

## Second Order Bribery and Extortion

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### **Abstract:**

In this paper I explore a constellation of activities that can be referred to as second order cases of bribery and extortion, and my suggestion is that an acquaintance with these activities can yield a richer appreciation of the moral issues surrounding bribery and extortion.

**Keywords:** Bribery, Extortion, Threats, Temptation, Moral Dilemmas, Integrity

### **1.**

Various definitions of bribery can be found in the moral literature, and I do not propose to enter into debates about which one is the correct account (except perhaps to offer the generic claim that a bribe is an inducement to get another to act in a way the other would not otherwise behave). All that is required for the first stage of my project is that a necessary condition of someone offering a bribe is that he or she is sincerely indicating a willingness to act in a certain way.

I likewise do not propose to endorse a particular account of extortion (except perhaps to offer the generic claim that extortion is a demand for an inducement not to act that the other would not otherwise offer). All that is required for the first stage of the project is that when extortion takes place someone in some manner is threatening to act in a certain way. Of course, the matter is not quite this simple, because I will be offering examples of extortion, as well as bribery, in the ensuing discussion. Surely someone can raise objections as to whether my examples actually qualify as cases of extortion or bribery, and in this way questions about the actual definitions might arise. But I shall endeavor to choose examples that are non-controversial and to rely on how these terms function in ordinary usage, at least in the first section of this paper.

Eight categories of actions comprise the second-order cases of bribery and extortion (I employ the term “second-order” in a manner less rigorous than that of a formal logician).

- (1) Indicating a willingness to offer a bribe;
- (2) Indicating a willingness to accept a bribe;
- (3) Indicating a willingness to extort;
- (4) Indicating a willingness to be extorted;
- (5) Threatening to offer a bribe;

- (6) Threatening to accept a bribe;
- (7) Threatening to extort;
- (8) Threatening to be extorted.

Examples of actions falling under these categories will now be presented. The landlord of an apartment complex is contractually obliged to provide repairs on a first-come first-served basis. Unfortunately, the landlord works slowly, and hence there is invariably a lengthy wait for repairs to be made. Tenants are free to hire plumbers and electricians of their own choosing to make the repairs. But if they do not wish to incur the costs of hiring these professionals, they wait their turn. One day Alice approaches the landlord and indicates a willingness to bribe him in order to make a repair that very afternoon. Alice feels that she has done nothing wrong because she has not in fact offered a bribe; she has only articulated a willingness to do so, and this constitutes an example of category (1).

Suppose things had gone a bit differently. The landlord learns that Alice's apartment has no running water, and a relatively simple repair would restore the water. He approaches Alice and indicates a willingness to accept a bribe to make the needed repairs immediately. He feels that he has done nothing wrong, for he has not accepted a bribe. Moreover, he cannot rightly be charged with extortion, for he has not in any manner threatened Alice (he has not, for example, threatened not to do it at all). His indicating a willingness to accept a bribe, then, is an example of category (2).

John's sister confesses to him that she is having an affair with his married friend, Tom. John knows that Tom's wife would become violently angry if she learned about this. Tom is exceedingly wealthy, and John asks him for a loan of \$300. When Tom refuses, John asks him to re-consider on the grounds that John is in a position to blackmail him and is willing to do so. John reasons that he has not actually threatened Tom; he has only said that this is a course of action he is willing to undertake. Moreover, Tom does not know what the threat would be if one were made. It might be the threat not to return a magazine he loaned John. John's actions qualify as an instance of category (3).

The next day, John's sister tells Tom that John knows of the affair. Fear overcomes Tom as he realizes that John is in a position to inform Tom's wife, and he now realizes that the blackmail John referred to was precisely this. Secure in the knowledge that he is in possession of vast sums of money and that John is very modest in his tastes, Tom informs John that he is perfectly willing to be extorted. His wife, quite simply, cannot learn of the affair. Tom reasons that he is not offering John a bribe because he is not requesting that John do anything wrong (such as violating a role duty). In this way Tom's actions exemplify category (4).

Two brothers are partners in a small business founded by their father. The older brother, who acts as the chief financial officer, realizes that the business is strapped for cash, and he proposes that they borrow from their employees' pension fund. The younger brother is strongly opposed to this idea. The older brother knows that their financial problems would vanish immediately if a certain foreign company placed an order with their business, but this could only happen if they

bribed officials of that company illegally. The older brother therefore delivers an ultimatum to the younger brother: Either agree to the loan, or he will offer bribes to these officials. This ultimatum instantiates category (5).

After happily accepting bribes from tenants of the apartment complex, the landlord faces a problem. His wife is angered and humiliated by his actions, and in an effort to save his marriage he stops accepting bribes. He in turn is angered by his wife's incessant gambling at a nearby casino. After she declares that she is unwilling to stop her visits to the casino, he threatens her with accepting bribes from the tenants. This threat falls under category (6).

When John's sister informs him of her affair, John deduces that Tom is the source of her newly found wealth. John requests a loan of \$300 from his sister, and she refuses. He then threatens her that he will extort money from her lover, Tom, if she continues to refuse. This threat can be identified as an instance of category (7).

A clerk in a convenience store is instructed by the owner not to give in to extortionists unless violence is threatened. Periodically a group of locals appear, collecting money for a charity. They make it clear that a list of non-contributors will be printed in their next newsletter. The owner of the store is perfectly happy to have his store's name listed in the newsletter. One day the clerk asks for a raise and threatens that if he does not receive it, he will cave in to the extortionists whenever they pay a visit. This threat is an instance of category (8).

## 2.

In this section I will address the significance of these second-order categories for normative ethics. I claim that when people allege that they haven't actually engaged in bribery or extortion, they may be correct. But this taxonomy can be of assistance in identifying a different kind of wrongdoing they have committed. In the final section I claim that the identification of these other types of wrongdoing can help shed light on what exactly is morally objectionable with bribery and extortion as such.

The first scenario of the previous section involves Alice expressing a willingness to offer a bribe. She justifies her actions on the grounds that she has not actually offered a bribe; she has only expressed a willingness to do so. Someone might accuse Alice of splitting hairs and judge that she might as well have offered a bribe, given the message she is conveying to the landlord. However, Alice is correct in judging that she is innocent of offering a bribe. If she had offered a bribe to the landlord, he would know what the bribe is, at least approximately, and he would be in a position to decide whether to accept the bribe. Obviously he is in no such position.

The second scenario involves the landlord expressing a willingness to accept a bribe, an action which he feels is not the acceptance of a bribe. Someone might attempt to argue that he is splitting hairs and that he is as guilty as if he had accepted a bribe. This in fact is essentially the way bribery is dealt with in American criminal law. According to John Danley, "Federal statutes do not directly speak of accepting a bribe. The laws are written in couplets, proscribing the offering of a

bribe and the asking or soliciting of a bribe (Danley, 1983, p. 23).<sup>1</sup> But despite the approach taken in the law, it is hard to deny that the landlord is correct in claiming that he has not in fact accepted a bribe.

My claim is that Alice is guilty of wrongdoing in the first scenario and that the landlord is guilty of wrongdoing in the second scenario. What wrongdoings might these be? Both are guilty of indicating a willingness to do something wrong, where the wrongdoing involves another person's also doing wrong. Alice indicates a willingness to offer a bribe which, if it is accepted, involves the landlord accepting a bribe. The landlord indicates a willingness to accept a bribe which, if carried to fruition, involves Alice's offering a bribe.

This type of wrongdoing can be captured in a single word: temptation. In the first scenario Alice is tempting the landlord to engage in wrongdoing, and in the second scenario the landlord is tempting Alice to engage in wrongdoing. No doubt they are less blameworthy, morally speaking, than if they actually engaged in bribery. But tempting another to wrongdoing is morally blameworthy to at least a modest or minimal degree.

Strictly speaking, in the first scenario Alice is not tempting the landlord to accept a bribe as such. She is tempting him to indicate a willingness to do so, after which presumably she will offer a bribe and tempt him further. But this initial temptation is still moral wrongdoing. Upon hearing her indicate a willingness to offer a bribe, he is immediately tempted to take the first step toward collecting a bribe.

Temptation also seems to play a role in scenario four, where Tom indicates a willingness to be extorted by John. Initially one might be hard pressed to identify any wrongdoing on Tom's part. But our inquiry of the last several paragraphs, which grew out of a familiarity with the categories of the taxonomy, suggests that Tom is not as innocent as one might have supposed. He is tempting John to engage in extortion, and surely that renders him morally blameworthy to at least a modest or minimal degree.

It is not my contention that temptation is the only wrongdoing involved in actions falling under categories (1), (2), or (4). Drug lords might indicate a willingness to accept a bribe out of the most depraved motives imaginable. Moreover, indicating a willingness to engage in wrongdoing can itself constitute wrongdoing, depending upon the precise circumstances (imagine a middle school teacher confiding in his students that he is willing to use illegal drugs when the opportunity arises). But temptation is at least a common theme that runs through acts of these types.

In scenario (5) the older brother threatens the younger brother that he will offer bribes if the younger brother does not agree to borrowing from the employees' pension fund. The younger brother firmly believes that borrowing from the fund would be unethical without a plan for repayment, and yet offering bribes is unethical as well. From this one can infer that the older brother is forcing the younger brother into an ethical dilemma. The older brother is not guilty of borrowing from the employees' pension fund, and he is not guilty of offering bribes, but he is guilty of

knowingly placing his brother in a position where he must endorse wrongdoing. As such, I believe he can rightly be judged to be morally blameworthy.

Moral dilemmas, when construed as situations in which agents are forced to violate moral obligations no matter what, have proven to be quite controversial in the literature. Elsewhere I have called attention to a weaker type of moral dilemma that avoids the problems that beset standard moral dilemmas: situations in which agents are forced to incur moral blame no matter what happens (Mellema, 2005, 293-297). This is the type of situation into which the younger brother has been forced by the older brother, to endorse a wrongful course of action. Of course, the younger brother can steadfastly refuse to endorse either course of action, but that refusal is itself blameworthy if we suppose that it constitutes an abdication of his responsibility to influence the older brother to act in such a way that harm is minimized.

### 3.

I turn now to bribery and extortion considered in and of themselves, and I will suggest that the results of the previous section can lead us to insights that are moderately interesting from a moral perspective. Turning first to bribery, we have seen that indicating a willingness to bribe, as well as a willingness to be bribed, is wrong, at least in part, because one is tempting another to engage in wrongdoing. In particular, we saw that Alice's indicating a willingness to bribe involves temptation, and her subsequent offering of a bribe involves additional temptation. When Alice subsequently offers a bribe to the landlord, she is aware that she is asking the landlord to do something wrong. And if she is willing that he accepts the bribe, which is invariably what happens when one offers a bribe, then she is willing that he does something wrong. And if she is aware that such wrongdoing involves compromising one's moral integrity, she is willing that the landlord compromise his moral integrity.

When one offers a bribe, therefore, part of what is wrong with what one is doing is that one is willing that another person compromise his or her moral integrity in order to satisfy one's own ends. I believe that this is at the heart of what is morally wrong with bribery. This phrase has a Kantian ring to it, but notice that one is doing more than treating another as a means to an end. One is doing so in a way that involves another's compromising his or her moral integrity. Some might see this as no more than mildly interesting, but it is an insight that seems to have escaped notice by those who have contributed to the philosophical literature on bribery.

What can we learn about extortion from the remarks of the previous section? We have seen that when Tom indicates a willingness to be extorted by John, he is himself committing wrongdoing by tempting John. From this we can infer that Tom would be partly responsible for being extorted by John if extortion were to take place. We have also seen that a person can be forced into a moral dilemma as the result of a threat. From this we can infer that if a person plays a role in being extorted by another, a person can come to be subject to a moral dilemma partly as the result of his or her own actions that led to the extortion.

In real life people seldom encourage others to extort them. But focusing upon the extreme case of scenario (4) can help us realize that people do make poor choices in real life, and sometimes these poor choices lead people to become extorted in ways that are partly of their own making. By placing trust in people who we know do not deserve it, for example, we can make ourselves vulnerable to extortionists.

Discussions of extortion typically focus upon the wrongdoing of extortionists, and rightly so. But the so-called victims of extortion are not always as innocent as these discussions would have us believe, and this is a point that might not have come to light were it not for an examination of category (4). If I play a role in becoming extorted by another and end up facing a moral dilemma as a result, I can likewise be partly responsible for creating the moral dilemma.

It might be objected that extortion can take place only if the person being extorted is an unwilling victim, and hence Tom is not actually a victim of extortion. But this characterization of extortion seems wrong-headed. In typical cases where a person caves in to an extortionist the person is willing to act as he or she does. If I am asked to empty the contents of my wallet at gunpoint, my handing over the money is something that I am doing willingly to avoid being shot. Of course, there is an important sense in which I am acting against my will in handing over the money. Hence when a person caves in to an extortionist, what the person does is a curious mix of what is willful and unwilling. I do not propose here to analyze or unravel this curious mix (“mixed actions” for Aristotle). But it does seem wrong to paint the victim of extortion as an unwilling victim with no qualification.

Just as the victims of extortion can be partly responsible for their predicament, they can in many instances avoid caving in to an extortionist in the first place. Robert Larmer describes a case in which a clerk is asked to hand over the contents of the cash register, where the failure to do so would result in his windows being soaped. Larmer believes that the clerk would not be justified in handing over the money in this example, and surely he is correct. Perhaps the idea is that a person is not justified in caving into a threat when the harm that is being threatened to him or her is known to be much less severe than the harm that would otherwise affect others.

To summarize, when a person engages in second order cases of bribery or extortion the person can be guilty of moral wrongdoing, even though the person is not guilty of bribery or extortion as such. Identifying the nature of this wrongdoing can in turn generate insights into bribery and extortion. On this basis, I have argued that at the heart of what is morally wrong with bribery is that one is willing that another person compromise his or her moral integrity as a stepping stone to realize one’s ends. Regarding extortion, I have argued that the victims of extortion are not always as innocent or helpless as they are portrayed in standard accounts.

**Endnotes:**

1. U.S. Code Annotated, 210 subsection b (18 U.S.C.A.), 201-224.

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