The moral economy of guanxi and the market of corruption: Networks, brokers and corruption in China’s courts

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Abstract
In this article, I offer an economic analysis of the characteristics that are associated with corruption when it is facilitated through social exchange or guanxi as it is called in China. To that end, I challenge the framework applied in classic social exchange theories and contend that social exchange can be better distinguished from market exchange based on whether the intention to exchange is concealed and not based on the exchanging parties’ subjective reflections on the nature and outlook of their exchange relationship. I also identify that corruption participants rely on a self-executable operating mechanism to facilitate negotiation and enforcement of exchange terms instead of the informal reputational system that is used in ordinary social exchange. In addition, I explain how the involvement of professional brokers democratizes guanxi-based corruption and extends the otherwise privileged exchange opportunities to those beyond the guanxi networks with lowered cost.

Keywords
Social exchange theory, guanxi and corruption, economic analysis of corruption, transaction costs, gift-exchange, corruption intermediaries/brokers, moral economy, culture of corruption, China’s courts

Introduction
In this article, I intend to demonstrate how corruption participants ‘moralize’ corruption by grafting corruption on to a social setting and employing social norms to navigate the course of corruption. This discussion necessarily concerns an omnipotent and omnipresent social phenomenon in China called guanxi. Guanxi represents a particularistic relationship used to facilitate favour-exchange and is considered a close equivalent to blat in Russia, vruzki in Bulgaria, pistolão in Brazil, wasa

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in the Middle East, *Kharim* or *protektzia* in Israel, or *compadrazgo* in Latin America. In China, *guanxi* wields considerable power of influence over political, economic and social affairs. It is also a source of sustained ethical controversy, regarding its role in corruption: On the one hand, the symbiotic relationship of *guanxi* and corruption seems so potent that it is difficult to separate one from the other (Gold, 2002; Smart, 1993; Yu, 2008); whilst, on the other hand, scores of studies are positioned to convince their readers that the two are different. The claimed difference is theorized in different forms but its essence is more or less the same: corruption is impersonal, instrumental, transaction-focused (Yang, 1986, 1994) whereas *guanxi* is relationship focused (Fan, 2002; Jones, 1994; Wong, 1998); civil (Lo et al., 2003) and replete with emotions (Barbalet, 2017; Jones, 1994; Yang, 1986). Subsequently, the kind of *guanxi* that leads to corruption is considered instrumentality-driven and morally dubious and the kind that does not lead to corruption is deemed affection-driven and morally sound.

Despite its popularity, this affective v. instrumental binary classification of *guanxi* (Hwang, 1987; Yan, 1996; Yang, 1994) is problematic because affection and instrumentality are not mutually exclusive in exchange activities. Instrumentality is an orientation of action or a type of human agency where actions are purposefully taken to achieve a goal instead of being instinctive or purposeless. In fact, instrumentality is an innate characteristic of all exchange activities, no matter with whom one conducts it and through which method. And affection is not the antithesis of instrumentality. It is either irrelevant to instrumentality or a component of it. It is irrelevant when the exchange does not involve any party’s affective mental welfare. It is a component of instrumentality when affection is either the goal of a means (to use material incentive to evoke emotion) or the means to a goal (to evoke affection in order to achieve a goal guided by material interest) of the exchange activity concerned. In either case, affection is not the opposite of instrumentality. As I will elaborate in this article, what defines *guanxi* is that it facilitates an exchange where the intention to exchange is concealed by exchange parties from each other. It is this feature that sets social exchange, to which *guanxi* exchange belongs, apart from market exchange. Those behavioural patterns that are often attributed to social exchange, such as uncertainty of the prospect of exchange, unspecified exchange terms, and greater emphasis on trust, are all consequences of the aim to conceal the intention to exchange. It is also this very feature that brings *guanxi* and corruption together.

In the remainder of the article, *guanxi* will refer to social connections or ties. ‘*Guanxi exchange*’ means favour exchange between people who are connected by *guanxi* while ‘*guanxi practice*’ refers to any activity related to *guanxi* exchange, in particular, activities that are carried out to cultivate connections. And corruption is used throughout this article to mean transactional corruption only. Non-transactional corruption, such as embezzlement and fraud, is excluded from the discussion. This article is largely conceptual although my analysis is founded on previous empirical work that I have conducted since 2005 (Li, 2010a, 2010b, 2011a, 2011b, 2012). Apart from a few exceptions, most of the cases, interview scripts and anecdotal examples, are omitted here due to limitation of space.

The article is organized as follows. I begin with two examples to contextualize *guanxi* and corruption and demonstrate that the dominant approach in which corruption is carried out is, unlike what is commonly believed, social rather than market exchange. Then I discuss the limit of the conventional approach that is used to distinguish social exchange from market exchange and offer the concealment of intention to exchange as an alternative. Next, I explain why corruption is wedded to *guanxi*, an epitome of social exchange, and how a self-executable operating mechanism is devised to enable negotiation and enforcement in *guanxi*-based corruption. Lastly, I explain the role of brokers in the proliferation of corruption in China’s courts and offer a comparative reflection on the role of *guanxi* networks in other judicial affairs in China.
Two examples

The relationship between guanxi and corruption can best be illustrated by the following two examples. The first, a real story, involves Lawyer Zhai, who solicited five judges to perform corrupt exchange with him but failed because of his ignorance of the norms of guanxi exchange.

Example 1

In the autumn of 2003, five judges from three different courts in China received identical letters from Zhai Xuejun, a lawyer, who started to practise law in Beijing. The letter read: ‘I would like to have friendly cooperation with you…to share the litigation resources and the profits. You are welcome to introduce me to litigants in cases that you hear …under the following conditions: 1) the claim of the dispute is more than RMB 300,000; 2) the litigant has not retained a lawyer or it is possible to have that lawyer replaced; 3) the litigant is likely to win the case or to have the damages claimed by the other party reduced…I will let you share 40% of the retainer as your commission fee’ [author’s translation]. A couple of months later Zhai was disbarred on the ground of violation of the Chinese Lawyers’ Law by the Beijing Bureau of Justice, who received the letters forwarded by the judges. After the event, one of the judges told a reporter: ‘When I received the letter, I found it funny at first but then felt it was over the top. I knew many people tried to engage in guanxi practice with judges. But the way this lawyer did it is really out of the norm’. The consequence of his letters bewildered lawyer Zhai himself as well, who lamented in an interview later that he was simply doing the same as what he had heard others were doing and his offer to the judges (the ‘cut’) was only fair. (Anonymous, 2005).

The second example is an abridged story of how an auctioneer named Zhang managed to obtain lucrative auction commissions from Judge Hou, thanks to Mr Zhang’s ‘exemplary’ guanxi practices. The story is based on Celadon, a semi-autobiography of the auctioneer himself (Li, 2011b).

Example 2

Zhang knew through his contacts that Hou was the judge directly responsible for the commission of a lucrative court auction contract. Zhang wants to obtain Judge Hou’s endorsement, but at that time, Zhang was hardly an acquaintance of this judge. During one of his regular visits to the office of the enforcement division of the court, Zhang learned that Judge Hou has a drinking habit. With this knowledge, Zhang decided one day to deliver to the judge a full case of ‘health-preserving’ liquor featuring a mysterious aphrodisiac formula presented in fine porcelain. The liquor case was heavy and Judge Hou’s apartment was on the seventh floor of a residential walk-up. Zhang could have had his assistant deliver the gift; however, he decided to make it personal. When Zhang finally showed up at Judge Hou’s doorstep, panting and puffing, the judge was a little surprised and immediately invited Zhang in. Putting down the case, Zhang explained, ‘It is a gift to me from a friend who runs a liquor manufactory. I don’t drink. So I want someone who would actually enjoy it to have it.’ Judge Hou asked: ‘How much does it cost?’ Zhang said, ‘The product has not been put on the market yet. So I don’t know the price. But I do know that it cost my friend millions just for the trademark and the formula.’ Hou said nothing. During the visit Zhang did not mention a word about the court auction commission. On the same visit Zhang noticed that Hou was quite concerned about his son’s calligraphic performance. After the visit, Zhang managed to persuade a highly sought-after calligraphist to agree to see the son. Soon the tutorship was arranged. Zhang paid the tuition fee without asking the judge for permission. The judge did not say much. He just patted Zhang on his shoulder as a sign of approval.

After having made this tutor arrangement, Zhang is treated almost like a family member by Judge Hou’s wife. He can now pay casual visits to the judge’s home without an appointment, always with gifts in hands or gratuitous services. On one such occasion, months after their first meeting, Judge Hou finally raised the
topic of the court auction in a casual conversation with Zhang: ‘The court will soon decide on the details of the auction tender’, the judge said, ‘the selection procedure is not clear yet…’. Then the judge revealed the name of the manager of the company who applied for the court auction. Zhang immediately proposed: ‘How about we go fishing together another day, you, me and Manager Yan (the auction applicant) … There will be no agenda and no business talk. We just go out and breathe some fresh air. What do you say?’ Hou said, ‘Boss Zhang, it is not like that I am consulting you on anything … I have never said anything about the auction … you arrange whatever you want’. Zhang said, ‘of course, of course’.

In these two examples, Lawyer Zhai and Auctioneer Zhang faced the same challenge: how to obtain business opportunities through corrupt exchange. What had caused Lawyer Zhai’s failure in the first example is exactly the same that led Auctioneer Zhang to his success in the second. While Lawyer Zhai considered the exchange a market transaction and expected it to take place when the terms are fair, Auctioneer Zhang understood that such opportunities were privileged and had to be ‘earned’. Subsequently, Zhang took painstaking steps to bond with Judge Hou, win his trust and wait for the exchange opportunity to be granted to him. In the course of cultivating guanxi with the judge, Zhang invested not only gifts and gratuitous services but also affective commitments that were meticulously choreographed and displayed. In this process, Zhang demonstrated his trustworthiness and provided assurance of exchange safety that would and should concern any judge who intends to engage in an activity that is clearly unethical, unlawful and likely to be criminal. It is Lawyer Zhai’s ignorance of how to proceed in proper manners that had doomed his efforts. It also stifled the scholarly discussion on guanxi and its relationship with corruption.

In current scholarly discussions of guanxi and corruption, the two are often juxtaposed. The latter is equated with market transaction and considered cold, impersonal, transaction-focused and viewed in a contrasting light to guanxi, which is deemed affectionate, personal and relationship-focused. This juxtaposition is erroneous because of a factual misunderstanding: as shown in the above examples, corruption is rarely carried out in the form of market exchange. Rather, it is Auctioneer Zhang’s personal, affective way of ‘doing business’ through ‘guanxi’ that is commonly acknowledged and emulated in corrupt practices, not that of Lawyer Zhai. What should be re-examined and articulated is: what is the element that can clearly distinguish social exchange, as embodied in guanxi, from market exchange?

**Moral economy of social exchange**

Classic social exchange theories distinguish social exchange from market exchange based on adherence to the principle of reciprocity, the uncertainty of the prospect of the exchange and the emphasis on trust, relation and goodwill (Blau, 1964; Emerson, 1976). However, all these features can be found in market exchange too. We see reciprocity when service providers reward loyal customers. We see open contracts with unspecified terms commonly in trade in services. We find uncertainty whenever the performance of the two exchange parties do not take place at the same time and same place. What truly separates social from market exchange is that in social exchange people strive to conduct exchange while concealing their intention to do so. By contrast, intention to exchange is transparent in market exchange. As such, those features that are deemed distinctive for social exchange are only the ramifications of the concealment of intention to exchange.

In social exchange, it is typical that when a gift or favour is offered, the return of the gift or favour commonly takes place only after a considerable time lapse. This time-lag is maintained deliberately so as to conceal the intention of exchange. The sensitivity that people lend to this practice seems culturally distinctive. Research has found that people in China, as well as in Russia, are more conscious of creating a time-lag that allows them to be owed a favour for future use than
Northern Europeans, who desire to clear such issues as soon as possible (Michailova, 2003). It is also widely acknowledged that in social exchange the exchange terms remain unspecified. Instead, a general consent to engage in an exchange relationship is given when one accepts a gift or favour. The terms of the exchange remain open until reciprocal action is requested. This deliberate conduct is also related to the need to conceal the intention to exchange, since discussing the terms of the exchange inevitably exposes that intention.

Why, then, do we need to conceal our intention to exchange in social exchange? One important reason is to save on negotiation costs and replace cost-benefit calculation with the general registration of goodwill when one chooses to engage in an exchange. To establish the right price for a service is time and energy consuming and the cost of negotiation can be prohibitive. For example, if my neighbour asks me to feed her cat while she is away as a favor, I will very likely agree because I like my neighbour and she always helps me out when I am away. However, were my neighbour to proceed as in a market place, the exchange may never take place. She will need to calculate the production cost for me to deliver the service or to perform some research on the market price of the service and then perhaps offer to pay, say 25 euro, which would be ridiculous to me because the marginal benefit of 25 euro to my general welfare is insignificant and also because I am an investment lawyer and I charge 500 Euro per hour for the time I spend on behalf of a client.

Similar incidences are abundant in our daily social interactions, where the costs of negotiation, if conducted like haggling in a market place, outweigh the benefit of an exchange so much so that one would simply refuse to engage in the activity. Switching to social exchange allows us to save the negotiation cost and enjoy the benefit of the exchange which would otherwise be missed. However, when one provides a service professionally, a quantifiable cost–benefit assessment to establish the price would be necessary and costs associated with this assessment are justifiable by the volume of the transactions that will ensue. Based on this understanding, I will explain in the next section how the element of concealment of intention to exchange guides the choice of exchange parties to employ *guanxi* rather than market exchange to conduct corruption.

**Moral economy of corruption**

In China, transactional corruption is dominated by the form of social exchange through *guanxi*, as shown in the above story of Auctioneer Zhang. The reason that the market-exchange type of corruption is rare in China is largely due to the fact that the central state is strong enough to enact and enforce credible anticorruption measures whilst retaining a structurally flawed political-legal system that continues to produce ample opportunities for corruption (Li, 2012, 2016). This means that corruption is too risky if it is carried out in broad daylight and much safer if done through social exchange.

As mentioned in the previous section, the distinctive core of social exchange is that exchange takes place while the intention to exchange is concealed. Efforts to conceal the intention to exchange are manifest in corruption in China. One conspicuous indicator is the time-lag between the delivery of the bribe and the delivery of the bribe-induced favorable treatment. Shrewd *guanxi* practitioners spend months, if not years, building trust with targeted officials, showering the latter with gifts and gratuitous services, before addressing what they want in return. One briber once confessed to the anticorruption authority that when he offered bribes to the deputy mayor of Suzhou City, the offer was never attached to any specific request, because it would be too ‘distasteful’ if one only thought of gift giving at the advent of a specific request (Anonymous, 2008). Other than being a matter of style, the time-lag has a more significant function in corruption. By placing a chronological distance between bribe giving/taking and the delivery of a corrupt service, corruption participants are able to obscure the quid pro quo, an important factor required to prove guilt of
bribery in courts of law (Li, 2011b). As such, the time-lag makes it possible to reframe the motivation of corruption from a matter of self-enrichment to a product of fulfilment of moral obligation in an effective relationship (Li, 2011b).

The concealment of intention to exchange also reduces the moral censure that participants of corruption might experience when engaging in an unlawful and immoral conduct. As shown in the story of Auctioneer Zhang, guanxi cultivation neutralizes the immorality of corruption by transplanting it to a social setting, where exchange of gifts and services is not only permitted but even expected. In the process, intention to exchange is signalled and communicated through acknowledgment and endorsement of friendship and goodwill and the venality associated with corruption is neutralized and rationalized (Li, 2011b). In this re-defined social reality of corruption, the moral censure that would otherwise have been called for is replaced with moral commitment and obligation that social interactions require.

At the same time, the need to conceal the intention to exchange in corruption also erects serious obstacles that do not exist or are not prominent in ordinary social exchange. First, the negotiation: in social exchange, it is optimal to both parties to skip the negotiation process because the cost of negotiation outweighs the benefits of the exchange. In corruption, negotiation is not only warranted but also necessary in many cases because of the high stake involved in the exchange. How then, can one negotiate the exchange terms if the intention of exchange has to be concealed? Second, enforcement: in ordinary social exchange, the risk of the favour offered not being returned is negligible since the cost of rendering the favour is generally limited. In corruption, however, the costs and values of items under exchange are much greater than negligible. How then do corruption participants monitor and control opportunism when the intention to exchange needs to be concealed?

The answer lies in a self-executable operating mechanism that facilitates both negotiation and enforcement. This mechanism is different from the informal, social, reputational system identified in current literature, which involves releasing appraisal information to third parties through intra-network gossip (Barbalet, 2014). Such a word-of-mouth-based enforcement mechanism may indeed explain the occurrence of ordinary social exchanges that have low stakes and are carried out in small, closed rural communities. It cannot, however, explain the occurrence of the type of exchange that involves high stakes and where the benefit of defection far outweighs the damage inflicted by any sanction that one can possibly mete out through network gossip.

The limits of the word-of-mouth mechanism are manifest not just in corruption. Economic historians have detailed trading practices in medieval Europe (Milgrom, 1990; North, 1990), where traders were exposed to the risk of default by the other trading party because at that time cross-region trade had preceded the emergence of nation states, which means there was no third party to enforce the transaction and punish cheaters to ensure exchange safety. The only mechanism available to traders at that time was word-of-mouth, which was used as a bulletin-board carrying records of past performance of prospect traders. However, such a reputation system broke down when the volume, scope and scale of the trade exceeded the system’s informational capacity (Milgrom, 1990; North, 1990). It was against this backdrop that the Law Merchant system was developed, with private judges appointed by trade-fair organizers to hear complaints, adjudicate disputes and order punitive payments by the losing party.

The solution that medieval European traders found for themselves, however, would not work in corruption because the medieval traders did not need to conceal the intention to exchange and hence could negotiate exchange terms specifically and explicitly (Quinn, 1996; Read, 1926). Corruption is different for the reasons explained earlier. Instead, what operates in corruption facilitated by guanxi exchange is a self-executed operating mechanism, which involves an arrangement for partial performance and restitution for incomplete or failure of performance.
Partial performance means that the bribe would be paid in instalments and the corrupt services delivered in multiple steps. Partial performance helps both parties to minimize the risk of loss in the case of non- or incomplete performance of the other party, a rather common practice in corruption (Li, 2010b). As such, partial performance also allows either exchange party to negotiate exchange terms without explicitly addressing it. In practice, the bargaining power is usually held by the bribed, especially when their service is in scarce supply. Therefore, as described in Example 2, guanxi exchange almost always starts with the flow of gifts and other gratuitous services from the briber to the bribed. Such gifts and gratuitous services can be considered a down payment for the service that the briber is expecting to receive. Bribers seldom offer the full bribe at the beginning but divide them in many instalments, which are made commensurate with the value of the service received. Similarly, the bribed can also negotiate the exchange terms by withholding the delivery of services until an adequate additional bribe is provided.

Restitution means that if the bribed, after having accepted the bribe, could not deliver the promised corrupt service in part or in full, he would return the bribe to the briber. Motivation to return the bribe is two-fold. First, the principle of equity. Since the bribe is offered in exchange for a service and if the service is not delivered, it is only fair to return the bribe. Second, if the principle of equity is not observed, the briber may be incentivized to report corruption to the anticorruption authorities. Of course, the power of this threat is commensurate with the credibility of the anticorruption efforts of the authorities, which, of late, is consistently on the rise (Li, 2019). Although self-reporting is mutually destructive, the prosecutorial policy is more lenient towards the briber than the bribed because the policy is designed to incentivize the briber to report on bribe taking (Li, 2011b). Such legal asymmetry remains largely true despite recent legal-reform efforts per the 9th Amendment of the Criminal Code to limit the room of plea-bargaining for bribers (Zhang, 2018). Given the risk, corrupt officials looking at the long-term horizon tend not to behave opportunistically and cheat the briber, in case of default.

Democratization of corruption

With the self-executable operating mechanism, guanxi is able to overcome many of the obstacles that arise due to the need to conceal the intention to exchange and facilitate exchange of items or services of great value. At the same time, access to exchange opportunities should be limited only to a privileged few because of the dyadic, personal nature of guanxi relations. This projection is however inconsistent with the widely acknowledged pervasiveness of guanxi-based corruption, for instance in China’s courts (Cui, 2006; Li, 2009; Ma, 2014). For example, Wu Zhenhan, a former president of Hunan High Court, was convicted of 33 counts of bribe-taking in five years. It seems unlikely that all these bribers were already members of the court president’s social circle and happened to have disputes lodged at the latter’s court. It is possible that some of them had cultivated ties with the court president after the disputes occurred. However, personally cultivating ties in litigation presents a number of constraints.

First, time constraints: as mentioned earlier, the cultivating process is personal and time-consuming. Hu Gang, an auctioneer who was also involved in the corruption scandal at Hunan High Court, spent six months bonding with one judge, entertaining the latter with banquets, visits to massage salons and other services (Gong, 2007). A litigant may not have sufficient time to complete the guanxi-cultivating process within the short time window in which court cases are expected to be closed. Second, cost-constraints: in China’s courts, to secure a favourable outcome in litigation, a litigant may need to interact with not just one but multiple judges or court officials in different court divisions of the same or different courts. This is due to three features of the Chinese judicial system: the departmentalization of the litigation process, the layered adjudicative
decision-making process and the lack of finality of court decisions. The departmentalization of
the litigation process in China entails three phases: filing of the case, adjudication and enforce-
ment of the court judgment. Each phase is handled by a specialized court division. To ensure a
favourable decision is delivered, litigants may need to engage in separate corrupt exchanges with
different judges at each of the steps. In addition, the adjudicative decision making in China’s court
is bureaucratically administered. It means that each phase of the litigating process might involve
multiple decision makers. Finally, if a court decision is rendered and a party appeals, the case can
go up and down in the court hierarchy several rounds in extreme cases. Each time, the litigant will
face a new panel of decision makers (Li, 2012). Under this circumstance, the traditional dyadic
guanxi relations, even when networked, would not be able to generate sufficient bridges to close
the enlarged spatial and social distance between a random litigant and multiple judges each time
a dispute arises. However, what happened in China’s courts suggests that access to privileged
exchange opportunities has been significantly expanded and made affordable to many. What has
lifted all those barriers mentioned above?

What is responsible for the ‘democratization’ of guanxi is the emergence of professional guanxi
brokers or middlemen. The presence of guanxi brokers in courts is by no means a new phenome-
non. Legal historians had presented detailed examples of how, for instance during the Qing dynasty,
lawyers (‘litigation masters’), court clerks and family members of corrupt officials, provided bro-
kerage services to litigants who were in need (Lin, 2009; You, 2015). The practice of guanxi bro-
kers is not limited to the legal sector either. Recent research revealed that this practice is prevalent
even in the most disciplined institutions such as the Chinese military (Wang, 2017b).

In the context of court practices, professional guanxi brokers refer to those who specialize in
building and maintaining connections with judges and/or court officials and capitalize on such con-
nections by brokering corrupt deals between them and litigants. The brokering activities of such
professionals have catalysed corruption in China’s courts and have been repeatedly denounced by
judicial authorities in China in the last three decades (Peng, 2014). The emergence of these profes-
sional brokers creates a kind of ‘third-party’ effect (Lin, 2002) that goes beyond simple connection
making, as is the case in conventional social exchanges. Currently, professional guanxi brokers for
court services come primarily from three groups.

First and foremost among the groups are lawyers. Lawyers have appeared as brokers in almost
all high-profile judicial corruption scandals since the 1990s (Wang, 2017a). Lawyers have several
advantages to act as brokers of judicial corruption. First, they are bridges between judges and liti-
gants. Many lawyers enjoy pre-established ties with judges because they share the same alumni
network with the latter before taking their separate career paths. At the same time, as legal service
providers, lawyers enjoy open access to litigants and can sell their services to the latter openly in
the (lawful) legal market. Second, lawyers can package the unlawful services, i.e. corruption bro-
kerage, with lawful services, i.e. legal consultancy and representation, and sell them to their clients
as a whole. Packaging the two services together enhances the chance of winning the case and
reduces the risk of detection of corruption. This is because when a judicial outcome is generated
purely by the corrupt incentive provided to the judges in the absence of legal merit, the case is more
likely to arouse suspicion and be challenged at the appellant court. Therefore, for professional
lawyer brokers, the higher the quality of their legal services, the lesser the risk of their illegal busi-
ness. Cost-wise, lawyers can provide tax benefits for litigants by invoicing the bribe as part of their
legal fees, which a litigant can use as tax deductible, a service that one cannot expect from a judge
if the litigant were to bribe the judge directly. Third, lawyers are best positioned to reduce the
transactions costs of judicial corruption. Guanxi-cultivating costs are like a club membership fee:
once a connection is established, the greater the number of exchanges that this connection facili-
tates, the lower the transaction cost will be for each exchange. Since most legal services are
conducted locally, the chance that a lawyer would appear at the same court and in front of the same judge repeatedly is much greater than that of any single litigant. Such iteration allows lawyers to spread and lower the cost of *guanxi* cultivation as the number of corrupt exchanges increases.

The second group of professional *guanxi* brokers for court services is made up of serving or former judges and court officials, usually of lower rank. Working or having worked in courts, they can more easily and readily gain access to the process information of a case, much of which is not open to litigants or their representatives. Such information is particularly valuable for litigants or their representatives because of the complexity and opaqueness of the decision-making structure in China’s courts. This difficulty is compounded by the division of the litigating process into multiple phases and by the further protraction of the process if appeals and retrials are pursued. Therefore, what a judge broker would do is not only bring judges and litigants together but also coordinate various interests of multiple actors from both sides of the corrupt deal. Such services are appreciated by the bribing litigants and/or their lawyers who very often do not readily have access to court insider information or direct contact with all the decision makers involved in a litigation. Such services would also be appreciated by bribe-taking judges who may not have time (due to workload and other obligations) or do not feel safe to engage in the initiation and negotiation with bribers directly at early stages of corrupt exchange. For example, in the aforementioned corruption scandal in Hunan High Court, Li Xiaohua, a mid-rank court official, played an important role as a corruption broker. He not only referred bribers to Wu Zhenhan, then president of the court, but also frequently took instructions from the latter to ‘coordinate’ marked cases by communicating the president’s preference regarding the outcomes of the cases concerned to judges who were hearing those cases. Such practice is not isolated, but recurred in a number of high courts and intermediate courts in various provinces (Li, 2012; Wang, 2017a), including the Supreme People’s Court (Anonymous, 2015).

The last group of brokers consists of family members or close relatives of court leaders. Even more privileged than judge brokers, these brokers enjoy almost unencumbered access to the judicial decision makers who happen to be their family members. Sons, wives and nephews of high-ranking judges or judicial officials are frequently seen in corruption scandals (Anonymous, 2017; Liu, 2004, 2005; Xie, 2014). As such, profits are maximized when the business of corruption is syndicated within the family. In complicated cases which involve large stake, multiple decision makers in multiple courts and/or other institutions in different jurisdictions, it might be necessary to involve all three types of intermediaries, ‘outsourcing’ part of the commission where ‘structural holes’ (Burt, 1992) need to be filled.

**Guanxi and judicial politics in comparative perspective**

Other than facilitating corruption, how is *guanxi* related to other phenomena of interest to scholars of comparative judicial politics? For instance, can *guanxi* foster judicial solidarity, avert impositions from politicians and preserve judicial autonomy, as seems to be the effect of informal exchanges and networks in other countries (Mustafa, 2008)? Additionally, what is the role of *guanxi* in the formation and operation of the patronage networks that affect judicial appointments in China and elsewhere? Here, I would like to offer some preliminary thoughts on these two issues, based on the discussion elaborated above.

For the first issue, *guanxi*-based exchanges operate very differently from ideational networks. *Guanxi* is particularistic in nature – which means it extends exchange opportunities only to those who share a social tie – and it operates on the principle of reciprocity between the parties in the relationship. This is the opposite of ideational networks, especially those with a political orientation, which are sustained by the common ideology, principles or beliefs regarding substantive
issues shared by its members. These networks are not particularistic and do not operate on reciprocity. Instead, members of such networks share information and provide mutual support, for which the existence of social ties or reciprocal arrangements is not a condition.

Although reciprocity does not necessarily contradict ideological unity, *guanxi* is an unlikely mechanism to generate judicial solidarity and autonomy for two reasons. First, ideational networks often demonstrate their group solidarity publicly, which is incompatible with the discreetness of *guanxi*, especially when *guanxi* is used to facilitate corruption. Second, genuine ideational networks should have an open membership policy instead of limiting it only to those who share social ties. This means that *guanxi* may catalyze the formation of an ideational network at its initial stage of development; however, it should not become the latter’s constitutive principle. Indeed, in China, *guanxi* is the foundation of political factions. These groups are interest-driven and often switch their ideological attachment as soon as the environment changes, a phenomenon that has been well documented in studies of the political history of China, in particular, for the period of the Cultural Revolution, a time replete with factional conflicts (Walder, 2006, 2009).

For the second issue, *guanxi* is not only relevant but also important in judicial appointments in China’s courts, the detailed practices of which deserve independent treatment elsewhere. However, a few points can be laid out drawing comparison with the insights into the Mexican judiciary offered by Pozas-Loyo & Rios-Figueroa (2018, this issue). In their characterization, early practices (1917–1976) of judicial appointments in the Mexican federal courts used a system of ‘patronage with accountability’, where supreme court justices followed a ‘gentlemen’s pact’, taking turns to name candidates for judicial posts at lower courts with a ‘minimum standard’ of competence observed and, when it was not their turn, endorsing the nominations of others. The authors found that these practices evolved to a system of ‘patronage without accountability’ after 1976, where the standards for candidate selection were no longer enforced and appointment decisions were mainly made on the basis of patronage relations. This is explained in the article as arising from the fact that the growth of the size of the judiciary had overwhelmed the justices, who then had to drop the standard of competence when making their decisions.

In China’s courts, both *guanxi* or patronage and the ‘minimum standard’ come into play in judicial appointments. The ‘minimum standard’ includes not only legal credentials but also political performance, i.e. loyalty to the Chinese Communist Party (the Party), of the candidates, imposed by the Party which exercises institutionalized control over key appointments in all public institutions. The rigidity of the application of the ‘minimum standard’ depends on the importance attached to it by the Party as well as its enforcement capacity. In Mexican federal courts, the enforcement of the standard seemed to be informal, relying on voluntary observation of supreme court justices; hence, the enforcement capacity could be easily exhausted at the slightest increase in demand. In contrast, in China’s courts, the enforcement of the standard, both professional and political, is formal and institutionalized. Special court divisions (political departments) are established and personnel assigned to check candidates’ credentials. In addition, thanks to the fast expansion of legal education in China in the past decades (Minzner, 2013), the number of eligible candidates far exceeds the vacancies to fill, which creates considerable room for patronage to influence appointment decisions without necessarily compromising the standard of competence.

**Conclusion**

Current discussions on the relationship between *guanxi* and corruption are often (mis)guided by a misunderstanding, which leads one to equate corruption with market exchange and subsequently to view it in a contrasting light with *guanxi*. Furthermore, the affective v. instrumental typology that is developed to analyse the *guanxi* phenomenon is ill-equipped to provide analytical clarity to advance our understanding of *guanxi* and often leads to the trap of cultural relativism. In this
article, I contend that neither affection nor instrumentality are features that can be exclusively attributed to one particular type of exchange. Affection and instrumentality can coexist in any type of exchange relationship. What makes guanxi a distinctive form of exchange is not the absence of instrumentality but the efforts that its participants have made to conceal that instrumentality and it is this concealment that makes guanxi and social exchange in general distinguishable from market exchange. I also contend that the reason that corruption is predominantly carried out in the form of social instead of market exchange is exactly because concealment of the intention to exchange helps exchange parties to obscure the venality and associated criminality of the exchange conduct, to reduce the risk of detection and to mitigate the moral censure of the conduct concerned. At the same time, I also acknowledge that this feature creates obstacles: the concealment of intention to exchange makes it difficult for corruption participants to negotiate the exchange terms and to enforce them. This problem is negligible when the stake involved in the exchange is low, but it becomes consequential and difficult to neglect in corruption which often involves high stakes and great economic value. To deal with this problem, corruption participants rely on partial performance as a negotiating device and as a method to mitigate loss when voluntary performance is not forthcoming. In the meantime, restitution for incomplete or failure of performance is also observed by corruption participants, which is, ironically, attributable to the credibility and asymmetric punishment of anticorruption efforts.

This moral economy of corruption, as described above, allows public services and resources of great value to be exchanged and privatized in the form of social exchange. The increased exchange capacity drives up the supply of corrupt services and subsequently opens up otherwise restricted access to exchange opportunities. The access is then offered to those out of the guanxi network through specialized or even professionalized brokers. Such brokers come from, in the case of judicial corruption, three groups: lawyers, former or at-service judicial staff and family members of judges. The extended reach of a guanxi network does not however change its exchange-oriented nature, which sets it apart from ideational networks and consequently renders it unsuitable as a support system to nurture judicial solidarity and autonomy in China’s courts.

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