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# Bribes v. Bombs: A Study in Coasean Warfare


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# Bribes v. Bombs: A Study in Coasean Warfare

Gideon Parchomovsky & Peter Siegelman\*

## ABSTRACT

September 3, 2007

The use of bribes to co-opt an enemy's forces can be a more effective way to wage war than the conventional use of force: Relative to bombs, bribes can save lives and resources, and preserve civic institutions. This essay evaluates the efficacy and normative desirability of selectively substituting bribes for bombs as a means of warfare. We show how inter-country disparities in wealth, differences in military strength, the organization of the bribing and recipient forces, uncertainty about the outcome of the conflict, and communications technology can contribute to the efficacy of bribes. We discuss methods for enforcing bargains struck between opposing forces, a key problem in structuring bribes. We also examine the legal status of bribe agreements, under both international and U.S. law. While the former apparently views bribery as legitimate means of warfare, the latter poses a potentially significant obstacle by refusing on public policy grounds to enforce secret contracts made with foreign agents.

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## INTRODUCTION

Can bribes be more effective than bombs in fighting wars? This is not a purely theoretical question: during the second Gulf war, the United States apparently bribed Iraqi generals not to resist the US invasion. General Tommy Franks, commander of US forces, told one reporter “I had letters from Iraqi generals saying, ‘I now work for you’” after the US paid them substantial sums of money not to order their troops into combat (Kaplan, 2003: We have not been able to find any other information on this topic.). Although it is unclear how much such bribes shortened the duration or cost of the military campaign, we strongly suspect that they lowered the total cost of the war. Moreover, the *failure* to continue paying the salaries of the Iraqi army at the conclusion of hostilities—a kind of post-conflict bribe—is widely blamed for helping fuel the subsequent development of the insurgent movement in Iraq (Peter Slevin (2003), Edmund L. Andrews (2007), L. Paul Bremer (2007)).

The use of bribes is by no means limited to the US, or to the Iraq war, however: bribes have been used throughout history (albeit with varying degrees of success), including most-recently by the British in an apparently unsuccessful attempt to induce Taliban leaders in Afghanistan to surrender. (Lamb (2007). We discuss some of the reasons why the British effort seems to have been less successful than the American bribery campaign in Section 1.2.) Moreover, bribery will almost certainly grow in importance in future conflicts. For example, in 2005, the U.S. Congress—apparently for the first time—explicitly authorized \$25 million in funds to “to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States special operations forces to combat terrorism.”<sup>1</sup>

In this essay, we examine the efficacy, efficiency and legality of bribes as a means of warfare. We demonstrate that bribes can often be superior to conventional combat in conducting military campaigns. The use of bribes can minimize costs on both sides by saving human lives, preventing the destruction of property, and forestalling the erosion of governmental institutions and civic culture that so often accompany modern warfare.<sup>2</sup> We analyze the conditions under

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<sup>1</sup>§1208(a) of Public Law 108-375, 108<sup>th</sup> Congress, 118 Stat. 1811 (October 28, 2004). For what it’s worth, we also note that the Europa Barbarorum online computer game (devoted to Roman Empire military strategy) explicitly allows for bribing enemy generals. See, <http://www.twcenter.net/forums/showthread.php?t=102589>.

<sup>2</sup>Startlingly, Edward Miguel and Gérard Roland conclude that there was “no robust long-term effect of the [American] bombing [of Vietnam during the Vietnamese War] on local poverty, consumption or population density . . . a quarter century after the end of the ‘American War.’” *Bombing Vietnam: The Phoenix Rises*, 8 MILKEN INSTITUTE REVIEW 18, 30 (2006). Other studies find the same kinds of results for Japan and Germany in the aftermath of World War II. See, for example, Donald R. Davis and David W. Weinstein, *Bones, Bombs, and Break Points: the Geography of Economic Activity*, 92 AMER. ECON. REV. 1269 (2002) (concluding that long-run city size is robust to temporary shocks, even very large ones such as US bombing of Japanese cities during WWII). Steven Brakman, Harry Garretsen, and Marc Schramm, *The Strategic Bombing of German Cities During WWII and its Impact on City Growth*, 4 J. ECON.

which bribes dominate bombs as a means of waging military campaigns and discuss some of the historical evidence for the use of bribes during warfare.

Although bribes can take many forms, we limit ourselves to a narrow definition: an agreement between one country and members of the armed forces of its military opponent, under which the latter promises to refrain from participating in conflict in exchange for payment from the former. Seen in this light, bribes represent a kind of “Coasean warfare,” in which bargaining over entitlements (in this case, the right to send troops into battle) is used in conjunction with military force to wage war.

Like all agreements, the efficacy of military bribes depends crucially on the ability of the briber and the recipient to credibly commit to performing their respective ends of the bargain. The briber must convince the recipient that he will pay the promised bribe and let the recipient keep the money at the end of the military campaign. The recipient must guarantee that he will not take the offered money and continue to fight. What makes bribe agreements interesting from a contract theory standpoint is that much of the legal and institutional machinery that supports ordinary contractual enforcement is seemingly unavailable in the case of military bribes. (But see Section 2.3 for a discussion of the extent to which this might not be true.) Consequently, enforcement must be achieved in large part by other means.

Notwithstanding the enforceability challenge, we show that bribes may be employed in many armed conflicts, and moreover, that in some circumstances, they may be more effective than conventional weapons. Unlike bombs, bribes do not use up any real resources; they are pure transfers that do not involve economic costs. Furthermore, from the point of view of the paying country, bribes can realize considerable cost savings both in lives and in money relative to actual fighting. The amounts paid will often be considerably lower than the cost of standard warfare; and as we demonstrate, even rumors about widespread bribing *alone* can help achieve victory through a kind of “tipping” phenomenon, much like the mechanism Thomas Schelling used to model residential segregation. If enemy forces believe that fellow-combatants have received bribes, this alone can weaken their resolve to fight on. Finally, bribes minimize negative long term effects—they lower the probability of long term animosity and retaliation by the enemy population.

It is important to note, however, that bribes are more of a complement than a substitute for military might. Countries cannot rely on bribes alone to win campaigns—bribes can best be used to supplement (the threat of) standard warfare. A country without a strong army cannot employ bribes very effectively because the lack of enforceability means that enemy generals will be tempted to pocket whatever bribes they receive and continue to fight. Likewise, bribes will be most effective when the offering country is likely to win the war, but may face serious military resistance in doing so. Accordingly, it is not surprising that the U.S. reportedly employed bribes in the second Gulf war but not, for example, in the conflict with Grenada.

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GEOGRAPHY 201 (2004) (concluding that bombing had a significant, but only temporary, effect on city growth in Germany after the second world war). The studies do not demonstrate that the bombings had no *overall* effect—it is possible that the recovery of bombed cities was only made possible by diversion of resources from elsewhere in the economy, so that even though no particular city suffered long term economic consequences, the economy as a whole did.

Moreover, bribes will not work equally well in all military conflicts. They are most effective in conflicts between organized armies and much less so when one of the combatants is a guerilla force. Ideology and patriotism also affect the efficacy of bribes, although with an indeterminate sign. Enemy generals are unlikely to accept bribes from an enemy whose ideology conflicts with their own strongly-held religious beliefs or cultural values. On the other hand, one can imagine that some generals might find themselves fighting for a regime to which they had no loyalty whatever; think of some German generals in World War II. Such actors might be quite willing to accept bribes in return for refusing to fight. What little quantitative evidence there is on these questions suggests that ideological motivations are relatively unimportant compared to pecuniary ones—at least in contemporary civil wars in poor countries (Paul Collier [2007], Chapter 2)—which seems to offer widespread scope for bribery.

But is the use of bribes legal? Under public international law, the answer is almost certainly “yes.” Public international law condones the use of bribes as a means of warfare, drawing a distinction between forbidden “perfidy” and permitted “ruses of war.” Perfidy is defined as the killing or wounding “treacherously individuals belonging to the hostile nation or army” (Hague Convention IV, Annex art 23(b)) or as “[a]cts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.”<sup>3</sup> Ruses of war, by contrast, are defined broadly to encompass any deceptive measures employed in a military conflict in order to mislead the enemy or gain a military advantage. (Hague Convention IV, Annex art 24.) The use of spies and secret agents, the inducement of enemy soldiers to desert, surrender or rebel and even the use of bribes are all listed as examples of legitimate ruses of war (Department of the Army (1956), at 22 para. 49).

Ironically, it is our own national law that may obstruct the use of bribes, and lessen the effectiveness of this technique of warfare. In a recent decision, *Tenet v. Doe* (544 U.S. 1 [2005]), the Supreme Court ruled that public policy concerns should bar foreign agents from enforcing the terms of their secret contracts with the government in U.S. courts. This decision undermines the ability of the U.S. government to credibly commit to perform its obligations towards bribe recipients, and thus reduces the incentives for enemy generals to enter deals with the U.S. government. Hence, we conclude the Essay with a call for the reversal of this decision.

Structurally, the Essay unfolds in three parts. In part 1, we explore the efficiency gains generated by the use of bribes and review various historic examples of bribery in times of war. In part 2, we analyze bribery as a contracting problem. We discuss the various challenges facing bribe agreements and explain the extra-legal and legal mechanism that may be used to overcome those challenges. In Part 3, we discuss factors advising against the use of bribes. A short conclusion follows.

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<sup>3</sup>1977 Protocol I Additional to the Geneva Conventions of 12 August 1949 art 37. This might include, for example, the (false) use of a flag of truce to obtain a military advantage. Note that the U.S. is not a party to Protocol I; the distinction between ruses of war and perfidy is a traditional one, however, and Protocol I is apparently fairly reflective of the status of customary international law.

## 1. BRIBES V. BOMBS

### 1.1 The Gains from Bribery

#### 1.1.1. *Inefficiency of Warfare Generally*

Although there will sometimes be groups within a country that manage to realize gains from war (which makes the Pareto criterion inoperative), it is clear that warfare is almost inherently wasteful.<sup>4</sup> Political scientist Robert Powell (2006, at 169) follows the general assumption and ignores within-country distributional issues when he writes that

[b]ecause fighting typically destroys resources, the ‘pie’ to be divided after the fighting begins is smaller than it was before the war started. This means that there are usually divisions of the larger pie that would have given each belligerent more than it will have after the fighting. Fighting, therefore, leads to a Pareto-inferior or inefficient outcome.

Like labor strikes or failed settlement negotiations in litigation, the existence of war can thus be seen as a kind of bargaining failure.<sup>5</sup> While the precise nature of the bargaining failures that lead to war is an important topic for international relations theorists, it is not our major concern here.<sup>6</sup>

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<sup>4</sup>Some people or factions presumably do gain from war, so ending war would make them worse off. If the opponents of war gain more from its end than the proponents lose, then an end to the hostilities is Kaldor-Hicks efficient or wealth-maximizing. Instead, most models typically assume that the warring states are in some sense unitary actors, largely finessing the possible *internal* division of the gains and losses from war. It is always possible to assume that wars occur because a powerful group that benefits from war imposes its will on country, despite the losses war creates for the population as a whole.

<sup>5</sup>Robert Cooter (1982), identifies strategic bargaining as a key form of transactions costs that can lead to the failure of parties to reach mutually beneficial agreements or avoid mutually detrimental consequences. For more on inefficiencies in bargaining generally, see Martin Osborne and Ariel Rubinstein (1990).

<sup>6</sup>Dagobert L. Brito and Michael Intriligator (1985) offer a game-theoretic analysis that allows for “redistribution” (or what amounts to bribes between countries) as an alternative to warfare. They predict that if countries are fully-informed about each other’s strength, they will efficiently avoid going to war; redistribution will occur without the actual use of force, although it is of course the threat of force that forces concessions. When one country is not informed about the other’s willingness or ability to fight, however, wars can occur “if the uninformed country adopts a separating equilibrium strategy, in which it precommits itself to a positive probability of war in order to prevent bluffing by the informed country” (Brito and Intriligator, at 945).

Powell argues convincingly that such asymmetric information stories, while important, can not explain many important aspects of warfare. For one thing, “fighting [often] does not seem to result from some residual uncertainty about an adversary that has yet to be resolved. Fighting ensues when the resolution of uncertainty reveals that a state is facing an adversary that it would rather fight than accommodate” (Powell, at 174-5). For another, asymmetric information theories seem incapable of explaining why many wars last so much longer than would seem to be

We proceed on the assumption that because war is almost always inefficient, there may be room for a “partial” bargain that, even if it does not eliminate the struggle itself, can increase the welfare of both sides. Although the U.S. might not have been able to convince Iraq to surrender peacefully and thus avoid the second Gulf war, it could—and according to reports, actually did—approach this result by selectively bribing Iraqi generals, thereby shortening the duration and intensity of the campaign. Even in war, there may often be a potential bargaining surplus that can be partially reclaimed by (selectively) deploying non-destructive means to achieve what would otherwise be realized through the destructive methods of warfare. In other words, bribery may be second-best (constrained) optimal, where the first-best solution (to avoid war altogether and negotiate instead) is for some reason not available. The inefficiency of war—the fact that it represents failure of “Coasean” bargaining—sets the stage for our analysis of bribery.

Some readers may have reservations about the use of efficiency in our analysis. After all, if country X decides to invade and conquer country Y, it would seem odd for Y’s leaders to include losses to X as costs (rather than benefits) in their welfare calculus. It should be emphasized, though, that we do not suggest that countries making the decision to go to war should engage in a total two-country welfare calculus based on benign supra-national considerations, any more than contracting parties generally “should” take into account a contract’s benefits for their negotiating partner. Nor do we argue that war is never justified or appropriate; on the contrary, we readily admit that some wars are necessary. Our point is only that because war is destructive *to both sides*, there will often be possibilities for both sides to gain from avoiding it. In cases where alternatives to war are thwarted—say, by a tyrannical leader who is determined to take his country into war regardless of the consequences—efficiency will be enhanced if the overthrow of that leader is attained via bribes that spare lives and resources, as opposed to standard warfare that occasions death and destruction. Moreover, the fact that the tyrant’s actions are likely to cause losses for his *own* side makes it easier for the *other* side to bribe the tyrant’s troops: the more costly the war, the more willing high-ranking officers should be to abandon it.

Of course, agreements between a state and the military leaders in its enemy’s army are beset by some of the same kinds of enforcement problems that plague agreements between states themselves. As Powell points out, it is precisely these commitment or enforceability problems that stand in the way of negotiated alternatives to war in many contexts. But as we suggest below, it will often be easier for one state to strike an enforceable agreement with an individual military leader on the other side than it is to enforce an agreement between the two states themselves. Again, this suggests that bribes paid to opposition generals may be a kind of second-best alternative to (unenforceable) agreements between states to settle disputes without going to war.

### 1.1.2. *Are Bribes Efficient?*

Any voluntary deal between informed, rational persons is efficient (at least as regards those persons) because, by definition, it makes both of them better off; and since presumably nobody else is affected by the transaction, gains or losses to A and B are all we need to keep track of.

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necessary to reveal information about an adversary’s willingness or ability to fight. Powell’s positive claim is that even when parties have full information about each other and could design a negotiated alternative that would be Pareto superior to warfare, there is no way that they can commit to any such agreement they may reach; it is this lack of enforceability that leads to war.



Some bargains do have consequences for non-parties, however, and these are not efficient per se.

Bribing an enemy general to surrender rather than fight has externalities that make it similar to this second kind of deal. Saddam Hussein and his loyalists were apparently made worse-off by the willingness of some of his generals to surrender in exchange for cash from the US. In that sense, the payment of bribes was not Pareto efficient, since we can identify persons (albeit not parties to the transaction) who suffered a loss as a result. But suppose that the ultimate outcome of the war was a foregone conclusion with or without bribes, and that all the bribes accomplished was to produce the same result at a lower cost in Iraqi lives and resources. Given that the outcome would be an inevitable loss, presumably even Saddam Hussein would prefer losing with fewer casualties to losing with higher casualties, and if so, bribing generals to surrender might still be Pareto-efficient, relative to this baseline.<sup>7</sup>

Because of the externalities involved, it is impossible to be sure that bribing generals to surrender is Pareto superior to war. But we are much more confident that such bribes are desirable in the looser, Kaldor-Hicks sense, for several reasons.

First and foremost, a bribe is a transfer payment, rather than a true economic cost. Bombs (as well as other traditional means of warfare) usually result in the loss of human life and destruction of resources (on both sides). Paying money from the US Treasury into the bank account of, say, an Iraqi general is not a true economic cost to the world as a whole. It does not use up any resources, but only shifts money from one pocket to another. To a first approximation, no real resources are used up in paying a bribe, and the two parties, taken together, have as much “stuff” after the fact as they had before the bribe was paid. This means that bribes have positive efficiency consequences compared to any directly-costly activity for which they substitute. Thus, it is actually efficient to pay a \$1.25 million bribe rather than to fire-off a \$1 million cruise missile that has the same effect, because the former is a mere transfer while the latter is a real cost.

Second, bribes that prevent fighting can sometimes save the direct costs of weapons or human capital that would otherwise have to be used to achieve victory. Using a \$250,000 bribe that produces the same overall effect as a \$1 million cruise missile effects a saving of \$750,000 in direct costs. Of course, bribes cannot always replicate the effects of a conventional weapon for less than the cost of the weapon itself; but significant cost savings may be realized from the use of bribes on many occasions. For example, in Linda Bilmes and Joseph E. Stiglitz’s (2006) recent estimate of the cost to the US of the Iraq war, the human capital costs loom especially large.<sup>8</sup> Of the overall \$2 Trillion cost that they estimate, roughly 15 percent is attributable to human capital losses, including lost lives and injuries to soldiers. By forestalling fighting, bribes can obviously reduce these personnel costs.

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<sup>7</sup>Of course, this raises as many questions as it answers. Did Saddam Hussein understand that he would lose the war with the US? If he did, then why did he fight rather than surrendering? If he didn’t, then do we fail to credit his preferences (or his information, or his rationality) when we say that he would be no worse off from our bribing his generals to surrender than if they had fought and lost instead?

<sup>8</sup>Of their total economic cost of the Iraq war (to the US) of \$2.2 trillion, \$355 billion represents losses to or depreciation of human capital.

Besides their savings in direct costs to the briber, there is a third reason why bribes can be better than bombs. Warfare almost inevitably causes collateral damage to unintended parties; but as one source put it, bribes are a “Precision Guided Munition,” meaning that they always hit their intended target, and nothing else.<sup>9</sup> Even cruise missiles sometimes go off course and strike civilian targets, and precise targeting of other weapons is difficult.<sup>10</sup> Avoiding unnecessary harm to civilians is not only a key element of the law of war,<sup>11</sup> it is an obvious moral imperative as well, and thus represents a key advantage of bribes over bombs.

Finally, in the long run, it will often be strategically advantageous to achieve victory at the lowest cost in enemy lives or material lost. There may be campaigns when nothing short of an overwhelming and decisive military defeat of the enemy is desirable (for political or strategic reasons), but it seems unlikely that the infliction of significant harm on the enemy is itself an ultimate—rather than merely instrumental—objective in most cases. Each enemy soldier killed represents a potential source for future revenge, and unnecessary devastation may cause long term animosity toward the victor.<sup>12</sup> This can, in turn, extract a high cost, either by inspiring continued fighting, or by engendering lingering resentment once fighting subsides. Furthermore, inflicting devastation on the enemy can adversely impact public opinion in the victorious country, and may cause support for the cause to dwindle. Bribes provide an effective way to decide military campaigns without achieving devastation.

### 1.2.3. *A Dynamic Analysis*

The discussion so far has been essentially static. From a dynamic perspective, however, the cost savings from using bribes can be amplified by a “tipping” mechanism similar to the one Thomas Schelling (1978) first modeled in the context of residential segregation.

Consider General X in country A, a potential recipient of a bribe from a military opponent. X faces a choice between continuing to fight or accepting (or even soliciting) a bribe for not fighting. Regardless of whether X fights or surrenders, his expected payoff depends on at least

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<sup>9</sup>Kaplan (2003) quotes a “senior [Defense Department] official” as saying that “. . . a bribe is a PGM [precision-guided munition]; it achieves the aim, but it’s bloodless and there’s zero collateral damage.”

<sup>10</sup>For example, on May 9, 1999, during the Bosnian conflict, US bombs accidentally struck the Chinese embassy in Belgrade, killing four embassy staff and causing widespread protests in China.

<sup>11</sup>Article 25 of the 1907 Hague Regulations outlaws direct attacks against non-military targets. Joint civilian-military targets can be attacked under Article 23(e), but only if appropriate restraint is shown; the use of “arms, projectiles, or material calculated to cause unnecessary suffering” is prohibited.

<sup>12</sup>Of course, not all vanquished enemies remain hostile. Obvious counter-examples include the relationship between the defeated Axis powers and the US after WW II. But post-war animosity and resentment are a frequent problem, as in Germany after WW I, the South after the US Civil War, or today’s Iraq.

two factors: the likelihood that country A ultimately wins, and the share of the war's costs borne by him and/or the troops under his command. Bribes paid to generals *other* than X will thus have two separate effects on X's expected payoffs. First, if other generals order their forces to withdraw from the fight, the probability that A will prevail drops, since it has effectively lost the ability to deploy troops under the bribed generals' command. The more the odds of A's winning drop, however, the more X will find it attractive not to fight on behalf of a losing cause, and to accept a bribe instead. Hence, as other generals take bribes to surrender, they make it more attractive for X to do so as well.

Bribes can help tip the balance in favor of surrendering for a second reason. Even if we ignore the effect of other generals' withdrawal on A's probability of victory, the defection of other soldiers means that X and his troops now have to bear a higher share of the costs of whatever fighting does occur. The same enemy now confronts fewer "active" divisions of X's army, so whatever divisions remain are likely to suffer higher casualties if they choose to fight. Naturally, this effect also makes it more attractive for X to accept a bribe to surrender. Suppose, for example, that each general would choose to fight if he believed that 95 percent of other generals will make the same choice, and otherwise will surrender. This means that bribing a mere 6 percent of the generals—and making this information known—could lead all the generals to surrender. This kind of dynamic tipping effect could dramatically increase the efficacy of bribes, causing the opposition's resistance to unravel, much as Schelling's model describes the unraveling of integrated neighborhoods.<sup>13</sup> Somewhat similar dynamic reasoning appears to have been at work in the recent British efforts to bribe Taliban leaders in Afghanistan. The British apparently believed that the successful use of force against Taliban leaders would "soften-up" the opposition and make it more receptive to bribes, which could then presumably yield further defections.<sup>14</sup>

Moreover, even spreading (false) rumors about the widespread use of bribes could cause the same tipping effect, as long as such rumors can not be conclusively rejected as untrue. Since generals will always be uncertain about whether or how many of their compatriots have accepted bribes, even the rumored use of bribes may weaken the resolve of unbribed generals to keep

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<sup>13</sup>David Card, Alexandre Mas and Jesse Rothstein (2006) find econometric evidence of a tipping point in neighborhood racial dynamics, such that whites begin to exit once the proportion non-white in a neighborhood exceeds about 13 percent. Abraham Bell and Gideon Parchomovsky (2000), explore these issues in a legal context. Gideon Parchomovsky & Peter Siegelman (2004) describe a similar kind of unraveling in the sell-off of the entire town of Cheshire, OH to a nearby electric utility company whose plant occasionally caused a sulphur dioxide fog over the town. While many residents would apparently have preferred to stay as long as others also did, essentially the entire town ended up selling. A similar dynamic mechanism has also been identified in the analysis of two-tier tender offers. See Lucian Arye Bebchuk (1985).

<sup>14</sup>"The money [£1.5 million in bribes] was allocated . . . after the killings of two top commanders, Mullah Osmani and Mullah Dadullah, and the arrest of Mullah Obaidullah, all members of the Taliban's ruling *shura*, or council. British officials expected this would lead to a dip in Taliban morale and encourage less extremist members to cross over, fearing that they were on the losing side—the so-called 'Dadullah effect'" Lamb (2007).

fighting. Since the informational environment makes it virtually impossible to determine whether rumored bribes have actually been paid, it would seem easy to spread such rumors without paying much at all. And of course if enlisted men could be led to believe that officers are taking bribes to surrender, this would result in lower morale and internal dissension, amplifying the effects described above.

We acknowledge that there is much the same possibility for tipping when using bombs instead of bribes: general X's belief that generals Y and Z will be defeated increases his willingness to surrender for just the same reasons as if he believed Y and Z had been bribed. There is a significant difference in the informational environment between bribes and bombs, however. Bribes leave no trace, so X might reasonably suspect or fear that Y and Z had been bribed *even if no bribe were actually paid*. But for X to take Y and Z's military defeat seriously requires that Y and Z actually *be* defeated, or that his defeat be imminent and credible. Since it is easier to spread a rumor that bribes have been paid (perhaps without even paying them) than it is to actually defeat one's enemy, bribes would seem to have a dynamic advantage over bombs in addition to the static advantages we discussed earlier.<sup>15</sup>

## 1.2 The Historical Background

The use of bribes in warfare has not received any systematic treatment that we know of.<sup>16</sup> The payment of money to induce surrender or to prevent attack has clearly been used, at least sporadically, during the history of military conflict, but it seems highly likely that bribery is often conducted in secret—for reasons we discuss below—and hence, our attempt to “survey” the historical landscape is undoubtedly highly incomplete, and probably a biased sample as well.

Table 1 summarizes the main incidents of bribery we were able to uncover (in what we admit is an unsystematic search).

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<sup>15</sup>A reader astutely pointed out that by making war cheaper to wage, these dynamic effects could have the perverse “supply-side” effect of encouraging wars that would otherwise not take place. Indeed, to the extent that bribery makes warfare less costly for *any* reason, it could encourage countries to go to war in situations in which they would otherwise not choose to do so. We discuss such various supply-side effects in section 3.2.

<sup>16</sup>Even Martin Shubik and J. Hoult Verkerke (1989)'s broad-ranging survey of the role of economics in military strategy does not mention bribery of opposing forces as a possible tactic. Historians and sociologists have touched on related topics, such as the role of private entrepreneurs in early Modern European military history. See, e.g., Fritz Redlich, (1965, at 270), who notes that “[between 1500 and 1800] . . . warfare *was* business, like piracy and colonization.” William McNeil (1982) discusses similar issues over a broader chronological and geographical span. John T. Noonan (1984)'s magisterial intellectual history of bribery makes only one brief mention of bribery in wartime, noting that “[i]n actual warfare, bribery is a weapon, less lethal than a bomb, which may justly be employed” (*Id.*, at 694 ).

Table 1: Chronological Summary of Evidence on Military Bribes		
Event	Description	Comments/Source
Peloponnesian Wars	Several references in Thucydides to the use of bribes in warfare.	Thucydides
Sack of Rome	Alaric the Visigoth accepted a lavish payment to lift his siege of Rome in 409.	He returned the next year and sacked the city. Edward Gibbon (1781, 1994).
Italian City States vs. Mercenary Bands, 14 <sup>th</sup> c.	Several city-states paid-off groups of freelance mercenaries not to attack them.	Payments were usually not successful, as mercenaries returned to demand more money. William Caferro (1996)
Mexican-American War, 1846-48	Allegation that General Scott paid Mexican General Santa Ana \$10,000 to surrender	Allegation made by a political rival, and seen as very damaging to Scott's honor. Scott denied that such bribe was paid. N.Y. Times (1857).
Mexican Civil War, 1858	N.Y. Times reports that rebel leader Doblado, in command of Salamanca, was paid to surrender by the Government.	"The name of Doblado will go down as one of the most despicable in Mexican history." N.Y. Times (1858).
Cuban revolution, 1898	N.Y. Times reports that according to US Senator Cannon, the Spanish government "was afraid to meet the insurgents in the field," and had thus "resorted to a policy of bribery and starvation."	Evidence is unclear. N.Y. Times (1898).
World War I	Autobiography of Dutch aircraft designer Anthony Fokker reports that British offered him £2MM to leave Germany and design planes for them.	Offer was never received, and recipient only learned of it later. N.Y. Times (1931).
World War I	Prime Minister David Lloyd George, was prepared to spend £25MM (£200MM in today's value) to bribe Turkey into pulling out of World War I in the waning months of the campaign.	Amount never paid. "The intermediary was the notorious international arms dealer Basil Zaharoff. . . . In return for his services [he] was to get a cut of the money and . . . inclusion in the British honours system." Peter Day (2005).
Italian/Ethiopian War, 1936	N.Y. Times reports that "Ethiopia was not conquered by gas, bombs, or other modern weapons, but by internal revolutions. . . . The majority of chiefs succumbed to Italian bribery or propaganda," according to a Turkish source.	Evidence unclear. N.Y. Times (1936). See also, Angelo Del Boca (1969).
World War II	U.S. General McArthur received \$500,000 from Filipino leader on the eve of his retreat from the Philippines.	Purpose of payment unclear, but most likely designed to secure personal friendship between McArthur and Filipino President Quezon. Richard Eder (1980).
World War II	Italian invasion of Greece in late 1940 was preceded by payment of millions of lira in bribe to Greek generals and officials not to fight.	Bribes unsuccessful. Italian invasion of Greece was met with strong resistance, and failed before German assistance was called in. Bradley Lightbody (2004).
World War II	Germany secretly bribed its <i>own</i> generals to continue fighting: every field	Norman J. W. Goda (2000).

	marshal received an extra 4,000 marks and every four star general an extra 2000 marks for each month that fighting continued (this is a 100-200 percent increase over regular salary).	
Vietnam, 1965	Letter to the Editor reports that “The majority of roads throughout the country are unsafe for United States troops. However, unarmed, unguarded gasoline trucks can travel these roads unmolested to deliver needed fuel for the armed United States helicopters, merely by tossing bags of gold to the Vietcong at various points along the route.”	D. R. Wilson (1965).
Afghanistan, 2007	Britain paid out more than £1.5 million to Taliban leaders to surrender as part of a “peace-strengthening scheme.”	Apparently, no high-ranking leaders were induced to surrender, although lower-level soldiers did accept the money. Some allege that lack of success was because the bribes offered were not as large as what the Taliban was paying. Many Afghans also reacted negatively to the payment of money to the enemy. Christina Lamb (2007).

Several themes emerge from our findings. Chief among them is the importance of secrecy. Many bribes only came to light long after they were paid. The payment to General MacArthur on his departure from the Philippines was not reported until 1980, 38 years after it was made. Payments allegedly made by General Scott during the Mexican-American war were not revealed for ten years after they were made. A bribe offered to Dutch aircraft designer Anthony Fokker to defect to England was not made public until more than 15 years after it was allegedly made, and a potential English bribe to induce Turkey to withdraw from World War I was not revealed until 2005. For obvious reasons, Germany kept secret its bribes to its *own* generals to keep fighting at the end of World War II. (We discuss the rationale for secrecy in Section 2.2.)

A second theme, related to the first, is the apparent dishonor involved both in offering and accepting bribes. Rather than taking the view that successfully bribing one’s enemy is a cheap and effective way to secure victory, many of the reported uses of bribes were met with condemnation. Such behavior is seen as shameful, unmilitary, and even unmanly. These views are apparent in General Scott’s angry and detailed denunciation of the accusation that he obtained Santa Ana’s surrender in the Mexican-American war by means of a \$10,000 bribe. They are also clear in the denunciations—by American sources—of the use of bribes by other countries: by Spain in suppressing the Cuban revolution in 1898, by Italy in invading Ethiopia in 1936, and by the Mexican central authorities in suppressing the Civil War in 1858. (Of course, it is always difficult to separate opinions about the underlying conflict from opinions about the use of bribery per se.)

Finally, it seems clear that bribing one’s opponents has had a mixed record of success. Consider the lavish payment made by Rome to the Visigothic general Alaric in AD 409.

According to Edward Gibbon (1781, 1994), Alaric “consented to raise [i.e., lift his] siege [of Rome], on immediate payment of five thousand pounds of gold, of thirty thousand pounds of silver, of four thousand robes of silk, of three thousand pieces of fine scarlet cloth, and of three thousand pounds weight of pepper.” (*Id.* at Vol. III, Ch. 31, p. 191). Unfortunately, Alaric was back the next year, and the Roman treasury was depleted, so he simply sacked the city.

Similarly, the late medieval Italian city states’ efforts to buy-off the companies of adventure (roving bands of organized freebooters) rarely secured their security for any extended period.

[B]ribes were usually part of a formal contract between the commune [city-state] and the company [mercenaries] in which the company agreed, among other things, not to enter local territory for a specific time. The contract in October 1381 between Siena and the company led by John Hawkwood, for example, called for a payment of 4,000 florins per month to the company in return for a promise not to attack Sienese territory for 18 months. These payments, of course, only encouraged the mercenaries, who took little heed of their contracts and regularly returned for more loot. Siena, a town singled out for particular misery, was constrained to buy its freedom 37 times between 1342 and 1399 (William Caferro, 1996, at 796-97).<sup>17</sup>

Of course, the real question is the counterfactual one of how Siena would have fared under some alternative course of action. Given the costs of raising an army (if one could be raised at all), it is not clear that bribery was a substantially inferior alternative, as Caferro points out.<sup>18</sup> (The story of Siena does confirm our suggestion below, that bribes will rarely be successful when the bribing party is militarily weaker than the recipient.)

The failure of bribery even was more apparent in Mussolini’s invasion of Greece during World War II. Perhaps the “millions of lire” in bribes destined for Greek generals never reached their intended recipients, and were simply pocketed by the intermediaries who were supposed to broker the transactions. Or perhaps the generals took the money but failed to live up to their part of the bargain. In any case, Italian forces met stiff resistance when they attempted to invade Greece in 1940, and were unsuccessful until they were bailed out by the Germans. A more recent example of failed bribes comes from the British attempt to induce Taliban leaders to surrender in Afghanistan. It is difficult to know why these efforts were unsuccessful, but one can point to a number of possible reasons, including: the relatively diffuse organizational structure of the Taliban, the strong ideological motivation of most fighters, the insufficient amounts offered, and the inability of the British or their allies to enforce performance after a deal was struck.

On the other hand, several of the bribes reported in Table 1 do seem to have met with success. The Italian campaign in Ethiopia and the Mexican government’s use of bribery during that country’s Civil War seem to be examples of bribes that accomplished their intended objectives.

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<sup>17</sup>Caferro estimates that the total cost of Siena’s bribes was something on the order of 300,000 florins over the 57-year period.

<sup>18</sup>A rational, fully-informed mercenary would set his price just below the cost of raising an army to fight him, so that it would always be barely cheaper to pay than to fight.

## 2. BRIBERY AS A CONTRACTING PROBLEM

Wartime bribes present a unique contracting problem because so many of the background institutions supporting ordinary contracts are largely absent. This, in turn, greatly increases the transactions costs associated with this kind of deal. As with other types of deals, successful bribes require the presence of a bargaining surplus, meaning that the briber's maximum willingness to pay is larger than the recipient's minimum asking price. And as is also the case in more common contractual settings, the existence of a surplus is a necessary but insufficient condition for a successful bribe, because transactions costs could prevent the realization of a deal, even when both parties might be willing to form a bargain.

To illustrate, consider a simple contract for the sale of a watch. If the buyer's reservation price is higher than the seller's asking price, and transaction costs are sufficiently low, a deal will usually be struck between the parties. But in the case of a watch, we typically assume that background institutional factors supporting contracts are in place and exogenously given.

The same cannot be said for military bribes. Even if his hypothetical asking price is lower than the bribe offered him to surrender, a general may refuse to accept a bribe from his country's opponent because he may fear vengeance by his own countrymen if the story leaks out, or betrayal by the bribing country. If he were to accept, moreover, the offeree would presumably require a higher effective price for surrendering in order to compensate him for the additional risks that "selling out" would likely cause him to bear.

Such 'background' considerations may either be characterized as factors influencing the seller's (net) *valuation*, or instead, as transaction costs that impede the formation of a bargain. For expository reasons, we distinguish between factors directly affecting valuation and those influencing transaction costs, while recognizing that these analytic categories are necessarily somewhat blurry.

### 2.1. Factors Influencing Willingness to Accept

#### 2.1.1. *Ideological Commitment*

Ideology is an important determinant of an opponent's susceptibility to bribes, in much the same way that an individual's tastes or preferences determine her willingness to pay for or accept offers. Commanders who hold strong patriotic or ideological beliefs in the justness of their cause are less likely to be bribable. War often seems to promote a sense that the enemy is evil and that one's own side is operating under divine guidance or otherwise has a monopoly on virtue. But some conflicts are more ideological than others. Consider the Iran-Iraq war, where thousands of children were sent to clear minefields by deliberately detonating them with their own bodies,<sup>19</sup> or the Iraqi insurgency, which has made prominent use of suicide bombers. Military leaders who are willing to give their lives away in the name of ideology are presumptively unlikely to betray it for

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<sup>19</sup>Matthias Küntzel (2006) discusses the Iranian *Basij Mostazafan* ("mobilization of the oppressed"), a volunteer militia consisting of mostly under-18 year olds, which was supposed to supplement the regular army. "'The young men cleared the mines with their own bodies,' one veteran of the Iran-Iraq War recalled in 2002 to the German newspaper *Frankfurter Allgemeine*. 'It was sometimes like a race. Even without the commander's orders, everyone wanted to be first.'" Even with due allowance for hyperbole, such behavior suggests that bribes paid to these soldiers not to fight would not be effective.



monetary rewards, no matter how large. For example, the failure of British efforts to bribe Taliban leaders in Afghanistan may in part be explained by the strength of the Taliban's ideological convictions.<sup>20</sup> Put differently, ideologically motivated opponents may be thought of as having a very high asking price for surrender. Indeed, one functional explanation of ideology in warfare is as a motivational force that induces behavior that would otherwise seem irrational, such as willingness to sacrifice one's life in pursuit of a highly abstract goal.

Divergence in ideologies or religious beliefs *within* a country or an army may actually facilitate bribery, however, largely because of the kinds of agency costs we discuss at greater length below. For example, in the Iran-Iraq war, we suspect that Shiite generals in the Iraqi army (if there were any) could have been easily bribed by Iran precisely because their religious ideology was at odds with that of the ruling Iraqi Baath regime. The same is true of strong feelings of patriotism: on the one hand, patriotism may increase generals' willingness to accept bribes. This will be true if generals abhor the ideology and actions of their country's leaders, and view them as opposed to the interests of the general population. On the other hand, generals who act out of patriotism may be especially resistant to bribes, especially if they hope to govern their country in the future. Bribes and patriotism do not sit well together. True patriots are expected to shun monetary advances. Furthermore, accepting a bribe will in all likelihood tarnish a general's reputation as a patriot in the eyes of his own people if the story leaks out, and make it difficult for him to achieve the necessary popular support for ruling the country in the future.

Political ideology can also have an effect on the bribing country's willingness to *offer* bribes to its opponents. If the opposition is sufficiently demonized, potential bribers may come to conclude that recipients must be crushed or eliminated, rather than simply defeated or induced to surrender. If victory comes to be defined as the enemy's total destruction, rather than in terms of some narrower political or military objectives, bribes will be of little use, and would presumably be seen as counterproductive. (We discuss additional bribe-specific ideological factors below.)

### 2.1.2. *Differences in Wealth*

Other things equal, wealthier countries should be more likely to offer bribes, and generals in poorer countries more likely to accept them. Willingness to pay for opponents' surrender increases with a country's wealth because opponent's surrender is probably a normal good: the wealthier the population in the bribing country, the higher the monetary value it tends to place on human life (including the lives of its soldiers), and the greater the availability of resources to pay for bribes. On the receiving end, poor countries presumably have a higher marginal utility of wealth—a dollar's worth of bribe goes a lot further in Papua New Guinea (1998 per capita GNP of \$890) than in the United Arab Emirates, where per capita GNP was \$17,870, 22 times

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<sup>20</sup>See Lamb (2007). The failure may also have been due to the fact that the bribes were too small relative to what leaders could expect to earn by sticking with the Taliban. Lamb quotes one government official who "criticised the international community for not supporting the programme [to offer payouts to Taliban who would defect.]. 'I keep telling them we are absolutely short of funds[.] . . . If we could offer even one fifth of what they're getting the other side of the border, many are willing to come over.'"

higher.<sup>21</sup> This should make willingness to accept a bribe higher for poorer countries.

A country's wealth is likely to have indirect effects on its willingness to pay/accept as well as direct effects. Generals will presumably be more willing to accept bribes if their opportunity cost in foregone salary is low. Countries that pay their generals more should thus be less likely to see them take bribes from their opponents. (Presumably, the military budget is a positive function of a country's overall wealth, so wealthier countries can afford to pay higher salaries, reinforcing the effects described above.) For exactly the opposite reasons, wealthier countries can sustain larger military budgets, and are therefore better positioned to *pay* bribes.

### 2.1.3. *Likelihood of Prevailing*

Bribes are most likely to be offered when it is reasonably clear that the briber will prevail, but will face resistance en route to victory. If it is clear that country A will lose a war, there is no point in its trying to bribe enemy generals to surrender, since they will simply take the bribe and fight on.<sup>22</sup> For this reason, it would have been pointless for Kuwait to try to bribe Iraqi officers not to invade during the first Gulf war: the Iraqis would likely have pocketed the money and continued to fight, since Kuwait could not force them to perform or disgorge the amounts received. In the opposite case, where a potential briber is likely to prevail without facing serious military resistance, bribes may be offered, but only if the cost of overcoming the resistance by bribes is cheaper than by overcoming it by military means. Hence, in the armed conflict in Grenada, the U.S. probably saw no need to offer bribes, since the outcome was a foregone conclusion. In the second Gulf war, however, the U.S. chose to deploy bribes in addition to more conventional weapons, both because they were apparently more cost-effective than conventional weapons and because they improved the likelihood of winning the war.

Even conflicts in which it is initially unclear which side would prevail—World War II, for example—will often reach a point at which the outcome becomes virtually certain, although fighting has not yet ended. At such a point, bribes could still be used to speed up the defection of generals and forestall costly battles.<sup>23</sup>

### 2.1.4. *Agency Costs and Supervision*

Agency costs can loosely be defined as the costs that result from the divergence between a

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<sup>21</sup>Data are from the World Bank. See, NK"<http://www.worldbank.org/depweb/english/modules/basicdata/datanotbasic.html>"<http://www.worldbank.org/depweb/english/modules/basicdata/datanotbasic.html>, visited June 1, 2007.

<sup>22</sup>But note the example of 14<sup>th</sup> century Siena discussed above. With virtually no capacity for self-defense, Siena repeatedly paid bribes to marauding bands of mercenaries in order to be left alone; the efficacy of these bribes was apparently limited, since many mercenaries simply returned and demanded more money. Whether the bribes were actually worse than the feasible alternatives is a difficult question, however.

<sup>23</sup>Interestingly, the Nazi regime apparently foresaw this possibility, and paid substantial “bribes” to keep its own generals fighting during the final phases of the war. See, Norman J.W. Goda (2000).

principal's goals and those of the agents he employs to achieve his purposes. Such costs play vital, but potentially conflicting, roles in the use of wartime bribes. On the one hand, agency problems are at the essence of what makes it possible for recipients to accept bribes; but agency costs may also make it more difficult to offer bribes.

#### 2.1.4.1. Recipients

Agency "slack" is the key to the use of bribes. If enemy commanders have perfectly internalized the preferences of their governments, or if they are subject to perfect monitoring by their superiors, they would perforce be unwilling to betray their country in exchange for personal gain. It is precisely the divergence of interests between commanders and their country (or its leadership) that makes bribes possible in the first place.

This agency cost view of bribes focuses attention on the organizational structure of the potential recipients. For example, agency considerations suggest that guerilla forces are likely to be difficult to bribe because they often adopt a decentralized (cell like) or flat (egalitarian) organizational structure. Combined with their small size, this makes guerilla forces less subject to agency "slack," which enables agents to pursue their own interests at the expense of those of their organization or their superiors.<sup>24</sup> This kind of diffuse organizational structure could be a factor (among many others we discussed) in the apparent failed attempt by the British to bribe Taliban leaders.

Conversely, bribery works best in an organizational culture where the loyalty of the troops runs more to their commanders than to the system as a whole or to professional norms. In a structure like that of the US Army, generals rotate between commands and their subordinates do not tend to have strong personal loyalties to them. This means that it would be hard for a bribed general to "take his men with him," because they are not really his to command when his commands run contrary to the country's interests. That suggests that bribery should work best when subordinates owe an allegiance to their commander, rather than to the country or its political leadership. Perhaps in part because of fears of disloyalty (including bribe-taking from the enemy) the USSR structured its army to make bribery more difficult: every military commander had a Communist party counterpart, a commissar, one of whose tasks was to shoot the officer if he wavered from the loyal pursuit of the country's interests.<sup>25</sup>

#### 2.1.4.2. Offerors: The Role of Cultural Factors

Agency costs may play a role in the decision to *offer* bribes, as well as the decision to accept

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<sup>24</sup>This is not to say, however, that bribes can never be used with respect to guerillas. Bribes can be an effective means of buying information. Israel, for example, regularly pays Palestinian informants to provide it with information about planned attacks. Yet because of their cellular organizational structure, guerilla forces will hardly ever be susceptible to bribes (or, indeed, to any military force) that cause their total defeat. Decentralization means that to be effective, bribery must be widespread, since each bribe recipient controls, at most, only those subordinates in his own cell.

<sup>25</sup>We are grateful to Eugene Kontorovich (personal communication on file with authors) for this suggestion and example.

them. Even when bribes are the best way to advance a country's overall politico-military agenda, they seem to be at odds with the military ethos, at least as it is understood in modern times.<sup>26</sup> Today's soldiers are trained to believe that their job is to advance their country's interests through the use of military strength. Such power can be used to deter an enemy attack, or, when necessary, to defeat the enemy in battle, but it clearly involves the force of arms or the threat to use such force. Chapter One of the US Army's "capstone doctrinal manual" begins with a quotation that stresses the central importance of "putting your young men in the mud" as a means of defining its vision of what the Army should do.<sup>27</sup> Put succinctly, "The Army organizes, equips and trains Soldiers to fight"<sup>28</sup> [and not to bribe].

Bribes represent the intrusion of soft "bourgeois" values—money, profits, greed, commercialism—that seem inimical to the warrior ethos that most armed forces work hard to inculcate in their personnel.<sup>29</sup> We suspect that military officials on the side likely to offer bribes might be opposed to doing so purely on the basis that it is not in keeping with their self-image, even if such bribes were in the interests of the country as a whole. We expect that this factor might be particularly strong in countries where the military exerts a significant influence on the

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<sup>26</sup>Historically, the widespread use of mercenaries and the tradition of compensating military forces *via* seized booty (rather than regular pay), suggests that at least some commercial values were not always considered at-odds with military virtue. Indeed, the warrior as proto-capitalist entrepreneur is a major theme of Redlich's (1965)'s massive study. Even in the early Modern period that Redlich discusses, however, there were contradictory views about the appropriateness of mixing money with warfare. McNeil (1987, at 105) writes that "the men who made [the ultimate] decisions about raising armies and planning campaigns were utterly out of sympathy with pecuniary calculations. War was an affair of honor, prestige, heroic self-assertion. To regulate it according to the grubby selfishness of bankers and moneylenders seemed fundamentally wrong to the majority of rulers and their ministers."

<sup>27</sup>The full quotation (from T.D. Fehernbach, THIS KIND OF WAR) reads  
You may fly over a land forever; you may bomb it, atomize it, pulverize it and wipe it clean of life—but if you desire to defend it, protect it, keep it for civilization, you must do this on the ground, the way the Roman legions did, by putting your young men in the mud.  
U.S. Army (2001), at 1.

<sup>28</sup>*Id.* at 6.

<sup>29</sup>Political Scientist David A. Baldwin (1971, at 34), noted that  
[n]egative sanctions have become psychologically linked with such characteristics as courage, honor, and masculinity. Soldiers, not diplomats, symbolize masculine virtues. The statesman who would use positive sanctions [i.e., bribes] risks being perceived . . . as soft, weak, or lacking in toughness. When the North Koreans seized the *Pueblo*, it was 'unthinkable' that President Johnson would offer to buy it back. National honor was at stake. It is 'honorable' to fight, but 'dishonorable' to buy one's way out of a fight.

political system.

Of course, the apparent use of bribes during the second Gulf War demonstrates that this bias, if it exists, can be overcome under some circumstances. If the problem is that bribes are considered “un-military,” the obvious solution is to designate intelligence agencies or other non-military branches of the state as the offerors. But bribery may have a bad odor even in these institutions.<sup>30</sup>

Bribes are typically shrouded by secrecy, and the obvious rationale for concealing them is to protect the recipients against retaliation by their countrymen. Another reason for secrecy, however, might paradoxically be to forestall potential opposition from the *bribing side*. Bribing countries can use institutional separation to overcome potential military opposition to the deployment of “commercial” techniques in warfare.<sup>31</sup>

#### 2.1.4.3. Secrecy and Accountability

A final agency cost problem posed by the use of bribes arises from the lack of accountability associated with such payments. Opposing generals presumably do not provide notarized receipts stating that they have received X dollars, in exchange for which they have agreed to perform certain specified actions. If such moneys are to be paid, therefore, they will usually be disbursed on a highly informal basis. This inherent lack of accountability means that it will often be difficult to be sure that the funds designated for bribes to opposing generals do not end up in the pockets of those on the bribing side who are supposed to be mere conduits for the money.<sup>32</sup> The

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<sup>30</sup>Writing during the Vietnam war, Baldwin (1971) suggested acerbically that “the contemporary mores of statecraft seem to make it more moral to drop napalm on a man to prevent him from becoming a Communist than to bribe him to do the same thing.” *Id.* at 33. (In this context, of course, opposition to bribery may have been based as much on a judgment about its inefficacy as on its perceived immorality.)

<sup>31</sup>This is not a perfect solution since it could easily lead to coordination problems. For example, generals might end up attacking opponents who have already agreed to surrender. It is possible, however, that once the bribe is a “done deal” it may be easier for military officers to live with it and if so, ex post, they may be informed of bribe recipients. We discuss additional secrecy issues in Section 2.2.

<sup>32</sup>Jon Nordheimer (1985) reported on the trial of former Air Force General Richard B. Collins, who was accused of “converting \$19,000 in interest from . . . [a] secret \$450,000 Air Force fund to his own use while he managed the fund.” The funds were designated “to finance various Air Force spy operations.” Such off-the-books operations are obviously difficult to monitor and control. A more notorious example of the diversion of covert funds comes from the Iran-Contra affair, an operation (conducted in contravention of Congressional authority) in which funds from secret weapons sales to Iran were routed to support the opposition to the Nicaraguan government. Col. Oliver North played a key role in this complex series of transactions, and at least according to Arthur L. Liman (1998),

Adolfo Calero, the head of the Contras, . . . had given some \$100,000 in traveler's checks belonging to the contras to North. . . [presumably as a kind of kick-back for

payment of bribes therefore has a high potential for fraud or abuse by intermediaries on the bribing side, which tends to make bribery more costly as a means of warfare.

## 2.2. Identification and Negotiation Costs

Transaction costs are an obvious impediment to bargains between warring parties. A country seeking to bribe enemy generals must first be able to identify the potential recipients and conduct negotiations with them. (Ultimately, of course, both parties must somehow make their promises to perform credible: we consider these issues in Section 2.3, *infra*.)

An obvious problem with trying to bribe one's opponents is that it is difficult to identify the appropriate "targets" or offerees for a bribe. One solution might be to make public or "at large" offers, such as by posting an offer on an official website.<sup>33</sup> Such a "mass mailing" approach has some important virtues. First, it makes it substantially easier to identify the relevant persons who are willing and able to trade military non-performance for money. Second, it might lower the amounts the briber must pay by creating competition among potential recipients. Third, public offers could have the effect of demoralizing the enemy; such offers may make enemy generals suspicious of their peers, and, in the extreme, could lead to either to cleansing campaigns that weaken the opponent's army or to the kind of tipping we discussed earlier. Moreover, by making offers semi-public, offering countries might enhance the enforceability of whatever deals are struck.<sup>34</sup> Finally, open offers would presumably help reduce the accountability issues we discussed earlier, since offerors would be committed to providing money based on the terms of the public offer, with less discretion vested in the hands of unsupervised intermediaries.

Yet the fact that we are not aware of any such open offers seems to suggest that the costs of this strategy outweighs the benefits. What might such costs be, and why are they apparently considered so large that secret offers are the uniform practice?

One possibility is that open offers of bribes are likely to spur a crackdown by the security forces of the recipient country, a reaction that could increase the probability of exposing bribe recipients. This is not necessarily a cost to the offering side, however. Crackdowns by the security forces of the potential recipient can themselves be useful to the bribe-givers if they cause

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brokering the deal]. Richard Secord, one of the Iran-contra conspirators, . . . used Enterprise funds [Enterprise being the designation for the operation to move money to the Contras] to pay for a security fence around North's home and [said] that North created false documents showing that he [North] was the one who'd paid for the fence.

<sup>33</sup>The U.S. government's Rewards for Justice program has paid out more than \$62 million (as of June 1, 2007) for information related to preventing terrorist attacks. There is a \$25 million reward for "information leading to the location, in any country," of Usama bin Laden or several of his key aides. See, [http://www.rewardsforjustice.net/english/index.cfm?page=Bin\\_Laden](http://www.rewardsforjustice.net/english/index.cfm?page=Bin_Laden).

<sup>34</sup>As we point out in Section 3.3, US courts have refused to grant enforcement of secret contracts for espionage or other services affecting foreign policy, which has the effect of making bribes less attractive to recipients. But partially-public contracts—e.g., with offers posted on a website—might be sufficiently distinguishable to permit enforcement.

demoralization, suspicion, accusations against innocents, and so on. Another possible downside to public offers is that if they are unsuccessful, they could provide a propaganda victory to the receiving side by demonstrating that the potential bribe recipients are actually loyal to the regime from which the offerors are trying to wean them away.<sup>35</sup>

We suspect, however, that the main justification for shunning public offers is the desire to keep them secret from rank and file soldiers and from the general public *on the bribing side*. Imagine being a soldier in the trenches somewhere who learns that the enemy general you have been gearing up to fight has been given \$2 million by the government that has sent you into battle, and is using the money to retire to a life of luxury in Monte Carlo. The general public might be expected to react similarly to the use of tax moneys for this purpose.

Consider, for example, the headline “Millions for defense, not one cent for tribute.” This was how contemporary newspapers lauded American diplomats’ refusal to pay a bribe to be allowed to meet with the French foreign minister to negotiate over the return of US ships seized by France in 1797.<sup>36</sup> Of course, there are many context-specific factors that make it difficult to generalize from an example such as this. But we suspect that arguments for the cost-effectiveness of bribery (rather than fighting) will probably not carry much weight with most citizens or soldiers, and the risk of a backlash against a bribery program—with an attendant loss in morale—is one of the strongest reasons for keeping offers secret.

Given the practice of secrecy, a country seeking to use bribes must expend resources on identifying and verifying potential recipients. As in many markets, search costs are probably asymmetric. (It is generally easier for workers to locate firms with job openings than it is for firms to locate interested and qualified workers; similarly, in attempting to secure permission for reproduction of copyrighted material, it is easier for copyright holders to find Google than for Google to find the widely-dispersed copyright holders.) Hence, we would ordinarily expect potential bribe recipients to disclose themselves to (solicit bribes from) potential offerors, rather than vice-versa.

Naturally, not all enemy personnel are similarly situated in terms of their ability to affect the outcome of a war. The optimal bribe recipients are those who are in charge of forces defending important posts or strategic targets. Of course, commanders occupying such positions are presumably chosen for their loyalty to their regime. This implies that the most desirable recipients of bribes may often be the least likely to accept them. It also means that a country seeking to use bribes must proceed with caution, since contacting the wrong person could result in loss of lives, false information, or a “deal” that the recipient has no intention of honoring. There are also classic adverse selection concerns: when potential recipients decide whether to come forward and identify themselves by soliciting bribes, offerors must worry that those expressing a willingness to accept bribes are the least-valuable among potential recipients.

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<sup>35</sup>One wonders whether the relative lack of significant results from the Rewards for Justice program has perhaps strengthened the position of the groups being targeted.

<sup>36</sup>The famous line has often been attributed to Charles Pinckney, an American envoy to France. However, Pinckney’s response to the request for a bribe was actually, “No, no, not a sixpence.” See, William Stinchcombe (1977). The import of the remark is obviously unchanged, however.

Once potential recipients have been identified, it is possible to proceed to the negotiations phase. Here too secrecy presents a major cost. While it is true that modern communication technologies, such as cell-phones and the Internet may facilitate private communications with bribe targets, they do not reduce negotiation costs to zero. The existence of special forces units, who can operate behind enemy lines and verify the identities of bribe recipients, negotiate in person, and deliver or pick-up sensitive documents, can serve as a useful complement to communications technology.

## 2.3. Enforceability

### 2.3.1. *Extra-Legal Enforceability*

Both offerors and recipients of bribes face an extreme version of the commitment problem that bedevils many contractual arrangements. When the two sides' performance are not completely synchronized (one party must perform, or sink unrecoverable costs, before the other does), the second party will sometimes have an incentive to renege on its end of the bargain. For example, if the recipient of a bribe is paid up-front for a promise not to order his troops to fight in the future, he may find it in his interest to collect the money but keep on fighting regardless of his commitment not to do so. The reverse is also true—if a commander surrenders first, in exchange for a promise of funds after his side has been defeated, the offeror will have relatively little incentive to pay when the time comes. Since neither side can credibly commit to keeping its end of the bargain in the future, both parties may stay out of “deals” which would be in their mutual interests if enforcement were certain.

Moreover, most of the normal mechanisms for preventing such commitment problems are unavailable in the case of bribes. For example, parties often rely on the threat to terminate a valuable relationship to prevent opportunistic behavior such as taking the money and then refusing to perform.<sup>37</sup> But since there are few, if any, long-run relationships between members of opposing military forces, there is correspondingly little ability to use the threat of terminating the relationship as a means of securing performance.

Similarly, it is a commonplace that a reputation for keeping one's word can also serve as a credibility-enhancing device, since opportunistic behavior will cause a loss of a capital asset—reputation for honesty—that can be immensely valuable in dealings with other parties. Again, however, reputational concerns are of relatively little importance in secret, one-shot transactions.

A combination of trusted third parties, technology allowing for rapid communications, and a high probability of victory might alleviate the enforceability problem to some extent, however. For example, the offeror could deposit the money with a trusted third party (e.g., a Swiss bank) and give the offeree an opportunity to verify unconditional and irreversible payment. This should mitigate the recipient's fear of non-payment. A high probability of victory should attenuate the offeror's concern that the recipient will take the money and run: once the offering country gains possession of the enemy's territory, it can seek out the offeree and punish him for defecting, or

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<sup>37</sup>Benjamin Klein and Keith Crawford (1981) model how the possible loss of surplus from repeat play can motivate parties to perform contracts, even in the absence of judicial enforcement. Based on interviews with businesspersons, Stewart Macaulay (1963) also argues for the importance of relationship-preservation (and reputation) in securing good behavior.



retaliate against his family or kin.

### 2.3.2 *Legal Enforceability*

In this subpart, we discuss the legal enforceability of bribes both under public international law and under U.S. law. We show that while international law does not bar the use of bribes, the U.S. Supreme Court, by declaring secret contracts with foreign agents unenforceable on public policy grounds, has erected a potentially serious obstacle for bribe-paying.

#### 2.3.2.1. Public International Law

In its relevant part, public international law is organized around the distinction between perfidy and ruses of war.<sup>38</sup> Article 37(1) of the Additional Protocol I of the Geneva Convention declares it illegal to “kill, injure or capture an adversary by resort to perfidy.” The article defines perfidy as “[a]cts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.” Examples of perfidy include the feigning of an intent to negotiate under a flag of surrender or the feigning of incapacitation or non-combatant status. However, in order to constitute perfidy, the aforementioned acts must be “a proximate cause of the killing, injury or capture of the enemy (W. Hays Park [2003]).

By contrast, public international law recognizes the legitimacy of ruses of war (Hague Convention IV, Annex art 24; J.M. Spaight [1911]). Article 37(2) of the Protocol specifically provides that “ruses of war are not prohibited.” The article defines ruses of war as “acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under the law.” Examples of acts or measures that come within the category of ruses of war include the use of spies and secret agents, the inducement of enemy soldiers to desert, surrender or rebel, and (at least according to the U.S. Army) even the use of bribes (Department of the Army (1956), at 22 para. 49).

The Army’s position on bribes is probably correct. Bribes are not intended to instill false confidence in enemy soldiers in order to later kill or injure them. On the contrary, as we have explained, the effect (if not the purpose) of bribes is to spare life and avoid harm to persons and property. Of the various means of warfare, bribes are by far the least lethal and destructive. Therefore, international law should have no reason to ban bribes. As we shall see in the following subsection, however, the U.S. Supreme Court has recently adopted a position with dramatically different consequences for the use of bribes.<sup>39</sup>

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<sup>38</sup>This distinction apparently originates in chivalric law. See, Thomas C. Wingfield (2001).

<sup>39</sup>We note in passing that bribery by the US military is also not covered by the Foreign Corrupt Practices Act., which was designed to control the commercial operations of U.S. businesses, not the federal government. The Act “criminalized the bribery of foreign officials by U.S. corporations and individuals pursuing business in other countries and required that companies with publicly-traded stock meet certain standards regarding their accounting practices, books and records, and internal controls” (Andrea Dahms & Nicolas Mitchell (2007), at 605-06).

### 2.3.2.2. U.S. Law

Most readers will probably assume, as we initially did, that secret bribes paid to foreign commanders could not possibly be legally enforceable as contracts, at least in American courts. Surprisingly, these contracts might well have been considered legally binding, at least until relatively recently. Yet in two decisions, *Tenet v. Doe* (544 U.S. 1 [2005]), and its antecedent, *Totten v. United States* (92 U.S. 105 [1876]), the Supreme Court has ruled that secret contracts implicating national security could not be adjudicated in US courts.

The Does were (apparently) a husband and wife who were diplomats for an unnamed Eastern European country. After approaching the CIA in an effort to defect to the US, they were recruited to serve as spies, in return for which they were promised “travel to the United States and . . . financial and personal security for life.” The Does apparently performed their end of the ‘bargain,’ and once they arrived in the US, they were initially taken care of by the CIA. After several years, however, Mr. Doe lost his job, and the CIA refused to provide him with further assistance. When the couple sued for breach of contract, the Agency argued that courts had no power to hear the case or grant a remedy.

The Supreme Court agreed, citing *Totten* for the proposition that “public policy forbade a self-styled Civil War spy from suing the United States to enforce its obligations under their secret espionage agreement” (*Tenet*, 544 U.S., at 1). The *Tenet* court thus denied that there was any remedy at all for breach of a secret government agreement with a covert agent. Although *Totten* had earlier recognized the President’s power to authorize secret deals of this kind, it had also concluded that

[b]oth employer and agent must have understood that the lips of the other were to be for ever sealed respecting the relation of either to the matter. *This condition of the engagement . . . is implied in all secret employments of the government in time of war, or upon matters affecting our foreign relations, where a disclosure of the service might compromise or embarrass our government in its public duties, or endanger the person or injure the character of the agent.* If upon contracts of such a nature an action against the government could be maintained in the Court of Claims, whenever an agent should deem himself entitled to greater or different compensation than that awarded to him, the whole service in any case, and the manner of its discharge, with the details of dealings with individuals and officers, might be exposed, to the serious detriment of the public (*Totten*, 92 U.S., at 106-107 [emphasis added]).

*Totten* and *Tenet* together seem to imply that a secret “contract” for sensitive services, the existence of which might implicate national security concerns, is voidable at will by the US Government. As such, it is in some sense no contract at all, since it is binding only as long as the promisor wishes to be committed to its terms.

Although bribes paid to foreign generals not to oppose US forces might be distinguishable from bribes paid to espionage agents, it is hard to see the basis for this distinction. *Totten* seems to apply to “*all* secret employments of the government in time of war, or upon matters affecting our foreign relations” (emphasis added), which on its face extends to bribes paid to foreign generals. In some sense, moreover, the issue is not whether bribes paid to foreign generals would be found unenforceable *per se*. Rather, the issue is whether foreign generals would reasonably worry that their “contracts” would be unenforceable if the US were to change its mind. The

holdings in *Totten* and *Tenet* do make such worries reasonable, even if the situations might somehow be distinguishable.

It seems clear, then, that from an ex ante/contractarian perspective, *Totten* and *Tenet* were wrongly decided. Both cases make it more difficult for the US government to credibly commit to the terms of any covert deals it enters into with foreign military figures. Of course, quasi-public bribes, such as the “playing cards” used to denote insurgent leaders for whom we were offering rewards, can probably overcome the secrecy that blocks enforcement according *Totten* and *Tenet*. But public rewards face problems of their own, as we noted earlier, and anything that makes performance of the money-for-surrender “contract” less certain makes bribes less attractive to the recipient, and hence undermines the efficacy of bribery as a form of warfare.<sup>40</sup>

### 3. FACTORS ARGUING AGAINST THE USE OF BRIBES

In this Part, we consider possible objections to the use of bribes. We focus on the effect of bribes on domestic morale and the ex ante effects of bribes on armies decisions to initiate armed conflict and on how to fight them.

#### 3.1. Domestic Morale?

One drawback of using bribes to induce enemy forces to surrender is the potential cost in morale on the offeror’s side. Paying the enemy large sums of money not to fight—even if it saves lives on the side offering the bribe—could reduce the willingness of the offeror’s own soldiers to continue fighting. Part of what allows a country to conduct war in the first place is a shared sense that the enemy is worth opposing, and a shared commitment to defeating the opponent. If instead of vanquishing its enemy, a country were to selectively buy-off the opposing forces, it would doubtless strike many as unjust. Allowing Nazi generals or leaders of Saddam Hussein’s Republican Guard to escape defeat and punishment and to retire unmolested to Switzerland as millionaires would strike many as wrong, and could easily undermine the conviction necessary to sustain a fighting force. These “demoralization” costs might be experienced either by soldiers themselves, or by the civilian population. In either case, using bribes could be counterproductive for the bribing country.

More generally, bribery seems to be inimical to the definition of virtue cultivated by military cultures the world over. A culture focused on heroism, valor, armed prowess, and similar virtues is at odds with the kind of bourgeois commercial mentality associated with using bribes.

An obvious remedy for these kinds of problems is secrecy. If soldiers (and the general public) in the bribing country never learn about the offer of bribes—or only learn after the end of the conflict—the possibility for a negative effect on the conduct of the war is essentially eliminated. (There might nevertheless be a retroactive political backlash against such policies.) Bribes cannot be kept secret from everyone, but by designating a non-military agency (such as

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<sup>40</sup>Of course, other countries may not have *Tenet*-like precedents, so bribe-recipients might be able to turn to other fora to seek enforcement of covert agreements not to fight. And in light of *Tenant* and *Totten*, the US might simply respond by offering larger up-front payments to compensate for the risk of subsequent unenforceability. (Such up-front payments have problems of their own, however, the most obvious being that they increase the cost of the bribe, and raise issues about possible non-performance by the recipient.)

the CIA) to offer bribes, their secrecy from most of the military can be preserved, and their demoralization costs can be minimized.

### 3.2. Ex Ante Effects?

A second set of possible drawbacks to the use of bribes is that they may lead to undesirable ex ante effects. For example, a country that developed a widespread reputation for paying-off its enemies to go away when attacked, rather than fighting back, might run the risk of becoming a target for extortion.<sup>41</sup> This kind of dilemma confronted some weak but wealthy regimes during the medieval era, as we noted earlier, but we know of no actual instance in modern times when one country declared war on another just be paid to go away; and such behavior seems rather implausible. Conversely, bribery could also have perverse effects in the other direction: by making war cheaper to wage, the widespread use of bribery could conceivably increase the incidence of warfare. This, too, strikes us as implausible. In most cases, the savings from bribery will be quite small in comparison to the overall costs of war, especially because, as we noted already, bribes are a complement to military strength rather than a substitute for it.<sup>42</sup>

On the other hand, the presence of bribery does open up various possible distortions in decision-making at echelons of the military below the national level. Consider, for example, the report that Chechens offered bribes to Russian soldiers to spare their villages during the fighting in Chechnya.

In the Chechen village of Kater-Yurt, locals say they paid a top Russian military official about 150,000 rubles (\$5,555) and a big-screen television as a bribe to spare their homes from shelling and looting. In another village, Kulary, locals say they offered up tribute of basic foodstuffs, including sugar, meat and flour. And in Achkhei-Martan, locals say bombs rained down on their homes until someone passed the hat around the community and

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<sup>41</sup>A version of this scenario is described in Leonard Wibberley (1955)'s satirical novel *THE MOUSE THAT ROARED*, in which the tiny and backward Duchy of Grand Fenwick declares war on the US in order to lose, thereby making it eligible for Marshall plan-like reconstruction assistance.

<sup>42</sup>Moreover, clever use of bribes can forestall some of the moral hazard problems they might otherwise create. Bribes can be structured so as to create a kind of prisoner's dilemma that eliminates most of the incentive to solicit them by extortion. Suppose, for example, that there are four enemy divisions. The offeror could announce that it will randomly bribe only two divisions and refuse to accept the surrender of the other two, so that there is no net ex ante incentive to go to war in the first instance. We thank Ian Ayres for this insight (personal communication).

As Ayres points out, this strategy faces some credibility problems, however, since the offeror must commit to actually fighting the unbribed divisions, rather than merely accepting their surrender. Otherwise, the ex ante incentive is not eliminated. But it may not be optimal (or legal) to refuse to accept the surrender of the unbribed divisions when the time to do so comes around, which makes the entire deal non-credible. Ayres (1997) offers an extended treatment of the difference between bribes and extortion (in the context of judicial bribery), which is relevant in this context.

gathered an unspecified amount for a bribe—and once it was paid, the shelling stopped (Yevgenia Borisova, [2000]).

In a regime with weak control over its military (and impoverished soldiers), it is not hard to imagine that soldiers might be lead to deliberately extort bribes from selected targets, or to deviate from approved strategic goals in order to shake-down a village or a wealthy individual. For example, it is possible that Achkhoy-Martan was attacked not for any valid strategic reason, but simply so that the villagers could be induced to pay to stop the shelling.<sup>43</sup> This possibility strikes us as not so much a reason to oppose bribes, as to require a tight chain of command that restricts such behavior as much as possible.

Finally, while bribes may sometimes have undesirable ex ante effects, it is vital to distinguish between bribes paid to a country ‘as a whole’ (or its commander in chief) to dissuade it from pursuing its objectives (as in the case of Roman bribes to Alaric or Sieneese bribes to Hawkwood’s company), and bribes paid to subordinates to induce *defection* from the pursuit of these objectives (as in US bribes to Iraqi generals). For example, it has been suggested—in some cases facetiously—that the West should have bought out Saddam Hussein, rather than invading Iraq in the second Gulf war.<sup>44</sup> Others have opined that rather than threatening to attack North Korea, the US should simply offer money to the Korean government to give up its nuclear weapons.<sup>45</sup> These kinds of bribes might produce an unwelcome “supply side” response, however, encouraging other nations to develop such weapons so that they too can be paid-off. But paying subordinates to defect from their superiors’ plans should have the exact opposite supply side effect: these bribes make attacks more difficult to sustain, and would thus deter, rather than encourage, potential attackers.

## CONCLUSION

Economists have explored in great depth the “make or buy” choice faced by firms deciding whether to vertically integrate or to purchase inputs on the open market. In this Essay, we have sought to highlight the presence of a “destroy or buy” dilemma confronted by politicians and generals in times of war.

Carl Von Clausewitz famously noted that “war is nothing but the continuation of politics by other means.” Implicit in this statement is that war is of a piece with the negotiation and deal-making that are at the heart of politics. But even if war represents a kind of bargaining failure, it is worth remembering that partial bargaining can dramatically reduce the costs of military

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<sup>43</sup>We hasten to add that we have no evidence that this actually occurred, and are simply speculating.

<sup>44</sup>Keith Hartley (n.d.) proposed that we should have paid \$20 Billion to Saddam Hussein to leave Iraq, instead of invading. Gary Brecher (2006), writing as War Nerd, makes a similar proposal, tongue-in-cheek, as does Mark Kleiman (2007).

<sup>45</sup>James D. Miller (May 2003) points out that paying-off North Korea might encourage other countries to develop nuclear weapons, or to threaten do so, so that they too could get paid off. Even if that did occur, paying other countries to drop their atomic weapons programs might not be as costly as the alternatives, Miller concludes.

campaigns. We have demonstrated that under plausible circumstances, such partial bargaining is possible, and moreover, that it can outperform traditional weaponry as means of deciding military campaigns.

Bribes to enemy commanders can sometimes determine the outcome of wars without spreading devastation and risking collateral harms, and can do so at a lower cost than traditional weapons, or even their “smart” counterparts. In addition, the use of bribes can lower acrimony and resentment between the warring parties, and thereby facilitate future cooperation. We have also delineated the limitations of bribes. Bribes will not be as effective in campaigns against guerilla forces (but neither will conventional warfare), and are likely to be less effective when the enemy shares a strong ideological or religious commitment. Yet, our analysis reveals that bribes have been used in military campaigns throughout history. More importantly, perhaps, it establishes a *prima facie* case to increase their use in the future.

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