



A framework for analyzing international business and legal ethical standards

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Abstract Globalization increasingly brings businesses and legal providers together. With the help of lawyers, savvy businesspeople can complete complicated international transactions or create multinational networks of related corporations. This isolates risk, facilitates local business transactions, and carefully tailors localized ownership structures. However, these globalization activities can also facilitate activities such as international jurisdiction shopping, tax evasion, money laundering, and even terrorist financing. The resultant challenges undermine the ability of all parties to both compete and pursue ethical behavior across national markets. This article develops a framework for analyzing international business and legal ethics. Specifically, we focus on four key topics: (1) how globalization impacts both business and legal ethics; (2) the special role played by national interests in shaping the applicable ethics and legal standards; (3) a framework to explain how the configuration of international business networks and related legal services can have dramatic ethical implications; and (4) applicable issues identified in the Panama Papers and the Paradise Papers.

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1. Globalization and ethics colliding

In the era of globalization, markets around the world are increasingly interconnected. Barriers to

trade have been reduced, information and communication technologies have improved, and all types of business firms—including professional service firms—are now pursuing sophisticated international strategies to increase profit and market share. At the same time, national governments have changed their policies, practices, laws, and regulations to

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reap the benefits of globalization while also attempting to advance their own local interests. Global firms of all types are entering foreign markets and devising various international strategies to garner maximum profit.

Today, with the help of lawyers, savvy individuals and international businesses can easily engage in complex international transactions or create their own multinational networks of discrete corporate entities (e.g., corporations or limited liability companies). Quite often, these corporate entities are shell companies with minimal operations and few local operating assets that can be integrated into a broad international network of business ventures. To attract the resulting international cash flows, virtually all countries have become more business friendly. To varying degrees, these supportive laws and regulations also present clear ethical challenges.

The same mechanisms that attract and facilitate legitimate international business endeavors can be used to achieve illegal or immoral ends. When related transactions across multiple countries would otherwise raise major ethical concerns, piecemeal local activity can easily conceal broader purposes and, even if they are recognized, particular countries may still consider the piecemeal activity to be completely appropriate.

The pecuniary interests of a particular country may support the local activities regardless of the overall global implications. Within this context, both businesspeople and lawyers may engage in international ethical arbitrage by utilizing different jurisdictions and ordering transactions that may achieve similar functional ends but are subject to critically different legal or ethical standards. More research regarding these types of ethical dilemmas is warranted, especially in the context of professional services.

In this article, we focus on business and legal ethics within the global context. We begin by discussing how globalization affects both business and legal ethics and explain the special role played by national interests in shaping the applicable ethics and legal standards. We then present a framework to explain how the configuration of international business networks and related legal services can change the ethical implications dramatically; this effectively invites ethics arbitrage in international business decision making. We end with examples from the Panama Papers and Paradise Papers, which we look at through the lens of the framework, and explain how offshore shell companies can work. Ultimately, greater international coordination and enforcement is necessary in order to assure greater ownership transparency

and move us toward a globally recognized standard for business and legal ethics.

2. Explaining ethics: Business vs. legal

As we begin examining business and legal ethics within a global context, we first need to define the term (Javalgi & Russell, 2018, pp. 705–706):

Ethics is a historically important branch of philosophy that focuses on morals and values. [Ethics] broadly conveys the concepts such as right or wrong, good and evil, virtue and vice, and of being held accountable in this manner. Values provide guidance as we determine right versus wrong, good versus bad. They are our standards. Morality, on the other hand, refers to patterns of thought, action, and decision that are operative in everyday life. Morals are values (honesty, integrity) which we attribute to a system of beliefs (e.g., religious and political). Ethics is about our actions and decisions.

At its most basic level, *business ethics* therefore simply refers to “the badness or goodness of [business] behavior” (Javalgi & Russell, 2018, p. 710). Clarifying further, business ethics encompasses (Carroll, 2000, p. 36):

Those activities, practices, policies, or behaviors that are expected (in a positive sense) or prohibited (in a negative sense) by societal members . . . Ethical responsibilities embrace a range of norms, standards, or expectations of behavior that reflect a concern for what consumers, employees, shareholders, the community, and other stakeholders regard as fair, right, just, or in keeping with stakeholders’ moral rights or legitimate expectations.

Consistent with this view, it has been proposed that business ethics is the outcome of a process of expectations, perceptions, and evaluations interacting with societal and organizational considerations (Svensson & Wood, 2007).

In practice, given the diversity of stakeholder perspectives in business, it is not surprising to find disagreements over which perspectives constitute the ‘correct’ ones. Even domestically, there are a large number of considerations. International business ethics inherently involves more complexity and a collision of multiple national perspectives. As a result, there still is no clear consensus of what exactly constitutes international ethics (Kolk, 2016). However-

er, international ethics is inherently linked to the melding of national cultures (Wines & Napier, 1992). In turn, national cultures are thought to provide the foundation for the interaction of “institutional, organizational, and personal factors” (Stajkovic & Luthans, 1997, p. 21).

2.1. Business perspectives

From these finer mechanisms, the outcome of international business ethics tends to result in one of four distinct ethical perspectives (Enderle, 2015): (A) foreign country-type (implying the ethical standards are supplied by the foreign host country); (B) empire-type (implying the ethical standards are supplied by the home country); (C) interconnection-type (implying the ethical standards are a mixture of home and host country ethics); and (D) globalization-type (implying the ethical standards originate from universal ethics).

2.1.1. Foreign country-type

The first type of ethical perspective—a foreign country-type—adopts a culturally relativistic, when-in-Rome approach (Enderle, 2015). This type of ethical perspective commonly arises in connection with such things as international environmental dumping or labor issues. For example, in 2005, the decommissioned French aircraft carrier *Clemenceau* was towed to India for scrapping. The French did not have any ethical concerns even though the ship was “full of asbestos, PCBs, lead, mercury, and other toxic chemicals” (Greenpeace International, 2005). The French simply adopted India’s views regarding the ethics of environmental and safety issues inherent in ship breaking. In turn, Greenpeace decided to use the *Clemenceau* as “part of a day of action . . . demanding immediate reforms of [ship-breaking], one of the world’s most dangerous and dirty industries” (Greenpeace International, 2005). The ensuing legal battles and bad publicity ultimately resulted in France towing the ship back to France. It was not until 2009 that the ship was salvaged under significantly improved conditions (Maritime Journal, 2009).

2.1.2. Ethical imperialism

The second type of ethical perspective, ethical imperialism, assumes that the ethics of the home country should be adopted everywhere (Enderle, 2015). An example of this ethical approach is revealed by a story of a U.S. computer company implementing an antidiscrimination program in its Saudi Arabian office:

Under the banner of global consistency, instructors used the same approach to train Saudi Arabian managers that they had used with U.S. managers: the participants were asked to discuss a case in which a [male] manager makes sexually explicit remarks to a new female employee over drinks in a bar. The instructors failed to consider how the exercise would work in a culture with strict conventions governing relationships between men and women [as well as regarding the consumption of alcohol.] (Donaldson, 1996)

As might be expected, ethical imperialism can sometimes alienate foreign stakeholders.

2.1.3. Interconnection-type

The third type of ethical perspective, the interconnection-type, adopts a mixture of home and host ethical perspectives (Enderle, 2015). For instance, the ethical issues surrounding the production of foie gras (the liver component of pâté) are simultaneously one of animal cruelty (through forced feeding of ducks/geese), and national culture (as part of the heritage of France). In the case of foie gras, an emerging interconnection-type ethical compromise advocates for a compassionate way to feed the ducks and geese (Baker, 2015). The animals are still slaughtered, but the feeding process is more humane.

2.1.4. Globalization-type

The last ethical perspective, globalization-type, originates from an appeal to universal ethics regardless of host and home approaches (Enderle, 2015). An example of this approach is Apple’s refusal to assist the FBI in unlocking an iPhone related to the San Bernardino terrorist attack. In refusing to comply with a magistrate’s order, Apple asserted the defense of civil liberties to defend “the data security of hundreds of millions of law-abiding people” (Holpuch, 2016). Apple’s universal ethical appeal extended to all people in the world.

2.2. Legal perspectives

In stark contrast to business ethics, legal ethics is inherently more specific and limited jurisdictionally. This is true irrespective of the specific country involved. While legal ethics in different countries incorporate various perspectives, the results largely are framed within the context of national values and the local administration of justice. Professional virtues exist universally with respect to lawyer competence, independence, loyalty, confidentiality, responsibility, and honorable conduct (Hazard &

Dondi, 2004). At the same time, legal ethics are also concerned with protecting and promoting “the community’s [own] common good” (Pearce, 1992, p. 241). For this reason, legal ethics tend to exhibit more ethical parochialism than ethical imperialism regardless of whether or not international activities are involved. This is the core of the ethical problem presented by globalized business.

Legal services are integral to international business decision making. Lawyers enable businesses to navigate the rules of different countries and chart a course for optimal profitability (USITC., 2011). However, the process of integrating lawyers into business decisions opens the door to “cross-disciplinary ethics arbitrage” (Davis, Kumiega, & Van Vliet, 2013, p. 867). Adding an international dimension only complicates the situation further. Lawyers run the risk of becoming hired guns for maximizing client profitability with little regard for their professional obligations to the bar and broader society (Edwards, 1990).

As a result, several observers have questioned the wisdom of fusing lawyer professionalism with international business concerns:

The essential characteristic of a global organization is that it has divorced markets from nation-states. Borders are largely irrelevant to the movement of capital, goods, and services. . . . While it is sound from a business perspective, the concept carries with it the danger of professional statelessness, a condition in which lawyers over time become disassociated from the legal profession’s fundamental values, such as lawyer independence. (Daly, 1997, p. 1111)

This is all the more problematic because, for lawyers, all of these considerations are only evaluated in light of the local rules dictating the lawyer’s ethical obligations.

For instance, in the U.S. today, the Model Rules of Professional Conduct (as amended or adopted by the different states) determine the legal ethical requirements for U.S. licensed lawyers (American Bar Association, 2016). These legal ethical requirements do not change by virtue of international activities, other than possibly raising questions of limited legal jurisdiction over the foreign activity. However, in Europe where regional interests hold greater sway, the Council of Bars and Law Societies of Europe (CCBE, 2013) have express ethics rules governing “all lawyers who are members of the [member states and have] . . . cross-border activities within the European Union.” In all other matters, European lawyers are still directly subject to their national bars and law societies. Within each

system then, the determination of the applicable legal ethics is determined by rules established by the national or regional authorities.

Given the differing roles of lawyers in different countries and cultures, it should not be surprising that significant differences in legal ethics may exist across nations and regions of the world. These result in international differences in legal ethics of both form and substance that may further influence the accepted business practices within a particular country. The differences in legal ethical standards can have significant consequences.

In the U.S., prior to 1908, the issue of legal ethics was left to state and local bar associations. The first national code of legal ethics was the 1908 Canons of Professional Ethics (American Bar Association, 1908). Of particular relevance to legal ethics and international business transactions was Canon 16, entitled Restraining Clients from Improprieties: “A lawyer should use his best efforts to restrain and to prevent clients from doing those things which the lawyer himself ought not to do . . . If a client persists in such wrongdoing the lawyer should terminate their relation” (Russell, 2008, p. 148). This earlier approach included the individual attorney’s ethical perspective without regard to legal requirements or jurisdictional matters. Legal ethics was linked to morality.

However, the strength of the Canons was also their perceived weakness. The absence of clearly delineated rules under the 1908 Canons created uncertainty for U.S. lawyers trying to determine what they were and were not permitted to do specifically (Russell, 2008). Consequently, subsequent U.S. legal ethics requirements abandoned appeals to broadly based morality and increasingly substituted a detailed rules-based approach (Schneyer, 1984). In effect, the U.S. legal ethics regime abandoned the core foundations of moral philosophy underlying the general field of ethics (Russell, 2008).

Today, legal ethics for U.S. lawyers is largely amoral. U.S. legal ethical rules “move[d] from a standard of sanctions for unreasonable conduct [under the Canons] with the background of reasonableness formed by centuries of law, to a closed-end standard of sanctions for violations of stated norms only” (Pepper, 1986, p. 614). In the U.S. today, “[if] conduct by the lawyer is lawful, then it is morally justifiable, even if the same conduct by a layperson is morally unacceptable and even if the client’s goals or means are morally unacceptable” (Pepper, 1986, p. 614).

In stark contrast, the Code of Conduct for European Lawyers clearly retains the moral dimension for legal ethics previously present in the U.S.

Canons. Section 1.1. (The Function of the Lawyer in Society) states:

The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. . . . A lawyer's function therefore lays on him or her a variety of legal and moral obligations. (CCBE, 2013)

The differences in legal ethics across the world are significant. Across the extremes, legal ethics represent different approaches to values, justice, and the relationship to a particular society. These also likely have an impact on acceptable business practices. With planning and coordination, these differences provide a great opportunity for international ethics arbitration.

3. The role of nations in international ethics

Given the different perspectives of business and legal ethics within the international context, both still have a common nexus with particular national governments. National governments intentionally seek to reap the benefits of globalization by attracting international businesses. To achieve this goal, national governments attempt to create an environment aligned with business interests; this includes legal requirements. At the same time, the legal ethics for a particular country are directly impacted by the rules from the same national government. This suggests that national governments can play an active role in shaping—or manipulating—the national context to align international business interests with local legal ethics.

In attempting to understand the role of nations within this international context, it is helpful to consider Garrett Hardin's "Tragedy of the Commons" (The Commons). Among other things, The Commons provides a framework for understanding the behavior of both individuals and governments in international markets. In The Commons, Hardin (1968, p. 1244) considered the economic behavior of herdsmen and the consequences of having a "pasture open to all." According to Hardin, a problem arises because each herdsman obtains increased economic utility for each additional cow he adds to the pasture. Even though overgrazing hurts everyone, the incremental detriment to each herdsman for cheating is only fractional. The result is a tragedy as each herdsman opportunistically seeks to maximize his or her own unbridled economic utility. "Ruin is the destination" (Hardin, 1968, p. 1244).

Perhaps even more telling for international ethics is the backstory to The Commons. Originally, Hardin was attempting to use Adam Smith's work from *The Wealth of Nations* to show that "the sum of separate ego-serving decisions would be the best possible one for the population as a whole" (Hardin, 1968, p. 1244). However, Hardin was unable to achieve this goal, as it simply did not work. For this reason, Hardin continued searching. He ultimately stumbled upon the work of William Foster Lloyd regarding cattle grazing and the maintenance of open pastures (Hardin, 1998).

Lloyd observed that "with a resource available to all"—like international markets—"the greediest herdsmen would [only] gain—for a while" (Hardin, 1968, p. 1244). Ultimately, "the unmanaged commons would be ruined by [the opportunism of] overgrazing, competitive individualism would be helpless to prevent social disaster" (Hardin, 1968, p. 1247). In order to avoid this, Hardin concluded that the best way "to avoid disaster in our global world is through a frank policy of 'mutual coercion, mutually agreed upon'" (Hardin, 1968, p. 1247). As applied to globalization, this suggests that all legal professionals supporting cross-border business should be subject to a globalization-type ethics requirement similar to those across Europe.

By itself, The Commons instructs how individuals and nations are likely to behave without laws governing their behavior. However, the analysis can be taken further. How might opportunistic individuals and nations be expected to respond to Hardin's (1968, p. 1247) prescription of international "mutual coercion, mutually agreed upon?" While a finer theoretical analysis is beyond the scope of our current article, both Coase's Theorem and Game Theory assert that individuals and nations will adjust their behavior in light of the perceived benefits and consequences of different alternatives (Wilson & Wildasin, 2004). One of their options will be to game the system by feigning full support for multinational obligations while continuing to pursue strategies that continue to provide unique individual benefits.

One example is the national pursuit of tax competition in violation of mutually agreed upon international agreements. Tax competition occurs when a specific country attracts international capital by setting inefficiently low tax rates and public expenditure levels (Devereux, Griffith, & Klemm, Thum, & Ottaviani, 2002). When considered collectively (just like The Commons), tax competition presents risks of reduced national tax revenue resulting from a tax rate "race to the bottom" (Devereux et al., 2002, p. 452).

The Republic of Ireland recently dealt with this type of behavior. Due to risks posed by tax competition, in 1997 the European Council of Ministers adopted a “Code of Conduct in business taxation, as part of a package to tackle harmful tax competition” (European Commission, 1997). This perspective was subsequently reiterated and adopted into law (European Union, 2007) by virtue of Article 108(2) of the Treaty on the Functioning of the European Union. However—if recent accusations are to be believed—this did not stop the Republic of Ireland from illegally engaging in tax competition to attract Apple to Ireland.

On June 11, 2014, the European Commission initiated a formal investigation into potentially illegal aid, via tax competition, by the Republic of Ireland (Barrera & Bustamante, 2018). On October 2, 2017, the European Commission (n.d.) formally accused the Republic of Ireland of engaging in illegal tax competition by giving special benefits to Apple. If proved true, the illegal tax completion represents the avoidance of over \$14 billion in taxes (Reuters, 2017). The charge signifies the intentional and illegal violation of a nation to its international obligations in order to attract the capital of a major multinational corporation.

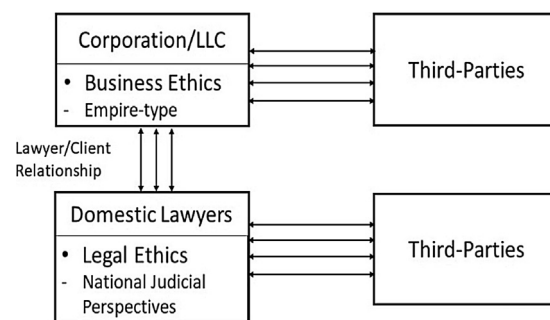
Nations may play various roles in connection with international business and legal ethics. In this regard, national behavior can often be viewed as self-interested and not always transparent. In seeking to manage the global commons, international agreements are intended to manage the national interrelationships. However, it also should be expected that some nations will provide excuses for pursuing their own individual goals—to attract international businesses.

4. An international business and legal framework

Based on our discussion so far, it is clear that there can be some type of interaction between business ethics, legal ethics, and different nations, but the question remains as to whether or not the resulting interactions matter. In attempting to address this question, we first consider a simple domestic context (see Figure 1).

In the simple domestic context, it is clear that business and legal ethics would generally align as otherwise expected. The purely domestic corporate entity would be subject to home-country (empire-type) business ethical duties based on the balance of domestic stakeholder perspectives. At the same time, the lawyer or law firm would be bound by legal ethics dictated by the domestic national/local bar. For completeness, Figure 1 also shows separate communications with third parties. The communications, all

Figure 1. Business/legal ethics, single national context

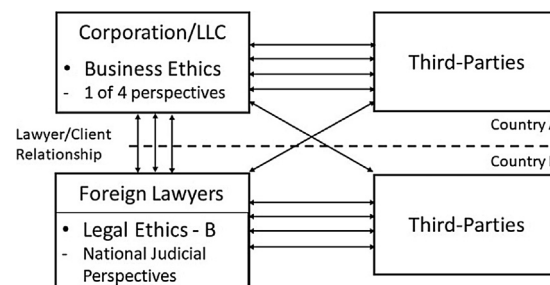


within the same country, could come either directly from the corporate entity or indirectly from the lawyer working as a legal representative of the corporate entity. Since there is a common national frame of reference, there is less chance for controversy.

However, what happens if the corporate entity needs to hire an attorney in another country? This would commonly happen when, for instance, a corporate entity wants to enter into a direct contract with someone in a foreign country. Suddenly, the relationship between the corporate client and lawyer is no longer aligned under common national contexts. Moreover, the addition of the crossed arrows highlights additional ethical conflicts. Where the third parties are located—and who is doing the communication—now becomes relevant (see Figure 2).

Even at this rudimentary level, business ethics must now consider the type of international perspective (foreign country-type, empire-type, inter-connection-type, or globalization-type). However, the business can also consider its outcomes if a Country B lawyer is used rather than a Country A lawyer. Taking the analysis further, consider what happens if the corporate entity decides to create a subsidiary or corporate shell in the given nation to conduct the given transaction. See Figure 3 to see how this relationship would work: The local subsidiary or shell would once again be under the same national context as the local lawyer (Country B). However, the real party in interest, the parent,

Figure 2. Business/legal ethics, simple cross-border



Note: The Corporation's Domestic Lawyer/Law Firm is omitted from this chart.

would remain in a different national context. Consequently, the ethical issues under one configuration might be mitigated (i.e. navigated) by adopting a different transaction structure. Clearly, the ethical and legal context of an international transaction can be actively shaped by good planning.

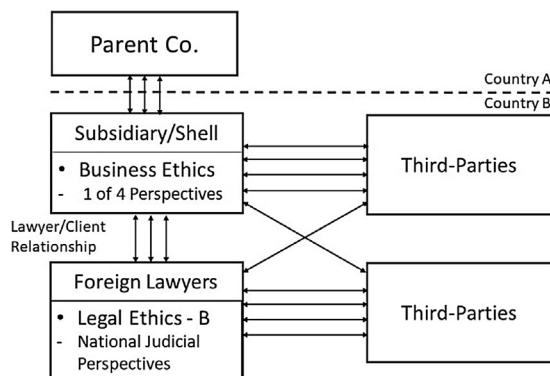
This can have extremely significant consequences when even more complex corporate structures or transactions are considered. For instance, since networks of discrete corporate subsidiaries/shells can now be established easily in multiple countries, the relationships of subsidiaries and/or shells can be laid out as follows (see Figure 4): Given the complexity, the potential relationships with third parties have been dropped from Figure 4 (but they continue to exist). Moreover, as shown in the first cross-border example, it should be remembered that a company—even a subsidiary or shell company—can have lawyers located in different countries. Therefore, in Figure 4, the third subsidiary/shell could have been located in yet another country (E) while its attorneys could have been in Country D (as shown). The parent entity could have its own legal counsel in various different countries.

Ignoring the space limitations, it should now be clear how the configuration and locations of parent/subsidiaries, plus lawyer/law firm locations, can provide an almost infinite number of combinations and structures. What should also be clear is that the selection of structures and locations could have a significant impact on the perceived ethics and legality of the overall process. This is a clear invitation to engage in international ethical arbitrage. An example is provided in Section 5.

5. Using offshore shell corporations

The configuration of business structures and locations provides a convenient opportunity to manipu-

Figure 3. Using an international subsidiary or shell



Note: The Parent Corporation's Business Ethics and Domestic Lawyer/Law Firm are omitted from this chart.

late international ethical and legal issues. As recent discoveries from the Panama Papers and Paradise Papers suggest, this manipulation can occur for both legal and illegal purposes. The challenge is distinguishing between the two.

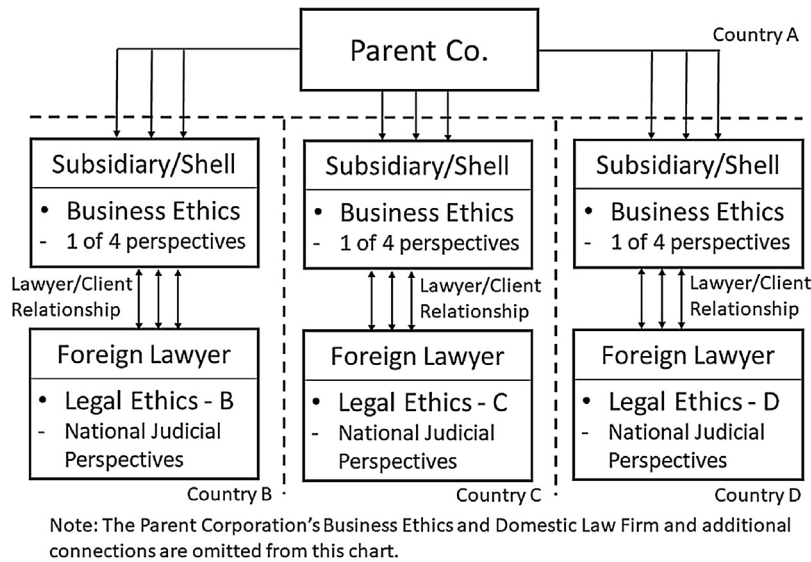
In April 2016, the Panama Papers were published, consisting of 11.5 million documents naming more than 200,000 corporate entities (Obermayer & Obermaier, 2016). All of the leaked documents came from a Panamanian law firm named Mossack Fonseca. Among the disclosures was the completely legal use of offshore companies to provide financial privacy, including actor Emma Watson (Puente, 2016). However, the documents also implicated hundreds (if not thousands) of individuals in potential illegal activity. Because of the disclosures, the prime ministers of Iceland and Pakistan both resigned (Erlanger, Castle, & Gladstone, 2016; Khan, 2017). Several months later, even the named law partners of Mossack Fonseca were arrested and named “allegedly as a criminal organization that is dedicated to hiding money assets from suspicious origins” (Garside, 2017).

In response to the continuing outrage over the Panama Papers, the government of Panama even pledged “its firm and real commitment to transparency and international cooperation” (BBC News, 2016). They did this by setting up a blue-ribbon commission to investigate the Panamanian offshore financial industry (BBC News, 2016). However, just a few months later, most of the commission resigned because the Panamanian government refused to guarantee the release of any resulting commission report (Hudson & Díaz-Struck, 2016). As explained by one resigning member: “Evidently, they [the Panamanian government] wanted us to be part of a charade to convince people they were serious when in fact they weren’t” (Hudson & Díaz-Struck, 2016).

In November 2017, another informative saga began. This time, many of the documents (6.8 million) came from a Bermuda offshore law firm named Ableby and its related corporate services provider (BBC News, 2017). However, 6.8 million additional documents were obtained from an assortment of other sources in various countries. All told, the Paradise Papers represent 13.4 million leaked documents covering a period from 1950–2016 (BBC News, 2017). The Paradise Papers implicate a diverse array of companies and wealthy individuals including Apple and Bono, advisors serving U.S. President Trump, and Canadian Prime Minister Justin Trudeau (BBC News, 2017). At this point, it is too early to determine whether any of them actually engaged in illegal activity. Only time will tell how far the Paradise Papers may go.

A common theme is evident across all of these leaked documents: With the help of lawyers, offshore

Figure 4. Using multiple international subsidiaries or shells in different countries



corporate entities are a common vehicle for illegal and unethical activities. “[I]t is clear from the Panama Papers [and other leaks] that lawyers are playing a central role in helping their clients hide money, avoid taxes, cover up bribery and corruptions, cheat creditors, and launder the proceeds of crime” (Donaldson, 2016, p. 364). Indeed, the basic techniques used are readily available to anyone interested in looking.

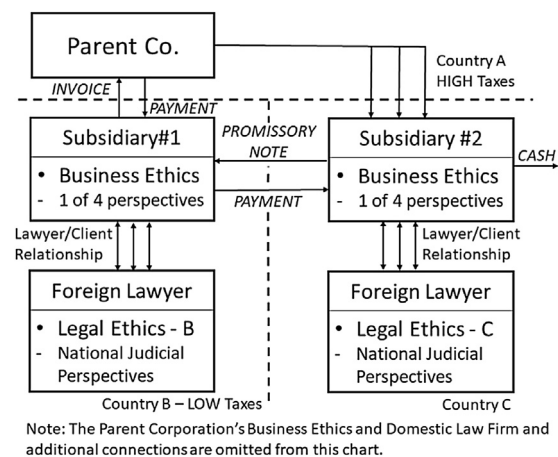
One simple example of the techniques that offshore corporate entities can use for illegal purposes involves the fraudulent transfer of profits from high tax rate countries to low tax rate countries. The task is disturbingly easy. It begins with a corporate shell established offshore in a country with low or zero taxes (OECD, 2009). The country selected must also have laws providing extremely robust privacy rules regarding both firm ownership and bank accounts (Obermayer & Obermaier, 2016). This enables concealment of the true owner and operators of the corporate shell.

Once established, the corporate shell can simply issue one or more invoices to its related parent company in the high tax rate country (OECD, 2009). From the documentation, no one would know that the invoices came from a related subsidiary. The amount on the invoice (or invoices) from the corporate shell would be approximately equal to the parent company’s total taxable profits for that year (see Figure 5).

With the payment of a single invoice, the parent company would deduct the amount of its profits on its income statement as an expense. This would wipe out any taxable profit for the parent company in Country A. At the same time, the corporate shell in Country B would recognize profit in the amount of the invoice(s). However, its profit would be taxable at a low/no tax rate.

Taking the example even further, an additional option would be to establish yet another corporate shell in a separate offshore jurisdiction with laws providing extremely high account privacy rules. For extra security, a second lawyer could be hired who has no actual knowledge of any relationships to the first corporate shell. The second lawyer would set up a second shell to be owned and operated by nominees. Nominees are individuals who represent (anonymously or otherwise) “a major shareholder or class of shareholders . . . [or] represent the interests of a lender or investor or employees” (Ahern, 2011, p. 118). As long as the proper jurisdiction was selected, there also would be no record of any relationship between the parent company and either of the two shell companies. The second corporate shell could then obtain a loan from the first corporate shell. The nominees of the first corporate shell (if any were

Figure 5. An example abusing two shell companies in different countries



used) would transfer its money into the bank account of the second shell. However, the loan would never be paid back. The second corporate shell could then spend the money on virtually anything with little risk of the money being traced back to its origins.

One legal use for structures like this could be simply to achieve enhanced privacy. This appears to be why actor Emma Watson was part of the Panama Papers. The problem is that these same techniques used by Emma Watson can also be used for money laundering and terrorist financing. This is why the Panama Papers led to the resignation of the prime ministers of Iceland and Pakistan (Erlanger et al., 2016; Khan, 2017). By disconnecting the money from its source, shell companies can become the vehicle for evasion and/or funding of illicit purposes.

Almost by definition, the true purpose of a shell corporation is rarely obvious to anyone. Consequently, some individual countries are able to defend their legal protections for extreme secrecy while notably attracting international investment. Although this certainly implicates opportunistic behavior under The Commons, the tougher question exists as to whether the constituent national transactions would constitute unethical conduct at the individual national level. For instance, would it be deemed inherently unethical for a shell company in Country B to receive an international payment for an invoice? Probably not. What if a U.S. lawyer was involved who suspected (but did not know) the non-U.S. transaction might constitute a crime in Country B? In answering this question, the reader is likely to be surprised:

The . . . ABA Rules don't explicitly prohibit an American lawyer from assisting a client with a scheme to break the law of a foreign jurisdiction, so long as the specific acts done on the United States don't violate any U.S. law. (Donaldson, 2016, p. 372)

Indeed, in specific response to the allegations arising from the Panama Papers, it has been asserted that:

1. The ABA Rules do not clearly prohibit American lawyers from assisting a client in a breach of some foreign law.
2. A lawyer is not required by the ABA Rules to withdraw from representation unless the lawyer actually knows the client is breaking the law. If the lawyer only reasonably believes that to be the case, the lawyer is entitled to continue acting on behalf of the client.
3. The ABA Rules do not explicitly require the lawyer to ask more questions in suspicious circumstances. (Donaldson, 2016)

Accepting these conclusions at face value, it appears that—even for U.S. lawyers—legal ethics may not prohibit enabling the violation of foreign laws. Given the U.S. interest in prohibiting such illegal activity, it raises the question of how other countries actively engaged in attracting global flows of capital should be expected to do any better.

In fairness, progress is being made. According to recent accounts, over 170 countries have criminalized money laundering through the Vienna Convention (Sahl, 2014). However, individual countries are still free to engage in opportunistic behavior in the name of privacy and narrowly defined concepts of legal ethics. Consequently, some greater form of mutual coercion mutually agreed upon is necessary in order to assure greater ownership transparency and move toward a globally recognized standard for business and legal ethics.

6. Final summary

Increasingly, globalization brings businesses and legal providers together. However, the ability to configure international business operations—and the location of operations—presents serious ethical challenges. Globalization implicates both business and legal ethics. The process is even more complicated given the role of national interests. For this reason, a framework has been proposed to understand the process better. The configuration of international business networks and related legal services can dramatically change the ethical implications of arbitrage activity. This is evident from just some of the examples identified in the Panama Papers and the Paradise Papers. What is necessary now is greater international coordination and enforcement to assure sufficient ownership transparency and move toward a globally recognized standard for ethical business and legal conduct. The intention of the present article is to lay the foundation for these further discussions.

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