

A Vexing Conundrum: Bribery and Public Relations

William James Buchholz

Bentley College, Waltham, Massachusetts

This paper examines bribery as a moral, legal, cultural, and socio-economic phenomenon. For public relations practitioners, who, by the very nature of their work, often confront bribery, this paper clarifies the dynamic of the bribing situation, focusing in particular upon the definition of bribery, the obligation between a bribe-giver and a bribe-taker, and the difference between a bribe and a gift. The last half of the paper examines the Foreign Corrupt Practices Act to demonstrate the difficulties involved in legislation designed to curb bribery. The paper concludes that bribery, especially international bribery, should be recognized as merely symptomatic of deeper underlying political and socio-economic causes. Laws and corporate codes of behavior, while often effective in combating the symptoms of bribery, are largely ineffective in eliminating its fundamental causes.

Given the elusive nature of bribery, it is entirely fitting that a conundrum (a riddle with a pun for an answer) introduce this paper. The chief purpose of a conundrum is to tease the wits. A really good conundrum is puzzling and tricky. But if you think enough about the riddle, and probe it, and look at it from many different sides, you can learn a great deal. The ancients, in fact, used conundrums to tease themselves into wisdom. Hoping for some portion of that, let us pursue this vexing conundrum:

In the marriage of heaven and hell, what has the potential to make the gift-giver a taker and the gift-taker a giver?

Answer: The *bribe-to-be*.

(Forgive the pun. It's essential in a conundrum.) To amplify: the gift-giver is a taker when he "gives" bribes, for then he "takes" another's integrity. The gift-taker is a giver when he "takes" bribes, for then he must "give" future obligation.

Let us pursue the riddle further.

A definition of bribery

Why focus on bribery and public relations? After all, bribery seems to be the by-product of very *private* relations. Actually, the most appropriate term in examining the potential for bribery would be *human* relations, for any situation in which two people are negotiating, or indeed simply communicating, is fertile ground for the manipulation that often results in bribery. Public relations specialists, corporate communication practitioners, lobbyists, corporate agents, liaisons, people in public affairs, the media, fund raising, international relations, politics, and political campaigning, to name a few, often find themselves in the *human* relationships that involve a great deal of money, power, or prestige — relationships which thereby invite corruption. On some scale, whether large or small, I dare say that all of us in communication have either bribed someone, have had someone bribe us, or have had the good sense to refuse both bribing and being bribed. In short, bribery is an occupational hazard for us.

Classically, "bribe" and "bribery" are legal terms designating a corrupt act that violates a government officeholder's fiduciary responsibility to the people who have granted the office, thereby a public trust. In recent years, modern definitions, at least in American experience, have included violations of trust in organizational settings as well as in personal relationships (Brummer; Barry; Danley; DeGeorge; Noonan; Philips, among others). Generally speaking, the bribe-taker violates a trusted relationship with a person, an organization, or even a principle, by receiving some kind of payment, usually money, and by putting the interests of self above all others. Bribery is regarded as morally repugnant primarily because it encourages "unfair or undeserved benefit or advantage" (Philips 629). An international scenario will help to illustrate these essential elements of bribery.

Sandra Sheffield, as agent for a multinational corporation, has just bribed a foreign defense minister with five million dollars to insure the purchase of her company's 20 fighter bombers. The defense minister awards the contract not on merit, not according to his country's accepted practice of open bidding and competition, not with the interests of his people first, but instead with his own interests chiefly in mind. Sandra has taken advantage of the minister's weakness for money without concern for his fiduciary responsibilities to constituencies larger than his own self-interest. By perpetrating the bribe, she has colluded to violate the minister's trust, namely, his larger responsibility to his government, his culture, his traditions, and, perhaps most importantly, his people. The violation of trust, whether implicit or explicit, is the primary issue here.

Ironically, however, for a bribe to be a bribe — that is, for a bribe to work — both parties (the briber and the bribed) must presume to trust one another. Bribery, like its more honorable open-market pursuits, is after all an exchange, based on trust, of one

Bribery and Public Relations

good or service in the present for another good or service in the future. The act of bribery, with its underlying presumption of trust, is therefore classically transactional. As in all transactions, between the briber and the bribed exists a "moral" duty, a tacitly binding obligation. If Sandra bribes the minister with money or favors or gifts or sex, she has a right to expect — and he a duty to perform — the future payment of goods or services that he implicitly obligates to by participating in, and thereby completing, the transaction.

The condition of bribery thus has its own internal ethic, what might be termed the "promissory ethic," which if violated dissolves the gossamer trust between the briber and the bribed. I can bribe you today trusting that tomorrow you'll speed my check through or pay off the inspector or keep the press quiet. If you take my money but fail to do my bidding, I have not *bribed* you. You, simply enough, have *double-crossed* me. From that moment, we are at odds — probably enemies. In all likelihood we can no longer do business, not even this dirty business of bribery, because you have defaulted on our implicit contract. The conditions between us now are unacceptable, though perhaps never named and certainly never publicized. In breaking our pact, you (ironically) have corrupted the very process of bribery by dishonoring your obligation. And for bribery to work, there must be honor among thieves.

Who bribes and who is bribed?

In a classic bribe situation, both the giver and the taker are morally culpable if the intention of each party is corrupt and if the context within which they operate is moral. For example, if I, as a communications manager for Candidate Smidgeon, approach you with a "gift" of a free weekend on the town, complete with escort and spending money, and you, reporter for the *Daily Excrescence*, agree not to investigate the story of the Honorable Smidgeon's alleged womanizing, we may have a classic instance of bribery. I say "may" because certain conditions must be met. Bribery pertains *if and only if* you did not investigate the story *because* of my gift, and *if* you understood that my *intention* in the gift-giving was to forestall your investigation and reporting. I have suborned you, true, but you have agreed to be suborned. In so doing you have violated your responsibility to your employer and to your reading public. We are both guilty: I of inducing the corruption, you of *willingly* participating in it.

Now, if you come to me and suggest that you have received potentially damaging evidence about the Honorable Smidgeon's private dalliances, but offer to suppress the story in exchange for the weekender, you have *solicited* the bribe. If I agree to your terms, we are both culpable, but the moral onus has crossed over from me to you because the heavier ethical burden resides with the initiator of the corrupt act.

Taking the case one step further, I can become your innocent victim if you

Bribery and Public Relations

brazenly threaten to print all sorts of suggestions, rumors, and innuendo just prior to the election, knowing full well that these will probably sink Smidgeon's candidacy. You promise not to do this if I pay you tribute — in effect, protection money. I pay you, but I have not bribed you, strictly speaking. You have *extorted* the money from me. Philips notes:

the bribery agreement is not by its nature an agreement between victims and victimizers. The extortion agreement is. Moral justifications and excuses for complying with the demands of an extortionist are easier to come by than moral justifications and excuses for offering bribes. (630)

As your victim, therefore, I may not be morally culpable because my motives are honorable (to protect Smidgeon from what I honestly believe to be falsehood), and I am serving what I sincerely believe to be the greater good (the public's) within a corrupt context (satisfaction of your private good). To the outsider, my passing over the envelope of cash for your weekend looks like a bribe. I look guilty, and I may end up in jail, but I have acted with some *prima facie* moral justification: my *not* surrendering to your demands could work a greater harm.

The subtleties of bribery

Do honorable men and women — do you and I — practice bribery? Most of us would answer no. Our mental pictures of bribery are clear. Bribery is an envelope stuffed with cash; it's a bagman in the park; it's a locker at the bus terminal; it's the bogus "widow's and orphan's fund." Bribery happens in the dark between consenting adults engaged in wicked bidding. Bribers and bribe-takers do their business in government lobbies, in plush offices, in hotel rooms, in back offices, and in dark alleys. Bribers are the dusky Iranians or Syrians or Saudis who, bribing and being bribed, slip into the night of their immoral cultures that condone, even encourage, bribery. But we certainly have nothing to do with all this — do we?

Unfortunately, we do. Legalistically speaking, bribery is a violation of the public or corporate trust, yet the psychological aspects of the act are so rooted in our ongoing relationships with people that the word has entered everyday parlance in many confusing ways. Bribery is the salesman's gift of Jack Daniels at Christmas. The client's lunch. The candy, flowers, perfume, or stockings for the receptionist (that special someone who someday may be counted on to do something special). Bribery is a wink — and a promise of more than a wink. It is a nod or a shrug or closed eyes or a look-the-other-way. No money, no goods need ever change hands. Bribery is an emotional IOU, a small gift of attention with strings attached, a clearing-the-way-for-you-if-you'll-clear-the-way-for-me.

Bribery and Public Relations

Understandably, because of the legal and governmental roots of the term, politics is perhaps the greatest exemplar of bribery: the *quid pro quo*, wheeling and dealing, exchanges of favors, obligations, and promises to cut future deals — all are fundamental forms of preferential exchange essential to effective politics. As Noonan points out:

Access payments, campaign contributions, tips, gifts — the ways in which exchanges with an officeholder may be made are so many that no exhaustive list can be made. Need one catalogue the forbearances, the appointments, the promotions, the kindnesses to siblings and in-laws, the sexual favors paid for or voluntarily given, or the business opportunities afforded, which constitute the common coin of reciprocity as much as cash and which, escaping legal condemnation, are morally indistinguishable as returns to officeholders? (689-90)

And beyond these political reciprocities, I suppose, to the cynical among us, *any* form of gift-giving is bribery. Perhaps, in fact, the greatest modern bribe of all is the marketer's "free" gift. Its invisible strings tug at us unconsciously. Its insistence that no obligation exists becomes the obligation itself.

Our lives are not as free of bribery as we perhaps thought. Even the "innocent" act of leaving a tip can be seen as bribery. Danley argues that a tip is not a bribe unless it induces "an action that would violate a positional duty" (22). But this view is rather narrow; it ignores the history of tipping and the complex psychological tensions involved in the act. The negative impulses common to bribery *and* extortion have been seen at play in tipping since the early nineteenth century. As defined in the *Oxford English Dictionary (OED)*, the word "tip" often keeps suspicious company, having derived from rogue's cant. Eric Partridge notes further that as early as 1812 the phrase "take the tip" or "stand the tip" refers to receiving a bribe: "and they say of a person who is known to be corruptible, that he will stand the tip" (888). Today, tipping is our attempt to assure expeditious future delivery or exchange. Moreover, the tip is not just a reward for present good service; the tip in some contexts staves off future bad service. Like tribute money, a tip may purchase peace or guarantee access. The tip ultimately "buys" us a better table, a better waiter, a better cab ride, or better room service. While the recipients of the tip certainly in one sense cannot be corrupted (because they may have wide discretionary powers in decision-making), their very power to affect our lives, and their withheld yet intimidating threat to cause discomfort or embarrassment, can operate as a corrupting form of influence, what may be termed "psychological bribery."

Recognizing these darker aspects of the act and the word, many people prefer to call tips *gratuities*. The *OED*, however, defines *gratuity* as "a gift or present (usually of money), often [given] in return for favours or services, the amount depending on the

Bribery and Public Relations

inclination of the giver; in [the] bad sense, a bribe. Now applied exclusively to such a gift made to a servant or inferior official; a 'tip'." Thus, the attempt to euphemize the act of bribery has not been entirely successful. In its adverbial form, however, *gratuitously* has a positive meaning. To give gratuitously is to give "without cost to the recipient; without any claim or merit on his part; free of charge." Is it any wonder that people are confused about the moral claims of tips and gratuities in our culture? In this confused state, people attempt to euphemize tipping by suggesting that this obligatory money-tendering for favor is nothing but a gift given freely. A true gift, however, is never "expected" by the receiver, and the giver never feels what we usually feel in tipping or in not tipping: gratitude, fear, indebtedness, shame, or some vague kind of moral encumbrance.

The moral encumbrances of tipping and bribery are most dramatically evident in metaphysical or religious situations. Elements of bribery are especially obvious in pagan rites and ceremonies of sacrifice. To mollify a wrathful god, and to insure abundant harvest, the ancients undertook to "stand the tip" or "buy back" peace, to purchase the good mood of the deity, through sacrificial offerings of crops, animals, and human virgins. The ultimate "buy back," of course, is that of eternal life, central, in particular, to Christianity:

Even in its most primitive form, Christianity rests on a transaction carried out between God and the Son of God which theology labeled the Buy Back, a term in Roman civilization often used to mean a payoff to a judge to escape punishment. Job and Jesus himself to the contrary, religion can be read as reinforcement of the iron law, 'I give that you may give,' a law requiring reciprocity with every powerholder including God. (Noonan xxi)

In Christianity the redemption rises above this iron law of bribery, however, because salvation is a gift of love, achieved through the supreme sacrifice of God himself (the son) to God himself (the father) for all of humanity. The Covenant of Grace between God and Man is freely given and freely received. Unlike its pagan forebears, the Judeo-Christian tradition, from as early as the inception of the Mosaic law, enjoins all officeholders to forgo the iron law and model their behavior on that of a supremely just deity. Unequivocally, this tradition condemns all forms of bribery, whether of the deity, the judiciary, or holders of the public trust. The bribe is polluting; the gift, purifying.

Is it a bribe or a gift?

Where the gift and the bribe differ essentially is in the motivation and in the sense of obligation attached to the act of proffering. The word "free" assumes paramount importance in gift-giving, both for the giver and for the receiver. I must give *freely*. I

Bribery and Public Relations

must give because I *want* to give. You must receive *freely*. You must receive because you *want* to receive. My gift-giving has an element of sacrificial generosity in it because I am guaranteed no return. I have no right to expect reciprocation, and you have no duty to reciprocate. In giving, I am neither coerced nor coercing except by my feelings for you. In receiving, you are neither constrained nor constraining, except by your feelings for me. Ideally, true gifts are open and honest celebrations of joy and good feeling. Ideally, the feelings between giver and receiver are mutual.

Bribes, on the other hand, are closed, secretive, coercive, and obligatory. The briber and the bribed are motivated chiefly by desire for gain. Their dispositions are self-referential. The interest of others is surrendered to the interest of self. For public servants, the bribe is particularly odious, because it corrupts the sacred fiduciary responsibility; money, not merit or reason or justice, governs the bribe-taker's judgment. The public trust falls subordinate to the private will; the national interest succumbs to local or self-interest. Assume, for example, that I am a lobbyist representing the soy interests of Illinois farmers. I am instructed to pay Senator Sludge \$100,000 to influence his vote on pending legislation that will be a boon to my client. In bribing Senator Sludge, I claim his vote as my own and thereby divert his loyalty from the electorate, by whom and for whom he has gained his office and power in the first place. He is in my pocket, and my pockets are very deep. Thus, my money has more power than the peoples' vote, a treacherous state of affairs for democracy.

In the case of Senator Sludge we have unambiguous venality. But most venality, the kinds we encounter every day, is seldom so obvious. Why is the innocent gift so difficult to distinguish from the not-so-innocent gift and the bribe? Perhaps because in practice our relationships with others are seldom clear-cut. Our motivations are often complex, ambiguous, and unconscious. While the little gifts we give are not wholly meant to bribe someone's affections, who can deny that we build little (and large) personal obligations by subtly manipulating the affections of others? When we give a gift or perform a kindness or do a favor, we expect a return — eventually. Otherwise we quit giving. Dinner invitations to friends stop, if they are not reciprocated. Cards, letters, telephone calls cease, if they are not returned.

Fortunately, law and social convention help us to determine the acceptable and the unacceptable gifts. In some cultures, gifts are signs of allegiance; the less affluent bind themselves to their patrons through token offerings. The gift "is employed to seal the loyalty of the gift-giver to the throne or to the seat of a ruling emir." In Japan gift-giving is an expression "of the difference in status between the one who does the asking and the one who confers the favor" (Jacoby, Nehemkis, and Eells 149). In probably any culture, a gift may be the means of signaling goodwill, making-up after an argument, establishing a bond of friendship, or reinforcing a bond of kinship. Traditional kinship ties, for example, in Africa, Asia, and Latin America are often stronger than ties of

Bribery and Public Relations

national fealty; where "the family, village, tribe, and clan command the primary loyalty of the individual, public office is exploited for the benefit of the nuclear or extended family" (150). Gifts given under these circumstances may appear unacceptable and corrupt to us, but against the backdrop of a foreign culture, the so-called "corrupt" act may be a form of devotion to the higher good of the family at the expense of the lower good of an impersonal and exploitative state.

Aside from cultural differences and kinship variables, within any society, purpose and intent color the meaning of the "gift" (Barry; Jacoby, Nehemkis, and Eells; Noonan; Philips). If the giver's intent is honorable (however that may be defined), and if the receiver clearly recognizes the motivating drive to be honorable, no moral conflict exists. If the gift is meant to have an influence beyond the relationship itself, that is, if I buy a reporter's lunch for some specified purpose beyond the lunch — if I have attached to this lunch a string that someday I fully intend to pull — then I have corrupted the gift and made it a debt. My dark intent has manipulated the gift; I have twisted it into a bribe.

In addition to intent, value is an important consideration. A nominal gift is quite different from a substantial gift (Barry 237). My gift of a \$10 bottle of wine to an editor may be seen as nominal; my gift of a \$150 bottle of Dom Perignon may be considered substantial and thereby psychologically binding. Of course, a loan of \$25,000, free use of a villa in the South of France, and season tickets to the Celtics games are clear attempts at inducing preferential treatment through bribery. The gift, by its very size, thus becomes corruptible and corrupting. For this reason, no U.S. government official is allowed by law to accept from any single donor a gift valued at more than \$50. (Behrman 301).

The circumstance of the giving and the recipient's position also determine moral acceptability across cultures: "a gift given during the holiday season, for a store opening, or to signal other special events is circumstantially different from one unattached to any special event" (Barry 237). Even during special seasons or occasions, however, a gift given to the mailroom boy or to the data entry clerk has an impact much different from the same gift given to the publisher or general manager of a magazine wherein I hope to place my product releases or feature articles.

Who then ultimately determines the difference between the gift and the bribe? The moralist, the pragmatist, the cultural relativist, and the legalist each will give you a different answer (Longenecker, McKinney, and Moore). Gift or bribe? It is a determination not easily made. Because of the difficulty inherent in such complex decisions, and because of the potential for enormous danger to the individual and to a culture if guidelines for behavior are haphazard or confused, civilizations advance legislation, judicial machinery, and enforcement agencies that attempt to insure fairness

and stability. The law, in short, tries to bring legal order out of moral chaos.

The law's attempt to curb international bribery

While law and morality are not identical, many laws are implemented to enforce a moral proscription. Usually legislators attempt to frame such laws because of, one, the desire to protect and defend the ethical and physical well-being of the greatest number of people (the *utilitarian* justification) or, two, the desire to adhere to an established moral principle embodied in an ethical or religious code (the *deontological* justification). No doubt, legislators are motivated by a mix of these two desires. Whatever the motivation of the lawmakers, however, any legislation that seeks to redress a dangerous and muddled social circumstance (like that of bribery) must be terminologically clear and consistent, or else it is doomed.

A good law can introduce the stability and structure often obscured in the moral vision. Such law acts as an ordering principle that provides refuge from ambiguity. As Sir Thomas More tells Roper in *A Man for all Seasons*: "the currents and eddies of right and wrong, which you find such plain sailing, I can't navigate Your seagoing principles! They put about too nimbly!" For More, the country

is planted thick with laws from coast to coast — man's laws, not God's — and if you cut them down . . . d'you really think you could stand upright in the winds that would blow then? (*Quietly*) Yes, I'd give the Devil benefit of law, for my own safety's sake (38)

Who among us, save the fool or the foolhardy, navigates without reservation these currents and eddies of moral indistinction between bribes and gifts? Our principles "put about too nimbly." And the waters are indeed dangerous. Just as for More, however, the law has attempted down through the centuries to settle these teasing distinctions between the acceptable and the unacceptable gift.

But sometimes the law itself introduces the confusion it seeks to clarify. A classic example of such a law is the Foreign Corrupt Practices Act (FCPA). In the early seventies Americans had become outraged at the blatant corporate and governmental corruption exposed daily by the media (Greanias and Windsor; Jacoby, Nehemkis, and Eells; Kugel and Gruenberg). In reaction to the Watergate scandal and to the great number of corporate wrongdoers exposed through SEC initiatives, Congress passed the Foreign Corrupt Practices Act, signed into law in 1977 by President Jimmy Carter. The FCPA is unique in bribery legislation because it is the first law ever passed to forbid paying bribes to high-ranking government officials in *foreign* countries. (The law specifically concerns itself *only* with the bribery of foreign officials, not with bribery in general.) Any American corporation or U.S. citizen is prohibited from paying bribes or attempting "to

Bribery and Public Relations

influence foreign governments or officials for the purpose of 'obtaining or retaining business for or with, or directing business to, any person.'" The law does not technically distinguish between error and intentionality (Greanias and Windsor 13). In other words, I may be prosecuted with the same vigor for wrongly interpreting the law as for conniving to circumvent it. Or if my clerks or agents make a mistake, I, as a corporate officer, may be prosecuted to the same extent as if they had colluded with foreign agents.

The law further stipulates that under no circumstances may I "make, authorize, or promise payments or gifts of money or anything of value corruptly . . . to a foreign official, a foreign political party, a party official, a candidate for a foreign party" or any agent who might transfer the funds to one of these (Greanias and Windsor 13). Under the legal tradition of *de minimus non curat lex* (the law ignores trifles), small payments to ministerial functionaries or clerks are not prohibited (Behrman 296; Noonan 692). The law recognizes that facilitating or "grease" payments are in some countries necessary if one is to clear goods through customs, secure licenses, or cut through bureaucratic red tape. Fines for a corporation violating the provisions of the FCPA can be as high as one million dollars. Any convicted individual may be fined up to \$10,000 or receive five years imprisonment or both. Needless to say, the fines are hefty enough to discourage many American corporations from violating the law.

Since its passage, and indeed even during its formulation, the FCPA has evoked passionate response — both from those who favor it and from those who deplore it. The law's moral efficacy has been well debated for a decade now (Alpern; Behrman; Brummer; DeGeorge; Greanias and Windsor; Jacoby, Nehemkis, and Eells; Longenecker, McKinney, and Moore; Pastin and Hooker, among others). Its weakness is less a moral weakness, however, than a failure to guide adequately. The FCPA makes no attempt to outlaw bribery worldwide. It seeks merely to prevent U.S. business from suborning high-level foreign government officials. This narrowness of the law's focus, however, introduces for its opponents a note of whimsy; to them the FCPA's *moral* intent seems confused. The law's weakness turns precisely on its inability to guide U.S. business; rather, it snares corporations in a complex of ambiguity.

In hoping to amend the FCPA, Senator John Chafee noted that the Act was "unpredictable and unclear" in its definition of "enforcement, interpretation, and jurisdiction," nor did the Act "reflect important differences in competitive conditions among various cultures and country markets" (Greanias and Windsor 178-79). For the last decade many corporate accountants, lawyers, and executives, perplexed by the law and fearing its heavy penalties, have chosen to limit their foreign business involvement rather than take a chance on violating the law. Other companies, not wishing to lose their lucrative and necessary international business, have taken on the responsibility of developing their own internal corporate codes of behavior that, within the broad

Bribery and Public Relations

outlines provided by the FCPA, seek to clarify the law itself.

Even before passage of the FCPA in December 1977, one of the earliest cooperative international attempts at codifying and clarifying this internationally confused state of affairs resulted in the International Chamber of Commerce (ICC) 1977 report on Extortion and Bribery in Business Transactions. The ICC called for an international prohibition of all forms of bribing and extortion, asked that all such corruption be reported to the foreign government concerned, and agreed that no member companies would practice bribery (Behrman 306). The ICC guidelines on extortion and bribery, however, are too general to be of much use. In recognizing this, Article 10 of the ICC guidelines encourages international corporations "to draw up their own codes consistent with the ICC Rules and apply them to the particular circumstances in which their business is carried out" (Kline 93). As made clear in the ICC's advice to international corporations, the FCPA has created a situation in which American-owned multinationals have no other choice but to write, or at least carefully interpret, the law themselves. Codes of conduct, because of the weight of the penalties attached to the FCPA, have therefore become *critically* important documents for U.S. corporations and their foreign agents.

Proof of the FCPA's influence upon corporate codes was provided in 1981 by a Government Accounting Office survey of 250 Fortune 1000 firms selected at random. The GAO study showed that, because of the FCPA, 98% of their respondents had reviewed their corporate policies, and 60% of these corporations had changed their policies and how they were communicated. Thus, one salutary result of the FCPA is that companies have felt compelled to develop for their employees, unlike the FCPA itself, *carefully* explicit and unambiguous policies and directives regarding bribery and other foreign payments. Of the companies surveyed, 41% had expanded communication of their policies, now informing *more* employees; 37% had formalized their policy communication procedures; 34% had stipulated that employees "acknowledge in writing more often that they had read or would comply with the policies"; and 29% had issued policies to cover "violations that had not been previously addressed" (Comptroller 8). By and large, "more than 70% of the respondents believed that the act has effectively reduced questionable foreign payments by U.S. companies" (Comptroller 6).

Perhaps more correctly, rather than the FCPA having reduced such payments, American corporations, spurred by the Act as well as by the post-Watergate climate of public moral outrage, have focused greater energy on correcting ethical abuses both at home and abroad. Ethical codes, as noted by the GAO, have become more than abstract paeans to morality; they have become explicit legal directives.

Allied Chemical's code illustrates well how one company's policy confronted the issue head-on by defining terms and offering clear examples. Perhaps even more

Bribery and Public Relations

importantly, individual Allied employees had a direct means of clarification available through their superiors:

Before such payments are made, a corporate officer shall have determined that: (1) the governmental action or assistance sought is proper for the Company to receive, (2) the payments are customary in the foreign country in which they are to be made, and (3) there is no reasonable alternative to making such payments. All such payments shall be reported to the Corporate Controller's office quarterly. (3)

Allied eliminated the problem of distinguishing between gifts and bribes by prohibiting gifts of any sort: "anything of value" could not be given or transferred directly or indirectly to anybody for any reason.

One allowable exception in gift-giving was "reasonable business entertainment." The guidelines interpreted the term "reasonable" very carefully:

Reasonable business entertainment would cover, for example, a lunch, dinner, or occasional athletic or cultural event; gifts of nominal value (\$25 or less); entertainment at Pleasantdale Farm or other Company facilities; or authorized transportation in Company vehicles or aircraft. In addition, reasonable business entertainment covers traditional Company-sponsored events. (3-4)

Allied employees were spared moral and legal difficulties by the explicitness of the code, even down to the value limits suggested in that most troublesome of words "nominal." Further, Allied employees could direct any questions about the guidelines to the Chairman of the Board of Directors (through proper channels, of course). Annually "appropriate officers and employees" were directed to certify their compliance with this policy. Employees were also encouraged to consult the Law Department if they had any questions about the policy. Thus, Allied's policy was effective because it (1) rigorously guarded against ambiguity (2) was sanctioned by the Board of Directors, and (3) had the full force of corporate legal behind it.

Corporations like Allied Chemical managed to protect themselves against the ambiguities in the FCPA by carefully analyzing the legal, moral, and political landscape and then offering clear guidelines for the corporate behavior of their employees, both foreign and domestic. One would assume, then, that, if all the corporations in the world were to adopt such stringent policies, corrupt business practices would lessen, if not diminish. I believe this is the ultimate hope of organizations like the ICC. Aside from the obvious logistical and philosophical difficulties, would such an undertaking succeed?

The Socio-economic view of international corruption

The FCPA is a prime example of the difficulties that arise when one country legislates internationally its prohibitions against bribery and other questionable payments. The United States, however, is not alone in its moral and legal condemnation of these corrupt practices. No country in the world legally sanctions bribery. Some countries, though, because of their traditions, economic conditions, social order, or governmental disorder, tolerate all forms of corruption in their officials: bribery, extortion, kickbacks, and graft in general. Jacoby, Nehemkis and Eells have summed up a number of the many and varied socio-economic causes for this toleration of corruption (1-44, 125-144, 228-251). Perhaps the most obvious problem is the low salaries of government workers; forced to make ends meet, some foreign bureaucrats supplement their incomes through extortion, gifts, and solicited bribes. In many Third World and Middle Eastern countries, ambiguous laws allow, indeed encourage, government workers to exercise broad interpretive discretion, which thereby invites administrative abuse through uneven application of rules and regulations.

In addition to low salaries and ambiguity in the law, heavy workloads allow foreign bureaucrats to "lose" or "delay" paperwork with good excuse. Such administrative delays lay the groundwork for facilitating or expediting payments. For example,

in Italy, a web of statutory ambiguities, inconsistencies, and contradictions, subject to the interpretations of poorly chosen, wretchedly underpaid, and badly organized bureaucrats, can only be made to function by means of *bustarella*. The political payment enables a chaotic system of government to function. (37-38)

Thus, graft and lubricity, reminiscent of the political corruption rampant in nineteenth century America's Gilded Age (Clemens and Warner), may actually bring order to bureaucratic chaos.

A root cause of corruption in many countries, perhaps even more than the weaknesses of the executive and legislative branches of government, is the two-tiered social structure. The grasping rich manipulate government and business for their own ends while the exploited, uneducated poor tolerate conditions they are helpless to change. Without a significantly sized middle-class "which historically has found corruption inefficient and morally repugnant," and strong professional classes, "which infuse their members and eventually, widening circles of society, with strict canons of professional behavior," such countries will continue to be hotbeds of corruption. Until the general living standards rise, until wealth shifts from the hands of an exploitative elite, until education becomes pervasive, until "strong, independent legal traditions [develop] in which uniform, impersonal rules and standards prevail instead of the

Bribery and Public Relations

arbitrary discretion of civil servants" (Jacoby, Nehemkis, and Eells 44), the abuses will continue.

Bribery, extortion, facilitating payments, grease, kickbacks — all can be seen not only as socially undesirable but also as economically unsound because, by their very nature, they create a black market economy that undercuts the open and public economy (Barry; Behrman; De George; Jacoby, Nehemkis, and Eells; Noonan). The chief objection to such undercutting should not be based on some *laissez faire* ideal (Danley), but rather on the somewhat utilitarian notion that dark and secret practices generally do not allow for fair participation on the part of the greatest number (DeGeorge). Greatest fairness to the greatest number is at issue here. "By benefiting individuals rather than the people of a country as a whole, . . . [corrupt acts] are burdens imposed on international trade and investment for private instead of public benefit" (Jacoby, Nehemkis, and Eells 142) The public, objective act of choosing a product or service based on quality and cost considerations is replaced by the private, subjective act of choice based on the highest briber. Without public scrutiny, there is no public accountability. Without public accountability, there can be no continual check of the fiduciary bond. Corruption festers in the dark. And the cost of corruption is high.

The bribe is paid for in a number of ways: the cost of the goods rises, and is therefore assumed by the taxpayers; or the company absorbs the cost, which is assumed by the shareholders (DeGeorge 61). The national coffers never benefit at all from the bribe, for it is a secret payment that goes untaxed. Other costs are social and moral; bribes

indicate that the rules are to be seen as violable, that it is all right to be involved in the corruption of individuals, that cheating is justifiable, and that it is more important to look after oneself than to pay attention to doing the job efficiently and appropriately; in other words, the ends justify any means. These are poor signals to be sending out in any society; and therefore, such payments are undesirable and prohibited in all countries. (Behrman 293)

The bribe's consequences are far-reaching indeed. Bribery and corruption deleteriously affect "the general system of bidding," dilute fair competitive practices, weaken integrity, and ultimately harm the governmental and economic systems as a whole (De George 61-62). Countries that tolerate bribery invite their own demise.

In the United States, bribery's insidious power to rend the social, economic, and political fabric has long been recognized. Bribery is one of only two crimes specifically named in the U.S. Constitution; the other, significantly enough, is treason (Noonan 428-433). As Jacoby, Nehemkis, and Eells remind us, people establish a political body "to attain the higher efficiencies and greater range of goods that a nation can achieve" when

Bribery and Public Relations

governed:

The common assumption in all governments that are more than self-serving oligarchies is that those who operate the government have by their election or employment entered into a kind of "contractual" relationship with the whole society to do their jobs fairly and objectively. (182)

A nation's economy and its markets develop most effectively and work most efficiently "when the price and merits of products and services are the criteria that determine buying and selling — not secret payments to well-placed politicians and government employees" (183). Openness, public trust, economic freedom, objectivity, reason, and merit — bribery undercuts them all.

Conclusion

Too often we see bribery, extortion, facilitating payments, and access money as the *causes* of social and moral disorder. We quibble endlessly over the most effective ways to outlaw them. We would be better served, however, to see these forms of corruption as *symptomatic* of the moral, social, political, and economic instabilities of any given culture. Moral indignation and outrage — self-righteous breast beating — will not make these problems go away. The law will not make them go away, nor will corporate codes. Thomas More to the contrary, the law is often only a feeble, short-term attempt to navigate the churning seas of rectitude. We may refine our charts and maps, invent a better compass, and build stronger ships, but the treacherous seas can sink any boat we launch, and frustrate any course we choose. Corruption will always be with us. And morality and law will always be necessary to guide our behavior away from it. But to *impose* morality on a desperate situation is folly. If, for example, you desperately need money to feed your family, and if you have exhausted all possibility of doing so through honorable means, though you loathe what you do, you may have no other choice than to take a bribe, or commit extortion. You leave law and the civilized niceties of morality behind because your condition has forced you to the most rudimentary levels of natural law. You obey first your instinct to survive. Until your conditions meet some kind of minimum to satisfy your needs, no one who lives in civil, political, and economic security can really expect you to conform to "higher" moral standards. The stability we seek in our attempts to root out corruption is attainable only when certain minimum conditions of civilization are met.

Bribery, extortion, and graft. They are uncivilized. They are not to be tolerated. But in rooting them out, we must be very careful to examine the contexts in which they appear. As public relations practitioners and corporate or governmental communicators, we must become especially sensitive to the moral and legal dangers in the human

Bribery and Public Relations

relationships so fundamental to our profession. Recall the conundrum at the beginning of this paper. Like the term "conundrum" itself, which signifies a problem with no easy or satisfactory solution, bribery is truly distressing for us. In the marriage of heaven and hell, good and evil are woven tightly into a moral warp and woof most difficult, if not impossible, to untangle. Before we moralize, or try to legislate away these corrupt practices, we must examine the million filaments that form the various cultural fabrics worldwide, for these are the threads that signify the truly disturbing moral, psychological, political, and socio-economic dangers that threaten us.

References

- Allied Chemical. "Proper Business Practices." May 26, 1977.
- Alpern, Kenneth D. "Moral Dimensions of the Foreign Corrupt Practices Act: Comments on Pastin and Hooker." *Business Ethics: Readings and Cases in Corporate Morality*. Ed. W. Michael Hoffman and Jennifer Mills Moore. New York: McGraw, 1984. 468-475.
- Barry, Vincent. *Moral Issues in Business*. 3rd ed. Belmont: Wadsworth, 1986.
- Behrman, Jack N. *Essays on Ethics in Business and the Professions*. Englewood Cliffs: Prentice, 1988.
- Bolt, Robert. *A Man for All Seasons*. New York: Random-Vintage, 1962.
- Brummer, James. "The Foreign Corrupt Practices Act and the Dilemma of Applied Ethics." *Business and Professional Ethics Journal* 4.1 (1985): 17-52.
- Clemens, Samuel and Charles Dudley Warner. *The Gilded Age: A Tale of Today*. Hartford: American Publishing Company, 1877.
- Comptroller General. *Report to the Congress of the United States: Impact of Foreign Corrupt Practices Act on U.S. Business*. Washington, DC: General Accounting Office, March 4, 1981.
- Danley, John R. "Toward a Theory of Bribery." *Business and Professional Ethics Journal* 2.3 (1983): 19-39.
- DeGeorge, Richard T. *Business Ethics*. 2nd ed. New York: MacMillan, 1986.
- "Gratuity." *The Compact Edition of the Oxford English Dictionary*. 1971 ed.
- Greanias, George C. and Duane Windsor. *The Foreign Corrupt Practices Act: Anatomy of a Statute*. Lexington, MA: Heath- Lexington, 1982.
- Jacoby, Neil H., Peter Nehemkis, and Richard Eells. *Bribery and Extortion in World Business*. New York: MacMillan, 1977.

Bribery and Public Relations

- Kline, John M. *International Codes and Multinational Business: Setting Guidelines for International Business Operations*. Westport, CT: Quorum, 1985.
- Kugel, Yerachmiel and Gladys W. Gruenberg. *International Payoffs*. Lexington, MA: Heath-Lexington, 1977.
- Longenecker, Justin G., Joseph A. McKinney, and Carlos W. Moore. "The Ethical Issue of International Bribery: A Study of Attitudes Among U.S. Business Professionals." *Journal of Business Ethics* 7 (1988): 341-346.
- Noonan, John T. *Bribes*. New York: Macmillan, 1984.
- Partridge, Eric. *A Dictionary of Slang and Unconventional English*. New York: Macmillan, 1956.
- Pastin, Mark and Michael Hooker. "Ethics and the Foreign Corrupt Practices Act." *Business Ethics: Readings and Cases in Corporate Morality*. Ed. W. Michael Hoffman and Jennifer Mills Moore. New York: McGraw, 1984. 463-467.
- Philips, Michael. "Bribery." *Ethics: An International Journal of Social, Political, and Legal Philosophy* 94 (1984): 621-636.
- "Tip." *The Compact Edition of the Oxford English Dictionary*. 1971 ed.