“What is wrong with bribery? How, if at all, should the law deal with it?”

“And you shall take no brite, for a bribe blinds the clear-sighted and subverts the cause of those who are in the right”. Since biblical times, bribery has faced widespread condemnation and disapproval. More recently, from the Watergate scandal in the 1970s to the recent college admissions scams in the United States, examples of bribery have caused tremendous public outrage. However, what really is the wrong in bribery that provokes such extreme reactions?

Before examining the intrinsic wrong in bribery, it is helpful to lay down a definition for this largely amorphous notion. Bribery exists in two main forms — bribery of public officials, and commercial bribery. Bribery in the former sense, occurs when property or personal advantage is offered, without the authority of law, to a public official with the intent that the public official act favourably to the offeror at any time or fashion in execution of the public official’s duties, as construed by the United State Court of Appeals for the Seventh Circuit in the case of United States v. Isaacs, where the former Governor of Illinois Otto Kerner was convicted for bribery. Commercial bribery is similar to the aforesaid, except that it concerns private actors not acting on behalf or in representation of a state or governmental authority. Innate in this conception of bribery would be the idea of disloyalty. Any individual convicted of bribery would have a loyalty or obligation to a certain appointment or position that he holds, and to fulfil the expectations of that position to the best of his ability. For example, a government official immediately assumes a loyalty to public interest. In most cases of bribery, a transaction occurs which causes the bribee to violate this loyalty, and hold two mutually opposing loyalties.

With this definition in mind, the idea that bribery is morally reprehensible is hence predicated on the premise that someone — the bribee's governmental or private employer — is deprived, by a bribe, of the recipient’s undivided loyalties. The bribee comes to serve two possibly conflicting interests, in breach of fiduciary duty he is expected to uphold upon the assumption of his position. Considering the case of bribery of public officials, in the carrying out of governmental duties, it is trite to state that a government’s obligation to deal with cases and issues alike is a principal of procedural fairness. In democratic countries, it is ubiquitously accepted that we stand equal before the government that we have joined to create, and that each individual would have a claim to the government’s equal concern and respect based on our fundamental dignity as beings, as proposed by jurist Ronald Dworkin. Bribery asks

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1 Exodus 23:8


3 United States v. Isaacs, 493 F.2d 1124 (7th Cir. 1974)


5 Dworkin, Ronald. Taking rights seriously. A&C Black, 2013. Dworkin writes “It makes sense to say that a man has a fundamental right against the Government … if that right is necessary to protect his dignity, or his standing as equally entitled to concern and respect” (p. 199)
that this sacrosanct principle be violated, that some persons be allowed to be preferred ahead of others, or that like cases are not treated alike. Moreover, though disloyalty contributes largely to the moral problems behind taking a bribe, the presence of elements like deception and cheating compounds its moral wrongfulness.

It is this author’s opinion that a moral basis alone does not warrant the complete vilification of any action, especially in the eyes of the law, due to morality’s inherently subjective nature. There must exist certain negative or harmful practical ramifications that arise as a result of this action. Bribery is no exception to this principle. On this note, the negative consequences of both public and commercial bribery are too numerous for this essay to examine in specificity. The foremost practical problem would be the inefficient allocation of scarce resources within society. Economically speaking, money or goods used in a bribe goes to waste — society as a whole does not stand to gain from the money involved in a bribe, as this money does not go into the production or consumption of any good or service. Moreover, any country notorious for bribery and corruption sees their economic development and investor confidence immediately shaken. On a whole, bribery creates political instability, distorts economic markets, stalls development, wastes resources, undermines legitimacy of national institutions and leads to general unfairness and inefficiency6.

Taking into consideration the fundamental immorality, coupled with the adverse implications of bribery, it is apparent that bribery should be viewed, in the eyes of the law, as wrong. How then, specifically, should the law approach this complex problem?

Actions are deemed as criminal as they violate socially acceptable boundaries of behaviour, hence necessitating punishment as a form of retribution and deterrence7. As established by the above points, bribery should be included under the mandate of criminal law, given its abundant negative repercussions. Specifically, we should seek an international framework criminalising both the offering and receiving of bribes, in both the public and private sector.

The law should first take a harsh stand against the offering of bribes, regardless whether the bribe is accepted in eventuality. Current legislation surrounding bribery acknowledges this, for the reason that inducing another party to carry out a criminal action should be, in itself, criminalised. For example, under United Kingdom (UK) laws, anyone who “promises or gives a financial or other advantage to another person” is guilty of an offence8. Internationally, a prominent authority on this matter would be the 1997 OECD Convention on Combating Bribery of Foreign Officials, which all OECD countries are party to.

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8 Section 1 (2a) of the Bribery Act 2010
This criminalises offering of bribes to foreign public officials in international business transactions by implementing strict punitive measures.\(^9\)

Ultimately, it would be the acceptance of bribes that should be met with the most severe punishment. This is already reflected in international legislature. For example, the United States’ Foreign Corrupt Practices Act\(^10\), has been the government’s main tool in combating overseas bribery and corruption. Another authority on this issue would be the 2003 United Nations Convention against Corruption, which makes a legally binding stand against bribery and corruption in both the public and private sectors.

In this light, there exists little contention over whether bribery should be criminalised. However, how extreme should the extent of punishment be? Different countries have differing legislation regarding the punishment of this crime. For example, in Singapore, the maximum fine for an offence under the Prevention of Corruption Act is only $100,00 per charge\(^11\), while the UK’s Bribery Act allows for an unlimited fine\(^12\). It is this author’s opinion that the degree of punishment should be relative to the amount of breach of trust and loyalty, determined mainly by the amount or valuation of the bribe. With this in mind, it would make sense for the amount of fine to be unlimited, especially given that many bribery cases see bribes that go into the millions. Furthermore, in determining the degree of punishment, there should also exist the consideration of the harm that the bribe causes society, and the responsibility the individual owes to his position. For example, a judge that accepts a bribe to rule wrongly in one party’s favour should be punished much more severely than a waiter who receives a hefty tip to seat a rich couple at their preferred table. In the former case, the judge’s actions leads to the integrity of the judicial system being compromised, which has wide societal implications, while in the latter case, the biggest harm that ensues would be another couple’s utility gained by getting that prized seat. Hence, courts should use the above two principles to determine the appropriate extent of punishment in cases of bribery, along with consideration of legal precedence.

Though it is maintained that the law should indubitably look to criminalise bribery, it would be naive to assert that this would be without complications. Firstly, it is conceded that bribery cases would be difficult to prosecute in court, given that the act of bribery is in itself complex and difficult to prove. Modern financial transactions are often complicated, with a multitude of clauses and varying methods of payment. It is hence easy to conceal bribes as legitimate payments, and hard to prove otherwise. Moreover, it would be difficult to distinguish a bribe from corporate hospitality. In theory, the distinction is clear: bribes are transactional deals made between two parties, trading something of value for influence, while hospitality contributions do not involve such conditions. However, this difference would definitely

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\(^9\) Article 1 of the Convention writes that “it is a criminal offence ... for any person intentionally to offer, promise or give any undue pecuniary or other advantage ... in order to obtain or retain business or other improper advantage in the conduct of international business”

\(^10\) 15 U.S. Code § 78dd-1


\(^12\) See Section 11 of the UK Bribery Act 2010
be difficult to define in practice. Lastly, what if the bribe is made for a objectively ‘good’ outcome? One can consider the hypothetical scenario of bribing a corrupt foreign government to hasten the process of sending aid into that country. A more commonly used scenario would be bribing a Nazi camp guard in order to spare concentration camp internees. Should this form of bribery still be criminalised?

If not properly addressed, the above concerns about criminalising bribery could lead to uncertainty in a judicial system. How should the law hence confront such issues? First, regarding complicated transactions, the law must demand that corporations incorporate safeguards to ensure that bribes hidden in such transactions do not go unnoticed. For example, legislation can necessitate due diligence to ensure that any arrangements conform to relevant laws. Ultimately, corporations should themselves be held responsible for the actions of their employees. Furthermore, in the case of corporate hospitality, it is entirely possible for the law to mandate a clear boundary between hospitality and bribery. There can be a range of techniques, including ensuring corporations have transparent, codified internal guidelines regarding the amount of hospitality they can lavish on a client, and critically, mandating that any hospitality should reflect a desire to build relations, removed from any obligation to return any favours. Lastly, regarding bribing for a good cause, this would boil down to the moral issue of disloyalty behind bribery. There are two general types of disloyalty -- in the factual sense, with regard to the position or office that one holds, and in the normative sense, whether decisions are aligned with the moral compass of the society. The offence of bribery should be understood as entailing disloyalty in the normative sense, since it would be a perverse use of criminal sanction to prosecute someone for betraying a loyalty misguided to begin with. In totality, though complications might exist in criminalising bribery, legal systems should incorporate safeguards and structures that help to mitigate potential problems to best ensure just and equitable outcomes.

To conclude, there is clear wrong in the act of bribery, both in a moral and practical sense, as elaborated upon above. As such, this necessitates legal measures to ensure that society is not severely affected by its ramifications. Governments have to take firm stands against bribery and corruption, so as to increase general welfare. Moreover, they cannot act alone — legislation must be enacted on an international level, as most cases of bribery nowadays transcend geographical boundaries, with the advent of technology. Only then, would authorities be able to effectively combat acts of bribery conclusively.

Word count: 2000 (excluding title, including footnotes)

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13 Alldridge, P. (2012). The UK bribery act: The caffeinated younger sibling of the FCPA. *Ohio St. LJ*, 73, 1181.