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

The concept of bribery is deeply rooted in human history, echoing back to the earliest structures of civilisation\(^1\), yet never before has it been a topic of greater relevance. With politics embracing our lives more snugly than ever before, the civil service’s increasingly widespread influence and the progressed relevance of government decisions to the average citizen in the modern era, concern over corruption has become universally pertinent over the last few centuries, and indeed, the last decade.

With all its negative connotations, there are a myriad of reasons as to why bribery is undesirable; it undermines institutional authority, values of equality, and, particularly if commonplace, retards socioeconomic progress. Notorious for being insufficiently investigated\(^2\) and punished, the impact of bribery occurring at the highest levels of authority has undoubtedly had global repercussions. This essay will outline the immorality of bribery and its tangible consequences and argue that the only way to comprehensively inhibit the crime is to adopt a firm stance in which the entity accepting the bribe receives stricter repercussions.

Before the problems surrounding bribery can be outlined, the term must first be properly defined to provide an adequate framework for analysis. In its looser, colloquial usage, bribery can be extrapolated to even the most ordinary situations where an incentive is offered. The distinction between its familiar usage and the definition of bribery as it should be through the lens of the law, then, comes when the lure is motivated by personal gain, involves an abuse of power, or if it has, even indirectly, a victim. These factors help to isolate unlawful bribery from its broader sense. Perhaps the most versatile definition of bribery, offered as a “working definition” by Stuart P. Green, is as follows:

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\(^2\) Refer to the findings of https://www.transparency.org/exporting_corruption, where 20 countries who produce 20.5% of the world’s exports are listed to have “little or no enforcement” against foreign bribery.
X (a bribee) is bribed by Y (a briber) if and only if: (1) X accepts, or agrees to accept, something of value from Y; (2) in exchange for X’s acting, or agreeing to act, in furtherance in some interest of Y’s; (3) by violating some duty of loyalty owed by X arising out of X’s office, position, or involvement in some practice.3

It is this definition of bribery that will be adopted; what makes it so favourable is because where many legal parameters of bribery are limited to government officials, under this definition, bribes that occur in separate organisations, such as educational institutions’ admissions processes, are not overlooked. Furthermore, its clarity succeeds in encompassing the vast majority of situations that would be considered corrupt conduct by those in positions of power, and therefore preventing bribery under this definition would be aptly geared towards creating the “sort of society we should live in”; a concept that, according to McBride, is one of the primary aims of law-makers4. Overall, the precision of the above-stated definition facilitates a close consideration of what exactly is wrong with bribery, from its ethics to its consequences.

One of the most significant reasons as to why bribery must be regarded as wrongful is because of the moral transgressions of the act. At its core, bribery ignores and bypasses rules embedded within the structure of our society. This is ethically dubious as society relies upon rules to function: these are in place to create stability, prevent anarchy and promote safety, leading to an inclusively better environment for humans to live in. At an administrative level, these regulations create efficiency, order and reduce instances of abuse. Whether it is morally suspect to not always follow the rules laid down by higher authorities is a separate ethical dilemma entirely, however, there is a consensus that to breach these rules for the sake of self-interest is morally wrongful because it unjustly undermines the authority of systems in place to prevent harmful conduct. Moreover, the fact that bribery assumes a level of personal detachment and elevation from these universally applicable rules can be argued to be

unethical; such an attitude inevitably influences one’s view of the law and undercuts its jurisdiction. By biasing the decisions of authority figures, bribery consequently destabilises their legitimacy. This is especially deleterious when bribery involves public officials, as this has the capacity to polarise the general population from administrative entities, stirring a mistrust entirely counterproductive to the role of a government.

The unethical nature of bribery is further highlighted through involving the betrayal of a duty of loyalty: to accept a bribe is a violation of the power originally entrusted to the bribee, and therefore all pacts are subject to a substantial level of immorality. Another significant issue with bribery is that it involves elements of theft. When the entity being bribed acts to further the interests of their benefactor, it often involves selling a service that is not within their rights to control, and thus it follows that that service is purloined at the expense of their organisation; this essentially amounts to a form of stealing. An example to illustrate this is if a public official is bribed by a company for subsidies: as the subsidies are paid using taxpayer’s money, the official would be stealing the funds and outsourcing the costs to the government. As stealing for individual convenience is ubiquitously regarded as immoral, this extends to the act of bribery.

The pragmatic repercussions of bribery are equally as severe. Bribery itself wastes resources, and the World Bank estimates that the equivalent of $1 trillion is offered in bribes every year. Additionally, corruption generally inhibits social and economic development, and bribery is no exception as a proponent of this. Through the use of measurements such as the Corruption Perceptions Index, numerous investigations have been able to prove the detriments of corruption. Statistically, it is estimated that an increase in 1 standard deviation of corruption decreases economic growth by about 5%, and that a 1% increase in police corruption has the capacity to reduce the GDP per capita by 0.6%. Higher levels of corruption are also strongly correlated with poorer service delivery and weak governance. Even “generally virtuous” countries are not exempt from the crime, but this worst affects

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5 See: https://www.forbes.com/sites/hbsworkingknowledge/2013/11/05/the-real-cost-of-bribery/
7 See: https://www.theguardian.com/business/2018/apr/14/beware-bribery-corruption-brexit
countries in the developing world: according to a BBC article, “seven out of nine of the countries with the highest reported bribery rate are in sub-Saharan Africa”\(^8\). The fact that bribery is most damaging to newly emerging economies by hindering their development indicates a global concern, as humanity as a whole would surely benefit if their progress was unobstructed and they could modernise more rapidly. Therefore, the economic consequences of bribery frame it not only as a social or moral concern, but as a holistic obstacle that poses a genuine threat to the future prosperity of countries across the world.

With all of the issues associated with bribery, the question of whether the law should deal with it can confidently be a resounding yes. Combating corruption falls plainly within the general public’s interests: as stated by Clarke, a previous UK secretary of state for justice, “bribery blights lives”\(^9\). How this should be done, however, demands a less transparent answer for its complexity. A primary judgement to establish is whether the crimes of each party should be handled with equal severity. At least two entities are involved in every bribe, yet arguably there is a juxtaposition in the moral gravity of the roles. As the bribee breaks a duty of loyalty inherent to the position of trust they occupy, it seems logical that they should be punished to a greater extent: if they are a member of the civil service, it is their actions that ultimately determine their capacity to erode the relationship between the state and its representatives, or otherwise harm the legitimacy of the authoritative position they occupy. It is therefore proposed that, when the law convicts an individual, they should be immediately removed from their position and barred from occupying ranks of similar authority for several years, if not the rest of their career, depending on the severity and implications of the crime. Whilst this could potentially be more difficult to enforce amongst private or foreign enterprises, this measure is most significant for public offices where the government has the most control. A zero-tolerance policy towards members of the civil and health services must exist.

\(^8\) See: https://www.bbc.co.uk/news/business-23231318
Other consequences could be imposed, such as fines and community service. However, prison sentences should only be extended to the most extreme of circumstances, as with the oversaturation of prisons a growing concern as well as the fact that, despite the immorality of bribery, the crime indicates no immediate danger to others, jailing appears largely unnecessary. The alternative conviction of community service would be far more productive as a form of redemption, particularly given bribery’s indirect repercussions for the wider population. Otherwise, the full extent of the law should be utilised to disincentivise bribery, with person in the position of authority invariably punished to a greater extent. Although this may at first seem draconian, it is the individual who takes a bribe is the one who perpetuates a culture of bribery that is so damaging to society as a whole.

Moreover, a practical benefit of this measure is that people are more likely to report bribes if an entity makes it conditional of their services, as they will know that the perpetrator will be appropriately reprimanded. The establishment of bribery as common practice that proves fatally debilitating to the strength of governance: this measure would aid in preventing this.

Coupled with this firm stance against bribery, it should be encouraged for legal systems across the globe to adopt a more proactive role in dispelling foreign corruption. According to a report from the UK government\(^\text{10}\), “weak governance is one of the fundamental causes of corruption”. The countries who are most vulnerable to effects of bribery, then, are likely to be those not well-enough equipped to admonish it themselves. With globalisation heightening the relevance bribery as a worldwide phenomenon, a strong international stance against corruption would create a climate in which bribery is intolerable. The intervention of supranational bodies with the capacity to instigate and support third-party corruption investigations, such as the UN, would also expedite the process of eliminating bribery on a national as well as international scale.

In conclusion, bribery is never a victimless crime. It removes opportunities and resources that impact lives in even the most benign instances. The moral faults, social harms and economic repercussions of

\(^{10}\) Refer to the aforementioned document in 6
bribery are compelling reasons for the law to deal with bribery, but critically, the most cogent argument for the government specifically is that in circumventing regulations, bribery threatens legal systems themselves by undermining the authority of the rule of law. Furthermore, the potential impacts of bribery are severely disturbing; at the highest level, enabled by the digital age, bribes can even threaten democracy itself by swaying paramount political decisions and intervening with elections. Legal systems must encourage more dynamic policies to suppress such activities. The most important measure to initiate this is to ensure that laws adapt their definition of criminal bribery to comprehensively encompass unlawful situations; such reforms have been shown to be effective¹¹. This, coupled with a firm stance against bribery and with new measures of international co-operation, there is no reason as to why it cannot or should not be tackled on a global scale. Bribery is wrong, and it is preventable. Legal systems should dedicate themselves to truly eradicate it.

Word count, including footnotes: 1995

¹¹ See: https://www.convercent.com/blog/bribery-the-reality
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