

GIVING SOME BACK — A REPRISE

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Finishing an article normally reminds me of pulling the plug in the bathtub: everything goes away except for a faint unpleasant residue, and no one is the wiser once I get things cleaned up for the next article. It is always a shock to find out what other people think when they actually do read something I've written. In fact, it is usually a shock to find out that they read it at all, since my normal assumption is that no one reads the thing once it is down the tubes, so to speak. But these gracious commentators (prodded by writing assignments of their own) have not only pondered my "gift" article; they have also told me what they think, some of them in no uncertain terms. The following, of course, is what I think about what they think.

I. DID I SAY THAT?

Well, shoot, I guess I am a more bumbling writer than I had thought I was. From reading Robert Frank's comment,¹ I see that he thinks that in the early stages of the article, I wanted to say that there is no such thing as a simply generous and unself-interested gift;² and in a particular instance, Mary Louise Fellows³ seemed to misunderstand my discussion of the potlatch,⁴ which I *thought* I was using as an example of the limitations of some of the standard accounts — and particularly the account of Self-Interest as the Motivator of All Things. Thank goodness for Emily Hartigan⁵ and Jane Baron⁶ — they

1. Robert H. Frank, *The Differences Between Gifts and Exchange: Comment on Carol Rose*, 44 FLA. L. REV. 319 (1992).
2. *Id.* at 326.
3. Mary L. Fellows, *His to Give, His to Receive, Hers to Trust: A Response to Carol Rose*, 44 FLA. L. REV. 329 (1992).
4. *Id.* at 345.
5. Emily F. Hartigan, *Rose and Apple — Original Gifts?*, 44 FLA. L. REV. 347 (1992).
6. Jane B. Baron, *Do We Believe in Generosity?: Reflections on the Relationship Between Gifts and Exchanges*, 44 FLA. L. REV. 355 (1992).

figured it out and give me some confidence back, though I now think I must have been a bit too elliptical for my own good.

What I really wanted to get across was that a lot of scholarly literature, and a lot of legal texts too, argue implicitly or explicitly that self-interest always motivates even things that look like gifts. But, like Bob Frank, I think that is a mistaken way to see things — not only as a factual matter, but also, as Frank points out, as a social matter as well,⁷ since all that greed-talk unnecessarily corrodes the belief in generosity. Frank illustrates this wonderfully with his examples of the economics students, who apparently learn that they are *supposed* to “defect.”⁸ In fact, this is why I turned things upside down in the later portions of the essay, to suggest that the pure self-interest story is backwards, and that exchange itself depends on gift, rather than the other way around.

On that issue too, though, Frank thinks that my position is extreme, and that lots of exchange does not have anything to do with gift and trust and all that blarney.⁹ He chiefly cites the well-known book of Robert Axelrod, *The Evolution of Cooperation*,¹⁰ which reports on computer game contests in which the users of a basically cooperative strategy, the so-called “tit-for-tat” strategy, outperformed a number of other less cooperative strategies. (Since Frank describes tit-for-tat in detail, I will not repeat it here, but refer the reader to his description).¹¹

What I want to say is, hey, Bob, come on, I’ve read Axelrod too — I just don’t think the book proves what you say it does. Can this tit-for-tat strategy rely on self-interest *tout court*? Not so! Sure, tit-for-tat cooperators in fact may do well over the long haul, but that doesn’t speak to the *logic* of cooperation, particularly to the logic of making the first cooperative move. That first “nice” move only makes sense if you think that you may be dealing with another cooperator. As Jon Elster has pointed out, the first move has no strings attached, and when you make it, in the hopes that the other guy will reciprocate instead of taking the money and running, you are taking a leap of

7. See Frank, *supra* note 1, at 321.

8. *Id.*

9. See *id.* at 326-27.

10. ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

11. See Frank, *supra* note 1, at 323-24.

faith. As Elster puts it, the move involves a kind of magical thinking that the other guy will act the way you did.¹²

One can tinker with this problem, as Frank does here, and add the supposition that the players are already in some other kind of network of interactions;¹³ but that gives away the whole game. Then the players already know something about each other and have some reasons to pay attention to each other; the critical first moves have already been made. By the way, Axelrod's games were set up in advance to involve repeat play,¹⁴ which is in itself a kind of forced set of interactions; but when two Hobbesians meet up at the OK Corral in the old State of Nature, they don't know anything about each other at all — certainly they don't know that they are going to have any future moves together. In short, the ways that people actually behave in repeat play, and even the fact that people might make gains if they cooperate, doesn't tell us how or why they *started* those cooperative repetitions.

So why do they trust each other and get going in the first place? Well, Frank's examples suggest that it might be a matter of experience and culture.¹⁵ Maybe people think other people just *do* act in a cooperative way. We know people give tips in interstate highway restaurants, when there seems to be nothing in it for the tipper; or, in Titmuss' famous example, they make anonymous blood donations to total strangers.¹⁶ What I want to suggest is that freeway-tipping and blood donations are a part of the standard behavioral repertoire that lots of people have for themselves and that they expect from strangers, at least some of the time. That is why Axelrod's tit-for-tat players can have some initial optimism that their counterparts might be cooperators too, rather than predators.

So, where does the behavioral repertoire come from? This is a question to which Frank himself has paid a lot of attention, notably in his very interesting book, *Passions Within Reason*.¹⁷ Are some

12. JON ELSTER, *THE CEMENT OF SOCIETY: A STUDY OF SOCIAL ORDER* 188, 197-99 (1989). For some other problems in the logic of tit-for-tat, particularly the endgame difficulties when interactions are finite, see ANTHONY DE JASAY, *SOCIAL CONTRACT, FREE RIDE: A STUDY OF THE PUBLIC GOODS PROBLEM* 65 n.17 (1989).

13. See Frank, *supra* note 1, at 324-25.

14. AXELROD, *supra* note 10, at 27-54.

15. See Frank, *supra* note 1, at 325-26.

16. RICHARD M. TITMUSS, *THE GIFT RELATIONSHIP: FROM HUMAN BLOOD TO SOCIAL POLICY* (1971).

17. ROBERT H. FRANK, *PASSIONS WITHIN REASON: THE STRATEGIC ROLE OF THE EMOTIONS* (1988).

measures of trust and generosity “hard-wired,” a result of some evolutionary pattern? Well, maybe; but as Frank points out in his comment, there is a learning aspect to this behavior as well.¹⁸ What is more, cooperation can be unlearned, as with those little rotters, the defecting economics students.¹⁹ By the way, tit-for-tat itself involves learning behavior too; the game makes no sense unless each player learns that the other is (or can be) a cooperater. That is why I think exchange behavior itself can be a learning experience, and why successful exchanges can open up future realms of trust.

II. POWER PLAYS AND THE SEDUCTIONS OF LARCENY

Ha! says Mary Louise Fellows in her intriguing if lugubrious comment. She has a pretty jaded view of trust generally, particularly when you see trust in “rich detail.”²⁰ It turns out that the rich detail is a group of appellate cases, dating in no particular order from five, thirty, fifty, and one hundred years ago — along with lots of free association about what the various parties’ motives (and even their color) might have been.²¹ Shoot, if I had the wits to figure out that you can make up your own rich detail, I would have stuck in some more rich detail myself.

Anyway, I’m less certain than Fellows about how to read these cases. Take that 1892 granddaddy in *Ricketts v. Scothorn*,²² whom Fellows depicts as (perhaps) a selfish old miscreant,²³ throwing around his nonexistent financial power just to lure his granddaughter into what he thought was respectable idleness.²⁴ Well, that old coot looks pretty pathetic to me, with all his false pride. But what do I know? A good deal less than Fellows, I guess. For example, since this was a case about a contested will,²⁵ there were some other claimants to granddaddy’s estate, and I have no idea how comparatively sympathetic those other claims might have been; but I don’t think Fellows does either. All the same, she has a point about the court’s running commentary,²⁶ which does make out the grandad to be a sweet gentleman,

18. See Frank, *supra* note 1, at 325-26.

19. *Id.* at 321.

20. Fellows, *supra* note 3, at 329.

21. *Id.* at 332-34.

22. 77 N.W. 365 (Neb. 1898).

23. Fellows, *supra* note 3, at 336.

24. *Id.*

25. *Ricketts*, 77 N.W. at 365.

26. Fellows, *supra* note 3, at 335.

and the granddaughter as something of a ditz (at one point her tears were duly noted).²⁷

What this is really about, Fellows tells us, is power imbalance.²⁸ It is? To be sure, power makes a difference to who gets what in transactions, at least some of the time — but not all the time, I would warn, as in the cases where healthy people stop to give assistance to helpless accident victims. In any event, from reading this case, I'm not at all sure who has the power and why it matters. True enough, Grandad was at least pretending to have money to give away so that his "grandchildren" (male? female? both?) wouldn't have to work.²⁹ But does comparative wealth matter? Obviously wealth matters to desperate people, as Fellows quite rightly points out on several occasions.³⁰ But then, not every A of modest means is desperate to deal with some wealthy B, just because B has more money than A. Wealthy B may also be awfully anxious to get A to do something, even more anxious than A is for B's money; and in that sense, A may really have some bargaining power with B. As long as Fellows is putting imagined motives and events on the table, I invite everyone to see if they can imagine the following transaction between some other turn-of-the-century relatives:

Daddy Warbucks: Settle down and lead a nice life of leisure, and I'll give you \$1 million.

Little Orphan Annie: Get lost, ace.

Sandy: Arf!

Who's got the power? What power?

Now, that scenario is quite different from some of the other instances that Fellows discusses. In some of her cases, one party is a woman who really seems to care about somebody else — kids or parents — while the other party is a man who reneges on an apparent promise to help.³¹ There's a power differential there, all right, but the gift doctrines Fellows discusses don't begin to capture what is going on. Larceny is much more at issue. Take the *Ervin v. Ervin*³² case,

27. *Ricketts*, 77 N.W. at 366.

28. Fellows, *supra* note 3, at 336-37.

29. *Ricketts*, 77 N.W. at 366.

30. Fellows, *supra* note 3, at 332-34, 343-45.

31. *See id.* at 332-33, 338-39 (describing the facts of *Ervin v. Ervin*, 458 A.2d 342 (R.I. 1983) and *Dewein v. Estate of Dewein*, 174 N.E.2d 875 (Ill. App. Ct. 1961)).

32. 458 A.2d 342 (R.I. 1983). Since Fellows is interested in context, she might want to note that Barbara Ervin represented herself, whereas her ex-husband had some lawyers. *Id.* at 343.

where the father welshed on a promise to pay for his kid's college education.³³ I expect most people would think this was not some kind of promised "gift" to the mom at all, but rather an independent obligation to the kid. That is, it is a very ordinary notion that you are *supposed* to take care of your kids if you possibly can — which, by the way, was the way the trial court saw the matter.³⁴ Much the same may be said of that brother in *Dewein v. Estate of Dewein*,³⁵ who let his sister take the whole burden of caring for their parents³⁶ — the parents, one might think, are his obligation too, an obligation that he ducked. Lest the gender issue get overplayed here, though, Fellows might have noted that one of the executors blocking Sis's payment from her deceased brother's estate was one Helen Dewein.³⁷

Fellows' view of these cases is a bit ambiguous to me, but sometimes it sounds as if she thinks that Mom and Sis really did rely on those ultimately empty promises — that Mom and Sis would have ditched the kids and the parents if it hadn't been for the promises of recompense by their respective no-account men, the ex-husband and the brother. If so, it sounds odd to me. I'd say that reliance on a promised gift isn't what is at issue at all. I'd say that the flaw in these cases is that they permit unjust enrichment — a version of larceny — and the legal lapse was in not recognizing the common-sense human obligations of those laggards to help out with the care of their own kids and parents.

But in principle, an irresponsible mother or daughter or sister wouldn't have had any greater obligations in these cases, at least as a matter of law. The reason that Mom (or Sis) gets stuck is that she takes on human obligations where the law requires nothing: if she really does care about the kids (or the parents) and if others aren't obliged to help out, they can take advantage of her for the very reason that she is a more caring person than they are. That may be a partial reason why Moms (including the Haitian maids that Fellows cites later)³⁸ get stuck with lousy jobs so often too: if Mom is worried about taking care of other people, especially her children, her cares result in what the economists call a high discount rate. Having a high discount

33. *Id.*

34. *Id.*

35. 174 N.E.2d 875 (Ill. App. Ct. 1961).

36. *Id.* at 876.

37. *Id.* at 875.

38. Fellows, *supra* note 3, at 344-45.

rate means that she is anxious to cut the deal, and this frequently makes her take the short end of the stick in her various negotiations, market and nonmarket.

I do think that Fellows is right to point out that mothers and sisters and daughters carry around a lot of culture-bound freight in their various dealings.³⁹ They are the ones everybody expects to be generous and caring and if, as I argue in my essay, exchange relations also depend on somebody's making gifts, then Fellows has a point: we might expect that gender inequalities persist in exchanges and negotiations of all kinds, just because Mom and Sis and Daughter give more, or are expected to give more.

This a subject I explored at length recently in an article entitled (ahem) *Women and Property: Gaining and Losing Ground*.⁴⁰ Fellows cites it a couple of times,⁴¹ but I'll bet she doesn't like that article very much either, since she pretty much drops it like a stone. In any event, I can't quite tell what Fellows wants to do about the problem of gender inequalities and the way they affect bargains — but if readers are interested in what I think about the issue, I would be delighted if everyone would take a look at my article. Did you get that title? That's *Women and Property*, etc. All right, all right, I'll move on.

On the specific issue of native Americans:⁴² you bet there is a power differential, based on war and other horrible disruptions, notably the spread of European diseases. But so-called treaties made through force, and even more clearly *broken* treaties, are not so hard to analyze. Fellows doesn't think that my transfer categories explain these matters,⁴³ but I should think the categorization is all too simple: they are variants of larcenies, though in the guise of deals. And as I stated in my essay, larcenies fall precisely into the category that the standard self-interest accounts really understand; they represent the most unvarnished form of self-interest.⁴⁴

39. See *id.* at 339, 343.

40. Carol M. Rose, *Women and Property: Gaining and Losing Ground*, 78 VA. L. REV. 421 (1992).

41. Fellows, *supra* note 3, at 331 n.10, 337 n.32.

42. See *id.* at 345-46.

43. See *id.*

44. A recent article on Indian-Anglo treaties explores an interesting twist on this issue, that is, the divergence of interests between sovereigns and their subjects in treaty "bargains," and the effects on treaty rupture. See Jennifer Roback, *Exchange, Sovereignty, and Indian-Anglo Relations*, in PROPERTY RIGHTS AND INDIAN ECONOMIES 5, 8-9, 13, 20 (Terry L. Anderson ed., 1992).

In fact, I think Fellows is attracted to the larceny category, since a lot of her examples seem to be best explained that way. What I had hoped to do in my essay was to point out that it ain't *all* force and fraud and advantage-taking, and to illustrate the crucial role of more generous impulses, in all kinds of exchange interactions. And despite Fellows' caveats, it is unquestionably the case that huge numbers of these interactions — buying the newspaper, getting some lunch, paying the bills — have almost no recognizable element of coercion or bargaining inequalities between the parties, whatever the larger context may be. I am acutely aware that not everyone has the means or good fortune even to buy a paper, get lunch, or pay the bills, and that is why I do not mind paying taxes for social programs or making a lot of charitable donations. But that still doesn't make all those everyday transactions coercive — or if it does, "coercion" has grown so large as to lose all meaning as a term of distinction. Moreover, even when a larger commercial context does present bargaining inequalities, as for example in some important parts of the world labor market, those inequalities pale by comparison to an avowedly patriarchal social ordering that they may replace.⁴⁵

Fellows clearly is interested in cases where coercion matters a great deal, even though it may not be recognized as such — and indeed the worst kind of coercion, where the strong take from the weak. But that sort of thing is all too easy to understand as larceny, on the most stereotypical depictions of heedless self-interest. What is much more difficult and fragile — even though, I think, much more pervasive — is what seems to be the easy case. That is the case of reciprocal exchange, where the participants somehow manage to neutralize those larcenous tendencies, for a long enough time to negotiate their way to something that seems mutually satisfying. In my essay I wanted to stress the generosity that underlies those seemingly easy cases of exchange; but Fellows is right that we also need to keep an eye out for the hidden inequalities and coerciveness that may surround and infect such dealings. It is important to do so precisely because coercion and bullying can undermine generosity, whereas what we need is more generosity, not less.⁴⁶

45. See Linda Y.C. Lim, *Women's Work in Export Factories: The Politics of a Cause*, in PERSISTENT INEQUALITIES: WOMEN AND WORLD DEVELOPMENT 101, 116-18 (Irene Tinker ed., 1990) (pointing out the ethnocentrism and implicit patriarchalism of attacks on multinational plants' employment of third world women).

46. This also is a point that I explore in Rose, *supra* note 40, at 427-38, 458-59.

III. THAT MEAN OLD MARKET

Jane Baron also is not a complete believer in free transacting, though for reasons somewhat different from the power differentials that interest Fellows. Let me start this section with something about categories: Fellows comments that my discussion of transfers “ossifies”⁴⁷ the various categories, though she acknowledges that the categories “leak” and even “burst,”⁴⁸ which is of course what I wanted them to do. Beats me how leaking and bursting go together with ossifying, but however that works, Baron’s comment suggests that maybe these categories aren’t quite ossified enough. Baron, I think, would like to preserve some space for gifts, as a separate place for the genuine generosity she still thinks is in short supply at the corner grocery.⁴⁹

My own view is that the corner grocery isn’t the source of the problem. The problem is in other kinds of markets, especially the ones where nobody knows anybody else. Baron makes an interesting observation: maybe gift and exchange categories melt together, she says, because the whole schema rests on a cooked-up individualism that does not exist in the real world — or at least, not in very many parts of it.⁵⁰ Now that’s a point that resembles one that Fellows makes, insofar as it indicates a need to focus on the social setting of transfers. Fair enough; and in a sense, Baron’s comment implies that the eighteenth century discovery of “the market”⁵¹ is not so much a discovery after all, but a kind of linguistic invention, a way of talking about a whole group of exchange behaviors as if they were all more or less the same thing. But one cost of talking about “the market,” as one great big thing, is that this kind of talk removes us from the ways people really behave, and the ways they mix up elements of self-interest and generosity in different kinds of exchange communities.

All this suggests that if you want to study modes of transfer, you really have to study communities too. Of course, that is already an implicit assumption in lots of studies of exchange behavior — not only those anthropological studies of “gift exchange among the X tribe,”

47. Fellows, *supra* note 3, at 346.

48. *Id.* at 329, 346.

49. See Baron, *supra* note 6, at 362.

50. See *id.* at 359-61.

51. See JOYCE APPLEBY, CAPITALISM AND A NEW SOCIAL ORDER: THE REPUBLICAN VISION OF THE 1790’S 29-30 (1984).

but also the game theory studies like Axelrod's computer games, which place exchange behavior in those mini-communities of repeat transactions and reputation.

At the far extreme, though, there are community-less markets too, where the participants have no expected repeat play and no reliable ways to get assurances about the goods being exchanged. That kind of market has been studied as well, and it has been given a marvelously descriptive name: it is the "market for lemons."⁵² I think what worries Baron is this market for lemons, and I don't mean the lemons at the corner grocery. Economists fret that in such markets, the fear of getting rooked makes everybody shy away, and so everyone loses opportunities for mutually beneficial trades in, say, used cars.⁵³ The same lemons market, I think, makes Baron worry that we maybe need some separate space for gifts, removed from commercial transactions, because the market for lemons is a pretty mean place.⁵⁴

I don't necessarily disagree with that. The difference between us is that I think the market for lemons — although it really exists — is not so dominating a part of commercial life as some people think it is. Baron implicitly brings up another cost of talking about "the market" as one great big thing: a lot of people may start to think that the whole big thing, her big "grey area,"⁵⁵ is not grey but lemon-yellow. And so, unlike Baron, I think "the market" *does* need some help, because the lemons market gives an image problem to "the market" generally.⁵⁶ Markets have had an image problem for a long time, by the way, as you may notice if you ever see those medieval illustrations of avarice (the characteristic vice of commercial people) as apes defecating money.⁵⁷ In modern times, the market's image is not helped

52. George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488 (1970).

53. *Id.* at 489-90.

54. See Baron, *supra* note 6, at 362.

55. *Id.*

56. Akerlof's own "market of lemons" analysis might suggest a kind of meta-lemon in market transactions generally: because of lemons markets, people might be nervous about other kinds of markets too, insofar as they are not sure of the kind of market they are dealing in. Aside from that, some literature in cognitive psychology suggests that intuitive risk perception weighs potential losses more heavily than potential gains ("loss aversion"), suggesting that lemons markets might be more noticeable than fair markets. For a discussion of loss aversion, see Roger G. Noll & James E. Krier, *Some Implications of Cognitive Psychology for Risk Regulation*, 19 J. LEGAL STUD. 747, 752, 776-77 (1990).

57. Lester K. Little, *Pride Goes Before Avarice: Social Change and the Vices in Latin Christendom*, 76 AM. HIST. REV. 16, 37-38, 44 (1971). For the rehabilitation of "avarice" into

by the exuberant celebration of self-interest among the greed-is-nature crowd in economics and other fields. This is why Robert Frank's economic work is so welcome: Frank picks up and develops the insights of the eighteenth century economic thinkers, who argued that commercial exchanges have some "moral sentiments" along with self-interest, and that market exchanges can in a sense create a kind of community.⁵⁸

Baron is skeptical whether market exchanges all by themselves can create communities, and no doubt her point is highlighted in lemons markets. Not much community there. So, does *anything* bridge the lemons gap — that is, does anything create trust to get people over the fear that most markets are lemons markets? This question recalls Frank's examples, where maybe gifts and generosity do create a bridge after all, in the sense of a culture that gives people confidence to make the first moves. Frank talks about those highway restaurant tips;⁵⁹ they could be a part of a culture of fair dealing that fosters trust in commercial dealings generally. Maybe that is part of the reason (though certainly not all of it) why Baron doesn't seem to want to give up the separate category of gifts.

What I was trying to point out in my essay is that the most ordinary transactions are animated by a moment of gift as well, just as, according to Robert Pirsig, the Buddha resides not just in the green bay tree but in the motorcycle engine as well.⁶⁰ But what Baron suggests, I think, is that it may be important to hold on to a separate rhetoric of gift, just to remind ourselves more graphically that those moments really are possible.

And that brings me to my next subject.

IV. JUST PLAIN STORIES

Emily Hartigan runs with some pretty fast philosophic company, and she wants to take me along. I'm not sure this is a trek I am ready for, being a bit slow-footed in this kind of crowd. But what especially interests me is the way that the parts of Hartigan's essay, taken together, tie back in with all of the other comments. Like Frank, Hartigan is interested in gift-giving behavior that from some perspec-

the more benign "interest" in the eighteenth century, see ALBERT O. HIRSCHMAN, *THE PASSIONS AND THE INTERESTS: POLITICAL ARGUMENTS FOR CAPITALISM BEFORE ITS TRIUMPH* 54-60 (1977).

58. FRANK, *supra* note 17, at 43-56; see HIRSCHMAN, *supra* note 57, at 59-61.

59. Frank, *supra* note 1, at 326.

60. ROBERT M. PIRSIG, *ZEN AND THE ART OF MOTORCYCLE MAINTENANCE* 76 (1974).

tives is “irrational,”⁶¹ though Hartigan is more interested than Frank in the religious ramifications of this behavior.⁶² Like Fellows, she is interested in the role of women in giving, though she is less pessimistic than Fellows about that role.⁶³ Like Baron, Hartigan thinks that there is a relation between gift-giving and rhetoric or narrative, and she dwells on this subject on a number of levels.⁶⁴

It is the last point that I want to pick up here, at least briefly. What *is* this connection between narratives and gifts? One answer that Hartigan gives is that stories — or at least symbols — simply *are* gifts, that is, as she says, gifts of thought.⁶⁵ Another possibility is one that I tried to explore earlier, in an article that Hartigan cites.⁶⁶ Briefly, the argument there is that gifts and generous behavior generally are a logical puzzle, and they require stories to explain them. The reason they are puzzling is that larcenous and self-interested defectors can bash the generous types in the usual Prisoners’ Dilemma games, and this means that generosity or gift-giving has to be explained. For that reason, generous behavior demands a story — some kind of narrative.

Be that as it may, gift-giving certainly is the subject for many stories, perhaps most notably the creation myths that Hartigan mentions.⁶⁷ There are lots of creation stories about law-givers, too — Solon, the Founders and so on. And even a story central to Western metaphysics begins with a kind of overflowing “principle of plenitude” at the top of that “great chain of being” that A.O. Lovejoy immortalized in his book of the same name.⁶⁸

If gifts call forth stories, they may in a certain sense provide the occasion for the creation, transmission and transformation of communities, since these are among the functions that narratives serve.⁶⁹ Not that gifts are imperial in this regard, though. While I don’t know a great deal about this matter, it does seem to me that larcenies also give the occasion for lots of stories, particularly when larcenies are

61. Hartigan, *supra* note 5, at 350.

62. *See id.* at 351-53.

63. *See id.* at 352-53.

64. *See id.* at 347-48, 350-53.

65. *Id.* at 351.

66. Carol M. Rose, *Property as Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory*, 2 YALE J. LAW & HUMAN. 37 (1990).

67. Hartigan, *supra* note 5, at 352-53.

68. ARTHUR O. LOVEJOY, *THE GREAT CHAIN OF BEING: A STUDY OF THE HISTORY OF AN IDEA* 48-52 (1936).

69. *See* DAVID CARR, *TIME, NARRATIVE AND HISTORY* 148-50, 156-57 (1986).

perpetrated by the weak on the strong. Prometheus and Robin Hood are the subjects of some pretty good yarns, though I suppose it is worth noting that both those stories also involve gifts tacked on after the larcenies (of fire to humans, of property to the poor).

Hartigan makes a subtler point about gifts and narrative, and this comes in her gentle chiding of my rather countrified style. In particular, she describes my own message as a kind of gift;⁷⁰ what I think she is saying is that I am trying to conceal a gift with all that plain folksiness. I am extremely embarrassed at this overly flattering depiction. In any event, I think Hartigan does not realize that some of us really do have a countrified way of thinking, and, for example, would be ecstatic if we could come up with lyrics like the ones that Patty Loveless recently sang: “Can’t get no satisfaction/and my tractor don’t get no traction.”⁷¹

Putting my own embarrassment to one side, I am interested in the larger idea that Hartigan is putting forth here: that different types of transfers are likely to elicit different narrative styles. Once Hartigan alludes to this point, of course, it seems that it should have been stunningly obvious all along. Gift stories are most likely to have a certain mythic quality. Larceny stories (when told at all) are all cleverness and bravado on the part of the taker, and all blues, injustice, and resentment on the part of the taken-from.

Hartigan thinks my story is a gift, yet it is styled as plain-folksy instead of mythic. Why is that? Well, I actually didn’t think about it, but now that I have read Hartigan, I think maybe my semi-conscious folksiness was an effort to do a little chiding myself, of the typical exchange narratives. Those narratives are all just-plainness. “I want this, you want that, so is it a deal? Yup.” That’s the plain-folks rhetoric of exchange.

This is a prosaic kind of rhetoric, one that too easily pretends that everything just happens naturally and that the parties’ self-interest is the whole story. But the just-plain, unsentimental rhetoric of exchange conceals something about how exchanges really work — their reliance on goodwill, and their potential to get the actors to think from other people’s points of view. Those are elements of a culture of exchange that the eighteenth century economists hoped for; and when one looks to the heroic efforts that must now be taken to teach

70. Hartigan, *supra* note 5, at 348.

71. PATTY LOVELESS, *On Down the Line, on ON DOWN THE LINE* (MCA, 1990).

simple pleasantries to business trainees in the former Soviet Union,⁷² one might think that perhaps there really is such a thing as a culture of commercial civility, a culture that we have been merely taking for granted under the just-plain rhetoric of our own deal-making.

Several of the commentators here have reminded me that market exchanges can be a pretty bad business. All right, all right: no one but a fool would think that exchanges are all a matter of Pollyanna trading sweetly with Rebecca of Sunnybrook Farm. But we are fooling ourselves too if we pretend that exchanges are all a matter of Simon Legree one-upping Scrooge McDuck. Hartigan is right that rhetoric matters, and by opening the door on the gift elements in exchanges, what I hoped to do was to open up the just-plain rhetoric of exchange, so that it might be a little less truculent about acknowledging some of its own dependence on humaneness. I keep saying this, but I'll say it again: humaneness is what we need more of, even in exchanges. That is one reason why humaneness is interesting, and why we need to be able to talk about it unabashedly.

72. See Adi Ignatius, *Russians Who Wear Jungle Ties or Spit Need Not Apply*, WALL ST. J., June 9, 1992, at 1, col. 4.