kingdom and the United States are presented as illustrative examples, and a full comparative study of the criminalization of gift acceptance — including the constitutional and institutional conditions that make each approach workable — is beyond the scope of this article. Fifth, the doctrinal analysis relies on Chinese-language legislation, judicial interpretations and scholarship; the translations of Chinese sources are the author's own, and readers without access to the originals should be aware of this. Finally, the proposal to create a new crime of accepting gifts above a threshold must be weighed against the risk of overcriminalization that the scholarly opponents of criminalization have consistently raised [4, 10, 59]. The proposal is deliberately confined to gifts whose value exceeds a calibrated ceiling and whose circumstances indicate a power-dependent relationship; ordinary renqing exchanges among relatives and friends remain outside its scope. Whether this boundary can be drawn with sufficient precision in practice is the most important empirical question that future research — including studies of judicial application and social perception — will have to answer.

Conclusion

The states parties to the United Nations Convention against Corruption have an obligation to take every possible measure and to mobilize all forces to prevent and punish corruption crimes in both the international and the domestic spheres [60]. This demands tightening the criminal net and implementing the criminal policy of zero tolerance. The value of gifts should be taken as the criterion for distinguishing between the act that may cause corruption and the act of renqing exchange. On the one hand, it can effectively combat corruption; on the other hand, it can prevent the criminal law from intervening in traditional Chinese social interactions that have lasted thousands of years. It will effectively achieve the unification of legal and social effects if renqing is confined within the rules of renqing, while matters involving violations of the law are governed by law [61]. By supplementing the cultural analysis with empirical findings, adjudicated cases and recent scholarship, and by reflecting on the limitations and boundary conditions of the proposed standard, this article has sought to place the boundary between renqing and corruption on as explicit and as verifiable a footing as the available materials permit.

Declarations of interest

None.

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