

## Balancing Personal Ethics and Public Duties

# The Ethical Problem of Professional Gifting

David Schultz

Conflict of interest rules across different professions seek to prevent private interests from affecting public duties. Often their goal is limiting professionals from using their public roles or employment in a way that inures to their private financial gain. Yet these rules have a broader purpose, such as to practices involving the misuse of information and biases in judgment. Among practices that have come under the scrutiny of these conflict of interest rules is gift giving. Gifting, a private act of friendship and charity among individuals which has deep cross-cultural roots, is increasingly seen as a morally problematic practice in many professions. Gifting done within the context of employment is at the cross hairs of balancing personal ethics and public duties, and it is a practice that needs regulation.

**The Cultural Roots of Gifting** Gift giving is a cross-cultural activity embedded within a network of social relationships and customs that express friendship, reciprocity, and other bonds of affection and respect. Noting that the practice of exchanging gifts is rooted in, but not confined to primitive societies, Claude Levi-Strauss in his *The*

*Elementary Structure of Kinship* contends that this activity is fundamentally not economic in nature but instead aimed at expressing other values. He states that often equal gifts are exchanged that "from an economic viewpoint seem totally meaningless." Instead, it is about the reciprocity, a way of respecting one another, acknowledging one's social status or even importance.

Offering food and dinners to strangers is one way of returning kindness and reciprocity. This practice is rooted in the habit of breaking bread as a way to create social relations and good will. Elaborating upon this point, A. R. Radcliffe-Brown stated that: "The object of the exchange was to produce a friendly feeling between the two persons concerned."

Marcel Mauss contends in *The Gift* that gift-giving has always had an almost magical or divine aspect surrounding it. For the Samoans and Maori, gifting occurred at major event, such as births or marriages, to serve as a form of recognition and commencement of new familial relations, or to define friendships. Gifting builds social bonds, relationships, and trust, almost in ways that Robert Putnam ascribed to social capital and civic engagement in *Bowling Alone*.

Yet gifting is not a practice limited to ancient or distant

cultures. Today many still exchange small token gifts to express friendship. Even the practice of sending greeting cards signifies social bonds, as evidenced by the plethora of Hallmark cards expressing almost an infinite number of ways we are bonded together. These cards highlight friendships, love, birth, death, marriage and other ways we bond.

Gifting is a practice that transcends token items. Richard Titmuss' classic *The Gift Relationship* chronicles the differences between blood donations in the United States and Great Britain, noting how the sale of blood versus its voluntary giving produce differences in terms of who gives, how much and for what motives. Blood donation forges unique bonds. The same is true of organ donation.

Finally, Marilyn Fischer, underscores the significance of gifting in the nonprofit sector in her *Ethical Decision Making in Fund Raising*. Her contention is that what makes the nonprofit community unique is its reliance upon a gift economy that establishes unique bonds and inculcates a set of virtues (including compassion and sympathy) that cannot be generated in the economy of the marketplace.

In sum, for Fisher, Titmuss, Mauss, Radcliffe-Brown, and Levi-Strauss, gifting is a

private practice that takes on significant social dimensions.

### The Gift Relationship

In the same way that there are no free lunches, there are no free gifts. Gifts, even if given of free will, are not without their strings and expectations that they will be reciprocated. For those who have received a Christmas card from someone whom they have not sent one to, they understand the power of gifts. Receipt of a card prompts most to rush to send one in return. For Levi-Strauss: "These gifts are either exchanged immediately for equivalent gifts or are received by the beneficiaries on condition that at a later date they will give counter gifts often exceeding the original good in value." A gift requires a thank you and reciprocity in kind of something of similar or greater value.

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Gifting and the demands to reciprocate are learned in childhood where a return

of favor for favor is viewed as an obligation. This power of exchange is well understood among those in fund raising and in sales. Why do some organizations give away coffee mugs or other trinkets as part of a fund-raising campaign? The hope is in part that the reception of a gift will guilt many into offering donations. The Hari Krishna well understood this point. Their practice of giving flowers away was met with individuals, often with clear indications that they did not wish to donate to them, giving the Krishna cash upon the placement of flowers in their hand. Robert Cialdini's *Influence: How and Why People Agree to Things*, also describes the power of apparent gifts in sealing sales and deals. A car dealer gives one a free tank of gas to score a sale with a reluctant customer. Taking a client out to dinner to schmooze breaks down barriers and inhibitions, inducing trust and a sale. Offers of free items, "buy one, get one free," and other similar techniques all play upon our sense that gifts and gestures of good will must be returned in some way. Gifting makes individuals more trusting and disposed to act in ways they might not have, but for the gift. Few individuals dislike gift givers—everyone loves Santa Claus.

### **Gifting in a Professional Setting: The Ethical Issue**

Gifting is a quintessential private activity that is ethically a problem when undertaken in a professional setting. The

issue is not the real value of the gift, although its size and timing may lead to serious questions about its intent and whether its offering or solicitation is a bribe or extortion. Instead, gifting in a professional setting implicates problems of conflict of interest, bias, and perhaps misuse of judgments that can color or affect the workplace.

Perhaps the most famous area where gifting has become problematic is between lobbyists and government officials. Gifts from the former to the latter, such as meals, junkets, and other gratuities, smack of influence peddling and buying votes.

The problem of lobbyist or special interest gifts to government officials raises concern that illicit influence is affecting the outcome of the policy making process in terms of bills heard or squashed, favors returned and earmarks allocated. As a result, Congress, and many states, have legislated or adopted rules regulating gifting. Some rules establish disclosure of gifts, others a de minimis standard, or, as in Minnesota, a zero tolerance rule prohibiting all lobbyist gifts to public officials.

### **The Professional Regulation of Gifting**

But public officials are not the only field where gifting in a professional setting has led to recognition of an ethical problem and adoption of prophylactic rules. At least 20 different professions have acted in this capacity. For accountants and auditors, American

Institute of Certified Public Accountants rules recognize that gifts compromise impartiality and objectivity, leading to a ban except for the most nominal gifts.

Many law enforcement agencies such as police preclude them from accepting free meals, less it creates the expectation among the public that such gifts are required in order to receive protection.

The American Dental Association bars gifts from patients to their dentists, except in long-term situations and where value is nominal. The ADA also recognizes the awkwardness of gifts from dentist to dentist. In both cases, concern about how gifting might affect professional judgments are the basis of the policy.

Finally, the American Medical Association has come to recognize the problems associated with gifts from drug companies to physicians and it, along with some states, are increasingly seeking to regulate or ban the practice, and the Code of Ethics for the Society of Professional Journalists encourages it members to act independently by refusing "gifts, favors, fees, free travel and special treatment."

The survey of the gifting policies of several professions demonstrates that growing recognition that a traditional practice of friendship and reciprocity takes on a more nuanced and ethically problematic status when undertaken in a work place setting.

A practice privately lauded and encouraged is fraught with real or apparent conflicts of interest when ensconced professionally.

Gifting in professional settings is not always wrong, nor should it always be prohibited. Workplaces first need to recognize the problem this practice raises in terms of situating personal ethics and behavior in potential conflict with public duties. Thus, workplaces and professions should adopt appropriate policies to address gifting in order to improve ethical service and discourage corruption.

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