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The corporate legal profession's role in global corruption: obligations and opportunities for contributing to collective action

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Abstract

Key corruption issues, like lack of transparency in beneficial ownership and money laundering, are inherently transnational. They are facilitated by professional services, like corporate lawyers, who work with various standards, regulations, and global financial flows that can move the proceeds of crime across the world. This paper uses reflective equilibrium to analyze the tensions between the philosophical principles of complicity and collective responsibility and the principles found in the professional role of lawyers in society to reflect on the corporate legal profession's role in enabling corruption. Furthermore, this paper explores how these tensions can be addressed and how lawyers can be situated in anti-corruption collective action theory and practical collective action initiatives. For example, the legal profession has a collective obligation to maintain and self-patrol the profession's ethics, primarily through their regulating authorities, and it should be considered to what extent these authorities are promoting anti-corruption standards or reprimanding lawyers who are complicit in corrupt acts. There is also an opportunity for corporate lawyers to use their role in society to develop more collective action initiatives to address issues of transnational corruption, which may include enforcing a higher collective standard in providing advice or advocating for legislators to fix regulations and promote legislation that addresses corrupt practices.

Keywords Corruption · Corporate lawyers · Collective action · Complicity · Moral responsibility

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Introduction

Several global scandals, including the Panama Papers leak[1], the Pandora Papers leak[2], and the 1MDB scandal[3] have shined a glaring light on the corporate legal profession's facilitation of corruption and money laundering. These scandals have also brought attention to the broader ways the global financial system and the global legal system are implicated in allowing corrupt people to move illicitly gained funds around the world (Barrington et al., 2022a; Barrington, 2021; International Bar Association & Organization for Economic Co-operation and Development, 2019; Judah & Sibley, 2018; Organization for Economic Co-operation and Development, 2021). Professional services within these systems, like corporate lawyers, work with various standards, regulations, and global financial flows and can move proceeds of crime across the world. Furthermore, key corruption issues, like lack of transparency in beneficial ownership and money laundering, are inherently transnational and need to be considered at the level of these global systems.

This paper will focus on the corporate legal profession's role in combatting transnational grand corruption. Corporate lawyers advise businesses on corporate law and legal business conduct within relevant jurisdictions. Corporate lawyers primarily work in corporate law firms, though they also may work in-house within the company. These law firms can vary drastically in size, but the particular law firms in mind are large corporate law firms. These firms are typically based in the US or the UK but can have offices all around the world (Pistor, 2019, p. 177). Among other professional services, corporate lawyers have been called professional enablers. This term has been used as early as 2012 for actors that have the knowledge, expertise, and authority to launder money or move proceeds of crime in an anonymous way (Levi, 2021).

The corporate legal profession is an important case study of professional enablers to further understand their moral obligations to act against corruption and promote ways in which they should feel enabled to fulfill obligations in fighting corruption. When reflecting on principles of moral complicity and collective responsibility, it seems like there is a strong case for corporate lawyers and the corporate legal profession to try and mitigate their alleged status as professional enablers. Yet, they are also expected to abide by the professional ethics of lawyers, which in certain ways is seen

[1] The Panama Papers was a 2016 leak of 11.5 m files from the database of the world's fourth-biggest offshore law firm, Mossack Fonseca. The documents show the myriad of ways in which the rich can exploit secretive offshore tax regimes (International Consortium of Journalists, 2016).

[2] The Pandora Papers was a 2021 leak of 2.94 terabytes of files from 14 offshore service providers. The documents show how the offshore system continues to be a haven for tax evasion, money laundering, and corruption despite increased international discussion targeting these issues (International Consortium of Journalists, 2021).

[3] A report by Global Witness, published in 2018, links the work done by advisors (namely, banks, accountants, and lawyers) to one of the biggest recent corruption scandals, the 1MDB scandal in Malaysia. 1MDB is a government-owned company intended to promote development in Malaysia but was used as a part of a complex scheme to embezzle billions of dollars of investment to key conspirators through funneling money through a web of joint ventures and offshore companies into their personal accounts. This corruption has caused a political and economic scandal in Malaysia. The report specifically calls out the lawyers' role in this scandal, noting that the alleged conspirators used major US law firms to shift money into the US (Global Witness, 2018).

to clash with the principles of responsibility. This paper argues that these theoretical tensions are not insurmountable, though, and that collective action is a potential way to align these principles. In the literature on anti-corruption collective action, the standard actors in collective action are identified as business, government, and civil society (Pieth, 2012). Yet, this paper argues there should be a specific focus on the professional services that enable transnational corruption and their distinct role in promoting anti-corruption collective action.

This paper looks at the theoretical tensions between the philosophical principles of complicity and collective responsibility and the principles found in the professional role of lawyers in society to reflect on the corporate legal profession's role in enabling corruption. Furthermore, this paper explores how these tensions can be addressed and how lawyers can be situated in anti-corruption collective action theory and practical collective action initiatives. Section 1, Transnational grand corruption as a collective action issue, starts by introducing grand corruption as a collective action issue. Section 2, Remedial responsibility of corporate lawyers in corruption, situates the corporate legal profession in the context of their enablement of corruption with an analysis of complicity and collective responsibility as applied to corporate lawyers and the corporate legal profession. Section 3, Tensions between moral responsibility obligations and professional ethics, will introduce the professional ethics of lawyers, which will show some of the tensions between the lawyers' perceived professional role and obligations highlighted in Section 2. Finally, Section 4, Anti-corruption collective action and corporate lawyers, promotes collective action theory as a way to engage corporate lawyers in anti-corruption collective action and provides examples of how corporate lawyers on a global scale can fulfill their role and collective obligations against corruption.

Transnational grand corruption as a collective action issue

To begin, the type of corruption which is the focus of this paper should be established. The standard definition of corruption is "the abuse of entrusted power for private gain"- this definition is inherently quite broad (or vague, as Rothstein argues) to cover the various ways corruption presents itself in society (Barrington et al., 2022b; Rothstein, 2021a, p. 6). Corruption comes in many forms - from petty corruption at the local level to grand corruption, where powerful people can drain significant resources from a population for their own private benefit (Chëne, 2019; Transparency International, 2017). While theories of collective action as it relates to the broader definition of corruption may be introduced, this paper's focus will be on issues leaning to the side of grand corruption, which generally has a transnational element of obtaining and moving corruptly-gained money across country borders with the help of financial and legal professionals. Grand corruption happens when high-level officials enact a systematic plan to move public resources to their private purse, through means of embezzlement or soliciting bribes for business contracts generally; and because these schemes are enacted by powerful people with access to professional services that can help move funds, these schemes are often not caught or punished (Jenkins, 2019; Transparency International, 2016). With this type of cor-

ruption schemes, money laundering, offshore accounts, and transnational business corruption are also closely related (Barrington et al., 2022b; Rose-Ackerman, 2002). This kind of corruption has a significant impact on society - it creates inefficiencies and distorts a population's economy, is a driver of poverty and disease, and impedes sustainable development (Jenkins, 2019; Rose-Ackerman, 2002; Transparency International, 2017).

Traditionally, corruption has been framed as a principal-agent problem (Rothstein, 2021b). Principal-agent theory assumes that there are two actors, a principal and an agent, and there is an information asymmetry where the agent knows more than the principal (Groenendijk, 1997). The problem arises when the agent then uses this asymmetry to further their own interests at the expense of the principal (Marquette & Peiffer, 2015). Applying this theory to corruption, an agent like a customs official or a doctor who could take bribes from citizens for better service, should theoretically be checked by a principal, generally seen as a governmental agency, government representative, or civil society, to ensure that they do not engage in bribery. This theory promotes that stronger monitoring systems for the principal and more substantial repercussions against the agent will solve the problem (Persson et al., 2013; Rothstein, 2021b). Yet, recent literature has challenged this traditional notion and reframed corruption as a collective action issue (Cook & State, 2017; David-Barrett, 2019; Persson et al., 2013; Rothstein, 2021b). They challenge the assumption that the principal in the principal-agent theory is in fact acting as a "principled principal," noting that the principal too may have strong self-interests to maintain the corrupt practices even though they know it is unethical and collectively harmful.

These researchers have instead turned to defining corruption as a collective action problem. A collective action problem is "a situation in which the short-term self-interest of individual actors is in conflict with longer-term collective interests, generating a substantial risk that the collective benefit is not produced at all" (Jagers et al., 2020, p. 1282). Bribery and corruption can be described as a collective action social dilemma because "while it may be immediately apparent (to citizens and officials alike) that a country's economy and political system would be better off without corruption, not engaging in corruption on one's own would appear foolish and ineffectual" (Cook & State, 2017, p. 8). This thought process may be further exacerbated in the context of grand corruption (what Bauhr refers to as "greed" corruption) where both actors are likely gaining special advantages to which they are not entitled (Bauhr, 2017). There is even less of an incentive for those engaged in corruption to refrain because of the general lack of public accountability in these situations. Therefore, instead of monitoring systems and stronger accountability mechanisms and repercussions (which is argued to be counter-effective if there is not a principal to enforce any repercussions), collective action theory aims to address these issues by promoting transparency, education, and collaborative standard-setting as ways to combat corruption (Marquette & Peiffer, 2015; Persson et al., 2013). These policies can help in establishing "a credible commitment" to "destabilize the corrupt equilibrium" and reinforce the community's social contract against corruption (Rothstein, 2021b, p. 24).

Remedial responsibility of corporate lawyers in corruption

Next, the remedial responsibility of corporate lawyers to act concerning corruption due to their complicity and collective responsibility will be defined. Lawyers' facilitation of corruption is not just a hypothetical situation of complicity but potentially a significant and systemic issue that needs further understanding (Cooley & Sharman, 2017; Skipper, 2020). As noted above, lawyers are among the group of professional service providers that are key in facilitating the illicit flow of capital by obscuring accountability and using legal means to evade regulations, primarily through securing access to finance, real estate, and visas or citizenship (Cooley & Sharman, 2017). A number of international organizations, like the Organization for Economic Cooperation and Development and the International Bar Association, have published reports recognizing the legal profession's potential facilitation of corruption (International Bar Association et al., 2014; International Bar Association & Organization for Economic Co-operation and Development, 2019; Organization for Economic Co-operation and Development, 2021).

Remedial responsibility is defined as having "a special obligation to put the bad situation right, in other words, to be picked out, either individually or along with others, as having a responsibility towards the deprived or suffering party" (Miller, 2001, p. 454). This responsibility can be grounded through several different principles, including an actor's special capacity to act and moral responsibility for the harm. The corporate legal profession's moral responsibility in enabling corruption will be grounded by dissecting (1) how an individual lawyer can be complicit in corruption and (2) how the legal profession can be collectively morally responsible for its lack of response to the issue.

Complicity

Now the conditions of complicity will be outlined to further elaborate on when a lawyer may be complicit in their client's actions. Example 1 below summarizes a real investigation done by Global Witness. While this example does not aim to prove that the entire legal profession is complicit in corruption, it will be referred to throughout the discussion to illustrate the conditions of complicity more clearly and how a lawyer could be seen as complicit in this situation.

> **Example 1**: In 2016, Global Witness published a report examining how America's legal system facilitates corruption (Global Witness, 2016). In this investigation, the NGO had a person go undercover to 13 US law firms to represent a foreign government official looking to buy various properties and luxury goods in the United States. The representative asked these lawyers how to move the funds into the United States without identifying the foreign government official. The representative intentionally used words in his discussion with the lawyers that should have provoked questions of corruption regarding the origins of the funds, like "grey money," "black money," and "facilitation payments." Despite these red flags, most of the lawyers in their introductory meeting provided some initial advice to facilitate the request regarding how the representative could get

the money into the United States. During their initial meeting, only one lawyer told the representative that he would not help and did not provide any initial advice on what could be done to help the government official.

A person is morally complicit if she fulfills three conditions - (a) voluntarily (b) facilitating or enabling another person to commit a wrong act (c) with the expected knowledge of their contribution (Lepora & Goodin, 2013). For this paper, condition A is assumed to be fulfilled in that corporate lawyers generally voluntarily engage with their clients without coercion or duress.

For condition B, a lawyer can do a number of actions that would be considered facilitating or enabling the crime of corruption, ranging from advising to facilitating the movement of illicit funds to conspiring in the corrupt scheme itself (Organization for Economic Co-operation and Development, 2021). Kadish and Mellema, in their work on complicity from both a legal and moral perspective, outline several actions that would fall under the umbrella of complicity; notably, advice and participation are highlighted in both discussions (Kadish, 1985; Mellema, 2008). This spectrum of acts can make a lawyer more or less responsible for the harm. For example, a lawyer that helps to set up a legal structure of offshore companies and accounts meant to obscure a person's ownership of corruptly-gained assets may be considered more complicit than a lawyer who only advises a client on various potential ways a client could set up this legal structure. Even with legal advice that lawyers are expected to give, they can tread a potentially narrow line in terms of complicity, depending on how far they stray from the spirit and intention of the law (Kershaw & Moorhead, 2013; Smith, 2010). When reflecting on the preliminary advice that the lawyers gave to the Global Witness investigator in Example 1 (and the bravado and recklessness with which a number of the lawyers suggested the advice), it could be argued that these lawyers would have been in some way complicit in helping the foreign official and "would not have been an acceptable response to an actual request for assistance" (Leubsdorf & Simon, 2015).

Finally, condition C considers whether the person knows or should have known that their action would contribute to the wrongful act. In the case of knowledge or expected knowledge as discussed by Lepora and Goodin, the condition would call a lawyer complicit if they knew or should have known that their action would contribute to the corrupt scheme (Lepora & Goodin, 2013). Of course, there are cases when a lawyer can be hoodwinked by their client into a corrupt scheme. However, when looking at Example 1, the investigator used words and described a situation with obvious corruption risks that should have made the lawyers pause. Due to their professional expertise, lawyers should be held to an exceptionally high standard of knowledge based on their experience and role in society with regard to an issue like transnational corruption, which is so widely known and systemic. This standard should be reinforced in their due diligence practices (Kanji & Messick, 2020).

Collective responsibility

Corruption is a systemic issue and must be considered at the systemic and institutional level. While not all lawyers engage in the facilitation of grand corruption, the

allegation of the legal profession as professional enablers by international anti-corruption and professional organizations as shown in the reports mentioned above point to the fact that it is not just a few bad-apple lawyers who get involved. Nevertheless, to what extent may the actions of some lawyers in these schemes implicate the entire corporate legal profession?

The concepts of moral taint and collective responsibility are two concepts that consider the group dynamics of the responsibility for an event. These concepts have been discussed and debated widely and in various contexts, but this paper aims to use the overall principles of these concepts to answer how the legal profession's role in corruption can be considered beyond the individual lawyer. Moral taint generally considers to what extent individual members of some affiliation are in some way negatively marked by the actions of some other people (Mellema, 2003). Mellema uses 'ethical distance' to outline a hierarchy of responsibility based on the agents' distance to the outcome even if the specific individuals within that collective may not have contributed to that outcome (Mellema, 2003). This hierarchy ranges from an individual agent who is wholly responsible for the outcome to more distance forms of involvement, like an agent being a part of a collective responsible for an outcome and an agent being tainted by the actions of person who is responsible. He applies this concept of ethical distancing to business ethics, and the same application can be translated easily to the legal profession. Collective responsibility generally refers to if and how a collective entity can be responsible at the group level (Mellema, 2006; Silver, 2006). There are a number of proposals considering what kind of groups can be a moral responsible agent, but organizations like businesses are often seen as an appropriate place for responsibility because they have a "corporate culture which influences how its personnel reason about the appropriate way to treat persons" (Silver, 2006, p. 271). The legal profession and its members can, in this way, be seen as a relevant agent of collective responsibility because of its codified conduct and regulatory bodies that enforce this conduct and promote the culture of the profession.

Under Mellema's account of ethical distance, members of the corporate legal profession have arguably become at a minimum morally tainted by the actions of these complicit lawyers. Not increasing the distance between the agent and the connected issue by speaking out or condoning the issue is an action that Mellema argues can allow moral taint. Corporate lawyers, while they may not want to support corruption in their personal capacity, do not seem to be publicly protesting those who may be involved in corrupt schemes. Furthermore, they dissect their personal feelings of responsibility from the actions they take as a lawyer. Vaughan and Oakley conducted empirical research with corporate finance lawyers in London, focusing on their consideration of ethics in their work (Vaughan & Oakley, 2016). They noted how the lawyers would say statements like they are not "doing the decision making" or "it is not for me to judge" when acting on behalf of clients, which shows there is an ethical disengagement within themselves from the potential harmful outcome. While differentiation between the ethical perspectives required of various roles is not unique, the extent that lawyers seem to accept the distance between their personal and professional morality without question exacerbates the lack of impunity in situations of enabling grand corruption.

Furthermore, the legal profession as a group agent has been notably silent on acknowledging its systemic role in corruption and taking steps for self-reform. This collective responsibility can be most feasibly located in the professional regulatory body as an actor. As a powerful group agent that regulates lawyers' conduct, the professional regulatory body has significantly more capacity to affect change and consider how individual lawyers should be held responsible for enabling corruption. Yet, it seems these bodies have been hesitant to take steps in this direction. If anything, there are examples of legal profession regulatory bodies advocating against regulations that may help mitigate their role in corruption and money laundering (American Bar Association, 2020; Brasch, 2021; Levi, 2021). While these bodies may have valid concerns about how to implement regulations that may affect the legal profession, the extent that blocking this type of regulatory reform is further embedding the status quo should be considered. This collective silence and lack of acknowledgment of or proposed solutions to the problem ultimately helps the system persist in which lawyers can facilitate corrupt acts. Therefore, while the corporate lawyers committing complicit acts of corruption would have a clear claim of responsibility, the corporate legal profession through its regulatory bodies also may have a claim of collective responsibility that they should address regarding the lack of steps taken to effectively address corruption at the institutional level.

Tensions between moral responsibility obligations and professional ethics

Several obstacles have limited the corporate legal profession from taking responsibility for their potentially enabling actions and fulfilling their role in combatting corruption. International organizations have called for a number of policy proposals that would "crack down" on professional enablers in general. These proposals include increasing the scope of relevant laws to increase the accountability of all professional enablers and to impose enhanced due diligence requirements to make it more difficult for enablers to claim lack of responsibility or liability due to lack of knowledge (Kanji & Messick, 2020; van der Does de Willebois et al., 2011).

While policy and legal reforms are obviously an essential aspect of combatting corruption, they may not be enough. For one thing, corruption is notoriously elusive and adaptable. Therefore, regulatory policy may inevitably be one step behind the actual workings of corrupt schemes if the norm of integrity and anti-corruption does not pervade the relevant actors as well. This concern is why the legal profession is quite an interesting example. While the profession professes to protect the rule of law and justice in its work, its professional norms have, in a way, become a significant obstacle to clearly establishing the role and responsibilities of the legal profession in anti-corruption efforts. For example, the same international organizations that proposed the relevant policy reforms above have explicitly called out confidentiality and legal professional privilege as an obstacle to reform that needs to be addressed (Kanji & Messick, 2020; van der Does de Willebois et al., 2011). Yet, whenever the legal profession seems to be faced with the threat of enhanced inquiry, reporting, or disclosure, they seem to hold closer to their tenants of confidentiality and privilege

and be unwilling to reflect on how these practices may contribute to enabling illicit transactions. We can see examples of this hesitation in how the American Bar Association reacted to the 2002 Sarbonnes-Oxley Act (following the Enron scandal) and how the American Bar Association and Law Council of Australia argue against proposed anti-money laundering (AML) reforms affecting the legal profession (American Bar Association, 2020; Brasch, 2021; Simon, 2005). Even jurisdictions that have introduced AML regulations that include the legal profession shield disclosure based on legal professional privilege to a certain extent (Kanji & Messick, 2020). While this protection is important for access to legal advice, Kanji and Messick note that broadly worded regulations and guidance in Financial Action Task Force member states still give lawyers the opportunity "often [to] abuse this legal professional privilege, asserting that routine, non-legal work… is protected from disclosure on grounds of privilege" (Kanji & Messick, 2020, p. 25). From the opposite perspective, a study in Sweden interviewing lawyers showed a general hesitancy in the profession to take on further AML responsibilities (Svedberg Helgesson & Mörth, 2018). The lawyers interviewed highlighted a conflict with these new obligations and their professional duty of privilege, with one lawyer stating that low reporting was, "because of a lot of things, among other things that this is in conflict with rules on confidentiality…then a new special law that obviously has not considered the rules that exist for lawyers" (Svedberg Helgesson & Mörth, 2018, p. 234).

From the difficulties in implementing reforms described above, we can see a more fundamental tension between the professional ethics of lawyers and their moral obligation to combat corruption. The professional's ethics of lawyers can be summarized broadly in the standard conception of the lawyer in legal ethics. Dare summarizes the standard conception in three principles: (1) partisanship (a lawyer is loyal to the client and is obliged to act in the client's interests within the bounds of the law), (2) neutrality (a lawyer must remain neutral about the moral aspects of the client's interests), and (3) non-accountability (in accordance with the first two principles, a lawyer should not be morally judged by the morality of the client or their goals or the lawyer's assistance in fulfilling the client's goals) (Dare, 2009). These principles ultimately then justify specific role practices in the legal profession, like confidentiality, legal privilege, and zealous advocacy. This standard conception has provided material for a long-standing debate within the legal ethics world, particularly questioning to what extent the principle of non-accountability truly erases the moral responsibility of the lawyer in all professional contexts, particularly with the principle of non-accountability.[4]

There is research showing that the standard conception of lawyers is practically influencing the perception of their practice. Returning to the empirical research with corporate finance lawyers in London, they found a concerning trend of ethical lack of awareness and apathy in the responses of the corporate lawyers and their work, showing that corporate lawyers are incorporating the standard conception into their jus-

[4] This debate is too large to be dealt with in significant detail here, but for a helpful summary of the arguments for and against the standard conception of lawyers, see Wendel's entry on Legal Ethics (Wendel, 2013). For a thorough discussion amongst notable contributors of the debate, see the Forum on Philosophical Legal Ethics: Ethics, Morals and Jurisprudence (Woolley et al., 2010).

tification for not considering the ethical implications of the client's goals (Vaughan & Oakley, 2016). They noted that ethics seemed to be rarely discussed in the profession, either formally or informally, and most seemed not to have considered the ethical implications of their work outside of a purely legal context. The theory of the standard conception of the lawyer is something that may not readily be recognized by practicing lawyers but is something that is notably affecting how they perceive themselves in their role.

These professional norms affect how lawyers consider their moral responsibility for unethical client goals, which has led to a collective ethical distancing of the legal profession to their role in contributing to relevant collective action issues. Nevertheless, the adaptation of this blanket conception hides a significant need to discuss the nuance of various situations of responsibility and whether lawyers need to consider ethical implications beyond pure legality. To illustrate this conundrum and provoke intuitions, Example 2 below represents an actual case when a lawyer was sanctioned for acting in accordance with the client's fraudulent goals.

> **Example 2**: In Germany, an attorney was charged and ultimately sanctioned for "having committed money laundering, assistance after the fact and attempted assistance in avoiding punishment and prosecution… When the 'drug baron' asked for help to hide his money amounting to approximately €13 million, both the defence counsel, the defence counsel's wife and the defence counsel's colleague (also an attorney) agreed to help. At first they brought all the money to the defence counsel's law firm, where they packed approximately €9 million into bags. The remaining money was deposited in the defence counsel's garage (approximately €3 million) and in a safe in the house of one of the defence counsel's friends (approximately €1 million)." (TrustLaw & Arnold & Porter LLP, 2013, p. 26).

Comparing this example to Example 1 above, these are seemingly two very different examples. It is clear that in Example 2 the lawyer played a very active role in hiding the money and most likely knew this conduct was illegal. That being said, further reflection on the two examples shows a spectrum of involvement that still should be questioned. When considering a very basic description of the actions the lawyer took, both examples ultimately show lawyers acting to hide proceeds of crime in the name of their client. Had Example 1 been an actual situation, the initial advice given during the discussions with the lawyers could also have provided enough information to the proposed client to take the next steps to hide the foreign official's money. The end goal in both cases is the same (and in many jurisdictions, illegal), and the actions done by the lawyer were integral to the potential success of the goal. While the degree of complicity is different, it can still be argued that both examples show lawyers that are complicit in attempting to aid the client in hiding their proceeds of crime. Yet, the lawyer in Example 2 was sanctioned by the relevant authorities, and the lawyers in Example 1 (and the corporate legal profession) might see the technically legal advice given as a part of their professional ethics. Given that outcome of illegally hiding proceeds of crime is essentially the same in both examples, it is unclear why the standard conception of lawyers might still be protected in Example 1.

While this assertion of complicity in Example 1 initially seems to run counter to the established norm of non-accountability within the legal profession, there have been several articles in legal ethics since the fall of Enron and the financial crisis also challenging this norm. Legal ethicists, like Gordon and Cramton, challenge the role of the "corporate lawyer-as-advocate" acting as a "hired gun" for the client who is morally unaccountable for actions taken or advice given within the law on behalf of their corporate clients, and they consider a more nuanced perspective of the role of a lawyer advising in a transactional capacity (Cramton, 2002; Gordon, 2003). Defining the role of the lawyer as an "independent counsel" for the client recognizes that a lawyer should provide advice with consideration of the goals of the client as well as with respect to the public interest, ethical considerations, and the intention of the applicable regulations or laws. Furthermore, Kershaw and Moorhead challenge the standard conception of lawyers' ethics by arguing against the principle of non-accountability, stating a "strong theoretical and practical case can be made for imposing limits on the zealous pursuit of client interests by holding transaction lawyers to account where their actions generate a real, substantial and foreseeable risk of client action that is unlawful or 'probably unlawful'" (Kershaw & Moorhead, 2013, p. 27). Even proponents of the standard conception of lawyers, like Dare, recognize that while the lawyer has a set of role obligations within their professional role, an ethical lawyer should "reflect upon the moral point of the role they fill" and act as a reformer to "take active steps toward institutional reform to diminish the gap between role and ordinary morality" (Dare, 2009, p. 55,153).

These conclusions align with incorporating moral complicity as a standard of responsibility that lawyers should be held to when evaluating if their work for their clients facilitated corrupt acts. This debate within legal ethics and consideration of moral complicity in the work of corporate lawyers ultimately needs to be brought into the realm of the practicing world to challenge the assumption of non-accountability further and find a potentially more applicable and comprehensive standard to hold corporate lawyers to in relation to their work for clients.

Anti-corruption collective action and corporate lawyers

The next step is to focus on "how" the corporate legal profession can both (1) further the discussion above of developing a better theoretical approach to considerations of complicity and (2) be considered a key stakeholder in anti-corruption efforts. Collective action can be a way to situate the profession within this idealized role.

First, it is relevant to consider previous work linking grand corruption and anti-corruption collective action, particularly in a business setting. Academics have focused on multinational businesses and their obligations for collective action against corruption as well as how they have created collective initiatives against corruption (David-Barrett, 2019; David-Barrett & Okamura, 2016; Rose-Ackerman, 2002). For example, researchers have evaluated examples like the Extractive Industries Transparency Initiative and the Marine Anti-Corruption Network as international collective action initiatives created either within the affected industry or in partnership with businesses and government to set higher standards in what can be considered

high corruption-risk industries, noting how the anti-corruption norm develops within the initiative and diffuses into a standard (David-Barrett, 2019; David-Barrett & Okamura, 2016). These initiatives have shown how a subset of businesses raised their anti-corruption standards collectively to where the norm of anti-corruption has diffused throughout the industry through transparency and creating incentives like reputation-building. Businesses are collectively more prone to not engage in corrupt activity (like paying bribes to officials) because the collective disrupts the corrupt status quo and reinforces the anti-corruption commitment amongst the group.

In this literature, the standard actors are identified as business, government, and civil society, and there has been a focus on each actor's role in promoting transparency and anti-corruption initiatives (Pieth, 2012). Yet, following the recent attention given to corporate lawyers and the examples that show how their actions have facilitated corruption, there should be a specific focus on lawyers and their role in promoting anti-corruption collectively. There is a potential gap in the literature in recognizing lawyers as another unique principal of focus or stakeholder in collective action against corruption. Like any other business, lawyers and law firms should be held to account if they engage in corrupt activity. They, therefore, could be seen as a part of the general business stakeholder group. However, unlike businesses, lawyers also have a role in connection with their corporate clients. Depending on the type of work done for the client, their advice could be integral in facilitating corruption. They also are seen as potential gatekeepers who should have known that a corrupt act was taking place and advised or intervened appropriately (Barrington, 2021; International Bar Association & Organization for Economic Co-operation and Development, 2019). Lawyers, therefore, also have a connection to the government in that they are tasked with upholding and promoting the rule of law as a profession. These two connections, between the lawyer and the business and the lawyer and the government, are important when considering how lawyers should consider their professional role in collective action. Collective action theory can also more comprehensively identify connections like this between various actors to further understand factors that affect collective action initiatives. Finally, these connections must be considered at the national and multinational levels. If lawyers are to help reinforce the anti-corruption commitment in the situations they are expected to, they need to ensure that all lawyers will take the same stand collectively in relation to enabling corruption. Therefore, lawyers' regulatory bodies have a unique role in controlling corruption by proactively developing, coordinating, and enforcing this standard. Regulatory bodies need to specifically address the obstacles of lawyers considering their role in anti-corruption collective action and promote professional norms that consider the ethical implications of their role.

Following from this theoretical role that the corporate legal profession finds themselves in relation to corruption and collective action, some practical ways the legal profession can or already has started relevant initiatives that bolster lawyers' collective capacity to address the transnational issue of corruption and other ethical issues are highlighted. While these initiatives may not translate into a full practical framework, these actions recognize some ways to take action on these theoretical considerations.

For example, the legal profession has a collective obligation to maintain and self-patrol the profession's ethics, primarily through their self-regulating authorities. To what extent these authorities promote anti-corruption standards or reprimand lawyers who are complicit in corrupt acts should be considered. As Pearce proposes, bars and associations could amend their codes to explicitly call lawyers accountable for their work concerning their clients (Pearce, 2002). While this may be a contested move, a rule like this would generally draw the corporate legal profession closer to working in the name of the public instead of only in pursuit of their client's (potentially illicit) goals. These reforms could also include a process of deliberative democracy, as Parker elaborates, which would make the "profession, state and community deliberate together about regulatory issues [which] increases the accountability of the profession and forces it to engage with and community expectations for itself" (Parker, 1997, p. 404). These reforms may be hard to implement politically for law societies and bar associations, but these actions could be beneficial in improving the legitimacy of the legal profession as it relates to their duties to the public interest. In addition, lawyers' codes of conduct, regulations, and guidance could be made more explicit concerning corruption and provide clearer instructions for the due diligence expectations that a lawyer should do on a client if red flags of corruption are identified.

The legal professions' self-regulating authorities can implement stricter rules and more guidance on professional enablement of corruption, but these authorities and other organizations can also work to foster better discussion, communication, and informal development of norms promoting ethical considerations in a corporate lawyer's work. These efforts can lead to a stronger salience of professional identity in the legal profession by increasing the exposure, time, and commitment to ethical issues that professionals potentially can face (Robertson, 2009). For example, the World Economic Forum and the Stolen Asset Recovery Initiative have created a unifying framework highlighting several practices to reinforce the role of gatekeepers against illicit financial flows that gatekeepers can endorse (World Economic Forum & Stolen Asset Recovery Initiative, 2021). Their proposed practices include clearer policies and due diligence rules but also elaborate on how gatekeepers should promote a culture of integrity, a "speak-up" culture, and collaboration with other sectors to share best practices. These kinds of initiatives by organizations working with legal professions or for anti-corruption can help bring discussion and proposals to the practitioners for them to implement. Further collaborative discussion and research should be encouraged to consider how discussions of professional identity and ethical norms can change the current ethical culture of corporate lawyers. There are examples studied from legal ethics showing how lawyers seem to adapt their ethics to that of their clients (Clark et al., 2021; Kim, 2005; Robertson, 2009), so organizations and regulatory bodies should consider in what ways can this phenomenon be reverse-engineered to incentivize lawyers to consider their role in mitigating corruption.

Finally, there is an opportunity for corporate lawyers to use their role in society to develop more initiatives to address issues of transnational corruption, which may include enforcing a higher collective standard in providing advice or advocating legislators to fix regulations and promote legislation that addresses corrupt practices. These initiatives can be exclusive to the issues of the legal profession or broadly implemented to incorporate other professional services. Collective statements can

be used to take a stand on a particular issue, express the legal profession's viewpoint to the public, or address public concerns (Wendel, 2021). For example, in advance of the London Anti-Corruption Summit in 2016, many major law firms, consultancy groups, and real estate agents put out a statement acknowledging their role in relation to the public interest and their commitment to not facilitate proceeds of crime or corruption into legitimate financial markets (Professional Services Leaders' Statement of Support for the London Anti-Corruption Summit, 2016). Another example of a global pledge at the individual lawyer level (but in a different context) is the World Lawyer's Pledge on Climate Action, where individual lawyers and legal professionals can pledge to "integrate climate considerations …[and] refrain from providing legal advice to individuals or corporate actors who seek to circumvent or undermine meaningful climate action or avoid climate responsibility" (Stucki et al., 2021). These are strong statements that recognize how lawyers can and should implement ethical considerations, like corruption and climate change, in their work. These initiatives are relatively new, and it will be noteworthy to follow initiatives like these to see if these statements follow through into authentic action from the committed professionals.

To conclude, by recognizing their complicity in this systemic issue, corporate lawyers should work to disassociate themselves from this issue by taking a collective stand and publicly advocating for measures that will help them mitigate their potential involvement in corruption. This paper contributes to further motivating the corporate legal profession to recognize their specific role in anti-corruption collective action and take steps to actively show their commitment against enabling corrupt practices within their profession.

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