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Bribery and Business

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Synonyms

Bribery; Corruption; Extortion; Grease payment; Integrity

Introduction

The concept of bribery is important to our thinking about ethics, especially in professional contexts. This is in no small part due to the thought that, as Seamus Miller has put it, bribery is "a paradigm of corruption" (Miller 2018, pp. 4–5). Business persons and corporate entities are often evaluated by how well they remain free from, root out, and punish corruption – especially in democratic societies. It is a common thought, for example, that a democratic institution ought to be free from corruption. Since bribery is often thought a form – perhaps the *paradigmatic* form – of corruption, bribery, too, serves as a central concept in our evaluations of business persons and corporate entities.

Although there is no consensus as to what *exactly* constitutes bribery, theorists have at least converged on some common elements of bribery. This article will lay out three common elements which together are characteristics of bribery (payment, intention, and wrongdoing), and then briefly illustrate how this conjunction of elements allows for distinguishing between bribery and two other questionable acts often examined in the context of business (grease payment and extortion). It is worth clarifying up front that this article concerns the *ethical*, rather than *legal*, notion of bribery.

Elements of Bribery

Paradigmatic cases of bribery involve, in some way, *payment*. As noted by John Douglas Bishop (2004, p. 3), the "classic case of bribery" involves giving "money to any person with the intention of encouraging that person... to violate any legitimate moral obligation." Paradigmatic though such cases may be, bribery clearly need not involve money. As John Danley (1983, p. 22) observes, it is clear upon reflection that more or less *anything of value* may serve as a bribe. Suppose a business person offers free and specialized consulting to a democratically elected politician in exchange for altered voting behavior. Though such an arrangement involves no promise or exchange of money, it is a clear case of bribery.

Although theorists have tended to converge around an element of payment as crucial to bribery, it is clear that one need not actually *make* any payment (or materially *transfer* anything of value)

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in order to be engaged in an act of bribery. In the above example, the mere act of *offering* the consulting services seems sufficient for being engaged in an act of bribing. This is why many have, like Danley, provided the disjunctive condition of bribery, as requiring the giving *or* offering of something of value. It is in this more general sense that bribery is universally thought to include an element of payment.

In addition to the element of *payment*, bribery necessarily involves an element of *intentionality*. Of course, not just any payment or offering value to another person constitutes bribery; instead, a bribe is a *payment with a purpose*. While the specific nature or content of that purpose (or *intention*) is the subject of controversy, all analyses have in common some connection to *wrongdoing* (the third basic element of bribery).

Some, like Bishop (2004), D'Andrade (1985, p. 329), and Turow (1985), hold that bribing someone is intended to "induce that person to commit an improper act." On this view, the wrongdoing which the act of bribing is intended to produce need not have any particular nature; so long as someone is by prospect of value intentionally induced to do *something* wrong, bribery is afoot.

Others, like James, Jr. (2002, p. 71), hold that bribery is intended to induce an *agent* of a principal to do something contrary to their duty *qua agent of principal*, and therefore also to do something which is not in the interest of the principal. On this view, bribery is only possible within the context of an agent-principal relationship.

Others still, like Danley (1983), Carson (1985, p. 71), Noonan (1984), Philips (1984), and Pritchard (1998), hold that a bribe must be exchanged for something which would be "incompatible with the duties of the office, position, or role" of the bribee. On this view, the wrongdoing elicited by an act of bribing is neither completely general nor limited to agent-principal relationships. Instead, the wrongdoing takes the form of *abandoning the duties of one's station*, as it were – violating duties specific to a role occupied by the bribee.

Unsettled controversy aside, notice that, on any of these three characterizations, an act does not count as an act of bribing if the incentivized action *merely happens* to be wrong. Rather, the bribe must be intended to produce the wrongdoing, and so the briber in some sense must be *aware* that the act they hope to induce would be wrong.

Putting these three elements together, bribery may be specially, even if generally and not finally, characterized as an *exchange* involving a *briber*, who *gives* or *offers* something of value to some other person (the *bribee*) with the intent that the bribee does some act which would be wrong – either by its general nature, or due to the specific role that the bribee occupies.

This provides some hint as to *why* it is that bribery is (usually) wrong. One who *offers* a bribe performs an action intending that that action will result in wrongdoing. Plausibly, it is generally wrong to intend to induce others to do wrong. One who *accepts* a bribe either (i) does indeed perform the wrong act which the bribe is intended to induce or (ii) at least implicitly agrees to perform that wrong act. It is self-evident that cases of the first type involve wrongdoing. With respect to cases of the second type, we may observe the plausibility of the thought that it is generally wrong to (genuinely) agree to do wrong.

Bribery and Other Business

Any satisfactory account of bribery must be able to answer the question as to what distinguishes *bribery* from two other phenomena related to and sometimes confused with bribery: *grease payment* and *extortion*. The above analysis of bribery allows for just that.

As Carson (1985, pp. 68, 79–80) notes, *grease payments* are payments made in order to *facilitate* or *expedite* routine or *normal* processes, events, or services. For example, a payment may be made in order to hasten the passage of goods through customs. Note that such a payment is not made in order to *obtain* passage of goods through customs – goods which would otherwise not be passed through. Assuming that the goods *should* be passed through customs, the grease payment is made to *facilitate* or *expedite* that *permissible process*. In other words, the grease payment provides incentive for the customs officials to *perform* their professional duties. This is exactly the opposite of the intended effect of a bribe, which is to incentivize *nonperformance* of duties. The fundamental distinction between *bribery* and *grease payment*, then, is made in the element of *intentionality*: whereas bribes are intended to produce wrongdoing, grease payments are not.

Extortion differs from bribery in at least two important aspects. Consider a paradigmatic example of extortion: a local mafioso enters your corner store and threatens to destroy the place unless you pay him for "protection." Clearly, the mafioso extorts you; but his action lacks the crucial elements of bribery discussed above. First, the mafioso does not necessarily offer you something of value; instead, he *threatens* you. Second, the mafioso need not intend to induce wrongdoing on your part; instead, he intends merely to extract from you *something* of value (money). If we can roughly (even if not definitively) characterize extorting as *using threat to improperly extract something of value*, it clearly diverges from bribery in the elements of payment and intent: while the briber offers something of value in exchange for some perceived wrongdoing, the extortionist threatens disvalue unless something of value is given.

There are of course other significant metaphysical, ethical, and legal questions related to bribery, which this article has not touched on or settled; for example, what is the precise nature of the wrongdoing involved in bribery, the moral status of making grease payments or extortion payments, and what corporate or public policies should be enacted to manage such things.

Cross-References

- ▶ Conflict of Commitment
- ▶ Corruption and the American Foreign Corrupt Practice Act
- ▶ Gifting and Influence in the Private Sector
- ▶ Gifting and Influence in the Public Section
- ▶ Leadership Integrity
- ▶ Organizational Corruption

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