

The Paradox of the Good Bribe

A person who avoids corruption is “somebody that just loves beefsteak but just can’t bear to go to a slaughter pen because there are some bad, rough men down there who aren’t animal lovers”.

—Robert Penn Warren, *All the King’s Men*, 1946

The Paradox of the Good Bribe

*A Discussion Defining
and Protecting
the Public Interest*

David J O'Regan



Universal Publishers
Irvine • Boca Raton

*The Paradox of the Good Bribe:
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Universal Publishers, Inc.
Irvine • Boca Raton
USA • 2020
www.Universal-Publishers.com

978-1-62734-300-8 (pbk.)
978-1-62734-301-5 (ebk.)

Typeset by Medlar Publishing Solutions Pvt Ltd, India
Cover design by Ivan Popov

Library of Congress Cataloging-in-Publication Data

Names: O'Regan, David J, 1966- author.

Title: The paradox of the 'good' bribe : a discussion defining and protecting the public interest / David J O'Regan.

Description: Irvine : Universal Publishers, 2020. | Includes bibliographical references.

Identifiers: LCCN 2020004035 (print) | LCCN 2020004036 (ebook) | ISBN 9781627343008 (pbk.) | ISBN 9781627343015 (ebk.)

Subjects: LCSH: Bribery--Moral and ethical aspects. | Corruption--Moral and ethical aspects. | Public good--Moral and ethical aspects.

Classification: LCC HV6306 .O74 2020 (print) | LCC HV6306 (ebook) | DDC 179/.8--dc23

LC record available at <https://lccn.loc.gov/2020004035>

LC ebook record available at <https://lccn.loc.gov/2020004036>

*I dedicate this book to Soumyadeep Bhattacharyya,
whose clarity in perceiving ethical truth amid
complexity and conflicting responsibilities
has inspired me.*

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Preface

This book contains reactions to a seemingly absurd suggestion. Four participants explore the ethical ramifications of a counterintuitive proposal that bribery might, on occasion, be harmless, or even virtuous.

The concept of virtuous bribery may seem, *prima facie*, preposterous. However, in our discussions, an economist puts forward strong arguments for the existence of the “good” bribe, which has a virtuous outcome, the “harmless” bribe, a *baksheesh* payment that simply encourages someone to speed up the performance of their existing duties without additional favors, and the “ambiguous” bribe, which arises from the frequent difficulty of differentiating an influence-peddling bribe from a gift given with no expectation of a *quid pro quo*. Our economist bases his arguments on the intentions behind and the consequences of the transactions, within a framework of radically *laissez-faire* markets. (He also seems, sometimes, to argue on the more straightforward grounds of economic expediency.)

A classicist and a Roman Catholic priest challenge the economist’s views, using arguments that bribery is inherently undesirable, irrespective of its consequences. Their viewpoints are founded on traditional ethical lines, derived from the classical Greek virtues and biblical divine commands. The fourth participant, a student of French literature, introduces perspectives derived from critical social theory.

She draws attention to the ways in which bribery might tend to reinforce undesirable or illegitimate power structures, and she challenges the opinions offered not only by the economist but also by his two culturally conservative opponents. She shares with the economist a rather radical temperament, but her radicalism is founded on quite different assumptions.

The discussion reveals the strengths, weaknesses, and ambiguities of the different viewpoints and not infrequently exposes the limitations of dogmatic assertions. In a dramatization along the lines of a Platonic dialogue, the discussion's structure blends form and content to permit the interplay of a plurality of views, without necessarily providing a sole, definitive answer. Although the exchanges of ideas move in the direction of a tentative attempt at a reconciliation of the various strands of ethical argumentation, the often ironic and inconclusive discussions act as stimulants to reflection and further enquiry and as invitations to one's own discovery of the value of the opinions expressed.¹ The text is therefore envisioned more as a guide to civic obligations than as a closed system of truth.

How, then, should we view the four highly educated, opinionated, and nameless participants in the discussion? On one level, the individuals in this intellectual encounter are stylized characters, rather like the masked players of the Italian *commedia dell'arte*.² The text's *dramatis personae*

¹Platonic dialogues often appear to leave deliberate gaps in logic and arguments, seemingly to invite the reader to fill the gaps with his or her own thoughts.

²The setting of the discussion in Italy reflects my own interest in that country. Among the major economies, Italy has had, perhaps, the most extensive and long-running public discourse of combating bribery, from the *mani pulite* ("clean hands") campaigns and judicial investigations into the culture of *Tangentopoli* ("Bribesville") of the 1990s to the anticorruption rhetoric of the *Cinque Stelle* ("Five Star") political movement at the time of this writing. In addition, my four characters in search of an answer to a seemingly absurd question seem to carry echoes of Luigi Pirandello's six characters in search of an author (*Sei personaggi in cerca d'autore*, 1921).

generally remain remarkably faithful to their “masks”, with the exception of the classicist, whose insights into the Jewish Bible significantly supplement and amplify the priest’s contributions. Indeed, although the discussions are formally chaired by the economist, the classicist’s role is central to the flow of the narrative.

It has been suggested that, in the Platonic corpus, “the charm of Socrates lies...in his superiority to the situation”³ and, to a degree, this judgment may apply to the classicist in our text. He speeds up the discussions in the opening pages when they threaten to get bogged down in lengthy speechmaking; he encourages a focus on practical matters to prevent the discussions spiraling away, like smoke, into abstractions; he prevents the sidelining of the student’s contributions in Section Four; and he even rescues the discussion, in the final pages, from a derailment into the red herring of Richard Wagner’s music dramas. In general, he steers the narrative in an efficient manner. To use a musical analogy, he tries to limit the participants’ wilder chromatic wanderings to focus on the core melodies and harmonies.

The discussions are rich in historical and literary references. Examples of bribes are taken from traditional sources, including the Bible and Plato, supplemented by a range of literary allusions and insights from behavioral economics and critical social theory. The historical and literary examples place bribery in the realm of ethical and artistic traditions of enduring validity: The text therefore invites us to explore bribery in the context of authentically timeless examples of expressions of the human spirit. The voices in the text seem at times to cry out from half-forgotten catacombs of our culture but, as the speakers grope through the mists of history for the primeval sources of our ethical behavior, their discussions resonate with a strikingly modern tone.

³Voegelin (2000, 63).

A modest critical apparatus supports the discussion to elucidate some of the historical and literary references and allusions and to draw attention to points of interest.⁴ The references to various sources do not suggest that the discussion can be reduced to these sources, nor do they imply a necessary commitment by any of the speakers to the viewpoints or metaphysical stances that underpin the references. The annotations serve simply as pointers for further exploration of the themes contained in the discussions.

There is a certain amount of circularity in the text, which is inevitable in an extended conversation. It might therefore seem impossible to isolate certain sections of the discussion without doing violence to the integrity of the whole structure. Indeed, if one tries to draw one particular strand from the discussion, the entire fabric seems to move with the pull. Nonetheless, the text is divided into sections to provide indicators of thematic shifts of emphasis: The section headings aim to be nothing more than signposts and are not intended to act as abrupt stalling points, like the locks that delay and block the flow of water in a large canal.

I present this text to the public in the hope that it might enrich our understanding of bribery. I believe that the discussion's findings have profound implications for public policy. The interactions of the rival ethical viewpoints

⁴Biblical references are taken from the New Revised Standard version in the Oxford University Press *New Oxford Annotated Bible*, 3rd ed. (New York: Oxford, 2001), with some amendments, except for quotations from the Jewish Bible when the Jewish Publication Society (JPS) translations available at the time of writing this book seemed preferable. References to the *Catechism of the Catholic Church* are taken from the English-language second edition (New York: Doubleday, 1997). References to Plato provide the Stephanus numbers and translations as they appear in *Plato: Complete Works*, ed. John M. Cooper (Indianapolis: Hackett, 1997). References to Xenophon are taken from the Loeb Classical Library edition, vol. 168 (Cambridge, MA: Harvard University Press, 1923). For Aristotle, Bekker references are provided. All other titles referred to in the notes are listed at the end of the text.

develop in ways too complex and controversial to describe fully in this brief preface, but the economist's arguments for the existence of good, harmless, and ambiguous bribes are not convincingly refuted. If we were to accept the economist's arguments, there would be inevitable implications for the use of "zero tolerance" antibribery policies. Indeed, over time, the arguments of the apologists for some types of bribery might result in bribery as a whole being viewed with increasing legitimacy, or at least with a decreasing sense of illegitimacy.

On the other hand, the discussions also make clear that, notwithstanding the ambiguities and seeming virtues of some transactions on the margins of the vast bulk of bribery, most bribes are without doubt deeply damaging in their social and economic effects. Bribery generally corrupts not only those who give and receive bribes but also the wider society that suffers their consequences.

Perhaps the ultimate question raised by the discussions is where we might strike a balance, in public or institutional policies, in trying to accommodate a fringe of virtuous or ambiguous transactions within the overwhelming mass of harmful bribery. Our four-way discussion may seem to end inconclusively, but it suggests, at a minimum, that ethical matters may be legitimately disputed from a range of perspectives. It also implies that there is no simple model or algorithm that can spit out a "once-size-fits-all" checklist for the ethical assessment of transactions suspected to be bribes. We cannot rely purely on a checklist-compliance approach to bribery.

The application of judgment to bribery transactions therefore appears to be essential in evaluating their harmfulness, and this in turn seems to require an acknowledgment of the complexity of the subject. Both the traditionalists and the radicals in our discussion indicate that solutions to the problem of bribery, especially at its ethical boundaries, tend not to be straightforward. An effective public or institutional

policy towards bribery is therefore likely to be nuanced and capable of handling and resolving ambiguities.⁵

I thank Dr. Jeffrey Young of Universal Publishers for valuable guidance on sharpening the structure and clarity of the text. I am grateful also to Professor Michael Power of the London School of Economics and Political Science; Dr. Mark Dooley, biographer of Sir Roger Scruton; Dr. Joan Dubinsky, former Chief Ethics Officer of the United Nations and the International Monetary Fund; and Dr. Amit Chawla of Sharda University for giving generously of their time in reading and commenting on part or all of the text. This does not imply their seal of approval for anything in the book. Even with this collective wisdom and my best efforts, there may remain some errors or omissions, and any infelicities in the text are mine alone. I thank my wife, Abhishikta, in helping me to see the book through to completion.

Falls Church, Virginia

March 2020

⁵On the importance of judgment in ethics, see Warnock (1998, 7): “Ethics is a complicated matter. It is partly a matter of general principles, or even rules, like those of manners; but largely a matter of judgement and decision, of reasoning and sentiment, of having the right feeling at the right time, and every time is different.”

The Characters and Setting

THE CHARACTERS:

An economist, head of a free-market think tank.

A Roman Catholic priest, lecturer in divinity.

A retired professor of Greek.

A student of French literature.

THE SETTING:

Turin, Italy. Early twenty-first century.

Chapter One

Introduction and Definitions

THE ECONOMIST:

My friends,⁶ I'm delighted that we've convened to discuss the ethical dimensions of bribery. I provided you a challenge: to refute my assertion that bribery can be, on occasion, a positive activity with beneficent outcomes. I'm immensely pleased that you've accepted a debate of my claims. And, as we've had several weeks to prepare, I trust that we've all had the chance to do some research or at least to reflect deeply on this topic.⁷ So I feel confident in saying that we are well prepared to take on this challenging discussion.

THE PRIEST:

Indeed, it's good that we've had time to ready ourselves for what are bound to be deep, and perhaps difficult, discussions.

⁶From the opening words, other than for one or two moments of tension, the tone of the discussions is generally cordial and collegial.

⁷That the participants have been granted a period of prior preparation accounts for the readiness with which they are able to summon a large range of historical and literary examples and allusions.

THE ECONOMIST:

The topic of corruption is an important one, and bribery, we might say, is the quintessential manifestation of corruption.⁸ Any justifications of bribery need to be fully explained and not merely explained away. Perhaps it would make sense first to set out our basic arguments in relation to the subject. As we know, we shall be hearing a range of views today. I shall be seeking to justify the use of bribery or, to be more precise, modest-level bribery, in certain circumstances, and at least two among us shall tend to the view that bribery is always inherently wrong.

So, if you allow me to begin, in my capacity as chair, I'd like to set out my position in the following way: To many, if not most, people, bribery is a kind of destructive economic parasitism that undermines social trust and damages individuals. For example, if a police force routinely accepts bribes to let criminals go unpunished, then public confidence in the justice system is damaged, and the victims of crime are betrayed. I accept this for cases of large-scale bribes or bribes that involve serious matters like homicides. But, to pursue my example of the corrupt police official, I consider there to be a legitimate place in some contexts for small-scale bribes on minor matters, like routine traffic offences.

This may seem provocative, but I'm an economist, and I'm interested in the operation of markets. Small-scale bribes clear markets quickly and promote economic efficiency. Their effect can be likened to the way oil lubricates otherwise inefficient economic and social machinery. I'd even go further and argue that bribery is an unavoidable feature of the human condition. All around the world we see cultures of

⁸See Anechiarico and Jacobs (1996, 4). Also, Noonan (1984, xvi) informs us that "treason and bribery are the [only] two crimes named in the Constitution" of the United States.

exchange and reciprocity. Gifts⁹ and bribes are embedded in the networks of trust that bind communities together. In my view, gift-giving may be envisioned as a distillation of social knowledge that is deeper than rational, articulable knowledge. Gifts and bribes define and reinforce interpersonal arrangements, acting as shortcuts to a harmony of human and economic needs.

THE PRIEST:

Interesting. Please continue.

THE ECONOMIST:

A gift or a bribe can be seen as a problem-solving mechanism in the context of social cooperation and competition. People in markets cooperate and compete, and gifts can be used for both these purposes in a nonviolent way. A gift implants reconciliation in the fabric of society. Just as the price mechanism distils social knowledge and crystallizes a massive quantity of information to assist us in exchange transactions, so bribery supplements the rational, articulable knowledge that is expressed in such economic signals. Gifts and bribes help us to discharge our obligations.

The small bribe, we may therefore say, is a problem-solving mechanism that arises naturally from the necessities of human demands in a market. It provides solutions to economic problems in the manner of the operations of the “invisible hand” of the price mechanism in a Hayekian

⁹The economist uses the terms “gift” and “bribe” fairly interchangeably in his opening comments. This, perhaps, plays a part in the subsequent suggestion by the classicist that the participants should define bribery before continuing the discussions. In Section Five, the economist differentiates more carefully between the two terms.

spontaneous order.¹⁰ And, if we accept this view, attempts to eradicate bribery are bound to fail. And we all know—do we not?—that bribery is ineradicable. The giving of gifts to influence others is as old as human social intercourse. As long as bribery is kept within reasonable parameters, such as making a legitimate transaction move faster, bribery can be a means of social order, not disorder.

THE STUDENT:

I think you underestimate the impact of bribery on power relations and on the consolidation of the power of economic elites. The incentives created by bribery are likely to be misaligned to the common interest and certainly injurious to minority and marginalized groups. Bribes reinforce established and illegitimate hierarchies of social power.

THE ECONOMIST:

I see that the spirit of the *soixante-huitards*¹¹ is with us today. But you make a fair point, and you express it well. It demands a response. We need to explore this topic in some depth.

THE CLASSICIST:

And I would also add my immediate reaction to your words, which is that bribery's longevity as part of the human

¹⁰In his opening comments, the economist's references to F.A. Hayek (1899–1992) and the “invisible hand” of Adam Smith (1723–1790) suggest that his views—or at least the starting point for his analysis—are based on the advocacy of free markets arising from noncoercive association in a self-regulating society, as opposed to both private monopolies and top-down, public sector planning systems of economic allocation.

¹¹The *soixante-huitards* are those who took part in, or who have drawn inspiration from, the revolutionary politics of the May 1968 student uprising in Paris.

condition, like greed, is no indication of desirability. It seems to me that bribery flourishes when markets are not free in the Hayekian sense. Bribes are distortions and parodies of transactions arising from free association. They reflect market pathologies. They interfere with the price mechanism. Overall, I see bribes as acts of moral, as well as economic, corruption.

THE PRIEST:

I agree.

THE CLASSICIST:

So, as far as I'm concerned, I see bribes as perversions of the Hayekian spontaneous order. It's the intransigent, rent-seeking¹² bureaucrat, the bullying monopolist, and the gangster who thrive on bribery. As for your analogy with Adam Smith's "invisible hand", I'd say that bribery is a disease that cripples this hand. It thrives especially in agency contexts in which intermediaries subvert economic transactions.¹³

THE ECONOMIST:

Your points of view are well taken, though I would dispute some of them. I touched briefly on the notion of the ends

¹²With the term "rent-seeking", the classicist refers to an exploitation of bureaucratic power to accrue income above that established by market conditions. Søreide (2014, 2) defines rent-seeking as "efforts to manipulate the social or political environment to obtain...benefits [gained by market distortions], rather than investing time and/or money in productive work and creating new wealth". The concept of the "rent-seeking" bureaucrat was developed by the "Virginia School" of public choice theory, notably in the work of James Buchanan (1919–2013) and Gordon Tullock (1922–2014). See Tullock (2005).

¹³On bribery as an agency problem, in which bribery subverts the relationship between a principal (including the public) and an agent (the bureaucrat), see Klitgaard (1988, *passim*) and Nichols (2015, 657).

justifying the means.¹⁴ The ramifications of bribes may have an impact on how we judge them. We all accept, I'm sure, that there is a distinction between serious lies and harmless "white lies". So there is, perhaps, a small, permissible bribery that we may dislike but tolerate, which contrasts with the unacceptable, gargantuan bribery schemes of the modern kleptocratic state.¹⁵

THE CLASSICIST:

Well, here we are in Italy, which has been damaged more than most European countries by large-scale corruption, including bribery. At this point, please allow me to raise a concern. The economic arguments we've talked about have been fascinating and provocative. But I fear that we've already plunged too quickly into deep, dangerous waters, and there is a risk that our discussions will proceed in a disorderly manner. I propose that we take a step backwards and start by defining "bribery". It will serve us well to have a common understanding of what we're discussing. And I suggest that we follow our definition by proceeding first with what

¹⁴The economist shall discuss the consequentialist approach to bribery in greater detail in Section Five.

¹⁵A differentiation between minor and major bribery is common in, and perhaps central to, concepts of bribery. Small "facilitating payments" intended to induce an official simply to perform his or her established duties, without additional favors, are differentiated from bribes in the Foreign Corrupt Practices Act of 1977 (and its amendments). The Knapp Commission, set up in 1970 to investigate police corruption in New York following the whistleblowing disclosures by Frank Serpico, used interesting metaphors in its 1972 report, distinguishing between the actions of "grass eaters" and "meat eaters". The former referred to those involved in petty, opportunistic corruption and the latter to those who undertook major, premeditated corruption (Brioschi, 2017, 162). See also Ariely (2008, 196ff) for a discussion of the behavioral differences between opportunistic criminals and career criminals. From a legal perspective, the common law maxim of *de minimis non curat lex* (the law does not concern itself with trivialities) is relevant to this concept.

we may call the traditionalist arguments of those among us who consider bribery to be wrong. These views, it seems to me, rest in a fusion of biblical and secular concepts, the latter originating in ancient Greece. One does not need to be Jewish or Christian to appreciate biblical wisdom. Similarly, it is not necessary to be a committed Platonist or a devotee of Aristotle to gain insights from the Greeks.

THE STUDENT:

Seriously? I agree to starting with a definition of bribery. But you're asking us to use the Bible and the Greeks as our starting point? Why should we put the clock back, so to speak, in our discussions?

THE CLASSICIST:

Please bear with me. All of us who sit around this table today are, to a greater or lesser degree, products of the biblical and Greek cultures that, together, have defined Western civilization. Some prefer Jerusalem to Athens. Others favor Athens. Some repudiate both. But we all live in the shadow of this dual heritage. And, as far as I'm concerned, the onus of proof in our discussion rests with the apologists for bribery. So let us first define bribery and then set out traditional views of the harmfulness of bribery that are derived, as I say, from a combination of Jerusalem and Athens, and then we can move on to modern challenges to those views. In this way, I think we would maximize the value of our discussion.

THE ECONOMIST:

That's alright. I've no objection to your proposal. I think we may all agree on the necessity of defining bribery. We may

then consider the conservative and traditionalist views of bribery before we proceed to engage with modern concepts.

THE PRIEST:

This approach makes sense. Irrespective of any religious commitment, we're living over a vast, subterranean reservoir of Judeo-Christian and Hellenic culture that continues to nurture us. Let's set out this cultural context before we hear any attempts to counter it, whether from radical free market economics or radical postmodernism.

THE STUDENT:

Well, I tend to keep away from metaphysical matters. I was always told that things divine are not for mortals to know! But it seems logical to set out any discredited grand narratives¹⁶ before we demolish them.

THE CLASSICIST:

(Laughs). That remains to be seen, though I've awarded marks to my students for such comments in the past.

THE ECONOMIST:

Well then, let me start by offering a pithy description of bribery that may set us in the right direction. I'd describe bribery as "influence-peddling gift-giving". Let's use this as a springboard for our definition.

¹⁶ An allusion to the postmodernist mistrust of overarching, definitive discourses that purport to provide exhaustive descriptions and legitimizations of aspects of the human condition. The term "grand narrative" (or, frequently, meta-narrative) is particularly associated with Jean-François Lyotard (1924–1998).

THE PRIEST:

Fair enough. I think it's a good starting point for us to refine and chisel our definition into a workable shape. My first comment is that a gift or bribe can take many forms. A bribe might simply be an envelope stuffed with cash, an asset like a fancy watch, or a service of some kind. It might be as simple as a meal, a bottle of whiskey, or some form of hospitality. It might even involve the non-performance of a service: Take, for example, a tax official who accepts a promotion in return for not processing an individual's tax return.

THE STUDENT:

I agree that the concept of the influence-peddling gift is wide, but I think this very wideness is helpful to our discussions. As you've said, bribery isn't limited only to money transactions. Bribery can also take place in the form of sexual services—we all know that big business uses sex workers to gratify individuals so they will serve its interests. A customer in two minds about entering into a big contract? Provide him with a sexual service, with all the exploitation that this implies, and you can bend him to your will. In cases like this, we can see how bribery reinforces inequalities and exploitation.

THE CLASSICIST:

We're on a good track. But I think we need to draw a line between a gift that's simply a gift and a gift that's a bribe. If I offer my children an appealing vacation if they achieve high school grades, that surely isn't a bribe. It's simply an inducement to encourage good behavior. On the other hand, if I offer my children a vacation if they steal or somehow improperly obtain in advance the answers to their test papers, that would be a bribe because it would encourage bad behavior.