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Folded Lies: Bribery, Crusades & Reforms

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BOOK REVIEW

FOLDED LIES: Bribery, Crusades & Reforms by W. Michael Reisman. New York: Free Press/McMillan. Biblio. Index. 1979. Pp. x 277. \$12.95 hardcover.

Rodolphe J. A. de Seife*

After having laboriously plowed through Professor Reisman's tedious prose, one comes away with a feeling of depression over the author's apparent philosophy of life. After having spent two summers with a grant from the Law Enforcement Assistance Administration (LEAA), one would think that Professor Reisman, a lawyer, would produce something more than what is essentially an uncritical inquiry into the seamier side of human behavior, *i.e.*, the hypocritical gap between law and its enforcement filled by rules of behavior to which only a few are privy. All of us will agree that the law is a part of the social sciences but, as lawyers, we would prefer not only to have more reference to actual cases with an explanation of why they do or do not resolve the all-pervasive problem of bribery, but also to be given a clue as to the possible solutions for bribery.

This somewhat pedantic treatise is not one that a layman will find easy to read. The style is often labyrinthic and written in a manner, alas, familiar to all too many lawyers.

According to Professor Reisman, bribery is part of the human system. He adopts a broad definition of bribery which includes every light deviation from the established enforcement norm and encompasses what we would call judgmental or sound discretionary decisions.

Bribery, seen in the light of this analysis, is part of an "operational code" used by the "doers in the real world." The "doers" have fabricated the myth system, of which our laws are but a part, to keep the rest of us satisfied with the *status quo*, the real "opium" of the people. This state of affairs may be unfortunate and its acknowledgment by the author cynical, but it is probably a substantially correct assessment of "what is." This does not resolve how we go about dealing with the problem of bribery, if it is a

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problem.

The answer to selective enforcement of the law, in my opinion, does not reside in acknowledging and accepting the fact that bribery and discriminatory enforcement of the law will be with us forever as it has always been. Essentially, all Reisman does is verify that "a photograph of four legs beneath the curtain of a voting booth" is Chicago's logo, as one local writer put it.¹ Whether bribery is legal or illegal, right or wrong, *Folded Lies* does not really tell us: all we get out of this reading is that it will be forever-more!

I, for one, view with a jaundiced eye the definition of law as part of the myth system. Again, Professor Reisman may be correct. He is, one may assume, a sophisticated and learned individual teaching law at Yale. Yet he is apparently more attuned to the research methodology of the general social sciences than to the scholarship of the law.

The theme of Reisman's research is not all that complicated. Reisman is saying that laws are created which some of us, the "operators", cannot or will not abide by, thus resulting in the need for an "operational code" which only the "in" people know about. This permits them to operate around the so-called myth system of which law is a part. Thus, the operators preach about free market and unfair advantage but do not really believe in these things, because the only way the system can work is if there is some kind of incentive for them, in the form of bribery, which permits the wheels of government to turn more efficiently.

There are, according to Reisman, three main forms of bribery: first, those that "speed up processes" which he calls transactional bribes, and which apparently are quite common and relatively harmless; second, those which keep certain things from happening and are called "variance bribes." This second type of bribe is in somewhat of a twilight zone. Third, the bribe by which one actually purchases an individual's loyalty for a particular length of time so that his services will not be rendered to the public or to the government, but rather to the briber. These are the so-called "outright purchases."

The book further states that the law, as part of the "myth system", might make some forms of bribery illegal, but that these laws have, in fact, very little bite in them: no reality, just myth. These laws encourage, of course, selective enforcement. One reads nothing in this book about that particular social disease, if it is

1. C.A. Kelson, *HOLY COW!* Chicago Magazine, July 15, 1980, at 110.

one. Rather, Reisman goes on to state that when the public outrage reaches the level of quasi-revolutionary mood, the manipulators in the establishment create "crusades" to satisfy the reform mood of the people, but these crusades are strictly designed for the benefit of the members of the establishment. These crusades are not true anti-bribery "reforms"; they do not change the operational code, but they satisfy the people's hunger for adherence to the myth system. Reform proposals are so designed as to give with one hand and take away with the other, being engineered *ab initio* to be ineffectual. "Reform" may yet occur when the public outrage verges on, or possibly culminates in, revolution. All this accomplishes is a change in the operational code as it now stands for the benefit of the members of the new establishment. As the French put it, "Plus ça change, plus c'est la même chose." In any event, with the whole machinery of power on the side of the operators' establishment, there is apparently not much that can be done except to wait for a total decay of the present social system from within. The result is its replacement by a new system that will be just as corrupt because this is the way humans do business.

I do not know whether or not to bemoan the fact that a law professor spends the taxpayers' money to support what is in essence a cynical verification of what people already "know" to be a fact. Some of us innocents thought, up to now, that law was meant to be enforced and that antiquated laws should be wiped off the books. We also thought that laws which cannot be enforced should not be enacted. To call the law part of the "myth system", without qualification, is shocking, and the author's cynicism, which becomes apparent through a careful reading of the book, gives the reader an empty feeling. There is very little "law" in this treatise, just an exposition of a rather shallow, if not simplistic, social science theory of what the law is all about. To that extent, Reisman's book should interest those of us who have an interest in jurisprudence since this appears to be a good example of the product of the self-styled "realist" school of thought. In terms of what the law is all about, or should be about, and what law professors should teach their students in a system which is already cynical enough, this book fails to make any constructive contribution.

At the other extreme we find William Safire's missionary philosophy, which may be equally simplistic: namely, that bribery is incompatible with democracy and honest competition (United States style), and that "American" ways and ideas should travel

arm-in-arm with American trade and power.² When all is said and done in such a contest of conflicting views, were I forced to choose, I would rather opt for the "bleeding hearts" as a better harbinger for the future of our civilization.

As lawyers, we cannot afford to become cynics. We should remain idealists, albeit "realistic idealists." It is our duty to make every effort to narrow the gap between Myth Systems and Operational Codes, not to set the defects of the system in stone.

A totally sterile and nonjudgmental inquiry into bribery, such as the one undertaken by Professor Reisman, falls short of meaningful scholarship. I believe that the author owes us the more important part of such a study: suggestions or indications as to how we are to narrow the schism between the law and its enforcement. That, I submit, is the real issue involved herein. The lawyer's creative role as a social engineer begins where that of the social scientist, as an observer of the human scene, ends.

2. *New York Times*, August 14, 1975 at 7, col. 1.