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THE DIFFERENCES BETWEEN GIFTS AND EXCHANGE: COMMENT ON CAROL ROSE

*Robert H. Frank**

As an admirer of Professor Carol Rose's work, I am honored to have been invited to comment on her Dunwoody Lecture. Her essays are not only provocative but also fun to read, and I am pleased to report that this essay is no exception.

Gift giving has always posed a challenge to self-interest models of human behavior. Professor Rose's observations do much to advance our understanding of this interesting and peculiar practice. Her review of the law of donative transfers, for example, will persuade most readers that "good" gifts often have much in common with reciprocal exchange and that "bad" ones often are much like involuntary takings, or larceny. I think Professor Rose also is clearly right to suggest that ordinary reciprocal exchange relationships, especially in the earliest stages, often require a trust that is a form of gift. In all, Professor Rose has made a convincing case that gifts and exchanges are sometimes more alike than people might think.

At the same time, however, I could not help but wonder whether Professor Rose may have found her own arguments too persuasive. In my brief comment I will argue that Professor Rose goes too far when she says there is "no such thing as a transfer that is at once unilateral and voluntary. 'Gifts,' then, appear to be merely *purported* gifts: they really are exchanges or larcenies in disguise."¹ I will also argue that although some exchanges may require gifts in the early stages, this is by no means always the case.

The donative transfer is the centerpiece of Professor Rose's argument. Professor Rose correctly observes that those who "give" their time to care for a dying friend sometimes do so with the expectation

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1. Carol M. Rose, *Giving, Trading, Thieving, and Trusting: How and Why Gifts Become Exchanges, and (More Importantly) Vice Versa*, 44 FLA. L. REV. 295, 301 (1992).

of being compensated in the friend's will.² Care given with such an expectation is clearly more like exchange than a pure gift. Alternatively, consider people who, at considerable expense to themselves, care for dying friends that have no assets to bequeath. Here, no realistic expectation of future monetary rewards can exist. Care for an impoverished friend suffering from a nonterminal illness might also involve some element of exchange if the caregiver generates stocks of loyalty and affection on which to draw in the future. Care provided for a dying friend, however, involves no such prospect. Isn't there at least *something* of a pure gift inherent in care provided under these circumstances?

Alternatively, consider someone who wills part of her estate to a non-profit group like the Audubon Society. The elements of reciprocal exchange seem altogether absent from such cases. Of course, the public recognition that often attends charitable gifts might be an ancillary motive for some donors, possibly implicating some element of exchange. However, many people make such gifts anonymously, and the recognition that comes from a posthumous gift cannot be of much value to the donor in any event.

Professor Rose observes that donative transfers can never be considered fully voluntary because of the coercive influence of the donor's looming death.³ Yet many people consume at a level far below what their resources could sustain. Even though they know that they could leave smaller bequests by consuming more, they still fail to exercise this option.⁴ It is true, as Professor Rose observes, that you can't take it with you.⁵ The relevance of this observation, however, is diluted by the fact that so many people leave so much more behind than is necessary.

Outside the limited domain of donative transfers, denying the existence of pure gifts appears even more tenuous. Most anonymous donations to charity, for example, are gifts pure and simple. So are acts of kindness performed for the benefit of strangers, such as pausing to offer directions to a tourist. While the sacrifices involved in such

2. *Id.* at 304-05.

3. *Id.* at 303.

4. One might argue that uncertainty about the exact time of death makes it risky to consume too much. Many people, however, consume less than the interest on their current assets. Thus, even those who expected to live forever could increase their consumption with no risk of running short of resources.

5. Rose, *supra* note 1, at 303.

unilateral transfers are often small, they are not always small, as in the case of the soldier who dives atop a live hand grenade to save his comrades. These behaviors have precious little to do with exchange.

Assuming that all action is motivated ultimately by self-interest has become increasingly fashionable in the behavioral sciences. As the foregoing examples illustrate, however, this assumption is not well founded. More important, this assumption may be highly corrosive to our fragile social fabric. The difficulty is that if people are taught that self-interest is the only important human motive, they may become more likely to behave opportunistically in social dilemmas.

Investigating this possibility, two colleagues and I recently performed a study to discover whether economists, who are by far the most enthusiastic proponents of the self-interest model among social scientists, are more likely than others to behave opportunistically.⁶ We found numerous indications that they are. For example, academic economists were more than twice as likely as the members of any other surveyed discipline to report that they give no money at all to any private charity.⁷ We also found that economics majors were almost twice as likely as nonmajors to defect when playing one-shot prisoner's dilemmas with strangers.⁸

This difference was not merely a reflection of the fact that people who chose to major in economics were predisposed opportunists. We found, for example, that the difference in defection rates grew larger the longer a student had studied economics.⁹ Questionnaire responses also indicated that freshmen in their first microeconomics course were more likely at the end of the term to expect opportunistic behavior from others than they were at the beginning.¹⁰

6. See R.H. Frank et al., *Does Studying Economics Inhibit Cooperation?*, J. ECON. PERSP. (forthcoming Spring 1993).

7. *Id.* (manuscript at 7, on file with author).

8. *Id.* (manuscript at 13-14). One-shot prisoner's dilemma is a game of strategic choice in which each player faces a single decision and must either cooperate or defect. Each player must choose without knowing what the other will do. Each player's payoffs depend on both players' choices. If only one player chooses to cooperate and the other chooses to defect, the game will reward the defector with higher payoffs and the cooperating player will suffer the worst payoff. Both players will receive poor payoffs if both defect; both will receive moderately good payoffs if both cooperate. Cooperation is best only when both players choose to cooperate. This payoff structure creates powerful incentives to defect.

9. *Id.* (manuscript at 20-21).

10. *Id.* (manuscript at 22-25).

Professor Rose calls our attention to many interesting ways in which transfers that appear to be gifts also involve important elements of exchange.¹¹ However, by insisting that this is so in every instance, I fear she encourages an unrealistically pessimistic view of human nature. Since views about human nature tend to be self-reinforcing, this may be a costly error.

Professor Rose does an about face in the concluding portion of her essay and argues that it may be impossible to launch bilateral exchange in the absence of generosity and trust.¹² With this different perspective, she focuses on two problems. The first concerns bargaining over the division of the surplus from exchange.¹³ Assuming each party is selfish, each may want to take virtually the entire surplus and leave just enough for his partner to make participation better than nothing. However, since both parties obviously cannot take the lion's share, the transaction may fail, with each side ultimately receiving nothing. Professor Rose argues that if each side is prepared to "give" the other side part of the surplus, the deal will go through and make everyone better off.¹⁴

I completely agree with this argument. My only question is why Professor Rose identifies this behavior as a gift. Use of the term "gift" seems to presume that each partner has an initial entitlement to the lion's share of the surplus. For unless the share was rightfully his to begin with, his willingness to assign part of it to his trading partner cannot be considered a gift. It is more descriptive to say that being content to settle for a "fair" share of the surplus is conducive to successful exchange. This distinction is no more than a semantic quibble, for I fully share Professor Rose's view that the "sharp bargainer [someone who insists on taking the lion's share] is by no means the image of success in commerce, but instead may well be a fringe person, a con artist on the twilight edges of the market — someone who can find no trading partners except gullible strangers."¹⁵

Professor Rose then mentions as the second problem the difficulty that arises in exchanges when both parties do not act simultaneously:

Let us suppose that I have to deliver the tomatoes first, so that you can have something to eat while you are making

11. Rose, *supra* note 1, at 302-08.

12. *Id.* at 311-17.

13. *Id.* at 310.

14. *Id.* at 310-11.

15. *Id.* at 310.

the shoes. I must give the tomatoes to you in the expectation of receiving the shoes later. Why would I do that? . . . if I am afraid that you will cheat me, I will refuse to commit myself, and the trade will fall through. . . .¹⁶

Professor Rose acknowledges that the prospect of repeated interactions between the potential exchange partners may make matters easier: “the fear of mutual retaliation keeps us both in line.”¹⁷ But then she argues that the threat of future retaliation cannot explain why cooperation would ever hold on the first step: “How can I be reassured by future dealings when they have not yet started and when as yet we have no history of dealings”?¹⁸

This complaint appears shaky on logical grounds, for when two people face an infinitely repeated prisoner’s dilemma, the material incentives to defect are no larger on the first iteration than on any subsequent one. In each case, the threat of future retaliation provides the material incentive to cooperate. The threat of retaliation — or the lure of the fruits of future cooperation — can be sufficient to initiate exchange even among purely self-interested trading partners.

Professor Rose could have benefitted from the results of Robert Axelrod’s study of repeated prisoner’s dilemmas.¹⁹ With computer simulations of an evolutionary model, Axelrod investigated the relative performance of a variety of strategies of play.²⁰ One strategy — “tit-for-tat” — called for cooperation on the first move, with play in subsequent rounds that mimicked the partner’s response in the previous round.²¹ Axelrod found that tit-for-tat outperformed all other strategies in many environments, even though many of the other strategies were designed with the specific goal of exploiting tit-for-tat.²² He thus showed that circumstances exist in which repeated interaction solves the problem of starting cooperation.²³ Cooperation is started — and

16. *Id.* at 311.

17. *Id.*

18. *Id.* at 311-12.

19. See generally ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984) (describing the use of computer simulations to test the effectiveness of a variety of play strategies and then formulating a theory of social cooperation based on the most successful strategies).

20. *Id.* at 19-20.

21. *Id.* at 20.

22. See *id.*

23. *Id.* at 27-54.

sustained — because tit-for-tat players tend to be so successful in material terms. Knowing this result, it does not seem accurate to say that someone makes a gift by playing the tit-for-tat strategy. Granted, the player might run into someone who defects on the first interaction. The player will not, however, be victimized twice by such a person, and there are many others with whom his experience will be much more favorable.

Professor Rose then observes that the community can impose sanctions on those who fail to live up to their agreements.²⁴ These sanctions range from informal measures like social ostracism to the more formal and sophisticated legal remedies available under modern contract law. However, Professor Rose argues that these observations simply raise a more basic question: “How do such . . . communities get started? How does *their* history begin, in the absence of a successful prior history?”²⁵

If cooperation in repeated dilemmas can emerge through the tit-for-tat strategy, the origin of larger cooperative structures appears less of a puzzle than Professor Rose suggests. James Coleman, for example, describes how norms might originate and be enforced by self-interested agents in networks of social relations.²⁶ Coleman’s account addresses the difficulty arising when *A* sees *B* violate a norm and it is not in *A*’s material interest to incur the costs of enforcing the norm unilaterally.²⁷ *A* will want *someone* to enforce the norm, but his own narrow material interests dictate free-riding. Coleman’s solution is to note that if *A* is part of a social network whose members also have an interest in enforcement of the norm, it may be possible for others to compensate *A* for his enforcement costs.²⁸ *C* and *D*, for example, might each relieve *A* of some obligation owed to them.

Arguing in similar terms, Robert Nozick describes an invisible hand mechanism in which the state emerges from a struggle between competing protective associations.²⁹ Having achieved power, the dominant protective association has an interest to provide a structure of

24. Rose, *supra* note 1, at 312.

25. *Id.*

26. JAMES S. COLEMAN, FOUNDATIONS OF SOCIAL THEORY (1990).

27. *Id.* at 250-51.

28. *Id.* at 269-70.

29. See ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 118-20 (1974).

secure property rights.³⁰ As Professor Rose recognizes, once such a structure is in place, the conditions for efficient exchange are satisfied: "Contract law permits the initial element of gift, that first trusting step, to be made with confidence at the outset of exchange relations, and contract law thus assures a regime of greater wealth and gains through exchange."³¹ Although it might have been more accurate to say that contract law obviates the need for gifts, Professor Rose's point is clear and well taken.

Now why would someone take the first step of organizing a protective association? The puzzle, as Professor Rose sees it, is that "Leviathan rests on an initial act of giving too, and for much the same game-theoretic reason that exchange does. Someone has to do the work of setting up Leviathan. . . ."³² Again, the concept of gift comes to the rescue: "luckily, at least some people make a gift of their organizational efforts. . . ."³³ But is the gift construct needed here? If a dominant protective association did not already exist, would not great power accrue to whoever formed one? And wouldn't this power be reason enough for organizers to take the first steps? Neither Coleman's account nor Nozick's account requires motives beyond self-interest.

I believe Professor Rose has missed the mark by insisting that gifts are *always* necessary to support exchange. And yet, surely she is onto something here. *Some* exchange certainly does seem to rest on transfers that are very much like gifts.

Consider, for example, the practice of tipping after restaurant meals. A functional account of this practice might propose that diners have better information than restaurateurs on how service staff perform and are therefore in a much better position to disburse fair and efficient compensation. The diners who receive prompt, courteous service can reward their servers with a generous tip; those who do not can respond accordingly. In most settings, the theory of repeated games appears to solve the most salient problem of this scheme — the problem of providing an adequate motive for the diner not to

30. See generally R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960) (suggesting several reasons that a protective association has an interest in securing certain outcomes).

31. Rose, *supra* note 1, at 314.

32. *Id.* at 315.

33. *Id.*

renege. As before, the relevant incentives lie in the future: an unfair tip now will translate into poor service on the next visit.

However, this reasoning cannot explain why tipping works even in restaurants where most diners are not regular patrons. From the perspective of self-interest theory, the astonishing thing is that efficient exchange occurs even in such restaurants: the diner receives good service and tips commensurately. Although an exchange relationship certainly lies at the core of this transaction, both the good service and the tip are quintessentially gifts at the moment they are given. Thus, for example, the waiter who provides good service does not have a recourse if the diner does not leave a tip. Similarly, the diner who leaves a good tip cannot realistically be hoping at that moment to influence the quality of the service he has already received. However, because both service staff and diners are willing to make the necessary leaps of faith on these occasions, each reaps important benefits.

Likewise, consider the person who must dispose of a bottle of highly toxic insecticide. The laws of most communities require disposal of the poison in an approved toxic waste facility. Yet the narrow material interests of any individual favor breaking these laws. A person alone in her basement faces no risk of being punished for simply pouring the insecticide down the drain. By doing so, she saves the trouble and expense of a trip to the disposal center and has only a negligible share of the negative environmental effects. And yet, if everyone were to act in this fashion, the negative consequences would be severe, overwhelming the collective savings. In cases like these, society has little recourse but to rely on the willingness of individuals to set aside their own narrow material interests, making gifts of their time and effort in the name of the common good. Theories of repeated games, network transfer mechanisms, dominant protective associations, the law of contract, and other devices of the self-interest literature are simply unable to explain cooperative behavior in such circumstances.³⁴

Professor Rose has staked out extreme claims in both sections of her essay: in the first, that no such thing as a pure gift exists;³⁵ and

34. In *PASSIONS WITHIN REASON*, I try to explain how people who cooperate in one-shot prisoner's dilemmas like these might nonetheless compete successfully for resources in the material domain. ROBERT H. FRANK, *PASSIONS WITHIN REASON: THE STRATEGIC ROLE OF THE EMOTIONS* (1988).

35. Rose, *supra* note 1, at 302-08.

in the second, that all exchange rests fundamentally on some form of gift.³⁶ Not surprisingly, such claims prove difficult to defend — and not just because one claim seems directly to contradict the other. I have tried to show by example that many gifts are really the unilateral transfers they are purported to be. It is also true, however, that many more gifts than we might have imagined surely do blend into exchange and others are really indistinguishable from larceny. I have also argued that many exchange relationships can be accounted for without recourse to the construct of gift. Yet a surprisingly large number of exchange relationships do seem to rest on voluntary unilateral transfers.

In conclusion, even though important exceptions exist to both of Professor Rose's claims, less extreme versions of these claims contain a strong measure of truth, affording important insights about society and the law. Professor Rose deserves our gratitude for having called these issues so vividly to our attention.

36. *Id.* at 308-15.

