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Corruption was not a problem at the beginning of history. Rather than use bribes, people made "offerings" to their gods and leaders in the hope of receiving favors. In a sense, such reciprocities provided a social glue that allowed cultures and civilizations to develop. But with civilization came religious and civil institutions that needed rules of fairness and good governance to ensure the loyalty and trust of the populace. Kings and pharaohs had to demonstrate that the rule of law was above the influence of greasy palms. Thus began the distinction between gifts and bribes.

After presenting the Ten Commandments to Moses on Mount Sinai, God instructed the Israelites not to take *shohadh*, which is loosely translated from Hebrew as "offering."

> You shall not take *shohadh*, which makes the clear-eyed blind and the words of the just crooked. (Exodus 23:1-3, 6-8)

Given that the Old Testament was breaking new ground, it was only natural that this distinction started a bit ambiguously. However, even after several millennia of lawyers trying to define bribery, a certain amount of haze shrouds the issue.

There are records of bribes and bribery laws from ancient times. Archaeologists have recently found an Assyrian archive which is 3400 years old that listed the names of "employees accepting bribes." An Egyptian pharaoh, Horemheb (1342-1314 BC), issued the first recorded law of a secular penalty for bribetaking. The Edict of Horemheb proclaimed that any judge who took a reward from one litigant and failed to hear the adversary was guilty of a "crime against justice" and subject to capital punishment. His threat apparently did not stop the practice of bribing the judiciary from spreading beyond Egypt.

The Greek historian Pausanius relates that before beginning each Olympic Games, all the umpires, athletes, their relatives and trainers swore over boars' flesh that they would uphold Olympic rules intended to prevent corrupt activity. Similar to present times, not everyone played by the rules. Pausanius recorded in his *Description of Greece* (5.21.5) that Calippus of Athens bought off fellow competitors with bribes, as did many other contestants. This practice continued unabated until the Roman Emperor Theodosius eventually abolished the Olympic Games in 394 AD because of rampant corruption and brutality.

As for the Romans' view of bribery, Shakespeare may have captured it best when Brutus said to Cassius in *Julius Caesar:*

> Remember March; the ides of March remember.
> Did not great Julius bleed for justice sake!
> What villain touch'd his body that did stab
> And not for justice? What, shall one of us,
> That struck the foremost man of all this world
> But for supporting robbers – shall we now

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Contaminate our fingers with base bribes
And sell the mighty space of our large honours
For so much trash as may be grasped thus?
I had rather be a dog and bay the moon
Than such a Roman.
(4,3, 19-30)

People's view of corruption has evolved and become more negative as the institutions of government have developed. Instead of being ambivalent about the giving of gifts to officials in a position of public trust, modern society has enacted and prosecuted laws that make such payments illegal. Over time, a bribe has come to mean "an inducement improperly influencing the performance of a public function meant to be gratuitously exercised." (For an illuminating history of bribes, please refer to J. T. Noonan, BRIBES (1984).) Even though it is usually opposed on moral grounds, bribery has become a legal concept analyzed and prosecuted by lawyers. Thus in understanding how the world has grappled with corruption, one must consider the history of bribery laws.

For King and Country (And a little bit for me, too)

Francis Bacon was one of the most brilliant lawyers, judges, and philosophers in English history. He was also one of its most corrupt Lord Chancellors. Bacon was first Solicitor General, then Attorney General, and finally, in 1618, Lord Chancellor. Even though he was an extremely capable jurist who honestly and fairly dispensed justice, he was too detached and philosophical to take notice of the bribes flowing to his servants who used his good office to benefit themselves. Caught up in the byzantine politics of the court of King James I, Bacon was accused of accepting bribes to affect cases in the Court of Chancery. His enemies in Parliament impeached him with twenty-three charges of bribery and corruption. Bacon first replied with a qualified admission of guilt. The House immediately rejected his submission, whereupon Bacon caved in: "I do plainly and ingenuously confess that I am guilty of corruption, and do renounce all defence."

Sir John Trevor was probably the most corrupt Speaker in the history of Parliament. The East India Company was rumored to have bribed him to exert influence over laws affecting it. He also apparently accepted a large payment from the City of London Corporation. Indeed, a House Committee investigation discovered a written record of the City's instructions and an endorsement of the payment to Trevor. The Members of Parliament drew up a resolution in 1694 which convicted the Speaker of a "high crime and misdemeanour." Ironically, it was the responsibility of Sir John, as the Commons Speaker, to put the motion to the House, which he did in a shameless way. The motion was overwhelmingly acclaimed and Sir John slunk out of the House of Parliament. He did not return but rather sent a sicknote to the House who responded by expelling the Speaker. (These and other stories can be found in Matthew Parris, GREAT PARLIAMENTARY SCANDALS (1995).)

The English common law first dealt with foreign bribery in the trial of Warren Hastings who went to India at eighteen as a clerk of the East India Company and quickly rose through the ranks until he was appointed the British Governor of Bengal in 1772. During his tenure as Governor, he amassed a great fortune that could not be accounted for by his salary alone. Edmund Burke, a member of the House of Commons, accused the Company of great abuses in India and gradually those accusations focused on Hastings, who allegedly received large bribes while Governor. As a result of his investigations, Burke and his fellow Parliamentarians drafted Articles of Impeachment against Hastings that asserted various abuses of authority constituting "high crimes and misdemeanours" including "Corruption, Peculation and Extortion." After winning the support of the House of Commons, the impeachment trial of Hastings commenced in the House of Lords in 1787. *See* Peter J. Marshall, THE IMPEACHMENT OF WARREN HASTINGS (1965).

The leading case of the time (1725) concerned Thomas Earl of Macclesfield, a Lord Chancellor who was accused of selling jobs in Chancery. In that case, the House of Lords held that the sale of an office which related "to the administrations of justice" was not an offense at common law. This was reflected in the definition of bribery provided by Blackstone in his COMMENTARIES ON THE LAWS OF ENGLAND of 1765. A bribe was a crime committed by "a judge or other person concerned in the administration of justice." The definition was thus restricted to acts involving a judicial decree or its execution. By 1769 the law had expanded to make the offering of money for a government office a crime. In this environment, Hastings launched his defence which consisted of showing that he had not offered any money himself as bribes and that any presents he had received were not for himself but for the Company. To be on the safe side, he also launched personal attacks on Burke throughout the trial. Hastings' strategy was successful and resulted in the Lords deciding on April 23, 1795, after seven years of deliberation that he was not guilty. It would take another 180 years before anyone would again try to prosecute an act of foreign bribery. However, the next attempt would be in America rather than England.

New Law in the New World

America has a long tradition of being concerned about corruption. Public offices have been bought, judges were monetarily influenced, and the nation's infrastructure was sometimes built on the back of bribes. But America is a country where government is expected to be for the benefit of the people. Public officials and their decisions were not to be bought and sold by a few wealthy individuals or corporations. Bribes were seen as immoral and against the founding principles of the United States of America. Something had to be done about corruption and lawmakers were more than willing to fill the breach. A multitude of approaches was thus pursued to address the problem.

The U.S. Founding Fathers clearly had corruption on their minds when they drafted the Constitution. Their first concern was Executive Branch corruption but they expanded the concept to include the Judiciary. The mechanism they built into the Constitution to remedy this problem was impeachment. The Constitutional Convention of 1787 first specified that the grounds for impeachment would be "Treason, Bribery, or Corruption." They later dropped "Corruption" as superfluous but added "other high crimes and misdemeanours" using the language from the *Hastings* trial in Parliament. This amendment supposedly provided Congress sufficient flexibility in the future to prosecute corrupt judges and Presidents. Unfortunately, the Constitution did not provide that Congressional members were subject to impeachment based upon the argument of James Madison that it was harder to corrupt a multitude than an individual. How wrong he proved to be! Bribing Congressmen became a national pastime. Eventually, Congress passed An Act to Prevent Frauds upon the Treasury of the United States in 1853 which made it illegal to bribe a member of Congress. It was not used much (possibly because of its misleading title). Indeed, during the first 150 years of the American Republic, no high ranking government leader was convicted for bribery. The Teapot Dome Scandal in the 1920s changed this complacency.

Albert Fall, Secretary of the Interior, arranged for the awarding of leases to two oil companies in 1922 in the Navy's oil reserves at Teapot Dome, Wyoming, and Elk Hill, California. After receiving many complaints, the Public Lands Committee of the Senate investigated and thereafter declared that the procurement of the leases had been "essentially corrupt." Apparently, Edward Doheny of Pan-American Petroleum made Secretary Fall a cash loan of $100,000 delivered in "a little black bag" on which neither principal nor interest was collected, and the alibi of Harry Sinclair of Mammoth Oil Company was that he bought an interest in Fall's ranch. The Supreme Court unanimously cancelled the leases as "corruptly secured" and the oil companies were forced to pay back over $47 million. All three were tried for conspiracy to defraud the United States but were acquitted. However, former Secretary Fall was convicted of bribery even though he argued that if the oilmen were innocent of giving a bribe, he could not be guilty of taking one. Fall was eventually sentenced to a fine equal to the bribe and served one year in jail. *See* Burl Noggle, TEAPOT DOME: OIL AND POLITICS IN THE 1920'S (1962).

American legislators continued putting in place a plethora of laws that comprehensively extended the criminal law of bribery to almost every class and occupation imaginable. There was the Anti-Racketeering Act of 1934 and the Hobbs Act of 1946. This preoccupation with bribery continued unabated until the Nixon administration in 1970 produced the most comprehensive federal statute ever designed against bribery – the Racketeering Influenced and Corrupt Organization Act (or RICO). This statute was enacted in response to the growth of organized crime but its greatest effect was to make bribery a federal offense and to give broad powers to district attorneys to prosecute anyone engaged in a "pattern" of bribes.

There was also a long history of laws meant to stop the abuses of campaign financing. President Teddy Roosevelt first pushed for the enactment of the Tillman Act of 1907 after the president of Standard Oil claimed that he had given the Republican Party $125,000 in cash which had never been returned. The law prohibited corporate directors from using stockholders' money for political purposes and was meant to be "an effective method of stopping the evils aimed at in corrupt practice acts." This phrase had been popular for some time. The English Parliament had enacted a Corrupt Practices Act in 1883. The U.S. Congress enacted the Federal Corrupt Practices Act of 1910, which required the reporting of all contributions to national elections. This statute was amended several times, but its enforcement was infrequent, resulting in ambivalence about campaign contributions. The situation did not change until 1972 when the Federal Corrupt Practices Act was repealed and the Federal Election Campaign Act was enacted, resulting in taxpayers being permitted to deduct contributions to presidential campaigns. The government in effect had legalized payments to campaigning politicians rather than encourage potential bribes.

Throughout this period, all of the industrialized countries and most of the developing world had their own laws which made the bribery of public officials illegal. England had the Public Bodies Corrupt Act of 1889 and the Prevention of Corruption Acts of 1906 and 1916. Countries such as Canada, Denmark, France, Germany, Italy, the Netherlands, Spain, and Switzerland had prohibited the bribery of public officials under their respective Criminal Codes for many years. Some, such as France, as early as 1810. But similar to the United States, all these laws addressed the bribery of domestic officials, i.e., judges, politicians, and government officials within the country's boundaries. No one ever contemplated looking beyond their own borders. All that changed as a result of some unrelated but extraordinary events investigated by several committees of the U.S. Senate.

A Leap into Foreign Waters

In 1972 the Democratic National Committee headquarters located at the Watergate complex in Washington, D. C., was burglarized. The Senate formed a select committee the next year to investigate the burglary and found that many U.S. corporations had made illegal contributions to Richard Nixon's Committee to Re-Elect the President. The result was that fifteen prominent corporations pleaded guilty to making illegal campaign contributions and were fined. One of the corporations, Gulf Oil, provided an amazing report to the Senate committee that detailed an elaborate overseas network to siphon political bribes back to the States and to other countries. Gulf had apparently distributed more than $5 million to influential politicians from overseas bank accounts over the years. *See* THE GREAT OIL SPILL (1976).

On February 3, 1975, Eli Black, the Chairman of United Brands Corporation, jumped to his death from a New York skyscraper. The Securities and Exchange Commission (SEC) investigated and discovered that his corporation, the largest American banana producer, had paid $2.5 million to senior politicians in the Honduras. The SEC successfully sued the company for securities fraud since the payments were not reported in the financial accounts of United Brands. During the same period, a military coup ousted the President of the Honduras. As a result of the United Brands' investigation and concerns around the Gulf Oil report, the SEC sent a questionnaire to U.S. companies and asked them to reveal any "questionable payments" made by them abroad. Based upon this survey, the SEC published a report showing that over 400 U.S. companies, including 117 of the Fortune 500, had made "questionable payments" totalling more than 300 million dollars.

In June 1975, Senator Frank Church and his Subcommittee on Multinational Corporations were investigating a recent price rise of Arab oil and had called upon Northrop Corporation, a major supplier of aircraft to Saudi Arabia, to provide evidence. Northrop admitted paying bribes through a Saudi agent, Adnan Khashoggi, using the "Lockheed model." After hearing this statement and seeing the questionnaire from the SEC, the auditors of Lockheed Aircraft Corporation decided that they would only certify the company's accounts if Lockheed's corporate officers signed statements that all payments to consultants were in accordance with contracts and properly recorded. As it turned out, Lockheed had been engaged in a massive program of overseas bribes to government officials who bought their planes. Its officers refused to sign the statements. It quickly became public knowledge that Lockheed was going into its stockholders' meeting with unaudited financial statements. This caught the attention of Senator William Proxmire, Chairman of the Senate Banking Committee, who immediately convened an investigation into Lockheed. The day before the Senate Committee began its hearing, the company's treasurer shot himself dead. Undeterred, the Senate Banking Committee opened its investigation on August 25, 1975. The Committee found that Lockheed had paid hundreds of millions of dollars through consultants to government officials in Saudi Arabia, Japan, Italy, and the Netherlands. When asked if he had paid a one million dollar bribe to Prince Bernhard of the Netherlands, the president of Lockheed, A. Carl Kotchian, replied:

> I think, sir, that as my understanding of a bribe is a quid pro quo for a specific item in return….I would characterize this more as a gift. But I don't want to quibble with you, sir.

It appeared that even a sophisticated jet-setting business executive was unable to distinguish a gift from a bribe.

Upon further examination, the Banking Committee found that as many as nine different American laws were criminally violated by a bribe paid abroad, including the Internal Revenue Code, the Foreign Assistance Act, the Bank Secrecy Act, the Travel Act, and RICO. However, these statutes had only been peripherally violated. To the great chagrin of the Committee, no specific law explicitly prohibited an American from paying a bribe overseas. Something had to be done to prevent the abuses perpetrated by Lockheed, Gulf Oil, and others so inclined. Senator Proxmire's Committee thus recommended that a new law be enacted to prevent overseas bribery based on their reasoning that (1) foreign governments friendly to the United States had come under "intense pressure from their own people," (2) the "image of American Democracy" had been "tarnished," (3) confidence in the financial integrity of American corporations had been impaired, and (4) the efficient functioning of capital markets had been hampered.

After very little debate in either the House or Senate, both Houses unanimously approved the Committee's bill on December 7, 1977, and President Carter subsequently signed it into law on December 19, 1977. The Foreign Corrupt Practices Act (or FCPA) was thus born. This law was the first of its kind in the world. A new era of global bribery prevention had begun. The United States, like no other country before it, had decided to make the payment of bribes to foreign officials illegal and imposed rigorous record keeping requirements on U.S. companies and their overseas subsidiaries to ensure that bribes could not be hidden. However, when the dust settled and the United States surveyed the global landscape, it found itself standing alone.

All For One and One For All

American companies immediately recognized that they were at a disadvantage to their foreign competitors. They would thereafter constantly claim that they lost overseas contracts because they could not pay the bribes that foreign companies allegedly did. (This view has been reinforced in some recent studies. *See* U.S. Department of Commerce, UNCLASSIFIED SUMMARY OF FOREIGN COMPETITIVE PRACTICES REPORT (Oct. 12, 1995); James R. Hines, Jr., FORBIDDEN PAYMENT: FOREIGN BRIBERY AND AMERICAN BUSINESS AFTER 1977 (Nat'l Bureau of Econ. Res. Working Paper No. 5266, 1995). The American government believed that its companies were competing on an unlevel playing field and therefore began seeking multilateral co-operation on global bribery.

The United States has advocated changes in the bribery laws of other countries in two primary areas. The first is to criminalize the bribery of foreign officials. This reflects the debate held in the U.S. Senate when it approved the FCPA in 1977. At that time, Congress chose the stringent approach of criminalization over the option of only requiring public disclosure of foreign payments on the grounds that it was too lenient. The second area is the elimination of the tax deductibility of bribes. The U.S. government was concerned that other governments such as France and Germany allowed their corporations to deduct such payments against their income tax and thus tacitly approved the practice.

The first attempt to change international bribery law on a multilateral basis was at the United Nations (U.N.) and was wholly unsuccessful. The U. N. Economic and Social Council completed a draft agreement known as the International Agreement on Illicit Payments in 1979.

This draft document outlawed all bribes to public officials, including the "grease" payments exempted under the FCPA. The Council of the General Assembly took no action to convene a conference to conclude and formalize it, despite strong efforts to do so by the United States.

Having failed at the United Nations, the U.S. moved to another forum, the Organization for Economic Cooperation and Development (OECD). The American government lobbied the OECD in 1981 to implement an illicit payments agreement. However, several countries expressed the view that differences among their legal systems would make such an agreement difficult to implement. Another attempt was made at the insistence of Congress when they amended the FCPA in 1988. Nothing resulted from either of these efforts. *See* U.S. Department of State, ILLICIT PAYMENTS: PAST AND PRESENT U.S. INITIATIVES.

The multilateral approach of the U.S. government was shelved at that point. There were a variety of unilateral attempts to extend the territoriality of the FCPA even farther beyond U.S. borders. Senator Russ Feingold introduced Bill 576 in 1995 which would have prohibited certain U.S. trade assistance agencies from aiding U.S. subsidiaries of foreign corporations, unless the director of the agency certified to Congress that the corporation maintained a company-wide policy prohibiting the bribery of public officials. Senator Hank Brown drafted a more far-reaching bill, the Foreign Business Corruption Act of 1996, to pressure foreign companies and countries. It provided for private rights of action with awards up to three times damages, allowed retaliatory actions against corrupt foreign governments on the basis of unfair trade barriers, and gave any U.S. person the right to bring action in a U.S. court against a foreign concern which violated a law of a foreign country that was substantially similar to U.S. legislation.

Neither of these bills advanced. One of the primary reasons was that the Clinton administration had decided in late 1993 to renew a multilateral effort. Since the Cold War had ended, the U.S. focused its attention on global economics and the problem of foreign bribes was given high priority in this new war. The American government carefully considered the supply and demand sides of the corruption equation in forging its strategy. It primarily focused on the supply side (or active part of bribery) and the multilateral organization that received most of its attention was the OECD.

The OECD Convention

In May 1994, a majority of the OECD countries agreed upon a suite of recommendations entitled OECD RECOMMENDATIONS ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS. However, it was not binding and was well below the objectives set by the United States. No specific measures were recommended; rather, it offered a broad list of “meaningful steps.” Subsequently, after intensive lobbying by the United States and after overcoming the resistance of some European countries (especially France), the OECD Council on April 11, 1996, approved a recommendation to eliminate the tax deductibility of bribes among its member states. At the next OECD meeting in May 1997, the American government pushed for a resolution committing governments to outlaw foreign bribery in their domestic legislation by the end of 1998 and to establish a monitoring system to ensure that it was being enforced. In opposition, France and Germany, with the support of Japan and Spain, maintained that “you need an international convention for criminalizing corruption, because the legal framework in each country is different." The U.S. and its supporters viewed this as a stalling tactic since such treaties take many years to negotiate and ratify.

After much negotiation, a compromise was struck. The ministers endorsed the REVISED RECOMMENDATION ON COMBATTING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS. They recommended that member countries would submit criminalization proposals to their legislative bodies by April 1, 1998, and seek their enactment by the end of 1998. The ministers also decided to open negotiations promptly on a convention to be completed by the end of 1997, with a view to its entry into force as soon as possible within 1998, and urged the prompt implementation of the 1996 recommendation on the tax deductibility of such bribes.

After six months of intensive discussions, all twenty-nine member countries of the OECD and five non-member countries agreed to sign the CONVENTION ON COMBATTING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS (the OECD Convention) in Paris on December 17, 1997, *reprinted at* 37 I.L.M. 1 (1998). This Convention provided the framework under which all the signatory governments undertook to prohibit and act against the bribery of foreign public officials on an equivalent basis without requiring uniformity or changes in the fundamental principles of each government's legal system. The OECD Convention entered into force on the 60th day following the date upon which 5 of the 10 countries with the largest shares of OECD exports, representing at least 60% of the combined total exports of those 10 countries, deposited their instruments of acceptance, approval, or ratification. Such ratification had to occur by December 31, 1998, to be binding upon all signatory countries. Canada's deposit of its instrument on December 17, 1998, met the pass mark and resulted in the OECD Convention's entering into force on February 15, 1999. At the time of writing, fourteen countries had deposited their instruments of ratification and the remaining signatory countries have publicly stated that they will complete their ratification process during 1999.

The Convention has a clearly defined scope. It provides that each government "shall establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business." The Convention makes it an offence for nationals of signatory countries to give a bribe to a foreign public official. In other words, it is directed against offences committed by the bribegiver and not the public official receiving the bribe.

Signatory countries have undertaken to make the bribery of a foreign public official punishable by effective, proportionate, and dissuasive criminal penalties. A foreign public official includes persons elected or appointed to hold legislative, administrative, or judicial office of a foreign country. It also covers Public Agencies, Public Enterprises, and Public International Organizations. Despite intense lobbying by the U.S., it is not an offence to make payments to political parties or officials of those parties.

The Convention provides that the bribe and its proceeds are subject to seizure and confiscation. Where more than one government has jurisdiction, they are required to consult with a view to determining the most appropriate jurisdiction for prosecution. Bribery of a foreign public official is considered an extraditable offence amongst the signatory governments.

All parties to the Convention have undertaken to cooperate in carrying out a program of systematic follow-up to monitor and promote the full implementation of the Convention. The OECD has recently set up a Centre for Anti-Corruption Compliance to provide information and training on anti-corruption laws. This Centre provides one of the most comprehensive websites available on foreign corruption at *www.oecd.org/daf/nocorruption/index.htm*. The commentaries on the Convention state that it is not an offense if the advantage was permitted or required by the written law or regulation of the foreign public official's country. Also, making small "facilitation" payments is not an offense since they are not payments made "to obtain or retain business or other improper advantage."

Without question, the OECD Convention is the most significant international treaty on foreign bribery up to this time. However, it is but one piece of the American strategy. At the urging of the U.S., the G-7 countries supported the recommendations of the OECD when they met in Lyon, France, in July 1996. The United Nations General Assembly also approved a resolution on "Action Against Corruption" in January 1997 and the Council of the European Union adopted a Framework Convention Against Corruption in May 1997. The U.S. has also worked closely with non-governmental organizations such as the International Chamber of Commerce (ICC) and Transparency International (TI).

In March 1996, the ICC approved and published its Rules of Conduct on bribery in international business transactions. These rules prohibit extortion and bribery for any purpose, not just to obtain or retain business, making them more stringent than the previous ICC Code published in 1977. The rules now cover extortion and bribery in judicial proceedings, tax matters, and environmental and other regulatory cases, as well as in legislative proceedings. (The ICC's website on extortion and bribery is *www.iccwbo.org/Commissions/Extortion_bribery/briberycom.html*).

Transparency International was founded in May 1993 with its headquarters in Germany. It is a not-for-profit, non-governmental organization that attempts to counter corruption in international business transactions. It does this through international and national coalitions which encourage governments to establish and implement effective law, policies, and anti-corruption programs. Each year, TI publishes a corruption index which lists the most and least corrupt countries in the world. It has also established a program called "Islands of Integrity" which attempts to arrange, in well defined markets, a pact among competitors to stop corruption simultaneously, by entering into an Anti-Bribery Pact. (For further details on TI, see its homepage at *www.transparency.de/index.html*).

The United States has not forgotten the demand side (or passive part) of bribery. It pursued the corruption agenda at both the Organization of American States (OAS) and the Asia-Pacific Economic (APEC) Forum. Its greatest success to date has been at the OAS. In a meeting held in Caracas, Venezuela, in March 1996, the OAS adopted an Inter-American Convention Against Corruption. Once again, the United States led the implementation of this convention, with strong support from several South American countries, including Venezuela. Colombia opposed the treaty's extradition provisions and Uruguay objected to the bank secrecy provisions. However, it was eventually signed by twenty-five OAS members and has been ratified by sixteen member states at the time of writing.

The OAS Convention provides that each country shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, residents, or businesses, to a government official of another state, of any article of monetary value or other benefit in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions. Such offenses shall be an extraditable offense in any extradition treaty existing between or among the countries. Countries shall also provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure, and forfeiture of property or proceeds obtained, derived from, or used in the commission of any offence established in accordance with the convention. (The OAS website on corruption can be found at *www.oas.org/EN/prog/juridico/english/fightcur.html*).

The U.S. government lobbied the APEC Forums that met in Manila in 1996 and Vancouver in 1997 to approve recommendations similar to those adopted by the OECD. Several Asian members of the APEC Forum publicly stated their misgivings about the U.S. proposal, citing cultural differences amongst the member economies. Nothing happened with this proposal, and it was quietly dropped.

The Clinton administration also pushed the corruption agenda in the multilateral organizations that govern world trade and dispense development funds, in particular, the World Trade Organization (WTO), the World Bank, and the International Monetary Fund (IMF). At the WTO's Singapore conference in December 1996, the United States, with support from Canada, the European Union, Japan, and nine other countries, proposed new public procurement rules that would criminalize bribes and require more transparency in the awarding of government contracts. As expected, resistance to the proposal arose from a variety of developing countries. A group led by Malaysia and including Indonesia, Thailand, Brunei, the Philippines, Bahrain, Zimbabwe, Cuba, Egypt, and Uganda argued that due regard be given to the national policies of each country.

At the end of the conference, the WTO issued a declaration creating a working group to study and develop a multilateral agreement related to government procurement and, in particular, to promote its transparency. (The status of the working group's progress is provided at *www.wto.org/wto/govt/working.htm*). The United States and the European Union have taken the view that an interim agreement on transparency emerging from this working group will eventually be upgraded into a full-blown agreement on government procurement practices to allow foreign companies access to government contracts equal to that of domestic companies. The U.S. Trade Representative Charlene Barshefsky stated, "The study on procurement is intended to be the first step toward an agreement on transparency practice in government procurement which should serve to reduce the influence of corruption." The EU Commission Vice-President Leon Brittan also confirmed, "Europe is determined to see the proposed study forming the basis of a wider multilateral agreement providing for non-discrimination in government procurement." *See* GOVERNMENT MUST RETAIN PROCUREMENT RIGHTS (Worldsource Online Inc., Feb. 18, 1997). Once the OECD Convention is fully implemented, we can anticipate that the signing of a WTO Convention on bribery will be a top priority and that a full assault will commence on bribetakers.

In 1996, the World Bank initiated a policy that required it to investigate complaints of corruption and if it found sufficient grounds, allowed it to blacklist companies and governments that participated in bribery. Under this policy, evidence of corruption could result in the cancellation of World Bank financing in a country and in the prevention of a bribing company from participating in contracts financed by the World Bank. The World Bank has made a clear public statement of its position in a report published in September 1997 entitled "Helping Countries Combat Corruption: The Role of the World Bank." The report states that bribes are one of the primary elements of corruption used to obtain government contracts and services and that poorly regulated financial systems permeated with fraud “can undermine savings and deter foreign investment. They also make a country vulnerable to financial crises and macroeconomic instability.”

The World Bank has begun to act against countries where it has found corruption in its projects. The bank stopped funding development projects in Nigeria and Zaire, and it has launched strict reforms to improve the monitoring of its money. The World Bank also suspended a $76 million loan to Kenya for energy development because it could not ensure that contracts would be awarded fairly and openly. Developing countries have to take these actions seriously since the World Bank finances about 40,000 contracts worth $25 billion each year. (Further details on the World Bank’s anti-corruption program can be found at *www.worldbank.org/html/extdr/anticorruption/).*

On a similar basis, the IMF has denounced corruption in developing countries. As part of its monetary policy, it has urged countries wanting to borrow from the IMF to institute anti-corruption reforms. The IMF has also acted closely with the World Bank against corrupt regimes. In August 1997, the IMF suspended a $220 million loan to Kenya because of a scandal in the gold and diamond export trade. The next month, the IMF put a $120 million loan to Cambodia on hold “because of problems in governance which concern corruption and logging.” As the IMF takes a leading role in resolving the financial crises of several Southeast Asian countries, it is imposing conditions on its loans that directly address corruption and bribery. South Korea has been forced to open its markets, curtail state-owned firms and crony capitalism, and make its financial systems more transparent. Thailand and Malaysia had to accept the same recipe and Indonesia was required to close sixteen loss-making banks, including one owned by former President Suharto's son. (The IMF’s position on dealing with corruption is provided at *www.imf.org/external/pubs/ft/exrp/govern/govindex.htm*.)

Despite such pressures, laws dealing with bribery in developing countries themselves haven’t changed much. Bribery laws in third world countries are often confusing and sometimes even contradictory. They tend not to reflect local customs and practice and are often ignored. When they are applied, it is often done arbitrarily and inconsistently. The punishment under such host country laws is usually severe and consists of imprisonment or fines and occasionally death. The punishment tends to apply to individuals only and not to corporations. For an investing company, the individuals most at risk are the company’s employees and representatives who work or reside in the host country.

Investing companies often face a dilemma with these laws. Whereas they try to conform to the requirements of the bribery laws of their country of residence, this may not necessarily translate into conformance with host country laws. One example is the defences or exceptions under the FCPA. Facilitating payments or reasonable business expenditures may not strictly be allowed in the host country’s law even though much greater sins are publicly practiced. These laws will undoubtedly change if a WTO convention on bribery is enacted, but in a way which is presently unknown.

Don’t Blame Uncle Sam!

One gets the impression that the American government has single-handedly changed corruption laws around the world, for which they can be commended (or criticized, depending on one's perspective). However, it is not the complete story. The United States has indeed been the primary catalyst in this tremendous change, but looking beyond its initiative there are a multitude of reasons that have converged to create wide and growing support for the prevention of bribery in foreign countries.

The United States has mounted a massive global campaign in every conceivable multilateral organization in the world. (The primary U.S. Government website on foreign corruption is found at *www.usia.gov/topical/econ/integrity/homepage.htm*.) A lot of this campaign is motivated by self-interest, but there is also a genuine desire to make the world a better place to do business. The U.S. government has relentlessly pursued the simple goal of having other countries' multinationals play by the same rules applicable to U.S. companies. Its strategy is clearly laid out in the 1996 Annual Report to Congress of the Trade Promotion Coordinating Committee. One of the Report's more novel ideas was the establishment of a hotline at the U.S. Department of Commerce for reporting bribery allegations. (This recommendation has not been implemented to the gratitude of scurrilous bribers around the world!)

There is a dawning realization that bribes eliminate competition, create inefficiencies, and ultimately cost countries and their consumers money. One only has to look at a list of the most corrupt countries and see that it is very similar to the list of the least developed countries in the world. It has been demonstrated that countries with high corruption have less investment and lower growth rates in their economy. *See generally* Paulo Mauro, WHY WORRY ABOUT CORRUPTION? (1997). The result has been growing support in international trade and development organizations for policies aimed directly at eliminating corruption.

The increasing speed and availability of global communication, e.g., CNN and the Internet, have resulted in growing dissatisfaction in many countries with politicians and public officials getting rich through corruption. This issue drives crowds onto the streets, overthrows governments, and imprisons politicians. The world has become a global village and corruption and bribery can no longer be easily hidden. People throughout the world are now getting access, like never before, to facts that impact their well being, and they are demanding change.

In an increasingly amoral world, it may seem odd to argue that today's moral standards demand the stamping out of corruption. But ultimately, morality is the fundamental argument against corruption. Bribery is a breach of people's trust. People find corruption shameful and repugnant and when confronted with corrupt public officials and their illicit gains, they invariably reject it. The difference today is that in the modern electronic world, it is more obvious when it happens and more difficult to deny it.

A lot has changed in the final quarter of this century with regard to global corruption laws. A positive and momentous step has been taken with the OECD Convention. However, one should not expect that the entire world will become pure and chaste in the next millennium. Indeed, some may argue that these new laws will only make multinational firms bribe more cleverly and government officials demand payment more subtly. But there is cause for optimism, since countries that are successful in eliminating this problem will in the end be the economic and political winners in the competition for global investment capital.

These laws will make a change for the good but they won't change everybody's behaviour. As Kin Hubbard, the American humorist, once said:

> "Honesty pays, but it doesn't seem to pay enough to suit some people."