Corruption: Uncovering the Price of Normative Morality and the Value of Ethics

By Verena Rauen[*]

Abstract

Corruption should be understood as illustrative of an ethical problem that runs deeper than specific immoral actions. This Article sees corruption as an unethical exchange, a view that can shed light on the economic structure of normative morality (as distinguished from ethics which is the theoretical field that underlies normative morality)—a structure that enables the possibility of exchanging moral values against marketable prices in the first place. To go beyond normative morality, this Article will discuss two profound philosophical concepts and their relation to corruption: (1) a non-economic justice as founded by Aristotle's principle of *épieikeia* (equity), and (2) Levinas' notion of the *Third* with the ethical responsibility that is connected to it. In addition, the discussion of the Third will be informed by philosophical theories of gift exchange as proposed by, among others, Marcel Hénaff, who examined the connections between gift exchange, monetary exchanges and corruption. Based on this, a way of thinking about the suspension between ethics and corruption is developed that avoids falling back into the logic of economic exchange which is constitutive for corruption. Instead, an ethical perspective is suggested as the fundamental ability to adequately balance universal normative claims with the individual case. This kind of just balancing opens up new spaces of reflection to confront corruption.

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A. Introduction

"Everyone will readily agree that it is of the highest importance to know whether we are not duped by morality."[1]

Moral values supposedly have timeless validity.[2] It should, therefore, be impossible to subject them to any economy of exchange—they are considered to be priceless. But corruption reveals that moral values can indeed be bought. This has led to some theories of corruption that understand corruption as an immoral exchange[3]—a problem of morality. In fact, many corrupt exchanges operate behind a "moral curtain"; from a philosophical perspective, corruption should be seen as an ethical problem, one in which ethics is the theoretical field that underlies normative morality and that provides concepts which can reach beyond the curtain of normative morality, such as ethical responsibility or a non-economic ethical justice. For this reason, this Article defines corruption as an unethical exchange.

Grasping the causes of corruption from an ethical perspective requires an understanding of how normative morality and economics are intertwined. To the extent that normative morality applies a logic of eternal debt-making and re-balancing to values that are seemingly not for sale, it might be considered to be corrupt itself. To confront corruption by ethical means thus requires an ethical dimension that is, itself, neither based on the principles of economics—i.e., on the compensation of debt or guilt—nor determined primarily by moral judgment.

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[1] EMMANUEL LEVINAS, TOTALITY AND INFINITY: ESSAY ON EXTERIORITY 21 (1969). The famous question of "whether we are not duped by morality" opens Levinas' first major work, *Totality and Infinity*. Levinas distinguishes between morality and ethics. He intends to establish the latter as philosophy's first discipline before metaphysics and, in the tradition of Friedrich Nietzsche's critique of morality, specifically before any normative moral philosophy. While the word ethics stems from the Greek term *ēthikē* and can refer to a theoretical meta-reflection upon morality, and in Levinas' case, a theory that focuses on the relation between the subject and the Other—whose characteristic quality is an irreducible strangeness that cannot be subject to any identification and especially not to moral judgment—the terms morality and morals stem from the Latin word mores, and allude more directly to general norms which are supposed to guide moral behavior. Section D of this essay refers to the relation between ethics and normative morality, which Levinas introduces by the so-called Third—a term that represents the general claims on a subject by moral norms and the general law as it is executed by legal institutions. The Third is seen as introducing a tension with the singular claim by the Other. For an introduction to Emmanuel Levinas' theories, see Bernhard Waldenfels' reflection upon the relation between ethics and normative morality, whereby he suggests an "ethical-moral époché that takes the self-evidence off morality." BERNHARD WALDENFELS, SCHATTENRISSE DER MORAL 10 (2006).

[2] IMMANUEL KANT, GROUNDWORK OF THE METAPHYSIC OF MORALS 394, 412 (1785) (describing the timeless validity of moral values). On the distinction between value and price in economy, see Immanuel Kant, The Metaphysics of Morals (1797), in which Kant determines the price as the public judgment on the value of something as determined from exchanges. *See also* Simmel, *infra* note 40.

[3] *See* Sighard Neckel, *Der unmoralische Tausch. Eine Soziologie der Käuflichkeit*, *in* 120 KURSBUCH 9–16 (Hans M. Enzensberger ed., 1995).

Several philosophers of the late nineteenth and the twentieth centuries posited that morality can foster corruption. For example, in *On the Genealogy of Morality,* Friedrich Nietzsche studies how morality is conditioned on principles of economics;[4] in *Capitalism as Religion,* Walter Benjamin describes the cross-dependencies between economics, morality and religion;[5] finally, in the light of the catastrophes of the twentieth century, Emmanuel Levinas argues for an ethics that goes beyond the economic, historical, and cultural conditionality of normative morality. In other words, Levinas strives toward an uneconomic ethics that does not provide exchangeable values whose prices could be paid on the markets of corruption.

An ethics that does not stimulate corruption, by using none of the principles of economy—that is, logically prior to cycles of exchange and repayment—would be a means to counter corruption within economics. According to Levinas, such an ethical force against corruption could be described as a basic concept of alterity on which his theory of ethical responsibility for the Other is based, as well as by a certain dimension of ethical justice that is opened by what Levinas calls the *Third*. Further, Marcel Hénaff, referring to Levinas, analyzes the economics of exchange with respect to the possibility of a non-economic gift that would undermine any corrupt exchange.[6]

Corruption should be understood as illustrative of a moral problem that runs deeper than specific immoral actions. Corruption as an unethical exchange can shed light on the economic structure of normative morality—a structure that enables the possibility of exchanging moral values against marketable prices in the first place. To go beyond normative morality, this Article will discuss two profound philosophical concepts and their relation to corruption: (1) a non-economic justice as founded by Aristotle's principle of *épieikeia* (equity), and (2) Levinas' notion of the Third with the ethical responsibility that is connected to it. These ideas offer a way of thinking about the suspension between ethics and corruption without falling back into the logic of economic exchange that is constitutive for corruption.

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[4] *See generally* FRIEDRICH NIETZSCHE, ON THE GENEALOGY OF MORALITY (2006). For an introduction to the critique of morality by Nietzsche and its link to the ethics of Emmanuel Levinas, see Bernhard Waldenfels, *in* DEUTSCH-FRANZÖSISCHE GEDANKENGÄNGE (1995). On the method of a genealogy of morality, see Volker Gerhardt, *Die Perspektive des Perspektivismus*, *in* 18 NIETZSCHE-STUDIEN 260–81 (1989). Last but not least, see Michel Foucault's seminal work on discourse analysis, which is also rooted in his readings of Nietzsche. Michel Foucault, *Nietzsche, Genealogy, History*, *in* LANGUAGE, COUNTERMEMORY, PRACTICE: SELECTED ESSAYS AND INTERVIEWS 139–64 (Donald Bouchard ed., 1980).

[5] Walter Benjamin, *Capitalism as Religion*, *in* THE FRANKFURT SCHOOL ON RELIGION: KEY WRITINGS BY THE MAJOR THINKERS 259 (Eduardo Mendieta ed., 2005) (alluding to the fact that economy and morality are intertwined to the extent that both refer to an eternal logic of rebalancing a debt that can never entirely be compensated for). On this problematic connection between moral guilt and economic debt, see Werner Hamacher, *Guilt History: Benjamin's Sketch "Capitalism as Religion,"* *in* 32 DIACRITICS 81–106 (2002).

[6] MARCEL HÉNAFF, THE PRICE OF TRUTH: GIFT, MONEY, AND PHILOSOPHY 398 (2010).

In what follows, Section B will give a brief overview of theories of corruption that follow the "moral approach," including works from economic ethics such as those from Homann and Wieland, as well as those from political philosophy, including Walzer and Sandel. Following that, this Article will discuss Priddat's view of corruption as an "order of a second kind," leading first to a critical perspective on the relationship between corruption and normative morality. Second, it will show that networks of corrupt actors do not only transform values that are not measurable quantitatively into prices to trade them but also, that they construct a separate moral order and, specifically, a separate system of mutual recognition. Section C takes up both points: It will discuss Nietzsche's view on morality as based on the logic of exchange, connecting philosophical and anthropological theories of the gift exchange to corruption. In particular, the French philosopher Marcel Hénaff analyzed this link by connecting corruption to relationships of mutual recognition—as introduced in section B—in gift-exchange systems. Thus, a non-exchangeable element is not only present but indispensable in every exchange of goods, which allows to refine the definition of corruption presented here: Corrupt exchanges are unethical in the sense that they have lost their original, non-exchangeable element. Finally, section D will review these ideas in the light of Levinas' ethical conception of responsibility and the related dimension of the Third. This lays the groundwork for a perspective on an ethical corrective of corrupt exchanges that is not based on economic principles, but rather upon ethical responsibility, which is understood as a constant challenge to balance the ethical claims of the Other with those of the Third. Section E offers a conclusion.

B. Corruption as an Immoral Exchange?

"We need to ask whether there are some things money should not buy. The reach of markets, and market-oriented thinking, into aspects of life traditionally governed by nonmarket norms is one of the most significant developments of our time."[7]

To shed a light on the problematic relation between corruption and morality, a short overview of the most widespread concepts of corruption in political philosophy and economic ethics that link corruption to an immoral exchange might be helpful. For instance, economic ethicist Josef Wieland describes corruption as "immoral venality (*sittenwidrige Käuflichkeit*) in the sense that it violates the moral consensus of a society about the separation of the public and private domain and about fairness and justice in competition."[8] Karl Homann, referring to Robert Klitgaard's model,[9] understands

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[7] MICHAEL SANDEL, WHAT MONEY CAN'T BUY: THE MORAL LIMITS OF MARKETS 7 (2012).

[8] Josef Wieland, *Die Governance der Korruption*, *in* KORRUPTION: UNAUFGEKLÄRTER KAPITALISMUS—MULTIDISZIPLINÄRE PERSPEKTIVEN ZU FUNKTIONEN UND FOLGEN DER KORRUPTION 43, 43 (Stephan Jansen & Birger Priddat eds., 2005) (translation by Author).

[9] Robert Klitgaard, *Gifts and Bribes*, *in* STRATEGY AND CHOICE 211 (Richard Zeckhauser ed., 1991).

corruption as a transaction, which concerns three entities: principal, agent, and client. The agent violates a contract between herself and the principal by an exchange with the client to her advantage.[10] In contrast to these morality-based approaches, Birger Priddat[11] focuses on the ambivalent role that morality plays in the networks that are characteristic for corruption[12] and that make corrupt transactions difficult to trace back to their origins. For him, corruption is subject to an order of secrecy—an order of a second kind (*Ordnung zweiter Art*)[13]—because those who benefit from corruption act within an economy without recognition, which leads them to grow the network continuously:

> The corrupt public official mainly lacks recognition. They may find it with B (the client, VR) and in the money transactions (*Auszahlungen*), but always concealed, never open. Nobody must learn about their special skills that they may imagine. Therefore, monetary transactions do not provide sense alone; additional inclusions into new networks are needed (and they become recognition-transactions themselves: shared holidays, parties, sport etc. . . . in the network with B).[14]

While the previously mentioned authors see corruption as an exchange that violates morality, and try to tackle such exchanges by means of an ethics of order—like Homann—or of governance—like Wieland—Priddat asserts that the reciprocity of exchange is not only characterized by the logic of compensation, but also in particular by relationships of recognition that promote a feeling of community. Within this "second life economy,"[15] agent and client develop their own morals.

This reciprocity of recognition thus mirrors an economic principle of compensation that will be shown in the following sections to be not only characteristic for corruption, but also

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[10] Karl Homann, *Unternehmensethik und Korruption*, 49 Zeitschrift für betriebswirtschaftliche Forschung (ZfbF) 187, 192 (1997).

[11] Birger Priddat, *Schwarze Löcher der Verantwortung, Korruption: Die negative Variante von Public-Private Partnership*, *in* Korruption: Unaufgeklärter Kapitalismus: Multidisziplinäre Perspektiven zu Funktionen und Folgen der Korruption 85 (Stephan Jansen & Birger Priddat eds., 2005).

[12] *See* Dirk Baecker, *Ämter, Themen und Kontakte: Zur Form der Politik im Netzwerk der Gesellschaft*, *in* Der bewegte Staat 9 (Birger Priddat ed., 2000).

[13] *See generally* Korruption als Ordnung zweiter Art (Birger Priddat & Michael Schmid eds., 2011).

[14] Priddat, *supra* note 11, at 90.

[15] Birger Priddat, *Korruption als Second-Life-Economy*, *in* Korruption als Ordnung zweiter Art 61 (Birger Priddat & Michael Schmid eds., 2011).

for normative morality. The assumption that there might be a morally right" and transparent authority entirely free from corrupt exchanges—from whose perspective the movements of corruption could be judged and condemned—is questionable. Instead, corruption and normative morality are interdependent; only the revelation of this interdependency can open an ethical space of reflection that may be a corrective for both corruption and normative morality. In this light, the view that corruption pollutes values that should not be available for money, as espoused by Michael Walzer[16] and, following him, Michael Sandel,[17] is problematic because it presupposes that corruption and normative morality could follow two separate orders: the order of economy—i.e., of exchange and purchasability—and the order of ethics—i.e., of non-purchasable moral values and ideals. Corruption would then put a price tag to such non-economic values and would make them an object of economic exchange: "We often associate corruption with illicit payoffs to public officials. But . . . corruption also has a broader meaning: we corrupt a good, an activity, or a social practice whenever we treat it according to a lower norm than is appropriate to it."[18] In contrast, the real moral norms would be those that have no price; those that are not for sale according to common consensus and that allow people to resist corrupt deals if they follow them.[19]

It is plausible that the logic of markets ought not to be extended to any and all realms of life. It is not plausible, however, that normative morality and economics follow two entirely different orders. The fundamental role of the logic of exchange and compensation for both has been consistently recognized in the history of moral philosophy and continues to be studied in neighboring disciplines like anthropology and ethnology. For instance, Jeremy Boissevain has provided an anthropology of corruption emphasizing the importance of social networks.[20] Ethnologist Bernhard Streck, referring to Boissevain, follows this approach of analyzing corruption by a paradigm of "giving and taking."[21] Still, Streck does not simply understand morality as a principle that is entirely heterogeneous to corruption. He points out that the norms that are associated with morality often simply conceal corrupt exchanges: "Boissevain compared society's norms to curtains that are drawn to hide improper behavior behind them."[22] These remarks provide the first clues as

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[16] MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 97 (1983).

[17] SANDEL, *supra* note 7, at 7.

[18] *Id*. at 46.

[19] *Id*. at 14.

[20] *See generally* JEREMY BOISSEVAIN, FRIENDS OF FRIENDS: NETWORKS, MANIPULATORS, AND COALITIONS (1974).

[21] Bernhard Streck, *Geben und Nehmen. Oder die Korruption in den Tiefen der Menschheit*, 120 KURSBUCH 1, 5 (1995).

[22] *Id*. at 5 (translation by author).

to the double role that morality can play with respect to corruption. In this light, the question that opens Emmanuel Levinas' first major work, *Totality and Infinity*—quoted in the beginning of this essay—becomes ever more urgent. What if we are duped by morality? What if it is not the clear opposite to corruption that it seems to be?

C. The Value of Incorruptibility and the Price of Morality

"So let us give voice to this *new demand*: we need a *critique* of moral values, *the value of these values should itself, for once, be examined*—and so we need to know about the conditions and circumstances under which the values grew up, developed and changed . . ."[23]

Corruption as an "order of a second kind" is not only a principle that counteracts morality: It points to a problem rooted in the deep structure of normative moral philosophy itself. Both normative morality and corruption follow the principles of exchange and compensation, based on a concept of economic justice that can be traced back to Aristotle and results from his notion of equality.[24] For Aristotle, the core function of economics is to satisfy basic necessities, while the ways to achieve this are adequate housekeeping and the wise employment of economic means;[25] all this subject to the prime goal of leading a good life.[26] Yet he also describes the interdependencies between morality and economics, to the extent that a balanced justice is obtained when economic means are distributed equally[27]—in proportion to everyone's needs—among the members of the *polis*.[28] Section D will come back to Aristotle to discuss how he also provides a corrective to this type of justice with his concept of *épieikeia*.[29]

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[23] Nietzsche, *supra* note 4, at 7.

[24] Aristotle, Nicomachean Ethics, bk. II, at 1129 (H. Rackham trans., Loeb Classical Library ed. 1926) (c. 384 B.C.E.).

[25] Peter Seele, *Ökonomische Philosophie: Ein Plädoyer für die Rehabilitierung einer alten Disziplin*, 14/1 Information Philosophie 30, 32 (2014).

[26] Viktoria Bachmann, Der Grund des guten Lebens: Eine Untersuchung der paradigmatischen Konzepte von Sokrates, Aristoteles und Kant 133 (2013).

[27] Raul Heimann, Die Frage nach der Gerechtigkeit: Platons Politeia I und die Gerechtigkeitstheorien von Aristoteles, Hobbes und Nietzsche 174 (2015).

[28] *See generally* Ludger Heidbrink, Verena Rauen, *Warum Wirtschaftsphilosophie? Eine kontroverse Auseinandersetzung*, *in* 3.3 Was ist? Wirtschaftsphilosophische Erkundungen (Wolf-Dieter Enkelmann & Birger Priddat eds., 2016) (unpublished manuscript) (on file with author).

[29] Aristotle, *supra* note 24, at 10.

It was Friedrich Nietzsche in particular who developed his critique of morality based on Aristotle's idea of a justice that aims at equality. For him, the economic principles of compensation and exchange provide the basic structure of morality:

> Every thing has its price: *everything* can be compensated for' – the oldest, most naïve canon of morals relating to *justice*, the beginning of all 'good naturedness', 'equity', all 'good will', all 'objectivity' on earth. Justice at this first level is the good will, between those who are roughly equal, to come to terms with each other, to 'come to an understanding' again by means of a settlement – and, in connection with those who are less powerful, to *force* them to reach a settlement amongst themselves.[30]

To Nietzsche, the quantification of values that should not be quantifiable is morality's essence. He understands morality as a discursive construction whose contents are subject to a genealogy, i.e., a continuous change of meaning that is determined by economic and political interests: "Fixing prices, setting values, working out equivalents, exchanging—this preoccupied man's first thoughts to such a degree that in a certain sense it *constitutes* thought . . . ."[31]

The striking structural similarities between morality and economics as pointed out by Nietzsche are crucial for an understanding of the ambivalent role of morality in the treatment of cases of corruption, since Nietzsche shows that morality's timeless values— such as justice—are economically influenced and that every normative moral value— distinguished from an ethical value—can indeed have its price, which makes normative morality vulnerable to corruptive transactions. Still, Nietzsche did not do justice to the question whether an ethical value that cannot be transformed into a price, that is not subjected to the reciprocity of exchange, can exist at all. To answer this, a short detour on philosophical theories of the exchange of gifts will be helpful, because we will need to distinguish between a non-economic ethical value, which does not take part in, although it is constitutive for, the circulation of exchangeable goods, as well as moral norms influenced by economic principles. In particular, the French philosopher and ethnologist Marcel Hénaff, following previous seminal works by Mauss[32] and Malinowski,[33] has

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[30] Nietzsche, *supra* note 4, at 46.

[31] *Id*. at 45.

[32] Marcel Mauss, The Gift: Forms and Functions of Exchange in Archaic Societies (1966). Mauss studied archaic systems of gift exchange. One essential finding is that a thing that becomes a gift takes a power that almost forces the receiver to reciprocate. He refers generally to three types of archaic gift exchange, which often serve as the classical examples in current research on the gift: (1) the kula, the exchange of gifts on the Trobriand Islands; (2) the agonal exchange of potlatsch of indigenous peoples in North America; and, (3) the hau system used by the

developed a theory of the gift in order to point out an ethical concept of recognition that he explicitly links to the problem of corruption.[34]

Hénaff shows that even in an economy that is based on exchange, the circulation of gifts contains a non-exchangeable element that is not based on reciprocity or compensation. He maintains, following Mauss, that compensation is not the primary constitutive element of exchange-based relationships.[35]

Rather, it is mutual recognition or appreciation as established by these exchanges that is most relevant, an idea that links back to Priddat's theory of corruption as an order of a second type. Thus, it is not economic but social reciprocity, the foundation of mutual recognition, that is the most important dimension in archaic societies:

> What the facts discussed by Mauss are about is an intensive binding between the partners, an acknowledged and acquired public recognition, an established alliance. Following his lesson one might say that the ritual gift is no more about profitable exchange than about charitable generosity or contractual relationships.[36]

Maori in New Zealand. For further reading on philosophical conceptions of gift exchange based on the work by Mauss, see THEORIEN DER GABE ZUR EINFÜHRUNG (Iris Därmann ed., 2010). One major problem in the philosophical approaches to gift exchange is the question of whether there can be a gift which is not based on the economic principles of reciprocity and rebalancing to debt. In particular, Jacques Derrida has approached this question in his monograph *Given Time: I. Counterfeit money* (1992). For Derrida, the only gift which would be a "true"—i.e., non-economic gift—could be an unforeseen event, which is not part of any calculation or anticipation of the future and which would open the only possibility for the absolute new that cannot be part of any economic calculation, since it cannot refer to any former experience and thus cannot be anticipated in any way. This conception by Derrida has been criticized by Marcel Hénaff, who claims that Derrida applies the homo oeconomicus model to Mauss' description of archaic gift exchanges (Derrida refers to the potlatsch system in particular); although this economic model of human behavior, according to Hénaff, is inadequate for archaic gift exchanges, because, as will also be discussed in this essay, their goal was the establishment of mutual recognition, an idea which Hénaff transfers into an ethical theory.

[33] *See generally* BRONISLAW MALINOWSKI, ARGONAUTS OF THE WESTERN PACIFIC (1922).

[34] HÉNAFF, *supra* note 6, at 6. Hénaff even applies the logic of exchange that characterizes corruption explicitly to the constitution of philosophy itself by asking to what extent philosophical knowledge can be the object of transactions.

[35] MARCEL HÉNAFF, DIE GABE DER PHILOSOPHEN: GEGENSEITIGKEIT NEU DENKEN 56 (2014). For the original, see LE DON DES PHILOSOPHES: REPENSER LA RECIPROCITE (2012).

[36] *Id.* (translation by author).

This difference between the circulation of economic goods and traditional, social systems of gift exchange, whose primary aim is the establishment of recognition—a so-called pact of recognition[37]—is decisive for a deeper understanding of the link between normative morality and corruption. Corruption mirrors the problem that we must differentiate between the social context that arises from reciprocity and an ethical relationship that is not based on economic principles. Like Mauss who argues that the power of the so-called *sacra*—important sacred objects that provide identity to a community, is not exchangeable as such—Hénaff asserts that it is not economic principles that constitute ethical values, even though moral norms, which are derived from ethical values, may take part in economic exchanges. The advantages that can be gained by corrupt exchanges cannot directly concern ethical values because ethical values are a priori not subject to reciprocity. Hénaff points out that the real, non-purchasable value of ethics is immune against the procurement of tactical advantages by corrupt transactions:

> Could there be a literal price of truth, a situation where truth could be bought and sold? We have to acknowledge that we can find no examples of this, at least not in this form. It is inconceivable that in exchange for a monetary amount one could obtain scientific results, spiritual depth, or legal certainty. At most one could secure indirect tactical benefits that would fall under the category of corruption. We should then conclude that the phrase has no literal content and is metaphorical from the outset.[38]

If knowledge as such, or ethical values as such, cannot be exchanged economically, then mutual recognition is created by exchanging *proxies*—symbols of exchange values—in particular represented by money. The concept of corruption now receives a metaphoric character, in that it does not simply refer to immoral exchanges, but takes place wherever the symbolic character of exchanged goods with respect to the original, non-exchangeable element—which Mauss specifies by the term *sacrum*—is forgotten. Since those entities that are not for sale—that cannot be exchanged—are symbolized by exchangeable goods, they exist in an irreducible relationship to them. For Hénaff, the particular corruptive power of money lies in its ostensible ability, as a general equivalent, to represent a quantitative value for any kind of object: "This is the risk inherent in money. It is not new. It is the correlative of money's power as a sign of value and as an instrument of valuation, exchange, reserve, and investment."[39] But while money, as Georg Simmel has pointed out

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[37] *Id*. at 62.

[38] HÉNAFF, *supra* note 6, at 6.

[39] *Id*. at 394.

in his cultural-philosophical study on the philosophy of money,[40] is fluid and flexible enough to put a price tag to any value and to convert originally non-quantifiable values into quantifiable prizes, it serves in a paradoxical way as the means of a fulfillment of the non-fulfillable desire to accumulate capital,[41] and as the general equivalent for values. Prices receive their reality only from the practices of trade since the price always depends on its acceptance by the trading partners.[42] Hénaff concludes that it is precisely because of these conversion structures and because of its ability to raise the desire of accumulation that money can be seen as the most efficient and "the most powerful means of influence and corruption."[43]

In this light, the theoretical approaches from political philosophy, as discussed above, that refer to corruption as an immoral exchange are not comprehensive. For both Walzer and Sandel, the essential problem of corruption lies in the conversion of values that are not measurable by quantitative prices into exchangeable goods. To establish these non-quantifiable values, Walzer gives a list of shared values like individual freedom that ought not to be sold in any form.[44] Hénaff rightly criticizes this approach by pointing out that it can at most fight the symptoms, but cannot come closer to the cause of the problem, because the main ethical questions such as why some ethical values—as distinguished from normative moral values—should not be converted into economic prices, and where the consensus about moral norms that Walzer claims to exist could take its origin, are not at all answered.[45]

Money, as the most important means of corruption, gains its effectiveness from its symbolic character as an empty equivalent of exchange values of tradable goods. This leads to the question concerning the origin of these exchange values: If both corruption and, following Nietzsche, moral norms are subject to the principle of exchange, might the problem of mutual recognition as pointed out by Hénaff be a key to open an ethical dimension of incorruptibility? The reciprocal exchange as an act that can provide communality by trading symbols of recognition refers, as was already pointed out by Mauss, to non-reciprocal elements that are nevertheless constitutive for any reciprocity of exchange. While, in modern societies, the relation between the symbols of exchange and the non-exchangeable *sacra* has been forgotten and the reciprocity of exchanges is often

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[40] *See generally* GEORG SIMMEL, PHILOSOPHIE DES GELDES (1989).

[41] In this context, Hénaff follows Marx' theory on the accumulation of capital. *See* KARL MARX, THE CAPITAL: CRITIQUE OF POLITICAL ECONOMY (1887).

[42] *See generally* KANT, *supra* note 2.

[43] HÉNAFF, *supra* note 6, at 393.

[44] WALZER, *supra* note 16, at 26.

[45] HÉNAFF, *supra* note 6, at 392.

reduced to exchanges of empty equivalents, i.e., monetary transactions, Hénaff points out that the non-reciprocal ethical value—that is at the origin of any moral norm—cannot be part of any transaction. To clarify the function and meaning of such an ethical value, he refers to the necessary establishment of legal institutions and the execution of the general law, in so far as the archaic systems of exchange have been replaced, in political societies, by the equality of all individuals before the law and the norms and contracts that come with it:

> The public recognition of each person is ensured by the law, before which all the members of the citizen community are equal. This status and dignity carry all sorts of rights. They also carry obligations, which are public and collective. Those rights and obligations can, indeed, be called social goods, but this arrangement is not capable of guaranteeing or protecting the bond that connects each member of the community to another or to the entire community. Neither civil membership nor economic interdependence calls on us to recognize the other as a person. This limitation is constitutive of legal societies and of the market system.[46]

The equality of all individuals before the law, and not least before moral judgment based on a normative morality, is based on an understanding of justice that recurs to equality, and to this end also recurs to exchange equivalents and to means of distribution that serve the goal of equality. Following this concept of justice, recognition means the reciprocal recognition of all members of a political community as equal individuals with respect to the law. But how do these notions of equality and exchange refer back to the problem of corruption, or to any ethical value resistant to corruption? As Priddat has pointed out, the networks of corruption do not directly refer to the public order of the law but to the order of secrecy.[47] The essential ethical challenge, however, would be to reintroduce an ethical value that cannot be an object of any transaction, whether the public is involved or not. Personal recognition, according to Hénaff, would create the basis for an ethical relation without requiring a similar kind of reciprocity and without referring to any logic of exchange.[48] Such a new type of recognition would be the only kind that can protect those

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[46] *Id*. at 397. An interesting critique of a concept of justice that is based on public order (as presupposed by, for example, JOHN RAWLS, A THEORY OF JUSTICE (1971)) can be found in the following essay: Wolfgang Kersting, *Herrschaftslegitimation, politische Gerechtigkeit und transzendentaler Tausch: Eine kritische Einführung in das politische Denken Ottfried Höffes*, *in* GERECHTIGKEIT ALS TAUSCH? AUSEINANDERSETZUNG MIT DER POLITISCHEN PHILOSOPHIE OTTFRIED HÖFFES 16 (Wolfgang Kersting ed., 1997).

[47] Priddat, *supra* note 15, at 90.

[48] HÉNAFF, *supra* note 6, at 397.

that defy any categorization by normative claims; it would furthermore be the unchangeable constitutive moment of any ethics, even in an order of secrecy.

A pivotal point in any ethics that withdraws itself from the economic logic of exchange as constitutive for corruption, from any binding to commonality and equality, and that could be constitutive for normative morality, is the absolute stranger that does not yet belong to any political or juridical community. This view has been proposed by the French philosopher Emmanuel Levinas, and Hénaff refers to this problem towards the end of his remarks on corruption:

> Yet beyond the support provided by local forms of civility or by universally accepted rules of behavior, the question remains as to the unconditional foundations— those that would be valid at any time and in any place—of the requirement to respect the stranger we meet or the unknown in the familiar event of every encounter.[49]

Which non-purchasable ethical value protects the stranger who cannot be understood from any category of equality or analogy? Such an ethical value would shatter the dimension of the logic of exchange, because it would not presuppose any measure of compensation, or any equality or any reciprocity. According to phenomenologist Emmanuel Levinas, the absolute stranger, the Other, is the origin of the ethical relationship and the foundation for any normative claim. The Other cannot be part of any economic logic of transaction or of any expectation of reciprocity because the absolute difference of the Other is the epitome of the unexpectable—the absolute new—that cannot be derived from any expectation: "The absolutely new is the Other."[50]

Crucially, Levinas' concept of alterity as an absolute difference that cannot be integrated into any procedure of exchange opens a perspective on the non-exchangeable ethical value that any normative moral value—which can be, as has been shown above, converted into a price and become an object of economic exchange—must be related to. While Hénaff tries to translate his concept of recognition into Levinas' ethical terminology, Levinas himself uses quite a different vocabulary to describe the problem of an ethical relationship to the Other that is neither founded in compensation nor reciprocity. He refers to ethical justice through responsibility in this context. This model of ethical responsibility could perhaps be suggested to counteract corruption by ethical means, as will be discussed in the following section. However, ethical responsibility—just like corruption—requires not only two entities, but at least three.

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[49] *Id*. at 398.

[50] LEVINAS, *supra* note 1, at 219.

D. Ethics Beyond Economics in the Light of the Third

> One of the fundamental themes of Totality and Infinity about which we have not yet spoken is that the intersubjective relation is a non-symmetrical relation. In this sense, I am responsible for the Other without waiting for reciprocity, were I to die for it.[51]

> It is consequently necessary to weigh, to think, to judge, in comparing the incomparable. The interpersonal relation I establish with the Other, I must also establish with other men; there is thus a necessity to moderate this privilege of the Other; from whence comes justice. Justice exercised through institutions, which are inevitable, must always be held in check by the initial interpersonal relation.[52]

To counterbalance the reciprocity of exchange that makes morality vulnerable to the conversion of moral values into quantitative prices, the conception of justice itself as a system of balancing and compensation that aims for equality needs to be corrected. Aristotle himself, who has been a major reference for Nietzsche's critique on the economically-influenced principles of justice—which are a basis for normative morality— already provides a corrective for economic justice which counterbalances the logic of equality and exchange. He sees justice as a virtue, i.e., "that moral disposition which renders men apt to do just things, and which causes them to act justly and to wish what is just,"[53] and does not simply posit equality before the law as the only basis for this justice.

Because he realizes that the generality of the law can never do full justice to individual cases, Aristotle gives priority to a justice that takes each single case into account, by weighing it in together with the general law, over general justice that aims at equality. This corrective to general justice he calls equity (ἐπιείκεια, *epieikeia*). Equity goes beyond general compensational justice, by attenuating the harshness of its strict application; by sometimes waiving compensational justice, equity comes into its own in particular where the strict application of the law would be unjust or even wrong: "Justice and equity are therefore the same thing, and both are good, though equity is the better. The source of the difficulty is that equity, though just, is not legal justice, but a rectification of legal justice."[54]

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[51] EMMANUEL LEVINAS, ETHICS AND INFINITY—CONVERSATIONS WITH PHILIPPE NEMO 98 (1985).

[52] *Id*. at 90.

[53] ARISTOTLE, NICOMACHEAN ETHICS, V.1, 1129 a3–19 (trans. Rackham).

[54] *Id*. at V.14, 1137 a26–b10.

The principle of equity, according to Aristotle, thus consists in balancing the individual case with the general law; the individual case always takes primacy from an ethical point of view, in particular wherever the general law fails in a concrete application to an individual case.[55]

This foundational concept of an ethical justice in which the general law or common norms do not take priority over individual cases, but must be brought into balance with them, paves the way to Levinas' concept of responsibility. Most importantly, Levinas notably does not refer to a teleological ethics like Aristotle, but to an ethics of alterity, in which the anticipation of ethical goals can only be approached in reflecting upon the relation between the absolute new and unforeseeable claim of the Other and public normative claims. Levinas, who describes the conditionality of occidental moral philosophy by the totality of the metaphysical order of being, understands ethics as an *optics*[56] that provides a view on the continuously changing discourses of moral norms, an idea similar to Nietzsche's genealogy of morality. In contrast to the traditional conception of the Other as an analog to the Self,[57] Levinas points out the irreducible difference between them, a difference that resists any reciprocity or exchange and that is therefore the non-economic, incorruptible origin of any ethics. The incorrupt value of the exteriority[58] of the Other, transcendental to any moral norm, any economic calculation and any corrupt transaction, offers an ethical corrective to the economic constitution of morality.

Crucially, this corrective does not mean to react to the claims—the so-called call—of the Other without taking moral norms into account. Instead, it is this ethical relationship of alterity that opens the social-philosophical dimension in the first place by always simultaneously concerning the so-called Third,[59] who represents the universality of norms and laws as well as the community of all others, i.e., the public: "Everything that takes place here 'between us' concerns everyone, the face that looks at it places itself in the full light of the public order . . . ."[60] The balance between the individual claims of the Other and the generality of the *Third* makes up the essence of responsibility to Levinas. It is what allows the possibility of a non-compensating justice that he denotes by the French term

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[55] *Id*.at V.14, 1137 b10–29.

[56] Levinas, *supra* note 1, at 23.

[57] Edmund Husserl, Cartesianische Meditationen, Eine Einleitung in die Phänomenologie 97 (1995).

[58] By exteriority, Levinas means an absolute transcendence that cannot be integrated into a synthetic whole by any ontological, dialectical or metaphysical procedure.

[59] *See generally* Thomas Bedorf, Dimensionen des Dritten: Sozialphilosophische Modelle zwischen Ethischem und Politischem (2003); Pascal Delhom, Der Dritte: Levinas Philosophie zwischen Verantwortung und Gerechtigkeit (2000).

[60] Levinas, *supra* note 1, at 212.

équité (equity) in the first place: "Philosophy serves justice by thematizing the difference and reducing the thematized to difference. It brings equity into the abnegation of the one for the other, justice into responsibility."[61]

The absolute difference of the Other, because inequality is its first condition, cannot be reduced to an equality that aims at reciprocity and exchange. The simultaneity of this absolute difference of the Other with the generality of claims represented by the *Third* is, according to Levinas, the only possibility of a corrective to any static, ontological setting of the subject in a universal, timeless order of ontology, and by extension, to any movement of compensating exchange.[62] In short, not equality, but the irreducible exteriority of the other, is the first principle of ethics, the primary incorruptible value and the basis for ethical responsibility.

The changeability of normative claims that Levinas refers to in his famous question "whether we are not duped by morality," quoted in the introduction, thus offers an important orientation for weighing the importance of ethics and the ambivalent status of morality for the problem of corruption. For justice in its ethical sense does not only mean to perform individual just acts, but refers to, as Aristotle has made clear, a virtue—i.e., a fundamental ability to adequately balance universal normative claims with the individual case. It is only by this balance that ethical responsibility can be thought of as a corrective to normative morality and to compensational justice. The challenge of ethics consists in weighing each concrete situation anew with respect to the relationship between the individual claim of the Other and universal claims of moral norms. It is only by creating spaces of reflection for this kind of just balancing, which was already postulated by Aristotle, that corruption can be confronted from an ethical perspective.

E. Conclusion

Referring back to the above models involving at least three entities in exchanges of corruption—principal, agent and client—it can now be seen that this triadic structure, according to Homann's interpretation, refers to a questionable timeless validity of moral norms that has been contested by authors like Nietzsche, Foucault, Hénaff, and Levinas. According to the moral norms that authors like Homann, Walzer, and Sandel refer to, corruptive exchanges must always be judged as morally reprehensible. However, Marcel Hénaff and Emmanuel Levinas have distinguished between ethics and normative morality, and questioned the relevance of reciprocal compensational justice for ethics, for good reasons. Were ethics reduced to the observance of moral norms, it could easily become a stage for moral hypocrisy—a cover for corruption, rather than an instrument against it. But Priddat's emphasis on the relation of corrupt exchanges to recognition-based networks,

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[61] EMMANUEL LEVINAS, OTHERWISE THAN BEING OR BEYOND ESSENCE 165 (1981).

[62] LEVINAS, *supra* note 1, at 212; LEVINAS, *supra* note 61, at 165.

Streck's remarks on the hypocritical role of morality in the networks of corruption, and Henaff's critique of reciprocity which leads to Emmanuel Levinas' concept of ethical justice pave the way to a different position regarding the possibility of ethics. From this position, the curtain of morality can be removed by reflecting in each individual case anew upon the balance between general norms and individual claims, or public goods and individual values. The ability to weigh each case of corruption individually as to whether a moral—not a juridical—verdict is appropriate, or whether a moral judgment should not be foregone, is thus the particular strength of ethical justice.