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Introduction and Overview: Bribery and the Study of Decision Making

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This is a book about bribery. More precisely, it is about how people think about offering or accepting a bribe. Bribery is an iteration of corruption, and corruption shapes the modern world. Some governments exist because of it; some will collapse under its weight. Corruption mobilizes the protests and motivates the opposition of millions, while millions more suffer its inequities. Corruption distorts the flow of the world's resources and its capital and renders markets dysfunctional. It is virtually impossible to turn to a news outlet without encountering stories of corruption or popular reaction to corruption. It certainly is impossible to understand the world today without taking corruption into account.

Bribery has probably existed for as long as there have been some forms of authority to bribe, and people have been trying to control it for just as long. The earliest known legal rules seem to include proscriptions against bribery. Only fragments of the Code of Urukagina (2370 BCE) have been preserved, but the tales from ancient Lagash in Mesopotamia suggest that a substantial portion of the rules penalized the taking of bribes by Lagashian bureaucrats. The earliest of the well-preserved cuneiform codes, the Code of Hammurabi (1754 BCE), proscribes bribery. Mencius, the great interpreter of Confucian teaching (around fourth century BCE), suggests that "[a] fully righteous person would also recognize that it is just as shameful to accept a large bribe as it is to accept a small bribe, and so would refuse to accept either" (van Norden 2014). Ancient Hindu texts, whose origins are lost in time, vigorously condemn bribery and proscribe drastic punishment for bribe-taking officials (Thakur 1979: 14).

As could be expected of a phenomenon with such ancient roots, bribery has long been studied. This book offers a new way to think about bribery. Much of the previous research that has been conducted on bribery investigates the antecedent conditions of bribery in a particular country or culture, the nature and forms of bribery, and the impact of bribery on societies and economies. Very little research looks at bribery from the point of view of the individual faced with the decision to bribe or be bribed. A fundamental question in the study of bribery, however, should be why individuals offer or accept bribes. This book approaches this question from the perspective of recent scholarship in multiple disciplines, including cognitive neuroscience, behavioral ethics, and psychology.

BRIBERY

Bribery is a type of corruption. Corruption has proven difficult to define. In its most basic and common usage, corruption describes the transformation of something from a good state to a bad state, whether that means functional or moral. Thus, people speak of a computer program as "corrupted" when it works no more, or of an innocent person as corrupted when that person becomes cynical and morally coarse. The word can describe simultaneous moral and functional decay, as in the corruption and fall of Rome. Used in such a way, the term corruption is too broad for either those who study corruption or those who wish to control corruption. A transformation from good to bad iterates itself in thousands of ways and can be caused by thousands of processes, not least of all the passage of time. To speak of corruption in a meaningful way or to formulate programs that might control corruption requires somewhat more precise definitions. Those who study corruption have responded to this need with a galaxy of definitions.

Arnold Heidenheimer, often in association with Michael Johnston, has generated the most well-known attempts to define corruption (Heidenheimer & Johnston 2011; Heidenheimer, Johnston, & LeVine 1989; Johnston, LeVine, & Heidenheimer 1970). Heidenheimer suggests three broad categories of definitions: market-centered, public interest–centered, and public office–centered. Market-centered definitions of corruption posit a "rational" actor who follows a particular thought process in deciding how to act. Thus, "[a] corrupt civil servant regards his (public) office as a business, the income of which he will … seek to maximize. The office then becomes a 'maximizing unit.' The size of his income depends … upon the market situation and his talents for finding the point maximal gain on the public's demand curve" (van Klaveren 1989: 26). Public interest–centered definitions look to the effect of activities; corruption occurs when a public servant's activity, particularly when induced by "rewards not legally provided for, … does damage to the public and its interests" (Friedrich 1966: 74). Public office–centered definitions are very similar but, rather than focusing on the effects of behavior, scrutinize the relationship and responsibility of the corrupt actor with and to the public. Each of these types of definitions has been productively used in social science literature, but each has also been roundly criticized.

Ulrich von Alemann (2004) suggests a different approach. Rather than attempting to find a single definition of corruption, von Alemann suggests that corruption simply be understood. He therefore categorizes corruption literature into five tropes of understandings: corruption as social decline, corruption as logic of exchange, corruption as deviant behavior, corruption as a system of measurable perceptions, and corruption as shadow politics. von Alemann recognizes corruption as a multivalent phenomenon; each of the categories he suggests represents only a trope within the research literature on corruption and none are meant to be either exclusive or definitional.

This mass of definitions is intellectually interesting and provides a window into the complexity of corruption, but it does little to provide a reader with a workable definition of corruption. Within the social sciences, one definition has come to dominate the discussion of corruption. That definition, in its most general form, is:

> The abuse or misuse of power or trust for self-interested purposes rather than the purpose for which that power or trust was given.

This definition can be found in the early writings of political scientists, in the websites of international financial institutions, and the mission statements of anticorruption organizations. As far back as 1931, Joseph Senturia (1931: 448) defined corruption for his fellow political scientists as "the misuse of public power for one's own personal profit." The World Bank defines corruption as "the abuse of public office for private gain" (1997: 8). Transparency International, the most prominent anticorruption organization, defines corruption as "the abuse of entrusted power for private gain" (www.transparency.org/what-is-corruption/).

Corruption exists in many forms, such as embezzlement, theft, extortion, and nepotism. A government official who quietly directs funds from the public treasury to her own bank account is abusing both public trust and power over the public budget. An office manager who steals a laptop is similarly abusing both trust and power.

Of all the forms of corruption, the one most closely identified with corruption in general is bribery. Indeed, Michael Johnston laments the general confusion between the terms "corruption" and "bribery" and notes that when most scholars and policymakers use the term "corruption" they

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are actually referring only to bribery (2005: 20–21). Bribery is, however, a specific form of corruption.

The hallmark of bribery is its quid pro quo nature. Bribery involves exchange. It is easy to overcomplicate the definition of bribery, using phrases such as "giving something of *value*" or "*benefit* to the bribe-giver." In reality, any exchange that fits within the general definition of corruption will be considered a bribe by most people, even if ultimately the objects exchanged had little or no value or were of little or no benefit to the bribe-giver. An uncomplicated definition of bribery that captures the notion of exchange and that fits within the general definition could be:

> The abuse or misuse of power or trust in a quid pro quo exchange.

A bribe-giver offers or gives something to someone who has power or trust and in consideration of what was given the holder of power or trust abuses or misuses that power or trust in some way. Even though this definition is not complicated, it sufficiently distinguishes bribery from other transactions. For example, if a person were to go to a restaurant, be seated immediately at a nice table, and enjoy a good meal, and that person were to give the maître d' a big tip after the meal, that would be considered nothing more than a tip. It does not satisfy the definition of a bribe, because there was no exchange and the maître d' did not abuse or misuse power. If, on the other hand, a person were to go to a restaurant and, upon finding that there were several people waiting to be seated, decided to give the maître d' money in exchange for getting that person a table, that would be considered bribery. There clearly is an exchange, and in consideration of the money, the maître d' abused his or her power (people should be seated in the order in which they arrive, not out of order). Similarly, if a person wants a visa in a short period of time and gives money directly to the consul, in exchange for which the consul immediately approves the visa application, then that constitutes bribery – in exchange for money, the consul deviates from the normal procedure. If, on the other hand, the consulate posts differential processing times and fees, and an applicant pays extra money to the consulate for immediate visa approval, then that does not constitute bribery. Although there was an exchange, it did not involve abuse or misuse of power or trust.

It is important to differentiate this general definition of bribery from a legal definition. A general definition is meant to be useful to those who study corruption as a phenomenon. Bribery does violate the laws of every jurisdiction in the world, but legal definitions, by their very nature, must be far more precise and circumscribed. Legal definitions must provide guidance for the people operating under those laws with enough precision that those people can determine what kinds of acts are and are not allowed. A general definition, on the other hand, only needs to describe the phenomenon sufficiently for its study and allow people in different legal jurisdictions to speak to one another.

WHY BRIBERY IS STUDIED

Bribery distorts economies and societies. It imposes tremendous costs on them. Most importantly, bribery hurts people and pulls apart the social fabric. Bribery merits attention.

The distortions imposed by bribery are easily explained. Under normal circumstances, a decision is made on the basis of factors relevant to that decision. Decisions about purchasing goods and services, for example, are made on the basis of the quality and price of those goods or services, as well as the extent to which they satisfy the needs of the purchaser. Decisions about whom to hire are made on the basis of whether a position needs to be created and then whether an applicant is qualified to fill that position. Indeed, one of the justifications for competitive markets is that such markets institutionalize the allocation of resources based on widely dispersed decisions about the quality and appropriateness of goods and services.

In contrast, under conditions of bribery, a decision is made on the basis of the quality of a bribe rather than on the basis of factors pertinent to the decision. Thus, a purchasing agent might choose an expensive, low-quality product if the seller offered the highest quality bribe. A manager might appoint someone utterly unqualified for a position if that person offered the highest quality bribe. Making decisions this way results in shoddy and unnecessary goods and services – such as buildings that collapse because resources were used to bribe inspectors rather than meet construction codes, or "bridges to nowhere" whose construction presented opportunities for massive bribery. The first level of distortion caused by bribery is quite easy to understand – society is flooded with goods and services that serve no purpose or are not really desired by anyone.

The distortion goes further. When decisions are based on the quality of a bribe, producers are not rewarded for using resources to produce high-quality or inexpensive goods and services. Instead, they are rewarded for producing high-quality bribes. Savvy producers, therefore, will divert the resources at their disposal away from the production of quality goods and services to the creation of high-quality bribes. Therefore, not only is an economy flooded with low-quality goods and services, it also experiences a dearth of goods and services of adequate quality. This means that the goods or services made from those goods or services will also be of lower quality. If, for example, an office is staffed by people who paid bribes to obtain positions in that office rather than actually qualifying for positions, then it is unlikely that that office will provide useful services.

Goods and services chosen on the basis of bribery also represent lost opportunities. Resources are not infinite, and, in fact, many polities that experience endemic bribery have very limited resources. The resources used to build an unneeded bridge are resources that could have been used to build a school or a hospital or something else that might have contributed to the overall well-being of the people in that polity. The absence of a school or a hospital means that people will be less educated or have poor health care and in turn be less capable of contributing socially and economically. The circles of distortion engendered through bribery ripple far beyond the initial act of bribery.

Given the wide range of indirect effects that flow from bribery, it is very difficult to measure the costs imposed by bribery. The International Monetary Fund estimates that between 1.5 and 2 trillion US dollars is siphoned away from the global economy each year in the form of bribes (IMF 2016: 5). This represents a shocking two percent of the global economy. A study commissioned by the European Union found that bribery adds from two to almost sixteen percent to the contract price of goods and services in public procurement by members of the European Union (PwC 2013: 6). Within the private sector, one study estimated that bribery costs developing countries 3.7 times the amount those countries receive in development aid (Hameed & Magpile 2014: 3).

As enormous as these costs are, they are only the starting point in understanding the harms inflicted by corruption and bribery. The Foreword to the *United Nations Convention Against Corruption* clearly outlines these harms:

> Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. (Annan 2004)

Corruption hurts people in a variety of ways. For example, corruption is related to higher levels of child mortality rates, lower child birth weight, and increased dropout rates of children from primary school (Gupta, Davoodi, & Tiongson 2000; Vian 2002). Indeed, a strong negative relationship exists between corruption and the performance and viability of healthcare systems, in general (Lewis 2006). Corruption also negatively affects environmental policy and the quality of the environment in which people and other living things exist (Pellegrini & Gerlagh 2006; Sundström 2013). Bribery, as a predominant form of corruption, undoubtedly plays a larger role in the infliction of all of these harms.

Most significantly, bribery tears apart the social fabric. Bribery destroys trust in business institutions (Black & Tarrassova 2003). Bribery destroys trust in government (Melgar, Rossi, & Smith 2009; Rose-Ackerman 1999). As Bruce Ackerman (2000: 694) points out, bribery "undermines the very legitimacy of democratic government. If payoffs are a routine part of life, ordinary people will despair of the very idea that they, together with their fellow citizens, can control their destinies through the democratic rule of law." People who have not endured the hardship of living with endemic bribery may think that official demands for bribery are nothing more than background noise, easily and quickly paid and forgotten. In truth, every bribe demand represents an assertion of power over those without power or adequate redress, which over time engenders deep frustration, resentment, and anger (Castañeda 2016). Perhaps, the greatest evidence of the hurt caused by bribery consists of hundreds of thousands of people who gather in streets and town squares to risk their lives protesting against its continued existence.

THE STUDY OF BRIBERY

The vast majority of current research on bribery studies the effects of bribery. Susan Rose-Ackerman (1999), in her seminal *Corruption and Government* (1999), steered the conversation toward the harms caused by bribery and other forms of corruption (although Rose-Ackerman studies corruption, in general she has stated that "I shall always keep bribery in the analytical foreground" [1978: 4]). The body of literature on the effects of bribery, a small portion of which has already been mentioned, is far too large to be described in full.

Two other streams of scholarship, however, are both more pertinent to this book and easier to summarize. Both examine the factors that lead to bribery. The first of these streams attempts to find the causes of bribery within the attributes of cultures or moral systems: indeed, the eminent jurist John Noonan (1987) attached the subtitle *The Intellectual History of a Moral Idea* to his now-classic treatise *Bribes*. Noonan's moral history was followed by inquiries into whether particular cultures or moral systems promoted bribery or created a space in which bribery could flourish

(Green 2007; see, for example, Camarata 2007; de Sardan 1999; Napal 2005; Sandholtz & Koetzle 2000; Tian 2008). This inquiry morphed into a claim by some scholars that the then nascent global anticorruption regime represented a form of "moral imperialism" (for example, Dalton 2006; Salbu 1999a). The moral imperialism argument has been effectively refuted and no longer appears in scholarly literature (Spahn 2009). It should be noted that although many polities fail to control corruption, no society has been found to fully embrace or exalt corruption.

Theories that attribute bribery to structural causes are far more prevalent in current research on bribery. Robert Klitgaard's pioneering *Controlling Corruption* (1988) attributes bribery to structural failures in a governance system. Klitgaard (1998: 4) suggests that:

> [C]orruption may be represented as following a formula: C = M + D – A. Corruption equals monopoly plus discretion minus accountability. Whether the activity is public, private, or nonprofit … one will tend to find corruption when an organization or person has monopoly power over a good or service, has the discretion to decide who will receive it and how much that person will get, and is not accountable.

The notion that bribery is the product of failures in the structure of social institutions has been pursued in a variety of fields, including economics (for example, Aidt 2009; Lambsdorff 2007), international relations (for example, Mutebi 2008; Naím 1997), law (for example, Bishara 2011; Quah 1999), management theory (for example, Naím, Glynn, & Kobrin 1997; Tonoyan et al. 2010), and political science (for example, Gerring & Thacker 2004; Jiménez, Villoria, & Quesada 2012; Levin & Satarov 2000).

Theories of institutional weakness are particularly embraced by organizations dedicated to the control or eradication of bribery. Transparency International, the most prominent of such organizations, promulgates a program that focuses on enhancing the strength of a country's institutional "pillars" (Pope 2000). These pillars include the media, legal enforcement and businesses, as well as the executive, judicial, and legislative bodies within the government. The World Bank considers strengthening institutions a "key to controlling corruption. Well-functioning public management systems, accountable organizations, a strong legal framework, an independent judiciary, and a vigilant civil society protect a country against corruption" (1997: 39).

Each of these bodies of inquiry has in common an impersonalized, systemic perspective of bribery. Bribery is perceived as the byproduct of a culture, or the product of a failure of a moral system or of institutional weakness. These approaches to bribery do not take into account the decision-making process of a person actually encountering the opportunity to offer or to accept a bribe. This book suggests that the study of bribery will benefit from close examination of the process by which individuals make those decisions. Introducing the concept of an individual decision-maker makes necessary an examination, if only briefly, of the normative issues surrounding that decision.

THE NORMATIVE ASPECT

This book approaches the study of bribery empirically rather than normatively; we are interested in research that explains bribery, rather than research that evaluates its ethical dimension. However, empirical research on bribery is meaningless without a normative basis to establish what it is about bribery that makes it unethical (Tenbrunsel & Smith-Crowe 2008).

Most normative ethical frameworks are either teleological or deontological. Teleological frameworks take account of the consequences of an act in determining whether that act is appropriate. The costs and devastating harms inflicted by bribery have already been discussed. These consequences are especially troubling because they particularly affect the least advantaged and most vulnerable (Rahayu & Widodo 2012). In the 1960s, a handful of development theorists argued that bribery offered a benefit, by allowing individuals to avoid cumbersome government burdens (for example, Huntington 1968; Leff 1964). That argument has been rebutted by more robust research that demonstrates that bribe-paying actors actually incur greater costs in dealing with government, as bribe-taking bureaucrats create ever-greater obstacles in order to extract ever-larger bribes (Choi & Thum 2003; Kaufman & Wei 1999). As Steven Salbu points out, "no nation can miss the clear and highly publicized conclusion that corruption is economically devastating" (1999b: 446). From a consequentialist perspective, there can be little doubt that bribery is wrong.

Deontological moral frameworks use rules to determine the appropriateness of an act. Some of the earliest moral rules are found in religious texts; those texts universally condemn bribery as immoral. A doctrinal text shared by Judaism and Christianity, *Deuteronomy* 16:19, clearly directs that "you shall not accept a bribe." The Holy *Qur'an*, of the Islamic faith, is even more forceful, stating in *sura* 28:77 that "Allah loveth not corrupters." Bribery violates fundamental precepts of Buddhism and is considered a practice that will "lead to moral disintegration" (Dhammaratana 1972: 18). The *Sri Guru Granth Sahib*, Sikhism's most authoritative text, teaches in *ang*

1032 that persons who "take bribes … do not know the essence of reality." The second lecture of the second book of the *Sūtrakṛtāṅga*, one of the foundational texts of Jainism, includes the practice of bribery among the characteristics of "unrighteous" persons. And as described earlier in this chapter, Hinduism has long condemned bribery.

Secular means of determining rules also proscribe bribery. Integrative social contracts theory, for example, posits a moral free space in which discrete communities may negotiate rules but describes that space as bounded by incontestable, nonnegotiated norms: "a thin universal morality … principles so fundamental that, by definition, they serve to evaluate low-order norms … reaching to the root of what is ethical for humanity" (Donaldson & Dunfee 1999: 43). Tom Donaldson and Tom Dunfee (1999: 229) suggest that bribery violates a fundamental rule of "necessary social efficiency," which holds that all institutions and norms should operate to provide people with social goods and that it also violates "a universal right to political participation" (Dunfee & Donaldson 2002: 74).

The research presented in this book does not undertake normative analysis. Instead, this research attempts to understand bribery as a choice made by individual actors. To do so, this research does not base itself in structural or institutional perspectives but instead turns to the sciences of the mind.

HOW SCIENCES OF THE MIND COULD ILLUMINATE THE PHENOMENON OF BRIBERY

Research on bribery has not been entirely bereft of any inquiry into the individual decision-making process. Gary Becker (1968), for example, famously suggested that crime is the product of a conscious decision by rational actors. Becker, with George Stigler (1974), later applied his theory to police corruption, which included bribery. Becker (1968: 177) suggested that a rational decision-maker considers the likelihood of detection and punishment, the burden imposed by that punishment, and "a portmanteau variable representing all these other influences." It is in "all these other influences," not to mention the way in which all of this information is processed, understood, and acted on, that great promise for understanding bribery lies.

Two approaches illustrate the potential that sciences of the mind offer in understanding bribery. Each of these approaches focuses on the way that individuals understand a situation involving bribery. One approach, cognitive neuroscience, pays attention to the mechanics through which these processes occur. The other, behavioral ethics, explores how decision-makers