Bribes vs. Bombs: An Essay on Coasean Warfare

Gideon Parchomovsky
Peter Siegelman

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Bribes vs. bombs: A study in Coasean warfare

Gideon Parchomovsky\textsuperscript{a,b}, Peter Siegelman\textsuperscript{c,*}

\textsuperscript{a} University of Pennsylvania Law School, Philadelphia, PA, United States
\textsuperscript{b} Faculty of Law, Bar-Ilan University, Ramat Aviv, Israel
\textsuperscript{c} University of Connecticut School of Law, 65 Elizabeth Street, Hartford, CT 06105, United States

\textbf{ABSTRACT}

Warfare is often thought of as the antithesis of Coasean bargaining over entitlements because armed conflicts consume real resources whose destruction could be avoided by negotiated solutions. We argue that fighting and negotiating are not mutually exclusive methods of resolving disputes between nations—there can often be a useful role for bargaining between a state and agents of its enemy, even when armed conflict has broken out between opposing states. We evaluate 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 US 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.

1. Introduction

To an economist, warfare, like strikes or litigation, represents a failure of Coasean bargaining. Rather than fighting over disputed entitlements (which consumes real resources), an efficient solution to disputes between states entails negotiation, which—whatever its costs—is invariably far less destructive than armed conflict. We argue, however, that fighting and negotiating are not mutually exclusive methods of resolving disputes between nations: there can often be a useful role for bargaining between a state and agents of its enemy, even when armed conflict has broken out between opposing states. Even in the presence of such conflict, some of the efficiency gains of bargaining can still be realized by using bribes as a weapon of warfare.

This is not a purely theoretical insight: 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). 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 (Andrews, 2007; Bremer, 2007; Slevin, 2003).

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 likely grow in importance. In 2005, the US 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.”

In this essay, we examine the efficacy, efficiency and legality of bribes as a means of warfare. We demonstrate that bribes can 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 war.\(^2\) On the other hand, the use of bribes to conduct warfare does have some potential drawbacks, including possible adverse supply side effects and the potential for “blowback” (recipients’ use of funds they receive to combat the bribe-payers). We analyze the conditions under which bribes dominate 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 critically 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 suggest, even rumors about widespread bribing alone can help achieve victory through a kind of “tipping” phenomenon, much like the mechanism Schelling (1978) used to model residential segregation. Finally, bribes may arguably minimize negative long-term effects of war, lowering the probability of long-term animosity and retaliation by the enemy population.

Bribes are more of a complement than a substitute for military might, however. A country without a strong army cannot effectively employ bribes, since it cannot enforce any deal it enters into. The absence of enforceability means that enemy generals will be tempted to pocket whatever bribes they receive from their weak opponent and continue to fight. Thus, bribes will likely 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 US reportedly employed bribes in the second Gulf war but not, for example, in the conflict with Grenada.

Moreover, bribes will not work equally well in all military conflicts. Ideology and patriotism affect the efficacy of bribes, although with an indeterminate sign. Generals are unlikely to accept bribes from an enemy whose ideology conflicts with their own strongly held religious beliefs or cultural values. Collier’s quantitative evidence (2007, Ch. 2) suggests that ideological motivations are relatively unimportant compared to pecuniary ones – at least in contemporary civil wars in poor countries – which seems to offer widespread scope for bribery. Bribes are also likely to have difficult-to-anticipate third-party effects that caution against their indiscriminate application. But conventional warfare also results in unintended consequences, and it is not clear that on net, these are likely to be more severe with bribes than with the application of military force.

One might also wonder whether the use of bribes is legal. 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.”\(^3\) 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 p. 22, para. 49).

Ironically, it is US 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 bar foreign agents from enforcing the terms of their secret contracts with the government in US courts. This decision undermines the ability of the US government to credibly commit to perform its obligations to bribe recipients, and thus reduces the incentives for enemy generals to enter such deals. Hence, we conclude with a call to reverse this decision.

In Section 2 of the article, we explore the efficiency gains generated by the use of bribes and review various historic examples of bribery in times of war. In Section 3, 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. Section 4 analyzes the case against the use of bribes.

2. Bribes vs. bombs

2.1. The gains from bribery

2.1.1. Inefficiency of warfare generally

Although there will sometimes be groups within a country that manage to realize gains from war, it is clear that warfare is almost inherently wasteful. Powell (2006, p. 168) follows the general assumption and ignores within-country distributional issues when he writes that

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\(^2\) Startlingly, Miguel and Roland (2006, p. 30) 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.’” Other studies find the same kind of results for Japan and Germany in the aftermath of World War II (Brakman, Garretsen, & Schramm, 2004; Davis and Weinstein, 2002). 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.

\(^3\) 1977 Protocol I Additional to the Geneva Conventions of 12 August 1949, Art. 37. This might include, for example, use of a false flag of truce to obtain a military advantage. Although the US is not a party to Protocol I, the distinction between ruses of war and perfidy is traditional, and Protocol I is apparently fairly reflective of the status of customary international law.

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Because 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 unsuccessful negotiations in litigation, the existence of war can thus be seen as a kind of bargaining failure. 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 (Britto & Intriligator, 1985; Powell, 2006).

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 US 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 bargaining between states – sets the stage for our analysis of bribery.

Of course, agreements between a state and the military leaders in its enemy’s army are bet on by some of the same kinds of enforcement problems that plague agreements between states themselves. But as we suggest below, it may be easier for a state to strike an enforceable agreement with an individual military leader on the other side than it is to reach 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.

2.1.2. 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. Some bargains do have consequences for non-parties, however, and hence may not be efficient. In the standard analysis of corruption, for example, an agent accepts a bribe from someone to go against the principal’s interest.

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. It is thus unlikely that bribing generals to surrender leaves nobody worse off than war, although doing so may produce welfare gains for both countries taken as a whole.

A government contemplating bribes as a substitute for fighting should see two significant advantages to their use. First, bribes that prevent fighting will 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 Bilmes and Stiglitz’s (2006) recent estimate of the cost to the US of the Iraq war, the human capital costs loom especially large. Of the overall $2 trillion cost that they estimate, roughly 15% is attributable to human capital losses, including lost lives and injuries to soldiers. By forestalling fighting, bribes can obviously reduce these personnel costs.

Besides their savings in direct costs to the briber, there is a second 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. Even cruise missiles sometimes go off course and strike civilian targets, and precise targeting of other weapons is difficult. Avoiding unnecessary harm to civilians is not only a key element of the law of war, it is an obvious moral imperative as well.

2.1.3. Are bribes effective?

Moreover, it will often be advantageous for a country to achieve victory at the lowest cost in enemy lives or material. 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. 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 affect public opinion in the victorious country, and may cause support for the cause to dwindle. Bribes may thus offer an effective way to decide military campaigns without visiting devastation on the enemy.

2.1.4. 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 Schelling (1978) first modeled in the context of residential segregation.

Consider General X in country A, a potential recipient of a bribe from A’s military opponent. X’s willingness to fight rather than accepting a bribe depends on the probability that A will win, and on the costs to X of fighting (whether or not A wins). Both of these depend on (X’s beliefs about) what other generals in A’s army are doing. If X believes Y and Z are taking bribes and won’t fight, A’s probability of victory falls and X’s costs of fighting increase, since X has to bear a larger share of whatever fighting does occur.

5 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.” Of course, that isn’t necessarily literally true: as a referee suggests, bribes can have third-party effects if, for example, a bribed general’s defection leads to soldiers’ deaths.

6 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.

7 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.
Suppose, for example, that each general would choose to fight if he believed that 95% of other generals will make the same choice and would otherwise surrender. This means that bribing a mere 6% of the generals – and making this information known – could lead all the generals to surrender. Such 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. Similar dynamic reasoning appears to have been at work in the (unsuccessful) recent British efforts to bribe Taliban leaders in Afghanistan. The British apparently believed that the successful use of force against Taliban leaders would soften the opposition and make it more receptive to bribes, which could then presumably yield further defections.8

Since generals will always be uncertain about whether or how many of their sympathizers have accepted bribes, even the rumored use of bribes may weaken the resolve of unbribed generals to keep fighting. And of course if enlisted men could be led to believe that the officers are taking bribes to surrender, this could likely 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, just as if he believed Y and Z had been bribed. There is a significant difference in the informational requirements of bribes and bombs, however. Bribes leave no trace, so X might 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. There is, of course, some tension between keeping bribes secret and using the rumor of bribes to sow further defections, since the more public the bribes are, the more “tipping” they encourage.9

2.2. The historical background

The use of bribes in warfare has not received any systematic treatment that we know of.10 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).

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.) And of course, our survey was only able to uncover the use of bribes that had somehow become public. We suspect that many more bribes have been offered and accepted than have become part of the public record.

A second theme, related to the first, is the apparent dishonor involved in both 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 Gibbon (1781/1994), Alaric “consented to raise 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.11 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.

Bribes 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

8 “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). We discuss possible reasons why this did not occur below.

9 A referee suggests an alternative possibility: Regime A’s generals are all ready to take bribes. Fearful that this will occur, the regime executes one of them, which changes the others’ calculations. Such a threat could drive the remaining generals into the arms of the other side; but it might also be the case that the threat to execute bribe-recipients is credible, and drives up the amount required by A’s generals beyond what the opponents are willing to pay.

10 Even Shubik and Verkerke’s (1989) 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 traced the rise of such secrecy, e.g., role of private entrepreneurs in early modern European military history, Redlich, (1965, p. 270), notes that “[between 1500 and 1800] ... warfare was business, like piracy and colonization.” McNerl (1982) discusses similar issues over a broader chronological and geographical span. Noonan’s (1984) 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” (p. 694).

11 It is important to keep in mind the difference between bribing principals (Alaric, Sienna) and bribing agents (US/Iraqi generals in Gulf War). As we discuss below, the two types of bribes are likely to have different ex ante effects.
### Table 1
Chronological summary of evidence on military bribes.

<table>
<thead>
<tr>
<th>Event</th>
<th>Description</th>
<th>Comments/source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peloponnesian Wars</td>
<td>Several references in Thucydides to the use of bribes in warfare</td>
<td>Thucydides</td>
</tr>
<tr>
<td>Sack of Rome</td>
<td>Alaric the Visigoth accepted a lavish payment to lift his siege of Rome in 409</td>
<td>He returned the next year and sacked the city (Edward Gibbon, 1781/1994)</td>
</tr>
<tr>
<td>Italian City States vs. Mercenary Bands, 14th century</td>
<td>Several city-states paid-off groups of freelance mercenaries not to attack them</td>
<td>Payments were usually not successful, as mercenaries returned to demand more money (William Caferro, 1996)</td>
</tr>
<tr>
<td>Mexican-American War, 1846–1848</td>
<td>Allegation that General Scott paid Mexican General Santa Ana $10,000 to surrender</td>
<td>Allegation made by a political rival, and seen as very damaging to Scott’s honor. Scott denied that such bribe was paid (New York Times, 1857)</td>
</tr>
<tr>
<td>Mexican Civil War, 1858</td>
<td>New York Times reports that rebel leader Dobladó, in command of Salamanca, was paid to surrender by the Government</td>
<td>“The name of Dobladó will go down as one of the most despicable in Mexican history” (New York Times, 1858)</td>
</tr>
<tr>
<td>Cuban revolution, 1898</td>
<td>New York 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.”</td>
<td>Evidence is unclear (New York Times, 1898).</td>
</tr>
<tr>
<td>World War I</td>
<td>Autobiography of Dutch aircraft designer Anthony Fokker reports that British offered him £2MM to leave Germany and design planes for them</td>
<td>Offer was never received, and recipient only learned of it later (New York Times, 1931)</td>
</tr>
<tr>
<td>World War I</td>
<td>Prime Minister David Lloyd George, was prepared to spend £25 MM (£200 MM in today’s value) to bribe Turkey into pulling out of World War I in the waning months of the campaign</td>
<td>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)</td>
</tr>
<tr>
<td>Italian/Ethiopian War, 1936</td>
<td>New York 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</td>
<td>Evidence unclear (New York Times, 1936). See also Angelo Del Broca (1969)</td>
</tr>
<tr>
<td>World War II</td>
<td>US General McArthur received $500,000 from Filipino leader on the eve of his retreat from the Philippines</td>
<td>Purpose of payment unclear, but most likely designed to secure personal friendship between McArthur and Filipino President Quezon (Richard Eder, 1980)</td>
</tr>
<tr>
<td>World War II</td>
<td>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</td>
<td>Bribes unsuccessful. Italian invasion of Greece was met with strong resistance, and failed before German assistance was called in (Bradley Lightbody, 2004)</td>
</tr>
<tr>
<td>World War II</td>
<td>Germany secretly bribed its own generals to continue fighting: every field 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% increase over regular salary)</td>
<td>Norman J.W. Goda (2000)</td>
</tr>
<tr>
<td>Vietnam, 1965</td>
<td>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.”</td>
<td>D. Wolfson (1965)</td>
</tr>
<tr>
<td>Mozambique, 1990s</td>
<td>UN and others paid substantial sums to “re-integrate” ex-guerillas by dispersing them to their home areas and essentially buying off their opposition to unfavorable election results</td>
<td>Daniel Levine (2006)</td>
</tr>
<tr>
<td>Afghanistan, 2007</td>
<td>Britain paid out more than £1.5 million to Taliban leaders to surrender as part of a “peace-strengthening scheme.”</td>
<td>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)</td>
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misery, was constrained to buy its freedom 37 times between 1342 and 1399 (Caferro, 1996, pp. 796–797).

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. (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 Greek 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 inability of the British and 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, as was apparently true of the bribes used in the second Gulf war.

3. 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 during warfare. 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 reach a bargain.

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.

3.1. Factors influencing willingness to accept or make offers

3.1.1. 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, 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 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.

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 could have been easily bribed by Iran precisely because their religious ideology was at odds with that of the ruling Iraqi Baath regime.

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.)

3.1.2. 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 probably increases with a country’s wealth because opponent’s surrender is likely to be 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 than in the United Arab Emirates, where per capita GNP was 22 times higher. This should make willingness to accept a bribe higher for poorer countries.

12 Kuntzel (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 superiors of these soldiers to induce them not to fight would not have been effective.

13 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 “criticized 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’.”
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.

3.1.3. 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. 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 US probably saw no need to offer bribes, since the outcome was a foregone conclusion. In the second Gulf war, however, the US 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 (already high) 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.

3.1.4. Agency costs and supervision

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

3.1.4.1. 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 be unwilling or unable 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 might suggest that guerrilla forces would be difficult to bribe because they often adopt a decentralized (cell-like) or flat (egalitarian) organizational structure. Combined with their small size, this would seemingly make guerilla forces less subject to agency slack. This kind of diffuse organizational structure could be a factor (among others we discussed) in the failure of the British attempt to bribe Taliban leaders.

Shapiro and Siegel (2007) offer intriguing counter-evidence (and theory), however, which suggests that since terrorist groups operate in environments where monitoring is virtually impossible, low-level operatives have significant opportunities to skim funds from financial transactions. They provide case studies showing that leaders sometimes deliberately underfund terrorist operations because the costs of skimming by subordinates are so great. This perspective suggests that at least low-level terrorists should indeed be bribeable, although a decentralized organizational structure implies that bribery can only achieve limited success, and makes operatives difficult to locate.

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 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.

3.1.4.2. 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 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. 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 of 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 (US Army, 2001, p. 1). Put succinctly, “The Army organizes, equips and trains Soldiers to fight” (and not to bribe. Id., p. 6).

Bribes represent the intrusion of soft, bourgeois values – money, profits, greed, commercialism – that seem inimical to the war-

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14 But note the example of 14th 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.

15 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 (Goda, 2000).

16 We are grateful to Eugene Kontorovich (personal communication on file with authors) for this suggestion and example.

17 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) massive study. Even in the early Modern period that Redlich discusses, however, there were contradictory views about the appropriateness of mixing money with warfare. McNeill (1987, p. 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”.

18 The importance of “putting your young men in the mud” as a means of defining its vision of what the Army should do (US Army, 2001, p. 1). Put succinctly, “The Army organizes, equips and trains Soldiers to fight” (and not to bribe. Id., p. 6).

Bribes represent the intrusion of soft, bourgeois values – money, profits, greed, commercialism – that seem inimical to the war-
rior ethos that most armed forces work hard to inculcate in their personnel. 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 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 “unmilitary,” 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. Writing during the Vietnam War, for example, 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.”

(The opposite, of course, is that the military might have been based as much on a judgment about its inefficacy as on its perceived immorality.)

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 sometimes use institutional separation to overcome potential military opposition to the deployment of “commercial” techniques in warfare.

3.1.4.3. 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. The 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.

3.2. 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. 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. 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 such open offers seem not to be used suggests that the costs of this strategy may outweigh 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 demoralization, suspi-
cions. 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.

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 a soldier in the trenches somewhere who learns that the enemy general he has been gearing up to fight has been given $2 million by the government that has sent him into battle, and is using the money to retire to a life of luxury in Monte Carlo. The public might be expected to react similarly to the use of tax moneys for this purpose.

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. (For example, 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.

Once potential recipients have been identified, the payment of the bribe must be negotiated. Here too secrecy presents a major cost. While modern communication technologies, such as cellphones and the Internet may facilitate private communications with bribe targets, they scarcely 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 thus serve as a useful complement to communications technology.

3.3. Enforceability

3.3.1. Extra-legal enforceability

Both offerors and recipients of bribes face an extreme version of the commitment problem that bedevils many contractual arrangements. When one party must perform, or sink unrecoverable costs, before the other does, the second party will sometimes have an incentive to renge 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 that 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. 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 retaliate against his family or kin.

3.3.2. Legal enforceability

While international law does not bar the use of bribes, the US Supreme Court, by declaring secret contracts with foreign agents unenforceable on public policy grounds, has erected a potentially serious obstacle for bribe-paying.

3.3.2.1. Public international law. In its relevant part, public international law has since chivalric times been organized around the distinction between “perfidy” and “rules of war” (Winfield, 2001). 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]ct[s] 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 feigning the intent to negotiate under a flag of surrender, or 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” (Park, 2003).

By contrast, public international law recognizes the legitimacy of rules of war (Hague Convention IV, Annex art 24; Spaight, 191). Article 37(2) of the Protocol specifically provides that “rules of war are not prohibited.” The article defines rules 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 rules 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 US Army) even the use of bribes (Department of the Army, 1956, p. 22 para. 49).

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24 Klein and Leffler (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, Macaulay (1963) also argues for the importance of relationship-preservation (and reputation) in securing good behavior.
The Army’s position on bribes is probably correct in the context of war.25 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 will usually be to spare life and avoid harm to persons and property. Of the various means of warfare, bribes seem by far the least lethal and destructive. Therefore, international law should have no reason to ban bribes.

3.3.2.2. US 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. However, 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 cannot 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 employment agreement” (Tenet, 544 US 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 might deem himself entitled to greater or different com-

pensation 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 question 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/contractual 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 Iraqi 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. (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.)

4. Factors arguing against the use of bribes

In this section, we consider possible objections to the use of bribes. We focus on the effect of bribes on domestic morale, the ex ante effects of bribes on armies decisions to initiate armed conflict, and the possible unintended consequences of bribery.

4.1. Demoralization

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. Selectively buying-off opposing forces, instead of vanquishing them, would doubtless strike many as unjust. If Nazi generals or leaders of Saddam Hussein’s Republican Guard could escape defeat and punishment and retire unmolested to Switzerland as millionaires, this might undermine the conviction necessary to sustain a fighting force. Such 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.

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
4.2. 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 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. 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 to 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 might conceivably increase the incidence of warfare. This, too, strikes us as implausible. In most cases, the savings from bribery would 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.27

Finally, while some bribes may 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), 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.28 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.29 These kinds of bribes might produce an unwelcome supply-side response, however, encouraging other nations to develop such weapons so that they too could be paid-off. But paying generals to defect from their country’s service should have the exact opposite effect: these bribes make war more difficult to sustain, and would thus deter, rather than encourage, potential attackers.

4.3. Blowback

Another possible disadvantage of bribes is their potential for unintended long-term consequences, a phenomenon colloquially known as “blowback.”30 For example, Iraqi generals who received bribes during the second Gulf war might have used their newly acquired wealth to retire to a life of leisure in Monte Carlo. But they could also have decided to use the money they received to buy weapons and create their own private armies so as to destabilize whatever government emerges in the wake of the US occupation. Analogously, the weapons and military training provided by the US in aid of the Afghan mujahedeen’s efforts to resist the Soviet occupation of Afghanistan subsequently ended up helping to create and empower groups such as the Taliban and Al Qaeda.

Of course, overt interventions and the use of force invariably have unintended consequences as well. And in some cases, such as the democratization of the Iraqi army after the second Gulf war, it has been the failure to pay bribes that has apparently generated substantial negative effects.31 A purely military victory may sometimes achieve better long-term consequences than a victory won by a combination of bribery and the use of force; but there is little or no reason to think this is usually the case, and some good reasons to believe otherwise. We recognize, however, that buying the cooperation of enemy soldiers is not the same as buying a quart of milk at the local grocery store. The possibilities for unintended consequences are much larger in the military context, so bribes must be used with the same kind of wisdom and judgment that are required of conventional warfare if they are to be successful.

5. Conclusion

Even though war represents a kind of bargaining failure, it is worth remembering that partial bargaining can dramatically reduce the costs of military campaigns. Under plausible circumstances, such partial bargaining is possible, and can sometimes outperform traditional weaponry as means of deciding military campaigns.

Bribes to enemy commanders can help determine the outcome of wars without spreading devastation and risking collateral harms, and may 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 guerrilla forces (but neither will conventional warfare), and are likely to be less effective when the enemy holds a strong ideological or religious commitment. Bribes have been used in military campaigns throughout history, albeit not always successfully. More importantly, perhaps, we establish a prima facie case to increase their use in the future.

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37 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).

38 Hartley (n.d.) proposed that we should have paid $20 Billion to Saddam Hussein to leave Iraq, instead of invading. Brecher (2006), writing as War Ner, makes a similar proposal, tongue-in-cheek, as does Kleiman (2007).

39 Miller (2003) points out that paying-off North Korea might encourage other countries to develop nuclear weapons, or to threaten to do so, so that they too could get paid off. Even if that did occur, paying other countries to drop their atomic weapons could also have decided to use the money they received to buy weapons and create their own private armies so as to destabilize whatever government emerges in the wake of the US occupation.

40 Political scientist Chalmers Johnson (2000) uses the term, broadly, to characterize the unintended consequences of US covert intervention in other countries.
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